

To be read in conjunction with
the tabled evidence/statement



**HEARD BEFORE JUDGE D SHEPPARD (CHAIR), MR K PRIME,
DR J HARDING AND MRS J VERNON, MEMBERS OF THE BOARD**

WEDNESDAY 26 AUGUST 2009

**HELD AT KINGSGATE HOTEL HAMILTON, 100 GARNETT AVE,
TE RAPA, HAMILTON**

HEARING OPENED [9.13 am]

APPEARANCES

Mr T Robinson and Mr M Chrisp, Contact Energy Ltd

Ms S O'Sullivan and Mr H Deane, Raukawa Trust Board

Mr K Thompson, Dr B Clarkson, Ms K Denyer and Ms K Bodmin,
National Wetland Trust of New Zealand

Mr R Fisher, Ms K Mason and Mr W Russell, Newmont Waihi Gold Ltd

Mr P Majurey, Genesis Energy

Audio file: dpm 0135

CHAIR: A warm welcome to this Board of Inquiry sitting. You know what we're here for, and we would like you to understand that there's no particular formalities, that we would be content for you to present your case as you choose and perhaps when we come to the end of your presentation there may be some questions from the bench, and we have found that some type of exchange of that sort has proved to be useful. So Mr Robinson if you'd like to address us first, we'd welcome that.

MR ROBINSON: Thank you sir. Much appreciated. For the record my name is Trevor Robinson, counsel for Contact Energy Limited. I am accompanied on my left by Mark Chrisp, planning consultant who's circulated evidence, and on the far left, Ms Dixon, my co-counsel and in-house counsel at Contact Energy.

I have prepared a very brief set of legal submissions, since I apprehend that in a process of this nature the legal issues are relatively narrow, and this is much more a case of finding appropriate objectives and policies and therefore much more in Mr Chrisp's camp, and we have therefore divided our time on the basis that I will hopefully spend less than 20% of our time talking to you, and he will spend the balance.

So as I say I have a relatively brief set of written submissions which should be before you and their purpose is to address only certain addresses arising out of the submissions, and more particularly the further submissions of Contact Energy Limited.

By way of interpolation, to introduce Contact's interests in freshwater management, it operates a hydro storage lake in Central Otago, being Lake Hawea. Something around 750 megawatts of hydro generation on the Clutha River at Clyde and Roxburgh, and uses cooling water in the

Patea River catchment at its Stratford combined cycle generation plant, and will use it for the thermal Pika plant currently under construction. That's in excess of, or nearly 600 megawatts, which also uses cooling water at Wairakei and Te Rapa, and discharges contaminants from the thermal stations and the geothermals.

Introduce Mr Chrisp, his evidence details in detail with the issues raised in Contact's primary submission, and I don't intend to address those matters unless there are questions from the Board.

Rather, I propose in the brief submissions to discuss some issues that arise out of the character of the document under consideration, and the range of submissions the Board of Inquiry has received from other parties as to what amendments might be made to it.

Talking about the key characteristics of the document, as Ms Powell made clear addressing the Board on behalf of the Ministry on the first day of the hearing of submissions, the purpose of the proposed National Policy Statement is to guide local authorities as to distinct from guiding users of the environment. The reality in my submission however, is that as currently framed the proposed NPS would not provide any meaningful level of national guidance, because it's expressed in such a level of generality that it would do little more than ensure that all regional councils promulgate regional plan provisions that address the checklist of water quality and quantity issues set out in the proposed NPS. As Ms Powell put it, the proposed NPS is an RMA tool that will support implementation of Government policy, rather than the means to set the whole direction for water management. It's this characteristic that is because the NPS provides little substantive direction, which means that the Ministry evidently believes it can accommodate the announcement by central

Government of a parallel process potentially leading to a significant shift in the way in which

New Zealand's freshwater resources might be managed in future. For its part, Contact regards this approach as missing an important opportunity to guide regional decision makers in key areas where the approach taken to date has lacked consistency. Most relevantly in Contact that includes the extent to which regional plans governing water allocation recognise and provide for the contribution and the use of freshwater for production of renewable electricity generation, makes the social and economic wellbeing. Mr Chrisp's evidence expands on the points made in Contact's submission, and I don't propose to address it further myself.

Many other submitters have sought that the proposed NPS provide greater guidance as to the content of the regional plans that would be promulgated in accordance with its requirements. The nature of the guidance sought naturally reflects the interests of particular submitters. Again, I don't propose to address the issues canvassed. Contact has provided further - filed further submissions and Mr Chrisp's evidence addresses most of the key points. Rather, I seek to address the Board at a more fundamental level, should it determine that it is appropriate for the proposed NPS to provide greater level of guidance than is currently the case.

[9.20 am]

One of the problems in my submission - is that the current form of the proposed NPS is that it's susceptible to amendment in virtually any direction the Board of Inquiry might choose. The range of submissions before the Board of Inquiry reflects that reality, and their brief lays the jurisdictional foundation for a wide range of potential approaches, guided of course by the provisions of part 2 of the Act. And similarly a practical

reality, that viewed on a nationwide basis, the provisions in part 2 might steer the Board of Inquiry in any number of different directions, the detail of which cannot be foreseen by stakeholders with an interest in management of freshwater resources. The end result could be a document that looks very different indeed to the proposed NPS, and it is submitted that the Board of Inquiry should be alert to the potential that it might inadvertently deprive stakeholders of fair opportunity to be heard on matters of great concern to them.

Accordingly, it is submitted that should the Board of Inquiry form the preliminary view, that it should recommend amendments which substantially alter the force and effect of the proposed NPS, for example to include guidance on the content of particular objectives and policies required to be in regional plans, then it would be appropriate to reconvene the Board's proceedings in order that submitters might have the opportunity to make submissions on the detailed amendments the Board has in mind. The sections of the Act governing the Board's process - do not impose any limitation on it seeking further input from submitters before it makes its report and recommendations to the Minister under section 51(2) in the Board's terms of reference envisaged that this might be desirable. Of course this contingency may never arise. The Board of Inquiry may determine that the comparatively modest policy objectives of the proposed NPS are appropriate, and the document can be promulgated largely in the form notified, as however other submitters will no doubt already have observed the management of freshwater resources is of critical importance both to the economy of New Zealand, and to the social and cultural wellbeing of a large number of New Zealanders. If the Board determines that it is appropriate for the proposed NPS to provide real guidance as to how issues relate to freshwater management should be resolved, which in my submission is not something it does at present, then it is submitted that it is only appropriate that the Board hear from affected

stakeholders on the detailed exposition of the direction the Board believes such management should take.

Comparatively brief and I'll hand over unless there are any questions. I'll hand over to Mr Chrisp.

CHAIR: May we just ask the question about the burden of your submission, which I understand clearly now, the Board was not obliged to invite further submissions as recorded in the Act, and of course the Board have to establish what its process was to be before it had the primary submissions. Even so, the Board anticipated at least the possibility that there might be submissions seeking substantial changes to the content of the proposed NPS, and that the total range of those submissions might be quite wide and might involve quite direct conflict, if not confrontation, and so the Board chose to do what it was not obliged to do, and invited further submissions. And Contact Energy amongst others accepted that invitation and had the opportunity to say what they wanted to in response to the submissions of others. My question is did that process provide in a way that's consistent with the Acts processes, and that avoids the process going on for another round with all the costs and delays that that would involve, did that deal with the issue that you are raising in your paragraphs 10 through to 16?

MR ROBINSON: I don't believe it did Sir and I'll explain why. A number of submitters said precisely what they wanted the Board to do with the NPS and I think class in that category for instance, our friends at Meridian Energy who gave the Board a red lined NPS. And so did EDS. A number of submitters didn't take that step which was - and Contact was among them, but said reasonably clearly what they wanted. Now in respect of both groups, I agree completely with what you've said Sir, that the opportunity to make further submissions is a fair process that gives - and

I've forgotten which administrative law case it is, but it gives everyone a fair crack of the whip.

CHAIR: North Taranaki Environment Protection Society.

MR ROBINSON: Thank you Sir. That it's the submissions who looked at this document, and made much more generalised requests for relief that I was intending to refer to, and I have referred in my submissions specifically to Environment Bay of Plenty. I didn't go looking for any more, but they were the first one that I found, and it may be that the Board decides that it's not appropriate to venture into examination of the document on such an imprecise jurisdictional base. My submissions are framed on the contingency that it might wish to do so, having reflected on the totality of the submissions before it, and reflecting on the document.

CHAIR: Well in terms of - the Board might bear in mind they are all about natural justice as epitomised by the reference to the (inaudible).

MR ROBINSON: Indeed Sir.

CHAIR: Well thank you very much Mr Robinson. Grateful to you, for that. Now we'd like to go to Mr Chrisp's evidence and Mr Chrisp we have had the opportunity to read it, so that's been helpful to us. We require no formality. If you prefer to introduce - to address us from the reading stand you may. If you're comfortable with addressing us from your seat, that's perfectly satisfactory too.

MR CHRISP: Great thank you Your Honour. I think I'll remain seated. The microphone is right here so that could be helpful as well.

Thank you for that direction Sir in terms of having pre-read my evidence. I didn't - I had assumed that would be the case, and so what I have sort of intended to do was really just sort of highlight particular points, and also I guess sort of a few additional points based on the fact that, because my evidence was prepared back in June. There's been - I've since had the opportunity to look at some of the other evidence that's been prepared, and also particularly the comments of Ms Powell on the first day of the hearing and I guess it's really - you could almost say that Contact and indeed my evidence have sort of probably misjudged what the NPS was supposed to be all about, in a sense because I - looking at the comments of Ms Powell, basically saying that this is only intended to direct Regional Councils in terms of the contents and form of their policy and planning documents, to me when you look at the content of the submission and my evidence, it's actually all about or more about should I say, the opportunity to provide some national direction particularly in the context of resource consent applications, when they have been considered under section 104 and so I guess the short point is that if the Board accepts the view of the Ministry that this document should only be intended for the purposes of directing Regional and District Councils in terms of the contents of their policy and planning documents, then it would be very helpful if the NPS actually stated that, as being the position.

[9.30 am]

And that's purely from a practical point of view, as someone sort of looking at it from the coal face, well saying well in a years time when I'm involved in another major consenting project, and I'm having to write evidence and consider the matters under section 104 of the Act and I'm required by law to consider relevant National Policy Statements, then I'm in a position where I'm having to write huge tranches of evidence trying to find out what this document is trying to tell me, that might assist us in the context of for

example a hydro dam on the Clutha, but struggling to do so because there's nothing very substantive there in terms of that national guidance, obviously it would be very helpful to say well that wasn't the purpose, it's only for the direction of the Regional Councils and it's not intended under - to be relevant under section 104.

CHAIR: Subject to what counsel who there with you at the bench might say to the contrary, my request to you, the Board's request to you, is that you should present your evidence on the assumption that the scope and impact of a National Policy Statement is defined by the Act and not by Ms Powell.

MR CHRISP: Yes. That's what I'm sort of - that's where I'm getting to Your Honour where - my next point I was going to make is that if indeed Ms Powell's view was to prevail, that to me would be a huge lost opportunity, and I guess the flavour of my evidence is really that of someone coming from the coal face of having been in many large consenting projects, and renewal of consents for existing large scale infrastructure, and really sort of struggling through those processes from the point of view of weighing up the national benefits versus local effects, and I see that that's one of the topics for the - one of the workshops which I've signed up for - for the RMLA conference which is coming up, which I'm quite pleased about, but that is the essence of some of the problem one has, sort of working through a major consent process like that, and also the same in terms of when going through policy and planning submission processes as well, where it seems bazaar to me that every time we have to sort of struggle to get recognition of the social and economic importance of the renewable electricity generation recognised in policy and planning documents. A recent example was the Otago Regional Councils plan change 1(c) which I appeared before the committee there recently, where a complete comprehensive review of their water quantity and quality, water allocation

provisions of their regional plan, there was one mention of hydro electricity generation in the first sentence of the introduction and beyond that, there was total silence, and so of course we're going into those sort of processes sort of having to start from ground zero to basically get some recognition even of the existing infrastructure, let alone the possible for any future development of renewable electricity generation opportunities in that region. And obviously having a National Policy Statement in place, which recognises and directs that those sort of type of considerations should be considered in those type of planning documents, would be particularly helpful and that's where we see a major benefit coming from the outcome of this type of process.

So that's where sort of paragraph 7 onwards of my evidence is talking about the need for that national perspective and that national direction, and I make the point that what we have at the moment there is there's little more than a redrafting of the elements of part 2 of the Act which are relevant to the management of freshwater resources.

And it's typified by when you go to hearings we will often be in situation as I've talked about in paragraph 14 where you'll have different Government departments, one supporting the application and seeking that it be granted and usually the Ministry of Economic Development and Department of Conservation usually on the other side seeking it be declined. So we're sort of not getting you know it's the central Government's fed with fork tongue type approach so - whereas we - if there was some national set of priorities which is where we see the NPS as providing that sort of role, that would be very helpful and sort of worthy contribution to the process.

Sort of beyond that, my evidence really sort of gets into the detail - in terms of Contact's submission, with requesting in particular - the particular concern about not only new activities but existing resource consents and

existing activities and obviously the ongoing operation of those and that being recognised, and I guess always a key theme also is the recognition in the RPS of the importance, the economic and social - sorry NPS, of the economic and social importance of renewable electricity generation, which is obviously consistent with a range of other policy documents on behalf of the Government, might be energy strategy and the work of (inaudible) as well.

And another key theme is the integration with other policy documents, and my evidence there is not intended to suggest that the Board should go and liaise with the likes of Dr Somerville, in terms of the work that he's doing, that we appeared before him and his Board a few weeks ago, but rather it's an issue that in terms of - I don't think that this Board can assume that the matter will be dealt with in the renewable Electricity Generation Policy Statement to the extent that it can just decide not to deal with the issue in this, because it clearly - when it comes to hydro generation and also the use of freshwater for cooling purposes for thermal power stations, to me it's squarely within the ambit of this NPS as well.

And so it's really a case of - and when this Board advises the Minister I think it's not necessarily something that might have a bearing on the content so much of this NPS, but it is certainly an issue that might need to be highlighted to the Minister, that there needs to be a level of consistency because one of the problems we have out there at the moment is that even within regional and district planning documents you have the situation where you have policy imperatives pointing in opposite directions and - which is you know it is understandable and that's not really intended to be a criticism, but it's a case of if we have a duplication of that same situation at a higher policy level in the form of National Policy Statements, that's not actually particularly assisting decision makers in the context of resource consent applications because again you've just now got different

layers of conflicting policy imperatives, whereas I would like to think that the - particularly at the NPS level, that we would have some policy directions that cut through some of those conflicts, and say that these are the particular priorities and having looked at Meridian's red line, that in my view provides a sort of good start in terms of getting to that point, and indeed it's very similar to the point that Environment Waikato's got to, with its variation 6 where it has established a bit of a hierarchy in terms of the use of water which is - human drinking consumption first, renewable electricity generation then typically becomes a close second. And then other activities sort of tend to flow on beyond that.

So that's another wish I guess, if you like, to make life a bit easier rather than more complex in terms of going through consent processes.

There's a - I've also noted in my evidence the issue of the use of terminology which I think is just a practical sort of thing, where the NPS tends to use slightly different terms to that which are found in the Act, and I think that's just a recipe for argument about what things mean.

[9.40 am]

And then finally in my evidence, again really comments on the key points that are raised in the further submissions, and I guess we sort of finish up with the view that particularly there were two particular points of further submissions supporting Mighty River Power and Horticulture New Zealand, essentially seeking that the current NPS as proposed be sort of regarded as a bit of a first draft, and that the benefit of the current process be utilised to do a redraft of it and then seek further comment on it, in some sort of format, not necessarily re-notified but to provide that further opportunity, and I guess that comes back to Your Honour's question to

Mr Robinson, in that the way I look at that is that had this been a good first draft that was notified that did cover off a particular - or didn't actually provide a particular flavour and direction in terms of national priorities, and covered off on that side of it in terms of providing guidance for decision makers under section 104, as well as the - what I would regard as more the implementation side, I mean to me there's two key elements of the implementation of an NPS - yeah, so there's - and at the moment the document does one but not the other. But had it done that, in whatever form then we would have had a submission, and then further submission process that could bat, bat that backwards and forwards. Because there was a void at the front end, that's why I would support some sort of process that actually said well let's actually now put out a substantive document, which actually fills that void and then have some comment on that. So I guess I'll leave my comments at that and happy to answer any questions.

CHAIR: Thanks very much. Mrs Vernon, would you like to ask any questions of Contact Energy representatives?

MS VERNON: I've really just got one question and it relates to geothermal water, and you picked up in your further submissions on page 3 that the New Zealand Conservation Authority has asked - and also University of Canterbury picked up - something about geothermal water, but as it is currently drafted, there really is nothing in there that specifically - in fact I actually saw it as being totally silent on geothermal water as it currently sits. Would that be a correct observation?

MR CHRISP: Yes, I entirely agree with that, and I guess what I saw was that there were those parties seeking to then introduce or widen the scope of the NPS to cover geothermal water, and I think, and I don't want to underemphasise the importance of this in that geothermal resources are

limited to really three regions in the country. I mean, Ngata is just one field up in North and we've really got the bulk of it in the Waikato, and some in Bay of Plenty. And having myself been extensively involved in, along with Ms Dixon and Mr Robinson throughout the process of formulating policy documents for the Waikato region, and to the point where I think we can all be very happy with the outcome, and indeed it got an international environmental award. So you know it was a good process, it came out with a good result, and it was a very difficult process because it is very significant issues, but I don't think the NPS is going to provide any additional value trying to upset that regime, and indeed the current review of the RPS, the discussion document, was indicating that having now only just recently settled that matter, it wouldn't be particularly wise for even the Regional Council to start saying let's have another go at it, and we've agreed with that in our feedback.

MS VERNON: Yes, and I'm reasonably au fait with that document as well.

MR ROBINSON: Commissioner, can I just add a comment from a legal perspective, because to draw the circle of Mr Chrisp's suggestion, identification of the dangers about moving from the carefully-considered language of the Act, and inserting using new terms and new language, the Act of course makes it clear that geothermal water is water but is not freshwater, which is as definitions go a blinding statement of the obvious. The NPS using freshwater resources as the defining term, but not making it clear that it excludes geothermal, while I agree that - that is the natural interpretation of the definition that it would be helpful or more helpful if the terminology of the Act we used were put beyond doubt.

MS VERNON: In the definition do you see that where it would best lie?

MR ROBINSON: It says freshwater resources means freshwater of New Zealand among other things groundwater systems. Now, I would have said freshwater in that context means non-geothermal water and non-seawater, but again it's the whole concept of introducing new terms and the desirability of using the carefully-defined terms of the Act.

MS VERNON: I can understand your point, thank you. That's my only question, Sir thank you.

DR HARDING: You made reference in your original submission about this issue of industry good practice which has come up with quite a number of submitters and so this is in your original submission on page 12, point 57. Does Contact have any particular view on this idea of good practice or best practice? It could help us with as you commented on that it's not very well primed.

MR CHRISP: Just having a look at the policy as well...

MR ROBINSON: While Mr Chrisp is gathering his thoughts, Commissioner if I could add a comment, again with reference to the Waikato Geothermal policies, the use of terms like best practice or in that case international best practice - created considerable controversy, essentially because the argument was that there was no recognisable international best practice, and that reference to it in policy documents it would inevitably send the participants on the process of this - like chasing the pot of gold at the end of the rainbow, and so it becomes a huge sideshow in itself trying to establish what best practice is, that obscures what you are trying to achieve.

MR CHRISP: If I can carry on from there. And that sort of leads off in terms of the point that is made in the submission, is that you have a certain

threshold to achieve under the RMA, typically in respects has been no more than minor, and then you get into arguments about well how much further should you go. And I have myself in drafting policy documents used the term “industry best practice” but it has not been in an objective or a policy situation, it’s been in sort of the category of other methods. So when you’re drafting up a plan and you’ve got your rules and things like that, you often have other methods which in the Waikato Regional Plan is a good example of that where it typically, in relation to every section of its documents, will have sections dealing with education and dissemination of information and the use of industry codes of practice in pursuing industry what it recognises industry best practices is where that comes in. I wouldn’t want to say that is something that shouldn’t be pursued.

[9.50 am]

I think that definitely should be pursued, but enshrining it in a policy when it is very unclear as to what that means, and when you then get back into let’s assume this NPS is going to be applicable under Section 104, and you’re having to say well are we, in terms of advancing a proposal, in accordance with that objective or that policy or not, and that comes down to an argument about what is best practice. The example that Mr Robinson raised is probably one of the better ones, where when you’re talking about the management of a geothermal system should you re-inject in the field or out field or a combination of the two, or not at all or should you target re-injection. And there’s as many different views about that as there are geothermal experts, so it’s not particularly helpful.

DR HARDING: I take the point that you make. I guess an alternative point of view might be that a lot of primary industries have in fact gone through the process of trying to develop their own preferred practices, which might

provide some assistance for Regional Councils etc to think about what might be the appropriate (inaudible) alternatives.

MR CHRISP: Well, a good example from Contact's perspective is it has a quality assurance system called Positive Contact, where it has sets of manuals and instructions, and they deal with issues such as oil containment and management. So there's an entire book of words that basically regulate how Contact employees and contractors are to deal with any mineral oils as an example, in terms of the point it comes on site, its storage, its use, the way the site is designed in terms of having water traps etc, right down to the disposal of the containers at the end of the day, and then it's got documentation in respect of all forms of hazardous substances in that regard, and that's an example of utilising industry best practice. Those documents are updated as industry best practices is advanced, and that is something that is talked about in the context of a resource consent application, when you're dealing with for example the re-consent of the Wairakei Power Station.

DR HARDING: So those are documents that your company has, so those aren't necessarily consistent across all the hydro generating companies.

MR CHRISP: No, they probably have their own systems and often they are particular to the type of plant that is installed, because a lot of it is particular to the type of technology. Like you obviously have a totally different set of procedures and provisions in place for a binary plant, for a geothermal power station versus a condensing steam turbine in terms of, because you've got different hazardous substances involved for starters.

MS DIXON: Perhaps I could add they must work within the parameters of wider standards maintained across the industry of course, so they may be specific to the particular plant, but they work within a wider set of

parameters that may be established by particular standards such as HAZNO best practice.

CHAIR: I just think that the explanation you are giving seems to me to demonstrate that there is no problem with referring to industry good practice or industry best practice, and that makes me wonder whether I am understanding you correctly - because like so many things it's a matter of emphasis on a particular case at that particular time. If a decision-maker is involved with a binary plant, and the binary plant is proposal?? of Contact Energy, then we know what the industry practice is, you just told me you know, and if anybody can be bothered looking through the thick book that the answer can be found to every conceivable point, which of course Contact Energy and every other energy operators, if there are any others in the business, has to have for the protection of their own plant and staff. It works for the protection of the environment they're working in. So is there a difficulty with an industry or even an operator in an industry, describing to the extent that it is relevant to a particular point, what the practice is?

MR CHRISP: Where those industry practices relate to what you might regard as mechanical issues in terms of like how you deal with hazardous substances and things like that, that type of system works well and I agree with you entirely, it is a matter of evidence and saying look we are adopting industry best practice. I guess the concern that we have about the reference to industry good practice when it relates to freshwater management, comes back to more of a bigger picture issue in terms of let's take a geothermal system for example, questions of should you re-inject or should you discharge to freshwater. Now obviously - just leaving aside the policy making - probably a better example is should you re-inject or should you irrigate a portion of that to land, because when some of it the condensate for example, is basically very clean water, once it cools

down to a certain level it's actually very good as an irrigant and that's part of the Te Mihi project - is part of what we will be applying for shortly with the Tauhara 2 project where there is an area for irrigation. Now those sort of bigger picture issues, against views that we know will come from some sectors that will say no you should have 100% re-injection, and indeed that injection should be in the field, and indeed it should be in certain locations, and then you have a conflict where that re-injection can cool your resource that you're trying to preserve the golden goose, and so that's why the re-injection regime is very important in terms of achieving, trying to minimise subsidence, but also not to cool the resource that it is actually the golden goose.

MR ROBINSON: Can I offer an additional comment Sir - over the top of that, listening to Mr Chrisp, that there is an issue to my mind that Mr Chrisp has identified. Where you use reference to industry good practice, industry best practice, and this is a point I made earlier, as to whether there is a definable best practice, clearly such terms are ideally suited to as Mr Chrisp put it, mechanical matters, but where you have judgements that have been made that have to be consistent with Part 2 of the Act, then industry best practice may not in fact be consistent with Part 2 of the Act, so I think there is a need for care in that regard.

CHAIR: Thank you for that observation. And of course thanks to Mr Chrisp for his response as well. And plainly, if there is no identifiable industry good practice or best practice on a particular topic, then a decision-maker has to fall back to the classic way of resolving issues, and that's been done on questions of re-injection amongst many other topics. Well I just wanted to come back again to this point about the possibility of there being national instruments, that may not be entirely compatible with each other, and that is a relevant issue at the moment, because there has been a revision of the New Zealand Coastal Policy Statement, but we cannot benefit from it,

make anything compatible with it, because we don't know what's in the report on that. There is the work by Dr Sullivan's Board, and of course we are aware of its existence and that's about the limit to that. Then somebody has brought to our attention, that there is some work being done on a National something Standard, Environment Standard, relevant to the subject matter of this NPS, and that's an independent and different process.

[10.00 am]

At what stage it's at and how that will be related to what we're doing is also conjectural as far as I'm concerned. But while it seems interesting that the government should have chosen to do all of these tasks at the same time, with quite different advisors, that's what's happening. But I think I can say that as a matter of law, the Board, this Board, is obliged to stay within its terms of reference, and has no business telling the government anything other than what's within its terms of reference, and in fact would be unwise to offer any advice outside its terms of reference as a Board. But if at the end, there are more than one National instrument that are in conflict on any particular issue as there theoretically could be, the law and the Act are the source of how those sort of conflicts are to be resolved. Is that right?

MR ROBINSON: I agree completely Sir and I read with interest the transcript where Your Honour put a similar question to my colleague Miss Appleyard hearing for Meridian Energy. That and her answer, I think the exact proposition you put to her, this was one step back from that position, which is your hypothesising two inconsistent National instruments, was effectively that you as a Board had to remain within your terms of reference. I completely agree with that, it is a matter of law and good practice. But you also have to, as you say it's interesting that the

government should choose to have parallel processes with different advisors on overlapping subjects, and I think the exact proposition you put to Miss Appleyard was well if there is an inconsistency, isn't that for the minister to sort out. She agreed with you and I would too. I think that we'd merely go the next step and say that in terms of the report that the Board issues - that it may be worth your recommendation that one of the things that the Minister has regard to - is the end result of these other processes and that it would be desirable to ensure consistency. But if the Minister in his infinite wisdom...

CHAIR: Or her.

MR ROBINSON: His or her, but currently his - infinite wisdom chooses to promulgate National instrument, multiple National instruments, that conflict I agree with the proposition Your Honour has put and that it will be for the counsel addressing Regional Councils and/or the Environment Court in due course, and assisted by expert planning advisors to endeavour to find a route through the mess that will result guided by Part 2 of the Act.

CHAIR: Thank you for that. Perhaps I also suggested to Miss Appleyard - but if it wasn't to her it was to somebody else - that the way in which a Minister might be persuaded to attend to the issue or the potential issue, is more likely to be effective at the instance of electricity generators perhaps, not individually but as a group, or Regional Councils perhaps as a group and so forth, rather than tuck away somewhere in the report of a Board that the Minister may not be reading anyway.

MR ROBINSON: I think it would be - my answer to you Sir would be that informal channels of communication - will no doubt endeavour to make that point. And it is also in the every little bit helps category.

To be read in conjunction with
the tabled evidence/statement

CHAIR: Sometimes there is great value in informal channels of communication.

I think that we've taken this exchange as far as we wish to at the moment, so unless any of you wish to add something further, we'll bring this to a conclusion with our special thanks to you all for coming and giving us this exchange and this evidence today.

Audio file: dpm0136

CHAIR: Thank you. Tena koutou katoa, very warm welcome to you. We are here to hear the submissions from Raukawa and we'd like you to feel comfortable and relaxed and to understand that there is no particular formality that we expect of you. But we'd like you to present your submission as you choose. Thank you very much.

[10.10 am]

MS O'SULLIVAN: Thank you, my pleasure to be here today. Before I introduce myself I'll just introduce (inaudible) who is the Chairman of our kaumatua and council our (inaudible) which is our tribal council of elders. (Inaudible) is here in support today and Kataranga Hodge (ph) who is trustee of (inaudible) pacific portfolio of the environment so they come to support me in presentation today. My name is Steph O'Sullivan, I'm the Board's environmental manager but I'm also one of the two tribal treaty negotiators which has some contextual relevance for our submission today. I'm very conscious of the time that we're sitting and the amount of people that you hear and so I've tried to keep my submission to some key points today. I will go through some background as to who we are, a very short sort of contextual environment, some concerns that we've got about the current policy environment, some key policy issues for us going forward. As I've sat and developed the submission or this presentation I was thinking about, what are some of the fish hooks and some of the issues that we're facing at the moment that we'd like to raise with you about the process going forward and then I'll finish with some very short conclusions.

I have to say as a precursor for the submission that as an environmental planner I would prefer to be here making some very specific points on the proposed National Policy Statement of some very specific relief that we might seek and to go through it in plain speak. Unfortunately due to

capacity issues we're not able to do that, you'll be aware of the co-management negotiations that are going on in relation to the Waikato River and that is really taken up a large percentage of the resource that the Board has for the last 18 months, which is me. I don't have a team as the environmental manager of the Board, it's just me, and we've got lots of issues on our plate. Water is extremely important for us and so we apologise that we're probably not able to give the specific direction to you today that you might be looking for at this stage in the inquiry. However we hope that the contextual environment, the picture that we can paint and the issues that we are facing might be helpful in your deliberations. And I hope that this might be helpful, as I say. So let me just start with a very brief background about the Raukawa and who we represent today.

The Raukawa Trust Board was established in 1987, it's based in Tokoroa and was set up to work in the best interest of the dependants of the tupuna Raukawa. We represent the whanau and hapu representing some 22 of marae and the total tribal area encompasses some 530 thousand hectares. Within that contemporary tribal rohe or area and we've got three major rivers and their catchments the Waikato, the Waipa and the Waihou rivers. As an incidental piece of information, I understand that over 90% of New Zealand's bottled water comes from the blue screen on the Waihou River which is a taonga for Raukawa. So we've got historical and very contemporary issues that we're facing around water management in that area. As I say we're firmly involved in the co-management negotiations around the Waikato River along with Ngati Tuwharetoa, Te Arawa, Manapoto and Waikato/Tainui. We have a Deed of Agreement signed in relation to co-management for the Waikato River we have a draft deed it is currently on the table that we are renegotiating with the new National Government post election in November. So we are well ensconced in those negotiations and they provide for us a future that is quite different in terms of a new era of

resource management from our perspective around water. We would expect that by the time we have gone through our treaty settlement process there will be some 18,000 people in our tribal register. So that's who we represent coming here today.

Some important elements that I think differentiate us perhaps from other submitters that you might hear today and you might have heard yesterday, are the fundamental principles by which we approach water and I think these are important along with the key tenants of our submission that for us are the tests about whether a National Policy Statement is going to provide for us the guidance that we require and provide the context that we're looking for. I'm very fortunate to have our kaumatua Hori Deane with me in particular around water issues Hori is our leading kaumatua as Hori's had a long history of working with the late Dame Te Ata the Māori Queen and we often talk about water and what it means for us. A fantastic analogy that Hori has given me is that the rivers flowing through Mother Earth, Papatuanuku, are like the veins carrying the blood through our bodies. And we perceive that in a metaphorical sense water is the life blood of Raukawa, that they are the veins carrying life blood. That we don't see water or the rivers or the separate from the people but part of us nor do we see the rivers as things separate from their surrounding environments. And the second sentence just encapsulates that, that we believe that the streams, lakes, tributaries, flora, fauna and sub-claims as well as the metaphysical being which brings in the aspect of Māori are all connected.

These rivers and their catchments and the punga, the springs have formed an important element of our history as Raukawa and they our historical relationship with the rivers are complex ones and they have been a source of sustenance a source of food and continue to be a place of spiritual nurturing and cleansing. But rivers and streams have also

provided modes of transport and modes of communication so our relationship with water is a complex one.

As we went through the proposed National Policy Statement and as we are involved in other issues around water in terms of water allocation, the Iwi leader's forum, being involved in water allocation interviews with the Ministry for the Environment. These are some of the things that we are aspiring to and this is our test, this is the litmus test for us about whether proposed policies and standards are going to help us deliver to our people these aspirations. One of the most important things for us is the key starting point that water is a taonga and thereafter we make decisions about how we use and manage and look after it. The intrinsic value of water as a sustaining force for us all and its right to exist in a healthy state for itself and then our ability to be able to perhaps use that water for our own life sustaining purposes. Sometimes we come across positions where the waste assimilated capacity of water is the first tenant that people consider and for us that's abhorrent, it's unacceptable. We would like to see a change where we see water as a treasure or as a taonga, as a fundamental principle starting point.

We have a desire to restore maintain and enhance the Mauri of water within our rohe. We also have the same desire to restore maintain and enhance our role as kaitiaki within our rohe. That's a two edged sword having the role as kaitiaki there are responsibilities and rights that come with that, if we are wanting to ensure that our traditional relationship with water is acknowledged, respected, maintained and afforded due protection into the future. These are the things that our people have told us that they would like to see in terms of water framework, how we go about that, that's for us to do to engage with people like yourselves and to work within a policy environment to see these things starting to be reflected. We must look at lots of works, I've put in a lovely photo there of the Waikato River prior to the hydro electric development at lake - what is

now the site of the proposed Apamaru dam, so in about the middle of our rohe looking at Mount Kahu which is a taonga for the people of Ngati (inaudible) and Ngati (inaudible) within our rohe. So for us that picture says a thousand words, it shows the change that's happened in our river I don't know how many times you've driven across the Whakamaru dam but it certainly doesn't look like that now.

[10.20 am]

So moving on, I'm very aware that in proposing a National Policy Statement we're seeking to find solutions, we hear lots of problems but we need to find solutions. And not being able to have the capacity to go through the National Policy Statement with some very adept lawyers or a team of planners I guess what we've sat down and said, "Well what is not being delivered to us in the current policy environment?" And this hopefully might raise some flags in this process. Our values are not currently incorporated into water management, they are absent from the current regime in terms of water management. Once again water is perceived as a resource for use, it's lacking a more fundamental respectful approach and that is one thing we would look for is that water is recognised as a taonga in the first instance. Water has been a key treaty based issue for us it's also not recognised and provided for. This is a fundamental issue as I get further into my submission I'm going to respectfully ask the Board to consider the other contextual issues that water has been discussed at present and how we might bring these threads together in a more comprehensive fashion. Unfortunately processes continue and we as Tangata Whenua continue to have to make submissions along with our (inaudible) and we say this in a respectful context about every other submitter in the community and this is not reflecting the treaty partnership that we believe must exist around water.

There seems to be a lack of an overall plan for water so we support the idea of the National Policy Statement as one way of trying to pull these threads together we totally support the idea of greater national guidance around giving key environmental standards and key policy direction. This has been lacking, this has led to inconsistency we believe and a failure to reach better water quality and better management of our water allocation. So there needs to be some kind of way of pulling this together that represents a national and regional framework that we can all understand and one that reflects Tangata Whenua values. I'm sure that none of this is a surprise for you.

On the key word that seems to be on everybody's lips, New Zealand Inc, there continues to be a major disconnect in terms of how we are going to move forward as a country, geographically isolated, small population, we've got one thing on our side and that is this beautiful environment that we have. But there still seems to be a major disconnect between Regional Council and District Council activity. In our region particularly there are aspirations sought in terms of the Regional Policy Statement and the Regional Land Plan around water quality however the District Council has promoted some recent dairy conversions on a very large scale. And for us over time, this is going to leave significant decline in water quality in our region. And we know there are no quick answers to this, and I'm sure Mrs Vernon is well aware of this, but we've been lobbying around these issues for some time. We hope that a National Policy Statement would provide greater guidance to Regional and District Councils to get this integration happening. The second point on this page relates to these things. It just seems to us an apparent disconnect between things, ground and surface water have been treated differently, land and water issues have been treated differently, the demand and supply equations around water being disconnected or perhaps not even happening in the way that they should.

We've had a chat in the car coming up today about this kind of general assumption, "Oh, well there's plenty of water." I mean, it was raining heavily on the way up here today and we drove past the Waikato River and there's plenty of water in there. And there's kind of assumption that we've got that it's just sort of an infinite supply, this the fundamental issue that we need to broach with New Zealander's, with all New Zealander's, that this is not an infinite resource we need to start appreciating it in a completely different way. And if you take that beyond New Zealand boundaries, this kind of lax (inaudible) approach, everyone else in the world is well aware of the scarcity of water. And we need to become more savvy about this, we need to approach this in a different way. And I think that as Māori we can offer an approach to that by treating it as a taonga in the first instance, by saying this is a very precious resource.

So what are our key policy issues going forward? You might be thinking, "That's wonderful Raukawa, thank you for raising those issues, we're well aware of those. What does that mean for us and how do we take this into account in our deliberations?" We absolutely support proposing a National Policy Statement on Freshwater Management. The key tools within the RMA have not been utilised to their fullest extent and we support that. A greater use of environmental standards, greater use of National Policy Statements, we (inaudible) those. We support this National Policy Statement in the way that it seems to promote greater integration of the way in which we manage water, we absolutely support that. That must be a fundamental context. Once again it must also change the way we value water, it can't promote the status quo, it has to set clear goals at a national level and then provide workable pathways for communities on how to get there. Otago knows about Otago's water issues, Northland knows about Northland water issues, we're trying to resolve some in the Waikato in a pretty unique way through a treaty settlement. We haven't had much luck doing it with local government, we haven't had much luck doing it in other forum, so the treaty settlement

pathway has provided an opportunity for us to do that. But I think there has to be some consistencies at a national level and then allow communities to get together and figure this out but give them timeframes and set very clear expectations for them. Promote community collaboration partnerships, encourage and direct rigorous water planning and management regimes. I went through a show home in the Gold Coast four years ago that recycled water three times and that's going to be a standard building provision on the Gold Coast in Australia. I've just bought a new house myself, the guy that built it had no idea about even thinking about recycling water within the house, it's just not even on the radar. As I say at a personal level I think that's an indication of the fact that we're just not thinking about these things, our building standards aren't directing them and therefore District Councils need a greater direction to promote these arguments. And that goes to wider municipal authority water planning regimes as well. And let's promote education about water, I don't see this happening we need to do this. And we would hope that any National Policy Statement really gives direction to a range of people to promote education about water.

Something that we don't see however in the proposed National Policy Statement, and we're not sure how this is going to roll out in its current format and we have some ideas about how that might be rectified, is that any water management regime has to reflect the true partnership approach between Crown and Iwi. The direction to consider Tangata Whenua values is no longer an adequate standard as far as we're concerned, in terms of RMA language, you are all the experts on that much greater than I am but the "recognise and provide for", the "consider", this language has got to be elevated to a higher standard. And any National Policy Statement has got to reflect a true partnership approach. Given the context of the Waikato River co-management arrangement any National Policy Statement around freshwater management must be integrated with and reflect this new era of

co-management. I think the writing's on the wall, co-management is going to be reflected around the country, it might be reflected in different ways, but there has to be integration that's reflected in a National Policy Statement.

Any freshwater management regime, we would hope, would also provide for sustainable Māori development into the future. We've been running around in the training sheds hoping to get on to the playing field with perhaps treaty settlements as one of the key catalysts for that, we're finally looking at running out onto that rugby pitch to start playing the game on some kind of level playing field, excuse the horrendous analogy. But we're about to get there and the water will all be gone, the allocations will have been made and we won't be able to be there that is something, that is of significant concern to our people and must be recognised in this National Policy Statement. And I don't mean Swedish model in terms of Tiger Woods wife, what I mean is looking overseas in the final point and seeing what other people are doing. I've read some objectives and policy statements in Swedish freshwater management and stuff and they're bold, they're gutsy and they say very clearly what people have to work towards.

[10.30 am]

Something that we're very proud of in Raukawa are our relationships with our key community partners, Federated Farmers, Kinley, Carter Holt Harvey, Hancock Forestry Management. And one of the things that Fed's always say to us is, "We just don't like uncertainty, we want to know what we have to work for. We want to know what that means for our businesses, what it means over time, how much money it's going to cost and let us work towards that." Well if we're going to provide some certainty lets provide some bold objectives, let's say, "Here's the timeframe we're going to meet that in and how we're going to work backwards from that together." It's a simple approach but I don't think this

is rocket science, I think this is about getting together and sorting this out, let's be bold about it.

Environmental bottom lines have already been hit, it's not something we're talking about reaching in 20 years. If you look at Bill Banks work in terms of the Waikato River, we have some scary, scary predictions about what that rivers going to reflect in terms of nitrogen and phosphate levels in the next 15 to 20 years, and it's not acceptable. I don't want to leave this legacy for my children and I'm sure that they don't want to inherit it.

CHAIR: I'm going to interrupt you at this stage. It's not that we're not focussing very much on what you're telling us but we've already heard from some other people this morning and there's some more people to hear so we're going to take a break now. And we hope that you will take some refreshment too and when we come back we'd like you to continue from exactly where you are and when you've completed what you wanted to say we hope you'll agree there might be some exchange of questions and answers so that we fully understand the case that you're making.

MS O'SULLIVAN: Absolutely.

CHAIR: Thank you very much

ADJOURNED [10.33 am]

Audio file: dpm0137

RESUMED [10.47 am]

CHAIR: Thank you very much. Sorry to have interrupted you, we were being carried along with the momentum, if you will address, and we'd like you to continue if you would please Miss O'Sullivan.

MS O'SULLIVAN: The final part of my presentation, and I haven't got too much to go, are some concerns that we've got about issues that are going on, and then perhaps some ideas about the way that we see that those might be rectified.

One of the things that we're really concerned about is that there appears to be many streams of work going on around water at the moment. Māori have got together and we have an Iwi Leaders Forum who are directly engaging with the Honourable John Key and Bill English and a range of other Ministers around freshwater issues. We understand that the Minister for the Environment has established his Land and Water Forum. We were recently interviewed by the Ministry for the Environment, as I mentioned earlier, about the water allocation and ecological flow work. Te ao hau kaimoana also have a freshwater Trust that's been going around the countryside, having Hui about freshwater management issues. And then of course there's the ongoing work around merging council and district council work. What appeared to be lacking is any kind of common sense. I mean, I'm not a rocket scientist, but I would like to see just some simple threads between those pieces of work and understanding how they might hinge together and form some kind of comprehensive approach. I'm wondering why there isn't that happening, and I'm sure there are good reasons, but perhaps we might end up with a better freshwater management regime if some of those threads were brought together.

We have some very critical concerns about water allocation, and see these as being a very integral part of building a robust and durable freshwater management regime. Some of these relate to transferability of water rights. The establishment of private property rights over water, when the treaty issues in terms of Article 2 have not been resolved at any level, and we are very concerned about this. The failure of introducing a market system into the water arena where those economic models and the market systems have failed to deliver better environmental outcomes, and particularly accounting for long term sustainability. And the aspect of sustainability that's very important for us, which is the provision for intergenerational values around water. So we've got some very strong concerns about these economic models. We believe that some of these need to be resolved and set aside and be clear before a comprehensive regime can be established.

[11 am]

Achieving integrated management requires a fundamental change to the way we do business. We think bringing some of these streams together might be a first step in really achieving integrated management.

Where to from here? We respectfully ask the Board to work with the Minister, to take stock about where we're at. We submitted to you on the 23rd of January of this year, however within the last sort of 12 months the wider contentious stuff has moved quite considerably, including the co-management settlement for the Waikato River. We need time to pull these strands together. One of the more practical ways which we'd like to suggest that we might be able to do this would be for the Crown to work with the Iwi Leaders Forum on freshwater issues. To resource that Forum to work more comprehensively with Iwi on finding what it is that we do

want, so that these can be reflected in a National Policy Statement. Simply put, converting our views into good planning speak, so that it ends up being a meaningful framework that can be tested in our district plans, regional plans, through the Environment Court, but taking our views, and having them reflected in some comprehensive way. So we believe that the Iwi Leaders Forum might be a tangible and real forum that could provide some assistance.

We believe that the proposed National Policy Statement needs to take account for the co-management framework and needs to reflect that. It needs to account for the vision and strategy that's been developed in the Waikato River, which we've been assured by the Crown will have the status of an NPS also. How are these two going to be linked and how are they going to reflect each other? More questions than answers but I think that they are important things to resolve.

We think we might also be able to offer to help in a range of ways. Agenda 21 in Chapter 18 recognises and recommends that full participation of indigenous people in integrated water resource management. UNESCO in 2001 recognised the contribution that traditional knowledge can make in achieving good governance in sustainable development. At the moment the Waikato River scoping study has just been initiated. The first scope study of its kind in New Zealand, which will incorporate ma Te Rūnanga Māori or Māori knowledge into an assessment of a major catchment. That kind of scoping study could provide some very good guidance to us about how we move forward in achieving better water quality and water management outcomes. Given the chance to participate fully in these processes, I believe that we of Tangata Whenua could add real value to this process.

In conclusion, and I hope that I've stuck to my time. We think this process is extremely important - that's why we're here. We apologise again for perhaps not being able to give the very clear distinct relief that we're seeking or being able to pull the document apart and put it back together in a way that would be very helpful, but we think it's important, and we do believe that there is a need for greater national guidance. We would like the Minister to get that message very clearly. We're concerned that there are too many balls in the air at a national level and not even necessarily the same juggler, with those balls in the air. And can this NPS really be useful if it's not lined up with those other balls. We have to ask that question.

The success of New Zealand Inc. This is something that we've all got a vested interest in. And I believe that water is going to be a fundamental part of New Zealand Inc's success, and that must also reflect the Treaty Partnership. And yet, we seem to be doing business in the same old way. I have some real concerns about this. And as I went through this I tested that to our key tenants that we introduced at the beginning of our submission. Will this proposed National Policy Statement provide for the key tenants of our submission in terms of restoring the Mauri of our waters, recognising our special relationship with those waters, and providing for our role as kaitiaki? And I believe while there is so many unanswered questions, and so many threads that are missing, I'm not quite sure that it will provide security and safety for us that it will do that.

To end our submission, I introduced what I think is a beautiful whakatauki that, "A voice may be heard, but a face needs to be seen."
(Māori translation).

Now that you've heard our voice through our written submission, we hope that our faces turning up today and by being able to hear our story, that

our message might be heard in a more personal way and it might stay with you as you go on your travels.

I'd like to say thank you very much to the Board for this opportunity, and congratulate you on the good work that you're doing and look forward to hearing, and being part of, the outcomes of this process.

CHAIR: We'd like to thank you and before we conclude may we have some questions and exchange with you, is that satisfactory?

MS O'SULLIVAN: Absolutely

CHAIR: And Mr Prime would you like to ask some questions?

MR PRIME: Thank you. Just referring back to all of your slides, where you talked about the market system to elaborate in achieving Environment Court outcomes, are you able to elaborate on that? I couldn't quite understand what you meant by "market system".

MS O'SULLIVAN: Within a water management regime, I think water allocation of who gets access to water is one of the key elements of the freshwater management regime. In terms of implementing a system and deciding how water is managed within a water allocation framework, it appears to be a greater move towards the introduction, like a transferability, of water rights. In our experience with the proposed Variation to the Regional Policy Statement in the Waikato - this is an issue that's quite an important one, in terms of that water allocation variation. And in terms of using the appropriation of rights and then being able to say that, you can transfer that water right that you have within this region has a range of significant implications for us. I think I raised this issue in our initial submission. I'll just ask for a minute to be able to find it. In essence what

a tradability system does is allocate water to its highest value. Often cultural and environmental uses end up being the lowest value users or lowest values within an economic system that's attributing value to a range of aspects, whether they're economic, cultural, social, or environmental. And externalities and particularly environmental externalities are not incorporated into the assessment of the true cost of that market system. So those are two ways in which that the economic modelling would affect us. Is that clearer?

MR PRIME: Yes it is, thank you. I wondered if you had alternative wording to what's already there, like "consider" or "could take into account"?

MS O'SULLIVAN: It's a very good question. And I squirm on my feet as a Planner, because I think these are very, very important. What I would say is, within the Treaty negotiations context we are advocating very strongly that the Iwi Management Plans as a critical part of any system, must be recognised, and provided for within a planning system. I think "to have consideration for" or "to give consideration to" are not strong enough. It's not an adequate protection of our value and if I remember correctly, "recognise and provide for" is at least what we would be looking for.

MR PRIME: The other question I had was based on your comment about the Autodema(ph) coal mine and how could it be worded in a National Policy Statement, are you talking of Objective 8 or (inaudible)?

MS O'SULLIVAN: Excuse me just for a minute while I find that. To use the word "taonga" immediately asserts a Māori context for that value. We believe an overarching principle for the whole policy statement must be that water is a treasured resource. It's a first principle. So that would underpin all of the Objectives, is that in the first place, beyond its use and its potential to provide for us, it is a taonga in its own right. We would

seek to have that asserted at the very beginning of any National Policy Statement. That that is a key principle from which everything else stems from and can be tested against.

MR PRIME: Thank you, thanks very much. Thank you Sir.

CHAIR: Mrs Vernon.

MS VERNON: Thank you. I just want to follow a little bit further your use of bold terms, and also ask you a question about - as you can imagine we're getting a lot of submissions about the cost of everything and the economics. And you raised the issue about regional councils and district councils working close together. And of course we've had submissions saying, "No, no, no, we mustn't have too much overlap." That one's got a certain job, and the other one's got a certain job, and neither two will meet. And I guess what I pick up from your submission is saying, "Well that's not efficient, in actual fact they do need to meet and they do need to work more collaboratively together from a Māori perspective." So if I look at bold and at taking bold steps, would I be correct in assuming therefore under Objectives 1, in fact 2, 3, 6, where the word "ensure" is there, you would actually see a word like, Objective 2, "To require effective integrated management," instead of "ensure". Is that the sort of direction you are heading for?

MS O'SULLIVAN: Yes.

MS VERNON: And just the other thing is, because I know that you have had lots of experience with working with lots of district councils and one regional council, how do you think or where do you think they could work better or smarter in integrative management of water? Is it in the planning process that you see there could be greater guidance at a national level or

is it just how they first start out on the issue? Where do you see is the stumbling block and how can we nationally guide some of that direction?

MS O’SULLIVAN: I think that’s a very good question. I think it starts with having some national guidance and that’s what we have lacked. I think what is staring us in the face is that we have got increasingly degraded water, we’ve got increasing pressure in terms of water allocation, so our current system has not delivered better outcomes for us, so we carry on the Einstein definition of insanity doing the same thing over and over expecting a different result. We’ve got a situation we need to change. I think that is firstly directed by some national guidance at the proposed National Policy Statement, in the Waikato we’re talking about having some environmental standards developed for the Waikato river catchment. Then it comes down to the way in which regional councils I think, and district councils, and I appreciate that this might sound fantastic and easy in theory and difficult in practice, when our Regional Policy Statements and land plans are being developed and district plans, there has got to be a greater synergy between the two. And I think in developing LTCP, Long Term Council Community Plans, as well. Looking at those key objectives and saying, “How are we working together to achieve those things?”

A contentious issue would be that if we have got aspirations for water quality from a Regional Policy Statement and then agriculture as a permitted activity in the district plan, I’m not quite sure how we’re ever going to achieve greater water quality standards.

So I think there is some collaboration type stuff around the way we are developing planning documents. I think perhaps there is opportunity to have stronger standards set at a regional council level, and then there’s the opportunity to really consider some of the land use activities that are

covered currently by district plans. I know there is a reluctance for regional councils to perhaps take over those land management activities, but I'm just not seeing how we are going to achieve greater water quality and a better freshwater management regime without encompassing the land use activity as part of that. And that's a tricky one, I absolutely acknowledge that.

MS VERNON: Because it has been suggested that, really district councils, their planning should come after a regional planning, but what I'm hearing you saying is perhaps they should all be sitting at the same table at the same time on some of the issues, particularly water. So like the RPS, a lot of them are now going through second generation. Is it in actual fact the argument, which we only had yesterday, which was that while the regional councils come out on the racetrack first and then the district councils follow, that in actual fact some sort of national guidance that it would be a nice idea or good idea that they work together on some of those things, like water, would be the sort of national guidance that you are looking for?

MS O'SULLIVAN: Yes. I appreciate that the practicalities of things have forced people into - and the current RMA reforms also provide an opportunity for us to set this in some kind of better alignment, that the district plan 10 year reviews and delays in becoming operative have meant that things have got out of sync, so often a district plan is going ahead of a Regional Policy Statement review. I think we need to get those things in a better alignment, and if we're looking for efficiencies, I never quite know what that word means, but that is the time to do it, to collaborate at that early stage and have this clear vision from a national level, "This is what we're aiming to achieve," and be very clear about that. "In 20 years time we want to see effective gains in water quality in New Zealand," and, "How are we going to work towards that?" And, "Here's how it must fall out."

MS VERNON: Equally, some submitters have made the point that this document principally is about the future and that in actual fact it's the present that is causing the issue, and that in fact there should be some national guidance in this document about what is currently happening. One of the questions that I've been asking a lot of the submitters is where it says in Objective 2 for example about integrated management, when in fact it's probably more correct to talk about integrated catchment management, and equally where it talks about "land use development" in the same objective in fact, that in fact "land use and development" is probably - then gets existing plus future.

MS O'SULLIVAN: Yes, I would agree.

MS VERNON: Thank you.

DR HARDING: In your presentation today you talked about the importance of the river to people, and the view of the river as including the banks, the bed, the flood plains and all those, flora and fauna etc. At the present moment the definition of freshwater resources really sort of talks about water as a usable item, it doesn't really encompass those things like flora and fauna, the ecosystem etc. And one of the things that some submitters have suggested that we might look at, that in a somewhat different way. Rather than calling it freshwater resources, we might call it something like freshwater ecosystems. And that might start to encompass the entire environment. What would be your sort of response to that?

MS O'SULLIVAN: We would absolutely support that. At a contextual level by engaging with the area users on (inaudible) on freshwater would be to agree on some principal tenets to start with about the guiding philosophy for any freshwater management regime which would include the Māori

world view about water, so I think it would be a very practical way of expressing or acknowledging the view that Māori have, and how that issue might contribute to better integrated management over time. If you don't see water as just the water running through a channel of a river but in fact part of a wider system, might encourage us to think, plan, research, implement in a different way. So we would be very positive about that sort of move to encompass a wider approach such as an ecosystem approach rather than just water resources, absolutely.

DR HARDING: In your original submission of number 27 there, you're talking about various elements that you consider to be important for good freshwater management. I'm not sure if I've got this right, whether my question is related to what Mr Prime was talking about but on the third to last bullet point you make the issue of the Board raising the first rights of allocation for Iwi within water allocation. So part of the proposed statement at the moment mentions priorities. So would you like to elaborate on your view of that at all?

[11.10 am]

MS O'SULLIVAN: Certainly, one of the issues that gets kicked back and forth is with delegation of resource management functions by central government to local government. There is a disparity in views about whether they have also delegated the Treaty of Waitangi responsibilities with that delegation functions. We are constantly told by local authorities that it's not in their responsibility to create Tangata Whenua allocation within a water allocation model. For us, that's a key tenet of the Treaty partnership is that water was never, ever within Article 2. Water is a Taonga that we were guaranteed continued rights and responsibilities for. This issue of water allocation has to be resolved before any freshwater management regime is going to have any kind of comprehensive approach we believe.

We get bouts between central government who don't want to talk about it and local government who are implementing water allocation but won't talk about Iwi first rights. So therefore we've had to take this argument through a treaty settlement focus and that's still ongoing. So what we've said there is that within the water allocation framework as part of a wider freshwater management regime, this issue has got to be resolved, and it is an issue that the Iwi Leaders Forum is raising at the highest level.

DR HARDING: Okay, great, thank you for that. And actually at the bottom of the same page, looking at 31 there, you make reference to changing climatic conditions and that sort of thing and a number of submitters have suggested to us that we should be starting to think about some precautionary approaches. Would you be supportive of that?

MS O'SULLIVAN: Absolutely. I think there is a significant amount of science and research going into how climatic conditions might change around the different regions of New Zealand if climate change happens at the rate that it is predicted to, and what that will mean for water conditions, particularly times of water shortage. The two years of drought in the Waikato, unheard of. It had significant implications for the region as a whole and the regional economy. So I think we do need to take a precautionary approach, and I think it is something that we need to incorporate into good policy development, good public policy development.

DR HARDING: Thank you very much.

CHAIR: You've been talking about co-management and the difficulty in advancing that because of division amongst various decision making bodies, are you talking there about who should be the managers?

MS O’SULLIVAN: Within the co-management framework, I guess it’s about shifting towards where Tangata Whenua are involved in governance of the Waikato River catchment as well as management, and working in a much greater partnership approach with those organisations and delegated authorities who have the current responsibilities to manage water and land and wider issues in the catchment under the RMA. What we are saying is that it elevates each of the five rivers Iwi to be involved in both governance and management, and that is expressed already in the Guardians of the Waikato River, who is the Governance Board.

CHAIR: And do you know that this Board of Inquiry has a limited framework, that’s the RMA, and I’m wondering whether it’s within the scope of the Board’s task which is to look at what should be the contents of the NPS under the RMA, to propose any changes to the kind of governance and management arrangements that the RMA currently has.

MS O’SULLIVAN: A very good question Judge Sheppard. Something that might alleviate that concern is that when we initiated negotiations with the Crown there were very clear parameters put on the table, there would be no changes to the Resource Management Act and there would be no changes to the Local Government Act. Everything that we designed, and it is a new design, had to be within the current parameters and had to work with what we had already on the table. So therefore everything that we have at Waikato Tainui obviously have legislation before the House, we are a step behind that with a draft Deed of Settlement, is within those current parameters but enables, takes, every element that is currently being latent within the RMA and makes them happen in a way that is unique.

So within this, how that might affect you in terms of your terms of reference, I guess what we’re asking for is that any proposed

National Policy Statement recognises, acknowledges and provides for this new era of resource management which is co-management, which reflects this Tangata Whenua/Crown partnership as based on the Treaty of Waitangi. So it doesn't need to go beyond those parameters but I think it needs to acknowledge and provide for that in a much stronger way.

And I acknowledge that the timing is out between when this was being proposed and developed and the co-management negotiations that rocketed ahead at light speed, and what I think needs to happen particularly if the vision and strategy for the Waikato River becomes also a National Policy Statement, there needs to be, particularly for planners and implementers, people like myself and people in district councils, there needs to be some clear links and acknowledgement between the two documents. Can have two National Policy Statements on water and catchments that don't relate to each other or don't acknowledge each other could lead to some really difficult planning situations.

CHAIR: That's another matter I was going to ask you about, because I understand what you're saying in that regard in that particular situation and it's a public record that many submitters have been saying the same and I'm suggesting to you that that risk of lack of integration is the Minister's responsibility but not the Boards.

MS O'SULLIVAN: I would concur with you Judge.

CHAIR: Then I wanted to ask you about the Swedish model, and thank you for the little joke about that, and that's what they also describe sometimes as collaborative governance, isn't it, and am I right in understanding that that's a way of governance that isn't provided for in the RMA? You know the processes of the RMA, this Board's process is a part of them, and an

example of them I'd say, and the collaborative governance is a different kind of model of governance, one that isn't provided for in the RMA. Is that right?

MS O'SULLIVAN: With due respect Judge - I am not sure that I would agree, because I think if three years ago we would have said that we could have established a guardians for the Waikato River with five Iwi reps and five Crown reps, people would have said, well how does that - that's not provided for, but it's been provided for within the confines' of the Resource Management Act, which we are trying to develop this for.

CHAIR: I'm not sure that I understand that it has been provided within the confines of the RMA, I think it's separate from the RMA, and not recognised by the RMA at all.

MS O'SULLIVAN: That's interesting.

CHAIR: Where it gets its legal authority from I don't know, but I'm not aware that it gets any legal authority from the RMA.

MS O'SULLIVAN: Judge, I have to admit that you are in a far greater position of authority and knowledge than I am, that all I can say is that we sat with Crown law for a long time and debated these issues and were assured that (a) it was the negotiating bottom line of the Crown, that everything would have to be within those two Acts and (b) that what we were proposing was within those Acts. I'm most interested to hear your thoughts about that, and I honestly don't have the answer for you, that it might be different.

CHAIR: Well, when you get back to the office and when you get the chance and I recognise what you were saying about the many calls on the limited

resources, look at an index for the RMA and see if you can find anywhere there, anything about the kind of governance model that the guardians represent.

[11.20 am]

MS O’SULLIVAN: Surely wouldn’t part 2, and those provisions such as section 33, provide for recognising and providing for the principles of the Treaty of Waitangi if you are recognising and providing for Kaitiakitanga, then that could involve a suite of tools and mechanisms, including the ability to make shared governance decisions.

CHAIR: Well, you can have a look and see if you work that out from that.

MS O’SULLIVAN: Right.

CHAIR: Thank you.

MS O’SULLIVAN: I’ll do.

CHAIR: So you’ll see that the Board is an ad hoc Board, if I can use that language. We have one task and one task only, and that’s to see if we can recommend improvements to the contents of the NPS, that’s this particular NPS, and that’s the scope of the total ambit of what we’re about, so that we don’t see that is an including questions of what governance ought to be, because whatever the Act might provide the NPS certainly doesn’t get into questions of governance.

So we would come back - I think to the issues that you have so clearly raised about the intrinsic values of water, which is certainly within the scope of what we’re about, and Raukawa are not the only Iwi who have

To be read in conjunction with
the tabled evidence/statement

been talking to us about that, and also about the sense of water being treated or regarded as a resource for use, as compared with the intrinsic value for its sustainable qualities, and then I think you also reminded us of the need to concern ourselves with water for future generations. Now those matters are clearly at the heart of what we have to do, and indeed might be seen to be quite a mouthful on their own.

What we would like to say is - we're very grateful to Ngati Raukawa for coming and presenting the submission. It's exactly as you said, that we need the faces and you need the faces as well as the words and that helps the understanding, and the exchange of questions and answers that we've had also helps, and we're very grateful to you for a clear exposition. Thank you very much, all of you.

CHAIR: Good morning and a warm welcome to you. We understand that you will be speaking to us in support of the submission for the National Wetlands Trust of New Zealand, and we already have the submission in front of us and we've read that, and we would like you to present what you wish to do in support of that in just the way that you choose, there's no formalities, and we hope that when you've completed your presentation which we'll try not to interrupt, we might then have some exchange of questions just as you have seen with the previous submitters, and hope that will be agreeable to you as well, so which of you is going to speak first, yes please.

MR THOMPSON: Thank you Judge - My name is Keith Thompson and I am Deputy Chair of the National Wetland Trust. Tony Roxburgh who is our Chairman is indisposed today. At the last minute he has been taken away by urgent professional responsibilities in the Waikato - at the Waipa District Council where he works, so I apologise for that, but I'd also like to introduce to you at the far side there, our Executive Officer, part time Executive Officer, Karen Denyer, who will be talking to you, making the main presentation, and Bev Clarkson next to me on my left and your right, who is a scientist at the Manaaki Whenua Land Care Research and Kerry Bodmin on my right and your left, who is scientist at NIWA in - based in Hamilton.

I'll start, if I may, just by giving some background. So my role is simply the - for five minutes, just a bit of background to the Trust and where we came from. The Trust was formed in 1999, but really has its origins in a report produced in 1983 by a working party chaired by Gordon Stevenson entitled Wetlands a Diminishing Resource. This report was commissioned by the now, sadly defunct Environmental Council and it painted both an exciting and a depressing picture of New Zealand's wetlands.

Exciting because of the sheer diversity and the uniqueness of our wetlands, and that's uniqueness versus a local sense and a global sense. Depressing because of the rapid rate at which they were disappearing and being degraded and that was 1983.

I can't, of course, argue with the Development Act 1908 some swamp's have to go - but we've all gone since then, and yet much damage was still done in the 1980s and things like the Land Development and Encouragement Loans - into the 1990s of course by agricultural intensification and by coastal developments. But mainly it was the lack of co-ordination, the lack of a coherent voice speaking from wetlands, the divide and rule, the lack of an understanding of wetlands importance to conservation, to recreation, to economics, to flood control, to water quality and so on, and particularly the lack of knowledge and understanding of how to manage them properly.

So in 1999 Gordon Stevenson and David Lawrie laid the seeds of the National Wetland Trust. Now with it's 12 or 13 trustees, involves a range of organisations and specialist fields. Trustees represent local Government, the Department of Conservation, NIWA, Land Care Research, University interests, the farming community, Fish & Game New Zealand, Mighty River Power is an important player in hydro and geothermal power generation. The Land Care Trust and of course we've got links to the tourist industry, and to a great many community groups throughout New Zealand.

Our aims are to increase public knowledge and appreciation of wetland values, to increase understanding of wetland functions and procedures and processes, to ensure that land owners and Government agencies commit to wetland protection, enhancement and restoration.

To be read in conjunction with
the tabled evidence/statement

We have within our group and our contacts, the widest body of wetland expertise of any single organisation in the country, regarding wetlands and we're keen to continue to establish the Trust as a one stop shop for wetlands advocacy and wetlands management advice. For instance, for several years now we have organised a biennial national conference on wetland restoration management, which was very well supported. We've held these in Wellington, Christchurch, Hamilton - the next one is in the Bay of Plenty, next year.

We are particularly concerned that wetlands are the focus of one of New Zealand's six international treaties, and yet we see serious shortcomings in the execution of New Zealand's obligations.

[11.30am]

For instance the Department of Conservation is the contact point for liaison with the (inaudible) Bureau but DoC has to concentrate when the chips are down mainly on wetlands management within the conservation estate, whereas there are large numbers of privately owned wetlands throughout the country, many of which are valuable, by a diversity reservoirs or perform important functions in flood control, water supply, water quality management, recreational facilities, even seasonal grazing, and I'm not trying to denigrate the Department of Conservation's role here, they do after all have administer almost 25% of the country, but as I say, we don't have a lot of money and when the chips are down, we have to look after the conservation estate.

The Regional Councils, to take another example, have clear responsibilities under the RMA to manage wetlands, but over the last 18 years since this legislation was enacted, large numbers of wetlands have received quite a lot of attention because of what they might call "buck

passing” between the regional and the territorial authorities, and the main reason for this is that local Government responsibilities are shared. Water for regional councils, land for district councils, (inaudible) wetlands are bogs and swamps, so some call them wet, some call them dry, some call them land, some call them water. This excuse if I might use the word - has lead to a lot of wetland degradation during the past 18 years. Wetlands are a product of their catchments and what goes on in them. You can put a fence around a forest and come back in 50 years and the forest is most likely there in the same sort of condition. But you can't do that with a wetland, because of the contiguous nature of the water table, which extends into dry land within the catchment on either side.

The National Wetland Trust has pretty strong, in fact I would say dominant signs, base and interest - and we are determined to see management guidelines and legislation which acknowledges the value of wetlands, and their unique structure and functioning and processes. So much damage has been done because of the lack of understanding of the hydrology of wetlands. The fact that management practices enacted now, can take many years to produce visible and often irreversible degradation. We all know about the short term, the short time frames of economics and politics. Well unfortunately with science and particularly with wetlands, we have to talk long term.

Currently there is much debate - for instance about carbon sequestration. Many wetlands do this very effectively and more ever they can store carbon indefinitely, which again is something that forests can't do. I think I've said enough by way of introduction. I'd like to hand over now to Dr Bev Clarkson who is going to briefly outline to you the forced wetland research programme which she co-ordinates.

DR CLARKSON: Thanks Keith - well as Keith said I co-ordinate, I lead the current wetland programme throughout New Zealand, and this compiled research is from Land Care Research, from NIWA and the University of Waikato, and just this last Monday we've just put in our concept for the next six years of wetland research which we're keeping our fingers crossed for - and this concept actually also incorporates another research provider of Waikato (inaudible) basically collaborating with them - embedding them into the research.

So the short title of our concept is just "Restoring Wetlands" and as Keith has pointed out, wetlands are very important, they have extremely important biodiversity values, because they provide habitat for unique and also endemic flora and fauna but they also provide large economic and social benefits, through the eco system services as Keith has described. For example, they regulate water quality, water quantity, they regulate nutrients and they also sequester a carbon.

But as Keith has said, we know that wetlands throughout New Zealand - are steadily degrading, and basically through man induced impacts. So we need to do something about them.

So our foundation, wetland concept, our programme, we seek to improve and restore the functioning and the biodiversity condition of wetlands and their associated eco systems services. So our clear questions are, what are the impacts of altered hydrology and nutrient regimes on wetland biodiversity and the services, and how can these regimes be manipulated to manage and to restore degraded wetlands, so that's the crux of our research over the next six years, and we basically will provide several outputs and outcomes but perhaps those that are most relevant to the NPS are these ones, the provision of water regime and nutrient thresholds across our wetland types which Keith said - there's Bog's - there's

swapped, there's other wetland type's - so their thresholds are provided with regard to maintaining the biodiversity of the wetlands, and the eco system services and we actually do plan to do quite a bit of research on carbon sequestration, because this is very important in terms of increasing or change of climate.

And so we will also provide a suite of indicators for wetland functional conditions, with regard to their resilience to the altered hydrology and water quality, and ultimately we will provide guidelines for biodiversity, mitigation and also restoration. So that essentially is the crux of a concept, which may or may not be picked. Thank you.

MS DENYER: Morning Your Honour and members of the Board. Thank you for taking time to listen to us today. You have a copy of our written statement, I understand -

CHAIR: We have it right here, yes.

MS DENYER: I understand that you have read that. And you will see that contains a number of specific elements that - or changes that we are suggesting. We've tried to be as helpful as possible in providing some specific situations where we believe the NPS could be strengthened to include more reference to wetlands and biodiversity.

Just in general, we support the approach of producing an NPS on freshwater, and we do applaud the Ministry for that, but we do seek some stronger provisions around wetlands and biodiversity stronger recognition for those at the very least.

In my presentation today - I'd really like to just focus on the apparent exclusion of herbaceous or woody wetlands, the term Keith used with

Palustrine which I will spell for your transcriber, P-A-L-U-S-T-R-I-N-E, and those are the wetlands that have emergent vegetation.

You will see the bottom of our first slide, that the Wetland Trust - has a broad interpretation of wetlands. We take the international Ronsard (ph) definition, which does include those flowing and static open water bodies, rivers and lakes, but also the swamps and the bogs which are those palustrine wetlands that we mentioned earlier.

Now the NPS as currently drafted has a definition of the term fresh water resources, which does include the word wetlands. Because it also refers to rivers and lakes, and ground water systems, we assume that the draft is intended that to be referring to the palustrine wetlands but we do note that that is the only place in the entire estrata NPS that the word wetlands is actually mentioned.

In terms of the RMA definition, it is quite broad and it includes under the RMA, intermittently wet areas, shallow water and land water margins. That's supported natural eco system of plants and animals adapted to wet conditions.

And I've presented here a few photographs of wetlands, really just to illustrate that they don't always - they are not always characterised by open water or flowing water. Some of them the water is just the low, the vegetation level there, and the reason that we point this out is because - these sort of wetlands aren't just affected by water takes and discharges, which we see as being a strong focus in the NPS. These palustrine wetlands are also affected by clearance, by drainage, by infilling, and also by weeds stock and pests.

To be read in conjunction with
the tabled evidence/statement

The reason we point these out is because these are pressures on wetlands that are managed under the Resource Management Act, land activities that are managed under the Resource Management Act, can contribute to or exacerbate these problems for wetlands.

I don't imagine I need to remind this panel of the values of wetlands, but I just thought I would present a few facts about the economic and biodiversity values, and we recognise that wetlands also have very strong, recreational scientific and educational values as well.

The eco system services the wetlands provide has been estimated around 3.5 billion annually in New Zealand - which is about 900 per person. Overseas literature has suggested that the value - eco system service value of wetlands is always a (inaudible) high of just about any other eco system type, because wetlands provide a huge range of services, that they do while you're just sitting there in the environment. They do it completely free for us Flood mitigation, carbon sequestration, that Bev's has mentioned, water renovation and more.

[11.40 am]

In terms of the bio diversity value, our wetland support a disproportionate number of threatened species. While wetlands are only occupying about 1% of New Zealand's land area, they support 11% of the threatened invertebrates, 16% of our national critical bird species, 18% of all replants and not surprisingly, 100% of all of our freshwater fish.

Now coming back to the NPS, despite wetlands being identified as a national priority in the 2007 National Statement of priorities, released by the Government and Department of Conservation, they do continue to be destroyed and degraded as Keith has said. We see the NPS as an

opportunity to address this continued problem. As currently drafted however, there is scant reference to wetlands, and the activities for which policies and objectives have been written in the draft NPS, focus on water take and abstraction. Also the terminology seems confused between referring to water per se or to freshwater eco systems.

We found it rather confusing, we weren't sure at times whether the NPS was referring to freshwater beyond the definition of the freshwater resource, including back to the femoral and artificial water resource, or whether it was just a confusion of the terminology and they were really referring to the resources. We think there needs to be some clarification around that.

We also sought some clarification around the terminology of degraded versus outstanding water bodies. We felt there was confusion here between an element of condition which might be degraded - versus and element of significance which might be outstanding. Now they don't necessarily sit together, so we felt perhaps it should either be degraded and healthy or outstanding and some lesser term. We feel that the water bodies could actually be both degraded and outstanding, and we also feel like there's the whole spectrum of water bodies between those two extremes that aren't provided for in the NPS.

Just a pictorial example of a wetland - that could be outstanding - or degraded. This is a photograph of some very sediment laden water, very invaded by exotic weeds, probably highly atrophic water, nutrient rich water but it's in Whangamarino wetland, which is internationally significant, so we would ask, how would you classify this water body, outstanding or degraded or both?

MS O’SULLIVAN: Most of the impetus behind the NPS is the increasing of public concern over poor water quality resulting from enrichment, contamination of sedimentation, and water shortages. The diverse role that herbaceous wetlands play in conserving water, regulating flows and purifying water, plus their role in providing habitat for unique assemblages of plants and animals and their high recreational cultural cannot be ignored.

Native plants, in my experience in wetlands, slow water, filter sediments and de-nitrify - in rich and it’s been set up to 90% on nitrogen, can be removed through those processes.

Wetlands and do make a real and substantial contribution to managing human impacts on all of our water resources. While we as a nation grow, ever more alarmed at the increasing quality of our lakes and rivers, let us not forward the invaluable role played by the herbaceous wetlands that fringe or buffer them, and that are integral part of their ecology.

We have provided a number of examples in our written statement where the NPS can be strengthened, to fully include herbaceous wetlands and policies and objectives and to clearly indicate to councils, that the NPS applies equally to vegetative as well to open the water bodies. These include reference to activities that adverse affect herbaceous wetlands, particularly drainage and infill, and controls on activities to minimise facilitation of weed and pest spread through land use activities. Protecting wetlands from drainage and filling is critical - not only to protect the intrinsic values of the wetlands but to allow them to continue to help protect water quality in lakes, streams and rivers. These threats to our natural filters need to be specifically referred to in the NPS, along with takes or discharges to define water in terms of the activities that we would seek policies and objectives around. The value of indigenous aquatic

biodiversity - also deserves greater recognition under the proposed NPS and our submission also provides some suggested amendments to achieve that.

Finally, I'd just like to show you some slides that let - let them speak for themselves and really it's an element of eye candy because I'm imagining that you've seen lots of photos of very degraded cows and wetlands - we wanted to just give you a nice ending to our presentation.

Thank you, we're more than happy to answer any questions the Board may have.

CHAIR: Well, thank you very much on all of your presentations and especially the closing piece - which was as valuable as the rest. Mr Prime?

MR PRIME: No thank you.

MRS VERNON: No question - I would like to thank you for your presentation, and wonder if we could have a copy of your sound, just because some points that you've elaborated more fully on the original submission which I have seen helpful.

CHAIR: Dr Harding?

DR HARDING: Thank you for your presentation, and your original submission. I'd just like to talk a little bit about the definitions, it's on the last page of your original submission where you talk about freshwater resources here, and we've already heard from them today, how wetlands might, potentially sit somewhat uncomfortably at the definition at the moment, but you may have heard me the previous submitters about the suggestion of changing the definition to something like eco system which would. I notice in your

submission talk about indigenous communities, species etc, again that's the flora and fauna et cetera. Again, that's the fauna but it's not necessarily the beard of the systems, or the riparian zone, or the flood plain. Do you have a view on some sort of extension of this definition even further or are you happy with what you've suggested here in this original submission?

MS DENYER: I mentioned my colleagues don't have a copy of our - do you have a copy in front of you?

MR THOMPSON: (Inaudible) your presentation.

MS DENYER: We certainly did seek an amendment to that definition to include reference to ecosystems and not just the physical biotic elements of ecosystems but the processes of ecosystems. And I think particularly if the aim of the NPS is to protect the quality of freshwater it's those processes that we need to keep wetlands in the landscape and let them do their job while helping to maintain the water quality in those other water bodies. As well as retaining them for their own values which we've also expanded upon. And I think the greater recognition of the fact that it's all those ecosystem processes that go on naturally that help counter the pressure that we keep putting onto these systems. Holding on to those is just as important as trying to reduce the pressure of the actual activities that we carry out.

MR THOMPSON: I think one of the concerns we have also is that many peoples perceptions of the word "resources" is that this is something to be used. And indeed this is also our definition but our definition is broader because it is used in the sense of ecosystem services, which are quite often missed out of management of natural resources in general. So sure, "resources" provided that it applies to ecosystem services, is okay as a word but since

you're using the terminology which must be understood by a wide variety of people, I think it either needs some explanation or it needs a changing or an alternative word like "ecosystems" put in there.

DR HARDING: Thank you.

DR CLARKSON: I've got a comment. I would suggest we could go even further than "resources" or "ecosystems" to "biodiversity". Because "biodiversity" is everything, it's your gens, it's your species, it's your ecosystems, it's your biotic, it's your physical and is counting the processes that make them a functional systems. So biodiversity does encompass everything which I would be a lot happier with. But provided we also - if we use the word "biodiversity" we need that full definition to be in there. So that was something that the panel might like to consider.

DR HARDING: I'm guessing that would need to be a very inclusive, extensive definition wouldn't it, because a lot of people imagine biodiversity really to be talking about the organisms and that sort of thing. And you're trying to encompass everything.

[11.50 am]

DR CLARKSON: No, I'm not trying. The official definition is exactly what I said. If you go on any web search and put in definition biodiversity it will come up with genes, species, ecosystems, environments, biotic and physical, and their processes. So to me that's probably what we're trying to get over.

MR THOMPSON: So it's things and organisms. Things, organisms and places.

DR HARDING: I noticed in several places you've also added "indigenous".
So would you like to explain your view on that?

MS DENYER: It's coming back to the biodiversity. We believe that while there elements of introduced species that do contribute to New Zealand's wealth in terms of economic and other social and cultural and recreational values, it's the indigenous biodiversity that is solely our responsibility. Such a large proportion of New Zealand species only occur in New Zealand. We've got the unique responsibility and opportunity to look after them so we believe that's it's the indigenous biodiversity should take precedence where there's a conflict between the values of introduces and exotic plants and animals, flora, fauna, etc.

We also have a concept, or understand that, native species are a lot more in tune with the environment here. They're probably going to do a better job of those processes because they've evolved here. But primarily our reasoning behind inclusion of "indigenous" is because New Zealand has that unique responsibility and opportunity to look after what is truly ours.

MR THOMPSON: We do recognise the role, quite often the very important role, of naturalised species in New Zealand wetlands and naturalised are species which have come from other countries that are now firmly established in New Zealand and part of our flora and ecosystems forever.

So we're recognising the importance of these but we're also emphasising that nobody else can look after the indigenous species, the ones which are found only in New Zealand. And therefore it's important that we stand up for those.

DR CLARKSON: There's also another component here of that. There's actually lack of knowledge. We have these introduced species coming and taking

over. And they've changed wetland ecosystem functions. For example willows came into herbaceous system but any peak flying species are removed because they can't get the light or the open habitat that they require because the willows has completely changed the structure and functioning of the system. Okay we know that for willows. But what impact does this have on other components in the micro-organisms, the invertebrates, the vertebrates, the fish, the birds and so on. We don't know. Because if we change the whole ecosystem component at various levels what ongoing effects does it have? I mean, we don't know and that's why I think we do need to think about in some areas we need to restore the indigenous biodiversity. Because that, as Karen said, that's the way our systems evolve. That's the way the best of our ecosystem functions are basically, and our services, occur. So I think we do have this responsibility.

MS BODMIN: I think also in the National Policy Statement it also refers to mitigating activities and we'd prefer to see any wetland mitigation be revolving around restoring native planting rather than creating wetlands that are predominantly using exotic species. That would be another focus as well.

DR HARDING: Okay, thank you for that.

CHAIR: You have got a comment in your submission about the meaning of the word "contaminant". And I understand what you mean by saying that it should include (inaudible) or (inaudible) oil. From the conversation we've had a moment or two ago there are circumstances in which willow trees might be a contaminant. And you say, "Well the RMA definition should be inserted." Is that adequate?

MS DENYER: I'm trying to recall how the term was used in the NPS, often "contaminant" is used in the context of something we deliberately place, either discharged, through a discharge whether that's illegal, or placing fill as a contaminant. Willows are something that we have facilitated their invasion into wetlands. But they sort of tend to do it on their own, we're not deliberately going out there and sort of planting them. So it would come down to the context of how that term was used in the NPS. Whether it's a deliberate activity which the NPS is seeking particular reaction or response from councils in terms of controlling that activity, or whether it's dealing with a problem like invasive species which is a bit more pervasive. And you can't necessarily pin it down to a particular person or agency causing that.

I mean if somebody was to go out and plant them that's a bit different but when they're just self seeding into the environment it's not necessarily something that regional council or district council can put a control on preventing it. Although they can put controls on activities that, if it exacerbates weed spread, if they change the hydrology of a system, if they're enriching the water quality with nutrients and that facilitates willow spread then we would seek that that agent or that party be required to mitigate that effect through other means such as going out and spraying, controlling or removing it in some way.

So again it sort of comes down to how that term is used in the NPS and I'm sorry, I can't remember off the top of my head exactly how it's used. It may be appropriate. It might be that we deal the weeds through other mechanisms in the NPS.

CHAIR: Well thank you for that. I think that the NPS will work from the assumption with unless a word is given a meaning under, what they erroneously call, definitions in the NPS the meanings will be the same as

the meanings ascribed to those words in the RMA, if any. And are you comfortable to leave it like that?

MS DENYER: I think I'm comfortable with it following the RMA definition but we would like to see as we asked in other parts of our written submission that the effects of activities that exacerbate weed and pest infiltration into aquatic ecosystems be something that the councils retain control over through resource consents or other methods.

CHAIR: Thank you.

MR THOMPSON: I think as with resources there is a perception of the meaning of "resources" out there and therefore has (inaudible). Similarly with "contaminant", there is a meaning out there and I would prefer to have the separate word which refers to weeds or introduced species.

CHAIR: All right. Well thank you for that. One of the things about your submission and presentation is that it added to our understanding, or at least mine. Perhaps my colleagues already had better understanding about the vulnerability of wetlands. And so we thank you for those insights and for the clear way in which you've presented your submissions. And particularly for being constructive as you have in specifically identifying changes you want made and stating what the changes are. We find that very helpful. So thank you very much for coming today.

ADJOURNED [12.01 pm]

Audio file: dpm 0317

RESUMED [1.16 pm]

CHAIR: Thank you. Good afternoon, and welcome – it’s good to see you all. We have the submission in front of us, which we have already looked through, and we want you to understand that there’s no particular formalities. We would like you to present just as you choose. And perhaps after you’ve completed saying what you want to say, collectively, we’ll have some exchange of questions to complete our understanding of what you’re telling us. So may we call on you first, Mr Fisher.

MR FISHER: Thank you Your Honour. Yes, Rob Fisher, to my left is Karina Phasencloak from Simpson Grierson, on my immediate right is Wayne Russell, one of the two witnesses. And next to him is Kathy Mason who works for Newmont Waihi Gold, and behind me – not presenting evidence, is Malcolm Lane, who is a Civil Engineer who’s worked in a consulting basis at Waihi for many years.

Just while these are being handed out Sir, please don’t be worried by the thickness, there are some annexures that - we won’t need to go through in detail.

CHAIR: Very well, thank you.

MR FISHER: And in the interests of your time Sir, I may well paraphrase some of these paragraphs, but I’ll keep you up to date with where I am -

CHAIR: Yes that’s fine. Just help us with the navigation.

MR FISHER: Thank you.

Thank you Sir. Now these legal submissions are made on behalf of Newmont Waihi Gold Limited, which operates the Martha Mine, an Open Pit Goldmine, and the Favona Underground Mine at Waihi. Both mines are a significant contributor to the economic output and employment at a local, regional, and national level.

Newmont made its original submission in January of this year, and has made further submissions – thirteen in support of other submissions, and thirteen in opposition to other submissions, and those other submissions are referred to in annexure one.

If I turn the page, there's reference there to annexures two and three, and what I'm saying in 3.1 is that Newmont having supported other parties submissions, on some occasions prefers the relief that those parties sought to the one it put forward itself, and annexures two and three make it clear where that occurs.

We have collectively been following the transcript, which I must say is a very helpful tool to those to follow, and we've noted that some parties, and I refer to Christchurch City in their submission have been seeking that the NPS deal with their specific area, rather than New Zealand as a whole. We are also aware that there are other submitters who have been looking for, what I might describe as unique situations – industry related type changes to the NPS, and Newmont appreciates that the Board in making its recommendations to the Minister won't want to open Pandora's Box up with a little bit of a change here for this industry, and a bit over here. And what I want to say, Your Honour, is that Newmont in the submissions to follow is not trying to open Pandora's Box, it's not trying to seek a mining specific exemption from the proposed NPS, but is really looking for

objectives and policies that relate more specifically to ground water and to surface water.

In the original submission, Newmont said the proposed NPS was unnecessary, and it would not be appropriate to impose the proposed NPS on all councils across the country. Newmont resiles from that submission, and does in fact support the intentions behind the development of the proposed NPS.

The concern really is that there is what I would term a “one size fits all” approach to fresh water resources, because the definition includes both surface water and ground water. So I turn to top of Page 4 - and that’s in essence what we’re presenting to you today, that there should be some separation of ground water from surface water in the document, and there be some specific objectives which relate to ground water.

At paragraph 3.5 I’ve set out the definition of fresh water resources, and I’ve emphasised ground water systems included in there. And because the definition covers both surface water and ground waters, it seems on a strict reading of the document that ground water systems are subject to the same requirements as surface water, when such an approach is impracticable, and in some cases unachievable, because of the different characteristics of surface water and ground water. And that was a point picked up by Local Government New Zealand, and I’ve given the quote there, which says that “the NPS does not expressly acknowledge the nature of the system sought to be managed, more set out the interrelationships that exists in the context of fresh water management, in particular the relationship between surface water and ground water.”

I now, Your Honour, give you a couple of examples – I have four examples to support the content of that – there should be some distinguishing between surface water and ground water systems.

And the first is Objective 3, which is set out there – and the words I'd like to emphasise is “ensuring that appropriate fresh water resources can reach, or exceed a swimmable standard”. And that's a requirement in my submission, which is impractical if it is applied to ground water. And so Newmont in its original submission sought that ground water be excluded from the requirement, “to reach or exceed a swimmable standard.” I know Your Honour is very familiar with the operations of Waihi, and I imagine Mrs Vernon is as well, but Newmont is well aware of the quality of the ground water systems around Waihi, and in particular beneath the Martha Mine, and in some instances that water is naturally mineralised, such that, in situ certainly, would be impossible for that water to be brought to a swimmable standard.

Newmont is certainly not opposed to the requirement in the proposed document for the progressive enhancement of ground water, and obviously surface water, where such enhancement is justified, practical, and achievable. And that may well be the case if you've got a near surface aquifer, where land use activities are detrimentally affecting that aquifer – change the land use practises, and maybe the aquifer can be enhanced. But in the Waihi situation that is not practical, or possible.

The second example comes from Objective 4, which refers to “ensuring the life supporting capacity, and ecological values of fresh water recognised”, and talks about damming, or diverting of fresh water. In my submission, parts of that Objective are not relevant to ground water, certainly the reference to damming, and diverting. And nor does ground

water, and I interpolate here Sir “always”, nor does ground water always have life supporting capacity, nor does it have ecological values.

The next example refers to Policy 1(g) of the proposed standard, which refers to restricting takes at times of low flow. And Newmont’s understanding is that, that Policy if read strictly would require mine dewatering to be restricted at times of low flow. The mine is dewatered to keep the water level below where people, and machinery are working, and if Newmont was required to turn off the pumps at times of low flow, then operations have to cease. And if that were done, there would be no benefit to any of the other people in the area who use ground water, because they are drawing from completely different sources elsewhere in the Waihi Basin, and in my submission it would only be necessary to restrict existing takes, such as dewatering, if the ground water was sustaining surface water, and that is not the case at Waihi.

Further – why the mine dewatering – the water is taken from the mine, it’s put through a water treatment plant, and discharged to the Ohinemuri River to a high standard, and it adds between twelve to eighteen percent extra water to the river at times of low flow. So it’s a real benefit for a river that is already over-allocated.

And the last example is Policy 4, which refers to notable values of fresh water resources, and at Paragraph 3.20, I want to be clear that Newmont’s not seeking that ground water be exempt from the requirements of the proposed NPS, just with the differences between surface water and ground water, and between different types of ground water get some recognition in the document, and subject to appropriate Objectives and Policies.

Newmont in its further submission to the New Zealand Conservation Authority submission, stated that the definition of fresh water resources should not include ground water resources, and that there should be Objectives developed which more appropriately relate to ground water resources.

Mr Russell's considered this issue, and the next paragraph sets out a definition of fresh water resources, amended into surface water and ground water. And I think you can see from that the essential elements of the definition remain, but by separating ground water out, some of the elements, which plainly apply to rivers, lakes, and possibly wetlands, but don't to ground water systems, would be recognised. To give you an example of that is Objective 3, which is set out at paragraph 3.24 – Objective 3A relates to surface water, and it's almost identical to the wording in Objective 3 now. But Objective 3B deals with ground water, and deletes the reference to "reaching, or exceeding a swimmable standard", and relates to ground water impacted by land use development, where discernable effects on surface water, on ground water usage are identified. So Objective 3B is put before you – would distinguish between ground water where the quality has been impacted by land use development, and ground water, which is naturally degraded, and that term "naturally degraded" was set out in the Local Government New Zealand submission.

[1.30 pm]

A further example would be Objective 4, and 4A. There's reference to "ensuring the life supporting capacity, and ecological values of surface water". 4B is in exactly the same wording, just leaving out the reference to ecological values. Oh, sorry, and also the reference to damming, and diverting. But otherwise the wording is the same.

So in my submission Sir, the amendments are relatively minor, but would achieve the objective which Newmont seeks.

Now, all of this is clearly set out in the annexures, and Miss Phasencloak, and Ms Mason will be happy to answer in the detail if you would wish to ask questions on that at the end of our presentation.

I then turn to your power to make recommendations, and I'm certainly not going to give you a lecture, because you're very familiar, but perhaps if I move to 4.4 - from following the transcript of this previous day hearing, I think it was when Fonterra were presenting. It appeared that Fonterra wanted to bring in a new relief, and you pointed out at the bottom of that quote, that a late request for change to those already in the submission would deprive the Board, and potential further submitters of the opportunity to say what they thought about it. And I can certainly understand that the Board has had a big task, and it needs to bring it to finality, and produce a report for the Minister, and you can't go on infinitum. But there is a procedure, and I'm at Paragraph 4.5 now, where the Board can invite further submissions on amendments to the proposed Statement prior to completing your report and recommendations, and that relies on Clause F, which says "the Board may invite, and consider further submission on amendments to the proposed NPS, prior to completing its' report, and recommendations"

So it seemed to me Your Honour, that the Minister in setting the terms of reference had given you a second opportunity, if you like, to seek further submissions, but obviously at your discretion. And the point of this submission is that Newmont did not specify the precise wording that I've been going through as recommended by Mr Russell, and so if the Board considered it's too late in the process for Newmont to come up with these

definitions, then I would commend to you perhaps the steps set out in Policy F of seeking further submissions, and there may be other instances where you might think that that's the appropriate course of action, but again, over to you.

Over at Paragraph 4.8, I've simply set out what the Board may also address, and I highlighted B – the level of certainty, or clarity provided by the proposed Statement, and in D the identification of any unintended, or unforeseen, but likely outcomes, with the proposed NPS.

So, it's my submission that it is necessary for ground water specific objectives to be included in the proposed NPS, due to the very different nature of ground water from surface water. And I also note from the terms of reference that the Board's able to recommend some changes to Regional Policy Statements, District, or Regional Plans, and those changes could be directly inserted into the document without further consultation. And in my submission, that is why it's so important that the NPS be right at the outset, because it is such an important document in the hierarchy of matters to be considered under the Resource Management Act.

So what I'm saying Your Honour at 4.11, if you're not persuaded in the course of today's presentation that you were able to grant the relief proposed by Mr Russell on today's submission, then the next step might be to seek the further submission, but if you weren't happy with that, I've given you a third option, and that's just to deal with the submissions as originally filed, and the further submissions – it sounds a little bit a bob each way, and then another, but I am responding I think to the discussion you had with another submitter, and you properly, and correctly – you did not state a concluded view. So that's the approach, we've really got a descending order of relief. There's one other issue which I draw to your

attention, which is not set out in the annexure, because this is a case relating to the ANZEC Standards, where the Hawke's Bay Environmental Water Group and others sought that robust figures from the ANZEC Standard be imported into the proposed NPS. And Newmont is opposed to that. I refer at Paragraph 5.3 to the evidence of Dr Ian Boothroyd, who gave evidence on behalf of Solid Energy Coals, and I think we gave notice to the Board of our wish to adopt that evidence. I haven't asked Dr Boothroyd to come and appear again, and in any event Kathy Mason, does address the ANSEC Guidelines briefly with her statement.

So my submission really is that the NPS should not be imposing standards on fresh water resources in the way those submitters sought. As I've told you there's just the two witnesses – Ms Mason, and Mr Russell. We noted that there's only one piece of rebuttal evidence been submitted, and that was by Ms Sarah Dawson, and in her rebuttal evidence she particularly referred to Mr Russell, and the approach that Newmont has taken, which she opposes in the interests of one integrated overall approach. There are other people, and there are a couple of quotes at Paragraph 6.4 I think, from a witness for the Oil Industry, who has a positive view of Mr Russell's statement of evidence, and Ms Dawson is a very fine Planner, but in my submission her approach is more philosophically based – she's not a hydro-geologist, and may not understand the differences that Mr Russell will point out to you.

So, in conclusion Newmont seeks the Board make the recommendations set out in Paragraph 7.2, and I've hopefully explained the descending order of preference, which is annexure 2, which is what Newmont originally sought by way of submission, overlaid by Mr Russell's definitions in splitting out some of the objectives as I've described. The second is just to stay with what Newmont proposed initially, and then the third preference, if you didn't like anything that Newmont put forward, we

commend to you the submission of Local Government New Zealand, which we thought was a very good piece of work – it did adopt a different approach than the authors did to the proposed document, but we thought that particular submission, coming from the body that it did had considerable merit.

And I think that's all I want to say at this point Sir.

CHAIR: Yes thank you Mr Fisher. May we postpone any questions about that until we've heard the evidence, and then we may ask some questions generally. Does that seem satisfactory to you?

MR FISHER: Yes, that's very appropriate sir, thank you.

I'll ask Ms Mason then –

CHAIR: Do we have the text of that – oh I think it's coming, so just pause for a moment. And while it's being prepared for us, may we just say that consistent with our policy of avoiding formalities – you can either stand at the reading desk, or sit where you are to present your evidence, and we won't have any requirements of swearing, or affirmations, unless that's what Newmont wants.

[1.40 pm]

MS MASON: Thank you. Do you want me to start now?

CHAIR: When you're ready.

MS MASON: My name is Kathy Ann Mason and I have been employed by Newmont Waihi Gold, and its predecessor companies at Waihi since

nineteen ninety, and my qualifications and experience are set out in paragraphs one and two of my Statement of Evidence, filed on the third of June 2009.

I'll just introduce Newmont Mining Corporation. Newmont Mining Corporation based in Denver. Newmont Mining Corporation is primarily a gold producer, with significant assets, or operations in the United States, Australia, Peru, Indonesia, Ghana, Canada, New Zealand, and Mexico. Worldwide, Newmont has approximately thirty four thousand employees or contractors. Newmont Mining Corporation has the following vision, "We will be the most valued, and respected company through industry leading performance." Newmont Mining Corporation understands that stewardship of the environment, and good community relationships are inextricably linked to its current, and future business success.

At Waihi, Newmont operates the Martha Open Pit Mine, and Favona Underground Mine. An excellent level of compliance with the resource consent conditions has been achieved over a period exceeding twenty years, and Newmont has an admirable record of performing well beyond compliance, in terms of its environmental, and social commitments. For example, Newmont has voluntarily planted a quarter of a million native trees and shrubs, and many of these have been planted along riparian boundaries in the Waihi Basin.

Water management is an integral part of Newmont's mining and exploration activities. Paragraph 1.14 of Newmont's submission lists the various water related activities that are undertaken. Newmont dewater both the Martha, and Favona Mines, and water from the site that is excess to requirements is treated through a water treatment plant, prior to discharge to the Ohinemuri River. Last year Newmont installed a reverse osmosis plant, with a value of ten million dollars. The RO plant allows

Newmont to discharge a greater volume of water, with an improved water quality. Prior to discharge, the treated water flows to polishing ponds, where it is tested, and held prior to release. The water is treated to a very high quality. Once a year a swimming race is held in the polishing ponds. Since 2007 Newmont has been discharging water from the decommissioned tailing pond known as Storage Two. No treatment is required of this water.

Newmont has in place a rigorous monitoring system for both ground water and surface water. This includes monitoring of water quality, sediment, and aquatic biology in the receiving waters. Over the past twenty years, effects on the receiving waters have been less than minor. The Ohinemuri River is a world class trout fishery, and trout and eels are regularly recorded as being present close to Newmont's treated water discharge point. During the summer the local community makes good use of the swimming hole that is located just downstream of the discharge.

In my experience Newmont has strived to work with the Waihi community, and the district and regional councils to achieve good outcomes. Newmont acknowledges that some of its areas of operations have significance to Tangata Whenua, and Iwi, including Ngati Tamatera, Ngati Maru, Ngati Tokanui, Ngati Haku, and Ngati Puhi. Newmont has entered into memoranda of understanding with three of their forementioned groups, and continues to consult with the other two. Newmont is committed to a sincere and honest sharing of information, and mutual education to provide a greater knowledge of mining, and understanding and respect for cultural values.

Over the past few weeks I've heard the further submissions and evidence that have been prepared as well as the transcripts of this hearing. I believe that the process has demonstrated first that an NPS is necessary,

and secondly that Newmont has much in common with many of the other submitters, including Local Government New Zealand. Accordingly Newmont is supportive of the intentions behind the development of the proposed NPS, and acknowledges the need for consistent policy, that will provide real, and achievable improvements to fresh water on a national basis.

As discussed in the legal submissions Newmont does however have some concerns with the proposed NPS, as currently drafted. In the sections to follow, I would like to briefly summarise Newmont's operations at Waihi, before returning specifically to the NPS.

Your Honour, Paragraphs 11 to 13 are the repeat of what was in my evidence, and really the point of it is just to say that Newmont is a large employer, and contributes significantly in terms of local, regional, and national economy, and that Newmont really wants to have a future, and if you're happy for me to, I'll skip straight to Paragraph 14 to save time.

CHAIR: What we'll do is to receive it as part of your evidence without asking you to read it out, so that you can go straight to fifteen.

MS MASON: Okay, if I may just read fourteen? that's just a little bit different.

CHAIR: You can do what you like, yes.

MS MASON: Just to summarise, Newmont's operations at Waihi have become a shop window for its operation from a global scale. Newmont is fully aware that to have a continued presence in New Zealand, it must maintain its current high standards by complying with consent conditions, maintaining good community relations and adopting a beyond compliance approach.

Moving to the proposed NPS general comments, Newmont's operations are located within the Waikato region, and in Newmont's experience the regulatory environment of Waikato Regional Council is robust and well developed. Waikato Regional Council has already made considerable progress in terms of addressing both surface water and ground water management, within its area through its regional plan which is why Newmont originally opposed the proposed NPS.

However, Newmont acknowledges that this is not the case across the whole of the country. For that reason, Newmont is generally supportive of the intentions behind the development of the proposed NPS, and acknowledges the need for consistency and quality on a national basis. While the intent of the proposed NPS is supported, Newmont has some concerns as described below.

Regional flexibility - At present the NPS in some respects is prescriptive and provides little flexibility for regional councils to address freshwater issues using their own methods, for example the NPS prescribes what must be included in Regional Policy Statements and regional plans, this will require councils to notify their Regional Policy Statements and subsequently their regional and district plans to fulfil the requirements of Policies 1 and 2. Newmont believes that while it is important that the NPS is worded in such a way as to provide consistency on a national basis, it is also important to ensure that councils can address regional variability using their own methods. Newmont has been actively involved in the development of the Waikato Regional Plan, and most recently variation 6 - water allocation through the planned public notification processes, and we believe the process does work well and achieve good outcomes. My concern is that the proposed NPS could be inconsistent with, or could even undermine work that has been completed through a public process.

Uncertainty - All of Newmont's mining water related consents, sorry mining related water consents, have been processed as fully notified applications, and in Newmont's experience the level of examination for those consent processes is significant. The opportunity that the consenting approach provides to focus on site specific environmental issues, and the practicalities of mining is supported by Newmont.

My concern is that as worded the NPS creates considerable uncertainty, for example as discussed in my evidence at paragraph 25, the proposed NPS will require the addition of further conditions on consents granted, and there is some ambiguity as to whether this applies to existing consents. Policy 6(b) would impose a condition requiring protection against degradation of the quality of freshwater resources, which depending on its interpretation could be extensive and difficult or impossible to meet when applied to ground water.

Surface water versus ground water - Generally speaking the objectives and policies of the proposed NPS appear to be appropriate for surface water, but not necessarily for ground water, and in particular ground water that has no connection to surface water, and I agree with paragraph 2.5 of the submission by Local Government New Zealand which Rob's already read out, an example of this policy – an example of this is Policy 1(d) which again you've already heard from Rob.

[1.50 pm]

Newmont does not object to the policy per se, but the policy is incorrectly worded for ground water. The term stamen, diversion and low flow are commonly used in relation to surface water not ground water. Newmont's concern is that this policy could be inappropriately used to restrict its mind water intakes. To dewater its mines, Newmont must take water from a

deep mineralised structure that is not connected to surface water. The water is not usable to others without treatment. It needs to be treated prior to discharge to the open Amuri River. From a practical perspective, dewatering involves passive extraction and is required to keep operations safe and dry for workers and equipment. The open Amuri River is currently over allocated and a discharge of treated water from the operation typically adds 12 to 18% extra water to a low river flow.

The concern is that this policy could result in Newmont having to stop dewatering - there for shut down its operations in times of low river flow even though there would be no environmental benefit in doing so.

Water quality standards - In principle Newmont supports the use of water quality standards where Regional Councils consider them to be necessary, provided that they are scientifically robust and appropriately derived, taking into account site specific factors and monitoring data. Newmont is concerned, however, that if Regional Councils are required to impose water quality standards for all surface water and ground water resources, in a very limited time frame, then a one size fits all approach could be used without appropriate justification. For example, adoption of trigger values contained within the NZ guidelines as regional standards, which has been suggested by some submitters. This would be inappropriate because the ANZEC trigger values are intended to be a threshold value - which are free to require further investigation in site specific evaluation, a feature that would not be applied if the trigger levels were simply adopted as standards.

Furthermore, the science behind some ANZEC trigger values are fundamentally flawed, for example we are aware of some flaws in the trigger values for selenium boron, zinc, nickel, (inaudible) aluminium and lead. The natural ambient levels for some elements in New Zealand

waters commonly exceed the ANZEC trigger levels, for example aluminium and some of the ANZEC trigger levels of a lowly ability of current science to reliably detect or assess concentrations, and in some cases this is actually below a laboratory detection limit, and in other cases it is below a practical quantification limit, which is a level above which you can ensure your results are reliable.

Locally with Dr Ian Boothroyd that the proposed NPS should provide a clear and explicit guidance on how freshwater quality standards should be incorporated, and implemented within a regional plan, but should avoid specifying any particular set of standards. In my opinion, the NPS should require councils to develop standards that are appropriate to the particular circumstances to which they apply, ie: enable councils to set standards that take account of the variability of the type and location of the water and the existing and future demands on the water within their regions.

Environmental flows and water levels - Newmont supports the use of environmental flows, and water levels for surface water resources and for ground water Regional Councils consider them necessary. I note however the difficulty and expense involved in deriving environmental flows and water levels for ground water, and for that reason Newmont supports the development of environmental flows and levels in ground water on a priority basis, such as Policy 1(a).

Support for Local Government New Zealand - Newmont supports the submission of Local Government New Zealand, from Newmont's perspective the proposed reworded objectives and policies in Local Government New Zealand's proposed alternative NPS are workable and achievable. If the Board is not minded to adopt Newmont's proposed relief sought, Newmont requests that the Board be – gives consideration to recommending the adoption to the Minister.

Thank you for the opportunity to present this statement.

CHAIR: Now Mr Russell, who has a power point presentation. Thank you.

MR RUSSELL: Thank you. Your Honour because this is a presentation of pictures, it might be helpful to the panel if they have questions that they be put to me during this presentation, and I would be quite happy to answer them.

The first thing I wanted to point out is that any location the ground water systems can be quite complex, and we can have different layers, different strata building up over time, for instance in the grey one at the bottom could very well be similar to a grey wacking, fractured system, that could be overlaid by sands which are from a marine inversion, and in turn that could be overlaid by gravel which would be from a river source. And typically the – we have our land use development on the upper surface, or on top of the upper aquifer, and that upper aquifer tends to be the one which interacts with the surface water.

And of course these layers can be separated from each other. These thin brown lines I've shown here are to redirect – present that there are quite often separations between the various layers that we see.

Now one thing that we do – I want to talk about is chemistry. This is just a methodology of presenting a chemical analysis, all ground water has sodium potassium, calcium and magnesium, bicarbonate, chlorinate and sulphate, and just ignoring this area for the moment, just focusing on these two things, you can see here that these are water samples from various parts of New Zealand and if you look at Waikato, which is this symbol we can see, that we have magnesium waters right through to

calcium rich waters, and as we look at the round circles, which is Waikato, we have chloride waters moving through to more bicarbonate waters. So in others within each region we have quite a variation of water chemistry and this is what this picture is showing us. If we had the same chemistry, then what would happen is if all the groups would plot at one location on these diagrams, but that doesn't happen there is a wide scatter, on this side here you can see the various types of water chemistry that we can get. Now the point I want to make, is that given that we have a wide range of chemical water types throughout New Zealand, we could also see a similar wide range of water types at one location, from shallow depth to greater depth. The other point I want to make is the ground water or the variation in ground water chemistry, is far greater than the variation say of the chemistry from one end of the Waikato River to the other. So there is this big change in ground water chemistry with depth and with location.

Now as I said earlier, shallow layers may interact with surface water bodies, but typically ground water layers – deeper ground water layers are separate and if you look at how we determine this, if we put in different bore holes, different depths, sorry, bore holes to different depths, you end up quite often with water levels rising up the bore holes to different elevations. Now for instance this – what we see here is the shallow aquifer all rises up to this point, if we go deeper it gets a bit higher and if we go deeper still we would have higher water – this would be typical for instance for the confined aquifer system we see down in Canterbury, where the deep bores are quite artesian and some of them are naturally flowing – and that's the best situation that we see for instance in Marlborough, and other parts of the country.

Now if you pump a deep bore, then in these conditions you don't effect the intermediate or the shallow waters and if you even if you do water, or

pump down into the deck as large, you're still going to perfect the shallower layer's.

DR HARDING: Excuse me is this in a situation where these are confined aquifers?

MR RUSSELL: Yeah, confined, yes. As I said the coastal aquifers in Canterbury for an example, that's the confined aquifer system, and this is what applies there.

Now shallow bores, if you pump shallow bores and they have to be close to surface water, then you can get an interaction and you can see water taken from the river or a pond or a lake through the ground water to the bore, and that is depleting the surface water flow.

The other point I want to make here is that the ground water systems, aquifer systems can be quite complex, and why I included this in my evidence is that we have had a recharge zone here for the deeper or the confined aquifer, and the discharge which is somewhere out beyond here, probably off the Coast, but this recharge location was different from the recharge location of the shallow – one confined aquifer shown here. Now again, if you drill two bore holes side by side, one a shallow, one deep one, you can get different water levels, you'll get different water chemistry and you'll get - and I'm really tacking two completely different systems, this system here is recharging, in this area here so any land use which is going on in this area here will affect the chemistry of the water here – the quality the water here, but that is then discharging into say below – or a stream in here, and in this case here I have shown a bore hole with particularly occasion here being an example of water levels above ground surface, it's artesian.

[2 pm]

Now, complex systems like this are quite typical throughout the country. Now this has also included in my evidence, and I was just wanted to take you through a couple of things on this, if we look at a cross-section of area ground by 100 metres wide – that's a football field in length, by 5 metres, by 100 square metres, if we then for its fair depth permeable material, will end up with a ground reply of 10 metres cubed per day and a time flow for over one kilometre or be 41 years. Now if we take the same cross-sectional area and we take say the average velocity of the Waikato River, what we end up with is not 10 metres cubed per day, but between four and 10 million metres cubed per day, so if you're looking at ground water flow volumes in relation to surface water flow volumes for similar areas, you can end up with quite a big difference.

And the other – second point is if we are looking at flow time, the calculation for this reasonable permeable material is 41 years to go one kilometre. Again, if we look at the – if we look at flow in the Waikato River, we're looking at something like one to three hours per kilometre as opposed to 41, so surface water travels at a far different rate and when it's in its – it travels at a far greater volume than we ever see in ground water.

Now not all shallow ground water can provide usable amounts of – shallow aquifers provide usable amounts of ground water. The point I wanted to make about this is - is that if you have ground water discharge into surface water, because of the disparity in flow you can end up with a very large dilutions in surface water, so if you are setting a standard in surface water, then what it means is in order to get a measurable change in the surface water, in ground water discharge, you can actually set or allow a much higher concentration of that component in the ground water, before it has a real or practical effect on the surface water.

Now the NPS of course actually the way it was written, has set out one set of rules for both surface water and ground water and the purpose of this little presentation is to show that there is quite a significant difference between flows and flow times.

Now if we look at the management of aquifers, if we try that without understanding their inter-relationships with other aquifers and with surface water bodies, that can result in extremely conservative and inefficient management of the ground water resource. Now the proposed NPS would likely not allow development such as deep mining, despite that activity not causing significant effects on ground water or surface water systems, and my example here is that after 20 years of pumping, the (inaudible) mines being pumped down the water level has been drawn down some 220 metres, and that places about 120 metres below ground level, and under the way that the NPS is written, that sort of ability doesn't to me appear to be possible. Yet, this has been done without any real significant effects on the system, and there's no effect on shallow ground water from deep ground water and we have 20 years of monitoring data to show that. There's no effect on plant growth from dewatering and again, there's monitoring going on to show that. There's no effect on production from other wells in the area and there's no effect on stream quality from the treat and discharge. On completion of the mining, the ground water levels will recover, and there will be no long term effects on ground water levels.

So that is just an example of something which I don't think would be permissible under the NPS.

So in conclusion, I see ground water being different from surface water, and it needs to be considered and managed in a different manner to surface water.

I have a hard copy of the presentation which is here. That's the full slide presentation, and on the back of that I've actually attached the changes I suggested to the NPS which I forwarded to Newmont for their consideration. They are set out there for you to look at. Thank you.

CHAIR: Well thank you very much Mr Russell. What we'd like to do now is to see if it is time for us to ask one or two questions. I'd like to ask Mrs Vernon first if she has any questions.

MRS VERNON: I have no questions thank you.

CHAIR: Yes, well I'll ask Mr Prime.

MR PRIME: No questions.

CHAIR: No questions. Dr Harding.

DR HARDING: Oh great thanks. Okay, so there's - one of the things you've suggested in the evidence this morning here - is some - a few definition of surface water and ground water, and you talk about the efficient units on page 7 - ground water means water below the ground surface which is available for consumptive use or discharge to and sustained surface water - and sustained surface water. So where I'm going with this, is that - and I accept there's - from what you've been saying that there's a reason why you would think surface waters and ground waters should be treated in a different way, I guess what you've also suggested later on in Objective 2 and Objective 4 - is taking out ecological values, and I'm wondering about

the assumption that ground water under this definition doesn't have ecological values, when you've talked about your situation in your mind, but I'm thinking about Waitomo Caves system, Pupu Springs, and the ground waters associated with those, and whether they have ecological values as well as life supporting values, which in other regions might need to be catered for out of this NPS.

MR RUSSELL: Perhaps I could start – one of the things I think is perhaps lacking in the NPS is really a definition of, well of when ground water becomes surface water. You know I'm aware of Pupu Springs and where they emanate from, and in my original evidence I did indicate that where there are springs and are known springs then some consideration needs to be given to the ground water system supplying those, but it seems to me the definition should be that it's ground water until perhaps it discharges as a spring or if it's in the case say of the Waitomo Caves, I'm having a little bit of trouble defining that as ground water, because I see that as more the surface water system in an underground environment as it were.

DR HARDING: Well that's right.

MR RUSSELL: Yes. It behaves like surface water you see

DR HARDING: Right.

MR RUSSELL: Then it's erased within – it's under the ground but it's not moving through floor spaces or the fracture spaces like most of the, you know the bulk of the ground water moves. But I see no reason why there can't be a separation between the various types of water. Recognition that there are important ones, and in the definition that I was looking at, that ground water, to me, there is a lot of ground water which isn't suitable for potable

use, a lot of ground water, which doesn't discharge to surface water bodies, and therefore that doesn't really require any management, because it's basically unused and so the focus should be, if you're going to manage the resource the focus should be on the water, (1) that a sustaining stream flow or spring flow or (2) that has it as a potable value.

[2.10 pm]

DR HARDING: Well I think some of our submitters might disagree with you on that potentially, if you are talking about say for example you were talking about confined – deeply confined aquifers and you are drawing water from those, then there is still potentially well supporting and ecological values there - that are being impacted. The fact that we don't know much about them is separate issue.

MR RUSSELL: And we know quite often that they are not discharging or creating discharge to surface waters, and you can tell that from the chemistry.

DR HARDING: Right, but is that all we're interested in here, surface waters –

MR RUSSELL: No, I'm – we have been talking about – I mean I see a definition between – a difference between surface water, ground water which ends up as surface water, and I think you know you have to consider issues in relation to that, and ground water which is able to be extracted and used as (inaudible) supply or some other supply, but then there's other water, for instance, the demining mine water, whose quality is not suitable for those other purposes, and only in that specific circumstance would the water actually be pumped out, otherwise it would be left in the ground with no effect on surface water or no effect on the ecology.

DR HARDING: Yes, well you've made mention about your support - Local Government New Zealand, (inaudible) naturally degraded –

MR FISHER: Dr Harding, the example you gave of Canterbury of the aquifer supplying water would be covered by the definition of ground water as set out in paragraph 3.2(2) to which the NPS applies - because it's available for consumptive use - compared with the water beneath the mine which is not available for – not available for consumptive use.

DR HARDING: Thanks for that. So one of the other issues – you make reference to Dr Boothroyd's evidence where he talks quite a bit about science specific values, and you've also referred to suggesting that Regional Councils should be able to set those and look at that on a side by side basis, I guess one of the concerns we would have here is that there wouldn't then be standards, there would be a series of – (inaudible) but there would be thousands of around the whole country, so each concede each activity, would have its conditions and there would be no real opportunity for any nationwide sort of comparison about improvements of inequality or – of those sort of considerations, bearing in mind that at the present moment the draft NPS seems to imply some requirement to improve water quality conditions nationally. Would you like to comment about that?

MR FISHER: No.

MS MASON: I guess what I'm thinking of that is that there's so much of a difference in surface waters around the country, that to impose one and use that as a means of improvement's probably not the way to go. I would have thought the way to do it would be to – most councils already have done some monitoring, they know where they're at now, and then you would put in place a standard which is sensible and relevant to that

particular water body, and measure improvements from where we are now or some pre-determined base line in terms of time. I guess we have the benefit of being – having worked with Environment Waikato for quite a while, and I quite like their approach where they have different water classes, for instance you'll have a native fishery class, and you'll have a trout fishery class or you might have a contact recreation class, and in some cases you might have all three on the same water body, and they'll put in their something, for instance, that says, if you're worried about fish, then it will be dissolved oxygen and temperature, and so on, and you'll have standards like that which apply I guess for those water bodies, I think if you are talking about consents then you really need to be able to impose standards which are relevant to what it is the consent holder is doing, where they want to discharge to, and what their uses are in that particular water body. So I guess in summary, I don't see a problem in having different standards for different water bodies. I think what we have to be sure of - is that, what is there is sensible for the use and for – particularly the notable values, because if we've got several notable values in one area, then you'd put in standards to protect those notable values, and they could be quite different from one area to another.

MR FISHER: So I think sir, the policy of improvement and enhancement is fine, but the standard of – to which that improvement or enhancement may not necessarily be the same, to each water body, so would you apply the same approach say to water in a trout stream somewhere in Rotorua, to a stream that is naturally degraded by geothermal activity. You might be able to enhance or improve the quality but probably not to the same standard which if you have that in the NPS that would be the requirement.

DR HARDING: Okay. Thank you.

CHAIRMAN: Mrs Vernon?

MRS VERNON: Thank you. Mine follows a little bit along the same lines as Dr Harding and I just want to talk about Objective 7 “Efficient Use of Fresh Water”. And also it relates to Objective 4. And it’s talking about the exemption of groundwater that is not connected to surface water in Objective 4, which you want added. And excluding (inaudible) water in takes. I have concern, and maybe I’m wrong, in efficient use, it’s 7b where it talks about avoiding excessive contamination. Now I’m aware of the treatment process that you might undertake so they can discharge to the Ohinemuri (ph) but would it be fair to say that everybody treats water from mine dewatering to the same level as that? Because if we start putting in an exemption that then means that we may not be able to avoid the excessive contamination because the argument could be well that the mine dewatering take is already contaminated. The discharge to where they’re sending it, maybe the surface water stream is also already degraded so therefore, no, there won’t be any expectation that the standard might be raised. Where the community might expect that standard to be raised from such a document as this NPS.

MS MASON: I think again it comes back to communities or regional councils setting the notable values in their different waterways and then collectively discharges and communities meeting those notable values or where it’s degraded enhancing the water so that you do come up to where that notable value is. I sort of see notable values and standards working together really. Does that answer the question I’m sorry?

MRS VERNON: I’m not sure, but never mind. It’s a tricky one. That’s all right.

MS MASON: I think in terms of the term excessive contamination, I think again it needs to be related back to what it is that you’re trying to protect. And that’s where your notable values kick in and that’s agreed I think.

MRS VERNON: Yes, although we had a submission today saying that in actual fact something degraded can still be outstanding. For example the Whangamarina (ph) wetland actually has some rather nasty water in it but it's still a Ramsar site so you know, it's where do you find the balance I guess?

MS MASON: Yeah I think again, you know, if the notable values have been determined and you know what you're aiming for - to me, I don't see the difference between whether it's outstanding or degraded or anywhere in between. It's a matter of deciding what your – where your goal is and putting measures in place to achieve it through standards. Realistic, achievable standards so that you protect the use of the values that people have really.

MR FISHER: And the example I gave before of the trout stream and the stream that is naturally degraded by geothermal activity. They've both got notable values but they're different notable values.

[2.20 pm]

CHAIR: I wonder if the thought of realistic and achievable enhancements goes quite far enough. What's achievable and realistic now mightn't be as good as can be achieved in ten years time. Haven't we to try and raise the bar and subsequently say so.

MS MASON: I think there are definite cases where we have been raising the bar yes.

CHAIR: Can I just ask one question please Mr Fisher --

MR FISHER: Certainly sir.

CHAIR: -- about your legal submissions. And I'm looking at your 4.5 where you refer to clause F of the Terms of Reference.

MR FISHER: Yes.

CHAIR: Isn't that what the Board has already done? Invited further submissions?

MR FISHER: The way I read that sir was -- looking at the order of the Terms of Reference it seemed to me to be a second opportunity for the Board to take if it wished.

MS MASON: It's actually E I think isn't it, not -

MR FISHER: The way I read it is that you start with publishing the written submissions, providing an opportunity for the making of further submissions which a lot of the parties have including (inaudible). Then you sit in public, hear the submissions and evidence in support. And then there's -- seemed to me to be an additional step and that was my argument that you may invite and consider further submission. There seemed to be further, further submissions that's what I was putting to you.

CHAIR: Yes. Well that's understandable as a lawyer's understanding of something that's been written by a Minister. And I'll think about it further.

MR FISHER: Thank you sir.

CHAIR: Can we say that we're impressed and welcome the fact that Newmont's advisors have taken the opportunity of looking at the transcript of the

previous submitters' presentations and related your presentation to that. That's what it is there for. Not all of the submitters seem to have taken advantage of it. Well, we make no complaint of that, but when it's done it helps us and so we're grateful. And in addition, your submission is, at least in parts, constructive. You've gone to the trouble of rewording some bits, as well as responding to other submissions and all of that helps us as well. So thank you all very much indeed for your contribution. And we will proceed as it's comfortable for you to depart to the next submitter.

CHAIR: Good afternoon and welcome to you Mr Majurey.

MR MAJUREY: Good afternoon sir. Thank you.

CHAIR: We're glad that you've been able to come and lead the presentation of the submission for Genesis Energy. You'll understand that this isn't an occasion for formality and so just take your time and take your places.

MR MAJUREY: Thank you very much sir.

CHAIR: And we don't expect you necessarily to be standing when you're addressing us. You can do that or you can address us from your chair whichever is comfortable to you. And we would like you to feel free to present in your own way. And we look forward at the end of that to perhaps a short time for some exchange of questions and answers that might help us. Is that all satisfactory?

MR MAJUREY: Yes. Thank you sir, and thank you for accommodating the team on behalf of Genesis Energy. I'll take up your kind invitation to sit and address you on the submission. Just before doing that, to explain the approach that we're proposing to take. In the time that we have I propose to present some submissions which you have here. They aren't as long

as they might appear at first glance. They attach for the assistance and convenience of the Board a tracked change version of the NPS that picks up the proposed amendments sought on behalf of Genesis Energy. And I've got some covering submissions in front of it. At the conclusion of my presentation I, along with representatives from Genesis Energy, are here to help with any questions the Board might have.

CHAIR: Thank you.

MR MAJUREY: So commencing at paragraph one "The Genesis Energy submission addressed the proposed National Policy Statement on Freshwater Management and Genesis Energy also lodged a bibliography outlining the various reports and studies produced by Genesis Energy in relation to its water and electricity generation scheme.

Within its diverse electricity generation portfolio Genesis Energy owns and operates approximately 1886 megawatts of water related generation assets. The Tongariro power scheme, the Waikaremoana power scheme, Kauwerau hydro, the Huntly powerstation, that's one before, and the Huntly unit five is set out there.

The Rodney power station which is in the process of obtaining authorisations would also rely on water from the Kaukapakapa river. Here to assist the Board with any questioning as I alluded to Mr Bob Weir, Generation Manager Production on my far left. Miss Andrea Marshall on my immediate left, Environmental Manager Strategy and Policy. Mr Jared Bowler, second from my left, Environmental Manager Renewable Energy and Mr Angus Judge, third from my left, Environmental Manager Thermal.

In terms of the RMA framework which the Board are well familiar with. We note the following statement from the report of the Board of Inquiry on the proposed NPS on Electricity Transmission (inaudible) and we set out an extract there which reads, clarity is essential. The National Policy Statements sit at the top of the (inaudible) policy instrument hierarchy. Section 55 requires local authorities to amend (inaudible) documents to give effect to provisions of a National Policy Statement that effect those documents. And section 55 (2) (b) allowed such a statement to direct that specific provisions are to be included without notification for hearing.

[2.30 pm]

This underscores the importance of clarity and effectiveness. Common denominators for decision makers under the RMA in relation to policy statements, plans and resource consents include section 5 the Part 2 principals and any National Policy Statement. It is the daily task of the Environment Court to evaluate Resource Consent Applications and Plans etcetera. One formulation of the evaluative framework for resource consents is found in the TBD case in relation to plans and policy statements (inaudible) and Long Bay are illustrative.

Electricity and the government policy and national importance of electricity. The importance of electricity has been recognised by the courts. For example, the Environment Court has identified the critical role of electricity in providing for people's well being.

First extract is from the Awhiti Windfarm case. Electricity is a vital resource for New Zealand. There can be no sustainable management of natural and physical resources without energy of which electricity is a major component.

And the second extract is from the Rotokawa Joint Venture case, a geothermal case. From a national level, electricity is an essential commodity for New Zealand households. Directly they spend in excess of two billion dollars on it and industry provides the basis for our economic prosperity and way of life. Unlike in some other countries electricity cannot be imported and for some purposes it has no practical alternatives.

In light of increasing demand the Environment Court has acknowledged the importance of maximising existing generation output. For example, the geothermal concepts again from Rotokawa, over recent years New Zealand's demand for electricity has been growing faster than new generation. We were told that for the year 2005 the growth rate was 2.5 percent. It was stressed that because of potential for electricity shortages, combined with the uncertainty surrounding new generation it is very important that existing generation is at least retained where possible. If not increased.

Similarly the full utilisation of available renewable generation facilities is in the national interest. For example, in the hydro context. This is from the TBD case. We have found that TBD makes a significant contribution to the hydro-electric production in New Zealand. Its infrastructure with its same costs and existing capacity to produce 360 megawatts, not to mention the reuse of the water down the Waikato River, reflects its contribution to the New Zealand economy. Clearly, it is in the national interest for the TBD structure to be as fully utilised as possible.

Given increasing electricity demand projected to grow at around two percent per annum, requiring 100 to 150 megawatts of new generated capacity per annum, the High Court is also recognising the importance of increasing generation. And this is from the South Island Wind Farm case in Mahinerangi there the High Court said: "this court recognises the

notorious state that there is and ongoing risk of the demand for electricity not being matched or supplied. This past winter and previous winters there have been low levels of stored water in the hydro-electric systems. The Court also takes cognisance of the notorious fact that where supply cannot match demand in electrical systems there has to be a partial shutdown of distribution networks. For these reasons it is in the public interest for public supply companies to increase generated capacity. The question is not whether generating capacity should be increased, but rather by what means and where.”

Turning to government policy the importance of electricity has also been recognised through government policy for example, the New Zealand Energy Strategy and New Zealand Energy Efficiency Conservation Strategy. Through the NZES the former government set a target for 90 percent of New Zealand’s electricity to be generated from renewable sources by 2025 based on an average hydrological year.

Renewable energy includes electricity generated from hydro sources while the NZES itself may change, the thrust of policy direction in the western world is support of a great utilisation of renewable energy. The NZES and the NZEECS include provisions supportive of the renewable generation and diversity within the mix of renewable options. The important role of thermal generation in providing security of supplies also be recognised in the NZES where it says: “a greater reliance on renewable generation is implication for the way security of supply is managed.” Thermal plants such as Huntly will continue to play a critical role in New Zealand’s electricity system providing necessary security and versatility to both provision of energy and the stability of delivery, voltage and frequency.

Water availability essential for electricity generation. Water is an essential element in the generation of both renewable and non-renewable energy.

To be read in conjunction with
the tabled evidence/statement

Water is the essence of hydro-generation, run of river storage schemes. Genesis Energy's three hydro schemes collectively generate significant levels of electricity and are operated and maintained to ensure full availability to meet New Zealand's security of supply.

Similarly, Huntly Power Station cannot function without constant access to water from the Waikato River, there being no storage capability.

HBS generation has regularly been significantly curtailed due to ambient river temperature events triggering cooling water restrictions in development resource consents. As noted, the NZES has recognised the vital role HBS fulfils with security of supply and stability of deliver. The need for HBS to maintain excess to cooling water has also been recognised by Waikato (inaudible) in decisions declining applications for new water takes proposed direct diversions upstream of Huntly Power Station and in variation 6 of the water allocation variation to the proposed Waikato Regional Plan. These decisions recognise that Huntly Power Station is a physical resource of national significance; that the station occupies a significant position in the nation's electricity generating capacity. And there are constraints in the Power Stations consents which can be significant.

Turning to the proposed National Policy Statement. The original submission provided detailed reasons for the amendments to the proposed National Policy Statement sought by Genesis Energy. These submissions address the original submission (inaudible). The tracked changes and amendments to the there proposed NPS sought by Genesis Energy are attached at Appendix 3.

CHAIR: Thank you for that, that would be helpful for clarity.

MR MAJUREY: Yes sir and if I can just interpolate there the footnote 24 explains the visual scheme of the track changes. And I'll just explain that very briefly. You'll see just through a flick at the end there is red colours and blue colours. The red is the changes from the original submission. The blue are additions to that. And just to explain the context to that it's a bit like, as I understood the exchanges towards the of the Newmont submission with Mr Fisher to attempt to assist the Board with its challenging task. Genesis Energy has also had the benefit of reading through the transcript, picked up some of the discussion points and reflected on some of its proposals and hence come up with this work. So that's the provenance to it and we'll take you through that as best we can.

CHAIR: Thank you.

MR MAJUREY: Consistency with Purpose. The purpose of the RMA includes enabling people and communities to provide for their social, economic and cultural well-being. Genesis Energy strongly supports policy 4D of the proposed NPS which recognises the contributinal use of freshwater resources to social, economic and cultural wellbeing.

Some provisions can be improved it is submitted to align with the RMA purpose. Firstly, the language in Objective 4 differs from that in section 5(2)(b) of the RMA which refers to safeguarding the life supporting capacity of air, water, soil and ecosystems. And we'll see just an example of how this scheme works at page 24 of the submission. Under Objective 4 there are those changes that emanate from the original submission in terms of that word safeguard.

I'll come on to where reference is made to policies and not wanting to confuse the Board, where we refer to policies unless we say otherwise it's to the original numbers, so the numbering scheme as proposed to be

changed because some additions were proposed, but the numbering we'll use in the references to the original wording.

MR MAJUREY: So 28B some provisions appear to follow the incorrect premise that the RMA is a no effects regime. In accordance with the sustainable management purpose of the RMA, adverse effects on quality and available quantity are appropriate if they are outweighed by the benefits of a particular activity. Particularly, where no practicable alternatives exist. Consistent with the wording of Policy 6, Policies 2 and 3 do not require to be where they are inappropriately submitted.

[2.40 pm]

So just picking those two matters up. At page 27 of the submission which is a page which actually commenced on the previous page with the relevant part we're talking about Policy 2. You'll see on page 27 in (c)(i) and (iii), the references to both where practicable in roman one and unless inappropriate in bracket three. Again that derives from the original submission.

That's the Policy 2 matter. And Policy 3 is over the page at 28. And the first change Policy 3 is in (b). Amend the phrase "unless it's appropriate". And the (d)(iii), roman three the phrase "where practicable".

Then 29, Proposed Amendments to these provisions in order to achieve consistence with the RMA is set out and I've just taken you through those.

On a related point – and I'm on 30 now – on a related point under Objective 5 "the provision should enable a net approach to assessing the degradation of Freshwater Management and this would allow for a

weighing up of positive and negative effects as well as allowing for offsetting environmental effects elsewhere.

Let me take you to page 24 of the submission. Objective 5 you'll see in blue there, reference the word net. I'm about to expand on that now. Paragraph 31, one example of this approach was reflected in the blue duck mitigation for the Tongariro power development. The background to which is explained as follows. And this is an extract from the TPD Environment Court decision where it said: "the agreement between the parties involves minimum flow regimes for the upper Tongariro river and the waterways of the western diversion. The establishment of a central North Island Blue Duck Conservation Charitable Trust to be financially supported and operated over term of the consents. The members of the trust are to comprise representatives of the parties and an independent expert on conservation matters. The primary objective of the Trust is to create new self sustaining populations of blue duck in appropriate locations not limited to the TPD region. Other objectives include the enhancement of existing populations of blue duck within the catchments effected by the TPD, the enhancement of priority aquatic and indigenous ecosystems within the catchments affected by the TPD. And the enhancement of priority threatened species conservation within the catchments affected by the TPD."

The central North Island Blue Duck Conservation Charitable Trust was established and publically launched in a high profile and very positive meeting in Turangi on the 16th August 2002. The value of this mitigation is reflected in the following extract of the Environment Court decision that said: "the minimum proposed flows have been determined following the lengthy consultation process between Genesis and a number of appellants and submitters to mitigate the effects of the diversion of waters of such matters as: the protection of indigenous habitat such as native

fisheries and the blue duck. On the basis of these surveys Mr (inaudible) concluded that a minimum flow of 0.5 cumecs in the Mangatepopo Stream and 0.3 cumecs in the Whanganui River would increase the available habitat for benthic invertebrates and provide a near optimum habitat for native fish and juvenile trout. Such flows were also recognised as optimum for blue duck habitat.”

Just to interpolate there – and this has come up in some of the transcript discussions, that we’ve seen, to emphasise the point that that mitigation involved multiple catchments between different regions and also for non-hydro scheme catchments as well, so it’s an example that can be given in terms of that net approach that’s been discussed in the submission.

Paragraph 33, I make the point Genesis is therefore proposing amendment to the relevant provision. We refer to the Objective 3 inclusion of the word “net”. And as one tracks through the rest of the attachment you’ll see in different places, I think two other places, the reference to the word net. Next reference is at page 27 under Policy 2 and paragraph C, roman three, capital A. And the next page is page 28, Policy 3, at (b) roman one. I think that’s it.

Turning to contact recreation, paragraph 34. To express reference to contact recreation swimming. The proposed NPS inappropriately elevates the relative value of contact recreation swimming given that no other specific activity is expressly protected. It would be more appropriate in our submission to remove express references to contact recreation swimming so that it is provided for as a component as recreational values or social cultural wellbeing and appropriately-balanced with the other interests in freshwater. Genesis Energy therefore seeks the amendments to the proposed NPS as set out in Appendix 3.

If I could take the Board, in terms of those changes, firstly to page 23, and there's at least a single change in that tracked changes coming from the original submission. The next reference is page 24 and object 3, showing tracked change there. Next to page 28 and Policy 4(h), and finally on page 32 in part C of Local Values definition.

Paragraph 36, in my submission in terms of benefit, some provision is aimed to facilitate opportunities to increase benefits from the use of freshwater and promote efficient water use and efficient consumptive use. Section 2 of the RMA defines benefits and costs and includes benefits of any kind whether monetary or non-monetary. Similarly, the purpose of the RMA refers to enabling social, economic and cultural wellbeing, and does not restrict the concept of benefits of use of resources to direct economic value. Policy 4(d) of the proposed NPS follows this approach. Consistent with the RMA, the phrase "increased benefits" should be defined by reference to contribution of the use of freshwater for social, economic and cultural wellbeing, rather than simply the direct economic value of using freshwater. The phrases "efficient freshwater use" and "efficient consumptive use" should be similarly defined as set out in the Appendix 3 definitions. In terms of that last submission, if I can refer the Board to page 31 of the attachment, and there is that proposed definition towards the bottom of page 31 "increased benefits from the use of freshwater".

The importance of freshwater for electricity generation, in paragraph 39, in light of Government energy policy for Coastal outlined above, and the proposed NPS for Renewable Electricity Generation which recognises the importance of electricity generation for social, economic and cultural wellbeing, the proposed NPS can be improved by including reference to the importance of freshwater for existing electricity generation.

Paragraph 2 of the preamble refers to freshwater as a vital input to many

forms of economic activity, and we say this includes electricity generation. Similarly, Policy 1(b) provides identification of notable values of outstanding freshwater resources and degraded freshwater resources, consistent with the purpose of the RMA with appropriate to identify appropriate use and development values, as well as the categories of notable values. Policy 1 can be improved to address the above matters set out in Appendix 3.

[2.50 pm]

If I can refer the Board then firstly to page 22, and the first page of Appendix 3. There's the reference there to the inclusion of electricity generation. If I can refer the Board to page 32. The reference there is outstanding freshwater resources to electricity generation values. And on the previous page, page 31 from the original submission, there was the proposed submission of electricity generation values set out there, existing activities, paragraph 41 in the submission. The RMA contains important directives to sustainably manage physical resources. Section 5 of the RMA is to recognise the value of investments, section 104.2(a).

Moreover, as the Board is aware, there is clear Court authority confirming the principles against the derogation of resource consents in the context of hydro generation, and confirming the appropriateness of the "first in first served" principle. Genesis Energy supports Policies 4(g) and 5(e) of the proposed NPS, which require consideration of social and economic management costs, and which are consistent with the considerations of sustainably managing physical resources, and recognising the value in investment. However, Genesis Energy considers the proposed NPS can be improved to adequately recognise those RMA considerations by: (a) providing for formal priority for existing uses, (b) providing that a law be established concerning the electricity generation activities that use

freshwater, and incorporate a substantial value of investment are entitled to priority over new uses of freshwater and (c) including a specific policy for mandatory consideration, recognising physical resources and the value of existing investments which are dependent on the use of freshwater resources.

Recognition of existing physical resources and the value of investment is also provided by long-term consent, which is separately discussed below. Other improvements are also appropriate as follows: sub provisions, require resource consent conditions or consideration of industry good practice and technology to achieve efficient use. The proposed NPS should recognise the practicability of adopting industry good practice and technology for existing activities and infrastructure. Policy 1(g) provides for restricting existing activities in order to sustain notable values and non-consumptive Tangata Whenua values and interests in time of low flow. There is a risk that this could be interpreted as empowering a decision-maker to restrict activities undertaken pursuant to an existing consent, and this policy needs to be consistent with the law in relation to non-derogation of existing resource consents.

Policy 1(i) provides for demand management strategies including through prioritisation of reasonably-foreseeable consumptive use. Genesis Energy supports appropriate demand management strategies. It is important the guidance of managing demands is consistent with the law in relation to non-derogation of an existing resource consent, and recognises the existing physical environment and the value of investments. The amendments that pick up those matters are also set out in Appendix 3. I've noted in footnote 45, where those changes arise. Hopefully the Board has been able to follow the scheme of this, rather than taking the time up to take you through them.

CHAIR: Yes, I'm sure we can do that.

MR MAJUREY: And likewise, Genesis Energy has proposed amendments to Policy 4, as shown in Appendix 3. Additional issues interfaced with the proposed NPS, and this is a matter which has had some discussion in the transcript. Integrative management under the RMA necessitates that the development of a national environmental standard should be integrated with a proposed National Policy Statement to the extent they overlap. It is best regulatory practice for regulations to follow a National Policy. Therefore the overall policy framework should be set prior to selection of the implementation methods. As an NES is a regulatory tool to implement policy, the proposed NES on ecological flows and water levels as contained in the discussion document of March 2008 should not be finalised prior to the finalisation of the policy set out in the proposed NPS. To do otherwise, would create a real risk that the proposed NES on ecological flows and water levels will be inconsistent with the proposed NPS, which in turn could result in regulatory uncertainty. It is recognised this Board has no jurisdiction on the proposed NES. However, it is open to the Board to include a comment on this matter in its report.

Existing infrastructures for generation. The question often arises as to whether there should be a different consenting path as between Greenfield and existing developments. At present, applications for consents to replace those which are about to expire are considered essentially as fresh applications. There is an opportunity for the proposed NPS to address differences between these types of developments. For example, it could include provisions which recognise that in circumstances where a new application is made to replace a consent that is due to expire, such a consent was considered a grant under the RMA. Then (a) the focus of a new application shouldn't determine the adequacy and effectiveness of the existing consent submissions in avoiding, remedying

or mitigating adverse effects on the environment, and (b) the activities status on the new application should be a controlled activity, unless the plan or the proposed plan provides a (Inaudible) activity status. Just to assist the Board, the proposed changes which go with that submission are found at page 29, and those are -

CHAIR: The blue at the top?

MR MAJUREY: Yes sir. I can anticipate the question now sir.

CHAIR: I might have to restrain myself for an answer to that.

MR MAJUREY: And finally, in terms of water consents, there is a direct relationship between the appropriate term of consents and the adequacy of review mechanisms to manage effects of change in circumstances. The Coastal has confirmed that the proper RMA technique to address any rational concerns in controlling unforeseen matters to the extent that they may arise is the use of review conditions and/or the enforcement provisions of the RMA. This has particular relevance to proposals which have a long life, or require significant investment, or existing proposals which have been in place for a long time. Genesis Energy has proposed amendments to Policy 4 as shown in Appendix 3.

CHAIR: How does it feel with your TBD?

MR MAJUREY: That's the thing of concern. And I should have acknowledged at the outset that I'm aware, as we all are, that many members of the Board, three quarters have had experience with TBD and other standards of the power stations, so you are probably as familiar with these matters as we are. So those are the submissions, and thank you for your time and I'm very happy to answer any questions amongst the table.

CHAIR: I think we'd like to do that, but just as an introduction to say as you've heard me say to other submitters, it's really helpful where a submitter does, as you have done on behalf of Genesis Energy, to have looked at the transcript of the proceedings earlier in this series, and have offered a response, that really helps us. And again to say how helpful it is to have a submitter being constructive and present quite precisely improvements, as they see it, to the proposed instrument. What I'd like to do is to go through some exchange of questions with you, because we have some time to do that, and I know it would benefit us. And we might even have the opportunity to come to the question of terms of consents. But may we see if Mr Prime has any questions first.

MR PRIME: No.

CHAIR: Mrs Vernon?

MRS VERNON: Thank you. If I go to your strikeout version, it's probably the easiest way of addressing and answering questions. I just found it in your preamble you've added the term "including electricity generation", and I just wonder, given that we're talking about water in this specific case and not geothermal or coal or anything, why you have left out the word "renewable".

MR MAJUREY: The short answer to that is the Huntly Power Station example, so far as the importance that water, of which this is the subject for the NPS, plays, as you are aware and Mrs Vernon, in terms of generation of electricity. So recognise that this is a water NPS, but water does play an important role in the ongoing operation, and all that goes with the Huntly power station.

MRS VERNON: The other question I have is we are getting a lot of submitters that are going on about terms, and that when you bring in new terms or you use old terms, please would you make sure everyone knows what the term means. Now, in your term “net degradation” I know that for example Environment Waikato used it in their Generation 1 RPS “net degradation”. Is that common though, understanding of what “net” means throughout New Zealand, and if we put that term in, that it’s not going to be needing to be defined?

[3 pm]

MR MAJUREY: The way I would answer that is, I doubt whether there is a single understanding of what that word might mean amongst various communities in the country. The second part of the answer would be, and this is a lawyer’s answer, is like many terms, the starting point for a lawyer would be what does the dictionary say? And from that point of view, it’s our view in terms of how we approach the suggestion, that that does provide a good starting point, and there are many examples in the policy statements, the legislative instruments in Coastal where “net” has come up. And my submission is that there is a good level of underlying principles that are well-known that go with that. I should also say that, of course this is not the only way to address this matter. The approach for the word “net” was to try and find a concise short hand approach, rather than go back and bring in language “avoid, remedy or mitigate” which has been another approach taken by some submitters.

MRS VERNON: And equally you’ve taken out the words “contact recreations swimmable” throughout your amendment, and we’ve had a lot of submitters who have the expectation that this NPS is going to raise the bar, and raise the standard. And by taking that out, I know there’s lots of people who don’t like the terms “swimmable”, but they like contact

recreational food gathering. If we totally just leave objective 3 with your amendment, doesn't it really let those places that are doing nothing do nothing for a little bit longer, and that it actually doesn't raise the bar?

MR MAJUREY: Several points that occur to me. The first is that, in terms of the approach of raising the bar, there is no issue with that, but it comes down to the circumstances of the case. So the examples that we've given in terms of the various Genesis energy schemes, we'd like to think that there would be no argument, but in terms of the outcomes of those various processes, the TBD Huntly power station, the bar has been raised on all the occasions that these matters have been addressed. For example, TBD has been through a number of iterations, In 1991 the (inaudible) flows, the process under the RMA. So the absence of those words didn't stop the bar being raised. The flipside then of course is does that necessarily inappropriately skew the framework for decision-making. So if there is an undue emphasis on one parameter, such as that, what does that do to the overall balance? And that's why, without trying to avoid the issue from a sustainable management point of view, each case will differ significantly. And that was the concern is that singling out that one particular matter skews that framework, which at least for the Genesis energy projects has worked very well, we would say, for all concerned: the environment, stakeholders and the like.

MRS VERNON: Except I know and you know the words of the vision and strategy for the Waikato Tanui deed of settlement, and I'm not sure whether that would be consistent with where those objectives are heading. And we've had them submit to us, and suggest that they would like the NPS to be at least consistent with that vision and strategy.

MR MAJUREY: Yes, the unfortunate thing with that in one sense is that that is not a finished matter. There is a bill, as we know, there can be changes.

MRS VERNON: So, it goes along the same lines, and I'm not sure whether our chairman is going to ask this question, but I'm intrigued on page 29 with the activity status of the new application for an existing consent to be controlled. Now it might be fine for something like a big power station or whatever, but let's take for example irrigation of land for agricultural purposes, or even let's say horticultural because it's obviously less contentious. That would mean that they automatically have that status as well, wouldn't it?

MR MAJUREY: So the approach that's been taken here in terms of the principle is as set out in the submission. If an activity or activities has been through the RMA, and so therefore the framework has been the current one, and the effects have been assessed, the focus should be, we say, in the future on addressing those effects. And whether it's controlled or restricted discretionary is probably less important than the principle of it, and that is the focus should be on what those effects are and how they should be addressed for the future. That's the essence behind it, rather than completely starting with a blank canvas of paper and the inefficiencies that go with that.

MRS VERNON: Thank you.

DR HARDING: So I really only have one question, and that relates to this idea of industry good practice. In your submissions, you've commented about recognising the difficulties with the practicality of that. And I notice that in your amendments on page 29, you talk about industry good practice. Another electricity generator was very uncomfortable about industry good practice, and would you like to comment a little bit more

MR MAJUREY: I'm conscious that I've been clogging the time and space of answers, and that's very inefficient, so I'm going to ask Mr Weir to start with that response.

MR WEIR: With regard to practicality of - I can't speak for what the other generator said obviously, but from that point of view I guess the point of industry best practice can be fairly general. I guess just trying to make sure that when we lock ourselves into those things to get good practice is practical to do so, because there are extremes of what good practice might be and this is what we're trying to refer to there.

DR HARDING: Well I guess that begs the question: do you have industry good practice, some idea of what industry good practice would be for all your activities?

MR WEIR: For the bulk majority of our activities, yes we would. I guess across the board it varies, I mean you've got an industry of the complexity we've got, and there's a range of different areas we would apply good practice obviously. I guess we're just saying in this point it's often when you tie yourself specifically to that, it can put you in a corner where you're not sure exactly what you're committing to, I guess.

DR HARDING: That's true, and I guess you could also make the counter argument: well, it would be the industry that came up with the good practice. So you would be the guys who would be saying what good practice is.

MR WEIR: I guess it is a bit of a circular discussion to some extent, but this is a time when we sort of say to meet good practice that we have sort of clear industries set it up, we want to meet that, but it's just trying to maintain

some level of pragmatism and practicality to it, maintaining that theme is I guess what we're trying to get at.

DR HARDING: I absolutely accept that. I guess part of our concern is a lot of our submitters are saying that what they don't want is an NPS that just opens the door to business as usual. And we don't put in something like where practicable so "Okay well, it's not practicable so let's just carry on".

MR WEIR: I understand the point. I guess we're also trying not to water down, from our own point of view, that we will at all times strive for best practice, I mean that is clearly in our industry, what we are doing. Trying to find that balance I guess, not an easy thing sometimes to do. Well I take your point, the last thing I want to do is deliberately drive standards down. Quite contrary, it's just how you do that in a practical way. Make sure (inaudible).

MR BOWLER: I think one of the things about it is about technology and some of our technology we use in New Zealand is relatively old, and when you say "industry best practice", we're talking about New Zealand, then can we talk about worldwide, because depending on how far down that extreme you go, the costs of implementing worldwide industry best practice may not be achievable in New Zealand because we are simply too small, and the costs would be too great for us. So that's where I suppose the definition around it, I mean what's appropriate, so if you've got 20 year old machinery, do you bring that up to worldwide best practice or do you bring that up to what's achievable within the New Zealand framework.

CHAIR: Well, we're talking about policies anyway, we're not talking about rules. I could imagine your thinking process concerning something at Huntly Thermal. We here also want to take into account a judgement of the remaining life of the plant, so I do understand what you're saying there.

Could I come back please to Mr Majurey's point on page 8, 28(b). I agree with the first statement, which implies that it is wrong to treat the RMA as simply another effects regime. My question doesn't relate to that. Then you go on to talk about what the right (inaudible) environmental compensation, just to use a slogan. My question is does an NPS have to be compatible with the existing practice, if that's not elevating it too high, relating to environmental compensation, or can a bar be raised above that.

[3.10 pm]

MR MAJUREY: A bar can be raised above that sir, that's accepted. The button part of the answer I would give is so long as it doesn't trespass against the parent legislation. And that's what we're trying to say here in terms of some of those examples.

CHAIR: Well, of course, that's what I'm trying to be alert to as well, that's part of my contribution as it were to the Board is to make sure that we don't breach that. That reminds me of your comment on page 11, about the Renewables NPS. If I can use that (Inaudible). And my question is should this Board, given its Terms of Reference, enter in any way onto the field of the Somerville Board.

MR MAJUREY: The strict answer is no sir, other than where as occurs here, there is overlap if I can use that word.

CHAIR: We fall back and leave that field to them, because that's their specific field?

MR MAJUREY: My submission sir would be no, that would be an untoward step, and so respectfully of course because there is that overlap. Renewables has a set of parameters which includes the water. And that's a NPS that

is yet to traverse its way through to a conclusion. We would say that water in all its aspects, including renewable energy and hydro schemes as we have set out, is an important and inherent part of what your task is. So that's the dilemma that is faced by both those folk on this side of the table and on your side of the table, that the RMA doesn't carve up media like that, and unfortunately the way the NPS terms have been set, doesn't unfortunately allow for that type of integrative approach that would be the desirable one. So we're in a bit of guess time here really insofar as there are two products that overlap and deal with renewable energy, both very important, and the fate is beyond those in this room.

CHAIR: It is. If we enter it at all, it is because we are conscious that if we enter that field, that gives rise to a risk of two instruments of potentially the same place in the hierarchy that are incompatible with each other. And as I discussed with counsel for another generator this morning, in an extreme event it is always possible to go to the questions, the principles of law to work it through. But even counsel for the other generators didn't think that was going to be a desirable outcome, and hoped that at least at the Minister's level any incompatibilities would be ironed out. Well, that's a risk that you take I suppose if you encourage us to enter that field.

MR MAJUREY: It is. The converse scenario, and there's no absolute right or wrong, the converse scenario is that if that field is left, then in terms of what's encompassed by the NPS at least in its bodified version, then that to follow the logic through would cover all aspects of water management, both positive effects and negative effects, so it's a difficult task to try and extract yourselves from in terms of water, all that goes with it, the policy setting, the matter of positive effects negative effects and all the other relevant considerations in Part 2.

CHAIR: Well, I understand what you are saying exactly. Whether we say something or whether we say nothing, it has got to be consistent with the totality of what we produce as a revised proposed NPS, and of course the same is true for the Somerville Board.

MR MAJUREY: And we would respectfully encourage the Board to address that matter of relationship with those other policy statements. A matter which was raised on behalf of Genesis Energy for the Somerville Board in terms of the overlap between the NPS on renewable energy electricity and the NZCPS where there is overlap again.

CHAIR: Of course and we're conscious of that too. But we can't trample there either except in the limited extent that some submitters have encouraged just to do, where the two waters meet in the estuaries and places like that. And we had Mr Shanks, who you know, address the use about that amongst other things.

MR MAJUREY: And another very real issue that arises with that, and we've also made submissions on this is; with the threshold of, give effect to, in terms of the higher documents. If you've got three NPS's on the same thing, how does one give effect to, given the (inaudible). That just reinforces the point you're making sir.

CHAIR: Yes, it's interesting. The other point that I thought you might help me with, I think you were offering to do so, is the question of when a consent expires. And there are two questions relating that one. And you've anticipated from both, I really don't even need to ask it, but I suppose I should. There's a question of fundamental jurisdiction, I suppose. Is the notion that Genesis Energy is putting forward, for which of course we're grateful, consistent with the concept of a term of a grant at all. And then the other question, which you were looking for an opportunity to answer I

think, was procedural jurisdiction. If this isn't covered by somebody's submission, can you do it anyway? So, as you'll have anticipated both of those questions, we could just give you the opportunity to answer them briefly, if you would like to.

MR MAJUREY: If I could deal with the second, first sir and I acknowledge on the outset that in terms of that relief in blue, note towards the end. That's a bold submission, and intentionally so in terms of - bit like raising the bar. The importance as I think you've heard from many submitters of the National Policy Statement, is to assist with the decision making over and above the broad framework of the RMA, and to give that national guidance to help decision makers. Genesis Energy like many of the submitters operates in more than just one region, as is shown by the operation it has.

CHAIR: We know where they are.

MR MAJUREY: You know me very well sir. And so, it is a stakeholder of a number of regions, and its experience is such that there's been different approaches. And that's the reason for trying to seek as much guidance by this NPS as possible. So that's the starting point Sir.

CHAIR: But it's not unwelcome to us, it's just a matter how are we going about doing -

MR MAJUREY: And so, it is as well known to you sir, in terms of the legal considerations that go with that, those are well set out, if I can say so respectfully, in the Waitaki Board's reports, whom we also address that at paragraph 15, and if I can just read that. "The Board's authority to amend the draft plan was limited to making amendments which are reasonably and fairly raised by and within the ambit of the submissions, approached

To be read in conjunction with
the tabled evidence/statement

in a realistic workable fashion, and take into account the whole relief package detailed in each submission.”

CHAIR: Hasn't the law changed since then?

MR MAJUREY: It has sir, so just makes a starting point.

[3.10 pm]

So, the underlying fundamental principal then, one of fairness, in terms of the opportunity for the public too. But that's the point I want to stress here. So in terms of that background, and the relief that's being sought, my submission is that it's not a quantum leap in terms of what is suggested there arising from the original submission. And I would express these paragraphs 5(a) and 13 to 14 of the original submissions sir, that emphasis the matters of existing activity and existing investment. You have the (inaudible) sir.

CHAIR: You don't mean paragraph 5(a) of the submission?

MR MAJUREY: So sir, this is the original document which is set up into different sections.

CHAIR: That's right.

MR MAJUREY: In appendix 1, there are detailed reasons that go with the various amendments. And 5(a), I'm referring to on page 4 of appendix 1.

CHAIR: Yes.

MR MAJUREY: So, there are three matters I'm going to refer to.

CHAIR: So it's a development of that.

MR MAJUREY: Yes sir. But in part, yes. And then the next matters are paragraphs 13 to 14, which are found at page 8 and those are under the heading "Restricted Use of Existing Activities and Demand Management Strategies". Sorry, 12 and 13 I was referring to, "Electricity Generation Values and Restricted (Inaudible)".

CHAIR: I'm just not sure that I'm looking at the right page, and it's important that you and I should look at the right page.

MR MAJUREY: Page 8 of appendix 1.

CHAIR: Page 8 of appendix 1. Now I have it, thank you, 13 and 14.

MR MAJUREY: Sorry, 12 and 13 sir.

CHAIR: 12 and 13, thank you. So all of those you would like to –

MR MAJUREY: Those are the ones I rely on, of course that's your final decision sir.

CHAIR: Quite, but we want to look at it carefully, but we'll have to have a look at Justice Wiley's judgement as well as a further development of what we thought was the law at the time of the Waitaki.

MR MAJUREY: Yes. That's the second question that I have.

CHAIR: That's the procedural one.

MR MAJUREY: Yes. In terms of the fundamental jurisdiction point, and perhaps I've been a bit loose in the way I've tried to attempt to use term. What is being said of course is that, with a reasonable consent, if I can call it that with water, there is a defined term. And of course, there is no right to expect beyond the term of the consent a re-consenting on the same terms. What is being said though is consistent with Aoraki, and I'm sure there are other generators who have made the point here, that during the term of that consent there's the non-irrigation point.

CHAIR: I'm just - the Aoraki runs out when the consent runs out.

MR MAJUREY: That has to be acknowledged sir, yes.

CHAIR: Then you talk about the investment that you've sunk.

MR MAJUREY: Yes sir. So that's the resource consent framework, and the other side of the coin, which is just as important, especially around allocation policy of which variation 6 is an important one, in this part of the world, and you've heard submissions on that. And the NPS informs of course, the plan and policy statement. It's where decisions are being made about priority, as those statements and plans and policies do, looking for support at the national level as to how that priority might be allocated. Of course, that is a decision by decision exercise and to the extent that the Board is persuaded with seeking that. Where the NPS makes comment on that, and the direction it gives the decision makers, how it might approach that task of allocation.

CHAIR: Well thank you. I think that we've reached the conclusion of this helpful exchange. And we would like to thank you all again for attending and taking part in this, perhaps slightly, informal way of understanding your submissions. And that goes into the total corpus of all the submissions

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that we have been hearing and will continue to be hearing for a couple more weeks or so yet.

MR MAJUREY: Thank you sir for the way you've allowed us to do this, apologises if it's been a bit involved in the sense of us going backwards and forwards. But because the relief side is so important we thought it important to do that and appreciate your time and patience you've given us to do that.

CHAIR: Thank you indeed.

ADJOURNED

[3.28 pm]