

**BOARD OF INQUIRY
WATERVIEW CONNECTION PROPOSAL**



IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Board of Inquiry appointed under s149J of the Resource Management Act 1991 to consider applications by New Zealand Transport Authority for resource consents and notices of requirement for the Waterview Connection Proposal.

Board of Inquiry members presiding:

- Judge Laurie Newhook
- Member Sue Jackson
- Member Alan Dormer
- Member Ross Dunlop
- Member Sandra Hardie

MINUTE AND DIRECTIONS OF THE BOARD

Mr C Higgins Email of 22 March re Waterview School Entrance Relocation.

1. Mr C Higgins¹ in an email message to the EPA dated 22 March 2011 (provided to the Board of Inquiry), has effectively asked how, if the Waterview School's main entrance were to be relocated to Oakley Avenue, the environmental effects of such would be managed.
2. The same issues might be said to arise in relation to the Kindergarten being relocated to have frontage onto the same street, at No. 17.
3. Relevant background, as the Board currently understands the matter is, as follows:
 - i) NZTA proposes a condition SO.3 that reads *"The NZTA shall relocate the Waterview Kindergarten to an alternative site, subject to the approval of the Ministry of Education"*.
 - ii) Counsel for the Waterview Primary School Board of Trustees and the Ministry of Education, and counsel for the Auckland Kindergarten Association, separately advised the Board of Inquiry in submissions on 22 March 2011 that discussions with NZTA have resulted in [as yet uncompleted] agreements that provide, amongst other things for *"Relocation of the Waterview Kindergarten to new premises at 17 Oakley Avenue"* and *"Redesign of the Oakley Avenue entry to the School to become the main entrance"*.

¹ Submitter 147

- iii) Counsel for the Auckland Kindergarten Association also noted that there would be *'provision for enlarging the kindergarten to a 50 child facility (currently licensed for 30)'*.
 - iv) Properties on the Oakley Avenue frontage are, according to the Board's own researches, zoned Residential 6A, and the existing school designation (which would appear to take in the kindergarten) does not extend over them, even to the point of authorising the present minor entrance. The proposed new school entrance would appear to require either designation or a resource consent (discretionary activity). The kindergarten would appear to qualify (as a "care centre" by definition in the plan) for permitted activity status if it meets the intensity control for the zone of 1 person per 45 sq.metres. However, 17 Oakley Avenue appears to have a site area of 1035 sq. metres, and a facility for the indicated maximum of 50 children plus staff would suggest a need for land approaching three times that, or in the alternative a resource consent.
4. It occurs to the Board of Inquiry that if the Project were granted consent, and the previously described agreements were to be completed and implemented, that the above described resource consents and/or access-way designation would be required, and that a new Council approval to an outline plan of works [s.176A RMA] would be required prior to the school being reconfigured and the kindergarten moved.
 5. So, the answer to Mr Higgins's query would appear to be that there remain some RMA processes that are beyond the jurisdiction of this Board to consider. Some of them (for instance consideration of any outline plan of works might not be publicly notified, while others again might or might not. The issue of whether notification occurs or not is also beyond the remit of this Board.
 6. The enquiry raises other issues which NZTA might wish to consider when making its reply. Its counsel should also consult with counsel for the Ministry of Education, the School, and the Kindergarten Association, so as to be able to advise their views². The issues to be addressed are that the agreement with the Ministry is almost silent on the matter of gaining consents...both as to the time that might be taken, the cost of doing so, and the impact that might have on the commencement of construction works on the project should overall consent be forthcoming for that.
 7. Indeed, the issues may go further than the school and kindergarten. A number of items of suggested mitigation, which if they recommend themselves to the Board (if consent is to be granted), might well require resource consents. For instance, works in certain reserves, and construction of cycle/pedestrian bridges and pathways. Does NZTA accept that construction works in relevant areas might need to await formal consents for required mitigation? If it sees construction works and those consenting procedures proceeding in tandem, how are items of mitigation to be brought to account if any consents for such were ultimately to be refused?

² In need, we would ear those other counsel separately if they cannot reach agreement with NZTA.

If you have any questions arising from this Board Direction please do not hesitate to contact the EPA on 0800 H2OVIEW (0800 4268439) or waterview@epa.govt.nz.

For the Board:



Judge L Newhook

Chairman - Waterview Connection Proposal Board of Inquiry

23 March 2011