

**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 Agency for resource consents and notices of requirement for the Waterview Connection Proposal.

THE BOARD OF INQUIRY

Environment Judge L Newhook
Commissioner R Dunlop
Alan Dormer
Susan Jackson
Sandra Hardie

Hearing Commenced: 7 February 2011

**Transcription of HEARING
Commenced: 7 February 2011
10:14am**

THE COURT: JUDGE NEWHOOK – EXPLAINING PROCEDURES

MS JANISSSEN:

Also before – members of the Board will have a copy of the case folder or a copy of the cases that I'll refer to in opening submissions. We have about five extra sets of those for counsel and can make further available if that is necessary. Just while those opening submissions are being distributed I will mention one matter which I'll address later on in the submission. The Board had issued a minute seeking a response from the Agency concerning important matters that it should respond to. We have a memorandum of counsel prepared and again 45 copies of that are also available which we could distribute after the opening submissions.

THE COURT: JUDGE NEWHOOK

Yes that would be suitable. Has that been provided, has your memorandum been provided to us?

MS JANISSEN:

Yes sir, it should be in the packet of documents we provided to the Board members.

MS JANISSEN OPENS

“...under annexure A.”

That is also provided on the Board in the courtroom. I recognise that’s a bit small, so we’re going to try and make that a little bit larger because I think a lot of the witnesses, both the Agency and submitters will find that useful. It not only indicates the sectors but also which notices of requirements cover which sector and likewise with the resource consents.

THE COURT: JUDGE NEWHOOK

Yes we’ve found that plan particularly helpful, pretty much had it at our elbows while we’ve been pre-reading the evidence, constant cross-referencing back into the sectors and the labels of the requirements, and the like, has been a useful aid.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Broadly sector 1... Mr Burn respectively.”

Perhaps I can just indicate for the Court immediately. In annexure D to these opening submissions I have provided a list of all of the NZTA’s witnesses. The list indicates what their evidence topics are. It indicates if they’ve given evidence-in-chief or rebuttal evidence and what the number of that is, as per on the EPA website. It indicates if they’ve been involved in signing a joint caucusing statement and I’ve put in place again the proposed moment

hearing order the NZTA witnesses. So that may be another document hopefully of use to members of the Board.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Turning to project... figure 1.1 of the AE.”

1030

And we’ve attached that for ease of reference under annexure C, and that diagram is also in the courtroom. Today, again I think we’ll try and make that just a little bit larger because that’s also proven to be quite a useful figure.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“This strategic corridor... achieve project objectives.”

And I’ll discuss that further in my submissions.

“I’m at paragraph... of national significance.”

And I simply set out there in subparagraphs 1 to 6 those reasons.

THE COURT: JUDGE NEWHOOK

Yes I think we could probably take those as read, couldn’t we?

MS JANISSEN:

Yes sir.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Turning now to... the (inaudible 10:32:38) caucusing.

So I haven’t decided – I haven’t mentioned them all because there are a myriad of different things that –

THE COURT: JUDGE NEWHOOK

Indeed, and I might just intercede at this point and for the benefit of those parties who have been participating in the various sessions that have been conducted during the last three weeks, through their experts or in the case of the social issues session and open space sessions where others have been involved as well, that they would have observed that the NZTA has been making some changes to the project along the way. Some people may be critical of that appearing, but it's part of the process during cases like this where it is the expectation of, in this case The Board of Inquiry and in other cases of the Environment Court when that's sitting, that parties will work together to identify things that can usefully be changed. So we don't consider it a matter of criticism of NZTA that it will do things like remove the emergency exhaust stack at Cradock Street, even after people have spent admittedly quite a lot of time and effort studying that feature if it's something that affects them or concerns them. So we have the expectation right from the word go, through the process that has been occurring, particularly during the last three weeks, but also we will find as the hearing progresses that we have an expectation that people will work together to narrow issues down, reach agreements where agreements are possible, and focus on the real issues. So in fact I'm saying that the fact that there have been changes in the proposal is not a matter of criticism of NZTA in the general sense, there may be some individual criticisms, and we will come to those during the course of the hearing and find out all about those, but by and large it is the expectation of The Board of Inquiry that such changes will be made to address effects on the environment and people's concerns where that's possible.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"The changes include... event of fire."

And if I could refer there sir, the references there are paragraphs 103 to 111 of Mr Walter's rebuttal evidence.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

In particular because... of the Act.”

And I just note there briefly in that footnote s 330 allows a network utility operator, such as the Agency, to remove the cause of an emergency or to mitigate any actual or likely adverse effect of an emergency.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Turning to the... Mr David Gibbs.”

And I note here by way of brief summary what they are. I could take that as read although I think many would be very familiar with those now.

THE COURT: JUDGE NEWHOOK

Yes I think we will take those as read thank you Ms Janissen.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“The addendum report... buildings and structures.”

And if I could just note there sir that in the updated set of conditions it was contained as annexure A to Ms Lindsay’s planning rebuttal evidence. We also have separate standalone copies of those conditions, and I think we’ve made some available for the Board, but that certainly is going to be a very useful document because we anticipate that that’s going to be changing as we go through the hearing.

THE COURT: JUDGE NEWHOOK

That’s this document here?

1040

MS JANISSSEN:

That's correct, yes. So that is the current state of the proposed conditions from the Agency, as of the time that the rebuttal evidence was finalised. I will refer to this later in submissions, but some of the caucusing had not yet been completed by the time we had prepared the rebuttal evidence and those conditions, so there are likely to be further changes.

THE COURT: JUDGE NEWHOOK

Yes we understand that. So the position of the Agency on this point, which was one of the main items in our quite extensive list of important points for you to address and which you tell us you have addressed in a memorandum this morning, is this. That the current option for the design of the stacks and buildings is indicative. So the application is for those stacks and buildings in indicative form, with the proposal now for an outline plan of works to follow, which hadn't previously been anticipated I think in the overall thrust of the application?

MS JANISSSEN:

Yes that is correct. The new conditions with respect to the outline plan of works are new, they are quite lengthy, they are at the start of the bundle of set of conditions and they contain a set of detailed criteria which need to be included when the application is made for the outline plan of works. Those criteria have come both from the recommendations from the Agency's expert witness Steven Brown, but also more particularly they incorporate most, if not all of the joint experts' caucusing statements recommendations about what those criteria should say, so they're quite – they're about a page each.

THE COURT: JUDGE NEWHOOK

That was going to be my next question. So let's just be clear about this. These proposed criteria for "yes" at the time of an application for an outline plan of works consent for the stacks and the buildings, were considered were they by the expert witnesses who caucused, particularly in landscape matters last week?

MS JANISSEN:

Caucusing was happening at the same time as the rebuttal evidence and the conditions were being prepared. Most of the criteria I understand from the caucusing statement, which was not signed until Thursday or Friday, are actually included now in the outline plans of works condition. I am going to be talking more specifically to the Board about how to be clear now what the outcomes of the caucusing are versus the rebuttal evidence. And one of those clear things will be whether or not for the Agency to identify to the Board and all parties, which of the conditions identified in the expert caucusing statements it accepts, which is in the main most of them, but which conditions it does not. I've reviewed, and I think the purpose of these new outline plan of works was to incorporate all of those criteria which previously had been in the landscape and visual conditions. So they've been briefed, put forward and separated out.

THE COURT: JUDGE NEWHOOK

All right, well one final thing then on this topic. Perhaps you and anybody else interested in this caucusing approach that's been occurring, particularly amongst experts, should take on board that we don't regard the last three weeks worth of caucusing as necessarily being the line in the sand. That it may occur to us during the course of the hearing that some further caucusing on some topics may be useful and in particular if things have happened at some speed last week, when the rebuttal evidence was being pulled together and your opening submissions for the Agency of course, and the caucusing statements. If there are some loose ends amongst all that, that can usefully be tied up further or some further focus gained, then we will be very open to the idea that the experts, in particular groupings, should meet again.

MS JANISSEN:

Yes sir, I'm –

THE COURT: JUDGE NEWHOOK

It could occur more than once during the course of the six weeks of our hearing.

MS JANISSSEN:

Yes sir, I have raised this with our experts already and advised that they in part need to be on call for that, because I do anticipate given that some of the caucusing statements came in, well they're just coming in today as well. And given that some of the caucusing statements are quite important, as between each other, for example air quality versus landscape that they do need to talk to one another further, definitely.

COUNSEL CONTINUES READING OPENING SUBMISSIONS FROM PARAGRAPH 35

"It is further... appointed its contractors."

1050

THE COURT: JUDGE NEWHOOK

Just passing back if you don't mind to the historic places situation, you were at some pains in the previous section concerning the Marine Reserves Act to point out that those processes are separate and distinct from the RMA process, and that is why they're running quite separately and need to be made as part of the suite of applications that underpin our current inquiry. However, in relation to the Historic Places Act the situation is different, is it not? Are there potential for appeals concerning refusals or conditions of consent, or consents themselves for archaeological authorities?

MS JANISSSEN:

Sorry –

THE COURT: JUDGE NEWHOOK

Is there anything akin to the RMA process?

MS JANISSSEN:

Yes.

THE COURT: JUDGE NEWHOOK

For instance, the potential for appeals to come to the Environment Court say?

MS JANISSSEN:

Yes there is. What the Agency is doing is preparing the applications. The Historic Places Act applications are a little, they're a little bit different to the extent that if the application's lodged and then it is granted by the Historic Places Trust, if there are further – and this is why the Agency's not progressing it too far at this point – if there are further changes that are then made to the project, for example, as a result of this process, the Agency couldn't simply go back to the HPT and amend the application or decision, it actually has to start all over again. So it may well be that in this particular case the applications will be, may well be lodged before the Board's decisions will come out, but they will require that no decision is issued by the Trust until this Board has made its decision to ensure that it incorporates anything that the Board includes by way of condition. And then, further to your question, yes there are appeal rights following HPT approval process and they could end back up in this Court.

THE COURT: JUDGE NEWHOOK

Or before the Environment Court.

MS JANISSSEN:

Sorry, the Environment Court, sorry.

THE COURT: JUDGE NEWHOOK

This Board might be –

MS JANISSSEN:

Yes.

THE COURT:

- functus officio, to use the Latin, by that time –

MS JANISSEN:

Sorry, the Environment Court.

THE COURT: JUDGE NEWHOOK

Yes I simply asked that question Ms Janissen because the legal position, as I understand it, is in connection with the necessity to gain a whole suite of consents under the RMA and related statutory provisions, that they are all sought at the same time so that they can be dealt with holistically, and I was just wondering whether in fact the absence of attention to this historic places aspect might be running counter to that general legal expectation, rising out of a body corporate case from Ms Douglas.

MS JANISSEN:

Sir with respect to this case, and certainly in my experience, the processes have been run separately, and the reason that the Agency in particular would wish to have a decision from this Board before finalising any application from the NZHPT is specifically for the purpose of ensuring that any recommendations, any conditions that arise out of this process can then be taken directly into the HPT process, but they are, statutorily they are distinct processes. And in relation to s 91 under and the integrated management of the RMA process there's no exception made for bringing in HB, HBK applications.

THE COURT: JUDGE NEWHOOK

So would I be right in inferring that the Agency accepts the risk that if it were to gain a particular decision – let's assume for the moment, but not by way of pre-emption about decision making, that it was to consent to the notices of requirement and the resource consents, and then was to find itself confronted by a refusal of consents on an archaeological matter by the NZHPT, or by the Environment Court on appeal from NZHPT, that that might create some difficulty for the consents that had been obtained from the Board?

MS JANISSSEN:

Yes sir they certainly run that risk and I think mostly, certainly the larger projects I've worked on, the clients have faced that exact same risk, because unfortunately they are quite separate processes. And I've certainly appeared in Court where that exact scenario's happened.

THE COURT: JUDGE NEWHOOK

All right, well I think it's worth our having that understanding at this early stage.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"In terms of... used as carparking."

And perhaps if I can just refer there to footnote 32, there were a couple of questions that were raised in the Board's minute to clarify the status of road closing, and that is addressed in detail in our memorandum of counsel.

THE COURT: JUDGE NEWHOOK

So it isn't just that one road replaces another and you don't actually need to stop it at all, not quite that simple?

MS JANISSSEN:

No sir.

THE COURT: JUDGE NEWHOOK

The law isn't usually quite that simple.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"The Agency will... for such works."

Again, just to add there, in a number of the roading projects through Auckland in the last 10 years this exact process has been followed. More recently perhaps with respect to State Highway 20, Mt Roskill in relation to the Roskill cone.

THE COURT: JUDGE NEWHOOK

Yes, well that's not surprising in that urban situation.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Turning now to... for the project."

1100

So currently it is not anticipated that there's going to be any issue at all obtaining that approval.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Auckland Council s177...construction yard 1."

Although this, we can discuss this later -

THE COURT: JUDGE NEWHOOK

On the Pony Club land?

MS JANISSSEN:

Correct, yes. So at the moment the resource consents that have been lodged, they were lodged before Christmas. We understand that the council is looking to process them on a non-notified basis, provided that one Watercare is resolved and that will effectively deal with the rotation of the construction yard, and it may well be that that rotation could also be done by way of designation, by altering the designation. The second additional consent is the consenting of new sections of Saxon Reserve for open space use. That is currently zoned residential and so it would need a resource consent to use it as open space and that's set out more, particularly in Ms Lindsay's rebuttal evidence.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“It is understood... school’s designation boundary.”

So that’s something that is arising out of the current agreement in principle between the parties but it will be something on a list of things to do in the future.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“In all other... requiring authority approval.”

So just the point made there is that the EMS report has correctly identified that there are quite a number of submitters who have sought mitigation, but those mitigation measures would require the Agency to seek either new designations or new resource consents and they’re not before the Board today. I think they’ll become a little bit clearer as we go through the rebuttal evidence, as to where in particular those matters are, but some of them are quite substantial.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Moving to the... the reclaimed land.”

So it’s a little technical, but it’s really just set out there in response to an EMS question to clarify the procedural nature of that process.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Turning now to... plan of works.”

If I could perhaps just take as read the first three provisions of s 176(a).

THE COURT: JUDGE NEWHOOK

Thank you.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“The Agency’s position... details are required.”

I just note there that conditions 3 and 4 relate to the process whereby both the construction and operational management plans are updated, finalised and, where necessary, approved or certified by the council. So it is hoped that the Agency now with its amended conditions has made it much more clear in terms of what is going to be approved for the project and what aspects of it may be subject to a future outline plan of works process.

1110

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“The exception to... building and stack.”

And again, as indicated earlier, there’s about a page for each of those conditions which sets out the criteria. If I could just, to save the Court flicking back to the conditions. For example in relation to the northern ventilation stack, it says, “An outline plan of works shall be prepared in accordance with s 176(a). The final form of the northern ventilation buildings and stacks shall be in accordance with the design principles of s (b) of the Urban Landscape and Design Framework and the following requirements.” And then it specifies (a) to (m), a number of design criteria. Most, if not all, of which I think are now also included in the expert caucusing report, but I just need to check that because it came a little bit later. But there is some very detailed criteria now contained there.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“As I noted... in my submissions.”

And if I can perhaps take the Board more quickly through this part because I anticipate that the Board have read the s 42(a) reports, in particular will be

very familiar with it and all I'm really doing in the section is setting out what the framework is and I think the more interesting part of it will be assessing it later on in my submissions.

THE COURT: JUDGE NEWHOOK

Yes, all right, just take us very quickly through it then.

MS JANIŠSEN:

Just noting at paragraph 87 that the project has been referred to the Board as a proposal of national significance. So this Board's jurisdiction in the matter is governed by part 6(a), and I note there the considerations that the Board must have, including having regard to the Minister's reasons for making direction, considering any information provided to it under s 149(g), so those are those reports from the three councils, and acting in accordance with subsections 2 to 7, and 2 to 7 are the only relevant ones there. Subsection 2 which sets out all the provisions of the Act in relation to resource consent applications and then subsection 4 which sets out all the relevant provisions of designation. So it just incorporates the relevant provisions of the RMA. I refer to, and briefly, paragraph 89, the notices requirement in s 171 and specify there the very clear issues that regard, or particular regard must be had to in making the Board's decision. And perhaps I can take those as read because they would be very familiar.

THE COURT: JUDGE NEWHOOK

Yes.

MS JANIŠSEN:

I then note there that the key ones are, being adequate consideration of alternatives, and a note there that it does not require that the Agency demonstrate that it has considered all possible alternatives or that it has selected the best of all available alternatives. The second, more important provision within s 171 is that the Board is required to consider whether the work and the designation are reasonably necessary for achieving the project objectives. In doing so the Board is not to pass judgement on the merits or

otherwise of the Agency's objectives, rather the Board's task is to have particular regard to whether the proposed work and designations are reasonably necessary for achieving those objectives. I'd like to highlight that and that's why we've set out earlier again, listed the objectives because I know this is an issue that has been the subject of some debate with some of the submitters as to whether or not certain aspects of the project that they seek to mitigate, or certain mitigation activities that they're after, do in fact fall within the objectives of the project. A key one on that one would be for example provision of a local road connection, Great North Interchange, which I will talk about further. I then just set out very briefly what's required with respect to the assessment of resource consents under s 104. As explained at paragraph 94 in the application in the evidence of Mr Burn, this project requires resource consents for activities ranging from control to non-complying activities and as a result of the bundling principle, an overall assessment of the applications against the non-complying activity test is required. I note of course the gateway tests in s 104(d), paragraph 96, "In considering if the activity is not contrary to the objectives and policies, I note the Board must consider whether the project is contrary to the overall purpose and scheme of the plans, rather than assessing the non-complying activity against the detailed provisions. Non-complying activity status of itself recognises that the proposed activity is unlikely to be supported by all provisions in the relevant plan. However, consent maybe granted if the activity is not contrary to the overall objectives and policies. If the Board determines that the resource consent applications pass the gateway test, it must then have regard to the matters set out in s 104 and of course the Board retains an overall discretion as to whether or not to grant the consents." I note very briefly in paragraph 98, considerations in relation to s 105 for the discharges of coastal permits and I note at paragraph 99 that at least two of the applications the Board must consider whether an esplanade reserve or strip is appropriate. In that regard the Agency's position is that such a condition would not be appropriate as the result would be to require more reclamation within the marine reserve than may otherwise be necessary. Finally in relation to the overall part 2 assessment, I refer to the fact that the Board's consideration is subject to part 2 and that's the overriding purpose in

s 5, it's set out there. And I refer then to the core of sustainable management under s 5 is balancing between the relevant resources, communities and environmental concerns that make up the environment.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Turning then to... considering his process."

1120

And I make those comments really in response to some of the submitters, for example Professor Hazeldene, there was quite a focus on the BCR and what that meant in relation to this project. So we've got a brief clarification to assist.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Turning to the... by the project."

Just a note there sir, I appreciate that the Board has not yet conducted or carried out a site visit so perhaps some of this detail, with respect, might go over your heads until you've actually been on site, but I thought we should set out very clearly where we understand the areas of disagreement are between the parties and what the Agency's current position is.

THE COURT: JUDGE NEWHOOK

Yes, well even though we haven't been out to inspect any of these areas yet Ms Janissen I can say to you that we have been reading all the evidence very carefully and we are developing, we hope, a reasonably advanced knowledge of the geography, and I might as well tell you that we've also been making reasonably extensive use of things like Google maps and Yellow maps to be able to look at the geography and look at the area and photography that accompanies those, in developing an understanding of the geography before we go on site and have to consultation with the parties.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“In the Alan Wood... in this area.”

THE COURT: JUDGE NEWHOOK

So you could almost summarise it further, at risk of oversimplification, as saying that issues are being brought forward about quality as well as quantity and that focus on 0.6 hectares of additional reserve land is in itself an over-simplification and an inadequate treatment of the topic overall.

MS JANISSSEN:

Yes, sir both quality and quantity have been the real focus of the Agency’s evidence in relation to this, and in particular and looking at the open space, mitigation proposals because that came clearly through in consultation throughout this project from submitters that it’s not simply a quantity issue, that it’s, it must be the quality of the open space that is returned or reinstated onto the communities.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“So turning to... investment being undertaken –

THE COURT: JUDGE NEWHOOK – MORNING ADJOURNMENT

COURT ADJOURNS: 11.32 AM

COURT RESUMES: 11.55 AM

COUNSEL CONTINUES READING OPENING SUBMISSIONS FROM PARAGRAPH 130

“The Agency considers... or fully undergrounded.”

Before turning to those perhaps I'll raise another key issue that's been raised, and that's whether the ventilation stacks can be reduced in height from 25 metres. I note that was a matter highlighted in *The Herald* this morning. With respect to the current position the visual and landscape experts have indicated in their expert caucusing statement that they prefer a reduced height to 15 to 17 metres. The air quality experts indicate that there is still merit in achieving the discharges vented as high as possible, even though dispersal modelling shows that the vent height is not a significant factor in determining ground level concentrations. However, with respect to their joint caucusing statement, the experts did not agree on the height. It was noted, and perhaps I can quote here, “The experts agreed that from an air quality perspective higher stacks are better. However, it is also agreed that lower stack heights, for example 15 metres, may be adequate to avoid any significant adverse air quality effects.” It was agreed that a stack height of 15 metres may be appropriate, subject to the results of comprehensive dispersion modelling. This modelling was not available at the close of caucusing, but is being undertaken and is expected to be available by the 10th of February 2011. The issue in relation to the height developed, more specifically within the caucusing, as a result – I think really it was the move of the council's expert witness because the council's position, certainly prior to lodgement, was insistent upon a condition that the minimum height of the vent stacks be 25 metres. So that is a current issue that is still being considered by the air discharge experts. The – while there was substantial discussion, I think, about the impact of reducing the height, again our understanding is that it was the council's air quality expert who was requiring comprehensive, or further dispersion modelling before perhaps being satisfied in the round that the

15 metres would be appropriate. So that is certainly an ongoing matter. This is discussed further in Mr Gavin Fisher's rebuttal evidence, and I note particular at paragraphs 25 to 27, where he notes that further modelling is now being undertaken. It's due this week and it is anticipated that lowering the height would result in only a slight increase in the ground level concentrations, but would not result in any exceedance of the relevant guidelines or standards at any location. So with respect to the height of the stacks there's really a balancing required here between those submitters who wish to have a greater height to discharge the emissions, that is higher height as possible, those who prefer that the stack be reduced, primarily for impacts in relation to landscape and visual. From the Agency's point of view, if the air quality experts come to an agreed position and especially based on the further modelling, and put that position before the Court that there will be no greater air discharge applications from lowering the stack height, the Agency would be happy then to work on the basis of the lower stack height at 15 metres instead of 25. But given the current situation where they just need to see the final result of the modelling so the experts can agree, we can't advise that further. I do note however that that particular issue was taken into the caucusing, the visual and landscape experts, on the basis of – and you will see the result of the report – if the vent stack height could be reduced from 25 to 15 what would that mean in relation to design, and those criteria have already gone into the conditions. So that is definitely a little bit of a moving target and we await the result of the air discharge experts. Whether or not though that would resolve the issues for many of the submitters, we don't know because they have different issues in relation to the potential effects of the emissions from the stack, no matter at what height. Because I know there's still a perception and a large community concern about that, but that, as we currently understand it, is where the situation is with height.

MR DORMER:

One of the things I'd be grateful if you could help us with once that work has been done is the degree to which the emissions will spread out over an area, and it occurs to me that the possibility must exist that if you reduce the height of the stack the area over which the emissions will spread will be extended.

And I'm reluctant to see us get involved in a South British and Auckland City type situation whereby in order to ameliorate effects we're going to give rise to effects on people who weren't previously affected.

MS JANIŠSEN:

Certainly sir, I will pass that – firstly I'll raise it with our expert, Mr Fisher, and then I expect that that would be certainly a logical question to be raised and I can see a further caucusing session with the air quality experts, on that particular issue.

MR DORMER:

I'm grateful.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Moving to some... associated with filtration.”

And I would also note that this was a specific issue raised by the Court in its recent minute, and it has been addressed in detail in the memorandum of counsel in response. And I note that that – where that is in a footnote, paragraph, sorry footnote 79. And again there's more information and it's provided by Mr Fisher as to the potential cost of providing filtration.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Northern ventilation building... and adequately mitigated.”

And again I refer the Board in particular on this issue to two things; Mr Walter's rebuttal evidence, which has some diagrams showing where the option A, B and C locations are, and then to the specific consideration that was given to that by the landscape and visual caucusing experts, who all had, it's fair to say, different views as to the impacts of the location of those stacks and each of those alternatives. And there was certainly not agreement on that at all. Moving to the southern ventilation building, they've also been the

subject of detailed discussion during expert caucusing. The primary question being considered is raised by numerous submitters, being whether the southern ventilation building could be partially or fully undergrounded.

1210

COUNSEL CONTINUES READING OPENING SUBMISSIONS

The Agency's evidence... a green roof."

And that's just referring there to the green roof shown on the construct revised options. There was quite a divergence of opinion as to whether or not that would make any difference to the amenity of the community."

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Nonetheless, the experts... of those criteria."

THE COURT: JUDGE NEWHOOK

Ms Janissen, if I could just observe at this point, because this is one of these, it's shown itself to be one of the bigger issues in this whole inquiry. And it's this. The figures in millions, give or take however many million, in either of these options or any of these options, might sound very big and without being too unkind to the Agency, it may be that the impression is sought to be created that they are indeed very big. We have the task at the end of the day of understanding what the effects on the environment of the whole project and in particular, all of these things might be. And it will be our duty to put those costs into the mix, but it will also be our duty to be examining, with great care, the effects on the environment of undertaking various options. And I will say, this, that sitting here right now as a simple legally trained person, my mind says, well the Agency is proposing to dig some very big holes in the ground for several kilometres, stretching from the southern portal, right through up towards the interchange. And it just seems to me that the costs of further activity in relation to undergrounding or partial undergrounding or buildings needs to be seen in that context. But there is this wide inquiry that we need to make into effects on the environment and I just feel the need to signal to the

Agency, at this point in time, that the sorts of figures that appear to be stressed in your submissions and that we're going to read in the rebuttal evidence will be observed by us in the sort of context that I've been describing.

MS JANISSEN:

Thank you sir. Perhaps just two brief responses to that. Other than the cost issues, obviously I've referred here to the fact that there had been the rounder environmental effects assessment of further options for undergrounding, this is in the north and the south, and that is set out in the rebuttal evidence. Because the Agency's well aware it's not a numbers game on anything like this at all. I do though – would direct the parties to Mr Parker's rebuttal evidence that does focus specifically on the implications of continuing to increase the costs for the project, in parts for mitigation and in response to requests made by submitters, that effectively at some point there must be a conclusion at which the Agency has to draw a line. But perhaps that can be best read with respect to Mr Parker's evidence on that, but the points are certainly made.

THE COURT: JUDGE NEWHOOK

I think it's worth observing that that point is understood, but that nevertheless I think it has to be said that the sorts of figures need to be seen in the context of the overall cost and the overall massive quantities of public works that are being undertaken. We're well aware of the fact that the proposal passes through a number of communities, with varying needs and varying views and that if the Agency was indeed to rush to each of the concerns or requests as a fireman would run to a fire with a fire hose, an awful lot of money could flow. But I reiterate that with which I started my observation to you, that this is, it seems to us from the reading that we've undertaken so far, one of the biggest issues in the whole project.

MS JANISSEN:

Certainly agree with that, thank you sir.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Turn to page 39... the Board’s decision.”

1220

I guess one of the key issues and concerns and fears that have come through from the community in terms of submissions has been, in particular, whether or not the emissions from the ventilation stacks are or are not harmful. And that one will be subject to detailed air quality evidence.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

1230

“Turning to construction... be addressed below.”

So in relation to noise and vibration issues our understanding is that there is no disagreement with respect to the experts as to how the conditions can deal with mitigation those effects.

THE COURT: JUDGE NEWHOOK

Yes, just want to make an observation at this juncture Ms Janissen, for the benefit of submitters who may be present who have concerns in this sort of area, and indeed in other areas where experts have caucused. I think I made it reasonably clear during the pre-hearing conferences, but I want to reiterate now that having the experts caucus to reach, or to narrow issues and to reach agreements where they can, and as Ms Janissen’s observed perhaps in a fairly substantial way in case of noise and vibration, submitters need to understand that having the groups of experts caucus and reach the agreements is not to divest ourselves of the ultimate decision making. That is, we haven’t left it to the experts to reach conclusions that we are required to reach. So, in theory at least, we can question whether an agreement that has been reached amongst experts is going to serve the purpose of the Resource Management Act or not, particularly in the area of effects on the environment, which of course includes people in the environment. At the end of the day, however, of course we have to have considerable respect for the views of the experts, most of whom are highly qualified, and we would be bold, I suggest,

to fly in the face of agreements reached by such highly qualified people. But just bear in mind that we nevertheless have to bring the whole of the evidence into the mix, including that which has been put in the submitters' own statements of evidence, including of course their non-expert views, in coming to our ultimate decision. So just to stress it, the decision has not been made in relation to the various expert topics by agreements having been reached, but it needs to be understood that a very high level of respect will be accordant, has to be accordant, to those agreements by a group such as ours.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Turning then to... raise any concerns."

And that's in response to numerous submissions and evidence that requested and asked for this ongoing level of involvement from the community in the project, particularly given that it's potentially the duration of anywhere from five to six years.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Secondly in addition... social and planning."

1240

THE COURT: JUDGE NEWHOOK

Just in slightly light response perhaps to your paragraph 187.5, about the timing of activities around such things as exams. I might as well relate a story very quickly. That at the age of 15 while sitting School Certificate examinations at Auckland Grammar, a predecessor of your client Ms Janissen was busy blasting his way through, what had been our lower playing field between Auckland Grammar and St Peter's College below it, for the motorway that now passes underneath Mountain Road, and that process continued rigorously and vigorously throughout the examination time, probably explains a fair bit about my lack of educational achievement. I blamed your client's predecessor.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Turning briefly to... be appropriately mitigated.”

So there was substantial evidence from Mr Towber and Mr Robertson on that issue and that has been addressed in many of the rebuttal statements from the Agency.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“With respect to... their full property.”

1250

And that clarification is provided because I think there was a specific request in one of the EMS reports about what the Agency was doing.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“With respect to... through sector 8.”

So effectively what we’re talking about in part of these proceedings is how best to mitigate the mitigation that the Agency is otherwise providing, in a nutshell. I note here that a detailed history of the assessment or alternatives for route and alignment options is set out in chapter 11.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“I refer in... information already lodged.”

1255

And an example here is in Mr Rob Mason’s evidence, when he is describing the proposals made by submitters about local on and off ramps, he explains the background to the options analysis to local road connections and footnotes some of the many reports that actually looked at that specific issue. We accept that those documents were not lodged, but the issue here is just

where is the balance in terms of how many documents the Agency actually lodges.

THE COURT: JUDGE NEWHOOK

You're referring to his rebuttal evidence no doubt?

MS JANISSSEN:

Yes I am sorry, yes sir. Moving then to, "Reasonably necessary to achieve objectives", I've already referred earlier to this, that particular regard must be had as to whether the working designation are reasonably necessary. I won't go further than other to say that that is again spelt out in the rebuttal evidence of Mr Parker and Mr Murray, because it is an issue that has been raised by some of the submitters, in particular as to whether or not the mitigation they are seeking is reasonably necessary to meet project objectives.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"I note at... that Mr Burns -"

COURT ADJOURNS: 12.59 PM

COURT RESUMES: 2.19 PM

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Statutory planning documents... method of dispersal.”

And I’d note there that this is addressed in some detail in that memorandum, and we also point out there that the s 149(g) report from the Auckland Regional Council confirmed that all of the relevant consents had been applied for and the EMS report itself found that they agreed with the s 149(g) report.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“So overall with... the Board’s minute.”

So these part of the submissions only cover those issues to the extent not covered elsewhere. I think they only deal with three issues. The first is the recommendation to the Minister of Conservation.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“This question had... measurable performance standards.”

1430

And perhaps if I can just add at this point that this is one of a few cases, certainly the roading cases, where the draft management plans have actually been lodged with the project. They haven’t just been referred to in a condition saying at some point in the future the Agency will prepare the management plan and lodge it for council review and approval. They’ve actually, most of them are attached to the relevant technical reports. They’re referred to in the evidence of the expert witnesses and that, in our opinion, gives much greater certainty as to what those ultimate outcomes will be from the management plan process. Comment in relation to the Hauraki Gulf Marine Park Act. In the EMA report they stated that, and I quote, “The overarching policy

framework of the New Zealand Coastal Policy Statement will determine whether the project is consistent with the Hauraki Gulf Marine Park Act. It is noted that when considering requirements under s 171 of the Act, particularly regardings be had to any relevant provisions of the New Zealand Coastal Policy Statement. So as such the project has been assessed against the 2010 policy statement. However, s 10(1) of the Hauraki Gulf Marine Park Act states that s 7 and 8 must be treated as a New Zealand Coastal Policy Statement for the coastal environment of the Hauraki Gulf. Section 7 of that Act recognises the national significance of the Hauraki Gulf and its islands, while s 8 sets out objectives for managing the Hauraki Gulf, its islands and catchments. This means that when considering notices of requirement under s 171, particular regard must be had, not only to the relevant provisions of the Coastal Policy Statement, but also to the relevant provisions of s 7 and 8 of the Hauraki Gulf Marine Park Act. That Act provides that the policy statement prevails in the event of a conflict between the two. So in this case the project has been assessed in relation to s 7 and 8 and it is consistent with the objectives set out in s 8 of that Act.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Comment in relation... willing to accept.”

THE COURT: JUDGE NEWHOOK

Pause there for a moment. Thank you for that offer, it's accepted by the Board Ms Janissen.

MS JANISSEN:

Yes sir. I think that's actually important for all parties because since some of those statements came in quite late, I think it's important for the Board to understand out of, what arises out of all of that expert caucus in terms of what issues appear to have been resolved, and a summary of which issues are not, and then literally just cross-referencing and ensuring, or checking, if the Agency's current set of conditions actually incorporates many or most of the agreed conditions in the caucusing statement. I guess the real purpose of it is

to really narrow down any issues that are really before the Board for the remainder of the hearing.

THE COURT: JUDGE NEWHOOK

Yes. No it's important for us to know what NZTA accepts from amongst the expert caucusing and what not. We would rather anticipate that it would accept the vast majority of the caucused agreements, but we'll see.

MS JANISSEN:

Finally just a brief note in terms of – I've already referred to annexure D, that the threat of evidence-in-chief and rebuttal evidence that has been exchanged and lodged, that's now summarised in annexure D with that list. I note also that various expert witnesses have of course been involved in the expert caucusing and so for ease of reference I'll keep this list updated as we proceed, but there's still the proposed hearing order which we're anticipating following as we go through, and I'll keep the Board and parties advised if anything should need to change in that regard.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“So in conclusion... should be confirmed.”

MS JANISSEN:

This conclude the opening submissions and I'm happy to take any questions.
1440

THE COURT: JUDGE NEWHOOK

Thank you Ms Janissen, I'm going to see whether members of the Board have questions for you over and above those which we've put to you already.

MR DORMER:

In paragraph 80 of your submission, you refer to the outline plan of works and those respects in which is proposed by the Agency that final approval be given through the outline plan of works procedure. Just to sort of dot the I's

and cross the T's, do I correctly understand that the only two respects in which the Agency proposes to proceed by way of outline plan of works, are those two specified northern and southern ventilation buildings?

MS JANISSSEN:

And stacks, yes.

MR DORMER:

And stacks?

MS JANISSSEN:

Yes that's correct sir.

MR DORMER:

And the next area in which you can help me, I've got noted by paragraph 119 through to 121. I don't quite know whether my point fits in there best or not, but there will be a number of alterations that the Agency is making to its proposal to accommodate the suggestions of affected parties to achieve general design improvements. As my question of this morning, I'm very anxious to ensure that by adopting any such amendments that you may be putting forward, we aren't exposing to adverse effects the folk who weren't previously exposed to any or were not exposing folk who were exposed to limited adverse effects to adverse effects of a greater kind. So I wonder if when you outline to us in due course the alterations/improvements that the Agency's proposing to make, could you just be so kind as to perhaps alert us to the nature of the effects that were to be generated previously and the nature of the effects that will be generated as a result of these so-called improvements?

MS JANISSSEN:

Yes sir, certainly I will, and in that respect perhaps I can point out that for example in the rebuttal evidence of the Agency when assessing the alternative, potential alternative locations for the northern ventilation stack, there's a range of evidence that assesses the knock-on effects of relocating

the ventilation stack, in particular in relation to open space and visual matters. So, we've been very much lithe to considering and around the implications of any of the mitigation sought by submitters.

THE COURT: COMMISSIONER DUNLOP

Relatively small but perhaps an important point, just following on from Mr Dormer's point. Would you agree that in proposed condition DC.6 as handed up this morning in your submissions, in the advisory note after the words, "northern and southern ventilation buildings", there should perhaps be the words, "and stacks", to make that consistent with DC7 and DC8. I understand that was the thrust of your answer to Mr Dormer's question?

MS JANIJSSEN:

Yes that's absolutely correct.

THE COURT: COMMISSIONER DUNLOP

It might just help in terms of keeping a running record of this type of thing.

MS JANIJSSEN:

Yes sir we're going to have to choose a different colour I think for our third edit, but yes, we will thank you.

MS JACKSON:

Ms Janissen, on your paragraph 246 you refer to the use of the phrases, "generally in accordance" and "subject to final design". How does, "as is practicable" fit into that context?

MS JANIJSSEN:

I think the "as practicable" or where "practicable" it's not found in that specific part of the conditions, it's usually in relation to other mitigation measures and the like and it literally allows for an overall assessment as to the practical implications of whatever is proposed in that particular condition. For example I think there may be a condition that relates to construction movements or something, needing to do something as is "practicable" and it needs to relate

to just a whole lot of practical implications around whatever is proposed. Sorry without a specific condition it's a little harder to explain, but it's not – it's a different issue than is raised there.

MS JACKSON:

Okay, well we'll come to it as we go through I guess.

MS JANISSSEN:

Perhaps on that one, if I can just point you to the evidence of Mr Parker, I think Mr (inaudible 14:45:43) deals with this as well, but it explained more clearly where there – we have a real issue with the wording. If the wording would say, as the EMS suggests, that the Agency will build this project in accordance with exactly what was lodged, that gives very little lee-room for any change or design innovations or refinements at all and it would mean that any alterations at all would need to come back to the council or the Board, it's just that is certainly not practicable.

THE COURT: JUDGE NEWHOOK

I think we might move to have the flyover next and then unless people need to get away, we should leave the questions of housekeeping, as I've called them to be aired. It might be a bit hard to estimate how long we might be studying the flyover, but have you a bit of a feel for that Ms Janissen.

MS JANISSSEN:

Mr Walter is indicating about 10 minutes. The suggestion is I think just take you through and then go back to certain parts, so it would only take 10 to 15 minutes depending on the amount of questions, it won't take very long.

MR WALTER:

Just to take you through as a general overview, as a flyover of the project and then we look back in a bit more detail specifically at the Te Atatu interchange as well as the two ventilation buildings, north and south. We start off at Te Atatu interchange and flying over the works that are being done in this section of the project, in sector 1, is widening of the bridge to include an extra

lane to deal with traffic movements and improvement of the pedestrian and cycle facilities across the bridge, upgrading the underpass. We're now flying on towards the Henderson River. You'll see the new stormwater pond, which is due to be constructed in Jack Colvin Park, will be coming into view quite shortly. This is to improve stormwater drainage and resilience along this section of State Highway 16. It also upgrades, it's a three lane motorway with dedicated bus shoulders in both directions. When we come back we'll talk in a bit more detail regarding the specific improvements at Te Atatu. This section of motorway through here is across the flyover bridge, a lane widening on either side of the existing motorway, with the separate dedicated pedestrian cycleway, which goes through those reclamation works which need to be undertaken. Heading to the bit of the land area, past the Rosebank Domain and this is four lanes going both east and west. At the turn off to Rosebank we have the – we lose one of the lanes, so coming from Great North Road interchange there's five lanes going west, four lanes going east. Crossing the main section of the causeway where we have the reclamation work which needs to be undertaken, widening of the causeway bridge and again there's the totally separate pedestrian and cycleway and facility which is being built all along the interchange. This is also one of the areas where there's some widening that needs to happen. Great North Road interchange, which is a functional motorway to motorway interchange, and incorporating the local connection of Great North Road into State Highway 16, the width of the ramps have been designed such to ensure that we don't have queuing traffic back into the tunnel. Going towards St Lukes underneath Carrington Road, this section is a lane widening on either side, as well as we're making provision for a dedicated bus shoulder. The extent of the project is just short of the St Lukes interchange. This is heading into the northern tunnel portal, and then the yellow lines would indicate, indicates the underground route of the tunnel. Crosses Oakley Creek a couple of times, underneath for the street reserve, Cradock Street, Powell Street, the one corner of Pak'nSave into the Alan Wood Reserve area and comes out of the southern portal. From the southern portal the motorway continues in three lanes, all the way through to Maioro Street, a very deep cutting prior to the – at the southern portal. You've got the stormwater, the cycleway, pedestrian

facilities, the Hendon Park Bridge with the big stormwater pond, sports fields, coming up towards Richardson Road Bridge, which we go underneath, before tying into the diamond interchange at Maioro Street. Just have a quick look at Te Atatu interchange in a bit more detail. Te Atatu has got a, it's a diamond interchange, so it's fully functional in east, west, north, south movements. The section coming from the city into Te Atatu, the lane indicated in blue is being widened and realigned to be able to deal with the required traffic movements, and the, ditto for the section on the red. There's an extra lane being created across the bridge to be able to deal with the movements going towards the city. Coming and going towards the Henderson Creek area, coming from again there's the lane widening across to be able to deal with those traffic movements, and there's improvements of the on-ramp onto State Highway 16 to be able to deal with increased traffic flows. From the Peninsula, to and from towards the city, those are the typical traffic movements. The ramp from the Peninsula onto State Highway 16 towards the city, it's indicated in red, is being realigned and improved and also with a bus shoulder being incorporated into that. And the movements from the Peninsula going towards north – towards Henderson at least, that's the typical movements. The only other improvement at Te Atatu that will be happening is there's going to be a slight improvement on the vertical geometry underneath the bridge. It's been – the elevation of the road's being dropped by approximately half a metre, just improve that radical geometry along that section of the motorway. At Great North Road those, that's the existing movements that occur within Great North Road. If you're coming from Great North Road going towards the city or coming from the city, that is the current movement, and it's not proposed that that's going to undertake any changes at all. And similarly from Great North Road onto State Highway 16 going towards the west, that's the to and from, and once again it's not proposed that those are going to be changed, except for a slight connection on the blue, right where State Highway 16 connects into Great North Road there's some configuration changes there to deal with pedestrian crossing and improving the pedestrian facilities across there. And from State Highway 20 you've come out of the tunnel, you follow the red route going towards the Waitakere, the eastern side, and the blue one coming back. Great North Road interchange provided a

number of constraints. Primarily between the current blue and red lines is where the archaeological site lies, the historic (inaudible 14:56:26) site and tannery is within that area. Provided quite a lot of constraint in getting the ramps up and over each other and across State Highway 16 and leaving as much of that area in tact as what we could. Coming from the tunnel going towards the city and coming from the city, that would be the type of movements. The major restriction, constraint is to be able to get underneath Carrington Road Bridge without impacting on the Pt Chev Shopping Centre. Maioro Street, a big diamond interchange with six lanes across it and on and off-ramps of three lanes to be able to deal with the traffic volumes. That's coming from the airport going in towards Richardson Road. Richardson Road on, straightforward into the tunnel and then from the tunnel onto Stoddard and from Stoddard into the tunnel and ditto, the other way down through towards the airport. So it's quite a big interchange to be able to deal with the expected traffic movements in that area. Northern ramp building, this is, will just take us around. The buildings, as indicated on the surface currently, are buildings to be able to deal with the electrical equipment, the HV and LV substations which need to be installed. There's quite a lot of communications equipment which is required to be in the tunnel to operate and maintain it, and then because you're going to have a building which has got people in it, you've got to provide all the other services such as toilets, showers and comply with all the other legal requirements. The building right at the bottom of the screen now is over a gantry crane, which will be used to elevate and transmit the fan equipment. Southern ramp building, a very similar function, except the operation centre has been located in this section as well, and that's what's right on top of the portal, used to operate the tunnel on a daily basis 24 hours a day. That's it sir, I'm happy to deal with any questions.

THE COURT: JUDGE NEWHOOK

Yes. I've got one base question for you Mr Walter and that is I recognise a good amount of the material in the flyover. Am I right in assuming that it's drawn from precisely the same base data, and in fact represents the same material as we have in the hard copy visualisations that have been supplied,

altered only in connection with updating things like ventilation stacks, pursuant to the construct drawings?

1500

MR WALTER:

You're quite right in that. It's been based on the current drawing schemes as we have submitted.

THE COURT: JUDGE NEWHOOK

Second question, will the flyover be available for use by us and the parties during the hearing?

MR WALTER:

Yes it will be available, this machine's dedicated to do that and we will be busy getting a scaled down version, this is just to use for anybody else to run on a normal machine. So we're getting a scaled down version which will be suitable which will go onto the website as well (inaudible 15:00:28), so we'll be rendering it down into a smaller version which people can use.

THE COURT:

All right then, well if that can be supplied to us as well on a disk in addition to our being able to access the website. Let me see if other members have questions. No more questions. Thank you for that fly through Mr Walter, it's a handy illustration of things. Matters of housekeeping. Ms Janissen have you something you wish to place before us first?

MS JANISSEN:

Yes sir, I've got two matters on housekeeping, one is an apology with respect to the rebuttal evidence, the index, when it went out on Friday I think, was missing from the rebuttal evidence. I think we've now made it available to the Board and it's going to be – we've got quite a few sets here if members of the public would like to pick it up and otherwise it's going to be provided to the submitters.

THE COURT: JUDGE NEWHOOK

Well that will be going onto the website and well and copies are available with Ms Janissen and her team for people to collect afterwards, that's the index to the statements of rebuttal that were filed on Friday.

MS JANISSEN:

Yes. The hard copy index is the only thing that was missing on the website, I think it went out straight away, it was up there. The other thing, is a housekeeping matter, just to confirm the lodgement of the memorandum of counsel on behalf of the Agency in response to the minute from the Board concerning important matters. So again that will be provided to the EPA so it can go up on the website today and hard copies will be mailed out. We've got quite a big bunch here for members of the public.

THE COURT: JUDGE NEWHOOK

So parties who are interested in collecting that material after the conclusion of the hearing, it's up here with NZTA's team.

MS JANISSEN:

I've nothing further sir, thank you.

THE COURT:

We have a few matters of housekeeping for everybody. First you may have noticed that we didn't start on time this morning at 10 o'clock, we awaited the call to come into the courtroom and inferred that people were still arriving and settling themselves in and that the equipment was being setup, prepared and the like. So there was a bit of a late start. It is our wish, having discussed the matter, that we make prompt starts at the advertised times which were in the notice of hearing, but may vary from day to day. We might sometimes take a break a little earlier or a bit later or something like that. But we will be starting each hearing day, this Friday being the first of them at 9.30. We will generally finish at five. There will be 15 minute breaks at 11 o'clock and 3 o'clock and the lunch break will be between 1 o'clock and 2.15 pm. We particularly ask that people return to the courtroom on time to commence each of those

sessions through the day. It's very easy to start to lose a lot of time if we don't commence the sessions on time and of course time is money for many of the parties here, we're very conscious of that. Ms Janissen, can you just tell us, we haven't seen them yet, how many folders of rebuttal evidence there are in each set?

MS JANISSEN:

There's three sir.

THE COURT: JUDGE NEWHOOK

Currently we have plans to conduct the site inspections tomorrow and I'll be coming to those in a moment and then to undertake our reading of the rebuttal evidence on Wednesday and Thursday, and I'm just simply trying to get a handle on whether those two days are going to be sufficient for us to find our way through the rebuttal evidence.

MS JANISSEN:

There's two like this and then one I think that's about three-quarters of that size.

THE COURT: JUDGE NEWHOOK

It looks like a fair bit, one imagines there are appendices, in which one doesn't need to read absolutely every word. I rather imagine that we'll be having a pretty busy couple of days but then we're getting kind of used to that in this case. There are the expert caucusing reports that we have only seen a couple of thus far, so there will be a lot of reading. If we can't find our way right through the rebuttal evidence and the expert caucusing reports by Thursday night we'll send a signal out that it's our intention if at all possible to be recommencing the sitting at 9.30 on Friday morning. Now we directed that notices seeking leave to cross-examine be filed by today, we interpret "today" as meaning up until the close of business at 5 o'clock. So there maybe some filed already, we expect that the others will be filed by 5 o'clock today and you'll all recall that those notices are to specify who wants to cross-examine which witnesses and to describe in a general way, not detail but a general

way the topics upon which cross-examination is sought to be conducted and approximately how long the cross-examiner believes he or she might be wanting to conduct that cross-examination. Now the estimate of time likely to be spent on cross-examining is a difficult issue, we know that, but nevertheless we need to have the applications because cross-examination can only be given by leave and the detail that I've described and the estimates of time, the estimates of time of course being particularly required so that we can assist the EPA, our support crew to work out when it is that particular witnesses and particular parties and the like need to be here because I don't imagine that everyone of you that's in the room today is going to want to be here for the six weeks that we have planned should we need that much time. So those notices are very important and are required to be in the hands of Kevin Morgan and the team from the EPA by 5 o'clock today. So by that means, we're hoping that by the time we recommence the sitting at 9.30 on Friday we will be able to give you more of an indication about what's going to happen and when. For instance, you'll be aware that for the moment the EPA has gone no further than recording in spreadsheet fashion the likely business for this week up to the end of Friday. Beyond that forecasting who is going to come and when was just too hard in our estimation when we talked about it last week, until we receive these notices seeking leave to cross-examine. So we'll leave that with everybody as homework for today. Now other matters that we need to discuss. I think on my records here we are down now simply to discussing the proposed site and locality inspection that we will be undertaking tomorrow. We've got the comprehensive schedule and a helpful map which has been authored by representatives of Auckland Council in consultation with those of you who were interested in these topics. We have read it and discussed the schedule. You will note that we are being asked to go to no fewer than 79 places. That looks like a busy day too. I'm ready for a bit of a lie down by the weekend I think, but then we won't be the only ones I'm sure. We have a number of questions and responses and I will invite further comments or questions from parties in a moment. For ourselves, turning first to items 35 and 36, visiting the – it's 34, 35 and 36, concerning the visits to ecological features. I recall from one of our pre-hearing conferences that there was some expression of concern about the numbers of, the sheer

numbers of people that might be in our group and wanting to march around on these features, and about tide driven conditions and other physical aspects of them that might provide limitations on visiting them. The suggestion is offered in the schedule that the way to visit these places might very well be by helicopter, I assume with the machine being able to hover reasonably low over them and fly around them and give us a pretty rapid, and probably quite good, view of them without the need for a group of people to somehow gain access off the motorway onto the features and walk. I imagine that would be a pretty time consuming affair too, in a busy day in which we're going to want to visit to 79 locations. Does anybody wish to comment on it in particular as to whether there might be any concern for wildlife from a helicopter visiting Pollen Island and Traherne Island at a reasonably low level? Yes, anybody standing up to the microphone if they could identify themselves for the record.

MR McNATTIE:

Thank you Your Honour, Bill McNattie, Forest and Bird. We have filed with the Board some land based access maps and there is quite considerable tide constraints with those, and that's why I understand that that will provide quite some difficulty if there's a, if there is a extensive time constraint. We would rather low level helicopters not be on endangered species zones, but we will take advice on that regard.

THE COURT: JUDGE NEWHOOK

Are you anticipating seeking advice from ecologists as to a height above Traherne Island and Pollen Island that might be thought safe and acceptable from wildlife purposes?

MR McNATTIE:

Generally we find another domain so, for example out on the Kaipara there, helicopters coming in even at six metres there create quite a disturbance to resting and nests –

THE COURT: JUDGE NEWHOOK

I would hesitate to think that we would ask the pilot to descend to six metres above the level, the surface of those two islands Mr McNattie. Would something of the order of 100 metres be safe do you think, or do you wish to take advice?

MR McNATTIE:

I don't see a problem with that. You'd be more, be worried about seabird strikes.

THE COURT: JUDGE NEWHOOK

Yes well the pilot might have views on it I suppose. Well look if you do wish to research that or have advice from others in the field of ecology and convey that to the EPA, to Kim Morgan, before reasonably early on tomorrow morning that would be appreciated, but at this stage our feeling is that the best way to visit those places, particularly given time constraints and tide constraints, is probably to do it by helicopter.

MR McNATTIE:

If the maps are available there are in fact a couple of walking tracks and parking locations, things like that, in case someone does choose to use that particular method of access.

THE COURT: JUDGE NEWHOOK

Yes, well who knows. Later in the hearing we might have a window of opportunity to go and do that, but for the purpose of gaining at least an overview tomorrow we think that the helicopter might be the way to do it.

MR McHATTIE:

Thank you Your Honour.

THE COURT: JUDGE NEWHOOK

Thanks for that input. Ms Houghton for DOC.

MS HOUGHTON:

Yes sir. I'm not speaking as an expert, but my recollection is that there was going to be – there was a proposal for a heliport on the edge of the marine reserve, and the worst time was to - and we –

THE COURT: JUDGE NEWHOOK

I don't think it's in the voluminous papers filed in this application.

MS HOUGHTON:

And sir it was opposed and it never eventuated, eventually the application was withdrawn. But I do know at that time that the department looked very carefully, because we opposed it, at the movement of birds and around Traherne Island because there's a relationship between the Manukau and the Waitemata. So when the tide is out in the Waitemata the birds fly over the isthmus to feed and vice versa, because when the tide's in in the Waitemata it's out in the Manukau, so they fly back. So really the best time, in terms of the birds, is to fly over when the tide's in because they will neither be roosting, or hopefully flying over, but it was certainly, with helicopters, the impact of the migration between the two intertidal areas.

THE COURT: JUDGE NEWHOOK

Well it might well be that somebody in the department could be prevailed upon to express a view –

MS HOUGHTON:

Yes.

THE COURT: JUDGE NEWHOOK

- about a height above which helicopter movement might not disturb either feeding or roosting birds, or those flying about in the vicinity of the reserves, and that can be conveyed to Kim Morgan.

MS HOUGHTON:

Yes sir. I'll do that.

THE COURT: JUDGE NEWHOOK

That particular issue leads to – I'll come back to Mr Easte – leads to the thought on our part that if we're up in a helicopter we might not feel the need to go and look at the whole of the Auckland motorway network, as we had indicated we might, because we actually think we all know it pretty well, too well probably. But that we're aware that there's a good deal of construction activity happening off the end of the North Western Motorway heading up in the direction of Whenuapai right now, and that it might be worth, just from the point of view of gaining a general overview of the landscape in which NZTA is conducting construction works, for us to fly up that alignment. Should only be a few minutes inspection. I don't anticipate we'd be wanting to visit the works closely, but an overview might just be helpful in terms of understanding these kinds of works.

MS JANISSSEN:

Yes sir. Mr Parker points out the Maioro Street interchange is also under construction at the moment.

THE COURT: JUDGE NEWHOOK

Yes, we could look at both ends, yes thank you for that. Thank you. Mr Easte.

MR EASTE:

Yes I was just going to make the observation, having been in a helicopter, it's almost impossible to have a conversation and apart from the pilot and the person in the co-pilot's seat, visibility's not brilliant. So if you've got a large party, you're going to need a large helicopter, and most of the people on board are going to be a bit frustrated. I'm really wondering what the value of the helicopter flight would be.

THE COURT: JUDGE NEWHOOK

Thank you for those thoughts Mr Easte, but some of us are actually reasonably familiar with conducting site inspections by helicopter and coping with the problems that you mention. Now, just leave it to us. Now we've

noted in the schedules that certain people are named who we are requested, through the EPA, to contact to arrange particular timing. I'll stress it again, as I did during the pre-hearing conferences, that it is our intention to conduct these inspections without the presence of any party or representative of any party, or anything – or anybody who's in any way even remotely involved in the case. And there's an important principle of nature justice involved here, which is very simply that if we meet with the representative, or a representative, of one party on site then other parties who are interested in that particular site and what's going on there or around it are also entitled to be present. In some places we could wind up with a cast of thousands. We also don't want to be hearing from people about issues in the case when we're out on site for a number of reasons. An important one of which is we don't have the hearing transcription equipment with us out there to have a record made of what was said, and of course things might be said that haven't been exchanged in evidence pursuant to the timetable that we set. So there's a whole host of reasons. Now the people that have been named as contacts are I'll stress, people that the EPA members, our support team may phone to make precise timing arrangements and geographical arrangements and the like, but we don't expect to meet people like Mr McKirdy or Mr Conder or others who have been named in the schedules on site. So I think I make that clear, I don't think I need any further input from anybody about that. Another issue that's raised comes from the Springleigh Residents' Association. Is Ms Gruger here, is she with us today, no. It's unfortunate because she wasn't at either of the two pre-hearing conferences either. So it makes communication a little bit difficult when parties who are said to be keenly interested in the proceedings aren't here. Anyway there are others who are representing the Springleigh Residents' Association, or a member of it, no. Oh well, I'm going to say it anyway and they can find out about it from reading the transcript or from talking to members of the EPA if that's necessary. We've been requested to take with us, when visiting certain sites from – numbered 65 through to wherever below that, a representative of the Race Relations Commissioner or the Race Relations Commissioner himself or herself or a member of his or her staff. We won't be doing that. As I've said, we're not going to be talking to parties or anybody interested in the case and it

hasn't been explained to us what this person could hope to achieve, particularly against the backdrop of the directions that we've issued about such visitations. Do parties have anything that they wish to add by way of comment or question to the schedule. I hope that the schedule is at this point complete. No, it doesn't appear so. Ms Fasenkloet?

MS FASENKLOET:

Ms Fasenkloet for Auckland Council, Auckland Transport. Just one amendment to line 76 of the schedule sir. The address reads "49" and it should read 47 Montrose Street. And just with regard to Ms Gruger, who I was hoping was going to be here, she contacted us about some sites that she thought weren't on the schedule, but having gone back we've checked that they are all there. We understand everything's correct sir.

THE COURT: JUDGE NEWHOOK

Very thorough job, thank you for that work. Any other questions or comments? No. All right, are there any other matters that members of the Board wish to raise in this housekeeping session? Is there anything else that anybody wishes, any parties wish to raise with us in this housekeeping session? Mr Allan?

MR ALLAN:

Sir, Douglas Allan for Living Communities, Auckland and a number of other entities. Sir there are a couple of points I would like to raise with you, and the first relates to my friend Ms Janissen's reference to the state of the conditions and obviously I'm sure the parties would appreciate seeing a memorandum that's due to come on Thursday. And I'm not sure whether there's sufficient changes between the current version of the conditions and the one we're going to be addressing through that memorandum to make it worthwhile but I think it would be helpful to have "a" current version of the conditions at that point and I'm just not sure how much work that involves for the applicant and his team. But an updated version reflects all the conditions that come in and are accepted from the caucusing and perhaps a note that indicates where –

THE COURT: JUDGE NEWHOOK

Either that or perhaps a column for comments in which NZTA records its agreement or disagreement in a little detail and if disagreement, a succinct reason.

MR ALLAN:

I just think sir it's going to be very helpful for us to have a set of the materials in front of us that's as up to date as it can be and I appreciate you're –

THE COURT: JUDGE NEWHOOK

And would you accept that one way or the other, either another annotated set with – no, I think we're going to have a few of these, how many colours out of the spectrum.

MR ALLAN:

I don't have a particular view and obviously have no understanding of how difficult the exercise is going to be, that's a judgement call obviously for NZTA.

THE COURT: JUDGE NEW HOOK

Well I see nodding, head nodding, rather than head shaking on Ms Janissen's –

MS JANISSSEN:

I think Your Honour my sense is a lot of those conditions in caucusing may well be in here. It might well be that I don't get messed up with too many colours that I incorporate whatever is in the caucusing reports that the Agency is willing to accept, I'll still put it in blue, which shows a change from the major evidence-in-chief, because I think that would be quite useful.

MR ALLAN:

I'd be grateful.

MS JANISSSEN:

And frankly I think it would be useful for everyone, I agree.

THE COURT: JUDGE NEWHOOK

Thank you for that. You had another point Mr Allan?

MR ALLAN:

I did. Cross-examination notes. I think most of us are trying to get with the 10 o'clock deadline, which would be this morning, which – so you have a –

THE COURT: JUDGE NEWHOOK

It suddenly occurred to us that we actually hadn't said, 9 o'clock, 10 o'clock, 5 o'clock.

MR ALLAN:

I think you did at one point say 10 o'clock, but 5 o'clock is as I'm sure fine for those who didn't make that 10 o'clock deadline. But the difficulty that of course had is that people like myself haven't actually finished reading the rebuttal yet. I don't know if two days is enough, but I can tell you that a day and a half isn't. So, admittedly I'm reading it for a different purpose. But that means there's a whole range of issues that for example I've raised in my memorandum, that may or may not be resolved with the rebuttal. So the issue in terms of timing is a very fraught one, and particularly so given that there maybe things that come in the rebuttal that really affect that. So from my perspective, I'm happy to come back and revisit that at some time in the future. Friday may be too soon, but I just –

THE COURT: JUDGE NEWHOOK

How about if we set the high watermark and we have the notices from people about their wish to cross-examine as of the information that all of us have now, and then modify that, hopefully downwards as the outcomes of the facilitated caucusing and further information coming out of rebuttal sink in. So climbing down from the high point.

MR ALLAN:

Certainly. And sir, it may well be that the EPA staff put together a big schedule that tells who is going to be – sort of matrix telling who's going to

cross-examine who, and as we go through if we inform them, we can drop out names where we no longer need to do that. Because certainly in my case –

THE COURT: JUDGE NEWHOOK

I think that would be helpful and we will find during the hearing that things will speed up at one moment, we'll think we're making great progress and then they'll slow down for some unforeseen reason, as something emerges. So it will be something of a movable feast, but the EPA's going to do its best to help us to plan about who should turn up and when.

MR ALLAN:

Sir, there's an issue that follows on from that too, which relates to the evidence that I exchanged for my clients a couple of nights ago. And some of that of course is now redundant, and at some point you may well want parties to do a red line version or something to clarify what's still alive, otherwise you're going to go back revisit a lot of evidence, much of which you probably won't need to read, but which might infuse or cloud the issues that are still live. I've asked my witnesses to think about that. It would take them, in some cases, quite a bit of time because there's a bit of red lining to do. In other cases, they're not all agreed yet, so there's not much change. But again that's something you might want to think about in terms of trying to speed up the hearing as we get through it. Certainly from my perspective I think if you just have the evidence in its current form it's not going to be as enlightened.

THE COURT: JUDGE NEWHOOK

Well we have done an enormous amount of pre-reading. We've done it, recognising that we've yet to receive the rebuttal evidence and of course the caucusing statements. So we know that we've probably read too much. We hear of issues being narrowed down and we approve of that, but we know that we may have done more than we need, but that's the nature of approaching a hearing in this way. What I would do is invite you and others, other counsel and anybody, any other parties who are reasonably experienced in involvement in larger hearings of Resource Management matters to get together and confer and see if you can come to some agreement about

Mr Allan's suggestion that we might be assisted, and indeed parties might be assisted by having a further red lined version of statements that take aboard agreements that have been reached and changes in position that have come from NZTA as a result of negotiation and the like. It sounds very helpful, and if it can be done in such a way that is not likely to cause concern by us or by any parties that people are simply taking the opportunity to throw something into the mix that wasn't previously there then it could be a good idea.

MR ALLAN:

And sir the final point I wanted to make related really to the developments that have occurred. This is an iterative process and as you noted earlier the changes from NZTA are certainly, in many cases, are very welcome to my clients. From their perspective we're happy to sit down and talk with the counsel and with NZTA to try and nail things and to get as many issues resolved as possible. The caucusing process has helped that in many ways. The information that's come out of caucusing possibly helped the discussion anyway, even when there wasn't agreement reached. So this three day period I suppose is an opportunity for people to do that as much as possible. I appreciate that we have no decision yet, it's being appealed so the decision has to be made by you and it's a little unusual, it's different from the position when you're in going to, before the Environment Court where of course you can resolve things, come with a consent order or consent documentation. But from my clients' perspective, if there are issues they can resolve with NZTA and that cuts down the level of the hearing they'd be very pleased to do that. So from our perspective, simply saying it's an invitation to, particularly the counsel and NZTA, to talk then I think those –

THE COURT: JUDGE NEWHOOK

Well from our point of view Mr Allan it's a bit like the observation that I made earlier today about the issues that spring from expert caucusing agreements that I felt important to signal to the parties that we're not bound by them, and the decision making isn't undertaken by those experts coming to agreements. We still have a discretion. We could put aside a particular point of agreement if we thought it appropriate in the circumstances, throw it back to the experts,

throw it back to all the parties who are involved with that particular issue. It's unlikely to happen a great deal, as I said this morning, but the point that you raise analogise and it's important that people know that there is a hearing process and the buck ultimately stops here, and that we make the decision overall and in detail. But thank you for the point.

MR ALLAN:

Just an addendum to that. The issues that are live and probably most usefully discussed relate to things such as the northern, the buildings at the northern portal, buildings at the southern portal and then there's the connections and the open space issues. Those are matters that I wonder if it would be benefited by having a facilitator if – assuming NZTA's prepared to enter discussions at all and I leave it with counsel, I know everybody's busy. But it might be useful to have a facilitator and perhaps whomever it was who was involved in the caucusing sessions on those issues might be willing or able to assist. It's just they will have the benefit of those discussions. It might help.

THE COURT: JUDGE NEWHOOK

Yes. Well, certainly as I think I've already indicated, we mightn't have seen the end of caucusing sessions. They do have a particular value and it seems that they might have already in this case. So if we perceive the need or indeed if parties perceive the need as we go along of extending the sessions into one or more areas and a facilitator's being provided, parties will signal that to us either during the course of the hearing or electronically to the EPA and we will do our best to find appropriate facilitators and put the groups together. You may find us fairly keen to make pointed directions about that. Does anybody have anything else they wish to raise, Ms Janissen?

MS JANISSSEN:

Sir just one final housekeeping matter, this relates to reconvening on Friday. Is it anticipated the EPA will be circulating a list as to who or how many people might be wanting to cross-examine the Agency witnesses? I think there's five or six actually listed for that day, I can't for the life of me think that they could

get through that many on that day, but I'd like to be able to advise those witnesses if they need to be appearing.

THE COURT: JUDGE NEWHOOK

It was a pure guess, a slightly informed guess, but yes as we – as the EPA assimilates these notices and refers them to us we will hopefully form a view about that Ms Janissen and –

MS JANISSEN:

Thank you sir.

THE COURT: JUDGE NEWHOOK

- somebody may be in touch. I'd prefer to be inviting you to bring more witnesses than five on Friday than fewer, but let's see what happens. Anything else anybody? All right we'll adjourn till 9.30 on Friday morning.

COURT ADJOURNS: 3.36 PM