

**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

**Transcription of HEARING
Day 15 – Tuesday 22 March 2011**

THE COURT: JUDGE NEWHOOK

This morning, first up we have the Auckland Kindergarten Association, Mr Ryan you're with us?

5 **MR RYAN:**

Yes, yes Your Honour. Good morning I have very brief, as in one page, written submissions.

THE COURT: JUDGE NEWHOOK

You're endeavouring to set the record.

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MR RYAN:

And I'm speaking to them very shortly. I'm not sure if I've got copies for everyone, but they're very short so I'll go through them.

15 **MR RYAN READS OPENING SUBMISSIONS**

"If the Board... of the Board."

THE COURT: JUDGE NEWHOOK

20 Well let's just be fairly clear about this Mr Ryan. If there are matters that are agreed that are within the jurisdiction of the Board on the one hand, and they're agreed.

MR RYAN:

Yes.

25 **THE COURT: JUDGE NEWHOOK**

And then there are some matters that go outside the jurisdiction of the Board on the other, are the two compartmentalised? Now, what happens if tomorrow or the next day, and bear in mind we're getting just about to the end of the hearing now, what happens if tomorrow or the next day it proves

impossible to reach agreement on the matters that are outside the Board's jurisdiction? Are those that are within the jurisdiction sufficiently compartmentalised that we can say, "Right, they're bankable," for the purposes of making our decision, or are you going to come running back saying, "I want to have all my witnesses heard"?

MR RYAN:

Your Honour the relief that the submission seeks primarily is the permanent relocation and that relief is now in effect and capsulated in condition SO.3. And so, in my submission, the primary relief sought by this submission is satisfied and...

THE COURT: JUDGE NEWHOOK

So we aren't going to find you coming back saying that condition, that draft condition might not be honoured and therefore I want to be heard?

MR RYAN:

No, no I don't believe so sir.

THE COURT: JUDGE NEWHOOK

All right, I just want to be sure about that.

MR RYAN:

I think that sir that the matters outstanding don't go to the Board's jurisdiction and therefore I'm able to say that the conditions that are now offered satisfy the relief within the scope of the Board's powers.

THE COURT: JUDGE NEWHOOK

All right, well I just make a – that's entered the record. I think it's important for us to know that.

MR RYAN CONTINUES READING OPENING SUBMISSIONS

"I say in... the ventilation stack."

5 And in paragraph 8 I say that subject to the conditions providing as they do in
condition SO.3 for the permanent relocation of the kindergarten the submitter
abides the Board's decision in respect of any alternate location of the
ventilation stack. Those are my submissions Your Honour. I have the two
witnesses for the Kindergarten Association available and I understand that
10 other submitters have given those to cross-examine sir so those witnesses
are available to be called.

MR RYAN CALLS

PETER PABLECHEQUE (SWORN)

15 Q. Mr Pablecheque, your name is Peter Pablecheque and you're the
assistant general manager for the Auckland Kindergarten Association?

A. Correct.

Q. Can you confirm as correct the contents of your brief-of-evidence dated
the 17th of December 2010?

A. Yes.

20 **THE COURT: JUDGE NEWHOOK**

Q. Yes I imagine this is a subsidiary question though that you might want to
put in - introduce the witness to the effect that events, particularly the
right of agreement of, largely of taken contents of his statement of
evidence. Is that the case Mr Pablecheque?

25 A. The negotiations?

Q. Yes.

A. Yes.

Q. They've largely overtaken the concerns expressed by you in your
evidence-in-chief?

30 A. Yes they have, we're now looking for a permanent relocation which is
being sorted, yes.

0940

CROSS-EXAMINATION: MR ALLAN

- 5 Q. In paragraphs 27 to 36 of your evidence, you explain why the Kindergarten Association wanted the northern stack to shift and then in Mr Ryan's submissions this morning, he's noted that subject to the conditions providing for the permanent relocation of the kindergarten, the submitter abides the Board's decision in respect of the alternative location for the ventilation stack. Is the position of the association that provided it, the kindergarten is permanently shifted it doesn't mind
- 10 where the stack goes?
- A. Well in our negotiations with NZTA we were proceeding on the belief the stack was going to be over our boundary fence and our position on any movement of the stack would be a bonus.
- 15 Q. But your negotiations led you to the position where your kindergarten has been shifted further away from where the stack is, isn't it?
- A. Yes, correct, it's going to 70 Oakley Ave, yeah.
- Q. And in the new location the stack doesn't have anything like the impact it would have had on the old or the current location?
- A. Correct.
- 20 Q. If it was the case that the kindergarten wasn't going to be permanently shifted you would still want the stack to be shifted wouldn't you?
- A. Well our deal is the kindergarten is going to be moved so we have no view on that.

CROSS-EXAMINATION: MR LAW – NIL25 **QUESTIONS FROM THE BOARD: MR DORMER – NIL****QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP**

- Q. Mr Pablecheque in paragraph 39 of your brief of evidence, you talk about the 12 to 18 months that would be required to consent and build a new kindergarten if it were to be moved. Does the agreement, the draft

agreement between the Ministry and the Agency deal with the question of timing of the establishment of any new facility if it's moved permanently?

- 5 A. Not at this stage, it just states that the major work, construction wouldn't start until we have moved. That 18 months was a timeframe that it would normally take us if we were doing the job, to do the drawings, doing the consent and the moving, that's our experience of the situation. I'm sure NZTA, as they have said, have resources that could probably do it in a quicker timeframe.

10 **QUESTIONS FROM THE BOARD: MS JACKSON**

- Q. Mr Pablecheque, just a matter for clarification. This is actually Mr Ryan's evidence, but it says here that you're enlarging the kindergarten to a 50 child facility, currently licensed for 30. We've heard that the school roll is likely to reduce, so is this a future proofing thing that you're –

15

- A. We believe that the area could support a 50 licence centre and that will also help the school roll because additional children at the kindergarten 70% of them go onto the school so it's a benefit for the community, the school and the association and yes it is a future-proofing issue.

20 **QUESTIONS FROM THE BOARD: MS HARDIE – NIL**

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR RYAN – NIL

WITNESS EXCUSED

MR RYAN CALLS**ROBERT JAMES PRYOR (SWORN)**

5 Q. Thank you Mr Pryor, your full name is Robert James Pryor and do you confirm the contents of your statement of evidence dated the 10th of January 2011?

A. Yes I do.

10 Q. In the penultimate paragraph of your evidence at paragraph 5.4, you say that you concur with the evidence of the Auckland Kindergarten Association in supporting a permanent relocation of the kindergarten to the site at 17 Oakley Avenue as an appropriate and practical measure. You've since heard today that there is agreement from NZTA to now permanently relocate. Do you have any comment on that in the light of your evidence?

15 A. Yes I have heard that there is that agreement in place and that all going well with that agreement the relocation to 17 Oakley Ave would mitigate the adverse effects of the stack on the kindergarten.

CROSS-EXAMINATION: MR ALLAN

Q. Mr Pryor, was your brief in this matter to consider the impacts on the kindergarten alone?

20 A. Yes that's correct I was acting for the Kindergarten Association.

Q. In the course of carrying out that work, have you been able or have you formed any views in terms of the impact of the northern ventilation stack on the surrounding area. In other words, a wider area than just the kindergarten itself?

25 A. Yes, well specifically my brief was in relation to the kindergarten. Going through the exercise of undertaking a visual and landscape assessment, of course the wider community is taken into consideration, and that is particularly something that came up in my role in the caucusing exercise where, whilst I was acting for the Kindergarten Association per se, the
30 caucusing did revolve around the wider community as well.

Q. Is it your understanding that when and if then – when we'll say, just be positive. When the kindergarten moves, that land will become part of the school grounds?

5 A. I'm not fully aware of it but I assume that if the kindergarten was moved then that land would become as part of the wider Waterview School.

Q. And if that's the case, the effects that you've identified in your evidence, with respect to the kindergarten would still remain, they would simply be transferred across to whatever the activity is on that land?

10 A. Yes, the adverse effects would be mitigated for the kindergarten but obviously there would still be adverse effects for the school and the wider residential area.

Q. Do you have with you a copy of the caucusing report that –

A. Yes I do.

Q. In paragraph 2.10 of that report –

15 **THE COURT: JUDGE NEWHOOK**

Paragraph?

MR ALLAN:

2.10 sir.

20 **CROSS-EXAMINATION CONTINUES: MR ALLAN**

Q. This is the paragraph where the caucusing experts are discussing the fact that full agreement between them regarding allocation of the ventilation stack was not reached, and there's a commentary in about the fourth sentence of that paragraph, that says, "Impacts resulting from alternative options 1 and 2, would result in the requirements traditional earthworks and vegetation removal." Now those options that you're referring to there, are the ones shown on attachment 1 of the caucusing statement aren't they?

A. Yes that's correct.

30 Q. And that's the plan that was introduced in evidence by Mr Walter, as annexure E to his statement, are you familiar with that?

A. I wasn't here when Mr Walter was giving his evidence but...

Q. If we could just refer to the plan at the back of the document then. That plan shows the proposed stack location, adjacent to the kindergarten and then three alternative vent stack locations?

5 A. That's correct, yes.

Q. And in that extract I've just put to you, you're discussing options 1 and 2 and there's a comment that those options would result in the requirements for additional earthworks and vegetation removal. Those are the options on the eastern side of Great North Road aren't they?

10 A. Yes that's correct.

Q. Would you accept the extent of earthworks and vegetation removal required for those options is actually quite limited?

0950

15 A. Without having seen the actual details for it and just having a look at the information that we have on the overlay for the aerial photograph, I couldn't imagine that because the stack locations are so closely aligned with the road that it would require major vegetation removal, and given that they – some of the higher part of the ground most of the earthworks would be restricted to the under, underground and getting the ventilation
20 pipes across Great North Road.

Q. And the block of land straddled in part by alternative vent stack 1, but also to the south of it, is the block that's to be used up for construction area isn't it?

A. That's my understanding yes.

25 Q. You go on in that paragraph 2.10 of the caucusing statement to say, "However, these locations would provide greater separation from Waterview Primary School, Waterview Kindergarten and the residential neighbourhood. The existing large scale trees in the reserve would compliment the scale of the stack. Are those comments that you still
30 stand by?

A. These were the joint agreed statement. Yes I do stand by those comments.

Q. Would it be your opinion that the advantages that are recorded in those last two sentences would outweigh the disadvantages in terms of the first sentence that I read to you?

A. So by that you're meaning the vegetation removal and earthworks –

5 Q. Yes.

A. - as opposed to - yes that's correct.

Q. You go on to paragraph 2.11 of the caucusing statement Mr Pryor and this sets out the positions of the various experts at the caucusing session, and you are the last listed and you have four bullet points underneath your name and I'd like to take you through each of those in turn. The first statement was made in your regard is that you do not support the proposed location at either height, and by that I take it you're meaning that you wouldn't support a 25 or 15 metre stack in the location currently proposed by NZTA, adjacent to the school and kindergarten boundary?

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15

A. That's correct. The location is approximately 10 to 12 metres away from the boundary so at either height I wouldn't support the stack in that location.

Q. You then refer in the second bullet point and you say at 15 metres you prefer alternative option 2, which is the option adjacent to the BP Service Station?

20

A. Yes that's correct.

Q. There's no preference expressed in terms of the 25 metre stack. Do you have a preference in terms of those four locations shown on the plan for a 25 metre stack?

25

A. I'm still of the opinion that 25 metre height in any location would have significant adverse visual and landscape effects.

Q. So your position would be that it shouldn't happen at all at 25 metres?

A. At 25 metres, that's correct yeah.

30 Q. And if it had to happen at 25 metres because there had to be a road and there had to be a ventilation stack for that road, which of those four locations would you, albeit reluctantly, have to plug for?

A. Of those four locations I'd still be of the opinion that option 2 was the better location of them all.

Q. You go on to say you do not support alternatives 1 or 3. If we can deal with option 1, because that's the one that my clients are proposing here, I'd like to explore that a little further with you. Ms Absolum's evidence was that option 2 is preferable to option 1, but there's an issue as to jurisdiction in the sense that option 2 is outside the designation scope whereas option 1, with a little bit of diggery pokery, can be made to go inside the designation area. If option 2 was removed from the equation because of that jurisdiction issue where would your preferred option then be, in terms of the three that are left on the plan?

A. If option 2 wasn't feasible then certainly option 1 would be preferable. The reason why I considered option 2 as being the best option of those four was that it's, it would be seen more in association with the commercial attributes of the BP Service Station and could be assimilated more into that landscape, whereas option 1 is slightly more removed. But certainly of those if option 2 was removed from the equation then option 1 definitely.

Q. The final bullet point says, "If the Waterview Kindergarten were permanently relocated then 15 metres in the current location is acceptable." That statement seems to me to clash a little bit with the answers we – you gave me a little bit earlier. Is it fair to say that that fourth bullet point really records the position in terms of your client as opposed to a professional opinion in terms of what might happen with the stack, regardless of whether the kindergarten comes or goes?

A. The bullet point 4 is the view in terms of my brief for the kindergarten. Of course when I was preparing the brief there was no discussion about proposed alternative locations. So of course my evidence wasn't able to take those options into consideration. So that fourth bullet point in relation to the permanent relocation of the kindergarten relates to my opinion that if the kindergarten were to be permanently relocated then

15 metres, as opposed to the 25 metres, from visual and landscape terms in its current location would be acceptable.

Q. In terms of the effects on the kindergarten?

5 A. In terms of the effects on the kindergarten, but not the wider school and residential area to the west.

CROSS-EXAMINATION: MS JANISSEN

10 Q. Thank you for clarifying that last bullet point. With respect to the 25 metre stack you indicated in response to questions from my friend that you would not support the stack at a 25 metre height in any location, is that correct?

A. That's correct.

15 Q. Your own counsel took you through or back to your evidence-in-chief at paragraph 5.4 where you stated that the permanent relocation of the kindergarten is an appropriate and practical measure that would mitigate the adverse visual effects of the ventilation stack to the kindergarten. Are you changing your opinion on that now?

20 A. The – when I was preparing the evidence there was, well the reduction in height from the 25 to 15 only came about as a result of – or that information only came to light in the caucusing. When I was preparing the evidence there was, the stack was 25 metres and if the kindergarten was to be permanently relocated then that would mitigate the effects on the kindergarten. Since the caucusing and other engineering attributes that have arisen all of the landscape witnesses are of the opinion that 15 metres is certainly preferable to the 25.

25 Q. I understand that, but when you prepared your evidence on the 10th of January you advised the Court that your professional opinion was a 25 metre stack would be appropriate if the kindergarten was permanently relocated, correct?

A. That's correct, yes.

30 **QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP – NIL**

QUESTIONS FROM THE BOARD: MR DORMER – NIL

QUESTIONS FROM THE BOARD: MS JACKSON – NIL

QUESTIONS FROM THE BOARD: MS HARDIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

5 RE-EXAMINATION: MR RYAN – NIL

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

Now, New Zealand Horse and Recreation, Ms Dostine. If you'd like to come forward. Now, you're just going to speak to your original submission are you?

5 MS DOSTINE:

Yes.

1000**MS DOSTINE READS REPRESENTATION**

10 First I'd like to take the time to address a couple of specific points from the NZTA's social impacts and assessment of effects reports. I notice that each time the pony club grounds are mentioned additional modifier comments were also included in what appears to be an attempt to diminish the value of the pony club in the wider community. The first is the phrase, "This part of the
15 park is fenced off from public use." Used in the social impacts report and throughout the assessment of effects as a preamble each time the pony club leased area is mentioned. I would like the Board and the NZTA to note that every open space and farm park in the nation, that either includes grazing animals or wishes to exclude grazing animals, is fenced off. This does not
20 however mean that the public is excluded, nor does it denote its value to the community. I point you to Cornwall Park, the volcanic cones and every regional farm park in Auckland is examples of this. It is a requirement of New Zealand law that stock not be permitted to stray onto roads and fences are also frequently in place around many public community assets to provide
25 security. This does not mean that these assets are not available to the public, nor that removal of them would not have social impacts. And of course horse riders are members of the public. The second is the mention of future plans for a marae on the site. The inference apparently being made is that the pony club is going to be replaced by a marae and therefore impacts on the pony
30 club are trivial. However, the proposed marae area is a maximum of 2.5 hectares. The portion of land is considerably smaller than that taking both

the construction yard and the permanent acquisition. The harbour view open space management plan continues to include the pony club on the recreation reserve for at least three years with annual reviews after that, and there is still some discussion about the marae location and the plans. Further, the inclusion of a marae on the land holds fewer concerns than it would of the proposed construction yard. One of the things about local urban Maori is that horse-based social programmes are often very popular and that would mean that if this marae wanted to run horse-based social programmes, it would be more important that we retain the horses on that piece of land. My final point is the referral to the pony club as a private horse riding or a private organisation. Again, it seems as if they're trying to sow the idea that as a private riding school, social impacts will be fewer than if this were a public or community facility. Over the last four years I've been advocating on behalf of the equestrian community on local, regional and national issues, which has required a substantial amount of research. In Auckland I worked with the ARC Parks to develop their horse riding policies, Rodney Economic Development Trust and Enterprise Franklin on equestrian initiatives in the equestrian economic sector and contributed to work on the ARPASS open spaces strategy as well as numerous other national and regional submissions. So I'm perhaps ideally placed to provide some context for the place of pony clubs within equestrian sport and recreation in the Auckland region and its context for the wider community. Within New Zealand public sports parks and facilities for a wide range of sports are generally provided by local councils. Auckland Council provides a wealth of public cricket pitches, tennis courts, soccer, rugby, hockey and even Aussie rules (inaudible 10:04:28), all of which is serviced by the council. Despite equestrians participation rates being as high or higher than many of these pedestrian sports, with publicly provided facilities, councils do not provide public equestrian facilities. They don't provide public livery of common land as in other countries. What they do provide is leases to a club. This is usually a grazing lease, but the club has to create and pay for any indoor facilities and maintain the land. This does not mean that these facilities are private, not that they are less valued or used by

the equestrian community or for that matter the community at large. In the 2007 ARC horse riding study, 75% of survey participants said that they used pony club grounds, that doesn't necessarily mean they're members, that means that they are people from the wider community who use the grounds.

5 Grounds with both onsite grazing for horses and sporting facilities are doubly important because they provide an entry point for new owners, non riders and those without transport for their horses. The issue of location dependence of grazing for horse sport and recreation participation is mentioned specifically in the ARPASS open spaces strategy as an important, unique quality for

10 equestrian. Councils and the NZTA have a dismal track record for making roads or roadsides that are safe for non-motorist. This means that horse riders are continually forced into purchasing and using horse trucks and floats to transport horses between where they are housed and where they can be ridden. This additional cost, the learning curve of getting your horse on and

15 off this transport and stress for new owners can be an insurmountable barrier to participation in equestrian activities. Pony clubs are usually the only places where training, competition, recreation and grazing are provided in one location. To do this requires sufficient land to accommodate all of these activities and/or the funding to establish multi-function areas. Pony clubs are

20 a national youth training organisation with strong links back to the British Pony Clubs Association. They were created within the context of the early 20th century youth movements, such as Boys' Brigade and Boy Scouts. Pony clubs were established in England to promote the ideals of sportsmanship, citizenship and loyalty to create strength of character and self discipline.

25 You'll note that they weren't created as riding clubs. They were the first youth organisation to include girls. New Zealand pony clubs are based on the English model but started with a decidedly more egalitarian focus. They stress that you did not have to own your own pony to belong, they strongly promoted riding instruction and their training of instructors, due to our colonial

30 lack of riding schools, that's the lack of private riding schools, that the reports are talking about. And we have far more city children join than our English originators. Pony clubs today are the entry level for sporting competition for

several equestrian sports and showing. This grass roots level of competition is often what is not understood. Each pony club runs open competitions as part of their obligations to the Pony Club Association. “Open” meaning that anyone can pay their fee and compete on the day. Again, this is a way for those without transport to compete, learn and socialise at a wider level. The community essentially comes to those who graze and ride at that pony club. There are around 20 different disciplines under the umbrella of equestrian sport. The Olympic sport of eventing is one for which New Zealand is particularly internationally renowned. It may seem unlikely that our local pony club grounds could have any effect on Olympic sport. However, each club is an important and unique training ground. Unlike rugby or field sports, where a standard field is required, equestrian cross country is more like golf, every course is designed to be different. The special characteristics of the landscape and the individual jumps is what tests the skill of horse and rider. Most courses allow for several levels of competition and so horses and ponies continue to use pony club grounds gaining experience at different levels by way of participating in each of the clubs open competition days. Whenever a cross country course is lost, this is a loss to the entire eventing community. A further consideration is, that unlike any other sport, there are two competitors in equestrian sports, horse and rider. Both need training and even if one is not destined for greatness, the other might be. Both Mark Todd and dual gold winning Charisma, are separate products of pony clubs. When New Zealand riders and horses do well overseas, international buyers come looking for New Zealand horses to buy. We have an existing export market for sport horses, for show jumping, endurance racing and eventing. The more our local, regional and national network facilities are eroded, the fewer participants we have at grass roots, the less likely we are to continue with our international successes. So it is not at all farfetched to mention that there is a linkage between our equestrian economic sector and pony clubs. Grounds like the one at Te Atatu are valuable because they are close to the city. It enables participation for a wide range of socio economic groups. It makes up part of the local network of grounds, and therefore courses, in the Waitakere

South Rodney catchment and it is a gateway point for many novices or those without the ability to travel and meet or see other competitors and riders. Thank you.

QUESTIONS FROM THE BOARD: MS JACKSON

- 5 Q. Ms Dostine, the lease you have with the council at the moment you said that you're guaranteed to be there for three years and then you're renewal – I understood I read somewhere that you're on a month by month. Is that not correct?
- A. It's not my lease, I'm not with the Te Atatu Pony Club, but yes the
10 Te Atatu Pony Club are on a month by month lease, however there's an open spaces management plan that applies to all – there's management plans that apply to all recreation reserves and parks and that within that management plan it states that the pony club is expected to be there for three years with a yearly review after that. The month by month lease at
15 the moment is due to a legal claim that is over the entire space of the land, which is a complicating factor.
- Q. When you say people from the wider community use those grounds, do they have a key system or something do they so that –
- A. No they just –
- 20 Q. – people that don't belong to the club can get in?
- A. If you're talking about people with vehicles driving onto the grounds, there is an area which is the club parking ground which has a key, but there are walking trails all around the park and people can just walk over the fences.
- 25 Q. No I was talking more about other people with horses?
- A. Other people with horses, yep. You – so there's two parts to that. If you want to arrange with the, with any pony club to go and use their grounds then you would contact the pony club and make whatever arrangements you need to do. If it's an open completion day then the day is open, so
30 everyone just turns up at the appointed time and pays their fees and goes on and does whatever the competition is of that day.

Q. So are you the person to ask about the facilities that the club has?

A. No that would be somebody from the pony club.

Q. Somebody from pony club?

A. Yep.

5 Q. Okay so I will ask you though, the likely effects of having a construction yard in amongst the pony club. Have you seen the mitigation offered by NZTA? They've turned the yard around –

A. Yes.

10 Q. – and what are your concerns about noise? Do you think that's been adequately addressed?

A. From what – from the discussions that I've had with the people from the pony club that there are still considerable issues to discuss about some of those mitigations. There seems to be the idea that it's really not that big a deal and that, you know, they can mitigate them in the same way that you would mitigate if you had a neighbour who was a person, but these aren't people that are your neighbours. So you need to think from a horse perspective and a safety perspective for the people who might actually be going across that land. So if you have a loud noise or something that's not mitigated by, I don't know the normal hubbub noise that you might effect or might try and mitigate that could set off a herd reflex and if somebody is walking their dog or walking across that field they aren't – if they aren't horse owners they can get severely hurt if there is a herd reflex to a loud noise. More particularly, my particular concern is that I haven't seen anything with regards to the seriousness of how much liaison there needs to be between the club and the construction site management with regards to ongoing health and safety management of that site. So it needs to be crystal clear that if they need to make a change to a fence or make a change to water or anything like that going on on that site on an ongoing basis, that has much more serious effects if a horse gets out onto the motorway or a horse gets out even onto Te Atatu Road, or a horse goes without water for a few hours.

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Q. Is noise the only effect that you have concerns about or is there –

A. No there's –

Q. – something else?

A. – a whole series of effects. I mean the biggest one is just the reduction
5 in land size. I mean there's 4.7 hectares I believe going into the
construction site, plus they're taking another .7 of a hectare for
permanent acquisition. That's an extremely large chunk and the chunks
– chunk that's being taken is basically the flat land there. Now the
10 biggest effect there is, yes you might be taking grazing land, but you
have to understand that that particular pony club uses all of that land in
a multifunction way. So you need to either have a large area of land
that you can rotate round as sometimes your horses are grazing on it
and sometimes you're using it for training and competition and
sometimes – and then it gets rested and all the rest of it, or if you're
15 going to take a large proportion of that land then you have to have that
mitigated by having multifunction areas. So at the moment Te Atatu,
because they're in this position where there's claims over land and all
the rest of it going on, they can't fundraise for instance to put in their
own facilities, multifunction facilities and they've got a large area of land.
20 But in order to mitigate the loss of four and a half, nearly five hectares of
land, which is 11 acres and an old bunny, you would have to put in
something like an all-weather arena and all-weather tracks around the
place in order to mitigate the loss of grazing land because otherwise it's
just not going to work. So you can't, you know – I've heard the phrase
25 several times that they think they're replacing like for like. Well you
can't replace like for like unless you've got another five hectares to give
them.

QUESTIONS FROM THE BOARD: MS HARDIE

Q. Ms Dostine, you mentioned – and this may not be you, this may be
30 Te Atatu Pony Club I need to ask the question of – you mentioned the
fact that the future plans for the marae, 2.5 hectares, is smaller than the

construction yard. I'm not that clear where the proposed marae is. We have had a copy in E2 which refers to a small section –

A. Mmm.

5 Q. – that's shown. Is that, to your knowledge, is that the extent of the marae land?

A. Well –

Q. That's proposed?

10 A. Yeah. In the – there's great debate in Waitakere and has been for a very long time about what's happening to that land, what is happening to the marae, where the marae is going to be, whether there's going to be a marae, but the latest open spa – the only definite information that is around is the open spaces management plan, and that shows the marae further up the hills than the current construction yard and in the original council proposals they definitely said that there was a maximum
15 of 2.5 hectares. So originally they were either going to buy some land for the marae or they were going to place it on that reserve, but it was always going to be a maximum of 2.5 hectares.

Q. And is – again this may not be you – but is the legal separate from the marae as just something that's covering the whole area?

20 A. The lease?

Q. The month to month grazing –

A. Yes.

Q. - that the pony club has at the moment, is that – you said it's to do with a legal issue? Is that separate from the marae development?

25 A. Yes, yes. So there's a – so what's happening apparently at the moment is that there is a claim on – the original land that was taken from what's this area which is known as “the people's park” was apparently originally acquired by Waitakere Council under the Public Works Act. It wasn't used for the purpose that it was meant to be used for. The original, or
30 descendants of the original owners have now got a claim in which I believe they lost and it's gone to appeal, but that seems to be holding up works on all of the development of the people's park, which is what's

covered by the management plan. But most of that development, if you like, the park actually fits into two sections. There's the northern park which isn't discussed in any way around the pony club, which is a scenic – which has been, or going to be, allocated as a scenic reserve. And then the southern half which is the pony club leased area, is a recreation reserve. So the pony club, the area that we're talking about, the however many hectares it is, is the part that's the recreation reserve and that continues at, in theory, to have the pony club on board and then a small section taken for the marae.

- 5
- 10 Q. I think we can all appreciate how unpredictable horses can be, those of us that have had some involvement with them so we appreciate your comments in terms of mitigation that's necessary to deal with various noise movement issues with ponies.

1020

15 **THE COURT: JUDGE NEWHOOK**

My question's for Ms Linzey, how's progress with the application for resource consent for the construction yard, well Ms Janissen –

MS LINZEY:

- My understanding is that we'll get the decision for that case on Friday last week so –
- 20

THE COURT: JUDGE NEWHOOK

Yes a tick or a cross?

MS LINZEY:

And it was granted consent.

25 **THE COURT: JUDGE NEWHOOK**

Granted consent?

MS LINZEY:

That's correct.

MS JANISSEN:

I think we can get some extra copies they might have been in Court yesterday
5 but I'll find them.

THE COURT: JUDGE NEWHOOK

Yes thanks Ms Janissen if you can arrange that. Okay that's helpful to have
that update thank you.

QUESTIONS FROM THE BOARD: MR DORMER – NIL

10 **QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP – NIL**

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

Now we've got the West Auckland Pony Club, Mr Wood please come forward. Morning Mr Wood, please have a seat and make yourself comfortable, and offer us your presentation.

5 MR WOOD READS REPRESENTATION

Your Honour may it please this Board of Inquiry, my name is Jeffrey Wood I represent the West Auckland District Clubs, in the capacity of district commissioner. Today I present our position and opposition to certain parts of
10 the proposal the project known as the Waterview motorway extension. Specifically I'm concerned about the siting or the impact of a siting of construction yard 1 in the middle of the Te Atatu Pony Club, and the effect of that siting of construction yard will have on club operations. More specifically the welfare for the riders and the ponies and horses. The Te Atatu Pony Club
15 is a branch of West Auckland Pony Club, these clubs are members in a New Zealand Pony Club Association. Membership in the West Auckland District continues to grow. Te Atatu members learnt to ride in the certificates of competence and horsemanship compete at and host events, learn to work together as a community and team, and as you'll learn later from Ms McBride
20 who follows me provide considerable service back into the Te Atatu community. The branch in question is small, this is not the lack or the result for lack of interest but rather the result of the location over the past 40 years on land that has been contested. With more permanence this sporting club had, and has the potential to be a large club serving the
25 equestrian needs of not only the Te Atatu area, but also the western half of the Auckland isthmus. As you've heard from Dostine equestrian sports have a large participation following in the Auckland region, giving permanence Te Atatu will grow significantly but having a construction yard in the middle of their grounds during the planned construction period makes growth difficult
30 and adds to the woes. The council's own long-term recreational spaces plan as Ms Dostine has indicated includes pony club. But to have been unable to

make a start to grow that plan and partnership with council and community is problematic. It will be difficult under the circumstances proposed by LT that in losing almost a hectare of land alongside – that is .7 of a hectare alongside the North Western boundary for road extension, and having their prime

5 teaching and competition spaces being gobbled up by a large construction yard, it will be very difficult without the co-operation help of Land Transportation to raise sufficient funds to maintain operations. To explain briefly the branch depends on a variety of fees to operate as a sporting club. Specifically these fees include membership, grazing fees, and event entry

10 fees. Simply with the reduction of space and construction activities over the fence, the club is less attractive to prospective members. Less grazing space equals less membership options, reduced space to host events, reduced grazing, reduced membership fees, adds up to a branch that will struggle financially. The pony club community as evident in the letters that I submitted

15 from our national association president, the NZPCA office and local clubs. This community is concerned that the loss of these club grounds will have a significant impact on the availability for a growing interest in an organised pony club experience. Membership in the New Zealand Pony Club Association exceeds 9000. The sport is not a rural sport as some people

20 have characterised. Over the past five years the urban based members residing in the five main urban centres in New Zealand had seen membership growth from 23% to now 27% with the national membership. The point I want to emphasise is that this is not a rural sport, there is growing interest amongst the urban communities. There are just two branches on the Auckland Isthmus

25 Meadowbank, and St Heliers. To the south is the Mangere Pony Club, and on the North Shore is the tiny Chelsea, on Cemetery Reserve, and the Rosedale Pony Club in Albany. There are no branches serving the Western and central area of the Isthmus an area that is showing increased membership, but finding it more and more difficult to find a close by equestrian experience.

30 Therefore the Te Atatu branch is ideally sited to provide for this growing need, if it is allowed to operate. We seek the support of this board to ensure that the siting and operation of construction yard number 1 take into consideration the

importance of colorations between the various parties to assist this community-based club to survive and flourish. The second consideration I wished to re-emphasise this morning, is consideration for the health and safety of a rider, and persons around – working around ponies and horses, and the animals themselves. What we want – excuse me, what we know and want those operating the construction yard to know is they have an obligation to reduce hazards associated with their operations, and maintain attitudes and practices that ensure our right as young and old, and that ponies and horses are safe from injury. There is little in the literature to add to expression of concern and request for the support of this. Academics can find nothing similar in the literature and veterinary expertise is anecdotal in nature. I've talked to the president of the International Equine Behaviour organisations, professors of equine veterinary sciences, senior inspectors of the New Zealand Society for the prevention and cruelty to the animal as well as knowledge for equine practitioners. They all agree that the construction yard activity presents concern for the safety of people and horses. My concern is that practice will emphasise this, my concern is that practice suggests that the welfare of horse and rider is being brushed off. We collectively know that equine animals are fright and flight responders, meaning when startled or feeling under threat they do one thing, run. The only known studies in the impact of sound on horses and ponies, particularly loud and or sudden noise, were conducted in Europe with the growth and interest of supersonic travel and the associated sonic booms around airports. This sport has had the impact of wind farms on equine animals and the horse business operations. Mr Black in another enquiry has suggested that there is no impact, we agree that horses and ponies do adapt to background noise, however construction noise is problematic though untested in our Courts. In personal communication with an equine business owner located in the Queensland Sunshine Coast, I understand from newspaper and personal communication that she's currently seeking relief from the State of Queensland authorities for damages resulting from the impact on her horses, when a gas pipeline was constructed through her property. Personal communication suggests that the

sound associated with the construction has resulted in all her horses needed adjustment. In other words, retraining at considerable expense. The loud noise scenario has been played out and reported in my submission regarding fire crackers exploding near horses, causing them to run and suffer significant injury including death. These sudden noises might be our fear, similar to unsafe and inconsiderate operational practices on the other side of the fence that Land Transportation is willing to construct. A bolting horse presents a significant safety concern, not only for the rider but people on the ground grooming, who are in the path of that fleeing horse or horses, as well as to the horse or horses in the herd. I have submitted evidence in my submission reporting the same Te Atatu branch losing a member's horse, named Cracker. When a person or person threw a firework onto the roadside paddock. Discussions and negotiations with Land Transportation has, by agreement, been collaborative, but with no due respect for the Agency's representatives agreement between that Agency and Te Atatu Pony Club's landlord, the Auckland Council, may undo that goodwill and collaborations. Meaning, that if the welfare of the horse, pony and rider are not considered by having knowledgeable equine people involved in that planning, it may be problematic and lead to tragedy. We request that this Board of Inquiry required Land Transportation to be held responsible to ensure that the welfare of people and animals are considered when providing noise or other starter, or startled trigger abatement measures. Further, we request that legal obligations of being a safe neighbour and operator be established and enforced. To better understand the siting of this construction yard in the middle of the Te Atatu Pony Club grounds, we ask that this testimony be considered part of that that proceeded from Mr (inaudible 10:32:54) and that follows from Ms McBride. So that our combined concern for the need to provide equestrian experiences in the urban area and the need for safety and financial operational support for this sporting club be understood and enforced. Thank you for your attention Your Honour and members of the Board.

THE COURT: JUDGE NEWHOOK

Thank you Mr Wood. There may be questions for you, I'll start again with Member Jackson.

QUESTIONS FROM THE BOARD: MS JACKSON

- 5 Q. Just a couple of questions Mr Wood. You said you get your income from membership, grazing and event entry fees. If the Te Atatu Pony Club wants to build a new clubhouse, who funds it, does the Pony Club Association fund it or do they fund it themselves or does Auckland Council throw some money in too?
- 10 A. Hopefully it would be a collaboration between the landlord and the club and private fundraising efforts that might follow that.
- Q. The other question, I'm well aware that if a horse is startled it runs. The fences around what is planned to be the construction yard area at the moment, the next fence out that the pony club has, what are they, are they eight wire, post and wire?
- 15 A. I believe they're seven wire.
- Q. Post and wire?
- A. Yes.
- Q. So my question is, would it help if the first paddock back from the surround of the construction yard, would it help if that was timber rails?
- 20 A. The recommendation from the President of the International Equine Behaviour Association recommends two metre post and rail for the safety of rider and horse.
- Q. Two metres high post and rail?
- 25 A. Yes.
- Q. Almost like a cattle yard?
- A. Yes.

QUESTIONS FROM THE BOARD: MS HARDIE – NIL**QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP – NIL**

QUESTIONS FROM THE BOARD: MR DORMER – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

WITNESS EXCUSED

MS MCBRIDE:

Members of the Board and Judge Newhook, thank you for hearing us today. My name's Bernadette McBride and I've been appointed by Te Atatu Pony Club to present the club's submission today. I also provided a statement of
 5 non expert evidence in support of the club's submission. So today, I would like to –

THE COURT: JUDGE NEWHOOK

Yes, we've been able to read that.

10 **MS MCBRIDE:**

Fantastic, sorry it was a bit lengthy.

THE COURT: JUDGE NEWHOOK

That's all right, we're presented with statements of various lengths from people and so we've tackled them all.

15

MS MCBRIDE:

So today what I'd like to do is update and expand on our original submission. We have struggled as a sporting organisation run by volunteers to meet the expectations of the submission and hearing process and we would sincerely
 20 like to thank the friend of the submitter, Brian Putt for his invaluable guidance and support with this process.

MS MCBRIDE READS OPENING SUBMISSIONS

25 "So the aim... pony club apparatus."

THE COURT: JUDGE NEWHOOK

Q. If you'd pause for a moment. You've given us a summary essentially of your appendices, being these letters from NZTA. You make the call, do you think it would be useful for us to sit here and read these quietly to
 30 ourselves, these letters or are you happy with your summary for the

present purposes and leave us to read them later. One way or the other we will read them, we promise you that but for the purposes of your presentation if you'd like us to read them, then we'll stop you and do that?

5 A. Well what would the Board find more beneficial?

Q. Well we don't know because we don't know what's in the letters, you do. That's why I think usefully it would be your call.

A. Okay, well it may be helpful then if you want to take some time and have a read through them before I continue.

10 **COURT ADJOURNS: 10.40 AM**

COURT RESUMES: 11.05 AM

THE COURT: JUDGE NEWHOOK

All right sorry for that interlude Ms McBride. We have now been able to read your attachment so we're up to date with the detail of what the NZTA have
5 been saying to you. You wish to offer us some commentary now.

MS MCBRIDE:

So are you happy for me just to continue?

THE COURT: JUDGE NEWHOOK

Yes you keep reading your submission, yes.

10

MS MCBRIDE CONTINUES READING OPENING SUBMISSIONS

"So however the... request for support." Thank you.

1110

15 **QUESTIONS FROM THE BOARD: MS JACKSON**

Q. Now just to work out how busy your club is, how many days – put it his way, is it mainly Sundays when you have your organised pony club activities?

A. No we have rallies on Tuesday nights and we have people come in and ride and my daughter rides five days a week at hen's rallies on a
20 Tuesday night, and we have often people coming in for lessons. We sometimes set up events so, yeah it varies.

Q. So it's more than just one day a week?

A. Oh it's an everyday activity, yeah.

25 Q. If you run a show jumping event, how many entries would you get?

A. Yeah, up to 120. It depends what else is happening at that time and what kind of course we're offering. We've put a lot of work into our cross country course over the last few years. We've built some really

neat jumps and so we've had a lot of interest because it's different from some of the other cross country courses and that's increased numbers at times.

Q. But what about for show jumping as opposed –

5 A. For sure that –

Q. – to cou –

A. – would be similar because people often come and do three events through the day, 'cos when we offered a one –

1120

10 Q. Oh, like a three day event?

A. Yeah often we offer a one day event but we offer all the different activities as part of that.

Q. So it is quite significant isn't it?

A. Yes it's very significant.

15 Q. How big is an Olympic dressage arena, is it 80 by 40?

A. An Olympic, yeah probably is 'cos I think an average is about 60 by 40, and imagine it would be slightly bigger –

Q. A bit bigger?

A. – yeah.

20 Q. Okay.

A. And cross country course size normally takes about two and a half kilometres, and what we do is it actually goes around the boundary fence to give us that length, which is why we can no longer do it when the yard comes and we lose that hectare, across the boundary by the motorway paddock.

25

Q. I'm surprised you say that the five metre width is sufficient for your raceway?

A. I guess none of us are kind of planners or engineers, and from what we could work out about distance we figured that would be sort of adequate for vehicles and passing by yeah.

30

Q. I'd be more worried about two horses trying to pass each other –

A. Yeah.

- Q. – and one takes exception to the other and they've got a pretty good reach and –
- A. So may be that that needs to be slightly wider year, and I like I say that's based on our estimation yeah.
- 5 Q. And you would do that in rails I would imagine, not wire?
- A. Yes.
- Q. Yes?
- A. Yeah.
- 10 Q. The difference between plywood and fibre cement sheet I would imagine would be about \$700 in a vet's bill?
- A. Yeah.
- Q. That's about all that difference is going to be.
- A. And I think that's why the fencing issue is so important, and we kind of want that to be continued as part of discussions.
- 15 Q. All right so this new grassed area.
- A. Yeah.
- Q. East of the construction yard, is that instead of your dressage area or as well as?
- A. Well it kind of is, it's not so much that it's a new area we already have that area, but it's not – because the piece of land that the yard's going on is the flattest piece, we use that a lot for dressage. And so what we've said is if we have to use another piece of land for that we really need something flat.
- 20 Q. Levelled you just want it levelled?
- A. Yeah, yeah so that's what that's about, and again kind of keeping it further away from the yard so we don't have to set out things too close, so we keep thing of distances as well. So it's not just the loss of the actual land that the yard, it's also about maintaining some distance which is kind of further land loss to some degree, 'cos we're very much
- 30 Q. But if you put sand on that couldn't that almost be – I mean you don't need a top level dressage arena?

A. We didn't ask for sand on that flattened area, we just asked for that to be flattened.

Q. But if you did would it be able to almost double as a dressage arena?

A. Um...

5 Q. It wouldn't take a lot of work would it?

A. Can I just get one of my colleagues, 'cos she's much better on arenas and stuff than I am?

THE COURT: JUDGE NEWHOOK

Would you just like to go round and ask her about that and then come back,
10 just do that and while you're doing that I'll just for the record just explain that as may be becoming fairly apparent, and I think as previously stated Member Jackson does have some specialist knowledge in these matters from her own personal experiences in these kinds of organisations.

15 QUESTIONS FROM THE BOARD CONTINUES: MS JACKSON

A. I guess what I probably need to highlight that mentioned in my report, yes it could do that but it's the combination of areas that we need, and so we could alternate it but again, if say for example we running a rally night and we needed three different areas that would make it quite
20 difficult if we only had one like that. So it's that idea around the combination of these three different sort of –

Q. Because when you have a rally like you've got –

A. Yeah.

Q. – like little kids at various levels?

25 A. We've got little ones, yeah we've got various levels, and various kind of levels of experiences and so it takes a lot of planning and different areas to use. And also as well because they do need to be – when we do a rally they do need to be able to experience different types of activities if they're going to achieve the certificates. So it's not like we can just do
30 dressage with them all the time, they actually need to experience quite a wide variety.

- Q. Okay I'm just trying to see if you could sort of build one thing and make it work for numerous –
- A. Yeah, and I guess if we had more land to use yes that would be a great option, but we don't so that's the idea of having the different areas. And then being quite safe contained areas as well.
- 5 Q. And just one last question, I did read in the original material about an offer of replacement feed?
- A. Yeah.
- Q. And I would think that that was quite important?
- 10 A. Yes, yes.
- Q. Because I appreciate the point that's been made that you can work on your pasture land if you've got enough.
- A. Mmm.
- Q. Then pull them off and let it recover and then use it again for grazing.
- 15 A. Yeah.
- Q. But of course if you run out of land in a winter you're stuck?
- A. And that's the whole reason again for wanting two places with flooring that we can use all year, because it keeps us off the pasture land and stops that from getting damaged as well. So yeah there's a whole load reasons around what we've requested.
- 20 Q. So if I grazed my pony at your pony club.
- A. Yeah.
- Q. Do I pay extra if my pony is fed hay in the winter?
- A. Yes, it depends on the level of grass that we've got, this year because we're reseeding we shouldn't need any extra, so it really depends on how much grass we've got and that will vary from year to year. It has been covered under membership cost, but again, it just depends, yeah because you never know what the weather's going to be like, how the grass is going to be so yeah it's hard to put effects on that.
- 25 Q. But they would pay extra if there was additional feed supply?
- A. If it went over and above the cost that we felt membership covered –
- 30 Q. Okay fair enough.

A. – and grazing covered yes.

QUESTIONS FROM THE BOARD: MS HARDIE

5 Q. Just following on from a question from Ms Jackson, when you just said there that this year you shouldn't need any more because you've regrass –

A. Well that's what we're hoping.

Q. – is that based on having the total area that you've got at the moment?

10 A. Yes, yes, and I guess that's a thing to be mindful of, that's based on the current area so if we've got less area it means a hell of a lot more hay than we would even have to look at in a bad year currently, yeah.

Q. And just your one day events that you talk about that you can no longer – it won't be viable for your cross country course –

A. Yeah.

15 Q. – how much of your – the money that you bring in each year or that you collect in terms of fees which you get to keep in terms of pony club, because I know this proportion goes off to the national group?

A. Yes.

20 Q. How much of that money, you know the – in terms of your costs for running and I guess the subsidising for your members, comes from the one day events from the cross country events?

25 A. The one day event is our biggest fundraiser there has been years where that's kind of been probably our biggest area of money, yeah. And again, because we do need to up keep maintain the land, we need to up keep and maintain resources, that costs money and there's no way that the memberships would cover, we'd be kind of scraping by doing the bare minimum. Whereas yeah, we're trying our best to keep everything in good condition, and expand and improve yeah.

30 Q. So just a ballpark though in terms of money, are we talking 5000 are we talking 2000?

A. In terms of?

Q. Just the one day events where –

A. Of what we would raise?

Q. – in terms of the cross country course?

A. I'll just go and check with my colleague.

5 Q. Thank you.

A. As a rough ballpark figure, we usually run three to four events a year and that would raise about 8000 overall, it's hard to separate it.

Q. Sure.

10 A. Because if you don't – if cross country people often just won't come just to do dressage, and it's our biggest – it's our biggest income.

Q. Okay.

A. Biggest area of income, so it's...

UNKNOWN:

15 Excuse me. Can I just correct that, just the overall income it equates to about 80%.

QUESTIONS FROM THE BOARD CONTINUES: MS HARDIE

20 Q. And I see, and I guess you've got a copy, but we have a copy of the Henderson Massey Local Board open agenda which talked to - I understand that you had applied for extra land –

A. Yes we had –

Q. – and they've declined that?

25 A. Yeah, yeah. And that's why we've kind of then had to come back to these other options, we would've still required some options but with not getting the extra piece of land we have to really get creative yeah.

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP - NIL

QUESTIONS FROM THE BOARD: MR DORMER - NIL

1130

MR DORMER:

No questions of the witness, but Mr Wood referred I think to something he described as an open space management plan prepared by the city.

THE COURT: JUDGE NEWHOOK

5 Yes that's in this (inaudible 11:30:20) Ms McBride's as well. Was that amongst the materials that...

MS MCBRIDE:

I think it's in amongst Vivien's materials that she –

THE COURT: JUDGE NEWHOOK

10 Vivien Dostine's materials?

MS MCBRIDE:

Yeah.

THE COURT: JUDGE NEWHOOK

15 Forgive us, you lodged so much with us and we have been through it, but I can't remember the last item.

UNKNOWN:

I don't believe it has been presented.

20 **THE COURT: JUDGE NEWHOOK**

That's an Auckland Council document is it?

MS MCBRIDE:

Do you want this copy, would that be helpful.

25 **THE COURT: JUDGE NEWHOOK**

Is that an Auckland Council document is it?

MS MCBRIDE:

It's, well it was Waitakere City Council because it was (inaudible 11:31:03).

THE COURT: JUDGE NEWHOOK

Yes I wonder if you would speak with members of the EPA when you're finished and arrange for them to provide copies to us and to NZTA and any
5 other party who's interested.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

Star Mills Preservation Group, Mr McCurdy.

MR MCCURDY:

5 Thank you for the opportunity to make this representation on behalf of the Star Mills Preservation Group. I've attended a number of the sessions of the hearing and followed as much as possible of the transcripts and it has been a little to the detriment of my current heritage conservation projects, but I'm the only one in the group who's self-employed so I'm the one who's been coming.

10 **THE COURT: JUDGE NEWHOOK**

Sorry about that, but there are many in this room and who have been through this room in the last few weeks who share that disability I think.

MR MCCURDY:

15 With this project I've come for the first time to the Environment Court and the RMA and the EPA and I do wish to acknowledge the direct engagement of the Board in resolving issues, and also the progressive improvement in the proposed conditions that's taken place during the process, submissions, caucusing and in the hearing. What follows is pretty much the same as in the
20 statement of evidence. Shall I read that?

THE COURT: JUDGE NEWHOOK

Well if – no we have read all the material. If you'd just like to either have us take it as read or mention anything in particular to highlight and then move to the next section.

25

MR MCCURDY:

The only change there is that I'm also representing Robert Mason and Stephen McCurdy, who made individual submissions.

THE COURT: JUDGE NEWHOOK

Yes, thank you for that.

MR MCCURDY READS REPRESENTATION

5

“The overview. The... would be useful.”

Could we have picture 1 please. Oh, picture 2. Just for context, very briefly,
picture 1 below the mill you see a low stone wall. That survives and picture 2
10 that’s part of the wall showing above the high tide level. You see just to the
left of the gang plank there’s a hole in the wall. That stone is in the creek and
there’s similar ones – restoring that wall is a relatively simple matter too. It’s
1890s date at least. Next picture please. And that’s the boiler, a Cornish
boiler made of iron from 1879. Once again survived quite well, but it does
15 need conservation work, needs lifting off the ground and turning upright again.
It’s lying on its side, but in general that’s a relatively simple matter and it’s
lasted 130 years. It’ll continue to go with proper conservation treatment. And
this one, this is the landing, the miller’s landing. All the grain came in by boat
and barge and most of the flour went out the same way. Some went by cart
20 on the Great North Road. Much of this wall has collapsed into the creek, but
it’s all there. It’s more major work to restore it, but it can be done. Moving on
to condition ARC5G which was about the design of walkways and
accessways within this area.

25 **MR MCCURDY CONTINUES READING REPRESENTATION**

“We would like... beneficial to the”

1140

And I’ve added some words here, “To the immediate and ongoing protection
30 and interpretation of these historic remains.”

MR MCCURDY CONTINUES READING REPRESENTATION

“And this is... heritage positions there.”

And I've suggested wording for condition ARC6.

5

MR MCCURDY CONTINUES READING REPRESENTATION

“Condition ARC5(f) calls... are like that.

THE COURT: JUDGE NEWHOOK

10 I at least am fairly familiar with those, I share your amusement or perhaps affection for them.

MR MCCURDY:

Affection, indeed, yes.

15

MR MCCURDY CONTINUES READING REPRESENTATION

“Robina pseudoacacia has... and vegetation conditions.”

20 And wording there, that trees be felled and milled by a specialist miller and provided to appropriate heritage projects in the region. And I'd add as a note that arborists, it's beyond the skill of arborists to harvest timber for that sort of purpose. Some of our members have –

THE COURT: JUDGE NEWHOOK

25 Q. Sorry, you say it's beyond the skills of an experienced arborist?

A. Yes, you need the knowledge of where to cut, how to cut, so you don't get splitting and also you don't need the big shredder there sitting to throw the branch straight in. And member of the group have the knowledge to identify trees that would satisfy this condition and also to
30 identify fellers and millers and projects where it could be used.

MR MCCURDY CONTINUES READING REPRESENTATION

“Dr Clough and... remains are gone.”

5 It can happen. One case I saw it wasn't archaeological remains, it was a
several thousand kilowatt cable under the ground. The man had to go home
afterwards, he wasn't hurt but his face, as I say, he did like the condition of the
melted bucket on the digger. In fairness to my current projects of working with
a contractor who is an artist in steelwork and is imbued with heritage
10 conservation principles and given past history as a construction engineer, I
find this an incredible luxury. Star Mills do note, that even with the constraints
provided by the conditions any archaeological remains that are in the path of
the ramps and viaducts will be lost and some of those are identified, some
aren't yet, the sub-surface ones aren't yet identified. And the extent of that
15 loss will depend to a large degree on how surgical the procedure, the
construction methodology is in that area, it will depend very much on how that
planning is done and the work is carried out as to how much has to be lost.

MR MCCURDY CONTINUES READING REPRESENTATION

20

“The proposal will... look after themselves.”

Could we have photo 5 please. There are two shags, when I went to take the
photograph there were five. This morning when I left home to come here
25 there were eight shags on that tree, that area is very rich in bird life and fish
life. And the next photograph, that's kotare, kingfisher, just a couple of metres
from the house at the Star Mills address. They seem to return twice in the
summer, a double mating season.

MR MCCURDY CONTINUES READING REPRESENTATION**1150**

“To assist with... the causeway bridge.”

This is on the north side of the strait channel that was cut in 1952. I believe it went right through a shell bank and this is the northern side. And picture 8 too please. The sign, the motorway sign in the background says “Rosebank
5 1500 kilometres” just to give a location. So I think fair investigation is required there and, if necessary, additions to conditions C12 and C14 about stockpiling and reinstating those shell banks.

MR MCCURDY CONTINUES READING REPRESENTATION

10

“Tidal Oakley Creek... a recreational area.”

Just a quick run through the pictures, this is two generations of recreational use on the creek. He’s about to land. And boating and swimming. Next
15 picture, hard to see but there’s half a dozen swimmers in there. Next, this is the ubiquitous packing crate, sorry, pallet raft stuffed with plastic milk bottles, the trick is to stand in the middle and see how far down the creek you can get before you go over the corner. There were years and years of these children doing that, that took them a whole tide to get all three of them to the boat
20 without capsizing it. They’re grownups now, the next generation is using the creek.

MR MCCURDY CONTINUES READING REPRESENTATION

25 “Waterview Community, we... is providing habitat.”

1200

And I’m about to demolish one of my own later on. I have seen privet as habitat for nesting herons, just this last summer. I have never seen that before. We’ll come to that later.

30

MR MCCURDY CONTINUES READING REPRESENTATION

“Schedule E7 of... unclaimed moderated pines.”

These are the ones by Waterbank Crescent. Some will be in the path of the Western Ring, but not all.

5

MR MCCURDY CONTINUES READING REPRESENTATION

“Talking about vegetation... in that area.”

1205

10 There does seem to be a difficulty there, I know that’s how the RMA works, that too is disquieting and I would note that demolition in Waterview has already begun, houses are emptying, and at this point no consents have been granted. Now back to this matter.

THE COURT: JUDGE NEWHOOK

15 Q. Just on the subject of the matters you’ve raised in your section 9. I think you’ve quite properly recognised that they are matters that we can’t help you with?

A. Yes.

Q. And if you retain disquiet about them, as clearly you do, they’re going to
20 have to be taken up in other places.

A. Yes, and I think that will happen over the next period. I understand it has no bearing on this application.

MR MCCURDY CONTINUES READING REPRESENTATION

25

“And to the... last several weeks.”

THE COURT: JUDGE NEWHOOK

Well I think we can say to you here and now that’s a likely thing Mr McCurdy. Arrangements have yet to be made but there is a likelihood that we’ll repeat
30 many of the inspections that we did on the ground and we also have it in mind to commit to an overall inspection by helicopter, possibly as early as

tomorrow, weather permitting, to give us the overview of the areas, subject of the proposed project and the motorway system in Auckland.

5

MR MCCURDY:

I'd like to finish with a quotation, and you've seen it already in the Friends of Oakley Creek brochure, but as one of the authors of it, I feel entitled to bring it up again here. "And always the creek, the natural environment is the backdrop, Oakley Creek, Te Aunga, at first relied in kai moana for Maori and as a source of power generation for the pioneering miller, and later a tanner. And finally, as a place where urban dwellers can connect and reconnect to their natural environment. A sliver of green space in a highly urbanised and populated city." Thank you, and that's the creek.

15 **QUESTIONS FROM THE BOARD: MR DORMER**

Q. Thank you very much for your presentation. Not a question, but in 6.2 you suggested that default position should be the other way round?

A. Yes.

Q. And you may remember perhaps that in 2009, the RMA was changed as regards protection of trees and there was a even an article about it in the paper as recently as this morning. And I think that the effect of that amendment would make it difficult, if not impossible to meet your request here.

20 A. Right, yeah I'm not familiar with that but I shall look it up, thank you.

25 **QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP**

Q. Mr McCurdy, in paragraph 3.9 of this morning's submission, you submit that suitable trees should be felled and milled by specialist millers and provided to appropriate heritage projects in the region. If the Board were to grant consent to the project and if it were to consider such a condition, for myself I'd want to be satisfied that there were such

30

heritage projects in the offing. And that is the question of you, can you help us with that?

A. Yes, there's a vessel called the *Awatea* built in 1886, a fishing boat originally, then a yacht and it was famous as the yacht of the Hermit of Henderson Creek. The misnamed Hermit of Henderson Creek, he was a very upright citizen, chair of the local domain Board and various things. That vessel is awaiting restoration and in need of new frames and floors, robinia. The original was pohutukawa, robinia will do that job very well. The *Kestral* has come back to Auckland, kauri frame vessel, I suspect in a much worse state that the Preservation Society would like to imagine. At the moment they haven't yet done a survey. There will be need for largish curved timbers for the *Kestral*, those are two. The *Toheroa* is steel framed, that's the one I'm most familiar with at the moment, but there is kauri timber, I don't think there's any kauri in this area but possibly pohutukawa for curved members in the cabin fronts and wheelhouses for the *Toheroa*.

Q. So the short answer's yes?

A. Yes.

QUESTIONS FROM THE BOARD: MS JACKSON - NIL

20 **QUESTIONS FROM THE BOARD: MS HARDIE – NIL
1215**

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Just a quick small matter I note in your statement of evidence Mr McCurdy you said that the group is in the process of establishing as a charitable trust in the Charitable Trust Act 1957, has that been concluded yet?

A. Not yet we've got to disclose our draft constitution –

Q. It's still work in progress is it?

A. – and initial membership and then the process got stalled because concentration was on other matters.

Q. You got a bit busy here.

A. But we are proceeding with that.

Q. Yes all right, how many members do you presently have?

5 A. The first count was 30, a core of about 10 who are active and local and then 20, 20 associates. And you range from the Great Barrier Island to Dunedin at the moment, expressing support.

Q. All right and I have another question for you, if you look at your paragraph 4.4 on page 8, where you discuss –

A. Oh, this morning's or?

10 Q. Yes this morning's presentation, where you discuss shell banks and provide us with a couple of photos, I'm not sure whether this is within your area of expertise or not, but these photos don't appear to me to illustrate the sort of chenier banks that have been under discussion further out into the harbour, up the motorway alignment. And in fact one
15 almost has a suspicion that they might be midden as much as shell bank, if can you comment?

A. Yeah, where this particular channel is there's right through what appears to be a massive shell bank running from the embankment of the motorway. It's cut by the channel, and then it runs quite a long way
20 south, a few hundred metres south and...

Q. Does it have this composition, that is shell in mud, as opposed to stacks of shell like we see on the chenier banks (inaudible 12:16:52)?

A. It's – it does vary, it seems to be not stratified but graduated so and areas of quite solid shell, I mean as you see there, shell and mud. And
25 it is a great big area but it's been cut through by the 1952 channel.

Q. Yes I just wondered if an ability to uplift this shell and place it in a stack somewhere and bring it back if it's in fact shell in mud as opposed to piles of dry loose shell as on the chenier banks that have been subject to extensive evidence in other parts of the hearing?

30 A. Yes I understand, part of my motivation is that this particular channel is very stable and accessible by kayak. You can nose in step out, you try not to disturb the godwits too much on the south side, and if the new

edge of the channel is not the same being new to the same mud that you have elsewhere which is not attractive for recreational use, but probably not as healthy for the fauna either.

- 5 Q. And non-voting members of my Board might be pleased to note that I'm not going to engage in the question and answer session with you that otherwise I might have found quite fascinating myself about (inaudible 12:18:26) and floors or any other parts of a vessel. But I will refrain.

THE COURT: JUDGE NEWHOOK

- 10 We want to thank you very much for the detailed and constructive and interesting participation that you brought to much of our hearing Mr McCurdy you've attended a great deal and participated in a very constructive and responsible fashion in addition to the detail was interesting the materials that you brought to us, we particularly want to thank you. Now the next item on today's agenda was pencilled in it was an indication that if the members of the Board had questions for our –
- 15

MS DOCHERTY:

Excuse me sir sorry to interrupt me I just would like to note that the Friends of Oakley Creek actually have a couple of cross-examination questions.

THE COURT: JUDGE NEWHOOK

- 20 I'm sorry I was too busy looking at another part of this sheet and I missed you and I'm sorry for that.

MS DOCHERTY:

I'm sorry for interrupting.

THE COURT: JUDGE NEWHOOK

- 25 Mr McCurdy we're going to need you to go to the witness box.

1220

PETER MCCURDY (AFFIRMED)

CROSS-EXAMINATION: MS DOCHERTY

Q. I note that you've lived alongside the tidal inlet of Oakley Creek for nearly 25 years, I imagine you must have seen a huge amount of wildlife come and go over seasons during that time, and my question just touches on the point that you raised regarding the Monterey Pines, and I know the comment from Member Dormer that your proposed approach that vegetation should be retained. It may not be possible but I was – would perhaps put it to you that proposed condition ARC9 makes some attempt to address some aspects of your concerns raised with regards to oak trees and that they will be retained?

A. Yes.

Q. Could that possibly be an approach that would be useful for these Monterey Pines, for ecological significance?

A. Yes I think that would work well, if they could be specifically added to a similar condition, I think they're important enough to do that.

THE COURT: JUDGE NEWHOOK

Just give us a page reference in the book of conditions?

20 **MS DOCHERTY:**

For ARC 9 is page 74.

CROSS-EXAMINATION CONTINUES: MS DOCHERTY

Q. Just going to a point that you've brought up in your submission around the ongoing maintenance of the heritage area, as part of the ongoing operational footprint and I was wondering if you could point out any other – if you're aware of any other heritage areas within Auckland that have been impacted upon by roading projects, that are now the responsibility of NZTA, that could perhaps set a precedent?

A. I'm not entirely sure, but Grafton Gully springs to mind and I'm not sure about the maintenance and Grafton Gully is all that it should be in terms of weeds, weed clearance and I have heard from someone who used to

be at the Historic Places Trust in terms of maintaining the gravestones there, a real problem with contractors. They found that the gravestones all had scores along the bases, especially round the corners and they couldn't work out what was doing it, didn't look like vandals, they weren't being pushed over, and then one day they were there when the contractor was there with his weedwacker, a massive great petrol weedwacker and that was the work being done, damaging to archaeological remains and not really supervised, contractors not really being trained. So I would think that for this area that is going to be important that ongoing maintenance, there does need to be a very good plan for it, which I don't think we have yet at this stage.

Q. That leads on to my next question quite neatly which was the condition ARC9 which is also on page 74, about contractor and subcontractors working on the project should be trained and the archaeological requirements set up in that (inaudible 12:24:46), but my question to you was that should there perhaps be some sort of ongoing maintenance training scheme for contractors in future, for ongoing maintenance purposes?

1225

A. I'd say very definitely, I do think that's a very good condition for the construction period, it should carry on into the maintenance of this area.

Q. Thank you. Now if we just turn back one page to "Proposed condition article 5" clause F which is on page 73. And clause F speaks about the vegetation management plan preparation and the enhancement of the heritage area with appropriate vegetation cover and that this plan shall become part of the Waterview Reserve restoration plan. It notes there the heritage manager from Auckland Council involved in that process but I'm not sure if you're aware whether Historic Places Trust would have input into that as well?

A. Not as it reads at the moment, I don't know whether the consents that they have to give for the construction would also cover the future after construction and what's planted there after construction.

Q. For Oakley Creek for the lower portion of Oakley Creek on the eastern side of Great North Road, there's a Historical Places Trust authority to modify in that area there, and –

A. No I haven't seen that.

5 Q. Oh, within that there's regulations on what can and can't be planted within those historically significant areas. Plant species such as puriri are not to be used in those areas due to their extensive and invasive root systems. I note that on the UDL plans these species are included in the mix, is this something that's been brought to your attention the
10 vegetation plan and species?

A. Not really, I know the vegetation plan includes a rock forest in that area to replace prehistoric rock forest, but it does seem as if there's a bit of a
15 difficult in that those species rock forest species, have root systems that dig into the rock that's how they achieve their stability and get their nutrients. And they would be the root systems that would not be good for subservice archaeological remains, so possibly that needs re-thinking in the vegetation plan.

Q. Cool, would you consider that a specific plant species list for the heritage area may be useful?

20 A. I would say so yes, yeah.

THE COURT: JUDGE NEWHOOK

Ms Docherty forgive me for not being able to remember every single document that we've ever seen in this hearing, or anybody else, happen to provide us with a copy of that archaeological authority from NZHPT?

25 **MS DOCHERTY:**

The authorities modify extends from my understanding, extends from the Great North Road culvert through to Waterview almost the base of Waterview Glades. I'm not entirely sure of the parameters of it but we can supply it.

THE COURT: JUDGE NEWHOOK

Are you able to refer to it from amongst our materials, or if not can you supply a copy?

MS DOCHERTY:

5 Yes we can supply a copy.

THE COURT: JUDGE NEWHOOK

Can you do that reasonably urgently, we're coming to the end of the hearing.

MS DOCHERTY:

Yes.

10 **THE COURT: JUDGE NEWHOOK**

But if your point or the point of your question of Mr McCurdy is that there's an approach taken in that document that might assist in the structure of conditions should consent be given to this project, then we might usefully see it.

15 **MS DOCHERTY:**

Certainly sir I wasn't sure of the involvement of Historic Places Trust in their input of information into the process.

THE COURT: JUDGE NEWHOOK

20 There's no monopoly on good ideas, I'm sure NZHPT and other regulatory authorities have some useful ideas from time to time. So can you supply that by first thing tomorrow morning to the EPA?

MS DOCHERTY:

Certainly sir.

THE COURT: JUDGE NEWHOOK

25 And serve a copy on NZTA and Auckland Council.

MS DOCHERTY:

Yes.

CROSS-EXAMINATION CONTINUES: MS DOCHERTY

5 Q. My final question actually just arises from your representation
Mr McCurdy you mentioned a grove of robina at a location near the
inlet, and their historical use for boat building, which is outlined. And
you sort of alluded to the building material on being sustainably
harvested by taking what is needed when is needed and if these trees
were to be removed wholesale they just wouldn't allow it to happen. Are
10 you aware of any other source of these trees in Auckland that – for
traditional boat building purposes?

A. The robinia itself is quite common as a garden specimen tree, there are
a few in a Point England park, in a reserve, which are not accessible,
they're not harvestable. In general this is the only grove I know of that's
15 been created or allowed to create itself specifically for that purpose and
in the way you mentioned, you take a tree every so often and the new
seedlings and suckering shoots are allowed to come up, yet they don't
get mown. That's what I've been doing for 20 odd years. It is difficult, if
they all have to go at once then there will be more available than the
20 demand and the sustainable harvesting will stop in that particular site.
We don't yet know that they do have to go, in terms of sub-surface
archaeology. If they do, it might be possible to stage it and work that
into the maintenance plan over a long period. If they do all have to go
and once then there will have to be provision for storage, for them to be
25 taken up by heritage projects. But I'd like to repeat, it would be a crime
to mulch them.

THE COURT: JUDGE NEWHOOK

Thank you again Mr McCurdy, and thank you Ms Docherty, once again my
apologies for overlooking you.

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

When I was jumping the gun I was announcing that Ms Metcalfe isn't wanted by the Board for questioning today and no party indicated a wish to question her. So we move to the next item, which is another section 42A expert,
5 Mr Brian Stewart, who is wanted for questioning by Star Mills and Forest & Bird. Forest & Bird, is there a representative of Forest & Bird here?

MR MCNATTY:

Yes Your Honour, we do have some questions.

10

BRIAN STEWART (SWORN)**THE COURT: JUDGE NEWHOOK**

Good afternoon and thank you for coming to answer some questions, thank you also in particular for the reporting that you've been doing for us along the
15 way.

MR STEWART:

May I just point out that I am hearing impaired, so if I don't pick up something someone says immediately.

20 **THE COURT: JUDGE NEWHOOK**

Now there is some equipment that can assist you perhaps. I don't know if you're familiar with the type of equipment that we have onsite but perhaps you could look at it and see if it might assist you. Shall we try that for a moment or two and see how that's going to go for you.

25

MR STEWART:

I think there's no real improvement there, I will trust – yes.

1235

CROSS-EXAMINATION: MR MCNATTY

- 5 Q. Good afternoon Dr Stewart. I have a couple of general questions, if I may to start with. Would you agree that for the stormwater discharge, the receiving environment of Oakley Creek is substantially the Waterview Basin part of the Motu Manawa marine reserve?
- A. Yes I would.
- 10 Q. Were you aware that a condition of a 90 to 95% total suspended solid treatment option was offered in an earlier part of the State Highway 20 development, involving the Oakley Creek catchment, and that's as reported in Auckland Volcanic Cones?
- A. No I wasn't aware of that.
- 15 Q. If a best practice option of 90 to 95% total suspended solid was able to be achieved, both in construction and in operationally, would you support that standard?
- A. I would, yes.
- 20 Q. Did you – when you did your report did you consider that with the acknowledged increase sedimentation that the accumulated adverse effects of stormwater discharge would or could possibly reach a threshold of permanent degradation of the Waterview Basin part of Motu Manawa Marine Reserve?
- A. I believe that would be the case, whether or not the project goes ahead. I mean there is accumulation of contaminants from stormwater from the motorway and from other sources and with the proposed mitigation measures the accumulation will continue, but at a reduced rate. But
- 25 eventually there will be some threshold reached.
- Q. In your report paragraph 7.5 page 36, you made a statement that you considered that revisiting a flushing mechanism had merits. Do you still agree with that?
- A. I have since had discussions with Dr Rob Bell and the Rosebank
- 30 offramp culvert, which was the one that I was referring to in that paragraph, is I believe a lost cause. Ideally, some improved flushing

within the inlet would be very, very good, but I don't think it is practicable at this point in time.

Q. If I were to use a term of sediment management rather than a specific flushing mechanism would you agree that that has merits in pursuing it?

5 A. I think that's up to the hydrologist, the hydrodynamicists. From what I have read and what I understand from Dr Bell that culvert is going to silt up no matter what and I suspect that any attempt at sedimentation management in that particular part of the estuary is doomed to failure.

10 Q. Okay thank you for that Dr Stewart. That would lead on to if an appropriate contaminated sediment management regime proved not to be practicable would you support an offsite mitigation, perhaps in a fund, targeted at sustainable ecological management?

A. I have stated in my report that I don't consider offsite management ideal, but it is – mitigation's ideal but I think it is better than no mitigation at all.

15 Q. Okay then my last question then would probably seem redundant because in your paragraph 8.1, page 37 I was going to ask can you confirm your statement that further mitigation be investigated?

A. Yes I would support that.

QUESTIONS FROM THE BOARD: MS HARDIE – NIL

20 **QUESTIONS FROM THE BOARD: MS JACKSON – NIL**

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP – NIL

QUESTIONS FROM THE BOARD: MR DORMER – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

WITNESS EXCUSED

25

1240

THE COURT: JUDGE NEWHOOK

Now, Dr Greg Ryder on freshwater ecology advising the Board once again.
Good afternoon to you. Mr McNatty, do you have any questions for our
5 advisor on this occasion?

MR MCNATTY:

I have three of the same questions Your Honour.

10 **GREGORY RYDER (SWORN)**

CROSS-EXAMINATION: MR MCNATTY

Q. Good afternoon Dr Ryder. You heard Dr Stewart agree that for
stormwater discharge the receiving environment of Oakley Creek is
substantially the Waterview Basin part of the Motu Manawa Marine
15 Reserve. Would you agree with that?

A. Yes.

Q. Were you aware that a 90 to 95% total of suspended solid treatment
option was offered in an earlier part of the State Highway 20
development involving the Oakley Creek catchment and that was
20 reported in Auckland Volcanic Cones?

A. No I wasn't.

Q. As a freshwater ecologist, if a best practice option of 90 to 95% total
suspended solids was able to be achieved, both in construction and
operational phases, would you support that?

25 A. I would couch that to be honest because I think the assessment of
effects that I've been through and reviewed in terms of the freshwater
effects on Oakley Creek indicate to me that the level of reduction or
management of suspended sediments and sediment discharges into the
Oakley Creek catchment are sufficient to mitigate any significant
30 adverse effects on the ecology of the stream. So to go further than that,

while it may help mitigate some short term adverse effects, I don't think it would help greatly in the long term effects, in mitigating long term effects.

Q. Is that primarily because of the existing state of Oakley Creek?

- 5 A. Yes, yes that's right, it suffers from degradation due to its urban developed catchment. It's got invertebrate and fish faunas that reflect the urban environment, the fact that there's sedimentation occurring already, so that's correct.

QUESTIONS FROM THE BOARD: MS HARDIE – NIL

10 **QUESTIONS FROM THE BOARD: MS JACKSON**

Q. Dr Ryder, how much danger does the construction yard 7 pose on the Oakley Creek, and I'm coming mainly from the extent of earthworks that would be likely to be – need to be done to provide a level construction platform?

- 15 A. I'm – you'll have to excuse me, I'd have to look on the map where yard 7 is, just to be completely -

THE COURT: JUDGE NEWHOOK

I'm wondering whether the projectionist could place on the screen the detailed map of construction yard 7.

20 **QUESTIONS FROM THE BOARD CONTINUES: MS JACKSON**

Q. Dr Ryder, can you appreciate how steep those contours, those existing contours are, shown on that map? Maybe you need to see the map in front of you?

A. That would help, I can't –

- 25 Q. No you can't see it.

THE COURT: JUDGE NEWHOOK

At that distance I think you're going to struggle a bit with it. Madam Registrar, I wonder if you could find the relevant map. What's the number on that map please Member Hardie?

5 **1245**

MS HARDIE:

107.

QUESTIONS FROM THE BOARD CONTINUES: MS JACKSON

10 A. There are cer – the first thing that I point out I'm colour blind so I just
 want to make that clear in case I say the wrong thing in the wrong area,
 but the first point I would make is yes there is some steep grading that's
 there and that will always pose challenges in terms of sediment
 retention when you start exposing surfaces. And if there is not sufficient
 15 room to build the likes of sediment retention ponds of a size sufficient to
 retain, for example, 75% of the sediment load then you have to resort to
 other best practical options such as silt fences or super silt fences and
 the like. The fact that if there's a possibility that some more sediment
 may be generated in that site that finds its way into the creek it's still my
 20 view that that won't result in long term effects on the stream ecology.
 The types of species that are found in Oakley Creek are well adapted to
 short term high sediment loads, and that's why you find them there
 essentially. So I don't think if there's an additional load as a result of
 that construction yard and if that occurs for a period of even months or
 25 longer, it's not really going to make a great deal of difference to the
 ecology of that section of the creek, or even further downstream.

Q. Okay thank you for that. I appreciate your opinion.

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP

30 Q. Dr Ryder, when you gave your answer to Mr McNatty about the lack of
 benefits in increasing the level of suspended solids that might be

discharged with stormwater, what regard did you have to that part of section 5 which is concerned with remedying adverse effects?

5 A. I didn't take that into particular account. Again, for the same reasons that I've just given, when I've looked at the project overall in the sectors that are relevant to Oakley Creek the generation of sediment is going to occur and while you can retain the majority of it through the methods that have been mooted or promoted in the management plans and the AEE, to go further and try and retain even more, sort of 90, 95%, while that might lessen the short term effects on the ecology of the creek I still don't think it will have any long term benefit for the ecology of the creek. 10 Regardless of what sector we're dealing with.

Q. Do you have sufficient experience of construction stormwater management to be able to advise the Board on the probability of consistently achieving levels of 90 to 95% removal of sediment, 15 suspended sediment?

A. I've had considerable experience with assessing the effects of various activities that generate sediment, open cast mining, motorway works and the like. I have had less experience to viewing the results of various sediment retention devices on this scale achieving the specified 20 levels of retention that they're designed to achieve. One of the reasons being is that up until recent years there hasn't been a lot of detailed monitoring associated with those works to look at and it's only becoming more – monitoring requirements are only becoming more prevalent in consent conditions in more recent years.

25 **1250**

QUESTIONS FROM THE BOARD: MR DORMER - NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

THE COURT: JUDGE NEWHOOK

Now I don't think we'll embark on the next item this side of lunchtime, it would 30 appear from our planning advisors we'll do that after the lunch break.

COURT ADJOURNS: 12.50 PM

COURT RESUMES: 2.19 PM

MURRAY KIVELL (SWORN)

THE COURT: JUDGE NEWHOOK

5 Good afternoon Mr Kivell, welcome and thank you for all your assistance to date and coming to weather the storm for questions this afternoon. We're going to start by having Mr McNatty question you, from Forest & Bird.

CROSS-EXAMINATION: MR MCNATTY

10 Q. Just a couple of questions, probably for clarification. If I refer to your reports dated the 7th of December and noted "final" and on page 36 you're referring to, in section 9.5, The New Zealand Coastal Policy Statement 2010.

A. Sorry, what page was it?

Q. Page 36 of that and your paragraph grouping 9.5?

15 A. Yes.

Q. In 9.5.2 you list, "key new policies pertinent to the Board's consideration for the project", under The New Zealand Coastal Policy Statement 2010. I note that you've missed policy 5 out of that list and policy 5 is, "Lands or waters managed or held under other Acts." Is there any relevance to that or did you see that as a "less" key policy statement than the others listed there?

20 A. I wouldn't have seen it as less important, it possibly more is an oversight, it maybe that we picked up in the balance of our report a summary of the other Acts that this project was requiring consents under, which would have been Wildlife Act et cetera, Historic Places Trust and I think somewhere in the main body of our report later on, we cover those, those Acts by way of a summary. There was a section, "other statutes", section 13 and towards the latter part of that section on
25 page 97, "other statutory approvals", so we did recognise that there

were other consents required under other statutes, albeit I didn't reference policy 5 of The New Zealand Coastal Policy Statement.

5 Q. The point of policy 5 from Forest & Bird and Motu Manawa Group is that there is a consideration of having regard to the purposes of the land or waters managed under those Acts and then moves on to avoid adverse effects of activities and otherwise avoid remedy or mitigate adverse effects and that then becomes a matter for planning consideration. Would you not agree on that?

A. Yes I'd agree.

10 Q. I'd like to leave that, I would accept that it's an oversight on that. If I may sir, move on to your 7th of March report, which I understand is almost final. If I read that report correctly and I've read the reference to marine ecology, you identify an outstanding issue of mitigation to offset permanent habitat loss resulting from stormwater contamination. Is that correct, do you confirm that?

15 A. That was a summary from the caucusing reports.

Q. And do you see that still as an outstanding issue?

A. Well we recorded that as an issue coming out of caucus that there appeared to be no common understanding of whether there was an issue to do with that, and if there was the means of its mitigation.

20 Q. Therefore if it's still an issue that's not resolved, would you consider there's another mechanism available to address, either remedy or mitigation?

A. I think there was a divergence of opinion. Some experts, from my reading of the caucusing suggested that there was some capacity to mitigate, for example the ecotone treatments that Mr Slaven was promoting. Some saw that as inadequate. There were design approaches for the whole causeway footprint that looked to minimise the extent to which the marine reserve was encroached into. So there's a matter of debate as to what was adequate mitigation.

30 Q. I've probably only got one final question then on that. Your final report identifies proposal to mitigate cumulative effects on local communities

through ongoing community mitigation funds. In your view, would this be an appropriate mechanism to address –

THE COURT: JUDGE NEWHOOK

Just give us a paragraph reference please.

5

MR MCNATTY:

I have a paragraph reference of 4.3.6

1425

CROSS-EXAMINATION CONTINUES: MR MCNATTY

10 A. Which report are you referring to?

Q. Well we're talking to the 7th of March. While it's based on by a reference point it is really a general question, if you have a mitigation fund for cumulative effects on local communities, would such a mechanism be appropriate to address outstanding issues say for example with cumulative contamination within the marine reserve?

15

A. I guess the concept in this was promoted as a discussion as part of our final report, was whether there was a mechanism outside the current consenting regime to deal with community driven issues that may be associated with the construction of the project per sae. The nature of those process, services or projects, would be something that the community would need to drive rather than the applicant or the agency, so it was a self driven process. So if there was some funding available then it would be a community priority as to what that funding, could or should be allocated to. So if off set mitigation from adverse effects on the marine reserve was seen by the community as being crucial to being addressed then presumably there would be some funding process allocated for that activity or that task. But it's not in the way we've discussed it we've not seen it as a mechanism specifically to offset effects on the coast marine area.

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30 Q. It is a mechanism that could be used?

A. Theatrically and this is very much a theoretical proposition we were contemplating.

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP

QUESTIONS FROM THE BOARD: MR DORMER - NIL

5 **QUESTIONS FROM THE BOARD: MS JACKSON – NIL**

CROSS-EXAMINATION: MS JANISSEN – NIL

QUESTIONS FROM THE BOARD: MS HARDIE - NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK - NIL

WITNESS EXCUSED

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THE COURT: JUDGE NEWHOOK

All right well that brings us to a conclusion for today, we've already indicated during the course of presentation of one of the witnesses that we're likely to do some site and locality inspecting in the next couple of days, and if the
5 weather is at least as good as it is presently we're likely to do the helicopter inspection that's been discussed once or twice during the hearing which essentially would involve having a look at the route of the proposed project, other parts of the Auckland motorway system. Probably to fly to the north-west of the end of State Highway 16, in the direction of 18 to hover
10 within a permitted distance of Pollen and Traherne Islands and generally inspect, as closely as permitted, the intended route and surrounds and also during the next two days we're likely to go back out into the field and look at some of the many features that have been discussed during the course of the hearing, parks and reserves, street, neighbourhoods, creeks, estuaries,
15 islands so forth and the like, so we think we'll have a fairly busy couple of days. The hearing will resume on Friday at 9.30 for the purposes of hearing reply from NZTA. Are there any matters of housekeeping before we finish?

MS JANISSEN:

20 Just a couple sir, we've handed up now copies of the pony club consent, which was granted last – what I call the pony club consent for the construction yard rotation sorry, which was granted last week and just to confirm that there have been a number of further caucusing reports that have been lodged with the EPA. A planning one on the 16th of March, a second noise one on the 17th
25 and an open space one on the 21st, all of which have conditions attached to them.

THE COURT: JUDGE NEWHOOK

We've had all that, we're grateful to the various witnesses and advisors for their continuing work in caucusing. We imagine that that will be the end of
30 caucus reports for the moment. On Friday we'll discuss future steps of the case after the reply has been delivered, but we remain on mind to build in that

earlier or first step, ahead of (inaudible 14:31:45), but it has commended itself to us that others seem to have embraced as well. So if there are no other matters of housekeeping, we'll adjourn to Friday, 9.30 am.

COURT ADJOURNS: 2.32 PM

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