

**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

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**Transcription of HEARING  
Day 16 – Friday 25 March 2011**

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COURT RESUMES ON FRIDAY 25 MARCH 2011 AT 9.30 AM

**THE COURT: JUDGE NEWHOOK**

I don't think there's too much in the way of housekeeping that is needed this morning, subject to Mr Allan leaping to his feet at the moment. I will mention  
5 that the Board has seen the material from Ms Janissen and Mr Allan and –  
sorry, and Mr Ryan and Ms Fraser yesterday in answer to the queries about  
the school and kindergarten consenting issues. There was a subsequent  
question in that material about the generality of further consenting issues and  
time in relation to (inaudible 09:31:45) I imagine you'll cover that in your reply  
10 today. Now Ms Janissen, do you have any other preliminary matters that you  
wish us to consider before I hear from Mr Allan?

**MS JANISSEN:**

No thank you.

15 **THE COURT: JUDGE NEWHOOK**

Mr Allan, you had something?

**MR ALLAN:**

I did sir. I want to seek an indulgence from you, a very brief one. When we  
20 presented our case and submissions most of the evidence had been  
presented, but there were elements that had not been presented because  
cases (inaudible 09:32:14) by certain parties and obviously the NZTA still had  
a couple of bits of information that came subsequently. What I seek from you  
is an opportunity to comment very briefly, somewhere I suspect, between two  
25 and three minutes on the matters that I hadn't had a chance to speak to in my  
submissions and that came out subsequently and just to put them in the  
context of everything else that's been said. I appreciate that's a little unusual,  
but we don't get a reply and –

**THE COURT: JUDGE NEWHOOK**

30 Well, and this is a situation in which we have operated, I suppose, as a true  
Board of Inquiry and have been seeking and receiving information, sometimes

on the wing almost, and if this is one of those situations that you wish to address I rather imagine you should be allowed to. Ms Janissen you're not objecting to that?

5 **MS JANISSEN:**

No I'm fine. No.

**THE COURT: JUDGE NEWHOOK**

Does anybody else have any concern about that, members of the Board? No we should hear from Mr Allan.

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**MR ALLAN:**

Thank you sir.

**THE COURT: JUDGE NEWHOOK**

And now should be the opportunity.

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**MR ALLAN:**

That would be fine sir. I am admitting in writing and as I say it's very brief.

**THE COURT: JUDGE NEWHOOK**

Yes it'll go into the transcript record.

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**COUNSEL READS SUBMISSIONS**

Sir the issues that came out in evidence after our presentation, and my focus is entirely on the northern stack, relate to matters such as the agreement  
25 between Ministry of Education and the school and NZTA. The new pictures that came out were made available into cross-examination to Ms Absolum, but also subsequently when the material from the school views came to you, and of course the evidence on behalf of the kindergarten as well, and Mr Pryor. The first point I make is in relation to the presentation from the school and just  
30 note that the agreement signed by the school, or not at that stage signed (inaudible 09:34:03) for the agreement hoping to be signed by the school and

NZTA expressly addressed construction effects. It did note that no more mitigation was sought, but as Mr Skeen advised you under cross-examination, he and the school in that agreement left to the Board the issue of where the stack would go. And if you go back to clause 12 of that agreement you'll see  
5 that the parties there recorded there their position in terms of what the agreement did in terms of construction effects. It didn't comment on those other operational effects. In paragraph – in clause 8 of the agreement the parties addressed material alterations to the project or conditions and there's a provision there for the parties to revisit the agreement if the Board of Inquiry  
10 offers the project or a proposing condition in the way that is material (inaudible 09:35:00). Clause 8.2 though says for the avoidance of doubt a requirement from the Board that the northern ventilation stack must be relocated will not constitute a material change of itself, but the resulting changes in construction effects are potentially increasing construction effects on the school.

15 **THE COURT: JUDGE NEWHOOK**

And that was the matter that was exercising the Board's mind during the hearing you'll recall, and that we put in front of you and the Ministry of Education, NZTA and the council.

20 **MR ALLAN:**

I understand. The queries you've got as to how that would happen we haven't come back to you in terms of what might need to be done in order to resolve the concerns that, say the kindergarten had into its relocation of the school. In other words (inaudible 09:35:42).

25 **THE COURT: JUDGE NEWHOOK**

What we were concerned about was if the Board decided to direct the moving of the stack that might have the effect of subsequently tipping over the apple cart in relation to the agreement with the school and opening up a whole lot of other questions that could result in a lack of finality for the school, the  
30 community, NZTA, everybody.

**MR ALLAN:**

And my reading of the agreement sir is that that issue has been dealt with expressly in 8.2, that the movement of the stack doesn't constitute a material change to the agreement. So the terms of the agreement remain the same, the school's position is not adversely affected by the moving of the stack in the way that I think Commissioner Dormer raised as a possibility. One issue of course that arises out of it is if you move the stack there may be less of a drop in role numbers than the school might be afraid of, but that's not a bad thing. It's not bad things that the MOE doesn't have to – pardon me, the NZTA doesn't have to fund the school, because it means it's a strong school. So there's that condition or that provision, in my submission, addresses the issue that the Board raised in quite a clear and concise way. If there's a material change the parties revisit, but the moving of the stack is not such a material change and it doesn't have that effect.

**THE COURT: JUDGE NEWHOOK**

We were looking for that clause Mr Allan, and we found it. (inaudible 09:37:10) however that of course the agreement isn't yet signed apparently,.

**MR ALLAN:**

Yes.

**THE COURT: JUDGE NEWHOOK**

But we're told that that's a technical matter of a signature being required from someone in Wellington.

**COUNSEL CONTINUES READING SUBMISSIONS**

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And I think, my understanding was it's left with the MOE and I'd be – I think I'd be surprised if the MOE said there's a problem with that clause. That one seems to be more to its benefit than to the NZTA's. The present – the second element was the presentation from the kindergarten. Sorry, the last point I make obviously with respect to the school is that Mr Skeen's evidence was quite clearly the school would prefer the stack to move. Notwithstanding that it's not seeing that formally as mitigation relief. It is preference, and the

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school's preference is quite clear. So it aligns with that of the rest of the community.

#### **THE COURT: JUDGE NEWHOOK**

We heard that.

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#### **COUNSEL CONTINUES READING SUBMISSIONS**

With respect to the kindergarten, the only point I'd make there relates to the evidence of Mr Pryor. His evidence was aligned with that of Ms Absolum.

10 That means that in terms of a scorecard on landscape architects we're 2/2, in the sense that there's quite a clear split between them. I guess the submission I'd make in that context is the debate – whilst there is a debate between landscape architects on the location of the stack, there is not a debate within the community because the evidence that's come out since our

15 presentation at that time there's been consistency in terms of a preference for the stack to be shifted. The only person who didn't express any preference as to where it went was Mr Skeen for the school. He just said, "As far away as possible please." And my submission, if that happens to be the other side of the road well that's better than the side that's likely to be close to the school

20 boundary. The extra pictures regarding the view from the school you'll recall that there were some corrections that were done and that then produced some plans that showed both a 15 and a 25 metre stack. In my – and you'll recall my advice from Ms Absolum that formally she didn't change her mind, indeed Mr Brown's mind wasn't changed either. My clients would say that that

25 evidence just simply reinforces their view that (a) if you reduce the height the impact is reduced (b) if you put the stack further away the impact is reduced. And they see the 15 metre at the other side of the road as being significantly better in terms of a solution from that school view than any other solution that was put to you. The other point I'd make, and it comes again in terms of the

30 pictures that were put to Ms Absolum, were that the issue about the sculptural quality of the structure, in my submission, are best considered if you put a sculpture in a space with some space around for people to view it. In other words, the views down Great North Road show you pictures on the left-hand

side and the right-hand side of Great North Road. The views on the right-hand side of Great North Road have space around it. If that is a sculptural element in the environment, at least for people to see it. On the left-hand side of Great North veering towards the motorway, you've got a building in a residential area, next to the school, next to the other structures. There's not space around it, and in my submission, on the merits shifting the stack to the eastern side of Great North Road is preferable. That of course leaves you with a decision, even if you accept that, as to whether it's an appropriate mitigation measure in terms of all the other factors. And I accept that you will look at costs in that and I simply return to that initial comment I made in terms of costs, which is –

**THE COURT: JUDGE NEWHOOK**

Until that last sentence I was about to swear you in and have you cross-examined Mr Allan.

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**COUNSEL CONTINUES READING SUBMISSIONS**

Sir, I guess the only comment, additional comment I'd like to make in terms of the southern building, is I think the issue here on the merits, is much clearer. The evidence, I think of all the witnesses is that option 3 is preferred, the landowners who are potentially affected say they prefer it. It comes down solely there to an issue in terms of whether it's appropriate to put that in as mitigation, in light of the costs issues, which is the only issue that Mr Parker raised, in what I would call of substance. Thank you, those are submissions I want to make sir. Thank you for the opportunity to do so.

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**THE COURT: JUDGE NEWHOOK**

Now Ms Janissen, we come to your reply.

**MS JANISSEN:**

Thank you sir. The documents you would like to have in front of you, is the reply submissions and a copy of now the red book. You'll need the green book as well. Because essentially the green set of conditions contains all of

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the changes from the beginning of the hearing up until that point, which is the 1<sup>st</sup> of March and then we literally ran out of colours. So we have in the red line set, just noted any changes since the 1<sup>st</sup> of March. So essentially any changes that have arisen as a result of representations and submissions through the hearing, and there were four sets of expert caucusing that resulted in further tweaking in the (inaudible 09:42:21) conditions as well. So it's mainly the red set that I'll be referring to today.

**MR DORMER:**

10 Excuse me sir. I picked up what I thought was the green book of conditions and it's not the green book –

**THE COURT: JUDGE NEWHOOK**

It's the green something else isn't it.

15 **MR DORMER:**

It's the green something else. Do we have a spare –

**THE COURT: JUDGE NEWHOOK**

There's a spare set of green conditions. We're needing more than one apparently and Ms Morgan's just gone – in the meantime yes we'll get underway, especially given that Ms Janissen's submissions are going to refer more to the red book than the green anyway.

**MS JANISSSEN:**

Yes I will, definitely.

25 **THE COURT: JUDGE NEWHOOK**

If we haven't got the green book by the time you happen to refer to it, at which time we'll take a pause then, but otherwise –

**MS JANISSSEN:**

30 No I don't actually refer to the green book much, I refer mainly to the red.



**COUNSEL READS SUBMISSIONS**

“...during the caucusing.”

5 And I refer then to a reply set of conditions.

**COUNSEL CONTINUES READING SUBMISSIONS**

“The various expert... in this reply.”

10

I then set out briefly outline what the reply will follow and I deal firstly with a summary of key effects areas and expert conclusions.

**COUNSEL CONTINUES READING SUBMISSIONS**

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“This section of... caucusing and analysis.”

And perhaps if I could just paraphrase that, that I refer to the expert reports, the caucusing reports and attempt really to give a wrap-up summary in terms of where all of the experts have reached with respect to all of the particular areas. In some of those cases we refer to particular submitter issues, but otherwise we deal with particular submitter issues later on in the reply. Some of those which the Board will be aware, full agreement has been reached and I'll move over quite quickly.

25

**COUNSEL CONTINUES READING SUBMISSIONS**

“Firstly in relation... of enforceability sought.”

**0950**

30 So with respect to the construction effects the position from the Agency is still is matters covering those conditions are already provided in the management plan. The Agency is already required to comply with them. There's really no need to repeat them again in the conditions suite.

**COUNSEL CONTINUES READING SUBMISSIONS**

“The next issue... with that position.”

**1000**

5 And if I just note there again that with respect to particular marine ecology issues we will be addressing those under the section dealing with submitters, but this is just a summary in terms of where the experts reach.

**COUNSEL CONTINUES READING SUBMISSIONS**

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“In terms of... the caucusing statement” –

**MR DORMER:**

Excuse me Ms Janissen. I think I heard you say, “vegetation condition 6”?

15

**MS JANISSSEN:**

Eight, sorry a misquote.

**THE COURT: JUDGE NEWHOOK**

Yes you did say six, yes.

20

**MS JANISSSEN:**

Sorry, my apologies, eight.

**COUNSEL CONTINUES READING SUBMISSIONS**

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“That was not... an advice note.”

30

So with respect to that we simply point out there was – it’s not agreement in relation to that and the version of vegetation condition 8 as contained in the red book is the version that is being proposed by the Agency.

**THE COURT: JUDGE NEWHOOK**

Ms Janissen, what if the regional pest management strategy was to change in the future or be dispensed with or replaced with some other requirements that didn't include this sort of requirement, and alongside that if this Board had a  
5 view that there should be such a condition, where would that leave us?

**MS JANISSEN:**

If I can turn specifically to the advice note, it notes that following the initial two year period of –

10 **THE COURT: JUDGE NEWHOOK**

The page number?

**MS JANISSEN:**

Oh sorry, it's page 67 in the red book.

15 **THE COURT: JUDGE NEWHOOK**

Yes, advice note following V8?

**MS JANISSEN:**

Yes. "Following this two year period ongoing control and management of all  
20 invasive plant pest within these same areas will be the responsibility of the Agency as part of its overall network management." That's as, I guess a separate process that continues in relation to, as I understand, all of the state highway network, regardless.

**THE COURT: JUDGE NEWHOOK**

25 And where does that obligation derive from at law?

**MS JANISSEN:**

That I'm not sure Your Honour.

**THE COURT: JUDGE NEWHOOK**

That doesn't even seem to be referring to the regional pest management strategy, the advice note, and my question I think remains, at least in my mind, about the future of the regional pest management strategy. We'll just  
 5 signal that as an issue we're likely to be thinking about some more.

**COUNSEL CONTINUES READING SUBMISSIONS**

“The vegetation caucusing... in this reply.”

10

If I can just refer there to footnote 39. The vegetation caucusing statement on that point was relatively vague, with support for the Eric Armishaw ecotone and vegetation plan if the Board determines that it is appropriate to undertake the proposed revegetation of Eric Armishaw Park and surrounds. However,  
 15 aside from the Agency's expert, the other experts during the hearing indicated a strong preference to mitigate ecotone loss on Traherne Island itself and the Agency now accepts that position. I'll refer to that later in the reply. That effectively means a withdrawal of vegetation condition 16 and an amendment to vegetation condition 18.

20

**COUNSEL CONTINUES READING SUBMISSIONS**

“The Friends of... in paragraph 66.”

**1010**

25 I set them out specifically but I won't read them unless the Board would like me to, because we are certainly aware that a number of submitters in their written evidence and still during representations had some lack of comfort with groundwater and sediment related issues. So I think it's just important that in response to that, we make it very clear where the experts reached agreement  
 30 on effectively all areas in relation to those specific matters.

**COUNSEL CONTINUES READING SUBMISSIONS**

“With respect to... appropriate mitigation response.”

**1020**

And I'll refer to that later in this reply. As a final summary in terms of the key areas of effect, and I note that just separately I will be dealing with open space only under the submitter issues. Finally, in relation to planning.

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**COUNSEL CONTINUES READING SUBMISSIONS**

"Since commencement of... have been provided."

10 I note in particular there there was a significant amount of information, further information, in relation to how the noise conditions would work, the management plans would work and particular effects on some submitters' properties. There was also particular information provided in relation to the operation of the replacement rail corridor.

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**COUNSEL CONTINUES READING SUBMISSIONS FROM PARAGRAPH 80**

"It should be... to this hearing."

20 As is the case and as is not – as quite often occurs in the major roading projects during the designation hearing, many submitters often raise Public Works Act type issues, in part because those negotiations are ongoing at the same time as the planning process. Just the problem is making it very clear that they are two quite separate statutory processes.

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**COUNSEL CONTINUES READING SUBMISSIONS**

"Issues of concern... cannot be achieved."

30 And just in that regard the Board will recall both the supplementary evidence that was provided by Ms Wilkening with further answers she gave during questions from the Board and the hot tub session that was held with the other experts.

**COUNSEL CONTINUES READING SUBMISSIONS**

“Specific concerns of... a numerical limit.”

- 5 Given that the standard is so recent, so far as I’m aware this is the first time that it has been, in effect, put under the microscope by a Board or a Court at this level. It is quite a complex standard. It is quite different to the old what we call the Transit guidelines, so many of the questions that were raised by submitters and by members of the Board were certainly not a surprise.

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**COUNSEL CONTINUES READING SUBMISSIONS**

“The Board’s questions... notices of requirement.”

**1030**

- 15 So that’s under 171(1)(b). So in short, it is considered that the GPS is relevant to consideration under both of those provisions.

**COUNSEL CONTINUES READING SUBMISSIONS**

- 20 “The Board raised.... in the NLTP.”

**1040**

And I note there in footnote 128, while of course the Waterview Connection Project is in the NLTP a sector 8 cycleway has never been part of that project and accordingly is not in the NLTP. These oblig –

- 25 **THE COURT: JUDGE NEWHOOK**

- I just ask you to pause there Ms Janissen. Just regarding the submission of yours that NZTA must first be satisfied that the activity is included in the NLTP, if this Board recorded in its decision that it had in mind such a requirement, leaving aside whether we can impose a condition of consent
- 30 having regard to the workings of section 108 and part 8 of the Act, if we said so then isn’t that the end of the thing? Isn’t that a situation in which the NZTA would, in effect, have to record that it was satisfied because it had been told

by this Board on consenting the project, if it consents, that it's a requirement?  
End of story.

**MS JANISSSEN:**

- 5 I'm not familiar with exactly how the Agency's Board would operate in that regard. I don't know if Mr Parker would have any comment in relation to that but it may –

**THE COURT: JUDGE NEWHOOK**

- 10 You seem to think – it goes wider than this doesn't it? We may impose multitudinous conditions that require mitigation to be undertaken and they may come at a considerable cost. NZTA is seeking consent from us as the relevant consent authority, and if we impose those conditions and so long as they're lawful in terms of the structure of the RMA, again leaving aside the section 108 point, then NZTA is in the position is it not of either accepting the  
15 conditions, providing the mitigation that we as the consent authority have required, or if say, if push really came to shove well we won't do the project or can't do the project, isn't that where it gets to?

**MS JANISSSEN:**

- 20 Yes, I think that is correct Your Honour, yes. My understanding, and Mr Parker can correct me if I'm wrong on this, if that sort of direction or decision is made by the Board then there would then have to be a provision made within the NLTPs that the Agency can also say that it has met its other statutory functions in relation to provision of that funding for mitigation  
25 required by this Board.

**THE COURT:**

Yes.

**MS JANISSSEN:**

- 30 I think that's how it would work.

**THE COURT: JUDGE NEWHOOK**

Well it's always got to be the case that the Agency might find itself between a rock and a hard place in relation to conditions of consent, and would need to deal with them accordingly. I wouldn't have thought that because NZTA had  
5 some discretion or some consenting or – sorry, some right to form an opinion about the reasonableness of one of our requirements that it could in turn assert to us that we didn't have the power to impose those.

**MS JANISSSEN:**

10 Yes sir. No I accept that and I think one of the issues that might remain outstanding is if such conditions were imposed. It may, given that there are certain functions that the Agency has to carry out under the LTMA, just may require or result in some form of delay in order to get it into the NLTF, but that's more – that's their issue.

**15 THE COURT: JUDGE NEWHOOK**

If one recognises –

**MS JANISSSEN:**

Yes.

**20 THE COURT: JUDGE NEWHOOK**

- that that might well be the case and as raised by us in our minute two days ago to you, there may be features or aspects of that kind of problem in relation to resource consenting around schools and kindergartens and the lying out of playing fields and building bridges, who knows. It's just something it needs to  
25 face up to and deal with. That's as I see it. Thank you.

**COUNSEL CONTINUES READING SUBMISSIONS**

“Next issue is... entering the CMA.”



**THE COURT: JUDGE NEWHOOK**

And for the avoidance of doubt and/or any debate in the tangled interface between mitigation and the environmental compensation Ms Janissen, might you be minded to record that this and any other such offer is put forward on  
5 an Ogier basis.

**MS JANISSEN:**

Yes, yes sir.

**THE COURT: JUDGE NEWHOOK**

10 I thought you might say so.

**MS JANISSEN:**

That's correct.

15 **COUNSEL CONTINUES READING SUBMISSIONS**

"During the hearing... as proposed in."

**1050**

Which is now, new condition DC10(b), not 11, so if you could correct that,  
20 sorry sir.

**THE COURT: JUDGE NEWHOOK**

10(b) is it?

**MS JANISSEN:**

25 10(b), yes.

**COUNSEL CONTINUES READING SUBMISSIONS**

"Another query raised... not be maintained.

30

And I specifically note there that the relevant conditions in that case, 5(b) and (d).

**COUNSEL CONTINUES READING SUBMISSIONS**

“It is submitted... of section 128.”

5

So in reviewing that case, with of course His Honour was very familiar, I think it effectively confirms that section, the very specific type of 128 review clause which applies to consents does not apply to designations but it does not of course stop the Court from having considerable discretion in the type of conditions that it might impose under section 174(4).

10

**COUNSEL CONTINUES READING SUBMISSIONS**

“Moving to transport... State Highway 16.”

15

So just to comment there, this issue was raised a number of times by Board members, not surprisingly and as a result the wording of those operational traffic conditions have been looked at quite closely to ensure that there is appropriate integration between not only the Agency’s projects but the Agency’s projects and the council’s projects, to ensure that that situation does not occur.

20

**COUNSEL CONTINUES READING SUBMISSIONS**

25 “Finally in relation... State Highway 16.”

**THE COURT: JUDGE NEWHOOK**

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Yes, well I suppose you’re always going to get the issue of when you have the extension of the motorway, of merging the problem northwards or wherever, as in the case of the Puhoi extension. How long is a piece of string I suppose is one way of looking at it.

**COUNSEL CONTINUES READING SUBMISSIONS**

“Moving to temporary... condition CEMP 14.”

- 5 And that’s because effectively the SSTMPs form part of the overall construction environmental management plan, so there is that provision and I think the Board will recall there was substantial discussion during the hearing as to how those dispute resolution processes would work as between the Agency and the council or as between any other entities in relation to
- 10 implementing these conditions.

**THE COURT: JUDGE NEWHOOK**

- Yes. Now that appears to bring you to the end of a set of topics, being questions from the Board on traffic issues and if you want to move to other topics raised by the Board, we might just take the morning break at this stage
- 15 and give your voice a rest.

**COURT ADJOURNS: 11.00 AM**

**COURT RESUMES: 11.25 AM**

**COUNSEL CONTINUES READING SUBMISSIONS FROM PARAGRAPH 146**

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“Community liaison person... different construction areas.”

And sir perhaps just to round that out, so far as I’m aware on most – on all of the Agency’s projects they’ve really only had that position reside in one person to ensure that there is no dropping between the cracks, as it were, between two or three people.

10

**COUNSEL CONTINUES READING SUBMISSIONS**

15 “In terms of... substances management plan.”

And I’ve provided the quotation and site there.

**THE COURT: JUDGE NEWHOOK**

Is that tied back in by way of a condition that you can refer us to?

20

**MS JANISSSEN:**

I think it’s tied back in – I can’t find it to hand, but it –

**THE COURT: JUDGE NEWHOOK**

Perhaps just leave that with Ms Linzey –

25

**MS JANISSSEN:**

- will be, yes. Yes.

**THE COURT: JUDGE NEWHOOK**

- and come back to us in a few minutes.

30

**MS JANISSSEN:**

I think the hazardous substances management plan is referred to under condition CEMP3L. There's other references.

**THE COURT: JUDGE NEWHOOK**

5 I think we'll come back to that in a minute.

**MR DORMER:**

(inaudible 11:27:28) as a point perhaps, but in the final, second to last sentence, "The explosives used during basalt blasting will only be brought  
10 onto the site when required."

**MS JANISSSEN:**

Yes.

15 **MR DORMER:**

What do the words "used during basalt blasting" add to the sentence?

**MS JANISSSEN:**

I think it's just clarifying the purpose for the explosives should people be  
20 interested to know. Perhaps they're thinking if they're used for any other reason.

**MR DORMER:**

Because if they were used for other reason this restriction wouldn't apply  
25 would it?

**THE COURT: JUDGE NEWHOOK**

Let's see what the condition says, but point taken. We can examine that if we reach that point.

30 **MS LINZEY:**

It's CEMP10 but it doesn't specifically relate to explosives. It's just saying that this hazardous management plan, of which there's an extract, will be finalised

and that there's a certification requirement identified there so that it will be confirmed.

**THE COURT: JUDGE NEWHOOK**

5 So if we come back to you and say it doesn't go quite far enough you mightn't be too surprised.

**MS JANISSSEN:**

10 Just with respect to Member Dormer's question you could just put in brackets "for example used during basalt blasting" and I think that might address your concern.

**MR DORMER:**

It would do both wouldn't it, yes.

15 **MS JANISSSEN:**

To further questions from the Board and a typo there sir, I refer to – it's a direction of the 23<sup>rd</sup> of March, not the 22<sup>nd</sup>.

**COUNSEL CONTINUES READING SUBMISSIONS**

20

"On the 23<sup>rd</sup>... the Kindergarten Association."

For ease of reference I've just provided another copy of that in annexure B.

**THE COURT: JUDGE NEWHOOK**

25 Yes we were grateful for that. Thank you very much. You were a little bit shy in coming forward in relation to the issues concerning 19 Oakley Avenue, but it was there.

**MS JANISSSEN:**

30 Yes, certainly. The Board also (inaudible 11:29:55) in the directions and I just set out the question there on the top of page 37 about whether or not these issues go further than the school and kindergarten. A number of items of

suggested mitigation, which they recommended themselves to the Board, might well require resource consents. For example, works in reserves, et cetera. Does the Agency accept that construction works in relevant areas might need to wait for consent for required mitigation and if it says  
5 construction works in those consenting procedures, proceeding in tandem, how are items of mitigation to be brought to account of any consents for such were ultimately to be refused.

### **COUNSEL CONTINUES READING SUBMISSIONS**

10

“Now during the... current kindergarten site.”

And if I could refer the Board to, it's page 62 of the red book of conditions. That is a further change made by the Agency to clarify that prior to  
15 construction works commencing the kindergarten must be relocated to an alternative site.

### **THE COURT: JUDGE NEWHOOK**

What does “adjoining” mean? How far away can you drive a bulldozer? How far away from the edge of the kindergarten?

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### **MS JANISSSEN:**

We're just referring to words that - just construction works that might impact on the kindergarten site. I mean if that can be worded more clearly in a –

### **THE COURT: JUDGE NEWHOOK**

25 Yes, let's not spend time on it now, but expect to hear from us if we get to that point.

### **MS JANISSSEN:**

Certainly.

30

## COUNSEL CONTINUES READING SUBMISSIONS

“Also works in... adjoining Howlett Reserve.”

- 5 Again this consent may be required, depending on the outcome of proposed condition OS10.

### THE COURT: JUDGE NEWHOOK

- Just pause. I don't want to have too many interruptions, there's quite a bit to get through, but in relation to Valonia future planning seems to depend on acquisition by the City Council of eight properties, and the question in the Boards' mind is what happens if even one of those eight doesn't land in the lap of the City Council? How then do we ensure that the mitigation anticipated occurs? Ms Linzey.
- 10

### 15 MS LINZEY:

I can probably start on that one. The open space restoration plan as proposed by the NZTA does not require the additional purchase of those eight properties.

### THE COURT: JUDGE NEWHOOK

- 20 It doesn't, but the City Council wants it.

### MS LINZEY:

- But the City Council they – so the current approach is that we do have a mitigation solution if the acquisition of those properties isn't successful. You would fall back to the proposal as NZTA has lodged it, which were the reasons set out largely by Mr Little, are considered sufficient to mitigate the effects of the project. Obviously there is a more preferable solution, but that requires Auckland Council secure (inaudible 11:33:48) –
- 25

### THE COURT: JUDGE NEWHOOK

- 30 You see you're counsel has told us that we can't go anywhere near the likes of section 108. So if we find that the City Council's suggestion recommends



itself to us as a form of mitigation, but if question marks remain because houses mightn't be acquired amongst the eight then Ms Janissen says we can't go to plan B, financial –

5 **MS LINZEY:**

Sir this –

**THE COURT: JUDGE NEWHOOK**

- condition, financial contribution condition.

10 **MS LINZEY:**

I do address specifically Valonia Reserve in relation to the eight adjoining properties, but this clause is not in relation to that.

**THE COURT: JUDGE NEWHOOK**

Okay well if you –

15

**MS LINZEY:**

This is another –

**THE COURT: JUDGE NEWHOOK**

20 - come to it at that time and we might give you and your team a little longer to think about what plan B might look like, if you're right about financial contributions. And well, yes you might talk to Mr Lanning at lunchtime and see if he's got some thoughts too.

**MS LINZEY:**

25 Certainly. In respect to the condition and the conditions at – sorry, the consents that are required here, this is for work that is on the existing Valonia Reserve that immediately adjoins that site, but isn't within the designation (inaudible 11:35:03).

**1135**

**THE COURT: JUDGE NEWHOOK**

Yes we're aware of that.

**COUNSEL CONTINUES READING SUBMISSIONS**

5

"155.4 works for... aware, endorse the –"

**THE COURT: JUDGE NEWHOOK**

Yes we'll take that as read.

10 **COUNSEL CONTINUES READING SUBMISSIONS**

"Should the Board... consider that the."

15 So I'm drawing a distinction here between conditions specifically that the Agency has offered in relation to either obtaining new consents and tying those into securing those before works proceed on the Ogier basis and the next set of conditions, or next set of issues.

**COUNSEL CONTINUES READING SUBMISSIONS**

20

"Should the Board... be wholly unreasonable."

And I'd like to just go through this, and it think it's, in terms of answering the Board's question.

25

**COUNSEL CONTINUES READING SUBMISSIONS**

"It's submitted that... a condition precedent."

30 **MR DORMER:**

Can you just hold there a minute please, I'd like to read the footnote. Thank you, sorry for interrupting.

**COUNSEL CONTINUES READING SUBMISSIONS**

“In general where... onerous and unreasonable.”

**1145**

- 5 And perhaps just to add there sir, we’ve looked at this closely in terms of what would a form of condition precedent say, and it relates directly back to the Board’s question in its minute. Is if for example the Board said that the Agency was required to construct a cycleway or part of the cycleway, it needs to make that a condition precedent to something happening on the project.
- 10 So it needs to say, “That until, or prior to construction starting the cycleway shall be in place,” or “Prior to operation of the tunnels, the cycleway will be in place.” The problem we have with that is, it would certainly not work with respect to construction because a lot of cycleway would go through areas which will be affected by construction. With respect to operation of the
- 15 tunnels, if the Board was to tie provision of the cycleway to being in place before operation, it is with respect submitted that that would be quite a disconnect between the effects that the cycleway are aimed to mitigate and operating the entire project, because after all the project’s about putting the tunnels in place and operating the motorway. So that’s the problem that we
- 20 have with the condition precedent, is how you would actually draft it, how you would impose a restriction on the Agency that is anyway fair or reasonable or has a connection to the effects that are attempting to be mitigated, and we don’t have an answer to that, and that’s the problem that we have in a nutshell.

25 **THE COURT: JUDGE NEWHOOK**

I’ll ask you a consequential question in a while, that hopefully you might be able to answer, but let’s finish this passage.

**COUNSEL CONTINUES READING SUBMISSIONS**

30

“The Agency supports... preserve open space.”

Sorry, “passive open space” that should say.

**COUNSEL CONTINUES READING SUBMISSIONS**

“In conjunction with... of the project.”

5

So that concludes my comments on those sections but we have looked at that very closely and the concern here is assuming that the Board would make a determination that further mitigation of this type is required, how, I think the Board’s question as raised in the minute on Wednesday is very correct, “How would a condition be phrased and what would the restriction be imposed on the Agency.” What would be the condition precedent and we see problems with that, quite significant issues there.

10

**THE COURT: JUDGE NEWHOOK**

I just want to test you carefully on this in relation to a couple of other submissions you’ve made. And it could be very important. If you’re right, I’m looking at page 42, if you are right concerning problems with conditions precedent, and for the moment accepting that the jurisprudence is correct, and I note in particular that the Westfield decision is binding, it’s a High Court decision. So, if you’re right about this and you’ve obviously researched it very carefully, and thank you. Then, another “if”, in paragraph 178, “If the Board were of the view that EMS in its section 42A report was wrong, and the Board considered that there was some rational connexion in this area and then a further “if”, if you’re correct about your submissions concerning financial contributions as a matter of law and if the Board were to find out for a quantitative and qualitative analysis of the proposed mitigation and accepted your submission in relation to the Valonia as well, that the eight properties can’t come within the designation, come within this proposal, then where does that leave you? Put bluntly, does it leave you at risk of sector 9 not being approved, because it cannot be mitigated. So I’m just a little concerned for you here. We haven’t finished our thinking about these issues by any manner or means, but if NZTA, putting it bluntly says, “Got you, got you, got you,” on three legal points, isn’t there a bit risk in there somewhere?

20

25

30

**MS JANISSSEN:**

With respect to sector 9 in particular, as I understand and I do so in the submissions, the outstanding issue with respect to the council in particular is whether or not “passive open space” has been sufficiently mitigated. I think  
5 that’s clear on that –

**THE COURT: JUDGE NEWHOOK**

Leaving that aside please, because you’re going to address us further on it, we’ve got a lot of work to do on it, I’m just asking you to make the assumption, that we didn’t happen to agree with you or EMS about these matters for  
10 mitigation. Three legal points against our doing anything, no Ogier offer, you’ve made that very clear, risk –

**MS JANISSSEN:**

No, in that respect, and this is another issue I do address here, it’s how then  
15 the Board does its overall assessment of the impacts of the project. In simple terms, if I could cut down to the chase on that one, if the Board was to find that there were significant adverse, unmitigated effects within sector 9, the Board then needs to address that in the overall balancing exercise of sector 5, section 5 of the Act. And it –

20 **1155**

**THE COURT: JUDGE NEWHOOK**

So you would say that if we thought that reserve and open space provisioning at Te Atatu was on the plus side of the ledger it wouldn’t matter what was happening in Owairaka. Is that what you’re going to be submitting? Or shall  
25 we wait until you come to that submission and question you about it then?

**MS JANISSSEN:**

Certainly, no. I wouldn’t – we wouldn’t say it wouldn’t matter, but the Board does have to balance overall the benefits and the overall impacts of the  
30 project and we give a very clear example of this in the *Mt Roskill Volcanic Cones* case. There was no disagreement whatsoever from the Agency at that time or all parties that there was a significant unmitigated adverse effect on

the volcanic cone. That matter, and the appellants argued that that in and of itself was a reason that that requirement should be declined. And that went all the way to the High Court on that specific point and the finding of the Court was in terms of the overall assessment of section 5, yes, it is recognised that there was a significant unmitigated issue there, but in the round and balancing all of the other benefits of the project it was something that still met the sustainable purpose of the Act. And it's essentially that sort of argument that we would make in this case.

### **THE COURT: JUDGE NEWHOOK**

Right, look two things so that you can think about it for when you come to this point in your submissions. Yes, there is an overall weighing to be done with particular reference to the requirements of part 2 of the Act. And perhaps at the end of the day when we've done all that weighing, even if we identified a qualitative and/or quantitative shortfall in terms of mitigation on open space and reserves in Owairaka we might say, "Okay, well that's one of the costs of the project." If, however, on the other hand we were of the view that the imposition of the construction works for five to seven years, followed by the operation of a motorway dividing a community was too great in comparison to what are after all in the main region of national benefits of this motorway, particularly given that you can't provide links into the community for their use, and leaving aside other issues that we'd have to weigh of course like improving their traffic flows in their streets, and all those sorts of things that we have to take account of, if we came to the view that this was a crucial issue in this area and bearing in mind the submission that you made in opening, that each of these sectors, while to be considered holistically as one project and nevertheless separately consentable or otherwise, then we ask the question that I put to you a moment ago, and I won't repeat it. And we ask that in all seriousness.

### **30 MS JANISSEN:**

Certainly. I'll probably address that condition further with relation to the community fund proposal as well.

**MS JANISSSEN:**

Moving now to issues common to various submitters, and we actually now go straight into a discussion that we had just been having.

5 **COUNSEL CONTINUES READING SUBMISSIONS FROM PARAGRAPH 189**

“Mitigation amounts a... that were intended.”

**THE COURT: JUDGE NEWHOOK**

10 Now you’ll understand that I want to interrupt you there too won’t you, because the (inaudible 12:01:29) findings of the High Court are well-known and of course are binding. However, that was one single notice of requirement, was it not?

15 **MS JANISSSEN:**

Correct.

**THE COURT: JUDGE NEWHOOK**

20 So that the submission that you make about the Court having no power to cancel part of the requirement must be correct, but doesn’t seem on point in the current case. I recall I think quite clearly, as I’ve been looking at it again more recently in your opening, you talked about this proposal being in sections and respectively consentable or not sector by sector. And either you might say that you didn’t make a submission like that or you might say that that was wrong. What’s the position?

25

**MS JANISSSEN:**

30 With respect to the sectors, a sector by sector analysis was done in particular to somehow make carrying out the assessment of effects process a little easier, and also to ensure that – and this was with respect to the communities, and particularly they only needed to look at information about certain sectors rather than have to – like all the Te Atatu people having to look at sector 9. So it was more administrative in a practical purpose in those

respects. There had to be different – well administratively it would make it a lot easier to have different notices of requirement. For example, for the substrata and surface and those things as well, so they're more of an administrative nature. With respect to the fact that there are six notices of requirement, the effect though of this Court if the Court was to find that they'd have an issue with one particular notice of requirement the effect of declining that, for example, would effectively decline the entire project, because you couldn't – they need all six of them, in effect. So that then would be an issue as to whether or not the Court's decision with respect to declining one notice of requirement, for example, was justifiable, taking into account the entire section 5 analysis.

**THE COURT: JUDGE NEWHOOK**

It begs a very big question doesn't it Ms Janissen, and I get back to my Te Atatu versus Owairaka example. Can NZTA simply by expanding the proposal to something of this huge scale and complexity effectively impose something – and I'm not saying this is necessarily likely to be our finding, but it's circulating in our minds – impose something on a significant part of that community, Owairaka, which has no social connection, or little, with Te Atatu, because the project overall is a highly desirable one in many other terms? There's a big question in there I suspect. Now for myself I accept the findings of the High Court in (inaudible 12:04:39), as I must. But I think there's a difference because that was a single notice of requirement. This is a multiple one, whether for administrative purposes or however. It's there in front of us in that form.

25

**MS JANISSEN:**

Certainly and I do address that further.

**THE COURT: JUDGE NEWHOOK**

Do you, mhm.

30

**MS JANISSEN:**

On that point. Definitely, but I understand the Board's concern on that one.



1205

**THE COURT: JUDGE NEWHOOK**

It's an anxiety.

5 **COUNSEL CONTINUES READING SUBMISSIONS FROM PARAGRAPH  
195**

"In terms of... should not proceed."

10 And I note I think those sections have also been cited in my friends'  
submissions.

**COUNSEL CONTINUES READING SUBMISSIONS**

15 "Accordingly, the measures... of the Act."

So certainly –

**THE COURT: JUDGE NEWHOOK**

Ms Janissen – sorry, carry on.

20

**MS JANISSSEN:**

I was just going to say, certainly with respect to the questions that Your  
Honour has raised, the Agency recognises that that, with section 5 and the  
assessment there and the overall broad judgement that this Board needs to  
25 make, taking into account all of the effects along the various sectors.

1210

**THE COURT: JUDGE NEWHOOK**

Now, my question is this, and I think I know the answer and I doubt that you'll  
disagree. Both the volcanic cones case and the Transpower case were single  
30 designation or single notice of requirement cases, weren't they?

**MS JANISSSEN:**

I think the – I don't recall in relation to the upgrade case, with Mt Roskill there – I think there were alterations as well, but I'll need to check.

**THE COURT: JUDGE NEWHOOK**

5 But essentially it was, I think there was one main notice of requirement.

**MS JANISSSEN:**

I think that's correct, yes.

**THE COURT: JUDGE NEWHOOK**

10 And I seem to recall similarly with the Transpower case.

**MS JANISSSEN:**

I'll check because I think there were a couple at Mt Roskill but I'm not –

**THE COURT: JUDGE NEWHOOK**

15 I don't think either of them were sectionalised, the alignment in the way that this one is. Well you might want to check that.

**MS JANISSSEN:**

I'll just check that yes.

20 **THE COURT: JUDGE NEWHOOK**

Member Dormer had a question too.

**MR DORMER:**

25 You spoke of the multiple, the choice being made to bring down multiple notices of requirement as being administratively convenient to the Agency. Are there any other advantages for the Agency in managing its designation process that way?

30

**MS JANISSEN:**

There was certainly the very specific advantage with respect to the emergency exhaust, because that was something that was quite separate to the substrata above which it was. I don't think so, I think it was just the fact  
5 that the Agency recognised that the project was of such a length and covered so many different communities that it, in considering, and I think Ms Linzey can speak to this as well, because I know we talked about this. In terms of doing the assessment of effects and somehow enabling the community to just be involved in consultation in certain areas, rather than having to go to  
10 massive consultations about the whole project, the project was divided in that way. And I think it's even explained as such in the AEE for that reason.

**MR DORMER:**

You could divide it in that way and still have one notice of requirement couldn't  
15 you?

**MS LINZEY:**

Not at the time of lodgement, because we had two different district plans that we were serving this on, so our understanding was we needed to – we had  
20 the Waitakere district plan notice of requirement and we had the Auckland City.

**THE COURT: JUDGE NEWHOOK**

(inaudible 12:12:25) as far as it goes because you get Te Atatu on the one  
25 hand and then you get Auckland City?

**MS LINZEY:**

Yes, so we were automatically split between those. But certainly the intention with the single omnibus of consents was to –

**MR DORMER:**

Well so far as the Auckland City stretch is concerned then, you could have one notice of requirement divided into several parts, or you could have had several notices of requirement.

**MS JANISSSEN:**

Correct, yes.

5 **MR DORMER:**

And it was regarded as administratively easier for NZTA to go down the multiple route, okay.

**COUNSEL CONTINUES READING SUBMISSIONS**

10

“Turning to national... that more clearly.

**MR DORMER:**

Ms Janissen, for my part and I’m sure for Member Jackson’s, merely  
15 suggesting that those factions could be overlooked.

**MS JANISSSEN:**

I understand that sir.

20 **MR DORMER:**

We are required to recognise and provide for certain things and we are required always to put section 5 as being paramount. And I think the obligation to have regard to the reasons for the Minister’s referral of this matter to a Board, is that we take account of it, not recognise and provide for.  
25 So I was never suggesting that we should not take account of it, I was merely suggesting that when taking account it has a lower priority than “recognise and provide for”.

**MS JANISSSEN:**

30 No sir, I wasn’t suggesting that you’d indicated that, I’m just making the point that there’s been a lot of discussion during this hearing about the local community suffering all of the detriments and having none of the benefits and with respect, part of the message that’s being lost there, is why are we here,

why are we in this courtroom effectively, why is this project before the Board?  
And that's just the point you're making.

**COUNSEL CONTINUES READING SUBMISSIONS**

5

"The economic benefits... the regional community."

And again, this is also in response to a question I think that was Ms Jackson of Mr Copeland at the time. That is attached as annexure C.

10

**COUNSEL CONTINUES READING SUBMISSIONS**

"This assessment was... and Pt Chevalier."

15 **MR ALLAN:**

Sir, I'm reluctant to interrupt at this point, but I've looked at annexure C, it looks like new evidence to me. I haven't been able to ask Mr Parlane for his view on it, but telephoned him, he's got another meeting in town, I may be able to see him after his meeting. But none of the parties have seen this before. It's addressing something we apparently raised in our case and I just don't know how to address it, other than to ask you to give it no weight whatsoever, because I can't test it, I don't even know what validity it's got at all at this stage.

20

**THE COURT: JUDGE NEWHOOK**

25 Well first Ms Janissen, is it new?

**MS JANISSEN:**

Ah, yes the memorandum is, yes.

**THE COURT: JUDGE NEWHOOK**

30 Where's the fairness in bringing this to us now Ms Janissen?

**MS JANISSEN:**

Sir in replying to the issues that are raised by the submitters, specifically to the Board Members' questions, it is a point of clarification. If the Board wishes to ignore that, then I will leave that to the Board.

**5 THE COURT: JUDGE NEWHOOK**

Well I'm grateful to Mr Allan for raising the point because I'll be quite frank, I was sitting here thinking that this is a piece of information that's been pulled out of the vast quantity of materials that we already have and are working with but it's not. There's a significant natural justice issue in you producing this  
 10 Ms Janissen for myself. I'll consult the other members, but for myself I think exhibit, annexure C should be handed back to you. Mr Allan, perhaps generously, suggests that we give it no weight. I'm wondering if I should even read it.

**15 MS JANISSEN:**

Sir I will leave that to the discretion of the Board. We're responding specifically to an issue that's been raised throughout this hearing from representatives, or representations in particular or submitters. It is derived entirely from modelling material and information that's available to the other  
 20 parties.

**THE COURT: JUDGE NEWHOOK**

Somewhere in the 60 plus volumes of stuff. Now Ms Janissen we have offered very considerable leeway to all parties, but particularly to NZTA during the course of the hearing in the interests of getting answers and indeed have  
 25 gone to the lengths of asking for material to come to us as late as last week and we have given other parties, Mr Allan's clients particularly, the opportunity to deal with them. For myself I have a feeling that he hasn't had the opportunity to deal with this. I'm going to consult my fellow members and see, they might have a different view.

30 **1220**

**THE COURT: JUDGE NEWHOOK**

Ms Janissen, our ruling is indeed that Mr Allan's suggestion that we simply receive it and give it no weight is generous. We think that this is a significant departure from the tenets of natural justice. Your client could have dealt with  
5 this some time ago, and our decision is to remove annexure C and hand back all the copies that we've had up here. And we'll mark the header page, page 146, in our copies of the book as our having done so.

**MS JANISSEN:**

10 Sir perhaps the same time then you would need to redact from the submissions, parts of paragraph 206 through 208.

**THE COURT: JUDGE NEWHOOK**

Yes that's right. Yes I was coming to that. So do we take out the whole of paragraphs 206 to 209?  
15

**MS JANISSEN:**

No sir, from the second sentence.

**THE COURT: JUDGE NEWHOOK**

In the second sentence. So starting with the words "to provide – to further  
20 provide"?

**MS JANISSEN:**

Correct, yes.

**THE COURT: JUDGE NEWHOOK**

25 To the end of paragraph 209?

**MS JANISSEN:**

208.

**THE COURT: JUDGE NEWHOOK**

208. I will use your word, which I rather like, “redacted” and I’ve written that in large.

**5 COUNSEL CONTINUES READING SUBMISSIONS FROM PARAGRAPH 209**

“In relation then... there as appropriate.”

10 I don’t know if you’d like me to take those as read, but we go through the improved –

**THE COURT: JUDGE NEWHOOK**

Can you summarise them?

**15 MS JANISSSEN:**

Yes sir. There’s just a suite of conditions which clearly show that there will be local benefits for the Te Atatu community in relation to pedestrian cycleway benefits, safety and amenity of the accessways in relation to the domain, improved ambient noise environments for residents adjacent to State Highway 16, improved screening and amenity planting, improved ecological planting and rehabilitation of the open space zoned land adjoining State Highway 16, improved passenger transport opportunities by increasing their proportion of bus shoulders, urban design improvements and general upgrades, learning and teaching opportunities for educational facilities, the ecological restoration and enhancement of coastal margins, secured and long term pest and weed management for Traherne Island and improved performance of stormwater treatment discharging to receiving environments from the existing and new paved areas with 80% removal of TSS 100% of new and proposed roads through sectors 1 to 4. In the next section we deal with the Waterview and Pt Chevalier community. Again, this is addressing claims that they are effectively suffering all of the detriments and none of the benefits. The delivery of these outcomes, as noted below, is again provided



for in the proposed suite of conditions. And most of those are cross-referenced there.

**COUNSEL CONTINUES READING SUBMISSIONS**

5 “With respect to... the Owairaka community” –

**MR DORMER:**

Sorry, before we go on – may I sir?

**THE COURT: JUDGE NEWHOOK**

10 Yes.

**MR DORMER:**

My immediate reaction in relation to (inaudible 12:27:34) 11.15 is that that is not an advantage derived by the community, rather it’s a mitigation, because  
15 the community would never have had to suffer the impact which necessitates this work if the motorway weren’t there. When you talk about the community suffering the impacts being imposed upon and receiving little of the benefit, we rather have in mind benefits other than by way of mitigation.

20 **MS JANISSSEN:**

With respect to the Waterview Primary School in particular it is submitted that the – especially as reflected in the agreement, that provides significant additional benefits for the school, over and above if you were just doing very specific litigation of noise effects and the like. The fact that a master plan and  
25 what not is going to be prepared and there’s going to be quite a significant reordering or redevelopment of the school, in the Agency’s submission, goes further than if you were going to, a strict mitigation would require.

**MR DORMER:**

30 What aspects of the plan could be said to fall into that category?

**MR LAW:**

Certainly sir. We would suggest – certainly the mitigation aspects are the acoustic installation, and so on, so those are certainly mitigation, but upgrade and redesign of the school administration block, creating a new entranceway, solar panels, fitness trail, so the provision of a cover for the pool, the upgraded PA system. The PA system of course is the public address rather than being a noise mitigation measure. So there are some measures like that and at the same time, the insulation of the, of all the rooms. So acoustic insulation is obviously required, but this goes further and it's insulation of all rooms, regardless of whether or not it's required for acoustic measures. So there's certainly a balance. There are some measures in there that are seen as mitigation and others that are trying to give the school positive outcomes to tell the community about.

**1230****15 MR DORMER:**

Thank you.

**THE COURT: JUDGE NEWHOOK**

Except Mr Law that I will add something here for you to deal with if you wish. First, in relation to the Waterview Primary School and then secondly, in relation to these lists of community local benefits, as you've called them. Firstly, as to the school I have an understanding from the evidence, tell me if I'm wrong, that these items which you might be urging us to consider as benefits that a package offered to the school to mitigate community perception that this school is suffering the impacts of local infrastructure like the stack and buildings, and to endeavour to remedy negative effects on the school role. Now that I'm quite sure is in the evidence, even if it's not in NZTA evidence. So for myself, at this juncture, I'm not inclined to see a lot of lolly – a lot of lollies in 2.11.15. Am I wrong in this perception that there is evidence that the community perception of the effects on the school were going to have a negative effect on its role and that if the school could be upgraded that might counter it? Perhaps, look if –

**MR DORMER:**

There's evidence of that.

**THE COURT: JUDGE NEWHOOK**

I think you just need to leave us to look at the evidence.

5

**MS LINZEY:**

Except to note that the agreement specifically separates this. It was pointed out this morning, the vents, the ventilation stack location issue from this agreement because it was not responding to (inaudible 12:32:17) you know, was not responding to that issue.

10

**THE COURT: JUDGE NEWHOOK**

Although of course it's dependent on our directing the moving of the stack, which you've not conceded.

15 **MS LINZEY:**

No certainly, but as I – but it was separated from that agreement for that reason, that it wasn't seen as part of works or that function.

**THE COURT: JUDGE NEWHOOK**

All right, you'll need to leave us to analyse the evidence. My other point is, and we will be analysing this when we are going through the evidence with care, is that many of the things in these lists may not so much be described as "local benefits", but in fact are mitigation. There may be some additional benefits and I'm minded, as I sit here, to think in terms of the stormwater treatment on State Highway 16 picking up water if it's on the existing highway and dealing with that far better than it's ever been done before, well because it hasn't been dealt with before being dumped into the CMA. So that's one that stands out as a benefit and there may be others, but there may - I'm inclined to regard these are items of mitigation, but we will, as a Board, be considering these things very carefully when analysing the materials.

20  
25  
30

**MS JANISSSEN:**

I'm going to move on to the Owairaka community. Again I'm pointing out the delivery of various outcomes provided for in the suite of conditions, and perhaps if I can just take those as read because they're (inaudible 12:33:54)  
5 in the same vain as has been discussed with respect to Waterview and Te Atatu.

**THE COURT: JUDGE NEWHOOK**

No I think you should just summarise them again as you have with the other groups.  
10

**MS JANISSSEN:**

Certainly. With respect to the Owairaka community, improved (inaudible 12:34:08) recreation furniture with respect to the Auckland Council guidelines, improved active recreation facilities through providing the open for play  
15 full-sized football fields in Valonia Reserve, being a betterment of existing sports field facilities in that area, amendment to the configuration of proposed sports fields on the Valonia Reserve area to maximise the opportunity for summer sports playing areas, improved pedestrian and cycle facilities through Alan Wood Reserve, including connections across Oakley Creek via the  
20 Hendon Park Bridge and from Methuen Road and a continuous open space land corridor through this area, include provision for pedestrian and cyclists through the south-western cycleway expansion from Mt Roskill through to the Alan Wood Reserve, improved ecological value of open space areas, including riparian planting, walkways and ecological planting of wetland areas  
25 which will contribute to passive open spaces, although they were not included in the open space replacement land calculations, opportunities for educational facilities and community group involvement and the restoration of the naturalised stream (inaudible 12:35:14) and ecological systems of Oakley Creek. The next issue to address –

**THE COURT: COMMISSIONER DUNLOP**

Ms Janissen, what should the Board make of that, that in your submissions you haven't identified any local benefits of what might be described as the Pt Chevalier to St Lukes community?

5

**MS LINZEY:**

In terms of the noise benefits –

**THE COURT: JUDGE NEWHOOK**

Would you take instructions from Ms Linzey and relate them, Ms Janissen.

10

**MS JANISSEN:**

Sir, the various benefits of – sorry, did you say Pt Chevalier?

**THE COURT: JUDGE NEWHOOK**

Pt Chevalier to St Lukes, sector 6.

15

**MS JANISSEN:**

With respect to this, I think part of those were covered under section – paragraph 2.11 with respect to the stormwater provisions. I haven't gone through those, just having a look if I can identify which of those paragraphs refer to – also are relevant to St Lukes.

20

**THE COURT: COMMISSIONER DUNLOP**

It's your submission that some of the matters in 2.11 are equally applicable to Pt Chev to St Lukes.

25

**MS JANISSEN:**

Yes.

**THE COURT: COMMISSIONER DUNLOP**

Is that the understanding?

30

**MS JANISSSEN:**

Correct, yes sir.

**THE COURT: JUDGE NEWHOOK**

All right, do continue, thank you counsel.

5

**COUNSEL CONTINUES READING SUBMISSIONS**

“Paragraph 213 in... condition in a” –

**1240**

10 **THE COURT: JUDGE NEWHOOK**

Yes, no carry on to the end of that next paragraph.

**COUNSEL CONTINUES READING SUBMISSIONS**

15 “In a similar... New Zealand transport strategy.”

**THE COURT: JUDGE NEWHOOK**

Yes, just pause please. Member Dormer.

**MR DORMER:**

20 I think this best use of funds argument may have started with a line of  
questioning I initiated. Ms Linzey will recall that we got to 11 to \$21 million for  
the cost of moving the southern portal several hundred metres, and then I  
asked her whether that would be a good use of funds, in terms of what one  
would do with 11 to 21 million if one was drawing up a list of projects. And  
25 she said it wouldn't be on it, which one could conclude that the cost of moving  
the southern portal was certainly not the best use of funds. But if leaving it  
where it is has significant environmental detriments, because it is rather at the  
chokepoint, as it were, with the reserve, if leaving it where it is has significant  
environmental detriment that the Agency is unwilling to ameliorate by way of  
30 an Ogier-type condition or payment, then might not the only alternative be an  
inefficient use of funds by moving it? I mean if the Agency, for example, were

to offer – to pluck a figure out of the air – say some environmental enhancement that might cost it five million then that might be acceptable in a wider context. And if the Agency says, “No the cost of ameliorating this environmental detriment 11 to 21 is too high so we’re not going to,” might it  
5 not be the case that the environmental detriment has to be ameliorated and that cost be borne? I mean there are cheaper ways of doing it. Let’s offer them five million to do something. If the Agency refuses to do that, would that be the case?

**THE COURT: JUDGE NEWHOOK**

10 Member Dormer I don’t think we’ve got any evidence about this five million and I think –

**MR DORMER:**

No no.

15 **THE COURT: JUDGE NEWHOOK**

You’re just quoting an example?

**MR DORMER:**

Yes I am.

20 **THE COURT: JUDGE NEWHOOK**

Taking an example or making an assumption.

**MR DORMER:**

Yes. Yes we do have evidence about 11 to 21 and we do have evidence that  
25 that’s not the best use of funds and I (inaudible 12:43:50) all that.

**THE COURT: JUDGE NEWHOOK**

Well I’ll declare at this junction that I don’t, for myself at this moment, but we have a long way to go, see the need for Ogier activity in this area. For myself I think the two options are move the portal or don’t.

30

**MR DORMER:**

Oh I certainly wasn't suggesting sir a need for it either. I was suggesting it as an alternative.

**THE COURT: JUDGE NEWHOOK**

5 Yes yes. All right, well there you are you've been witness to a little bit of deliberation amongst members of the Board. You're privileged.

**MS JANISSSEN:**

10 Just in terms of the last point that His Honour made, I agree with the comment in relation to not needing the Ogier-type of conditions with respect to the southern ventilation building.

**COUNSEL CONTINUES READING SUBMISSIONS**

15 "The location of... such a relocation."

And if I can note here this is responding specifically to a question raised by Member Dormer as to whether or not the Agency would see any form of jurisdictional problem with moving the stack.

20

**COUNSEL CONTINUES READING SUBMISSIONS**

"While an alternative... before the Board..."

25 And that was shown on the construct site plan that's now, I think, exhibit 8.

**COUNSEL CONTINUES READING SUBMISSIONS**

"It is submitted... modify a requirement."

30

And I've referred to that earlier. If I can perhaps take paragraph 230 as read because we've gone through that. And that's with respect to actually modifying the boundary of the requirement.



**COUNSEL CONTINUES READING SUBMISSIONS**

“But even when... modify the requirement.”

5

So that is, I guess, responding specifically to an issue that’s been raised throughout the Board by Member Dormer.

**MR DORMER:**

10 Can I just seek some clarification.

**MS JANISSSEN:**

Certainly.

15 **MR DORMER:**

In para 234 you use the expression “users of Great North Road who may have submitted” and in paragraph 251 you use the expression, in the second to last line, “who would have done so”. Should the word “would” read “may” in 231?

20

**MS JANISSSEN:**

Yes.

**COUNSEL CONTINUES READING SUBMISSIONS**

25 “Addressing next the... Mr Andre Walter.”

**1250**

And if you recall, in response to submitters’ evidence, Mr Walter attached various annexures to his rebuttal evidence, indicating three of the alternative vent locations that –

30 **THE COURT: JUDGE NEWHOOK**

We had it on the screen a lot.

**MS JANISSSEN:**

Yes, multiple times. Subsequently that location plan was updated and is now I think exhibit 7, to show the alternative vent site proposed by Melean Absolum, which is slightly south of option 1, and that was essentially  
5 just to move it slightly south to ensure that it was within designation boundaries.

**COUNSEL CONTINUES READING SUBMISSIONS**

10 “However, it’s submitted... building, option 3.”

Again, that’s an option supported by many submitters and to be determined by the Board. So one of the concerns, and I think obvious distinctions to be made here is that through the hearing process there was another option  
15 identified or a number of options identified for the southern ventilation buildings. In relation to option 3 the Board will recall the very detailed tables and multi disciplinary analysis of all aspects of moving the southern ventilation building further south, so that it would in part address whether or not, and I think in response to Member Dormer’s questions in particular, any other  
20 parties or residents could be impacted should that multiplication be made. There is a distinct disparity between the work that has been done with respect to that sort of modification and the modification for moving of the northern vent building. Effectively, what we’ve had through the hearing is referenced repeatedly to that site plan and I will refer to this later, the Agency at one point  
25 then provided a photo simulation to give the Board some indication as to what a ventilation stack would look like on the east of Great North Road because other than that, everyone was effectively operating in ignorance of what it might look like. And I’ll talk about that further, but there is a significant concern that we raise with respect to whether or not the Board has sufficient  
30 information for it to properly evaluate the implications of moving the ventilation stack across the Great North Road.

**MR DORMER:**

And do you suggest that we do have sufficient information for us to make that assessment in relation to option 3 at the southern end?

5 **MS JANISSSEN:**

Yes we do.

**COUNSEL CONTINUES READING SUBMISSIONS**

10 "Paragraph 2.6, it... BP service station."

So yes, while there was considerable support of the community, the Board will be aware that there was a divergence of opinion as to how they saw the ventilation stack fitting into that new site across the Great North Road.

15

**COUNSEL CONTINUES READING SUBMISSIONS**

"Ms Absolum for... of that stack."

20 So her position in relation to the supplementary evidence was move it across, onto the eastern side in the alternative stack location and use the trees to screen it.

**COUNSEL CONTINUES READING SUBMISSIONS**

25

"I then note... in that location."

30 Instead, I think as she put it, "Shrub up the front of the stack and try and hide it and pretend it's not there." And that, the Board will recall was specifically in response to the photo simulation. So I think that's just a very good example that without the more detailed analysis, photo simulations and the like, the Board cannot be in as clear a mind as to what the implications of relocation of that stack would be by comparison, with for example the Agency's proposal.

**COUNSEL CONTINUES READING SUBMISSIONS**

“During the hearing... on that issue.”

5 And again, in response to cross-examination of various witnesses of Living Communities, none of those witnesses had addressed that issue.

**COUNSEL CONTINUES READING SUBMISSIONS**

10 “Also the potential... implications of this.”

And I think the effect of the relocated stack being hard up against the boundary is particularly evident if you look at exhibit 7.

15 **COUNSEL CONTINUES READING SUBMISSIONS**

“Further the requirement... the construction operation.”

20 So this is another aspect which in terms of the impacts of the relocated stack, had not been addressed.

**COUNSEL CONTINUES READING SUBMISSIONS**

“The land and... of this option.”

25

And if you recall, I had under cross-examination asked Mr McKenzie a number of questions as to whether or not he had looked at any of these issues and he had not. His evidence in particular was limited to the visual aspects.

30

**COUNSEL CONTINUES READING SUBMISSIONS**

“In these circumstances... mitigation it proposes.”

And I could add there the detailed amount of work that the visual experts have put into the wording of the conditions. And our submission is sufficient to enable this Board to conclude that that dedication site can be confirmed.

**COURT ADJOURNS: 1.02 PM**

5

**COURT RESUMES: 2.24 PM**

**COUNSEL CONTINUES READING SUBMISSIONS FROM PARAGRAPH 256**

5

“Undergrounding of the... mitigate project effects.”

And that is – that refers in part to the distinction between section 171 and obviously the overall assessment that the Board needs to make as to whether  
 10 or not mitigation is proposed under section 5 and my friend, Mr Allan, had specific reference to that in his submissions. If I could refer to the footnote, an issue raised by the Board during the hearing is whether the Agency considers there would be a jurisdictional issue should the Board find that option 3 needed to be implemented to mitigate effects. Given the outcome of the  
 15 multidisciplinary assessment carried out for that option, together with Mr Brown’s response to questions on potential visual effects of residents, and I think that was in response in particular to Mr Allan, and also some members of the Board, the Agency sees no obvious jurisdictional issue in that regard. In relation to open space – and perhaps before I move any further on that,  
 20 could I indicate that as annexure D is new that we are happy to have that removed, which results in a redaction, paragraph 283 and annexure D.

**COUNSEL CONTINUES READING SUBMISSIONS**

25 “The impact of... other recreation facilities” –

**1430**

**THE COURT: JUDGE NEWHOOK**

Can I just stop you there. Is this financial contribution made on an Ogier basis is it?

30

**MS JANISSSEN:**

Yes it is. And sorry, it should be one sports field. That’s my typo.

**THE COURT: JUDGE NEWHOOK**

Sorry? It should be...?

**MS JANISSSEN:**

5 It should be “a replacement sports field”, not plural.

**COUNSEL CONTINUES READING SUBMISSIONS**

“Development of an... local areas currently.”

10

And that’s, for example, the New Windsor area.

**COUNSEL CONTINUES READING SUBMISSIONS**

15 “In addition to... number of submissions...”

Actually sir that goes on to my next paragraph so I might just ignore that one.

**THE COURT: JUDGE NEWHOOK**

So that’s redacted.

20

**MS JANISSSEN:**

That’s redacted as well.

**COUNSEL CONTINUES READING SUBMISSIONS**

25

“Over the course... by the parties.”

**1440**

30 So there of course the council's experts are not accepting that the Agency's mitigation package is entirely sufficient. But if the Board was minded, I think the point here is, if the Board was minded to approve the package proposed by the Agency, the council is comfortable with the conditions as currently proposed in the package. So there is a distinction there, I think the council is

5 keen to make that one. And if I could also just note here and I won't go through them in detail, but the Board can see, by simply referring to the red line set of conditions, beginning at page 54 and moving all the way through to page 61, that there have been a substantial development again of the open space conditions in the last few weeks. And a lot of that has been the very constructive discussions between the experts, particularly that canvassed the open space people. So it's certainly been of great benefit in terms of narrowing the issues in dispute as well, and ensuring that the conditions are appropriate.

10

**COUNSEL CONTINUES READING SUBMISSIONS**

"Next section of... and cycle bridges."

15 And if I can just take that as read, the Board will be familiar with those.

**THE COURT: JUDGE NEWHOOK**

Yes, thank you very much.

**COUNSEL CONTINUES READING SUBMISSIONS**

20

"The Agency does... and other impacts."

**MR DORMER:**

So do we have jurisdiction?

25

**MS JANISSSEN:**

30 On that particular bridge, no, with respect. That is one that, I think of all of the bridges, has the most significant impacts, consenting issues, land ownership issues and I think was by far the most expensive, from what I recall. I think potentially the visual effects of that bridge alone would be very significant.



## COUNSEL CONTINUES READING SUBMISSIONS

“Next in relation... on Oakley Creek.”

### MR DORMER:

5 So do we have jurisdiction in relation to the Alfred and Phyllis Street bridges?

### MS JANISSSEN:

Just reflecting on that, the question that Your Honour that you asked earlier. This refers back to the discussion we had about whether or not it was possible  
 10 to craft an appropriate condition precedent that effectively, or was fair in relation to the impacts that such a condition was aiming to mitigate so to speak. The point of the discussion earlier in relation to condition precedent is not so much that it might be impossible to draft one, but there are a number of difficulties associated with it. No one has even attempted to do that at this  
 15 point so it's potentially a significant jurisdictional issue because if any of this sort of mitigation was proposed, the Board would have to be satisfied that it is fair and reasonable and meets all the usual tests in relation to conditions. So I think that's – just to put it into context the discussion earlier about whether or not it is possible to draft an appropriate condition precedent to address any of  
 20 these issues that are proposed in relation to the cycleway as well.

### THE COURT: COMMISSIONER DUNLOP

And is it your submission that it is possible to draft such a suitable fair and reasonable condition precedent?

25 **MS JANISSSEN:**

To be honest I don't know. I've pointed out the number of the issues and the question that I raised earlier in the discussion today was, what would, if it was to be drafted, that's a condition precedent, it needs to be restricting the Agency from doing something. So if for example, the Board was minded to  
 30 require that a bridge was needed for mitigation, it would be precedent to what? The bridge needed to be in place before the Agency could do what? And our concern in relation to that is if you tie that to stopping construction at

all, or post-construction stopping the operation of the motorway, there's one lot of rational nexus but to the imbalance, in terms of the unreasonableness that that causes to the Agency by comparison to what effects it is mitigating are quite extreme. And that's the issue and the concern that we have in terms  
5 of drafting that sort of form of a condition.

**THE COURT: COMMISSIONER DUNLOP**

In 299 Ms Janissen, you submit it's relevant to note that the Alfred Street Bridge access would not be able to be built during construction and therefore could not provide this mitigation. Is there evidence to that effect that you can  
10 guide us to?

**MS JANISSSEN:**

If I could refer to – because there is evidence to that effect. Yes it was discussed in the rebuttal evidence of Mr Little. It's effectively, I think, the  
15 access is in the middle of a construction yard so it just wouldn't be possible to do it at the same time as construction was actually taking place. So I think it's a good point to clarify that because there are a number of submitters, as you'll be aware, during the hearing that really focused on the Alfred Street Bridge as a means of mitigating impacts during the construction period to take them  
20 away from the noisy works on the Waterview site, but unfortunately it would be impossible to do that.

**COUNSEL CONTINUES READING SUBMISSIONS**

25 “In terms of... in this location.”

And if you recall there that was the supplementary evidence from Mr Buchanan who indicated that while there could be a temporary bridge, effectively, as soon as the rail, KiwiRail did develop its plans, or if and when it  
30 did, that would effectively have to be removed at that point and replaced. So there was a concern there.

## **COUNSEL CONTINUES READING SUBMISSIONS**

“The scale of... on Soljack Place.”

5 And perhaps before I leave the Soljack Bridge, the Board will recall that during  
the cross-examination of Mr Little on behalf of the Agency he, certainly of all  
of the bridges, wearing his open space hat that was the bridge that he  
supported the most, but under cross-examination he indicated with respect to  
mitigating impacts of passive open space, if the Board was minded to require  
10 that the southern ventilation option 3 be implemented by the Agency then that  
would provide sufficient additional mitigation of passive open space impacts  
and the Soljack Bridge would not be required. Effectively, I think – I can’t  
remember his words – but they’re effectively either the Soljack Bridge or  
something in the order of making more open space available by way of the  
15 option 3, the southern vent building. Turning to the Olympus Bridge.

## **COUNSEL CONTINUES READING SUBMISSIONS**

“Generally the submissions... for the project.”

20

And this next section of the reply addressed just another aspect of provision of  
the cycleway, sector 8. I’ve already referred to it earlier in my submissions,  
but I note that – and I think I’ve referred to this already – the final addendum  
report considered that on balance this link is better managed as an Auckland  
25 Transport and an Auckland Council project and as a gap in the network we  
consider that this should be capable of being funded and delivered separately  
from the project. As I’ve noted, if I could take paragraph 313 as read because  
I’ve already indicated some of the difficulties with that route in relation to no  
agreement on alignment –

30 **THE COURT: JUDGE NEWHOOK**

Yes.

**MS JANISSEN:**

They need consents and the like.

**COUNSEL CONTINUES READING SUBMISSIONS**

5

“The more important... but complimentary project”

**1500**

In relation to air quality effects and perceptions, this is the background of the earlier part of my reply where I summarised all of the findings of the expert caucusing sessions and dealt with the outstanding issues, which were only construction and offsets.

10

**COUNSEL CONTINUES READING SUBMISSIONS**

15 “Newer submitters raised... and monitoring periods.”

And I just add there, and I note that in response to questions in particular from the Board, questions of both Dr Black and Mr Fisher that they stress I think that in their opinion it’s the issue of communication and the provision of information to the community that would be one of the most beneficial actions to happen, especially during construction, in order to mitigate and provide some comfort on general community concerns about general health effects, including air quality. So with that in mind, again the Board will notice that there has been quite a substantial redline of the conditions in relation to each of these areas to ensure that there is as much feedback, I guess, between the construction teams and the actual community as to what is happening, when it’s happening and specifically them having access to the air quality monitoring data, and the like. Next I’ll refer to the provision of local ramps to and from State Highway 20 at Great North Road interchange. This issue, and this one I might paraphrase a little bit, the only debate on this was narrowed down to one specific issue, which I will get to. Here the Board would be aware that there was comprehensive rebuttal evidence by both Robert Mason and Mr Murray as to whether or not a Great North – there should be, sorry, local connections to the Great North Road interchange. Mr Mason, in particular,

20

25

30

explained in his evidence the number of options. He looks specifically at the options that had been provided by Sir Harold Marshall for the ramps. This issue is also the subject of discussion in expert caucusing and while it was agreed that local ramps would be, in principle, be desirable i.e. nice to have,  
 5 whether there is an overall need for these ramps was certainly not agreed.

### **COUNSEL CONTINUES READING SUBMISSIONS**

“On behalf of... volcanic cones case.”

10 **1510**

And I've already read that quote earlier today.

### **COUNSEL CONTINUES READING SUBMISSIONS**

15 “The Court went... trees over construction.”

The next part of this reply goes into substantial detail to clarify exactly how this project is to be dealing with trees and what the next steps are with respect to their management as part of the process if it is confirmed. I'm happy to  
 20 read through this but it's quite...

**1515**

### **THE COURT: JUDGE NEWHOOK**

Yes, I wonder if you could – could you sum it up in a nutshell, or is that a bit hard? Can you just indicate the levels of mitigation and –

25

### **MS JANISSEN:**

Yes.

### **THE COURT: JUDGE NEWHOOK**

- the general considerations.

30

**MS JANISSSEN:**

Yes, perhaps if you can take you – if I could just summarise it in this way. That the assessment of trees has been looked – it has been looked at in considerable detail. I know that some of the submitters raised concerns as to what the Agency was doing. At paragraph 351.2 we note that it's looked at in relation of the assessment of the botanical or habitat values of vegetation, subparagraph (b), and the assessment of their contribution for landscape and visual amenity, and also the assessment of the managing trees, which is contained in appendix E7. I note also and clarify in paragraph 355 and onwards just how many trees are in fact affected. And I note – perhaps if I can just read paragraph 359.

**COUNSEL CONTINUES READING SUBMISSIONS FROM PARAGRAPH 359**

15

“The intention of... revised proposed conditions.”

So in a nutshell they'll confirm the construction methodology and footprint by the contractor then appoint a project arborist, undertake the stem assessment for trees in footprint areas to confirm the list of amenity trees then undertake consultation with the community liaison group on the stem assessment, confirm which trees can be protected through construction management and assess the potential to relocate trees. It is also noted that the construction and environmental management plan itself provides for meetings, for example, between the project arborist and the council ensuring that amenity trees are provided with appropriate protection methods, and the monitoring of amenity trees. There's also a final requirement to undertake necessary replacement of amenity trees in accordance with the provisions of – this is landscape and visual condition 10 – and with species from the planting schedule, or if in agreement with the council, unless they are the oaks in sector 5. In the latter case, if these trees require removal they will be replaced by the same species at a rate of two for every one removed as part of the Oakley Inlet heritage area plan. And the oak trees of course were of particular interest to (inaudible 15:17:53). So that's just – just want to add there was just

considerable more detail as to clarification as to how the project is going to be handling trees, given some of the concerns expressed by submitters.

### **COUNSEL CONTINUES READING SUBMISSIONS**

5

“In cross-examining Ms Linzey... southern ventilation building.”

I’m minded though of course that there is the test in relation to what is the adequate assessment of alternatives under section 171(1)(b) and then again the separate assessment that needs to be made by this Board as to whether or not, in the whole however, under section 5 further mitigation may be required and whether or not one of the options would better satisfy that.

10

**1520**

### **THE COURT: JUDGE NEWHOOK**

15 You anticipated my question.

### **MS JANISSEN:**

I’m still, I’m (inaudible 15:20:06) Mr Allan’s submissions on the point, which are certainly on point and are accurate.

20

### **COUNSEL CONTINUES READING SUBMISSIONS**

“Moving to the... as a whole.”

25 And I think another example there is the Board will recall the evidence of Mr Little in relation to open space, who was involved in a lot of consultation with the community in relation to the pros and cons of different open space options and the like. And he also made the point in his evidence and during questioning that there was a range of community opinions within each of the  
30 communities.

**COUNSEL CONTINUES READING SUBMISSIONS**

“Turning to economics... summarised as follows.”

5 And I’ll take that as read because I’ll with them next.

**THE COURT: JUDGE NEWHOOK**

Perhaps take that as read.

**COUNSEL CONTINUES READING SUBMISSIONS**

10

“Firstly benefits not... add any benefit.”

**1525**

Perhaps in relation to these sections, they’re quite specific responses to the matters and I can just summarise them as –

15 **THE COURT: JUDGE NEWHOOK**

Yes, could you summarise each one very briefly.

**MS JANISSSEN:**

As follows. The robustness of the project benefits and benefit costs –

20 **THE COURT: JUDGE NEWHOOK**

I’m saying that because your witness wasn’t cross-examined.

**MS JANISSSEN:**

Yes. Sir I’ll just point out that the Agency disagrees with the criticisms made  
 25 by Mr Tritt in relation to the economic justification to the project that (inaudible  
 15:26:03). That’s addressed in paragraphs 379 through to 384. They simply,  
 part of the evidence addresses the various reasons why, in our submission,  
 Mr Tritt’s analysis was inaccurate. The next issue in relation to the post-  
 construction audit. This was a request and the requirement by Campaign for  
 30 Better Transport. Mr Murray had addressed this previously under  
 cross-examination that a check showed that recorded traffic flows on



State Highway 20 Mt Roskill to be within the 5% of model forecasts. He also explained that such audits do not normally happen. And I just simply note here the Agency has plans to undertake a post-construction review as a matter of course for all of the (inaudible 15:26:48) projects. So requiring such a review by way of a designation condition would be outside the scope of the Board's jurisdiction. The next issue I address is that the Agency, for the reasons set out, simply disagrees with Professor Hazeldine's claim that the do minimum scenario is unrealistic and that the benefits are inflated. In paragraph 390 the Agency disagrees with the assertion made by the Campaign for Better Transport that the benefits of enhanced productivity and economic growth is an unproven assumption. And we refer there again to Mr Parker's rebuttal evidence and attachments. So that's over – I'll leave the economics. In relation to mitigation of ecotones.

#### 15 **COUNSEL CONTINUES READING SUBMISSIONS**

"As explained in... are vegetation severances" –

#### **THE COURT: JUDGE NEWHOOK**

Just pause for a moment. It's 3.30, I think we'll give your voice a rest for a few minutes. You're changing topic.

**COURT ADJOURNS: 3.28 PM**

**COURT RESUMES: 3.46 PM**

**THE COURT: JUDGE NEWHOOK**

Right, thank you, paragraph 393.

5 **MS JANISSSEN:**

Yes I've had, with respect I've had a look through this and I will be taking the Board through a lot faster. I think what I might do is just highlight what some of the issues in the reply address, key ones I will refer you to and then otherwise lead the Board to read it at a later time, because I'm mindful that it  
10 may be of more benefit to have some more questions in relation to certain areas as well.

**THE COURT: JUDGE NEWHOOK**

Yes, well we can certainly be trusted to read, we're well used to that with this hearing.

15

**COUNSEL CONTINUES READING SUBMISSIONS**

"The brief read... vegetation condition V18."

**THE COURT: JUDGE NEWHOOK**

20 Page numbers there?

**MS JANISSSEN:**

Page 69. So the suggestion there is to delete vegetation condition 16 and instead to provide in vegetation 17.

25 **THE COURT: JUDGE NEWHOOK**

In 17, yes.

**MS JANISSSEN:**

Seventeen now, “the Agency shall maintain pest and weed management works as identified in the restoration plan, through to 2020.” So in that respect even if the restoration plan itself ceased in 2014, this condition would require  
5 the Agency to maintain all works identified in that plan for a longer period.

**COUNSEL CONTINUES READING SUBMISSIONS**

“Turning to the... Island Marine Reserve.”

**10 THE COURT: JUDGE NEWHOOK**

In the next paragraph there is that topic that I asked about this morning, so – the regional pest management strategy?

**MS JANISSSEN:**

15 Yes that, just in response to that, the regional pest management strategy is required by the Biosecurity Act and the ARC is required to have a regional pest management strategy and that in turn feeds down to the Agency, who is required to comply with it.

**THE COURT: JUDGE NEWHOOK**

20 All right, well it mightn’t disappear or it might be replaced, but we don’t know what the detail would necessarily be going forward.

**MS JANISSSEN:**

I think just in relation to that condition, which was condition 8, I think there was  
25 a suggestion during one of the caucusing sessions that it be changed to 10 years, with respect. If the Board is minded to impose that, if there’s any concern in relation to what the advice note means. I mean the bottom line is, is that the Agency will be doing ongoing control and management of all invasive plant, pests in any event. So that may well be a storm in a teacup.

30

**COUNSEL CONTINUES READING SUBMISSIONS**

“And in relation... metals in solution.”

5 And we note again there, of course there will be further mitigation measures as a result of the application under the Act, Marine Reserve Act. In relation to transparent noise barriers, just a simple comment there that they are not considered appropriate for use in this project. Then some more technical transport related matters that were raised by individual submitters. I don't

10 propose to take the Board through that because they're just very technical responses, that in effect say that, for example with respect to Mr Will McKenzie, researching that only two lane lengths are required, rather than three lane. The Agency disagrees for the reasons set out in the reply. It is also noted in relation to future proofing bus shoulder lanes, the important

15 point to be made there, that this section of State Highway 16 forms part of the quality transport network, rather than the future rapid transit network. So if the region's plans were to change in the future, the project would not preclude the opportunity to implement a bus-way at a later stage. As more of a technical issue again, in paragraph 411, the widening and performance of

20 State Highway 16. The next sections respond to a query about how traffic reduction benefits on local roads can be locked in and there is reference there to the Western Ring Route Northwest Network Plan that's been developed by the Agency with input from former Auckland City Council, Waitakere City Council and ARTA. And this plan, this complimentary project's to be

25 progressed by the council and transport in order to make best use of the changes in transport patterns provided by the completed Western Ring Route. Mr Mehaffy raised a number of issues and we simply point out examples of some of the errors in his representation. And I do not propose to go through those.

30 **THE COURT: JUDGE NEWHOOK**

Yes, well you heard our questions of him, mine in particular about where his expertise lay and I think we'll take that as read for the moment.

**MS JANISSSEN:**

There were then freight and transport issues raised with respect to the Auckland Business Forum and National Road Carriers. Mr Walter has confirmed that the route in the tunnels have not been designed for over-dimension vehicles as this would result in significant extra cost due to additional excavation, temporary support and ventilation and greater adverse environmental effects. It also notes there's an existing over-dimension route across the Auckland Isthmus and motorways do not generally form part of these routes due to the high speed and function of the motorway system.

There's nothing of particular note in relation to the next point. So if I could move onto individual submitter issues. Again in this area I can move through some of these more quickly because a number of them raise issues of greater crossover with other submitters. With respect to the Royal Forest & Bird Society picking up at paragraph 427, the Board's aware of the view that the Agency should be liable for historic discharges, in our submission that is not a requirement of this project and also the relief that the society sought was originally to extend the Motu Manawa Marine Reserve and they've now accepted that this was beyond the Board's jurisdiction. In relation to the Rosebank culvert, I would simply refer there to paragraph 430, that the weight of the evidence which is from Dr De Luca, the Agency's expert ecologist, Dr Bell, a coastal scientist and Dr Stewart, who is the Board appointed marine scientist, they have considerable concerns with the suggestion by the Royal Forest & Bird to put in a replacement culvert. We note that the – and it was submitted – that the expert evidence and concerns expressed by those three experts in particular, they are sound, they're clearly articulated, they're unchallenged by other expert evidence and should be preferred over the views of the society of witnesses. Accordingly a culvert – sorry, a replacement culvert is not part of the project. Next there was a concern that was raised repeatedly by Mr McNatty where he referred to the *Auckland Volcanic Cones* case and the reference to 95% TSS treatment. He simply has, with respect, the wrong end of the stick there in terms of confusing treatment standards for erosion and sediment control measures during initial earthworks and for the treatment standards for stormwater that apply during construction, and we set out the basis for that. So there's really just factual

errors in relation to that line of questioning from Mr McNatty during the hearing. There's just mixing really apples and oranges, with respect, and we've given some quite technical reasons as to why he's incorrect. With respect to Unitec, I could move over that quite briefly. It's the agreement, project agreement, between the parties has been produced as hearing exhibit 5 6. I note at paragraph 440 all the matters that had been addressed with Unitec, and they were key issues in relation to construction noise and teaching areas, operational noise, the relocation of students, settlement which was a concern for their buildings, and dispute resolution. In that regard it's 10 considered that Unitec's very constructive approach and precautionary approach to the needs of its students and the residents in the hostel and to the effects of settlement on campus buildings has led to agreement being reached on the amended wording of the condition so as to ensure that construction noise and settlement effects are appropriately addressed. In 15 relation to 1510 Great North Road, the Board will be aware that there's been further information that's been provided separately to this reply in relation to, in particular, two of the owners, Mr Tauber and Mr Richardson, in relation to two of the issues they raised, particularly at the hearing on the 11<sup>th</sup> of April, which was stormwater and settlement concerns. There was detailed evidence 20 related to Ms Linzey's rebuttal evidence on concerns they had expressed, certainly in their evidence, about the likes of consultation and communications. It is noted in particular at paragraph 446, we clarify there the extent of the designation on the property at 1510 Great North Road. There is an operational substrata designation which is required for the tunnel. 25 The construction designation itself is required for the surface of some 0.16 hectares. It's required as a precautionary measure during construction for the cut and cover of the northern portal. The period of construction at this portal is expected to be less than six months and on the basis of this moderately short term impact, and the fact that much of the surface is not expected to be 30 disrupted by construction works, a temporary occupation of the surface designation is considered appropriate. That is consider – that is compared, for example, and the Board will be familiar with the supplementary evidence that was provided by Ms Linzey in relation to the Chands, that their property was going to be affected for 25% for the order of at least five years during the

construction period, which explained the difference of approach in relation to the property negotiations there. There was concern in relation to settlement of that building. That has been addressed by Mr Alexander. There was specific concern also expressed by these owners as to just the fact that they were

5 living next to construct – or construction yard 7 and in recognition of the potential construction impacts of that yard and of construction impacts generally, and a particular sensitivity to the buildings in terms of the foundations, there have been a number of conditions to address potential construction effects on this property and the student accommodation activity

10 on it. And we have listed in more detail than perhaps some other submitters exactly what some of those provisions are. It's including impacts or maintaining pedestrian access, the construction noise criteria, construction vibration and construction (inaudible 16:00:02) noise criteria. Moving to paragraph 448.5. Site specific traffic management plans, because there was

15 a concern indicated about mitigating construction traffic impacts. A number of conditions that would specifically relate to them, dealing with groundwater and settlement. There is a concern, I think this arose and was resolved after their appearance, CEMP16 which confirms that the NZTA intent to ensure that any stormwater services affected by the construction of the tunnel will be repaired

20 to the pre-construction state or better. That's at 448.8. There's also reference for conditions referring to the concrete batching plant and the construction activities relating to noise and emissions. Then an issue in relation to lighting, and finally on the top of page 109, ensuring that existing vegetation to the extent required is protected on that site, because that was another issue of

25 specific concern I recall to those landowners. So with respect to 1510 Great North Road it was certainly the Agency's submission that they have looked at all of the issues and that there are quite detailed settlement and designation conditions which will address all of the issues that have been identified by those owners. Moving to Friends of Oakley –

30

**MR DORMER:**

Before you do can you go back to paragraph 444, where you recommend an amendment to CEMP16. What page is CEMP16?

**MS JANISSSEN:**

That is page 18. And that's now included. So it makes it very clear that the Agency will be responsible for all service relocations. It shall liaise with providers of infrastructure networks and private property owners with onsite  
5 services in order to develop methodologies in time for the necessary services relocation. The objective being to minimise disruption to the operation of these service networks and onsite services. So that's one that is much more specifically directed at the likes of the owners of 1510 Great North Road.

**10 MR DORMER:**

Mr Tauber and Richardson's point, as I recall it, was that if their stormwater wetland was taken up with the Agency's construction yard they wouldn't be able to comply with the condition of resource consent, which obliged them to look after their stormwater. CEMP16 has the objective of minimising  
15 disruption. So minimising disruption, so far as Tauber and Richardson's property is concerned, could only be therefore to minimise the duration of it if they're correct couldn't it? They're still going to close them down and you take over their ponds.

**20 MS JANISSSEN:**

Yes, I think there could – well it, the aim certainly is that any, obviously any existing resource consents that might be impacted by the project, the Agency needs to ensure that it will – that there is nothing that detrimentally affects compliance with consents by existing landowners. With respect to the one  
25 from Tauber and Richardson as you note it's addressed in paragraph 443 that they are concerned about the impacts on stormwater treatment. We actually reviewed the council files and whatnot and have now, or since requested copies of plans and whatnot so that councils can actually determine how to protect it once they've seen it, because it's not on the council plans,  
30 notwithstanding that the resource consent require those plans to be lodged. So I think that might have been part of the concern, but certainly the intent is that if there's any interference or impacts upon private entities' stormwater system, the Agency is really compelled to ensure that it mitigates or ensures that there's no detrimental effects to the landowners.



1605

**MR DORMER:**

And that's not what CEMP 16 says though is it? CEMP says, "It is the objective of minimising disruption." Which is different to ensuring that there is  
5 no whatever it was, you just went on to say.

**MS JANISSSEN:**

I think it's probably more addressed in the terms of the advice note as well, that if noted that if separate consents are required for relocations if any, such  
10 –

**MR DORMER:**

We're lawyers Ms Janissen, we're not going to rely upon advice notes.

**THE COURT: JUDGE NEWHOOK**

15 Can I make the suggestion ladies and gentlemen at this juncture that this is something that we'll give attention to in our deliberations. Member Dormer has clearly signalled to your client Ms Janissen that the points that he was making may not have been satisfied by this condition, so you may expect to hear more in the informal first step that we're going to talk about when you're  
20 finished in relation to the timetable ahead of us all.

**MS JANISSSEN:**

If I could turn then to the Friends of Oakley Creek. There are a number of issues that are addressed here. And perhaps I can just say that it deals with  
25 sector 8 planting, the cumulative effects issues, which is one that they had raised through the hearing. Habitat loss, which deals – bank stability was another issue, paragraph 48, conditional freshwater monitoring, riparian planting, loss of freshwater wetland. Again, short of reading each of those through, the response from the Agency is that it's recognised that an issue's  
30 been raised by the society and considers that in the reply and in the evidence as presented, there are steps that will ensure that any effects are mitigated and/or appropriately managed in any of these areas. For example, in relation to bank stability, they were concerned that about bank failures. While no

expert evidence was produced to justify that submission, there was expert evidence presented on behalf of the Agency in relation to that, which has not been challenged. That's both in relation to vibration and in relation to ground settlement. That was addressed by Mr Gavin Alexander, who noted, at  
5 paragraph 459, "Highly unlikely that the extremely minor changes in bank steepness resulting from the estimated settlements will adversely affect bank stability such that the extent or frequency of this naturally occurring instability is increased to any measurable degree." The expert caucusing on ground  
10 settlement also concluded that the localised effects on stream bank stability from the project will be minor or less than minor. So in each of these areas I think there were some very valid concerns that were raised by the Friends, both in their submissions and through their cross-examination and we've endeavoured to provide some more detail in relation to those in this reply, which as you know that I've just encouraged the Board to read. I'm just trying  
15 to see if there's anything specific that would be useful to bring to the attention of the Board. Nothing in particular sir, but I'm happy to – if there's any particular issues that the Board is minded that they would like us to cover.

**THE COURT: JUDGE NEWHOOK**

They appear – I've skim-read through it and they appear to me to be matters  
20 of detail that we'll simply need to examine and deal with.

**MS JANISSEN:**

In relation to the Waterview Primary School and Ministry of Education, as the Board's now aware the primary school was advised, as of Monday, that  
25 they've agreed in terms of an agreement still yet to be signed, that the Ministry requirements which provides for an extensive suite of mitigation measures to address the effects of the project on the school. We had some discussion about that today so I won't repeat that.

**1610**

**THE COURT: JUDGE NEWHOOK**

I think we'll charge you with advising the Board in writing through the EPA when that agreement's been signed, and if there are any changes to it at all, provide a copy and indicate to us by highlighting where the changes are.

5

**MS JANISSEN:**

Certainly. I'll definitely do that. I just in response to my friend Mr Allan's comments this morning I'd like to refer to paragraph 478. In that and during questioning Ms Fraser, who's the school and Ministry's counsel, confirmed on questioning from the Board members that the agreement did cover both the construction effects of the project and operational issues. While the school's – because I think there was some indication or some implication from Mr Allan this morning that it perhaps only covered construction. While the school's principal accepted under cross-examination that the school Board would prefer to have the ventilation stack to be as far away from the school as possible, he advised that the school Board is not seeking the relocation of the stack. It's also relevant to note that the option 1 relocated stack across Great North Road would still be visible from the school grounds at either height, and that was in respect of the footnote 537 shown in that visual simulation viewpoint 568, the corrected one. As discussed earlier in our submissions the stack at that location would be even more visible to people arriving in Waterview, in the Agency's proposal.

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**COUNSEL CONTINUES READING SUBMISSIONS**

25

"It is submitted... kindergarten are acceptable."

30

That's the three primary ones in relation to 484, permanent relocation of the kindergarten to 17 Oakley Avenue, the site owned by the Agency. This will involve construction of a new kindergarten facility. Second, that the new facility will be expanded to accommodate 50 children rather than 30 as now, and role monitoring and reimbursement of any funding shortfall. While the parties do not yet have a final written agreement it is the Agency's position that one is not necessary for the purposes of this hearing. This is because the

areas yet to be finalised relate to matters which the Agency considers are not direct effects of the project, and which counsel for the Kindergarten Association agreed, are outside the Board's jurisdiction. For the Board's information those issues relate to how best to calculate the cost share for the expansion to 50 children, albeit the principle has been agreed between the parties. Secondly, clarification as between the Ministry and the school as to how much of the adjoining school property should be used for the facility and finding an issue relating to the association's legal costs. So those are the matters that were effectively holding up the signing of the project agreement, but as advised, because of the conditions specifically requiring the mitigation suggested it's our submission that the project agreement doesn't actually have to be in place for the Board to be satisfied that the impact on the kindergarten will be mitigated.

**THE COURT: JUDGE NEWHOOK**

15 So you're inviting us to rely on their counsel's submissions the other day?

**MS JANISSSEN:**

Sir I think the agreement will still be ongoing, and it may well be that perhaps we can just advise the Board when that actually is in place, because I'm sure it will be in place. It's just a matter of a timing on that one.

**THE COURT: JUDGE NEWHOOK**

My feeling's that you probably provide to us a copy of so much of it as relates to the project.

25 **MS JANISSSEN:**

Certainly.

**THE COURT: JUDGE NEWHOOK**

A signed agreement, so much of it as relates to the project. If there are some private bits you could make those, but that should –

30

**MS JANISSSEN:**

No it's not – that's not –

**MR LAW:**

- 5 That's not the issue sir. It's just a matter of lawyers figuring out words. The clients are quite clear on what they want us to do and it's taking us a lot to get there.

**THE COURT: JUDGE NEWHOOK**

- 10 Yes well lawyers can have a real party on that sort of thing. Why don't you just send us the agreement when it's signed.

**MS JANISSSEN:**

- 15 The Agency considers that the permanent relocation of the kindergarten and the monitoring of its role will adequately address adverse effects of the kindergarten. In response to a question from His Honour, Mr Pablecheque, during the hearing agreed that the permanent relocation has addressed the specific relief sought by the association. And I just simply note there that the association's visual expert, Mr Pryor, has stated both in his evidence-in-chief and his, and in the caucusing statement that if the ventilation stack was at the
- 20 location as proposed by the Agency then either he considered that the adverse visual effects of the ventilation stack on the kindergarten at a height of either 25 metres or 15 metres would be satisfied. Just a note there that under cross-examinat – paragraph sorry 489, Mr Pryor also accepted that the effects of the stack would remain on that part of the school grounds vacated
- 25 by the kindergarten, in his opinion, but would be transferred to whatever activity is on the land. And in that regard it was relievable to understand that the agreement between the school and the Agency provides that a new resource teaching, learning and behaviour unit will be constructed on the existing kindergarten side, i.e. on the vacated land. That unit, which will have
- 30 acoustic insulation, is a base for psychologists and teacher aides who will have their offices there but will undertake their work offsite at various schools throughout the school district. This activity is distinct from the school activity itself and will mean that the vacated area is not occupied by students. It is

submitted therefore that the visual perception effects of the stack need to be considered in that context.

Moving to the Te Atatu Pony Club and construction yard 1. We note there  
 5 that the project requires 4.7 hectares of park for construction yard 1, affecting  
 land currently leased by the club. There has been a series of constructive  
 discussions attempting to address the club's concerns about the effect of the  
 construction yard. The Board will be aware that the Agency has proposed  
 modification to the shape of construction yard 1 to ensure a more usable area  
 10 of land remains for the use of the club. To this end the Agency has sought  
 and obtained resource consent to establish a 1.6 hectare construction yard  
 immediately south of the yard identified in the NOR. If I could turn to footnote  
 550, just to note there a copy of the resource consent has already been tabled  
 with the Board and as requested by the Board earlier this week, annexure E  
 15 contains a plan that shows the rotated construction yard and the remaining  
 pony club land. So I think those were the specific questions from the Board. I  
 wanted to show those two facts.

**THE COURT: JUDGE NEWHOOK**

Yes thank you for that, that's appreciated. It's also a much better quality or  
 20 resolution than the aerial photograph that allows us to see surface features  
 such as the club house and certain gates and accesses that we have  
 inspected on the ground. So we appreciate that, thank you very much.

**MS JANISSSEN:**

25 This modification enables the passage of horses and ponies to the east of the  
 construction yard and provides space for grass, dressage and raceway areas.  
 In addition, and if I can perhaps take the next sentence as read because we  
 very recently heard from the pony club and this was what was contained in the  
 letter from the Agency on the date of the 21<sup>st</sup> of March.

30

**COUNSEL CONTINUES READING SUBMISSIONS**

The Agency specifically... and the club.”

And if you recall there was specific concern indicated by Vivien Dostine on behalf of the Society about just to ensure that there was this communication so that there was appropriate co-ordination between whatever activities the pony club wanted to do onsite with specific construction activities. And so that's why there is a specific reference to a construction yard plan with those communication channels to be very much open.

### **COUNSEL CONTINUES READING SUBMISSIONS**

10

"It is understood... cannot be justified."

### **MR DORMER:**

Ms Janissen, I wonder if (inaudible 16:22:02) little while that you're talking to us someone could refer us to the passage of evidence referring to the \$140,000.

### **MS JANISSEN:**

Sir that is set out in the letter that was sent to the club dated 21<sup>st</sup> of March 2011 and I think it's attached to Bernadette McBride's – yeah, appendix 2. So the cost is set out there.

### **COUNSEL CONTINUES READING SUBMISSIONS**

25 

"However the Agency... social condition SO8."

So there is on, sorry page 65 we now have four new conditions dealing with pony club. The first condition relates to the extra funding for additional feed, and that's SO8. So there to mitigate the impacts of lost grazing, the Agency will provide financial support over the period of construction for additional feed supplement. The second point, paragraph 501.2, funding to cover the lost fundraising from the one day events, because that was indicated during the hearing, if you recall, from the pony club members that that could be something up to 80% of their income, and that is provided for in new condition

SO, or new proposed condition SO9. That the Agency provide annual financial support to the pony club for monies lost from the one day events. Calculated on the base of the average annual funds derived from such events over the previous three years. So that's written to try and give some clarity as to what figure will be involved. During the hearing the figure of \$8000 was advised by the pony club, so that just needs to be demonstrated.

**1625**

The final two conditions are there just to confirm SO10 and SO11, that the Agency will construct a raceway on the alignment as shown in the construction scheme plan, that it will be approximately five metres wide and enclosed on both sides by appropriate fencing. I think during the hearing initially earlier in the week it was three metres but that's grown to five. And secondly SO11, "The Agency shall form a level grassed area, having approximate dimensions of 90 metres x 170 suitable for the exercise of horses." As a final note at the top of page 120, that is submitted that rather than relying on the now granted construction yard consents, the Board may instead consider it appropriate to modify the designation boundaries in this area, so as to rotate the designation for construction yard 1. We've already addressed this issue earlier in our memorandum of counsel in modifications to designations. But given that the purpose of the rotation is to reduce adverse effects in the properties across the road at the end of Titoki Street would be removed from the project, in our submissions it means that the rotation of the yard will not affect those residents and in our submission it's also relevant to note the Auckland Council considered the resource consents application or they processed it on a non notified basis and that was for effectively the same activity. In that context the Board can have some considerable confidence that there are no parties adversely affected by such a modification and that a modification to rotate the yard would be within the Board's jurisdiction, notwithstanding that it alters the project footprint. The next comment in relation to Margot Phillips is very brief. If you recall Ms Phillips appeared at the hearing and gave representations specifically and only focused on noise, she requested a number of actions. It's relevant to note however that her submission is entirely silent on noise and no relief was sought there. I set out in a number of paragraphs that obviously raises issues with respect to



whether or not she has complied with either the RMA or the directions from this Board not to raise new issues during the hearing and as a result it is submitted that the Board should only consider her written submission and disregard of her hearing representations. That notwithstanding, and I pick up  
5 at paragraph 511, we did refer her representations, written representations to the Agency's expert noise witness, Ms Wilkening, who provides the following brief response.

### **COUNSEL CONTINUES READING SUBMISSIONS**

10

"Ms Phillips' concerns... noise are unfounded."

And sorry sir, that part of the paragraph should be part of Ms Wilkening's entire paragraph.

15

### **COUNSEL CONTINUES READING SUBMISSIONS**

"Next, briefly in... had been seeking."

### **THE COURT: JUDGE NEWHOOK**

20 Just a question for you about Star Mills. You mentioned the community liaison group in your paragraph 512.1. You say later that Star Mills will be consulted on the preparation before you receive open space restoration plans so no need for additional consultation under the proposed archaeology conditions. I just wonder about that. You've agreed that Friends of  
25 Oakley Creek can be expressly included in community liaison, why not Star Mills on the archaeological matters? Of has that been done in the draft conditions?

### **MS LINZEY:**

30 No, the reason for the difference is because the specific consultation requirement relates to the open space restoration plan, which it specifically identifies a different consultation requirement from that from PI3, which was more, sorry, I'll go a step back. Mr McCurdy's concern was that that

consultation of the community liaison group was just to discuss, to present the plans and to identify any concerns. The response, and it's set out in the response to the conditions starting at page 135, just highlights Waterview Reserve open space restoration plan, has different consultation requirements which would include community consultation in the development of that plan, so that is the difference that we're distinguishing there, rather than that – it's more in response to his concern that it was just to his review and comment, we say the Waterview Reserve restoration plan requires specific consultation and development of that plan.

10 **THE COURT: JUDGE NEWHOOK**

I don't think I want to take it further with you right now but it's a point that we'll want to consider with some care if conditions for (inaudible 16:32:08) because it seemed to us to be pretty appropriate that Friends of Oakley Creek be involved in appropriate community consultation in relation to their interests and it is our impression I think, I can say on a tentative basis at least that Star Mills is an equally serious and responsible group, which has brought a constructive approach to matters before us and I for one would want to see them treated similarly. We'll look for the details when we work our way into this Chairman Mao's little red book.

20

**MS JANISSEN:**

Now I can move through this a bit more quickly still. Watercare Services essentially, you heard Mr (inaudible 16:33:10) who appeared at the hearing, all matters are agreed, they've got one project agreement and they're working on two. They're very comfortable with how each of those agreements will ensure that the relationship between Watercare and the Agency's project works would be accommodated. On page 518 I simply summarise that we have essentially resolved the majority of issues with Auckland Council and Auckland Transport. At 519 I note that these were some of the unresolved issues indicated at the start of the hearing and these have also been resolved, the wording of OT1, air quality conditions, landscaping, mitigation in relation to Traherne Island and the certainty of conditions. I note and particularly with respect to the latter, there's been considerable focus directed by the Board

and the party's expert witness on the wording of proposed conditions, particularly in relation to the management plan certification process. The words "practical qualifications" and the use of the outline plan process. All issues which the counsel was particularly concerned about and  
 5 understandably so, given its future regulatory and enforcement role for the project should the designation and consents be confirmed.

**COUNSEL CONTINUES READING SUBMISSIONS**

"As a result... southern vent building."

10 **1635**

With respect to the next two sections I could perhaps take them as read. All I do is simply note what the outstanding issues are being sought by Living Communities and Albert Eden Local Board. Page 125, iwi concerns.

15 **COUNSEL CONTINUES READING SUBMISSIONS**

"As explained in... for direct discharge."

**THE COURT: JUDGE NEWHOOK**

I'll simply comment here Ms Janissen that the matter raised by Mr Mahaffy is  
 20 not something that's going to be a showstopper, wouldn't have thought, and therefore we're not going to tear out appendix F and hand it back to you on this occasion. I see it is dated the 16<sup>th</sup> of March. I direct that you send it to Mr Mahaffy.

25 **MS JANISSEN:**

Briefly in relation to Mr Vipond, I won't comment further than that other than we – the Board will have seen the letter provided by the Agency clarifying the removal of vegetation located on land adjacent to his property and designated for Agency purposes. The only other issue he raised was with respect to  
 30 noise levels, wanting to seek extension of a retaining wall which is not an acoustic noise wall. And I also note that Ms Wilkening confirmed the project is not predicted to increase noise levels at the Vipond property.

In relation to the National Trading Company Limited, just to note there that agreement has been reached in relation to conditions that mean that the owner of what is the largest structure within the proposed tunnel route is satisfied with the protections afforded by those conditions, particularly in  
5 relation to settlement.

Further in relation to Housing Corporation, you'll recall their appearance at the hearing. The Agency's been liaising with Housing New Zealand for some years now. There's been a memorandum of understanding about the project  
10 dating back to 2007. There are a significant number of Housing New Zealand properties affected, either because they have been or aren't to be acquired for the project or because they're in the vicinity of it. And I note there that as noted and recorded in Housing New Zealand's legal submissions the parties have reached agreement on amendments to the conditions and we  
15 understand that Housing New Zealand is now satisfied with all of those conditions.

Again, briefly in relation to the Department Of Conservation. They record that they are satisfied that the concerns raised in their submission are able to be  
20 satisfied through the ecological conditions proposed by the Agency, so as between the Agency and the Department Of Conservation everything is agreed.

Summarising in relation to the KiwiRail Rail Group. Again, further information  
25 has been provided to the Board separately by way of a joint memorandum of counsel on the rail corridor questions and there was further information provided in one of the supplementary statements from Ms Linzey as to the impacts of the rail corridor and how that actually worked and fitted in with this project. We note in particular that provision of the replacement corridor meets  
30 a project objective to support mobility and modal choices within the wider Auckland region by protecting opportunities for future passenger rail development. For example, rail.

Just turning to paragraph 553 which is the Soljack Bridge and I refer here again to the supplementary evidence of Neil Buchanan, that KiwiRail advise that the bridge, if there was a bridge placed at the Soljack location it may need to be replaced in the longer term once the Avondale southbound line is developed as that area may be needed for a railway junction. The final comment is in their legal submissions on behalf of KiwiRail they supported the proposal for a financial contribution towards an upgrade of Phyllis Reserve, rather than provision of the temporary sports fields. This was on the basis, as expressed during the hearing, that it would avoid issues in the future with removal of the field, but it is noted however that the temporary sports fields were intended indeed to be temporary only, and as a result they should not create any greater obstacle for rail development than the present playing fields in Alan Wood Reserve. I finally note that the wording of proposed general designation condition 12 has now been agreed. I think that was an issue dealt with at the expert planning caucusing.

In relation to Springleigh residents, Hiltrud Gruger, this section of our reply simply points out a number of factual errors, and I need not go into those but there was a concern that there were just a number of issues raised during the evidence which were simply incorrect.

On the Alwyn Avenue noise bund, in response to questioning during the hearing and further review of the rebuttal evidence of Ms Hancock, an arrow linkage has been identified on the pedestrian cycleway plan at Alwyn Avenue. No noise wall is required at Alwyn Avenue and the bund design has been revised. On this basis it is considered that the linkage will be feasible, and this was presented in the second supplementary evidence. If you recall there were a couple of submitters that appeared at the hearing expressing concern about the design of that noise bund and there was one gentleman whose name I temporarily forget, who was not aware of, for example, Ms Hancock's rebuttal evidence that showed the further design that had gone into the bund.

Finally Mr Alan – Peter Alan Banes. Mr Alan Banes had provided an email to the EPA earlier this week and (inaudible 16:43:45) hearing appearance. We

simply note here that this submitter owns property at 12 Waterview Downs. He seeks a complete property purchase. His property is only affected substrata. The proposed land requirement is, pertains to land 12.6 metres below ground level over an area of 62 square metres. His entire property title  
5 is some 357 square metres. In those circumstances the Agency has declined to purchase the whole property and the matters that relate or are raised, both in his submission and his email, are really solely focused on property purchase and compensation and fall outside the Board's jurisdiction.

10 Very briefly in relation to general issues. We just summarise there that further section 117 approval – sorry, 177 approvals are being obtained. I note at paragraph 564 only statutory approvals required. That also has not changed, except that a draft application under the Marine Reserves Act has now been  
15 lodged for comment. In relation to additional resource consents, we've noted in earlier submissions about the requirement for a consent for modifications to restore a heritage seawall and by way of an update with respect to additional consents sought since lodgement, the Board will be aware that the construction yard 1 consents been granted and the Agency's application for consent for two new sections to extend Saxon Reserve's been lodged. That's  
20 currently on hold at the council's request.

If I could turn finally to –

**THE COURT: JUDGE NEWHOOK**

Are you able to tell us why it's on hold at the council's request, or perhaps  
25 Mr Lanning can? It seems a rather strange development Mr Lanning?

**MR LANNING:**

(inaudible 16:45:44) sir, Ms Richmond's discussed this with the other  
(inaudible 16:45:48) and the issue was the detail around what NZTA was  
30 proposing to put on the – or land. I think Ms Richmond described it as NZTA was proposing too much or more than the council actually.

**THE COURT: JUDGE NEWHOOK**

Yes I think I remember this.

**MR LANNING:**

5 That was my recollection sir on that discussion so it was more around the detail of what's...

**THE COURT: COMMISSIONER DUNLOP**

It's not a resistance to the (inaudible 16:46:10)?

10 **MR LANNING:**

No, no sir. It's just trying to align I guess the council's park policy with their actual what will be authorised under that consent.

**THE COURT: JUDGE NEWHOOK**

15 Yes, so if we look in the transcript at the point which Ms Richmond was being questioned.

**MR LANNING:**

Yes, which was around about the 10<sup>th</sup> or 11<sup>th</sup> I think.

20 **MS JANISSSEN:**

Turning to page 133. In the final addendum report EMS recommends the imposition of a condition requiring a community trust fund. They describe the proposed trust fund as a self-help fund for the community to use at its discretion during the construction period. In that report EMS referred to three  
25 specific examples, one from Contact Energy on the Waitahora wind farm project. There the Contact Energy was successful in its appeal and obtained resource consents to establish and operate the wind farm in an interim decision. The Court stated that conditions of the consent would require some reconsideration in light of the Court's decision and directed council to confer  
30 and produce a revised set. The interim decision did not discuss the community fund and the Court has not yet issued a final decision. The EMS also referred to examples of the (inaudible 16:47:30) Valley landfill and to the

Mt Cass wind farm, which was a procedural decision where no substantial decision has yet been issued.

### **COUNSEL CONTINUES READING SUBMISSIONS**

5

“While the Agency... proposition have merit.”

10 Further in relation to that and bearing in mind some of the comments made by the Board today the issues in relation to the community trust fund for this project revolve more in relation to what exactly it would – what mitigation it would be directed at, but also how it would be set up. What I set out very briefly in 576 is the sorts of issues that would need to be resolved in drawing up or considering whether, how such a trust fund could be created. For example, what communities should be addressed, how would the community trust representatives be chosen, given the divergence of opinion interest reflected by some of the submitters within their own communities at this hearing, how would appropriate projects or services be determined and within which community, how would an annual quantum be determined and what specific effects would it seek to address, presumably during the construction period, and how would that annual quantum be divided up between each community? If you recall the trust fund suggested by EMS in their report related, I think it was specifically to Waterview and Owairaka only. It is still an issue then as to how the various communities would co-ordinate. On this issue if the Board is minded to make a finding that or a consideration that insufficient I guess mitigation has not yet been provided for the project. For the impacts on those two communities during the construction period it is suggested that this, and if it was minded to impose some form of a condition that imposed a community trust fund, it is suggested that this would be one of the matters that the Board could direct go into further detail in caucusing or what not. We looked at this and as I said, the Agency certainly has sympathy with such a proposal, but how it would actually be crafted, in this respect the (inaudible 16:50:42) would certainly be in the detail and it may require some considerable thought, the real aim being that if the mitigation is aimed to further mitigate impacts of construction or general loss of amenity on these



two communities during the construction period, how would that best be achieved and what sort of projects or services would be targeted, how would they be determined and essentially how would it be operated. So we certainly recognise that, we've seen trust funds operate in other cases, they're very  
5 much specific to the projects, those specific to the communities in it and we simply raise that as an issue in terms if that were to require some further work. I think even the EMS author commented that has been raised or suggested late in the piece, so it hasn't actually been one that there has been an ability to have much discussion about.

10 **THE COURT: JUDGE NEWHOOK**

Thank you for that Ms Janissen, it may be that, and I'm just speaking off the top – not having had the ability to deliberate with my fellow Board Members about it, but following on my quite strong observations to you and your client this morning about some sectors, and bearing in mind the sorts of difficulties  
15 that you have outlined in your paragraph 576, which have real potential difficulties. That it may be, that there is a sector or sectors that when we analyse the thing carefully, might be said to be more severely disadvantaged, inadequately mitigated than others. So would I be right in hearing an invitation from you that if and I stress "if", if we find ourselves in that situation,  
20 that this is a matter that could be put over to the experts according to the first informal step that we intend will be taken in the next little while?

**MS JANISSEN:**

Yes, yes, that is exactly it, because at the moment we've raised potential  
25 issues and as you've stated there are some quite significant issues there and if the Board finds that there is the possibility that this sort of trust fund should be set up, it would at least I think be of assistance for the Board to find out if it's even possible to draft a condition or come up with a legal structure and a management framework that could operate, that would almost be the first  
30 step.

**THE COURT: JUDGE NEWHOOK**

If there were issues of the sort I've described and if they were reasonably particular sort of issues in a particular location or locations, we might do that. I don't know whether we will be and of course it's all subject to consent overall  
5 being forthcoming in any event, but I just throw up as comments and hear your response to my question about whether there was a careful invitation being offered by you.

**MS JANISSEN:**

10 The final – just to make a brief – just clarifying again, just to be clear in relation to the updated set of conditions to assist the Board in reviewing it further. So just to clarify again this red set shows amendments made to the green set. So in order for the Board to follow, it does actually follow quite clearly now what's happened. If you look at the green set, that will show in  
15 red all the changes made since lodgement of the project and the evidence-in-chief, then the blue shows changes which are then proposed in the rebuttal evidence in caucusing. The green then highlighted more recent changes that were made to the end of February and then you turn to the red set and that shows all the changes that have effectively been made during the  
20 month of March. So in a way it shows an iteration of the development of the designation conditions as the hearing has proceeded and I believe it's quite straightforward to follow. I just note here that further changes have arisen most particularly as the result of submitter evidence and representation since the 1<sup>st</sup> of March, including expert witness caucusing in the areas of planning,  
25 open space and noise. As I indicated paragraph 581 goes through really in much more detail what those more recent changes are. I do not propose to go through those because they are detailed and they are very specific, but they do reflect quite considerable development on a number of things, for example paragraph 581.2, deletion of the words, "subject to final design in  
30 conditions DC.1," in response to concerns raised in relation to the level of certainty. Those sorts of matters, but we have endeavoured to, well Ms Linzey has endeavoured to summarise for the ease of reference for the Board what all of those most recent changes are and in many respects how they came up in terms of planning, caucusing or in response to for example at

581.11, representations from Star Mills, the Tree Council and what not. So we hope that that's assisting you to see, not only what the changes are but where those changes came from. Now conclusions, page 141.

## 5 COUNSEL CONTINUES READING SUBMISSIONS

"The Waterview Connection... of conditions proposed."

**1700**

### **THE COURT: JUDGE NEWHOOK**

10 I have before me a short list of matters of questions and comments. The Board has asked quite a lot of questions during the course of the day. I'm just going to indicate the nature of the questions and comments that's I'm just going to, the nature of these matters that I'm going to comment on then I'm going to ask whether Board members have anything other in particular to

15 raise that hasn't been raised during the day. What I'm intending to request your comments on is a visual matter around the northern stack where an Australian lady with an interesting ability to illustrate her concerns gave evidence about – she lives in a house alongside the present wetland position in Oakley Avenue. You didn't mention her, but I rather imagine there are

20 plenty of things you haven't mentioned. I wouldn't have expected a complete rehearsal of all of the evidence, but just take it that it hasn't escaped us that there was evidence from people like her in relation to that issue. We hear all the other matters that you raise in relation to the jurisdiction and the issues surrounding the northern stack. There are these other things that will need to

25 be factored in clearly. Next at some stage shortly, like beginning of next week, could you please supply us with a table of contents complete with all subheadings and sub subheadings in relation to your submissions.

### **MS JANISSEN:**

30 Yes.

**THE COURT: JUDGE NEWHOOK**

I think there's a headings index at the start of it, but if you could give us a comprehensive one.

**5 MS JANISSEN:**

Certainly.

**THE COURT: JUDGE NEWHOOK**

Subheadings and sub subheadings in it to help us navigate over the next little while. I'm going to raise an issue about one of the construction yards with  
10 you. I'm going to talk about the timetable from here and then I'm going to address a very general matter to all parties. Do Board members have anything else that they're wishing us to raise, above that list that I'm about to embark on? Right, we've certainly put just about everything to you that has occurred to us during the course of the day. I want to raise a matter about a  
15 construction yard. Members of the Board, two members of the Board are engineers and the others of us have considerable experience in reading plans and understanding engineering documents to some degree or other. Construction yard 7 seems to be in a bit of a category of its own, in terms of its typography particularly, and its being adjacent to a highly sensitive  
20 waterway, right hard up against Oakley Creek. At a somewhat later stage members of the Board have trawled with care through the AEE materials that describe construction yards and this one in particular, and their brief, and we understand that that's in the context that a lot of this stuff gets developed with the alliance in due course, and we've looked at the CEMP and we've looked  
25 at support and management plans and even gone into geotechnical reports and vibration and noise. There's a whole lot of stuff scattered all over the place that could be said to be capable of being drawn on in due course when the design of the construction yard is put in place. But members of the Board retain a concern that it is severe typography, very steep. We were there again  
30 yesterday. It's what a former colleague of Member Dunlop's and mine, a surveyor by training, calls "tiger country" and at least in part, yes in part, perhaps not right across the whole. And there is a feeling that while recognising that the management plan approach to life that underpins this

whole project and recognising the general inappropriateness therefore of becoming unduly prescriptive about the setting of conditions, that nevertheless, we invite NZTA, along with any other experts in these areas, particularly geotechnical and civil engineering and stormwater engineering, in particular, to consider whether there might be some particular conditions in relation to construction of yard 7, that would serve to draw to the attention of the consent holder if consent is granted, and the alliance, once appointed and the council in its regulatory role of knowing that it is well and truly understood that it's a difficult site with steepness, a great deal of excavation undoubtedly required dimension platform in it and it's alongside the Oakley Creek, which must not suffer sudden releases of contaminants or sediments or stormwater or anything else into it. So we'd like to see an effort made about that and you'll consider that it might be worth that drafting, having attached to it a schematic plan and schematic cross-section, and recognising the construction yard will probably change shape on a iterative basis during the time that it's there, during the construction works over a number of years. Not try and design the entire thing but provide a schematic plan, a schematic cross-section, that are indicative of how accessways will be got into these various levels within this land and where retention works and mitigation works and the like would be likely to be placed in a general sense, so that we can see it and then if consent is forthcoming, signal to the public that we're aware, NZTA's aware and the alliance will be aware that these things are recognised. I think that work should be done to be available, it could start now but it could be available alongside this first general step that I'm going to talk to you about in a moment. Work could start on that and then it could catch up with all the other, or at least these other things could catch up with that work.

**THE COURT: COMMISSION DUNLOP**

The concept of risk management sort of underpins all this doesn't it?

**THE COURT: JUDGE NEWHOOK**

Yes, yes. Again, Member Dunlop's comment about the concept of risk management in all this.

**THE COURT: COMMISSIONER DUNLOP**

I thought that the standards that are adopted for the project universally may or may not be appropriate in this specific location.

**THE COURT: JUDGE NEWHOOK**

5 Now, come then to a further timetable. We've done some work in the last 48 hours about what is to happen next and what we've done essentially is to take the section 149R date of 17 June, work backwards and into that of course we've had to take the 20 working days for parties to comment, make comments on our interim decision or our draft report as it's called in 149G and  
10 then work back into where we could place a step, an informal first step of three, rather than the two steps between ones just being undertaken. And so, what we have in mind in the general sense is this, and I'll talk about the dates in a moment. What we have in mind is, that we foresee working in terms of deliberation on drafting to get ourselves to a sufficient level (a) to work out  
15 whether consent can be granted overall (b) if so, what outcomes need to be designed, what outcomes need to be provided for and then how, through conditions of consent, and then rather than move into a wholesale redrafting of a number or perhaps many of the draft conditions of consent invite the parties' experts who have been involved in these various areas to work  
20 collaboratively over a period of a few days, it can only be a few days because this timetable is as tight as tight, and provide those back to us for our consideration and for linking up with our draft report for issue on the required date. And to that end, we are minded to request or require in fact the parties relevant experts to protect a period of time for that purpose, because I'll say it  
25 again, this thing is tight. Now that raises another thing. We may need to nominate two alternative bunches of days to protect and it's for this reason that we have in mind an approach under section 149S and relation to a couple of weeks worth to about the end of June, and if (inaudible 17:11:58) in the lack of others than us as to whether that can come about, but we are going to  
30 make a case. So to that end there may be a slightly later time, a slightly later bunch of days that the parties are going to be asked to have their experts protect for this exercise. Now we floated the idea with the parties of undertaking this exercise. We thought that it would be a fair thing to the

parties to involve them in it, a project of this scale and complexity. The indications from the parties were to embrace the concept with considerable (inaudible 17:12:51) support and we're very much minded to do it, and in fact we think that it would have the potential, subject of course to whether consent is going to be forthcoming, to assist in the efficiency of the process and to shorten the time that might otherwise be taken in getting the conditions of consent polished up and ready to attach to the draft report. Now the dates that we think would need to be protected in the two scenarios would be first if 17 June is the drop dead date, we would need to – we would provide our directions about outcomes sought and the work on conditions required on about the 20<sup>th</sup> of April, that's the Thursday before Good Friday. No it's not it's the Wednesday before Good Friday. And we would want the parties to send in their draft conditions, the platinum book or whatever it was going to be, on the 29<sup>th</sup>, Friday the 29<sup>th</sup>. I reiterate, this is all tight, because I'll share with you that if we follow this timetable and we're allowing a certain amount of time for deliberations amongst us we've only got about two weeks, two or three weeks of drafting. And I think some of you might understand what that means. The alternative that we're going to be floating would be such that we would ask for protection of dates by the parties and witnesses. On this basis that we would send our directions out on Friday the 6<sup>th</sup> of May and want the work back by Friday the 13<sup>th</sup> of May for us then to keep working on and consider and further polish, or whatever. So those are the two alternative bunches of dates that we need you all to protect, those of you with experts involved. And that is about as much as I think I need to say about the timetable. We are under no illusion about the task that faces us. There's a lot of work going on of course behind the scenes already, and we will keep running, we're required to, and running hard. I just want to say one more thing. I want to say to the parties that are present and we'll find a way to convey it to others, that this Board of Inquiry very much appreciates the atmosphere within which this case has been conducted by all parties. It's a huge project, huge proposal, highly complex, and involves many, many situations in which passions can become inflamed and people are anxious. The consultation's gone on for a number of years and the levels of anxiety in the community have been and remain high, and in that context we find it hugely appropriate and commendable that the

parties have been able to conduct this hearing under pressure of time in the very largely constructive atmosphere that this has been conducted in. So we're grateful to the parties. And Mr Lanning, I wonder if we can charge you with approaching the representatives and counsel of the major players in particular, who took part in the questioning of witness and the making of submissions. I don't think I need to name them, but you know who they are. There were here, they had positive hats on, they played the game, they did magnificently well and I'd like you to convey the sentiments to them please if you wouldn't mind.

10

**MR LANNING:**

That would be a pleasure of course.

**THE COURT: JUDGE NEWHOOK**

All right, are there any other matters that we need to consider before we conclude the hearing? I will note for the record that the NZTA case is provisionally closed, everybody's case is provisionally closed because of course we are seeking these further inputs, so we won't stand on formality about the closing of cases. Anything else ladies and gentlemen? All right, well thank you all very much.

20 **COURT ADJOURNS: 5.18 PM**