

**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 6 – Monday 28 February 2011**

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**COURT RESUMES ON MONDAY 28 FEBRUARY 2011 AT 10.03 AM****THE COURT: JUDGE NEWHOOK**

Pause very briefly to think about colleagues and friends and family in Christchurch. I'm sure everybody in the room has been touched in one way or another by that awful thing that happened last week. We just put that on the record that we're thinking of them.

During the course of yesterday Ms Janissen emailed Kim Morgan about air quality issues. We had a situation last week where Ms Petersen filed and served her further statement pursuant to the Board's direction and at the end of the week Jane Metcalfe lodged with us her report to us, she not being a witness of course in the strict sense. And the upshot of that was apparently that NZTA gave some thought to how Gavin Fisher might address issues in the report and Ms Janissen advanced the alternatives of her orally examining him when he gives evidence or of preparing a supplementary statement about those matters. I was travelling quite a lot yesterday but I stopped and pondered all this and sent a brief message back to Ms Morgan but I don't think she's conveyed it to you yet Ms Janissen so we better just deal with it now. For myself, and having now discussed it with my colleagues I'm a bit concerned of where this air quality thing is heading. It's the one area where caucusing hasn't strictly achieved some concrete results. Our expectation frankly is that the air quality people might have been able to narrow things somewhat more than they have and it's a bit remarkable where we're dealing with, we're not dealing with landscape architects where subjectivity comes into the frame, we're dealing with a science and we would have expected that the air quality experts could do a bit more. I was also interested in an observation by Ms Metcalfe in her report to us to the effect that in her view matters of disagreement weren't really technical issues, and that struck a something of a chord with me and I looked at these issues and have thought while reading the materials that there was something of a flavour, something going beyond the attitude of the experts to more matters of policy or corporate approach or whatever. Now I think two things might happen, and my colleagues agree with me. And that is, that yes Mr Fisher can be given leave to prepare yet

another supplementary statement of evidence but frankly I would have thought it ought to be kept brief. His complaint conveyed via Ms Janissen yesterday that the report from their mission impossible was long and complex, I don't think washes, I don't agree with that. I think it's quite concise, it simply  
5 picks up on their earlier reports and adds in detail subsequent to the caucusing. I think Mr Fisher should keep things brief. We agree that he should be taken out of today's batting order and put in tomorrow morning, that may mean that Ms Linzey gets brought forward today, so we keep the books full today. We need to get the hearing on the move. So his report needs to  
10 be brief, any questioning of him I would have hoped could be fairly concise and confined. And frankly we're also of a mind to get these people to caucus again today. Mr Fisher maybe a bit busy but we don't want a long report so he shouldn't need the whole day. I think that the three of them should get together and caucus again today, and in particular they should address the  
15 question about whether the matters of remaining disagreement are in fact technical or really whether they are more matters of policy or corporate approach. And they should have another crack at narrowing things down. So I think I've said enough about that. Those will be our directions, I know Ms Metcalfe is here with us and available to undertake some caucusing. Is  
20 Ms Petersen available today for that purpose Mr Lanning?

**MR LANNING:**

Yes I asked her to come in before 11 today so I'm assuming she is available today.

25 **THE COURT: JUDGE NEWHOOK**

Ms Janissen any problems with any of that?

**MS JANISSEN:**

30 No sir, I mean the other option which I'm quite happy to proceed with is to actually just have very specific questions to Mr Fisher of issues raised in those reports because I realise that we're just going to be in a never ending circle of comments.

**THE COURT: JUDGE NEWHOOK**

Yes it's a spiral.

**MS JANISSEN:**

5 It is.

**THE COURT: JUDGE NEWHOOK**

But I don't want the spiral to be one that continues to play out here, and that's why with some reluctance we've said yes he can prepare yet another supplementary, hear the slight sarcasm dripping from my tongue. And that will give the others the chance to get their heads around it before they're questioned, but equally that's also why I want caucusing. I just think they can do better. I'll give you one example, the aspect in Ms Metcalfe's report where she expresses a concern that one of the types of monitoring will cease at the end of two years and that NZTA will do something about things if there's a need. If she's correct in her report of that, I'd have to say on a tentative basis I very much agree with her. I don't think that that's in the slightest bit sensible, better to craft a condition that has some formal termination if things are looking really good, but just ending at two years from the commencement of operations and things being done by NZTA if it thinks it's appropriate doesn't work for me.

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**MS JANISSEN:**

Sir, certainly agree and that condition's actually being revised and it was going to be addressed. The Agency was going to extend the monitoring till at least four years with provision that it would cease earlier subject to agreement with council.

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**THE COURT: JUDGE NEWHOOK**

Well just the idea of putting a timeline on it doesn't seem to serve the purpose of the Act Ms Janissen. Unless it can be done in a crafty way.

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**MS JANISSEN:**

That is one of the issues that will be addressed.

**THE COURT: JUDGE NEWHOOK**

Anything else you want to say on that issue before –

**MS JANISSSEN:**

5 Not on air quality, no.

**THE COURT: JUDGE NEWHOOK**

Now another issue from you Ms Janissen was, there was a question that the Board considered could usefully be put to Mr Hind in writing and have him  
10 provide us with some kind of an answer if he's able to in the United Kingdom. However your suggestion is that a useful person amongst your team of witnesses to respond would be Mr Geoff Hsi.

**MS JANISSSEN:**

15 Yes, correct

**THE COURT: JUDGE NEWHOOK**

And we've just conferred quickly about that and we think that that would be appropriate and it may very well be that Mr Hind doesn't need to be troubled  
20 while he's coping with the difficult circumstances of his family in the UK.

**MS JANISSSEN:**

I think they're currently working on that response now and it's anticipated it will be lodged in the next couple of days.  
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**THE COURT: JUDGE NEWHOOK**

Now Transpower have signalled that they don't need to participate in the hearing. That's an old letter, 13<sup>th</sup> of December 2010, not quite sure why that's come to my attention this morning but I think we knew that already. Mr Allan,  
30 you've indicated that you wish to file brief supplementary statements for five witnesses?

**MR ALLAN:**

Yes sir.

**THE COURT: JUDGE NEWHOOK**

5 Now I haven't seen those statements, I know that they're with Ms Morgan for distribution, if leave was granted in this regard. I note that most, probably all, I think all of those people were involved in the caucusing in one session or another. Is the nature of these statements to resile from any aspect of the –

10 **MR ALLAN:**

No sir.

**THE COURT: JUDGE NEWHOOK**

No, you're still narrowing the issues and getting focussed.

15 **MR ALLAN:**

Indeed, yes. From memory Ms Rhynd and Ms Myers are both saying the caucusing has resolved most of our issues and here's a little commentary on the ones that are left, just focus the Board's attention. Mr Haarhoff's statement is literally a page of saying, "I'm happy with alternative 1 at the top  
20 end and option 3 at the bottom." Ms Absolum's, a little longer document but saying essentially the same thing and these obviously things that they hadn't seen at the time they wrote their original evidence back in December. And Mr McKenzie's evidence does a similar thing, but as I pointed out to you he's also gone through and tried to very briefly summarise the potential parties  
25 who might be affected afresh or who might be affected to a greater extent. And his evidence is really very similar in effect to Ms Linzey's, in the sense that he doesn't identify anybody who is newly affected or anybody who's more affected.

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**THE COURT: JUDGE NEWHOOK**

Okay well thank you for that assistance. The statements can be distributed to us and served onto others and placed on the website.

**THE COURT: JUDGE NEWHOOK – HOUSEKEEPING**

5 1020

**MR LAW CALLS****SIMON PERCIVAL CHAPMAN (SWORN)**

Q. Is your full name Simon Percival Chapman?

A. It is.

5 Q. Have you prepared evidence-in-chief dated 8 November 2010?

A. I have.

Q. And have you prepared rebuttal evidence dated 1 February 2011?

A. I have.

10 Q. Are your qualifications as set out in your evidence-in-chief at paragraphs 1 to 5?

A. They are.

Q. Do you have anything in your evidence-in-chief or your rebuttal that you wish to correct at this stage?

A. No.

15 Q. So do you confirm that the contents of your evidence-in-chief and your rebuttal evidence are true and correct?

A. I do.

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**THE COURT: JUDGE NEWHOOK**

20 Yes now, Friends of Oakley Creek first of all.

**CROSS-EXAMINATION: MS DOCHERTY**

25 Q. In paragraph 21 on page 6 of your rebuttal evidence you note that subsequent to Friends of Oakley Creek's submission you conducted a herpetofauna investigation in sector 7 resulting in the discovery of a copper skink. Can you confirm that this location has been updated and included in the lizard management plan?

A. No we haven't revised that document.

Q. Will that be done so?

30 A. Yes it will be as part of the condition of consent that requires that to be finalised, and it will be done subsequent to consent being granted.



**THE COURT: JUDGE NEWHOOK**

Does anybody happen to have the reference to the condition number that's being talked about?

**5 MR CHAPMAN:**

I believe it's H1.

**CROSS-EXAMINATION: MS DOCHERTY**

Q. H1 yes, page 60. So clause (b) would take care of that additional site?

A. Yes.

10 Q. In the application the section G8, the assessment of herptofauna ecological effects notes that potential adverse effects on copper skink populations could be avoided by relocating copper skinks from the sites identified to a suitable habitat outside the construction footprint. Have these sites been identified?

15 A. We are looking into that at the moment. This is something that must be done in consultation with the Department Of Conversation and whichever consultant is engaged to do that relocation we need to negotiate that with the Department Of Conservation.

Q. Where are these potential sites?

20 A. Well we've looked at a number along, alongside motorways where we have plantings that are probably not yet occupied by skink populations yet may be developing as habitat. There are also options outside of the existing motorway network. For example, Moire Park which is a council reserve in West Auckland which has been enhanced as a lizard sanctuary which could potentially accept further copper skinks if required.

25 Q. As Friends of Oakley Creek are working to improve biodiversity and catchment of the creek could there be additional sites that would ensure that lizards found within the State Highway 20 portion of the project remain within Oakley Creek catchment?

30 A. Yep. There is definitely potential to keep those skinks within that area. For example, the vicinity of the construction yard 7 where the new skink was identified there will be quite a large amount of habitat remaining in

that area and so there will probably be no need to relocate them out of the area, just into the habitat that's left behind. And I can confirm that it is a good quality habitat, there's been some substantial planting going on in there, pest control and monitoring so it would indeed be a very good site for skinks from that area.

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Q. How will this be ensured? Is that – will condition H1 ensure that that happens?

A. Well the way that these projects are done, the relocation projects are dictated detail-wise by the Department Of Conservation permits the consultants operate under. They're highly detailed. In my opinion the key thing about the consent condition is it triggers the process and then the detail of how it's done is dictated by the Department of Conservation and in consultation with the Department of Conservation, and also Iwi.

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Q. And would Friends of Oakley Creek be consulted as part of that?

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A. Well there's no requirement in my permit. I'm not aware of other permits whether there is wording to the effect that local community groups might be consulted, but I would certainly see no reason why not to consult with stakeholders in those release sites.

Q. Also just going back to the section G8 of the assessment, paragraph 1.2.2, it notes that up to two litres of habitat enhancement planting could be undertaken at the Harbutt Reserve dependant on council agreement. Is this area still being considered as a potential relocation site?

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A. That was prior to the additional assessment or potential release site scoping that NZTA engaged me to do, and I believe there are better sites than that. And yeah certainly the remaining habitat along Oakley Creek would be in that so –

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Q. Potentially in sector 8?

A. – so no.

Q. Sorry?

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A. Potentially in sector 8?

Q. Yes, potentially in sector 8.

**THE COURT: JUDGE NEWHOOK**

Now I believe there was a request lodged late last week to question Mr Chapman. Somebody lodged a request?

**5 MS DOCHERTY:**

That may have been me sir. I snuck in under the radar.

**THE COURT: JUDGE NEWHOOK**

All right, and you did it most efficiently and succinctly so that's fine. Leave granted.

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

Q. Mr Chapman I've just got one question. In the condition H1 it talks about the Lizard Habitat Enhancement Act population release sites. And I might not have this – my understanding may not be quite right, but population seems to be referring to when there's one to three or more than three?

A. Yes it's actually three or more.

Q. Okay.

A. We've defined that, just as an arbitrary threshold.

Q. So is this saying that the lizards will be released where there is already three or more or that you're going to move three or more?

A. It's where three or more would be moved, would need to be moved.

Q. So if you only find one or two they'll just stay?

A. Well no they won't stay, we would move them to habitat in – without implementing enhancement, predator control and things like that.

Q. Okay, in terms of – so I'm clear – so the only time that they would need enhancement is if you've got more than three lizards?

A. Yes. They're robust creatures and they've survived in the presence of predators and they're quite broad in their habitat requirements so we've identified the key feature here is that we would like to protect what we consider to be populations where there are potentially breeding individuals that are well worth ensuring that they're able to breed up. Whereas a single individual or even just two individuals may be not

sustainable as a population in the long term future, however we would still look to relocate those animals into safe habitat nearby, but not necessarily implement a large scale predator control operation in that scenario.

5 Q. And can you just run me through – sorry I’m not aware with in terms of the permit with the Department of Conservation – can you just run me through how that works?

A. Well there are about, I believe about five consultancies in the Auckland region with herpetologists who are lizard, reptile and amphibian experts with permits to undertake this kind of work. The Department of Conservation is, administers these permits because under one of the schedules of the Wildlife Act it’s actually an offence to interfere with to handle these animals. So we need a permit to operate, so in granting the consultants permits to handle and move these animals that puts them in a position where they can also put conditions such as monitoring and enhancement and the Department of Conservation has been refining these permits over time and – so that as they get renewed they’re refined and have more detail on things like monitoring and predator control and habitat enhancement. And in my opinion the permits are very good, very appropriate for undertaking this kind of work and include far more detail than you could ever get across in a consent condition.

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Q. So are these permits that are you sort of like get a one year permit to enable you to do the work or is it a one-off, like for a location?

25 A. No they – the way it works is there’s a general permit that allows you to shift a certain number of animals a certain distance just without contacting DOC, Department of Conservation in the first instance. They have criteria where if you’re going to move more than 20 individuals more than 100 metres then you must contact the Department of Conservation and consult with them on how the relocation is done.

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**QUESTIONS FROM THE BOARD: MS JACKSON**

- Q. Mr Chapman I find your answers a bit confusing and it's mainly to do with the population size again. These animals are protected under the Act, and so whether it's one or 20 I fail to see what the difference is.
- 5 Surely you're uplifting them from their habitat, why wouldn't you look after every one of them. That one that you found later on proves that the ones that you found originally you can miss a few, so you might think you've got one but in fact there may be breeding pairs. So why wouldn't you look after every one of them?
- 10 A. Well that's a very good question, I believe we are looking after them and relocating them. In the past we haven't done predator control and habitat enhancement and still been very successful in being able to establish those animal, as I mentioned before they are robust and they have survived in the presence of predators. We're certainly not writing
- 15 off one or where have less than three, it's just that from my point of view it's not good bank buck to be spending a lot of resources and effort to protecting one or two animals when – and my experience shows me that those animals will probably be okay anyway. And the other part to your question was about that we missed some, having been in there and done that work myself and found that individual skink myself, I believe it
- 20 is a direct result of the work that The Friends of Oakley Creek have done in enhancing that habitat, the planting and the pest management. But the reason we mobile animals so we can expect them to move into new habitat or improved habitat as it becomes available.
- 25 Q. Which would surely mean that there's even greater risk of missing more of them, because they're mobile?
- A. Yeah, and we take that into account in the process by we try and move as many as we can before any work's commenced at a site, but then when the contractors start clearing an vegetation or having any direct
- 30 physical on, on a site we tend to try and be there so that we can relocate any remaining individuals, and we've had very good success doing that in the past.

Q. Can I ask you to look at two documents please, the first is your evidence-in-chief at page 15. And you talk about post-release monitoring is required if there's sign of population of skinks, and you've described that as being more than 20 animals?

5 A. Yes.

Q. So if there's less than 20 animals, you see what I mean what the confusion is, somewhere else you say a population is three or more?

A. Yes. The copper skink is a common species, the word significance is a tricky one for us ecologists, and the number of 20 there is really just an arbitrary figure but it is one which above that I would expect a population to be genetically viable and sustainable. So from my point of view the significance under the RMA, it's difficult when you're talking about a common species, but in a urban environment I believe we will have a good population in 20 years just an arbitrary figure, but that would indicate a reasonable size population. That would, in my opinion trigger significance.

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Q. So if you look at your – this annexure C in T8 page 18. And you've got here, marked a lot of where you found copper skinks, 1 to 2, or 3 to 10 on a map?

20 A. Yes.

Q. So you're not going to worry about any of them because they're all less than 20?

A. No we're going to worry about every single one of those and, and more. Yeah – it's from my point of view the important thing is that herpetologist is involved in the process of vegetation clearance certainly the initial stages of any physical works at any site, the herpetologist should be there regardless of whether it has been identified as a dot on this map. And there are – there are parts within the proposed project footprint that have not been surveyed, for example people's back yards can provide quite good habitat for copper skinks at times.

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Q. What's the lifespan of a copper skink?

A. Well we only know from captivity and it's difficult to say whether that is directly applicable to the wild, but they are quite long lived in comparison

to similar species overseas, where they – the copper skinks here we think live to about 15 years old.

Q. So is your three years minimum, what have we got here – you're going to monitor and mate them – monitor for the minimum of three years after release to make sure all is going well. Do you think that is sufficient?

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A. Yes, I believe it is, I think the key thing that we can establish in that time period is whether they are breeding, that is in my view, an indication of success. They may be pregnant or gravid as the technical term with lizards when captured. So it's not the first generation of young that are born that's important, it's the next one which would indicate breeding has occurred at the release site. So I think three years is appropriate it would capture that breeding cycle, they do bred annually.

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Q. Fair enough thank you, thank you Mr Chapman.

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

15 **QUESTIONS FROM THE BOARD – NIL – MR DORMER**

**QUESTIONS FROM THE COURT – NIL – JUDGE NEWHOOK**

**RE-EXAMINATION: MR LAW – NIL**

**WITNESS EXCUSED**

**MR LAW CALLS****GRAHAM LLOYD DON (SWORN)**

Q. Is your full name Graham Lloyd Don?

A. It is.

5 Q. Have you prepared evidence-in-chief dated 9 November 2010?

A. I have.

Q. And rebuttal evidence dated 1 February 2011?

A. That's correct.

10 Q. Are your qualifications as set out in your evidence-in-chief paragraphs 2 to 4?

A. They are.

Q. Do you have anything in your evidence-in-chief or rebuttal that you wish to correct at this stage?

A. No I do not.

15 Q. Then do you confirm that the contents of your evidence-in-chief and your rebuttal evidence are true and correct?

A. That's correct.

Q. So would you please now answer any questions put to you from the other parties of the Board?

20 **CROSS-EXAMINATION: MS DOCHERTY**

Q. Good morning Mr Don.

A. Good morning.

25 Q. On page 20 of the assessment of avian effects, which is section G3 of the application. It stated that no specific food count was undertaken in sector 7 due to the lack of habitat. Also in paragraph 13 on page 5 of your rebuttal evidence you state, "That in an inspection terrestrial vegetation in the remaining sectors, referring to sectors 7 and 8, indicated that no formal surveys were warranted." What rationale was used to inform this decision, and when was this decision made?

30 A. Ah, the decision was made during the investigation phase. The reason for the decision was that qualified people, myself included, inspected the habitat and decided that given its size, nature and the birds that were



likely to use it, in combination those factors didn't really warrant a formal survey.

Q. What year was that, the initial investigation?

5 A. The initial terrestrial investigation started in the year 2000, and that was the State Highway 20.

Q. And when was the most recent one conducted?

A. 2000 and I'd have to check my notes, I think it was 8, or 9. The State Highway 16 survey was done in 2007.

10 Q. When that decision was made not to undertake surveys in sector 7 and 8, how was the alignment of the project different to that proposed in the application. Was it the current alignment that we're looking at now or was the alignment different?

15 A. No I think it was probably different, I have – I can't recall exactly. The nature of AB fauna in that area didn't necessarily affect the alignment in any material way as far as I can recall.

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Q. But did the alignment have any effects on the AB fauna and the –

20 A. The alternative alignments would have had equal effect on the AB fauna, if we're talking about terrestrial AB fauna, because the habitats are of equal nature and equal quality.

25 Q. Over the past few years Friends of Oakely Creek have been undertaking habitat restoration and more recently animal pest control in and adjacent to sector 7, including parts of Waterview Glades. Birds such as pukeko, pheasant, shining cuckoo and heron are regularly observed in this area. Given these ecological and habitat improvements, have you considered that it could be beneficial to undertake another Avian assessment in this location?

30 A. It would be of interest. I would expect the numbers of birds to increase as a result of predator control, I think that's a fairly established fact nationally. I wouldn't expect there to be any increase in diversity necessarily, possibly in numbers. I think we've got to remember that we're dealing with an urban habitat and usually those habitats are inhabited by common birds.

Q. Referring to your evidence-in-chief, on page 10, paragraph 38 and also your rebuttal evidence page 5, paragraph 13, you state that the habitat loss in sectors 7 and 9 will be mitigated through landscape planting the proposed. How long do you consider it will be before these planted areas will provide suitable and effective avian habitat?

A. Those areas will start to provide habitat for some of the more common smaller birds, such as silver eyes and grey warblers in five or six years, but they won't start providing food resources for much longer.

Q. So give the construction period that is say five to seven years, plus another five years of establishment of habitat, we're looking at potentially over a decade of time before suitable habitat will be provided. Do you think that's appropriate?

A. Well I think it's an appropriate – the proposed planting to me is appropriate simply because we're really providing habitat for common urban birds. Species like coprosma grow very quickly, have berries in abundance are they're rapidly utilised by berry eating birds, when they're about say two metres high.

Q. So referring to your assessment of value and effects, in paragraph 4.1 on page 21, you use the example of the higher incidence of pukeko within the wider project area, reflecting the fact that there is ideal habitat in the parts adjoining Oakley Creek. Due to the considerable loss of habitat, which would be potentially for over a decade, what measures are being undertaken to ensure quality and quantity of habitat will remain aiding fauna, such as pukekos displaced by the constructions works in sector 9?

A. There will be some displacement with birds throughout the project footprint, but there's nothing to tell us that the habitat is fully utilised at present. There definitely will be displacement of things like pukeko but there's no shortage of habitat for something like a pukeko which is fairly versatile bird.

Q. Given that the catchment of Oakley Creek is highly urbanised, where exactly do you envisage that that ample habitat is?

A. Well there's a lot of habitat around the coastal edge. Pukeko, if we're talking still about pukeko, will utilise coastal areas including into tidal

areas, right through to farmland and motorway edges. So I think within areas like the Unitec property, even the golf course, around the coastal fringe from Waterview right through to Rosebank Road, there's a fairly significant amount of habitat through there.

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Q. On page 51, paragraph 5.1 of the AEE, Avian assessment, you state that loss of vegetation could be mitigated through additional planting or habitat enhancement and if habitat values were increased elsewhere prior to commencement of construction could that mitigate the loss of habitat for birds in sectors 7 and 9 during construction?

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A. I'm not sure I understand that.

Q. For example, if sector 8 was, if pest control or weed control was undertaken in sector 8, which is not affected on the surface, could that provide some mitigation for the loss of habitat for these common birds?

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A. Theoretically, yes in the short term.

Q. Is that something that could be investigated?

A. It could, but again I go back to the point I made before that on a scientific basis what we're dealing with is common urban species.

Q. With regards to sector 5, in evidence 32, your evidence in chief page 7 paragraph 22, you state that there is no adverse effect on the heron roost sites in sector 5. The large pine trees that are used by roosting herons are also not identified in the tree schedule, section E7 of the application. These pine trees are not listed as worthy areas of protection. How can it be ensured that the heron roost sites are protected?

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A. White-faced heron is a native species, it's abundant, it's self-introduced from Australia probably and proliferated in New Zealand in the 1940s. It's, on a local basis it's quite nomadic. It will use coastal areas and farm land quite well inland. It tends to roost in mangroves until it gets pushed off by the tide and I think in figure 4.4 of my report there's the roosting sites for white-faced heron shown. When the tides are spring tides and the mangroves are water covered the herons will go into the large pine trees, both radiata pine and Norfolk pine. I've checked that area right round the coastal fringe, the Waterview area, the Unitec

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property and the golf course. Pine trees are quite frequent, both radiata and Norfolk, so I don't think the loss of a relatively small number of taller trees is going to worry white-faced heron at all, basically.

5 Q. With regards to the vegetation management then in the proposed conditions V3, V5 and V7, will an avian ecologist be present at the time the botanist is evaluating vegetation management?

A. Not that –

Q. To ensure that –

A. – I'm aware of, no.

10 Q. How will it be ensured that significant avian habitat is protected or managed appropriately?

A. The nature of the vegetation suggests to me that it will be colonised by common urban birds. I don't think there's any doubt about that.

**THE COURT: JUDGE NEWHOOK**

15 Mr McCurdy for Star Mills, do you wish to question the witness?

**CROSS-EXAMINATION: MR MCCURDY**

20 Q. Now Mr Don, one species that hasn't come up so far, or two perhaps, are the pied shag and the black shag, which at the moment have a very healthy population in the tidal part of Oakley Creek from the Great North Road down to the causeway. Has there been any assessment of that area with the shags?

A. Yes, with respect the shags were the focus of the causeway survey, and indeed triggered one of the avian conditions regarding temporary roosting sites.

25 Q. And that extended up to the Great North Road through the tidal part of the creek?

30 A. The – one of the transects extended part the way up the creek, but not the entire way up the creek because visibility was difficult and it just wasn't practical to cover that whole length of motorway at the same time, if you like.

Q. And should there be an avian ecology monitoring plan within that area?

A. One of the avian conditions is focused on just that, and that's monitoring on a regular basis the use of the artificial roosting structures by shags.

Q. Yes, that's in the area of the causeway I believe, but for the rest of the tidal part of the creek that doesn't seem to be covered. Would that be true?

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A. That's correct. It's also correct that there are no general bird surveys proposed as monitoring. I personally don't think that's necessary because the effects are predicted to be relatively minor.

Q. There will be temporary structures with the bed of the creek for the flyovers, for the four flyovers in that area. The shags in that area appear to be territorial and highly sensitive to sudden noise. Would that suggest that perhaps a closer look might be advisable?

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A. No I don't think so. I disagree that they're highly susceptible to noise because one of their favourite roosts is right beside the motorway.

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Q. Yes that's the more sustainable, the ones I'm familiar with – and I see them every day – are very susceptible to sudden noise. They don't mind cars at all.

A. Well there certainly will be fright reactions and I've stated that quite clearly in my evidence and in the report, but fright reactions with birds tend to be relatively short term. Birds will move a slight distance away if they're feeding on intertidal flats and then come back again. The key aspect about the State Highway 16 part of the project is the fish concentrating effect of the causeway bridge and you'd be doing very well if you could keep shags from feeding in that area because it is such a rich source of food for them, and easy source.

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Q. Yes, my observation is that there's a very high population further upstream and going past on the motorway they do not seem to be fishing on the rocks immediately outside the causeway bridge at the moment, but a high population further up towards Waterview Reserve. I come back to the question that perhaps there should be a closer look taken at the shag population and the effects on them within that area, further upstream from the causeway bridge. I'd ask would you consider investigating that further?

30

- A. Well I still don't think it needs to be investigated because I think the potential effects on shags even swimming up the main low tide channel are quite clear and even though there may well be temporary structures within or over the channel, that won't deter shags from feeding along those areas.

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**QUESTIONS FROM THE BOARD: MS HARDIE**

- Q. Mr Don just one question with regards to these proposed roosting structures. Have they been used before?

- A. Not that I'm aware of, or put it this way, not in any project I've been involved in. The roosting structure condition is put in there as a proactive exercise that we think – I think, should be undertaken. During a lot of construction activities you will see shags roosting on bits and pieces of the construction so I think they will use purpose built ones.

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**QUESTIONS FROM THE BOARD: MS JACKSON**

- Q. Mr Don you've recommended that any vegetation clearance will be scheduled to occur outside of the breeding season of September to December, but when you look at the bird count that you did at Te Atatu Pony Club, a large number of birds were there between May and July. Why is that? Are they there to shelter? I mean, why aren't we protecting them when there's hun – there's literally hundreds of birds there between May and July.

20

- A. Yes that's right. That's because a lot of the species that are present in high numbers migrate to the South Island to breed so they return from now on. In fact last Monday I was out there and there were 300-odd birds there. They also – the oystercatchers in particular will also feed on the pony club paddocks when the paddocks are wet. The, as far as I know there is an agreement that is fairly close with the pony club to finalise the location of construction yard 1. That will ensure that there's sufficient pony club area remaining for the birds to roost in. They're not exactly particular which paddock they use, up to a point, provided there's sufficient area left.

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Q. So you don't think there's any need to extend the September to December vegetation clearance time?

5 A. No, but I know there are no significant birds breeding within the pony club grounds that I've observed and by significant I mean ones that are at risk or threatened.

Q. The shell banks appeared to us to be significant and they're significant to DOC as well. So do you know the duration between, I think they're going to take away the shell banks, do the construction and then try and put everything back again, do you know how long that's going to take, because these shell banks are significant feeding grounds aren't they for a number of species?

10 A. Firstly, no I don't know how long the shell bank will be gone for, I can't recall that. Secondly, the shell bank next to the motorway that will be removed and replaced is not an especially good habitat for birds, for reason they don't like it, they don't nest on it, probably because it's exposed to prevailing winds and the top of it gets turned over fairly regularly. The birds tend to roost on the one closest to the motorway near the Rosebank onramp and the ones further out, well away from the project footprint.

15 Q. I just wondered if you'd mind commenting on the fact that there's so few native birds mentioned in any of this reading that we've done?

A. There are native birds there, both –

Q. But we don't see anything about woodpigeons or tuis, hardly mentioned.

25 A. No, I think that's a function of the vegetation type. I was a bit surprised that there weren't more observations of native pigeons because they will eat privet, ironically, which isn't necessarily a good thing, 'cos they spread it all round the Waitakeres. Tuis are, from my observations in precincts throughout the Auckland urban area, but again it's a function of habitat and sufficient food trees and tuis in particular have benefitted from some of the exotic trees, such as winter flowering gum, those sorts of things.

30 Q. Oh good, so you support planting of some exotics in amongst these flax forests then?

A. I don't have any problem with exotics but I think it has to be put into context.

5 Q. Point's made. I just wonder about the accuracy of the bird counts because I was looking at your rebuttal evidence, page 11 and in October you did a count of some shell ducks and in November an extra little duckling walked out of a bush somewhere, but that's fine, we can live with him.

A. I think he was hiding in some very long grass.

10 Q. I think he must have been because it was quite irregular that there was suddenly an extra duckling.

**QUESTIONS FROM THE BOARD – NIL - MR DORMER**

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

**QUESTIONS FROM THE COURT – NIL – JUDGE NEWHOOK**

**RE-EXAMINATION: MR LAW – NIL**

15 **WITNESS EXCUSED**



**MR LAW CALLS****EDWARD ST GEORGE SIDES (AFFIRMED)**

Q. Good morning, is your full name Edward St George Sides?

A. Yes it is.

5 Q. Have you prepared evidence-in-chief dated 9 November 2010?

A. Yes I have.

Q. And have you prepared rebuttal evidence dated 2 February 2011?

A. Yes I have.

10 Q. Are your qualifications as set out in your evidence-in-chief at paragraphs 1 to 5?

A. Yes they are.

Q. Do you have anything in your evidence-in-chief or your rebuttal that you wish to correct or to update?

15 A. I have one matter to update. In reference to my rebuttal evidence, paragraph 31. That paragraph refers to offsetting mitigation to be undertaken for loss of 23 metres of Pixie Stream. At the time that I prepared the rebuttal evidence we were talking with Auckland Council about options for where we might undertake that offsetting mitigation and the update on that is we've spoken to them. The current proposal is  
20 to undertake that offsetting mitigation within the Alan Wood Reserve and Oakley Creek. The response from the Natural Heritage Advisor at the Auckland Council was that they had no specific objections to that proposal.

25 **MR LAW:**

And that sir, it's a matter sir that was flagged earlier on as something that was going to followed up.

**THE COURT: JUDGE NEWHOOK**

30 Is there a draft condition, a consent that we should be looking at in this connection?

**MR LAW:**

I don't believe so. I might have to have a look at that sir while – unless Mr Sides has an answer to that, but I think it's covered by the existing conditions probably somewhere in the streamworks conditions.

**5 THE COURT: JUDGE NEWHOOK**

Which are on page 92 I see. Yes well you might give some thought to that.

**MR LAW:**

10 I will do that sir. The intent has always been there that they should be replaced by stream evaluation rehabilitation, it was just a matter of finding a suitable location. Because you may recall that Pixie Stream has already been rehabilitated so there's no capacity to do further work there.

**THE COURT: JUDGE NEWHOOK**

15 Is that one of the aspects of conditions that's being looked at at the moment by Ms Linzey and others?

**MS JANISSSEN:**

Sir, I'm not sure, I'd need to check that.

**THE COURT: JUDGE NEWHOOK**

20 Well there's something for you each to think about.

**EXAMINATION CONTINUES: MR LAW**

Q. Subject to that update Mr Sides, do you confirm that the contents of your evidence-in-chief and your rebuttal are true and correct?

A. Yes.

**25 CROSS-EXAMINATION: MR LANNING – NIL****THE COURT: JUDGE NEWHOOK**

Friends of Oakley Creek, Ms Docherty.

**CROSS-EXAMINATION: MS DOCHERTY**

Q. Just touching on that point that you've just raised, for clarification, can you just clarify that given that Alan Wood appears to be fully mitigated in the landscaping plans, could you indicate if other locations perhaps in

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A. They could be considered but they would not have as much benefit for the stream and this was because the sector in Alan Wood Reserve is much more highly modified. So the benefit of undertaking stream rehabilitation there is greater than undertaking it in the Oakley Creek in sectors 7 or 8 where it's a lot less modified.

10

Q. Do you have a specific location in mind in Alan Wood, given it's already –

A. Ah yes –

Q. – heavily mitigated in the plans that have been provided?

15

A. Yeah, the plans that have been provided show sections of the existing rock wall channel being rehabilitated to compensate for works in a stream loss associated with the diversions of this project. But there is sufficient space within those areas, sufficient length to also mitigate for Pixie Stream.

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Q. Additional 23 metres. So that could be –

A. Yep.

Q. – the areas that are shaded grey on the landscape plans?

A. No, I'll just – if you just hang on a minute I'll find the plan.

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Q. Sheet 219, the urban design landscape plans of Ms Hancock's evidence.

A. If I could actually refer to the streamworks and flood protection realignment layout plan.

**THE COURT: JUDGE NEWHOOK**

30

Can you give us a reference to that amongst the materials. Is that in the – what series is that in?

**CROSS-EXAMINATION CONTINUES: MS DOCHERTY**

Q. Is that annexure C of your rebuttal evidence Mr Sides?

5 A. Yes that sounds right. Yes that's correct. This plan shows the extent of proposed streamworks including realignments to move the stream away from the motorway alignment and in between those areas and downstream are further sections which are going to be undertaken as rehabilitation. And the entire reach together will therefore present a continuous area of improved stream habitat.

10 Q. So are you suggesting the additional 23 metres in mitigation could occur outside of the coloured areas?

15 A. No will be within the green areas. The khaki areas are the stream diversions so they're referred to as "realignments," and the green areas, these sections of stream rehabilitation and the Pixie Stream rehabilitation – well I've seen mitigation for Pixie Stream – can be accommodated within those green areas.

Q. Not an additional 23 metres length elsewhere?

20 A. No not elsewhere, within those areas. The total length of those areas is 448 metres of the green areas. The total length of offsetting mitigation due to stream length within Alan – loss of stream length at Alan Wood Reserve, is 343 metres. And within the Pixie Stream, 23 metres of stream will be lost. The offsetting mitigation, that's been calculated for that, if undertaken in Oakley Creek, is 100 metres so it's 343 plus an additional 100 is 443, which is still less than the 448 which is available in those green areas.

25 Q. I think that's made it slightly clearer, thank you. Okay moving onto section 21 of the construction environmental management plan, appendix H contains the ecological management plan. Paragraph 5.2 pages 34 to 40, it outlines the methods for freshwater monitoring which includes stream cross-sections and macroinvertebrate and fish counts. 30 The cycle sites are also described and it describes the indicators of significant effects. What was the determining factor, or what were the determining factors in selecting these locations identified for monitoring?

A. The monitoring sites for ecological monitoring are upstream and downstream of the main area of surface earthworks and streamworks so

there are sites located within the Oakley Creek and the Stoddard tributary upstream of the proposed works and also downstream of New North Road.

5 Q. So do these monitoring locations reflect the sensitivity of the receiving environment?

A. Yes. The concept of upstream and downstream monitoring is to isolate the effects of the project so they can be quantified, so that's obviously you measure downstream of where inputs from the project will occur and the upstream site, the downstream can be compared to the upstream and if the similar level of effects are noted upstream that would indicate that the source of the impact is located upstream, but if the upstream site remains unchanged while there is a change downstream that means that the effects are located within the project area.

15 Q. You also refer to three sites in Harbutt Reserve, but there appears to be none below this. Is that correct?

A. That is correct.

20 Q. Is there a freshwater ecological monitoring in Harbutt Reserve sufficient to monitor any negative effects on the more sensitive areas downstream, specifically below the waterfall where construction, which construction yard 7 sits below?

A. Yes, I – in my opinion it's the best site for measuring the effects of the project and because it's close to the project it's the location where you're most likely to identify effects. The environmental management plan then provides for responses to be made when those effects are detected and that wouldn't necessarily be limited to the monitoring area. It could – there might be appropriate responses further downstream. The monitoring is to detect effects and then the follow-up from that is identifying the extent of those effects and what an appropriate response would be.

30 Q. So if there was a trigger event in or around construction yard 7 how would this be – how would the effects on the freshwater ecology be monitored?

A. There are water quality sites below construction yard 7.

Q. Excuse me, water quality, not –

A. Yes not –

Q. – freshwater –

5 A. – ecological sites. So they will determine if there's a change in water quality at that site. If there's a significant change there are trigger levels for water quality and a response to that could be an ecological sampling there, but the vast majority of the works that will affect the stream occur in sector 9, and it's appropriate to have the freshwater ecological monitoring focused on that area.

10 Q. Staying with sector 7, in your evidence-in-chief page 8 paragraphs 27 to 30, you acknowledge that the lower portion of the creek has the highest part of the length of Oakley Creek with a moderate SEV score of .45. Given that the footprint of construction yard 7 affects the riparian margins of the creek, I can't see the link between the sensitivity of this location with the freshwater monitoring that's been proposed. Are you  
15 confident that the water quality monitoring will be - the response to that will be swift enough to ensure that there is no freshwater ecological damage done?

A. Yes I do. The water quality monitoring will actually be a – undertaken  
20 much more frequently than the ecological monitoring. Ecological processes take time. The water quality can be measured quickly and simply and it is a better measure, a better method for detecting day to day environmental effects, such as on turbidity. With respect to the sensitivity of the receiving environment, while that lower part of the  
25 creek has higher values because it is less modified it's not necessarily – I wouldn't describe it, the communities there as a highly sensitive communities. The macroinvertebrate communities are similar throughout the creek, and that reflects the water quality. The fish communities have a higher diversity there, but fish are generally less  
30 sensitive to water quality than invertebrates. So, and some of them are highly tolerant of elevated sediment, so I don't consider that to be a sensitive, sensitive communities in that area.

1120

Q. In the context of the Auckland Isthmus would it be considered a unique feature, that this portion of the creek has such a moderate value?

5 A. Oakley Creek is a significant – a significant environment in the Auckland Isthmus. There are a number of other streams, large streams, around Auckland which have similar diversities of fish, in East Auckland, South Auckland, and West Auckland. But yeah I agree that it's a significant environment, it's – there are few large streams in the Auckland Isthmus and...

10 Q. Just touching on a point that you made about the connection between the water quality monitoring in the fresh water ecological monitoring. In your rebuttal evidence page 6, paragraphs 15 to 16, you're outlining outcomes of the expert caucusing sessions with regards to linking the various environmental results and monitoring results that are going to be undertaken. Turning to proposed condition F5 on page 99, the link  
15 between the fresh water monitoring and the ground filtering monitoring proposed condition G10 has been outlined. What is the proposed frequency of the review of monitoring results as proposed in F5?

A. I think the frequency of monitoring results has been addressed in the rebuttal evidence of Mr Hugh Leersnyder. And my recollection is he is  
20 recommending six monthly reports of monitoring results.

Q. And where is this ensured through conditions, would it not be beneficial – the ground water condition referred to here, G10 which is on page 76, has a proposed frequency which is outlined in condition G11. Would it not be beneficial to link the timing of these conditions together to make a  
25 more cohesive set of data?

A. I would expect all of the ecological monitoring to be reported together.

Q. But there's nothing in the condition F5 that would ensure that?

A. As I say I think it's addressed in the rebuttal of Hugh Leersnyder.

Q. Staying with the monitoring, and the sensitivity of Oakley Creek in that  
30 lower portion, given that the marine reserve is downstream how does fresh water monitoring link in with marine ecological monitoring?

A. If the stream environment and marine receiving environments are linked the stream carries fresh water and any sediment and so forth into the marine environment, and there are monitoring programmes in both of

those environments, or both the ecology and the water quality and sediment quality.

5 Q. But are they linked in any way, effects that are noticed in the creek through monitoring, will they be – how will they be relayed to marine ecologists for undertaking monitoring?

10 A. In the ecological monitoring plan there are details of how the monitoring will be co-ordinated. I'm not aware of a specific requirement that effects on fresh water need to be reviewed by a marine ecologist, that would be unusual, but I can see the benefits and as part of an overall approach for the project for the information to be shared.

Q. It would be a beneficial –

A. Yes.

15 Q. – process. On that area where the Oakley Creek meets the marine reserve the Oakley inlet, there is a proposed condition in the contaminated land and contaminated discharges conditions CL2 on page 78, that identifies a location that – well monitoring of soil and ground water quality, given the industrial nature of that location. Now will aquatic or fresh water or estuarine ecology, investigations or monitoring be undertaken in this location of potential contamination, ground water contamination?

20 A. Is that the Phyllis Street Reserve?

Q. Now that's downstream in the Oakley Inlet, the Star Mills site?

A. Um, that's a matter for the marine ecologist to address, I'm not familiar with these applications of the marine monitoring that will be undertaken.

25 Q. I believe that question was raised with the marine ecologist and she passed it to you?

A. The location of the marine environmental monitoring is a marine question. Could you rephrase your question perhaps?

30 Q. It's not in the marine reserve itself, it's the Oakley inlet, which is just outside of the marine reserve boundary, and therefore was not included in the marine monitoring?



**THE COURT: JUDGE NEWHOOK**

We if we've got a game of ping pong between the witness and Ms Docherty it mightn't be your fault, but equally it might be something you can control as of this moment but when you offer representations, when you make a case to us

5 that may be the subject of comment you might invite us to examine the question more.

**MS DOCHERTY:**

Thank you sir.

**CROSS-EXAMINATION CONTINUES: MS DOCHERTY**

- 10 Q. Turn to your evidence-in-chief page 14 paragraph 65. You refer to your relocation sites, where are these proposed sites?
- A. They haven't been determined in detail, but they will be – it's proposed that they will be above the waterfall and below the railway that runs near New North Road.
- 15 Q. So in sector 8?
- A. Yes.
- Q. What investigations have been undertaken to ensure that these areas proposed for translocation will provide suitable habitat and food source?
- A. The habitat is suitable for eels, there's numbers of eels already there.
- 20 We've undertaken some eel surveys to determine more accurately the number of eels in that receiving environment. And how many eels could be released there without disturbing the populations in those environments. The – so yes we've undertaken some fish surveys in that area to determine the number of eels that are presently there.
- 25 1130
- Q. On page 4, paragraph –

**THE COURT: JUDGE NEWHOOK – MORNING ADJOURNMENT**

**COURT ADJOURNS: 11.31 AM**

**COURT RESUMES: 11.48 AM****MS DOCHERTY:**

No sir I've revised my questions and I've got no further questions, thank you.

**5 THE COURT: JUDGE NEWHOOK**

Okay then, all right thank you very much. Now let me see, Star Mills, Mr McCurdy did you have questions?

**CROSS-EXAMINATION: MR MCCURDY**

10 Q. Condition F2(c) refers to freshwater fish monitoring, in other words direct monitoring of the fish not just the habitat. In your opinion should that also apply to fish in the Oakley inlet which is freshwater at low tide and salt water at high tide?

15 A. I wouldn't describe it as a freshwater environment. It's mainly mangroves with mudflats and it's not inhabited by freshwater species that only live in freshwater streams. My understanding is that there will be some fish monitoring undertaken in relation to the marine reserve and that there's not any specific monitoring to be undertaken for the fish in that area, and that's largely because the fish are – the marine fishes coming in and out of that inlet with the tides are highly mobile. Ms De  
20 Luca has assessed the potential impacts in that area and does not believe there will be significant impacts on the benthic organisms which the feed – the fish feed on, or on the physical habitat conditions so she doesn't believe that there will be significant effects on those fish and she's not proposing any monitoring of those fish.

**25 QUESTIONS FROM THE BOARD: MS HARDIE**

Q. Mr Sides, just one question I think. Just with regards to instream litter traps. Your comment in your rebuttal paragraph 33 you've said that in your opinion that you don't believe that an additional instream litter trap is required. That seems to be based on a comment with regards to sort

of a suggestion that there's going to be a higher level of maintenance carried out by Auckland city in that reserve. Is that your understanding?

A. That's what I would anticipate. There's a high level of open space development being – that will be undertaken and including new walkways and facilities like that, so I would anticipate a higher level of parts maintenance.

Q. One more question. Just with regards to the SEV scores and you've got that one section is between .34 and .37 and downstream it's .45. With the proposed works do you anticipate a higher than .39 in the final stream?

A. Yes that's correct. The SEV score largely reflects the physical habitat quality, so the proposal involves essentially naturalising the stream, re-contouring the banks, removing the granite block walls, or block walls, and planting riparian vegetation and they will all contribute to a higher SEV score.

Q. Can you give us an indication of what sort of score could be expected, just a range?

A. That has been calculated in my report, but I would think around point, maybe .5 to .6, but possibly higher.

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

Q. Mr Sides this may have been covered before, the riparian planting should achieve 70% stream shading at maturity. How long do you anticipate it would take these new landscaping plants to achieve the 70% stream shading?

25 A. There will be quite a high level of stream shade from the stream banks, which are quite steep. That's called topographical shading, and the trees provide another layer on top of that with additional height. The – I'm not sure exactly how long the trees that are proposed will take to reach maturity, but they will provide shade, you know, once they start getting above say one to two metres, the percentage of shade will start increasing quite dramatically.

30 Q. Okay, and another question, this is about the trigger levels for the base flows in the Oakley Creek once the tunnelling's underway. You talk

about “continuous monitoring,” and Ms Docherty actually touched on this as well. It talks about monthly reviews, but surely there must be a trigger level, and Dr Ryder recommended one, shouldn’t a trigger level be put in these conditions so that you don’t have to wait for a monthly review and a dry period to realise that the water level in Oakley Creek is getting too low?

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A. I believe that question would be best answered by a Ms Williams, who is the ground water expert, she’s – she will – she’s been designing the monitoring programme and the level – and the trigger levels.

**QUESTIONS FROM THE BOARD: MR DORMER – NIL**

**QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP**

Q. Mr Sides I’ve got question concerning Oakley Creek, and base flows as well which relates to paragraph 15 in your rebuttal?

15 A. Yes.

Q. Where you advise that subsequent to caucusing amendments to fresh water condition F3B were made, regarding monitoring and responding to effects on base flows. Can you tell the Board, how the amended F3B responds to that matter please?

20 A. (no audible answer 11:56:00)

Q. Well I think Mr Sides I’m particularly interested in the times of the year when I suspect base flows might be at their least.

A. Yes.

25 Q. And the times that appear to be set out in the condition for the monitoring to occur, although I find the latter confusing to be frank, but that’s a matter of detail?

30 A. The fish and invertebrate monitoring has been set up to monitor what we believe will be the most likely potential cause of effects of the project which is sediment discharge to the stream. So that it is the times for that monitoring is at the start and the end of the construction season. The end of the construction season would be after the period of summer low flows, so that would be a relevant time to monitor. But the main

monitoring of fresh water flows has been undertaken by monitoring the flows itself, and if there is sufficiently low flows then some specific sampling would be undertaken to see if that has affected the communities. That's the trigger monitoring.

5 Q. Can you guide us to that latter trigger please?

A. The triggers are listed in the ecological monitoring plan and the relevant sections are in appendix D of the Assessment of Freshwater and Ecological Effects. And that's section 3.1.1.3, so there's quite a long list of potential trigger events.

10 Q. Could you offer the Board a summary of them please Mr Sides?

**THE COURT: JUDGE NEWHOOK**

Q. Or take us to some page references in the appendix.

A. Sorry I don't have the page numbers on this appendix but only the section number.

15 Q. Oh, well that'll do.

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A. 3.1.1.3 of appendix D. The trigger responses, for example the first one, "A marked change in any of the ecological or physical variables measured under the freshwater component of this ecological monitoring plan." So there are references to "marked changes", so "significant changes", "obvious degradation".

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

Q. Mr Sides if under F3(b) you were doing the monitoring twice per year along the side of the earthworks programme, how would you pick up these other effects?

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A. The monitoring programme includes the ecological monitoring, which is relatively infrequent. Ecological processes generally take time, so that's the twice yearly, but there will be more frequently freshwater water quality monitoring, flow monitoring and there will also be devices monitoring, which will monitor the sediment treatment devices discharging into the creek. So there is quite a raft of monitoring at

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different levels, both of the construction, on the construction side and on the receiving environment side.

Q. Well I'm satisfied for myself that the frequency that's in F3(b) is sufficient to pick up potential adverse effects in the area that we are discussing.  
5 What is the frequency that's triggered by monitoring in the other areas that you've referred to, particularly at times when the base flow might be at its least?

A. The twice yearly monitoring is quite standard for other projects, such as the Northern Gateway Project. There is no set frequency for the triggered monitoring, it's basically in response to whenever there's an event which might potentially have a significant effect. We're obviously hoping that they will be rare, but the process is – I can refer to the figure 1 in appendix D of the freshwater assessment of effects, outlines the monitoring programme.  
10

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

Could that slide be put up on the ABL screen please.

#### **QUESTIONS FROM THE COURT CONTINUES: COMMISSIONER DUNLOP**

A. And that process is whenever of the environmental monitoring is cause of concern, that there is a meeting between the project engineer, project contractor and consent authority to determine the further measures. And that could be – it is likely to include further sampling to quantify or firstly to determine if there is a significant effect and to quantify that effect and then following on from that determine an appropriate response.  
20  
25

Q. Thanks Mr Sides. Perhaps we could come at it from another couple of angles. In paragraph 16 of your rebuttal, you note that the anticipated reductions in stream base flows will be between 2% and 6%, and the you go on and say what that hydrological modeling was based on. From your knowledge of the Oakley Creek, do reductions in base flow of those orders have the potential to cause adverse effects on fish and macroinvertebrates who are in stream?  
30

- A. In my opinion, reductions of those orders are unlikely to cause significant effects on the fish and invertebrates. But certainly when getting up to above a 10% is warranting some further assessments because it's getting into the grey area where there could be potential effects. Ms Williams' evidence has indicated that the stream flows are highly variable and about 70% of the stream flow of the volume of the stream flow occurs in response to rain. So it's a highly fluctuating stream flow environment and the ecological communities are adapted to a wide range of stream flows. So I believe they would be quite tolerant for temporary reductions of the order that's predicted.
- 5
- 10
- Q. Your background research hasn't indicated there's any critical threshold in the low flow regime, so as 2% or 6% would make a difference. Because your reference to a 10% trigger doesn't give me any comfort at all. That might be applicable to streams in North America generally, or wherever generally, but we are charged with considering effects on this particular stream, do you understand?
- 15
- A. Yes, the potential effects of reducing the flows are primarily a reduction in flow velocity and a reduction in the stream habitat area. The reduction in stream habitat area with flow is most pronounced in, if you can imagine for example a braided river in Canterbury, a wide dish shaped channel, where a small reduction in depth reduces, significantly reduces the amount of stream which is underwater. In the Oakley Creek it's got quite a different profile, it's more a trench-like, with steep sides and a slight reduction in depth would not result in a great reduction in the amount of streambed area available to fish and invertebrates, as it would in a more dish shaped channel. So it depends on the geometry of the stream and in the Oakley Creek those effects are much more minor than in a shallow profiled stream or river.
- 20
- 25
- Q. In condition F5 of (inaudible 12:08:05) Mr Sides, it is a requirement that the Agency review the freshwater monitoring results and the various conditions, "In the event that potential adverse effects are identified, the Agency shall develop and implement appropriate contingency plans and/or remedial measures in accordance with the measures set out in the ecological management plan." Can you refresh my memory of what
- 30

those contingency measures are? What do you do, to augment base flows, I guess is the question Mr Sides?

5 A. It is a good question. The – you can't address the habitat volume issues and on the subject of – I can just point out that where you mentioned "augmenting the flows", those flow calculations, reduction and the base flows, do not actually take – they take account of the water leaving the stream, they do not actually include the water that will be pumped from the tunnel and discharged back into the stream.

10 Q. I don't want to interrupt, but I've read that I your rebuttal at paragraph 16 and I'm sitting here thinking to myself perhaps there won't be very much to pump back into the stream at the time of low flows Mr Sides. So unless you can persuade me otherwise I don't take much comfort from that?

1210

15 A. If the flows are reduced by two to 6% that means that 94 to 98% of the stream flow will still be present in the stream, so there will be, there will still be, most of the volume of the stream will be left at base flows. And furthermore, at times when the stream is above base flow then there will be, a higher proportion will be in the stream.

20 **QUESTIONS FROM THE COURT: JUDGE NEWHOOK - NIL**

**RE-EXAMINATION: MR LAW**

Q. Mr Sides, was the issue of the conditions around monitoring frequency raised in expert caucusing?

A. Yes it was.

25 Q. And was agreement reached with the expert witnesses on the caucusing condition – sorry, on the frequency condition?

A. Yes it was.

**MR LAW:**

30 Thank you sir I have no further re-direction questions, however there is one matter I just want to draw your attention to. At the start of Mr Sides cross-examination the issue of Pixie Stream was raised and Your Honour



asked a question as to which condition dealt with this. Just to confirm that that is not an amended condition. If you turn sir to STW20, which are the streamworks condition, sorry page 95.

**THE COURT: JUDGE NEWHOOK**

5 Yes, got it.

**MR LAW:**

And just below the first paragraph, just below the red lined addition here you see that the plan shall cover the mitigation for the loss of an area of Pixie  
10 Stream, Oakley Creek and the Stoddard Road tributary. And then the condition requires that the location of works and so on be set out. So the change sir is not so much to the conditions, but that just now we have identified where that is going to occur.

**THE COURT: JUDGE NEWHOOK**

15 Yes thank you for pointing out where that is to us. Thank you very much.

**WITNESS EXCUSED**

**MR LAW CALLS****DAVID CHARLES SLAVEN (SWORN)**

Q. Is your full name David Charles Slaven?

A. It is.

5 Q. Have you prepared evidence-in-chief dated 11 November 2010?

A. Yes I have.

Q. And rebuttal evidence dated 2 February 2011?

A. Correct.

10 Q. Are your qualifications as set out in your evidence-in-chief, paragraphs 1 to 4?

A. Correct.

Q. Do you have anything in your evidence-in-chief or your rebuttal that you wish to correct or to update?

15 A. There is one update if I may. In response to a concern raised in paragraph 7.2 of Auckland Council's expert in relation to the fact that the Traherne Island natural restoration – sorry natural heritage restoration plan had no sensory basis I can confirm that NZTA have posed a new condition, the wording of which will be along the lines of "the NZTA shall commit to maintaining pest and weed in management works as  
20 identified in the existing Traherne Island natural heritage restoration plan 2009/2014 through to 2014."

**MR LAW:**

Sir that will be in the revised set of conditions that you'll get from Ms Linzey.

25 **THE COURT: JUDGE NEWHOOK**

Q. Yes all right. And was that paragraph 7.2 of the evidence of Mr Hamill was it?

A. No of Dr Julian sir.

**EXAMINATION CONTINUES: MR LAW**

30 Q. Subject to that update, do you confirm that the contents of your evidence-in-chief and your rebuttal evidence are true and correct?

A. I do.

**THE COURT: JUDGE NEWHOOK**

Yes, Mr Lanning, Auckland Council.

**CROSS-EXAMINATION: MR LANNING**

5 Q. First issue I'd like to just deal with is the significance of the vegetation on Traherne Island and at paragraph 8 of your rebuttal, would you have a quick look at that, you comment on Dr Julian's views that the vegetation alongside State Highway 16 causeway is significant?

A. Correct.

10 Q. Do you accept that at least some of the vegetation on that section of the project is significant in terms of section 6 of the RMA?

A. Yes.

Q. And in particular, would you accept that the – I've got the words "coastal scrub" and "flaxlands" – are significant. Is that – would that be  
15 accurate?

A. They're of high botanical conservation value and they are part of an ecotone sequence which is in the wider Waterview inlet. It includes Pollen Island, Traherne Island, Eric Armishaw Park and Harbourview Reserve. That would be, in my opinion, regionally significant as a  
20 ecotone example.

Q. So we can jump to the issue of ecotones. Now if I could just – you might recall what's in your evidence-in-chief, paragraphs 38 to 51. There you've discussed the vegetational loss within a state highway causeway and section of the project haven't you?

25 A. Correct.

**MR LANNING:**

If the Board wants time to look at that sir.

**THE COURT: JUDGE NEWHOOK**

30 Well if you put your question and we'll see if we need to be studying the paragraphs.

**CROSS-EXAMINATION CONTINUES: MR LANNING**

Q. So that's Mr Slaven's evidence-in-chief, paragraphs 38 through to 51. And then more specifically at paragraph 49 you conclude that the loss of 1.85 hectares of ecotone sequences on Traherne Island, this is a quote,

5 "is a loss of vegetation of high botanical conservation value which will need to be mitigated"?

A. Yes correct.

Q. And that's still your evidence. Now the annexure C to your evidence-in-chief shows the areas of ecotone loss, doesn't it?

10 A. Annexure B did you say?

Q. Sorry annexure B, yes.

A. That's correct.

Q. Oh sorry.

**THE COURT: JUDGE NEWHOOK**

15 Somebody said "B", somebody said "D", somebody said "C", what is it?

**CROSS-EXAMINATION CONTINUES: MR LANNING**

Q. It's B, is that correct?

A. B, yes.

Q. Now three of the ecotones that are lost, or in part at least, by the propose works are the flax lands which are in the brown colour there?

20

A. Mhm.

Q. And then we've got another ecotone in orange, flax, it's got cabbage tree wetland, that's correct?

A. That's not actually an ecotone. You're referring to vegetation types which comprised the ecotone, yes.

25

Q. And then so is the flax land with emergent wattle an ecotype?

A. No it's a vegetation type.

Q. And then if I take you to – oh before we do that. Now it's proposed to mitigate the loss of these ecotones with some offset planting or enhancement planting around the Eric Armishaw Park area, that's correct?

30

A. That's correct.

Q. So there's no direct mitigation on Traherne Island is there, relating to this ecotone loss?

A. There is, by virtue of the new condition that I read out just a bit earlier.

5 Q. I thought you might say that. We'll perhaps look at that condition. But that condition as I understand it is about maintaining what's left of these ecotones on Traherne Island, is that correct?

A. That condition?

Q. Yes.

1220

10 A. It's to do with managing the weeds and controlling reducing, and yeah controlling and reducing the weeds both within the, the designation and outside the designation on the whole of Traherne Island.

Q. But the purpose of that condition as I understand it is to assist and mitigate all the loss of vegetation and eco tones along the section of the project, is that correct?

15 A. That's one of them yeah.

Q. And the other aspect for mitigation they're proposing is still this enhancement planting at the Eric Armishaw Park area correct?

A. Yes eco tone replacement at Eric Armishaw.

20 Q. Will it be fair to say and for the Board's assistance there's some enhancement planting or restoration planting is at annexure C of Mr Slaven's rebuttal evidence. Now would it be fair to say Mr Slaven that perhaps in the absence of this new position which you're now suggesting, the proposed planting Eric Armishaw Park, is not a like for like replacement of the loss at Traherne Island is it?

25 A. No that's correct, but there is no requirement for like for like in any of the plans or the regional policy statement and when you are looking at the mitigation, especially off site mitigation it's important to identify constraints and opportunities, and I believe that the particular circumstances at Eric Armishaw and its environs (inaudible 12:21:59)

30 are very well, to be a appropriate form of offsite mitigation. The key reason being as if someone could just bring up on the screen my annexure?

**THE COURT: JUDGE NEWHOOK**

C.

**CROSS-EXAMINATION CONTINUES: MR LANNING**

Q. Annexure C?

5 A. C to my rebuttal.

Q. Well it looks like there were two plans now I actually see, there's one –

A. Yes if I could go to the page 2 of 2.

Q. There's one called, "Concept" and another one "Context".

10 A. We'll pick the "Contents" one please. That's the one thank you. The vegetation types that comprised the econ tones at Traherne Island are general replicated at the Eric Armishaw Park area, so rather than wanting to create more mangroves, or more flax or wattle, we are pursuing a different course here. We are trying to replicate two of the vegetation types that occur at Traherne being the flax cabbage tree the

15 wetlands and also the Olearia soft scrub. But in addition to that we are also wanting to create a coastal forest and also a block forest. And the reason why I consider this to be an appropriate form of offsite mitigation is that historically the volcanic rock that would've been – or that is at the junction of the causeway and land would have one supportive rock

20 forest, it no longer does, so we are trying to I guess re-create a lost vegetation type, and just add to the eco tone sequence of the Waterview Inlet at that area.

Q. Now just looking at that, the proposed restoration planting area, there is on the – that that area is just slightly to the north or North West of the

25 current Waterview intersection, or interchange. There's an area of yellow, it's an area that's surrounded in it with a yellow line, can you just explain what that is?

Q. Ah, yes that is land outside of the control of the NZTA, that's open space, I believe it was –

30 **THE COURT: JUDGE NEWHOOK**

Q. It's marked as "ACC open space 2 Zone"?

A. "Open space 2 Zone."

Q. So your client should know what's that's about Mr Lanning.

**CROSS-EXAMINATION CONTINUES: MR LANNING**

Q. And so it's your understanding Mr Slaven that the council's consent to use that land for that purpose will need to be given?

5 A. I do indeed, apparently the land is held for road purposes, but has never been declared to be a road. So it's a piece of land with open space zoning. And yes, the approval of council would be required to include that within the proposed mitigation at that site.

**CROSS-EXAMINATION CONTINUES: MS HOUGHTON**

10 Q. Now I think I was a bit hard of hearing, but I didn't catch the whole condition, the new proposed condition relating to the Traherne Island restoration plan, so do you mind repeating it?

A. Certainly. The NZTA shall commit to maintaining pest and weed management works as identified in the existing Traherne Island natural heritage restoration plan 2009 and 2014, through to 2014.

15 Q. I thought that's what you said, and in your rebuttal evidence you refer to the management plan as annexure D?

A. Annexure D is correct, yes.

Q. D yes. And I think that's on page 28 of your rebuttal evidence?

20 A. That's correct.

Q. The plan is further than just weed and pest management plan isn't it, because it's actually a restoration, it's been written as a restoration plan?

25 A. Yes the components of restoration are weed and pest control, as well as allowing for natural regeneration to occur, there's no proposal for actual planting within that restoration plan.

30 Q. The plan is due to expire on 2014, so and Transit is bound by that plan as is the Department of Conservation and as is the Auckland City Council. So I don't see what more the community is getting than they did before, even if it's made a condition?

A. It's – that the expert of Auckland Council raised it as a concern saying that that plan –

Q. Yes.

A. – did not have statutory standing, or statutory weight and therefore could by whatever mechanism be withdrawn. So it being included as a condition now actually creates certainty that it will be implemented up  
5 until the end of 2014.

**THE COURT: JUDGE NEWHOOK**

Well Ms Houghton I think Mr Slaven's done quite well as a botanist, there may come a time when the legal people need to help us to re-title this an advice note or something, and/or you can make submissions when the time comes  
10 about the nature of the thing. But haven't you reached the limit of this witness' expertise –

**MS HOUGHTON:**

Yes sir.

**THE COURT: JUDGE NEWHOOK**

15 - expertise on this topic.

**MS HOUGHTON:**

I accept that.

**CROSS-EXAMINATION CONTINUES: MS HOUGHTON**

Q. The plan, as such, when you look at the introduction was a community-  
20 based plan wasn't it? If you look at the background it says that, on page 1, it mentions that the NZTA has received numerous complaints, et cetera, about the way that the land was managed. And there was a community push for this plan. Would you accept that?

A. I really don't know the basis or the background to the plan other than  
25 what I've read –

Q. Yes.

A. – in the plan itself.

Q. And the – in the introduction in the last paragraph the plan also refers to the fact that it's anticipated that the plan is going to be influenced by the



Waterview Connection and so provisions had been made for the State Highway 16 improvement scheme. Do you accept that?

A. That's what it says, correct.

Q. And so that, for example, the plant mimulus which you have mentioned  
 5 in your evidence and has been by agreement a threatened plant, there are suggestions there about how it should be preserved and whatever. I suppose that I see that for Transit, and you may not be able to answer this, it's been put in the plan until 2014 that this was a plan that could have been picked up and given a much longer term as part of the  
 10 maintenance, you know, there's provision for maintenance weeding under the RPMS so why not somehow or other use this plan as the basis for a long term weed control and management plan?

**THE COURT: JUDGE NEWHOOK**

Now is there – if you've got a question for Mr Slaven as a botanist  
 15 Ms Houghton –

**MS HOUGHTON:**

And I was going to say –

**THE COURT: JUDGE NEWHOOK**

20 - rather than some policy question amongst departments, local government, whatever.

**CROSS-EXAMINATION CONTINUES: MS HOUGHTON**

Q. And as a botanist would you accept that that would be a good thing?

A. Absolutely.

25 Q. And now as a botanist we talked about the ecotone, Traherne Island, and you've already said in answer to my friend here that there is going to be a loss of ecotone of approximately two hectares on Traherne Island.

A. 1.85 hectares, correct.

30 Q. And you've explained in botanical terms how you're going to mitigate that by offset planting at Armishaw Park. Did it ever – my question is,

why, as a botanist, did you not think of mitigating on Traherne Island by increased planting, because...

5 A. Well that would be contrary to the intent of the restoration plan which looks at restoration in terms of increasing the biomass on those species, just by way of natural regeneration, which is one way. If you are controlling the weeds then definitely you will get an increase in the biomass of native plants coming through. I think the primary reason why we looked elsewhere was because Traherne Island is already being managed for weed control by virtue of the AMA's requirements within their designation and then there's Traherne Island restoration plan outside their designation. NZTA manages the whole of the island on behalf of the Crown and has an obligation under the regional pest management strategy to control weeds within the land that it manages. So, so long as there is a regional pest management strategy Traherne Island weeds should be being controlled. So therefore we looked elsewhere and just saw the opportunity at Eric Armishaw to recreate something quite special.

10 Q. And given it's a green field and you're going from rock forest down to the coast, to the coastal marine area basically to the foreshore, have you had any experience before in restoring such an area?

15 A. Yes. Quite a bit of experience with restoration, including - and construction sites. The most recent example would be the Northern Gateway Toll Road up behind Orewa. I was part of the environment team there.

20 Q. I'm aware of that.

A. The ecology team leader, and we've had some very successful, very extensive revegetation programmes implemented there.

25 Q. This is quite different though isn't it in its sequencing to a coast?

A. Well most of the sequences are in place. Really all that we are adding is coastal forest, which is, be pohutukawa dominated; rock forest, which will probably be mahoe dominated, again quite hardy; olearia and flax, cabbage tree wetlands should be no problem whatsoever, I mean there is some flax, cabbage tree wetlands already in that area so that sort of demonstrates that it's appropriate for that vegetation type. I don't think

it's going to be much of a problem to establish the plantings there, the real hardy species.

**THE COURT: JUDGE NEWHOOK**

Friends of Oakley Creek, Ms Docherty.

**5 CROSS-EXAMINATION: MS DOCHERTY**

Q. In the urban design plans of Lynne Hancock's evidence, rebuttal evidence, annexure B, provides sheet 229 which is a new plan for – new restoration plan for Waterview Glades in sector 7 which includes a 50 metre riparian buffer. Is noted this area is of a moderate ecological value in the reaches of the creek. Have you liaised with the urban design experts to ensure the best ecological outcomes are also reflected in these landscape plans?

A. In sheet 229?

Q. That's correct.

15 A. I have had no input to sheet 229, but from what I can see the fact it is, the fact that it is going to be achieving a 50 metre wide riparian strip I think that that is a good ecological outcome.

Q. Staying with this plan, it's not clear whether the freshwater wetland area will be retained and protected?

20 A. Sorry I missed that.

Q. The, it's not clear from this plan whether the natural wetland area, freshwater wetland area will be retained and protected. It's located in the chainage 3900, that loop that falls within the construction yard footprint. There's no mention of whether, how that area will be managed?

25 A. That will be managed by virtue of the consent conditions that relate to the requirement for minimising the extent of vegetation clearance. If the contractors' yard – I mean that little wetland it's 50 square metres of carex lessoniana which is a very, very common species. It's in a small seep. It may be within the contractors' yard, it may not. It's right on the edge. If it does need to be removed then the extent of wetland

30

treatment creation within the Waterview part of the project I think more than mitigates for the loss of 50 square metres.

Q. With regards to that, do you mean the stormwater treatment pond, the –

A. The treatment wetlands.

5 Q. The treatment wetlands?

A. Yes.

Q. Located between the ramps north of the northern portal?

A. There's a number of them. There are the treatment wetlands, yes at the northern portal, then in the Waterview interchange itself and then there's  
10 also the two up at Alan Wood Reserve.

1240

Q. If I'm not mistaken, those wetlands are there for the purpose of mitigating the effects of stormwater and to treat the stormwater generated from runoff. How do you propose that these stormwater  
15 treatment wetlands or devices mitigate the loss of a freshwater riparian wetland?

A. Because they include two hectares of wetland vegetation.

Q. That's connected to the freshwater environment?

A. Ah, yes, yes, especially in Alan Wood, there's a specific typology that's  
20 referenced in the Oakley Creek realignment (inaudible 12:40:32) guidelines, that is said to actually make sure that that happens.

Q. But not within sector 7 where the actual loss of wetland is occurring?

A. No, that's correct.

Q. Is it something that could possibly be amended on landscape plan sheet  
25 229, that a wetland creation is specified?

A. I do not believe that the loss of 50 square metres of (inaudible 12:41:00) lawsoniana is a significant adverse ecological effect.

Q. Yet it's the loss of wetlands which is one of the objectives, one of the  
30 NZTA's ecological resource objectives, E2, which states that the objectives for NZTA works to be no net loss of wetland?

A. Well there is no net loss, there's a net gain, there's a loss of 50 square metres and a gain of 1.97 hectares.

Q. Of stormwater treatment?

- A. Of treatment wetland, yes treatment wetland vegetation. If you turn to the schedule in the urban design and landscape plans which had the planting schedules, there's a specific one for treatment wetlands and it is mirroring what you would find in a very diverse natural wetland.
- 5 Q. But these treatment wetlands, and they're designed in accordance with ARC TP10 guidelines?
- A. That's correct.
- Q. Which in my understanding of it, outlines the fact that these plants are actually a necessary function to mitigate the effects of the contaminated stormwater, they're an actually integral part, they're not there to mitigate the loss of wetlands or planting in other areas?
- 10 A. TP10 just relates to stormwater treatment. The fact that you've got wetland vegetation in them I think is mitigation for the loss of wetlands, especially when the wetland we're talking about is 50 square metres of character lawsoniana.
- 15 Q. For us in Auckland, is there a wetland of character lawsoniana?
- A. Character lawsoniana would be one of the most commonly occurring species of wetlands within Auckland.
- Q. But there's no other wetland of that species?
- 20 A. There would be in most wetlands areas of character lawsoniana, it's very, very common, I'm sure you'd – I can't give you an example off the top of my head but I'm sure that you would find that there would be other wetlands which have got a lot more than character lawsoniana and more than 50 square metres of character lawsoniana.
- 25 Q. A note in the application, section E7, the tree schedule, I note that an arborist prepared the assessment of trees, is that correct?
- A. I believe so. My brief was not including amenity trees or heritage trees, that wasn't my brief.
- Q. But a botanist will be finalising the tree management details?
- 30 A. There's a project arborist and a project botanist I understand.
- Q. And would they be liaising with an ecologist to ensure that the ecological function of trees is taken into consideration?
- A. Sorry, could you repeat the question?

Q. Will an ecologist also be involved in assessing trees when – when the tree schedule details are finalised and tree management approach is finalised, will an ecologist be reviewing that information as well?

**THE COURT: JUDGE NEWHOOK**

5 If you don't know Mr Slaven, if that's a detail of a draft condition of consent, we're not expecting you to have a complete mind map of those. There is a person in the room who does and she's giving evidence later today or tomorrow, Ms Linzey.

**CROSS-EXAMINATION CONTINUES: MS DOCHERY**

10 1245

Q. In your rebuttal evidence Mr Slaven on page 14, paragraph 46, you refer to ongoing weed control and that matter which is addressed in condition B8, which is page 56 of the conditions?

A. Sorry, what paragraph were you referring to, I missed that?

15 Q. Page 14, paragraph 46 of your rebuttal?

A. Yes.

Q. Weed control has been identified however all pest control has not been addressed in the State Highway 20 section. Has the necessity for animal pest control been identified?

20 A. In the State Highway 16 Causeway?

Q. In the State Highway 20 section?

A. It will be associated with the lizard release sites.

Q. How will animal pests such as possums and rabbits, how will they be controlled to ensure the successful establishment of the mitigation in-plantings?

25

A. The contractor would be responsible for replacement of losses.

Q. So it's more of an approach to fix the problem once it's already happened?

A. There would be a management plan prepared by the successful contractor and I'm sure that they would hate to be spending money on having to replace plants that have become fodder for possums or rabbits, and I'm sure that within that management plan they would be

30

addressing those concerns. This level, at this stage here it hasn't been addressed, no.

5 Q. In your rebuttal evidence in paragraph 76 on page 19 to 20, you comment that the ARC Riparian Management Guidelines under TP148 recommend a 15 metre wide buffer. It's noted that in section 2.3 of TP148 the recommendation is for a 15 to 20 metre wide buffer for large waterways. Given Oakley Creek is a large stream, why is the minimum planting width of 15 metres recommended, rather than the optimum of 20 metres?

10 A. If I could refer you to the urban design and landscape plans for Alan Wood Reserve, which are sheets 218 through to 222. The great majority of the riparian buffers that are going to be created are in excess of 20 metres and in many instances they're up to 50 metres. This was discussed at caucusing by vegetation experts and it was agreed that there was, well it was agreed that that was the case.

15 Q. However, in paragraph 22 of your rebuttal evidence you outline specific parts of the creek will be planted to mitigate ecological effects and then other sections that will be there – that typology be of the realignment guidelines will be undertaken and other sections are referring to your rebuttal evidence you've provided a map, annexure B?

20 A. Yes.

Q. Which highlights different areas of mitigation planting?

25 A. No, what annexure B shows is the streamworks of flood protection realignment layout plan. The khaki coloured or the sort of darky green khaki army coloured green, shows the realignments that are necessary to accommodate the motorway. They will be – and the lighter green shows the areas that are going to be used for the mitigation for the loss of Pixie Stream and Oakley Creek itself. Because those losses, we've calculated under the SEV they are for ecol – well, the planting that goes in those areas has to be for ecological purposes, and it will be, and NZTA have agreed to make the same, or to apply the same, to the army-coloured green ones, the khaki green. So what you're getting in those areas there is definitely going to be where you get your 70% shade, et cetera, et cetera.

1250

Q. And am I correct that the lighter green areas will be where the typology B of the Oakley Creek realignment guidelines will be undertaken?

A. Sorry, is that the light green or the khaki green you –

5 Q. The light green.

A. The light green. On the light green we have a range of typologies. We have C, we have D, we have E.

Q. And is, will TP148 ecological objectives be met in these locations as well?

10 A. Correct. It's proposed to go beyond this also, if I could just elaborate.

Q. Yes.

A. It's proposed to go beyond just the planting that's shown on that plan there. It's also intended just to upstream and downstream all the way along Oakley Creek within Alan Wood Reserve, that will be revegetated as much as possible for ecological purposes, but factoring in the urban design and the landscape, the amenity, the recreational, the CPTED, factors that need to be also taken into consideration.

15

Q. So these areas will be blended?

A. Yeah.

20 Q. Between one another?

A. Yeah.

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

Thank you Ms Docherty. Mr McCurdy.

#### **CROSS-EXAMINATION: MR MCCURDY**

25 Q. Mr Slaven, coming back briefly to the tree schedule at E7 just to clarify your answer to Ms Docherty, would you accept that the skill set of persons assessing the significance of a tree needs to go beyond the botanical?

A. That's why an arborist was engaged to identify the amenity trees I believe.

30

Q. Right, would you accept that the significance of a tree might be beyond that though, beyond –



- A. Oh certainly –
- Q. – arborial or botanical?
- A. Sure, sure trees can have heritage value, they can have amenity value, but I'm not the person who can, you know, answer any questions on that. I can answer botanical questions.
- 5 Q. No that was my particular point, the recognition that significance of trees requires somebody beyond –
- A. Sure.
- Q. – just the botanical?
- 10 A. Sure, yep.
- Q. V4, dealing with the clearing of weeds and specifically with woody weeds.
- A. This is condition is it sorry? V4?
- Q. Sorry condition V4 page 55.
- 15 A. V4, yep.
- Q. What species would you understand is woody weeds, your example?
- A. Chinese privet, gorse, those sorts of things, woolly nightshade.
- Q. In the case of the privet which is prolific in certain areas through the designated area, would you accept that the clearing of the privet should perhaps be staged because it is providing habitat in some areas for, in one case, the Puriri moth, in another case the white-faced heron has been nesting in privets, rather than a clear felling of woody weeds at the beginning?
- 20 A. Certainly where you've got significant fauna such as at the mouth of Oakley Creek we have got tree privet, the intention there is to ensure that you leave sufficient habitat to maintain the copper skink population there while you clean it up, and then gradually replace the tree privet with rock forest. In other areas I think that it would be best just to get in there and take out those woody weeds.
- 25 A. Referring to urban design plan sheet 212 and plan note 1.
- Q. Referring to urban design plan sheet 212 and plan note 1.
- A. Sorry just give me one minute. This is the amended version, annexure B to Ms Hancock's –
- Q. Yes.
- A. – rebuttal, so it was sheet, sorry, two...?

Q. 212.

A. And white note sorry?

Q. Note 1, referring to exotic trees just to the north of the stormwater treatment plant.

5 A. Mhm.

Q. And the note refers to existing pine trees and populus to be retained in the meantime for (inaudible 12:56:05), but eventually to be replaced by native planting.

A. Mhm.

10 Q. Is there any reason why the pine trees, which are now some 70, 80 years old, should not be retained and they're also roosting sites for the white-faced heron?

A. Like I say this is more of a landscape visual amenity sort of a question, but yeah, I mean.

15

**THE COURT: JUDGE NEWHOOK**

Q. A question for others?

A. Yeah, yeah, yeah.

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

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

Q. Just one question Mr Slaven. Page 17 of your rebuttal, it's paragraph 61, you say, "Recent native plantings reflect considerable enthusiasm and effort of the local community"?

A. Mhm.

25 Q. But then paragraph 62 says, "Clearance of all vegetation be minimised as far as practicable." Surely "as far as practicable" deletes "minimised," so –

**THE COURT: JUDGE NEWHOOK**

Apparently it's being worked on.

30

**MS JANISSSEN:**

It's been deleted.

**MS JACKSON:**

5 That's what you were talking about this morning?

**MS JANISSSEN:**

Yes, correct.

10 **MS JACKSON:**

Thank you Ms Janissen. Okay, I stand my question down.

**QUESTIONS FROM THE BOARD: MR DORMER – NIL**

**QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP**

Q. Mr Slaven, are 70 to 80 year old pine trees vulnerable to wind throw?

15 A. They are sir.

Q. That might be a reason for looking at their longevity?

A. Yes sir, I guess so, yeah.

Q. Got a question about the proposed Eric Armishaw ecotone as well and I was wondering whether, as a botanist, you've considered the compatibility of the proposed walkway from Waterview to Eric Armishaw Reserve which as I understand it would pass through what you're now proposing should be a replacement ecotone. Are those two activities compatible?

20

A. I would imagine so sir, yes. At the moment we have a state highway that traverses through the ecotone sequence at Traherne Island and that hasn't detracted from its high botanical significance, so having a walkway through, an ecotone would not be an issue.

25

Q. In order that I should understand you clearly, you've got no issue with members of the public walking through flax, cabbage tree wetland or the coastal forest? That doesn't have any potential adverse effects on the ecological integrity –

30

A. Well hopefully –

Q. – of those areas?

A. Hopefully they would restrict themselves to the walkway itself. If they went off the walkway then you do run the risk of the trampling of seedlings and saplings and regenerating plants.

**5 QUESTIONS FROM THE COURT: JUDGE NEWHOOK - NIL**

**THE COURT: JUDGE NEWHOOK**

I've been reminded by someone that Forest & Bird made application, late application to cross-examine this witness, but it escaped my attention. Now Mr McNatty did you wish to cross-examine did you?

10

**MR MCNATTY:**

Yes Your Honour.

**THE COURT: JUDGE NEWHOOK**

At what length did you propose, and on what topic?

15

**MR MCNATTY:**

We have one very small question sir because Mr Lanning has –

**THE COURT: JUDGE NEWHOOK**

Well if he's dealt with it is it –

20

**MR MCNATTY:**

He's dealt with that, yeah. We have one question, just one with species that might be appropriate to the planting.

**THE COURT: JUDGE NEWHOOK**

25 All right, put that question now.

**CROSS-EXAMINATION: MR MCNATTY**

Q. Would it be appropriate for the Waitemata kanuka *kunzea ericoides* (inaudible 13:00:36) be included as the appropriate species for the planting round the State Highway 16 remediation?

- 5 A. I personally have no problem with that, but I would note that one of the greatest – and that would actually be a botanical advantage because it is a species that is on the decline – but one of the reasons why it's on the decline is because it freely hybridises with the normal form of kanuka and there's an awful lot of that normal form of kanuka in the
- 10 area. So any benefit that you derive from planting the sand kanuka may not be long term, but I have no objections to the planting of kanuka at all.

**RE-EXAMINATION: MR LAW – NIL****WITNESS EXCUSED**

15 **COURT ADJOURNS: 1.01 PM**

**COURT RESUMES: 2.16 PM**

**MR LAW CALLS**

**GEOFFREY ASHTON WALLER (SWORN)**

- 5 Q. Mr Waller is your full name Geoffrey Ashton Waller?  
A. It is.  
Q. And have you prepared a statement of evidence-in-chief dated  
4 November 2010?  
A. I have.  
10 Q. And a statement of rebuttal evidence dated 1 February 2011?  
A. I have, yes.  
Q. And are your qualifications as set out in the evidence-in-chief?  
A. They are.  
Q. Do you have any corrections at this point?  
15 A. No none.  
Q. And so therefore do you confirm that your evidence is true and correct?  
A. I do.

**THE COURT: JUDGE NEWHOOK**

Yes, there's just one party registered Albert Eden Local Board.

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

**QUESTIONS FROM THE BOARD: MR DORMER - NIL**

**QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP**

- 25 Q. Mr Waller for a change of what I thought was going to be a change of  
reading material in the lunchtime, I picked up a copy of the New Zealand  
Local Government magazine December 2010. And in it was an article  
about lighting of motorways, I really didn't get far from the subject at all.  
To cut a long story short I was quite intrigued to see that in Europe, I  
think it was in the Netherlands actually, the highways jurisdiction there is  
installing motorway systems, I think it's leading edge stuff, where they

actually reduce the illumination at night. And there is a submission from one of the Iwi groups about the coloration between night time glare and their ability to observe some features in the sky. So really what I'm asking is whether you know, this is a field of endeavour which may be relevant to that submission, and to the management of some might perceive as adverse glare effects?

5

A. Mhm.

Q. Is this something you've got any working knowledge on?

A. Well internationally it's rather a contentious issue at the moment, lowering the light levels when there's less traffic in the wee hours of the morning is something that has been considered, however the speed – the lighting levels that are used generally relate to the speed of the traffic more than anything. So that can be done fairly readily in residential areas, but it's not considered a good thing to do on a main arterial motorway. But it is a contentious issue at the moment.

10

15

Q. Right, is it something that the transport agency might maintain a watching brief of so to speak?

A. They certainly are at the moment, I do know of one trial that they're doing with some of these new LED lights that are out now, where they're looking at this to see whether it's practical for New Zealand.

20

Q. So the article talks about not only the – well the energy savings, but also some of the savings that come in terms of the generation of that energy?

A. Oh, yes.

25

Q. I really don't want to take the matter further than what I have, but it's interesting, you are aware of it and –

A. Yes I am indeed.

Q. – and I will take some encourage from the facts that the agency is perhaps maintaining a watching brief?

30

A. Yes.

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

Q. Mr Waller there's two properties affected by lights spill from the existing ramps. Are you aware of these?

A. Yes I am.

Q. It's in the submissions, I just wonder why nothing's been done to relieve that?

5 A. It is an existing, an existing situation and it's always, it's always been there, it's always been – if it's where I think you're talking about it's at the actual intersection itself, on the outer rings that run round there, there's a place where headlights could be seen from there. And yes I'm aware of them, but as I said in my rebuttal there's actually considered to be less traffic on those in the future that there is now.

10 Q. I guess the problem I have with it is if you have a problem with light spill, and I assume these people have reported it, as will the people when it comes into this project, how soon are their concerns going to be dealt with?

15 A. Well we have to be a bit careful about what we're talking about, when we're talk about light spill. Light spill is usually the light that is flowing over from street lights. I think that their problem was more headlights, and headlights coming round and hitting cars this is not an unusual situation.

1425

20 Q. So you're just got to live with it do you?

A. Well they've lived with it so far, but I also believe that there was some problem of some of the trees or some of the bush being cut down there, which is really another matter which I think exacerbated this matter.

25 A. The same problem could exist around the sides of the pony club. It says here, "A two metre high acoustic fence will go around all the sides of yard 1, which will at the same time screen low-level light spill." So you're confident that there's going to be no shadowing into the pony club grounds, because horses handle shadows in all sorts of different ways, usually by trying to jump over them?

30 A. It's not so much the light spill, it's more sudden light as I understand which is the problem with horses, flashing lights and things like that. If there were any spill light and it will be very minimal, it will be – it would be constant and I understand would not affect the horses.



A. And if there was a problem, they just come along to their liaison officer and report their concern?

A. Yes indeed they could and there could be additional blinkers that are put around the light, there are lots of ways that it could be accommodated

5 with the conditions.

#### **QUESTIONS FROM THE COURT: MS HARDIE**

Q. Mr Waller, just going back to the light spill again. We've heard that the proposal is that none of the houses will be within 20 metres of the carriageway. What sort of distance is the light spill expected to project

10

A. That actually is given in my report here. If you go to the assessment of lighting effects, in appendix E, you'll see some computer modelling that we've done to show the amount of spill lighting, and typically you can see that the lighting levels drop off very, very quickly. On the first of my

15

one it drops off down to about three lux within about one width of a lane. What's three lux, just to give you some idea of that, moonlight is about half a lux, road lighting is generally somewhere between eight to 12 lux, Aotea Square is about 20 lux and in here would typically be about 300 to 400 lux, just to give you an idea.

20

Q. So at approximately 20 metres from the carriageway, what sort of lux do you...

A. I should think it would, well it would definitely be well down below that that is required by the bylaws, both for Waitakere and for Auckland City.

#### **QUESTIONS FROM THE COURT: JUDGE NEWHOOK**

25

Q. What levels do those bylaws provide Mr Waller?

A. They provide generally for 10 lux over a boundary.

Q. And you're satisfied from personal consideration of this that the light levels at residences close to the proposed roads would be less than that?

30

A. Yes absolutely.

Q. I take it when you said, "moonlight", you meant full moon did you?

A. Yes.

Q. Three lux?

A. It's about half a lux.

**RE-EXAMINATION: MR LAW – NIL**

**WITNESS EXCUSED**

5

**THE COURT: JUDGE NEWHOOK**

Well the big question is, what are we going to do next Ms Janissen?

1430

**5 MS JANISSEN:**

Ms Linzey is here and ready to go. And with respect to Ms Linzey we'll be looking at evidence statements, they'll be numbers 37, 33 and the supplementary rebuttal evidence.

**10 MS JANISSEN CALLS****AMELIA JOAN LINZEY (AFFIRMED)**

Q. Is your full name Amelia Joan Linzey?

A. Yes.

15 Q. And may I refer you to your evidence, your first statement of evidence on planning dated the 13<sup>th</sup> of November 2010.

A. Yes.

Q. And you also prepare a third statement of evidence in relation to planning and designations dated the 14<sup>th</sup> of November 2010?

A. Yes.

20 Q. You also prepare a statement of rebuttal evidence dated the 3<sup>rd</sup> of February 2011?

A. Yes.

Q. And a supplementary rebuttal evidence dated the 10<sup>th</sup> of February 2011?

25 A. Yes.

Q. Do you confirm that the contents of those statements of evidence are still – are all true and correct?

30 A. I do have one correction to make to the rebuttal evidence dated 3<sup>rd</sup> of February. On page 8 of that evidence, footnote 9, the areas of pocket park open space should read “.96 hectares” rather than “1.11.” So just replacing one of the ones with a decimal place. Oh sorry, footnote 9 on page 8.

Q. Subject to that correction is the contents of all of your evidence true and correct?

A. Yes.

**THE COURT: JUDGE NEWHOOK**

5 Now just as a preliminary matter, it occurs to me that some of the questions that may be put to Ms Linzey might well be capable of being answered in the latest collection of materials in her latest supplementary statement because she's been diligently working away on questions from the Board in particular. Has that statement been served on everybody at this stage Ms Janissen?

10

**MS JANISSEN:**

No it hasn't sir. We've had, there's two supplementary state – two further supplementary statements; one with all the plans which was in that folder and they're still being copied now because they're quite large; and the third  
15 supplementary which responds to Member Dormer's questions is being finalised. So that won't be lodged until today.

**THE COURT: JUDGE NEWHOOK**

All right, okay. Well I'll make this comment, that people may find that some of the answers that Ms Linzey gives them are to the effect that it's being worked  
20 on and the answers are in either of the second supplementary or the third supplementary, neither of which you will have seen. It may well prove necessary for us to get her back in days to come so that you can ask further questions about those topics, given that you won't have the wording of things in front of you, particularly where the NZTA team has been, worked away on  
25 draft conditions of consent. I'll add one qualifications however that it may be that if the answer to any given question is so straightforward that Ms Linzey can give us a two line answer off the top of her head and reference into one of her rebuttal materials, then she might be happy to take things that far and that may also be quite efficient. We might think that that is quite efficient if it can  
30 actually close off a line of questioning. In close off I don't mean that you can't come back to it later when she's re-called, but it might be that you and/or we might be satisfied with what she's able to offer us as a short point now before

we get to see these materials. Now with that qualification let's start the questioning, Mr Lanning for council.

**CROSS-EXAMINATION: MR LANNING**

Q. I'd just like to take you first to paragraph 43 of your rebuttal evidence.

**5 THE COURT: JUDGE NEWHOOK**

Sorry, which particular rebuttal?

**MR LANNING:**

It's the rebuttal dated 3 February, paragraph 43 of that.

**10 THE COURT: JUDGE NEWHOOK**

In relation to planning?

**MR LANNING:**

Yes sir.

**15 THE COURT: JUDGE NEWHOOK**

Yes, and have you got a page reference for us?

**MR LANNING:**

That is – I'm losing my eyesight – page 14.

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

Q. Now paragraph 43 Ms Linzey you've commented on Mr Gallagher's mitigation proposals, haven't you?

A. Yes.

Q. And you acknowledge there the benefits of his mitigation proposals in terms of the ongoing operation of Auckland Council's recreational facilities, don't you?

25

A. Yes, from a management perspective I do, yep.

Q. And then you've gone on in those subparagraphs under paragraph 43 to list out some I guess limitations or constraints on delivering that mitigation, that's fair?

A. That's correct, yes.

5 Q. Now in terms of those limitations and constraints that you've identified, if the council was prepared to, for instance, acquire the land needed to deliver those mitigation proposals would that address your concerns?

10 A. It would certainly address the concerns in respect of the Valonia Reserve that requires the additional eight properties. There are also some consenting requirements which have been touched on by other experts, including Mr Widdowson, in terms of contaminated land in Phyllis Street Reserve. So putting that, acknowledging that aspect as well, certainly the land purchased would address a number of those concerns identified.

15 Q. And from a planning point of view, if the implementation of this mitigation was subject to successfully obtaining those necessary resource consents that would satisfy the planning issues wouldn't it?

A. Sorry, if the...?

20 Q. If a condition requiring these mitigation measures was subject to successfully obtaining these further resource consents that would overcome these planning concerns, wouldn't they?

A. In respect of a condition to the designation?

Q. Yes.

25 A. Right. Within the constraints of purchasing property from a third party and in terms of an uncertainty in the consenting process, certainly if you acknowledged both of those in a consent condition, that would recognise those limitations, yes.

Q. Because that's a similar approach to that you're taking, or the NZTA's taking, with the Saxon Reserve proposal isn't it?

30 A. Certainly in part that is the limitation with the Saxon Reserve in terms of needing additional land, the two small titles remaining, and there are consents outstanding on that section of land, that's correct.

1440

Q. We'll just stay on that site, you may be able to confirm something for me. In terms of the Valonia Street proposal. NZTA proposal is to essentially expand that existing triangle of land is that sort of a correction summation?

5

A. In part, yes though the zoning for the small triangle of land on Valonia Street is a – I believe it's open space 2, and open space 3, active reserve, correct – I might have my numbers around the wrong way. But open space 3 is what it would be proposed in the remaining of that area so.

10

Q. But that existing triangle of land that's outside of the proposed designation?

A. That's correct.

Q. And another reason that you've given for not referring the council's proposed open space mitigation, is that there is in your view, a division in the community as to whether this mitigation should be proposed locally, or there should be a network approaches. Is that still your view?

15

A. This is an issue we touched on earlier in terms of – certainly there is a – there are issues with local provision versus remote provision of open space. But there's also an acknowledgement that active recreational facilities, particularly the sports fields, could be provided on a more district wide, or city wide basis and that was something that came through and was agreed on in the open space caucusing. That resulted an amendment to the conditions in the 10 February version of the conditions suggesting that that could be accommodated.

20

Q. Is it still your view that there is sort of a reasonable level of – well a reasonable a significant section of the community which would not support the council's proposals, is that still your understanding?

25

A. I think that there is a clear acceptance by the community, or there certainly was in the non expert caucusing, this was an issue that was raised in terms of reallocating the sport field resources district wise. That seemed to be generally accepted, and there didn't seem to be the level of concern about that particular element of recreation reserve.

30

Q. Right.

A. In terms of actual land area of reserve being replaced locally, I don't think that that was as clear cut, so I think there would still be an interest in having the land area replaced locally as well.

5 Q. Thank you for that. We'll just move onto the bus lane issue now, as these are the proposed bus lanes down Great North Road. Now I just wanted to know, were you present on the first day of the hearing when Mr Parker was cross-examined?

A. Yes I was.

10 Q. It was a while ago. And it's in his evidence as well, but you're aware that Mr Parker has confirmed that the NZTA will provide bus lanes on the reinstated sections of Great North Road, that's your understanding?

A. That's correct yes.

15 Q. Could I just refer you to condition OT1, now I feel I haven't changed too much this is the 10 February version, so that's on page 22 of that document. And particular OT1A. Now would you agree that condition OT1A does not provide a clear requirement for the NZTA to provide bus lanes on the reinstated portions of Great North Road?

A. Are you talking about the geographical extent that is mentioned there, or the wording of opportunities to?

20 Q. Yes.

A. The latter?

Q. Yes the latter.

A. Yes, I think that it could be clearer in wording, that that is the commitment that has been made.

25 Q. Right as at the moment all that that condition requires is a network integration plan to be prepared that will consider and identify opportunities to address these bus related matters. So you're agreeing that perhaps, I just don't want to put words in your mouth, but one of the solution could be for the NIP to expressly include –

30 A. That's correct.

Q. – a portion of bus lanes on the reinstated sections, is that correct?

A. Yes, and that commitment is reflected in the integrated transport plans as I understand it. So that's certainly the intention and I think it could be tightened up in wording, correct, yeah.



**THE COURT: JUDGE NEWHOOK**

You're certainly entitled to put words in her mouth or our mouth or endeavour to Mr Lanning it's one of the but efficient means of cross-examination.

**MR LANNING:**

- 5 It's one of those issues I'm not quite sure whether it's been tidied up in the latest version or not.

**THE COURT: JUDGE NEWHOOK**

Oh, well time will tell.

**MR LANNING:**

- 10 Time will tell yes.

**CROSS-EXAMINATION CONTINUES: MR LANNING**

- Q. Now we'll move onto a separate topic, and this is a I guess a general topic around certainty or uncertainty in the conditions, and again some of these might be addressed in the latest version of the conditions, and I understand that you have looked at these matters. So I just want to ask some very general questions, and then hopefully if there's more specific things sir, we can come back a bit later tomorrow. So I just want to first take you to your evidence-in-chief, that will be the planning related one?
- 15
- A. The first or the third.
- 20 Q. Oh, dear.
- A. The 14<sup>th</sup> of November?
- Q. I have 14<sup>th</sup> of November here is that the –
- A. Yes that's the 3<sup>rd</sup>.
- Q. – that's correct?
- 25 A. Yes.
- Q. So paragraph 86 of that evidence, and there you're making some observations and comments about the use of management plans.

**THE COURT: JUDGE NEWHOOK**

Sorry page and paragraph?

**MR LANNING:**

Sorry sir again, it's page 29 of that evidence paragraph 86.

**CROSS-EXAMINATION CONTINUES: MR LANNING**

5 Q. Now do I take it from your discussion in this part of the evidence that you accept that management plans should only be used if they are, I guess, reflecting specific performance standards that might be set out in conditions. So let me jump to the chase. Do you accept that the conditions need to set out some environmental performance?

A. Yes I do, yes.

10 Q. That that's got to be achieved. And therefore do you accept that the management plan is about the detail on how you actually deliver those performance standards, is that your understanding?

A. That is my understanding.

15 Q. And that's particularly important would you agree, from the council's point of view when it's being asked to approval or certify these management plans, that needs to be able to look at what performance criteria it needs to ensure have been met, do you accept that?

A. Yes.

Q. Is that yes?

20 A. Yes, sorry.

Q. And equally then, you'd agree it will be important for the Board of Inquiry to be comfortable that the performance standards against which these management plans will be assessed are set out in those conditions?

25 A. Yes, I suppose the only qualification I would make there, is that in this particular instances the management plans themselves have been lodged with the documentation, and the intention is to finalise and update those plans, but not make a material change to them other than to reflect the conditions themselves, so that there is more detail in those management plans than traditionally would be case. We would have  
30 conditions and management plans would be prepared later. This process has sought to present those management plans up front, so that we have a greater transparency in terms of what those management plans will include.

Q. Right so going back to my first question, when the council is approving and certifying these plans, and the cases you've just talked about where there was already an management plan, where does the council look for the performance standards that it has to check these management plans against, where are they?

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Q. In most cases, they are in fact, well in a number of cases they are in fact duplicated between the conditions and the management plan themselves and there will need to be a process where those are amended if necessary in the managements plans as they were lodged to reflect the conditions as they finally stand. But I would certainly agree that the performance standard needs to be reflected in the condition generally, as the process by which you are checking off to certify the management plans.

10

15 **THE COURT: JUDGE NEWHOOK**

Thank you Mr Lanning. Forest & Bird, Mr McNatty.

**CROSS-EXAMINATION: MR McNATTY**

Q. Got a few questions if I may, and they're all related to your third statement of evidence, that is the 14<sup>th</sup> of November. And in the context of page 3, paragraph 4, where you indicate you were the joint planning team leader which included the scoping of the technical assessments. Could I ask please, in relation to stormwater treatment, was the historical discharge of stormwater contaminants to the marine reserve, Waterview Basin part of the marine reserve, ever included in the project scoping?

20

25

A. Sorry, the status, the current status of consents?

Q. Was the historical status of the discharge of stormwater contaminants ever considered?

**THE COURT: JUDGE NEWHOOK**

30 From where Mr McNatty?

**MR McNATTY:**

From the motorway causeway, motorway complex.

**CROSS-EXAMINATION CONTINUES: MR McNATTY**

- 5 A. Yes, and I think that was covered in the evidence of Mr Owen Burn.  
The way the project has historically run and the way the project has continued to be separated, Mr Burn has dealt with the regional consenting matters and the coastal consents and I have dealt with the designation consents. So I would defer to the evidence that he has given on that.
- 10 Q. Would you find that consistent with the statement of Mr Bell in examination, when he indicated that an historical context was not part of his brief for stormwater assessment?
- 15 A. Certainly, the issue there is from a planning perspective we scoped what investigations were needed of those environmental specialists. So certainly we looked at the consenting status in determining the scope of work that we gave, in terms of setting the scope for the environmental investigation. So that would be consistent, in that we looked, Mr Burn and I looked at that issue, but the brief – the scopes of specific investigation that were given to the environmental team followed from that process.
- 20 Q. On page 15, paragraph 3.6 of your third statement that, “The project meets the reasonably foreseeable needs of future generations.” But I’ve got a little bit of a problem with that and again it’s in relation to stormwater discharges from the motorway complex into the marine reserve. How is that consistent with Mr Murray’s confirmation in examination that State Highway 16 on the eastern side is close to capacity now and will be at capacity by the year 2026. That doesn’t seem to me to be consistent?
- 25 A. In terms of the capacity on State Highway 16, if that’s the nature of the question, rather than stormwater itself, yes?
- 30 Q. Well it is, the capacity is related to the amount of stormwater contaminants, so that’s the point of my question?

A. In terms of the traffic capacity on State Highway 16 and the evidence of Mr Murray, which have been considered in my – in reaching that conclusion that you are referring to. Part of his assessment is looking at the overall network for the state highway system, the overall State Highway 16 network and achieving a transportation outcome across that network. So while there are areas of limited capacity, future limited capacity identified, that's considered an appropriate balance when looking at other elements of the State Highway 16 network in its entirety. So I don't consider that that steps away from the conclusion I've reached that this meets the reasonably foreseeable future needs for transportation.

**THE COURT: JUDGE NEWHOOK**

Thank you Mr McNatty. Friends of Oakley Creek, Ms Docherty.

**CROSS-EXAMINATION: MS DOCHERTY**

15 Q. Referring to paragraph 116 on page 27 of your rebuttal evidence. Do you confirm that the trees identified as "amenity trees" to be retained or managed by the construction environmental management plan, are those trees identified in the schedule as being particularly significant or have the ability to transplant. Who will be undertaking this assessment of which trees are particularly significant?

20 A. Part of the CEMP process identifies and nominates a project arborist to undertake a specific assessment of the trees that we have included in the database and the database that has gone into the CEMP to date. This is an area where we have looked to amend the conditions slightly to provide greater certainty on the process that is being undertaken for a subsequent certification and we are recommending that a, and I'm going to use the acronym and then I'll be able to remember the full name of it I'm afraid, a STEM assessment which is an industry practice assessment is undertaken by a suitably qualified arborist, that is proposed in the amended conditions, I'm afraid that you don't have before you. So that might be a – that's an interim answer, perhaps once you have seen that condition.

Q. Will that STEM evaluation take into account broader ecological values of trees?

A. No, there are two quite distinct processes that we are looking at in this assessment, so the ecological assessment has been undertaken by the botanist and that has been presented in the evidence of Mr Slaven. This is specifically relating to the amenity trees and the section 7 matters of amenity that those trees afford in the urban environment. As a third layer I suppose would be the heritage or the historic trees that have been identified in and around this area as well and there are obviously different expertise that you would seek to manage effects on those three different elements quite discretely.

Q. So an ecologist will not be advising on –

A. Through a STEM assessment, no that is undertaken by a project arborist.

Q. Just going onto another topic, it's not something raised in your evidence but it comes out of the stormwater caucusing statement, paragraph 10 about the waste water mains relocation.

A. Just give me a minute to track it down.

Q. It's on page 6. It's noted that it's a wider issue, it's not just sector 9 where the waste water mains services may need to be relocated. Sector 7, as more a point of clarification, with the re-routing of the waste water mains require any further resource consent applications, or is that covered in the 54 that have already been applied for?

A. Certainly works within the streams have been – consents have been sought for those ones. If diversion's required, additional work to those streams that triggered a consent requirement, then that could be a separate consenting requirement, the intention is to replace those within the existing consent condition, sorry within the existing permitted performance basis for replacement of water mains.

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

Albert Eden Local Board.

**ALBERT EDEN LOCAL BOARD REPRESENTATIVE:**

We have no questions thank you sir.

**THE COURT: JUDGE NEWHOOK**

Living Communities and Others. No sign of Mr Allan?

5 1500

**MR LANNING:**

No he's indicated that he asked his questions earlier of Ms Linzey sir.

**THE COURT: JUDGE NEWHOOK**

All right, thank you for that help. Star Mills, Mr McCurdy.

**10 CROSS-EXAMINATION: MR MCCURDY**

Q. I heard your reply to Ms Docherty on the tree schedule. I'm still not clear, will there be, in the new conditions will there be a mechanism for assessing those other values of existing trees?

15 A. I can appreciate the lack of clarity, not having them. What we have, what we are looking to put forward in the conditions when we get an opportunity is to recognise the historic trees separately and to recognise the expertise that you would need to have in the assessment of those, and also in any replacement and/or protection of those trees during construction work. So that would involve both heritage expertise and a project arborist. With respect to the general amenity trees that have been identified, that is generally just a project arborist.

20

Q. And the values beyond that perhaps habitat and community association, as opposed to historical amenity? Will there be a mechanism for assessing those...

25 A. Only within –

Q. In the conditions?

A. – the parameters of the stem assessment itself, which is an arborial assessment, an arborist's assessment.

Q. Thank you, we'll wait and see what they say.

30

**QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP**

Q. Ms Linzey, with the statutory provision in mind of having had regard or not to alternatives, could you just refresh my memory of how the Rosebank Peninsula alternative ultimately weighed up against the alternative that's being pursued by the Agency? What were its sort of perceived strengths and weakness, and why ultimately was it not preferred?

5 A. The strengths are that it provides a shorter transportation route for traffic on the Western Ring Route, so it connects – provides a more direct connection, if you think about the triangle, between the State Highway 20 Mt Roskill and the Rosebank and State Highway 16 heading west. And so on that basis that was its primary benefit, I suppose. The negative impacts associated with it included the need for east-facing or city0facing connections onto the Rosebank Peninsula. Looking at that in respect of the marine reserve at Rosebank/Patiki interchange it was determined that that connection would be better placed back at the Waterview, at the Great North Road interchange. So those design options effectively had east-facing connections along the current or the Waterview connection and then the west-facing connections along the Rosebank Peninsula, effectively creating two areas of affect of the project or splitting the effect of the project along the two corridors. Other issues related to the impact on the Wateview estuary itself and the significant works that would either be required in the coastal marine area as further reclamation of that foreshore to push the alignment out into the coast, or if it was pulled back onto land, quite substantial property take residential between Heron Park and sort of the Avondale College area, and then business impacts on the Rosebank business precinct industrial area between there and the interchange. Both of, they're of quite significant scale, residential probably less though than the current proposal. It certainly had higher cost implications because of the extent of piling that was required if you were looking at bridging structures along the Rosebank Peninsula rather than reclamation. Trying to think – I think they would be the major, major



factors. There were others that are provided in the assessment somewhere.

5 Q. If you take those one at a time is it implicit in what you're saying that the existing east-facing ramps at the end of the peninsula wouldn't have sufficed for this project or would have required some further incursion into the marine reserve?

10 A. The designs that were looked at were to achieve a connection from State Highway 20 onto State Highway 16 as is the case in the Waterview Connection option. So the desire was for motorway to motorway type connections that would have required redesign of that interchange, as well as trying to maintain the local business connections that are provided at Rosebank. So that was where the – trying to put both the local and the motorway to motorway connections east-facing couldn't be fit – it could not be accommodated within the existing  
15 configuration of the Patiki and Rosebank ramps.

Q. Would the result – there would have been a greater incursion from the seaward side of the facility and I apprehend also some taking of business land on the land side, is that what you're saying?

20 A. That's correct, yes. And the other particularly sensitive issue that was in that area is Pollen Island itself. It is in that vicinity of that interchange so it encroaches closer towards that particularly sensitive area.

25 Q. Was it considered not feasible having tunnelled under the, I think it's called the Avondale ridge or whatever, sort of generally on the alignment of Heron Park, to continue that tunnel under the marine area and break out north of the grouping of educational facilities – you know where I mean? There's a reference, is there a Hendon Road or something of that – Hannon Road or some such thing?

A. Yes I know exactly –

Q. You know where I mean?

30 A. – where you mean. Yes.

Q. There's a visible gap in the aerial photography, any enquiring mind would be attracted to it.

A. We did, as you correctly point out, look at cutting beneath and through into Heron Park. The typography constraints coming out from beyond

that, plus the implications of bringing a tunnel up in the – effectively in the coastal marine area, precluded further extension of that tunnel north. Have I made myself clear.

5 Q. No I think you are. So the alternative was that you'd have to have recourse either to reclamation or to a pile structure?

A. Yes that's correct.

10 Q. And how is it, having reached Rosebank Road, how is it proposed to sort of generally proceed to the end of the peninsula, presumably on the alignment of Rosebank Road, so how is the question of frontage to those existing business premises to be addressed? Like where – did the alternative allow for a full motorway or is it something less than a motorway?

15 A. There were a number of different options looked at for the Rosebank connection. The motorway alignments looked at running parallel to Rosebank Road on the coastal edge, I suppose, of the peninsula itself, rather than using Rosebank Road. There was an option that looked at tunnelling beneath Rosebank Road to maintain a higher standard connection. Very early work, in fact before not my involvement in the project, the project pre-feasibility report I think was done in '96 or seven  
20 or something, did look at an option to upgrade Rosebank Road itself and the road frontages, so bringing State Highway 20 directly into Rosebank. The issues there were the impacts it would have in the Avondale Town Centre and then as you say, the land take requirements for the capacity improvement of Rosebank Road itself, and also the  
25 objectives of the project of achieving a complete connection to State Highway 16.

1510

30 Q. Thanks for that. It feels that I'm sort of taking a step back in the context of the hearing, but obviously it's something that we need to be satisfied on. Yes, so thank you for that. I think my other questions Your Honour which come out of the evidence concerning the relationship between management plans, conditions of consent, and outline plans and works. Which you probably will have got some inkling that I'm interested by

now, are probably best left until we get the further piece of work which I expect the whole Board will read with a good deal of interest Ms Linzey

**THE COURT: JUDGE NEWHOOK**

So descend upon avidly.

**5 MR DORMER:**

And I too would obviously look forward to asking Mr Linzey further questions after seeing the more detailed conditions.

**THE COURT: JUDGE NEWHOOK**

Absolutely.

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

Q. Good afternoon Ms Linzey and I'd like to thank you for the extra work you've done and it's been very helpful. The first issue I'd like to take up with you is the differential effect or the additional effect of moving the Southern portal 17 metres south, and you've addressed that in your supplementary statement of your evidence of the 9<sup>th</sup> of February. And just so that I can make sure I have things correctly understood, in my mind anyway. Appendix C shows option 3.

A. Yes that's correct.

Q. And appendix D shows the proposal as notified as the proposal for which consent was sought?

A. Yes.

Q. So a significant difference between the two is that the properties beginning at 79 or 81 now have in front of them buildings and facilities which they didn't have before, 81 through to 89?

25 A. That's correct yes.

Q. And those buildings include the control building, the ventilation building, and a southern stack?

A. That's correct yes.

Q. What would these occupants have looked out under the proposal as notified?

30

A. Property 79 to 81 would have been able to see the control building and stack.

Q. Mhm.

5 A. But not directly off to the rear of the property, but rather slightly to the north, I suppose of the property.

Q. To their right from the viewing position?

A. Yes correct, that – so they would have a similar view but moved to the left. The properties 35 to 89 would have had had –

Q. Sorry you said 35?

10 A. Oh, sorry going backwards – 83 to 89 my apologies, would have had the road surface and road alignment running behind them, but at that location it would have been in a deep cut in excess of 20 metres, so they would look over the alignment. Not my area of expertise, my understanding is they would see the vegetation that is proposed largely,  
15 and probably none of, or very little of the cut side to the trench.

Q. So they would've looked out onto vegetation and now it is proposed under option 3 that they look on to control buildings, stacks and ventilation buildings?

20 A. That's correct. Though there would also be the corridor of vegetation within the rail designation between them and those buildings.

Q. Okay thank you. Now in appendix you have compiled a assessment of the differences between the original proposal and options 1, 2 and 3

A. Yes.

25 Q. And I won't look at options 1 and 2, because I understand that no-one is seriously pursuing those, so let us confine ourselves if we may to option 3, as compared with the original?

A. Certainly.

**MS JANISSSEN:**

30 Sir could I perhaps just make a comment here, because I'm concerned we might be not quite on the same track.

**MR DORMER:**

Indeed.

**MS JANISSEN:**

What was actually lodged is not annexure D, annexure D is referred to to as the base option but that was the construct option that was contained in the evidence-in-chief of Mr David Gibbs in November. So what was actually  
5 lodged was a plan that just showed a big red wall if I recall.

**MS LINZEY:**

The plan that was lodged is shown in a red dotted line on that same annexure.

**MS JANISSEN:**

Yes, yes I just wanted to clarify that annexure D isn't actually what was  
10 publically notified to people but it was in the evidence-in-chief.

**MR DORMER:**

Thank can you refer me to that reference in the evidence-in-chief again?

**MS JANISSEN:**

Oh, it's in Mr David Gibbs' evidence-in-chief annexure A, drawing 3.

**15 MR DORMER:**

Thank you.

**MS JANISSEN:**

So if you recall what happened was after documents had been lodged and submissions received the agency did a substantial review of the design of the  
20 southern vent building, and updated it in the evidence-in-chief.

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

Q. Okay, so going back to appendix annexure F for a minute if we may.  
The usual impact in the right-hand column "Increase effects" those  
reflect your views do they?

25 A. No, in terms of visual impact that was the assessment undertaken by  
Mr Brown.

Q. Okay, so none of the “Increase effects” comments are yours, they are those of the author?

A. So the only ones that are mine are in relation to the social and land use assessments so there are two.

5 Q. Okay, could I ask you though in relation to the column next in, “Newly affected” Mr Brown says, there is no-one newly affected?

A. That is correct.

Q. If one changed the test from “newly affected” to “differently affected” would the answer be yes?

10 A. My read of the second column, “Increased affects” gives that answer, and I would concur it would be yes in those cases.

Q. And refining the question still further, accepting that they would be differently affected would it be fair to say that a number of them would be more adversely affected?

15 A. Again, deferring to Mr Brown, he indicated some difference of opinion of that, he noted that the size of the building was significantly similar than that proposed, so although it was closer that offset in his opinion some of those things. I believe he answered that question in terms of the social and land use effects, in particular, the difference in effect would  
20 be an increased sense of having that building closer to those properties. I would agree, but they socially would also have an improved noise environment from the increased cover that will be provided on that portal building. So there’s some complex balancing I suppose there. I would see a minor increase in effect from a social and land use perspective.  
25 From a visual effects perspective, yeah Mr Brown has indicated that while he considered it is an increased effect it is offset, I suppose, by the reduction in the building scale, in particular, and the vegetation buffering it would be provided for those buildings.

1520

30 Q. Offset or ameliorated do you think is a fairer description?

A. Ameliorated is a fairer description.

Q. So there is a different degree of effect?

A. Yes.

Q. The folk are - would you agree that the folk are rather more adversely affected in a visual sense than they would have been with the original proposal, but that the degree of increased adverse effect is partially ameliorated by the lowering of the building?

5 A. Yes I think that's a fairer reflection of the comments that Mr Brown has made and my understanding, yes.

Q. I'd like to turn now to a series of questions about the actual cost of moving the southern portal, because you've helpfully appended as item G a memo from Michael Collins. Are you familiar with that?

10 A. Yes, I am.

Q. All I'm trying to do in the first few questions Ms Linzey is to ascertain the facts and clarify in my mind. We'll come to the more detailed expressions and opinion in a little while. The bottom of the first page in the memo Mr Collins says, "Our base – on this basis our estimate for the option 3 ventilation building is 21.5 million."

15

A. Yes.

Q. Slipping over to the last page he's got option 3 and then the bottom right-hand figure, "Difference to base case 12.9."

A. Yes.

20 Q. So is the additional cost of moving it 12.9 or 21.5?

A. The additional cost if 12.9.

Q. Thank you. And that 12.9 doesn't include corporate overheads, profits, supervision, design costs which will be in the order of an additional 25%?

25 A. That's my understanding in terms of –

Q. So 12.9 plus 25% is 16.1 million. So the additional cost is not 12.9, it's 16.1?

30

A. I – yeah there is a difference in the – I suppose my understanding from Mr Don's memo is that there is a difference in the level of costing accuracy between this option, option 3, and the base option, option 1, having been a comparatively shorter assessment in terms of coming up with that cost. So there were other matters, additional items that were excluded from that cost assessment.

Q. Very good. And this is all subject to plus or minus 30%?

A. In the case of option 3, yes.

1525

Q. So we're not talking about additional costs of 16.1, we're talking about additional costs of between 11 and 21 million?

5 A. I'll take your word on the maths but I – yes it's certainly a range cost.

Q. 16.1, less 30%;

A. Yes, except that option 1 also has a cost variance of 10%, so there might be another layer to throw in there.

10 Q. So instead of – my point for the moment is, instead of looking at the additional costs, in terms of the bottom right-hand column, the 12.9, we should be looking at 11 to 21 million?

A. Yes, that's – yes.

Q. Now, forgive me, I forget all their names, but a number of open space and landscape witnesses said they supported option 3?

15 A. That's correct, Mr Little and Mr Brown and Ms Hancock.

Q. And at least in relation to two of them because I didn't latch onto it quick enough, they confirmed that in arriving at that view, they had not had regard to the additional costs of moving the portal. Did you hear that?

A. Yes.

20 Q. Do you prefer option 3?

A. From a social perspective and locally, I consider it to be a better environmental outcome for those residents in that community. From a planning perspective and looking at the balance of the impacts, I think it has positive environmental outcomes but I consider that the project particularly with the revised design lodged by Construct and submitted in evidence of Mr Gibbs adequately avoids remedies and mitigates the effects of the project such that the part 2 matters are met. So that leaves the significant cost issue associated with that project as a adverse effect if considered against projects that would not be able to go ahead for the cost of that project, for that work sorry.

25

30

Q. I think I understand what you're saying. May I read it back to you as it were and making sure I understand you correctly?

A. Certainly.



Q. I gather it to be your position that the adverse environmental effects of the proposal are properly and adequately addressed by way of remediation, amelioration et cetera, by the proposal as advanced by the Transport Agency. I understand it to be your position that moving the portal 70 metres south would give rise to environmental benefits?

5

A. That is correct.

Q. But that is additional environmental benefits are not necessitated in any way by the work which the Agency is proposing to put into effect?

A. That is correct.

10

Q. Now this might be difficult Ms Linzey and if you're going to be giving evidence again later, you may care to not answer it now. But I'd like you to imagine that you had somewhere between 11 and \$21 million to spend on environmental enhancements, while resolving and ameliorating environmental issues, on shall we say the western half of the Auckland Isthmus. Now I'd like you to imagine that you'd been asked to compile a list, of shall we say 20 possible projects that one might spend somewhere between 11 and \$21 million on. These projects could include everything from cleaning up the estuaries and providing further parks or whatever you thought was a good idea. And here comes the question, are you able to hazard a guess at whether moving the southern portal 70 metres south would feature on such a list, and if so, how high it might be on that list?

15

20

1530

A. I don't believe it would be on the list. We have had I suppose a number of various mitigation options costed in the course of this project, including conceptually the cycleway, including some of the work with Auckland Council in terms of additional reserve areas and replacement and enhancements in the reserve network. Just thinking of those projects alone and the work that you could achieve from them with that sort of financial resource, those projects would all sit above lowering the southern vent building in my opinion.

25

30

Q. Now I don't want to go through the whole exercise again in relation to moving the northern – shifting the location of the northern stack, but if we jump to the final question in relation to shifting the location of the

northern stack, would you be able to hazard a guess as whether that would be on our list, and if so, how high it would be?

5 A. I think that has the added complexity that I don't consider that the relocation of the vent stack necessarily has on balance a positive effect compared to its current proposed location. So it certainly would not be on that, unless we were looking at moving the vent stack to a fourth location not currently considered, in time.

10 Q. Thank you. Now just that's the end of my questioning except I just see I missed out a couple of bits in terms of the cost that I was building into the 11, the 21 million. Does that 11 to 21 million include an extra quarter of a million dollars a year for operational costs?

A. No it does not.

Q. And should we also add to that 11 to 21 million the cost of access ramps and roadways?

15 A. That has been excluded, but I understand it would be a comparatively small portion of those costs.

**COURT ADJOURNS: 3.33 PM**

**COURT RESUMES: 3.51 PM**

**QUESTIONS FROM THE BOARD: MS JACKSON**

5 Q. For now just one little question Ms Linzey. I saw on the drawing of Phyllis Street Reserve that the Akarana Dog Obedience clubhouse is going to be moved maybe. Do you know if the sports fields' redevelopment in Phyllis Street Reserve include the dog obedience club grounds?

10 A. That would depend on the final design that Auckland Council have put forward and probably better asked of Auckland Councils' planners because the project doesn't have any impact on the Akarana club as lodged.

**THE COURT: JUDGE NEWHOOK**

15 Now, just before we move further, just addressing counsel for the Auckland Council. I think we're going to wind up with a bit of time on our hands this afternoon. I've had Ms Morgan talk to you about possibly making a start on your opening submissions and you've expressed some concerns or reservations about that. Indeed the air quality people are still caucusing no doubt, but that I would have expected was just a part of the topics that you intend to address. If your draft opening submissions happen to be in a  
20 computer back at your office and if Ms Hartley wanted to go out and make a phone call and have something emailed to Ms Morgan that would allow us to get underway and hear at least part of your opening submissions this afternoon, I'm loathe to lose hearing time whenever we can avoid it.

25 **MR LANNING:**

I appreciate that sir. We do have draft legal submissions essentially ready to go. They, yes just basically the "draft" stamp needs to be taken off them.

**THE COURT: JUDGE NEWHOOK**

30 Yes well we'll put up with the E and OE or typographical apologies.

**MR LANNING:**

Sir I'll take that as an indication that you would like me to start.

**THE COURT: JUDGE NEWHOOK**

Yes that is our preference.

5

**MR LANNING:**

I think the only other issue sir I'll flag is that it's not only Mr Fisher's evidence that's – the new evidence that's been produced by Ms Linzey today. We haven't seen any conditions and things like that so –

10 **THE COURT: JUDGE NEWHOOK**

Oh well I've left leave to everybody, getting NZTA to come back to those topics, and the same must of course apply to you.

**MR LANNING:**

15 Well that's fine sir. Well we could probably arrange for someone to actually copy them and bring them up if that's even easier.

**THE COURT: JUDGE NEWHOOK**

It would be quicker if they were emailed to be honest. We've got good copying facilities on the premises, because I think we're going to be getting to  
20 that point very shortly.

**MR LANNING:**

That's fine sir. We've actually got copies sitting back at the office apparently ready to go so, but if it's easier to email we could do that.

25 **THE COURT: JUDGE NEWHOOK**

I think it would be quicker.

**QUESTIONS FROM THE BOARD: MS HARDIE - NIL**

**QUESTIONS FROM THE COURT: JUDGE NEWHOOK**

Q. Have you caught up with the statements of evidence and the latest section 42A report on the air quality issues Ms Linzey?

1555

5 A. I have read them as they've come in but I haven't spent a great deal of time on them, with other things, but I have certainly read them all, yes.

Q. Well the piece that I'm going to lay in front of you is not overly complex I don't think and it's been in the evidence as long as the case has had any traction at all, certainly from the time of the first section 42A report  
10 at least and may even have been addressed in a careful, slightly negative way in the AEE. Ms Metcalfe has reiterated in her latest section 42A report for us that she believes that the Board might consider some environmental offset mitigation and she's offered three ideas. And the one I'm going to ask you about is the one relating to replacing  
15 peoples wood burners and coal burners and the like in the, particular in the sector 9 area where there is already a reasonably significant problem from smoke hanging in low places on still days in the winter, and it seems from what I've read of Mr Fisher's thinking on this topic that he doesn't particularly favour it but that seems to be another of the  
20 issues that are not so strictly technical issues but more policy or corporate sort of issues. But I'm just wanting to ask you, from your experience as a planner and assisting to prepare conditions of consent for large projects, whether the idea might have some, might draw and analogy with the setting of conditions in some other big project situations. I don't know if you know anything about this one but it's fairly  
25 recent, it goes back 10 or 12 years and a little further than that. The Auckland Airport designations were expanded and were the subject of some major plan changes and other instruments in Manukau. And one of the techniques ultimately adopted out there was that as the air noise boundaries expanded to accommodate the proposed second runway, so  
30 too were the noise affects going to be brought much closer to the residents of Papatoetoe and that was ultimately solved by the airport being required to acoustically attenuate many homes, some hundreds of

homes I think in Papatotetoe to keep the levels back down at a reasonable level. I don't recall the detail because it is 10 or a dozen years since I had some involvement with it.

A. I did too and I'm trying to remember what it was.

5 Q. I think it was along the lines that I have offered, if somebody wanted to they could research it and come up with a little more detail. But it just occurred to me that there was some analogy in there from the point of view of serving the purpose of the Act with the thinking that Ms Metcalfe has placed before us, in terms of offset environmental mitigation over  
10 these wood burners. She's essentially saying that the pot is full now, we're at or over a sensible level and so one could reasonably efficiently tackle that problem to make room for the pollution that NZTA wishes to bring into the mix?

A. The mitigation that was proposed by the airport from my rather shaky  
15 memory of it as well, it would be more akin to the mitigation that is proposed for the noise effects of this project. In that in a similar vein, both for operational noise, there are a number of properties where acoustic insulation and consequential ventilation which I think was the other side of –

20 1600

**THE COURT: JUDGE NEWHOOK**

Q. – yes the ventilation as well that's right.

A. – the mitigation that was quite big, it was the ventilation to achieve the  
25 internal noise standards. And that – so that is proposed in this project from an operation perspective for some properties, but also potentially through the construction noise vibration management plan.

Q. Yes.

A. For mitigation of construction noise.

Q. Yes.

30 A. The key being it's directly linked to the effect generated by the project which is the noise itself.

Q. Yes. So to pick up on the air pollution, NZTA wishes to bring a new bunch of particles –

A. Yeah.

Q. – into the atmosphere in sector 9 and add it to something that's already at the limit of what's acceptable in health terms. Pretty strong analogy wouldn't you think?

5 A. I think there is some definitely, I think what you would need to understand to go down that path, is how much the traffic has been redirected rather than new traffic. So we have significant reductions in traffic on Mt Albert Road, I believe Richardson Road, Carrington, Great North, and Blockhouse Bay Roads. Which would also impact the  
10 air shared in this location. So we'd need to be balanced with how much of that traffic that has been put through sector 9 is a redistribution of traffic, but putting that to one side –

Q. Leaving that to the –

A. – you've got quantum.

15 Q. – experts?

A. Yeah, once you've got that quantum of change I suppose that at that point – and I suppose the other difference being the permitted status of discharge in sector 9 as well. But yeah, putting those two aside, certainly that condition or that sort of treatment perhaps more about the  
20 ventilation that's required to achieve the noise standard internally has some parallel.

Q. Yes well we'll see what the lawyers say about the permitted activity aspect later. But thank you for that, that response, from the planning perspective, very much. Member Dunlop has a philosophical question  
25 for you Ms Linzey while we're in that vein.

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

Q. Just thinking in terms of mitigation, and not using the term in a  
30 pejorative sense, but it seems to me as if the agency is proposing what you might categorise as a shylock approach. You propose not a penny more nor a penny less approach – or a pound for a pound. It's been a very considered approach, sort of down to the last decimal point in open space, square metres or eco tone, you know. I could go on, you know what I'm describing, the same thing pertains to the cycle way, or not,

in sector 8, there's no effect there to be mitigating. What would you say to the proposition Ms Linzey that in that sort of analysis there may not be sufficient regard to the effects on the community of hosting this project, if that's an appropriate word, for five or six years or possibly longer. Now that matter is not amenable to analysis in the careful way that I've described, and can easily get overlooked, I expect you would agree in wash up. There is certainly a benefit to the project to the regional community and as the evidence suggests to the local community in parts. But where is there a recognition, or should there be a recognition of the matter that I've referred to?

1605

A. I think there is certainly scope and I think there are instances and cases in this project where certainly NZTA is looking to leave the environment in a better – leave the environment better off from than where, than it arrives at it. That is not exhaustively the case, given the nature of the project itself and the fundamental changes that will result in that. But some of the work that is being undertaken and progressing with both the Waterview Kindergarten and the Waterview Primary School I would be, I would see as examples where rather than just meeting the performance standards set in the conditions in terms of noise treatment, the agreement is looking to achieve a better outcome for that school in the long term. Upgrading, substantially upgrading facilities, relocating or redesigning the school and looking to make the disruption of construction activities a positive outcome for that school as well. So while they will have the construction neighbour for that 18 month period as the ventilation building is constructed, they will also see from that some positive changes to the school environment itself, and similarly the kindergarten. So I think there are examples where the NZTA is looking to get positive outcomes. The Oakley Creek restoration and enhancement would be another one where, as Mr Sides presented, the ecological work, the strict mitigation areas, the SEV calculate – sorry, the SEV areas are where the ecological work is required, but seek to carry that through the entire mitigation works that are being proposed in Oakley Creek to achieve positive enhancement, maintenance and



enhancement of that physical environment in that ecological area, and I suppose the stormwater from the coastal marine area being another example. So I think certainly there is a emphasis and Mr Parker raised that of wise use of taxpayers' money as a balance to that, but there have been and there are cases where they're looking for positive environmental outcomes alongside the physical mitigation packages that are being put forward.

5

Q. Can you just refresh my memory about the stream ecology works. Which sectors are affected by those parts of the project?

10

A. Sector 9 largely, and then sector 5 with the Waterview – with the Great North Road interchange and the extension there.

Q. I was - as I understand it, seven and eight are unaffected aren't they?

15

A. No, sorry I stand corrected. Sector 7 with the Waterview Glades restoration there is a section there of riparian planting and the restoration of Waterview Glades so that would be sector 7. Sector 8 has the small area of esplanade reserve that is proposed on the 36 Cradock Street where the notice NOR6 has been withdrawn, but that proposal is still there. But they are smaller components of work.

20

Q. Thanks for that clarification. I appreciate the response to the philosophical.

#### **MS JACKSON:**

Excuse me Your Honour, can I have my supplementary question.

#### **FURTHER QUESTIONS FROM THE BOARD: MS JACKSON**

25

Q. Just following up from your question. Ms Linzey are you aware how many houses in the vicinity of the tunnels that are being removed have open fires, solid fuel heating? Are you – do you have a number?

A. No we do not. It is work that we had – it's at a preliminary level looked to commence but we haven't completed it, no.

30

**RE-EXAMINATION: MS JANISSEN – NIL**

#### **WITNESS EXCUSED**

**THE COURT: JUDGE NEWHOOK**

So you're not closing your case at this stage.

**MS JANISSEN:**

5 No sir we'll be lodging Gavin Fisher's second supplementary hopefully today  
and Ms Linzey's third supplementary tomorrow which will, at some point  
tomorrow which we'll attach the updated conditions which will be in green this  
time. We have - obviously I'm happy not to close and to re-call, especially  
Ms Linzey and Ms Wilkening, which I think you've got her evidence now this  
10 morning. And the only outstanding issue is whether or not –  
1610

**THE COURT: JUDGE NEWHOOK**

You wouldn't be closing anyway because of course we haven't had Mr  
Bishop.

15

**MS JANISSEN:**

Now of course, yes. And of course whether or not the Board has any  
questions from Jon Hind. I don't think he's back in the country, he's not back  
until next week, so that's the only other outstanding one.

20 **THE COURT: JUDGE NEWHOOK**

And to some degree at least Mr Seege **4.10.28** might be able to help there.

**MS JANISSEN:**

25 Yes, yes. And just as a note, I think the Agency certainly is very comfortable  
and happy to be continuing to provide further information to the Board and the  
other parties throughout the hearing even as the submitters go, because my  
preference certainly is to do that rather than lump it all with a reply at the end  
because no one has a change to really respond.

**THE COURT: JUDGE NEWHOOK**

It would be more helpful to the Board I think and more helpful to the other parties if they raise ideas and you can respond one way or the other as we go along.

5

**MS JANISSSEN:**

I will do that, thank you.

**THE COURT: JUDGE NEWHOOK**

Now Mr Lanning will you commence an opening at least on behalf of Auckland Council.

10

**MR LANNING:**

I've got some copies brought up.

15

**AUCKLAND COUNCIL****MR LANNING OPENS**

“...NZTA legal submissions.”

5

So we're not going to repeat that.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

10 “Council and Auckland...Auckland Transport submissions.”

And a footnote to that sir, I've just noted there, the amalgam of submissions which constitute that.

15 **COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“So now to...at this stage.”

20 

And sir I used the words “at this stage” was intentional. It is a bit of a moving feast, I think I have picked up on certainly the core issues from Auckland Transport and the council's point of view, but there might be minor stuff around the edges which we'll need to deal with as we go.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

25

“The submission by...of bus lanes.”

Which we addressed an hour ago.

30 **COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“The location of...air quality conditions.”

And I flag at this stage sir, I've had an email from Ms Petersen, it looks like they've listened to your instructions this morning and it looks like they might have resolved everything. Obviously important things.

**5 THE COURT: JUDGE NEWHOOK**

Well it will be interesting to see in the morning.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

10 "The next item...his rebuttal evidence."

And sir I don't think I need to read through that I would also note that there was a matter in Ms Janissen's opening legal submission and you had some discussion with her about that as well. So paragraph 4.9.

**15 COUNSEL CONTINUES READING OPENING SUBMISSIONS**

"Similarly in answer... of the submissions."

So firstly the open space issues.

**20 COUNSEL CONTINUES READING OPENING SUBMISSIONS**

"In their evidence...consents and land."

**THE COURT: JUDGE NEWHOOK**

Has it resolved in both of those ways has it Mr Lanning, that the council resolution is on the books?

25

**MR LANNING:**

That is what we're hoping to get tomorrow sir.

**THE COURT: JUDGE NEWHOOK**

Oh that's the meeting tomorrow.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“In our submission... so paragraph 7.11”

**5 THE COURT: JUDGE NEWHOOK**

Just pause for a moment while I remind myself about this business in comparison to section 108 because that does interest me.

**MR LANNING:**

10 It’s the estate homes case.

**THE COURT: JUDGE NEWHOOK**

Yes. All right.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

15

“So in light...and Auckland Transport.”

Turning now to the matter of bus lanes, and I don’t know if it’s necessary for me to go through this as it seems like Ms Linzey accepted that condition I’m referring to her needs to be amended to make it clear that there is a commitment to provide bus lanes along Great North Road. So I’m happy to read though those sir, or take them as read.

20

**THE COURT: JUDGE NEWHOOK**

I think you should take us quickly through them, you are right that she offered some careful acknowledgement about condition 021A but just take us quickly through, you could summarise submissions if you like.

25

**MR LANNING:**

The issue is sir is that the council sought a clear commitment to provide bus lanes along Great North Road as part of this project, as a result of discussions between Auckland Transport and the NZTA Mr Parker agreed that the NZTA

30

would provide the bus lanes on those parts of Great North Road that were to be reinstated, at the end of the construction period. And then if I could take you to paragraph 8.3 the proposed condition 021A simply, as is currently worded it simply requires the NZTA to prepare and collaboration with all the transport and network plan. That will consider and identify opportunities to progress bus priority measures on Great North Road, and that in our submission is something less than the care commitment.

**THE COURT: JUDGE NEWHOOK**

Well we'll see what arrives tomorrow in the next door stop.

10 **MR LANNING:**

So we can move to the Southern portal buildings.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“As the Board... and cycle way.”

15

And now the air quality. Again, this is a moving (inaudible 4:38:47) and the indications are that what I say here is probably not relevant any more as agreement seems to be reached.

20 **THE COURT: JUDGE NEWHOOK**

Well should we leave that for tomorrow, shall we leave the air quality section for tomorrow.

**MR LANNING:**

Move to part 11 landscape and plant and maintenance period, this concerns condition LD4.

25

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“At the expert...all agreed that.”

And I only need to read out the first part of that quote.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“That the maintenance...at witness caucusing.”

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Now to the Traherne Island issues.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“Based on the...Traherne Island is undertaken.”

1640

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Sir that's another area the new condition that's now been proposed by Mr Slaven that may or may not have addressed the council's concerns, I'm not quite sure at the moment. Looking at the next section is also possibly redundant or doesn't touch on the relevant matters at this stage.

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**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“Aspects of the... by the NZTA.”

20

That was yesterday when these were granted sir.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“In our submission...something materially different.”

25

And I've quoted there a quote from the Tribunal, no it will be the Court.

**THE COURT: JUDGE NEWHOOK**

Court in 2000.

30



**MR LANNING:**

The Court makes the point there that management plans are about how you implement conditions of consent and how the performance criteria standards need to be set out in those conditions. I can let you read that sir. Now sir in  
5 the next paragraph I've dealt briefly with the issue of where practicable and I fear that I might not need to deal with that. We also share concerns with that wording, it sounds like it might have been addressed.

**THE COURT: JUDGE NEWHOOK**

10 Let's leave that overnight as well. You can have leave of course to come back to it if you need to.

**MR LANNING:**

What I have suggested there sir at paragraph 13.4 is I think is a possible  
15 solution to a number of these drafting issues and that's further caucusing essential. But there are a number of issues which Ms Richmond, the council's planning expert is telling us about now with some of the detailed wording and things like that. So if I could just suggest sir that more caucusing at some point in this process might be able to iron out some of those issues.

**20 THE COURT: JUDGE NEWHOOK**

Yes well here's a thought, we're having to call a break on Thursday afternoon and Friday and that might present a very useful window of opportunity for the planners particularly to get together and have a look at the latest collection of draft conditions that Ms Linzey and the team have been putting together. So  
25 unless anybody sees a difficulty with that, that can be our direction. Nobody says no, that's the direction.

**MR LANNING:**

I would support that sir. And then at section 14, I don't need to read that out,  
30 that's just a list of the witnesses that will be called.

**COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“So in conclusion...for the project.”

**THE COURT: JUDGE NEWHOOK**

- 5 Thank you Mr Lanning. Now do any members of the Board have any burning issues they wish to ask counsel. Member Dormer.

**MR DORMER:**

I don't think know whether it's a burning issue sir.

**THE COURT: JUDGE NEWHOOK**

- 10 Float it anyway.

**MR DORMER:**

- As you will have appreciated Mr Lanning, from my questioning of Ms Linzey this afternoon, one of the issues that I see as being relevant is the extent to which it would be within our jurisdiction to require the relocation of the southern portal 70 metres to the south. On the evidence that she gave certainly there will be people who will be differently affected and more adversely affected in some respects, although she says not on balance. But there will be people who will be differently affected and more adversely affected in some respects than would have been the case. And I'd appreciate your thoughts as to whether or not that, if we were to make a finding in that regard would deprive us of the jurisdiction to order that the portal be moved.

1645

**25 MR LANNING:**

Yes sir, we did touch on the law relating to the ability to modify designations in our previous memorandum. My understanding of that case law is that it's not so much whether the effects are different, it's an assessment of the change in effects and whether that to change is sufficiently large to mean that someone

who is not involved in the process now is likely to have wanted to have been part of the process.

**MR DORMER:**

5 I think that's a fair statement from my understanding.

**MR LANNING:**

10 That plausible test which one of the cases referred to. So not so much whether the effects are different, it comes down to that assessment of what is the, I guess what is the magnitude of the change and is it of such magnitude that it would mean that there would be an expectation that someone now affected would wish to participate and was not participating now in the process.

15 **MR DORMER:**

Well on that basis then, I take it that your position is that the folk at the right-hand end anyway of Ms Linzey's plans who are now going to look out onto a chimney a portal building and a control building, rather than onto vegetation, I take it that it's your position that they are not more adversely affected and therefore we have the jurisdiction.

20

**MR LANNING:**

Sir, I would take the easy way out and say that I'm just a lawyer. I think it's important to look carefully at the expert evidence, particularly Mr Brown's evidence about what the actual change in outlook is in landscape and things like that. There are maybe questions you want to ask of Mr Scott, whether he's called or not I can indicate to him to give some thought to that as well if you like.

25

30 **MR DORMER:**

Thank you I'd be grateful.

**MR LANNING:**

I'm certainly not familiar enough with what's on the ground and how it might change to comment on that.

**5 MR DORMER:**

And I wonder sir if I might ask Ms Janissen. Not that your view on the matter would be determinative but if it were to be the Transport Agency's position that the Board has the jurisdiction to move the portal 70 metres, wouldn't determine the position clearly, you cannot confer jurisdiction on us, but it may  
10 alter our appreciation of it (inaudible 4:48:15), if you were to advise as to what your position is. If the Agency accepts that we have the jurisdiction to move it 70 metres, okay –

**THE COURT: JUDGE NEWHOOK**

There might actually be two aspects to that. There might be your one  
15 Member Dormer, but equally as to whether we can be clothed with power, there might, who knows, be the ogier aspect of it, whereby something could be volunteered. That then is a qualification to –

**MR DORMER:**

20 Yes it is –

**THE COURT: JUDGE NEWHOOK**

The general difficulty that we would have and be clothed with, jurisdiction.

**MR DORMER:**

25 So we'll take Ms Janissen to present the Agency's view.

**THE COURT: JUDGE NEWHOOK**

If she can now or at a later time, not too much later, perhaps –

**MS JANISSSEN:**

30 Sir, I think the case law on it is relatively clear and I agree with my friend Mr Lanning in that respect in terms of addressing, looking at whether or not

the effects of a change proposal would be such that someone else would have wanted to get involved in it, I think that frankly is the test on that one.

1650

5 **MR DORMER:**

I think that's probably right too, but in the – let's assume that that is the test, is it the Agency's position that the people who haven't objected, that number's 89 is it, 87, 89?

10 **MS JANISSSEN:**

Again, I do agree with Mr Lanning. I can but rely on the compilation of the multidisciplinary assessment that's contained in Ms Linzey's assessment where that certainly gives an indication that there appears to be no one who's much more adversely affected by option 3 that I can read within that report.

15 But the Agency's position at the moment I don't know.

**MR DORMER:**

I don't know that your position was actually what is entirely consistent with the position that Ms Linzey analysed it in her answer to my questions this  
20 afternoon.

**MS JANISSSEN:**

That was with respect to looking at that table in terms of clarifying.

25 **MR DORMER:**

Anyway it's quite theoretically possible that the Agency might take a different view of the matter from its expert witness.

**MS JANISSSEN:**

30 Yes.

**MR DORMER:**

It's quite possible for you to contend as a matter of law that we don't have the power to do things that your expert witnesses might think are good ideas.

**MS JANISSEN:**

Yes, that's correct.

**THE COURT: JUDGE NEWHOOK**

5 Now I'll just say for the record that we have asked questions of the visual and  
landscape witnesses about this southern portal business as, of course, was  
our right and obtained certain answers and that this afternoon Ms Linzey, as  
an overview witness with a particularly good working knowledge of this project  
was also asked for some views. At the end of the day the weighing of all of  
10 these issues is a matter for us of course, and that is ultimately how it will need  
to be, but we want to signal that the visual and landscape witnesses for other  
parties, including Auckland Council's Dennis Scott, will be asked similar  
questions to those that were put to Mr Brown and we think it also fair to signal  
that the planners, Ms Richmond in your case Mr Lanning, and Mr Duncan  
15 McKenzie for Living Communities, might also be asked for an overview feel  
about these things, but strictly on the basis that everybody recognises those  
overview witnesses particularly, that at the end of the day weighing is for us  
on the totality of the evidence that comes to us. All right, I think that's all we  
have unless members of the Board have any other questions for Mr Lanning.

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**MR DORMER:**

On page 18, paragraph 13.2 where you cite that part of the Wood decision,  
save me looking it up, just after the bold there's a sentence that reads, "So for  
example in the case of noise, specific noise control limits can be laid down,  
25 but the way in which these are to be complied with," is that a typo?

**MR LANNING:**

I can – I'll check that sir.

**THE COURT: JUDGE NEWHOOK**

30 I think the word should probably be "about".

**MR DORMER:**

About the way in which?

**THE COURT: JUDGE NEWHOOK**

Which is in fact how I read it as I skimmed across the top.

5

**MR DORMER:**

Well if there's a typo there somewhere which can be easily checked.

**MR LANNING:**

10 I was actually going to say sir if you'd like copies of these cases we can provide them. I don't think there's anything remarkable in any of the cases so I thought I'd leave that up to you to decide whether you want more paper or not.

**THE COURT: JUDGE NEWHOOK**

15 We'll see. Perhaps a copy of the Wood decision in the morning although (inaudible 16:54:38) the reported ones who have got fairly ready access to it, but bring us along a copy in the morning. All right well that will be the extent of the hearing for today. We'll resume at 9.30 in the morning. We'll have the further causing report from the air quality experts at that time and any  
20 necessary questioning of Mr Fisher and the further information that Ms Linzey is going to be providing for us. The questioning of her we'll probably need to await a day after the break we're having at the end of the week when people can focus closely on the extensive conditions.

25 **MS JANISSSEN:**

Yes sir, and purely for printing purposes I think the conditions are up to about 120 pages. We will simply not physically be able to print them until probably tomorrow afternoon because we need to make a huge amount of copies.

**THE COURT: JUDGE NEWHOOK**

30 All right, we think we understand that.

**COURT ADJOURNS: 4.56 PM**

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