

**BOARD OF INQUIRY
WATERVIEW CONNECTION PROPOSAL**



IN THE MATTER of the Resource Management Act 1991

AND

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

THE BOARD OF INQUIRY
Environment Judge L Newhook
Commissioner R Dunlop
Alan Dormer
Susan Jackson
Sandra Hardie

**Transcription of HEARING
Day 8 – Wednesday 2 March 2011**

COURT RESUMES ON WEDNESDAY 2 MARCH 2011 AT 9.37 AM**WITNESS ON FORMER OATH****QUESTIONS FROM THE BOARD: MR DORMER**

- 5 Q. Do you have a copy of the green proposed conditions?
A. I have a copy of proposed conditions, yes.
Q. The green one, is it the updated quite recently?
A. I'm not sure what colour they are, mine is photocopied. I do now, yes.

THE COURT: JUDGE NEWHOOK

- 10 Q. Dated the 1st of March?
A. Yes.

QUESTIONS FROM THE BOARD CONTINUES: MR DORMER

- 15 Q. Could you turn to page 34 and have a look at CNB10. Now I would read that as giving rise to a possibility that the issue of relocation won't be addressed until the monitoring indicates that it's required, by which time I would have thought it was a bit too late?
A. Yes I'd agree with you there. Yes I note in Ms Wilkening's rebuttal evidence dated the 2nd of February on page 15, paragraph 56 she talks about, regarding her recommendation regarding temporary relocation of residents in times of high noise generation. I would take that as meaning "prior" to that noise, but I agree the condition does not say that and I think it should.
20 Q. I wonder if I could ask you to perhaps delve back through your precedent files or exercise your mind, put your mind to it and come up with something, some kind of condition. I recall you appearing before
25 me in relation to a pipeline project in Tauranga where this issue arose and I forget whether you were advising the council. Can you recall Mr Lanning, you were there weren't you?

30 MR LANNING:

Yes I think Mr Hegley was the applicant's advisor.

MR HEGLEY:

I was advising the residents in that case.

QUESTIONS FROM THE BOARD CONTINUES: MR DORMER

5 Q. Well I think this issue arose there and I think we fixed it somehow?

A. Yes.

Q. So if you can turn your mind to how we might best fix it here I'd be grateful. Turning to page 31, at the bottom of the page there's the project construction noise criteria in relation to educational
10 establishments, and you'll see the reference there to existing or whichever is the higher?

A. Yes.

Q. How is the existing usually fixed or determined in conditions like this?

A. I would expect it to be field surveys undertaken prior to any work
15 commencing in the area and under typical conditions, in other words you don't take unusual events happening, for instance you wouldn't do it on a holiday period or anything like that when the traffic flows could be totally different, which may control the environment.

Q. Remember the City Council once measuring inner city traffic demand,
20 Saturdays and I flew over the city and took photographs of how busy all the carparks were and quite forgot that that was the day the Springboks were playing at Eden Park.

A. That's exactly the sort of thing I mean, same as I've had surveys
25 presented to me done on Guy Fawkes night, which is probably not a good idea.

Q. So there should be some requirement in here to pre-establish what the existing is?

A. Yes represent the existing noise levels, yes.

THE COURT: JUDGE NEWHOOK

30 Member Dormer, just provide us with that reference again please, page and –

MR DORMER:

Page 31, the internal noise for educational facilities. It reads, “45 or dBA or existing, whichever is the higher.” And that should be fixed in advance Mr Hegley says.

0945

5 QUESTIONS FROM THE BOARD CONTINUES: MR DORMER

Q. Now a difference between you and the Agency’s advisor is that you want a couple of things put in conditions and she wants them put in the management plan?

A. That would be a fairly good summary, yes.

10 Q. Now I can see advantages in them being expressed by way of condition because there’s nothing to stop them rewriting the management plan half way through the exercise. But are there any downsides to adopting the suggestion that you make?

A. Can’t think of any quite honestly.

15 Q. One of the issues which members of the Board have communicated their concern about on a number of occasions during the hearing is the frequent use of the term “when practicable” or “if practicable”, and speaking for my own part and only based on what I’ve heard to date of course, I’m rather dubious about the idea of leaving the person who is making the noise to be the person as the arbiter of whether it’s
20 practicable to reduce it. Is there some other way of doing it by way of a third party arbiter or third party determiner?

A. Yes I share your concerns on that and it was one of the issues that was reviewed in caucusing. As far as a condition is concerned it gets a very
25 long condition in some cases and a good example is putting up screens prior to commencing any work. You may have to do a cutting or a fill before you put the screen up so those sort of issues you’ve got to address. I think your idea of a third party or an independent person making that or helping make that decision would be one very good way
30 around it.

Q. Any suggestions as to who that third party might appropriately be?

A. Council is normally seen as unbiased person because they're neither for nor against the thing so I would suggest council is probably the appropriate person or organisation.

5 Q. So do I understand you to be saying that the "where practicable" has to be there sometimes?

A. Yes.

Q. And you can't get away from it?

10 A. Not unless you get very descriptive and the example I gave you, that's one you think of straight away, but there's potentially other issues. The case that I initially was following was that where you're exceeding the standard noise limits, there you had to do something prior to undertaking of work and in the case I gave you it may be come to some agreement with residents prior to putting up a screen fence, if that was the case. There's always a potential downside, I'm not sure off the cuff exactly what that would be but that is a way of potentially handling it.

15 Q. So if we are to retain any sort of concept of "where practicable" or "if practicable" are you suggesting that the decision as to whether it's practicable or not should be made by the council rather than the road builder?

20 A. One of the issues that I see with that sort of condition is that there's no certainty with it and you don't know what the council's going to decide, but then of course "practicable" means you don't know anyway.

Q. But you don't know what the road builder's going to decide either, there's no certainty there is there?

25 A. Well that's exactly what I'm saying, but if you put the word "practicable" in you've got that uncertainty anyway. So I think putting the council in and yeah I think they would perhaps be an arbitrator rather than decision maker, no they make the decision, but through arbitration shall we say and discussion with the actual parties so there's not absolute iron rule shall we say where they may not understand some of the issues unless it's discussed through with the noise maker or the noise receiver.

30

Q. Ms Janissen can help I'm sure. I've forgotten the term on the operational noise conditions you've got some kind of committee or third party arbiter haven't you?

0950

5 **MS LINZEY:**

In both cases the Auckland is to certify the mitigation, and then we've identified the dispute resolution process in the – in this free version of conditions.

MR DORMER:

10 Right.

MS LINZEY:

For an independent adviser if there is a –

THE COURT:

You need to be by a microphone.

15 **MS LINZEY:**

Sorry Mr Dormer.

THE COURT: JUDGE NEWHOOK

And Mr Hegley you need to move closer to one as well.

MR DORMER:

20 And Mr Hegley could you listen with care to this answer because I'm going to put it to you again.

MS LINZEY:

Sorry to repeat my answer in both cases, the Auckland Council has been identified as the certifier that the practicality test has been appropriate applied,
25 but we also had included the dispute resolution clause to both the CEMP and to the designation so that will relate to construction activities and to

operational noise if need be, and that is set out in DC 5 I think it is sorry, new numbering. And the final condition on the CEMPs and that's an independent advisor at that point, but agreed by both the Auckland Council and NZTA as to who that advisor would be.

5 **MR DORMER:**

Oh, that's – do I take it that you've been addressed my concern that I've bothering Mr Hegley with for the last few minutes?

MS LINZEY:

We hope so, we've been looking at that very closely, yes DC 5.

10 **MR DORMER:**

And page?

MS LINZEY:

Page 3.

MR DORMER:

15 This relates to disagreements concerning Auckland City approvals that are required and many of the situations don't require Auckland City approval do they?

MS LINZEY:

20 They require Auckland City certification so I suppose the question is whether we need to include certification or approval just to be clear because that is certainly the intention of that yes.

COMMISSIONER DUNLOP:

I'll leave it there it's good to hear the expression intent isn't it. You can always turn to the detailed editing.

25 **MR DORMER:**

Sorry Mr Hegley – is it permissible sir to –

THE COURT: JUDGE NEWHOOK

Ms Linzey has been able to help us on a number of occasions and we've appreciated her assistance so yes of course it is.

MR DORMER:

- 5 Well some of the folk for whom I'm particularly concerned are those who are going to be subject to a very loud noise during the construction period, and I appreciate it might only be for perhaps sometimes only days, but sometimes perhaps a couple of months. And I'm anxious that the decision to relocate those people not being made entirely by NZTA, if they have to be sent to live
10 somewhere else that might be an expense for NZTA I don't won't them being the ones who decide that these folk are putting up with that noise because it's only for six weeks. Under the present draft who makes the decision whether it's necessary or desirable to move those folk?

MS LINZEY:

- 15 The evidence of Ms Wilkening the second supplementary sets out a hierarchy of how the different litigation measures would be considered, and whether they would be practicable and the test there, I would in preparing that and doing the review that the board asked of us Siiri sorry and Ms Wilkening and myself meet with the Victoria Park tunnel construction team in terms of how
20 that was operating. In terms of relocation the important things there are whether or not the residents themselves want to be relocated and the duration of it, and that's where the decision of whether you do put up noise walls in advance, if it's something longer term or if it's a shorter term activity you would do a relocation. But certainly the proposal is still that as the contractor would
25 be determining how long that would be and what might be feasible within the site, and they would also be the people talking to the landowners themselves. They are working through that process but the intent of the drafting is that the Auckland Council would be certifying that that process that is set out in the CNVMP, so the Construction Noise Vibration Management Plan had been
30 appropriately followed.

0955

MR DORMER:

Okay, and lawyers can argue around the margins about what some of those words might mean. If somebody says, "It's too loud, I need to be moved out of here," and NZTA said, "No you don't, you're going to lump it." Who makes the decision?

MS LINZEY:

I suppose there's a question there to my mind and I'm not the expert, but that would be whether they are complying with the noise standard, the noise criteria that is set in the conditions.

MR DORMER:

One assumes they're not.

MS LINZEY:

If they're not then there would need to be a discussion on whether there was an alternative way to meet that standard, so by putting up noise, acoustic treatment, so a noise barrier for example, a temporary barrier to achieve that. If not, the steps then through the CNVMP are clear that relocation is an option if the residents are looking to take that option. I would anticipate that if the residents have expressed that they wish to move and it does practicably mean that we achieve the noise standard, then the Auckland Council in certifying it would not be able to certify that we had exhausted all those practical measures if then the contractor was not offering to relocate.

MR DORMER:

So the City Council would be the final arbiter?

MS LINZEY:

In that instance unless there was – with the exception of clauses DC5 and CNP14. If there was still disagreement I suppose you could bring in a third independent party, but yes.

MR DORMER:

So it won't be the Transport Agency who decides whether or not folk are going to get moved?

5 **MS LINZEY:**

In the final instant, in terms of what is practicable, they would be working through those tests of the CNVMP but the Auckland Council would be determining that that had been appropriately considered. So I think it's just a – I suppose, I think the issue is around the semantics perhaps to some point.

10 I think the contractor would need to be the person working through that process because they are the people who will have the best knowledge of how they're constructing, the timeframes and the people talking to the residents. But it would be the Auckland Council who was certifying that that process had been appropriately followed, that is my understanding of it.

15 Ms Wilkening will be on the stand to interrogate that further in terms of her –

MS JANISSSEN:

I think that part of it is very clearly covered now in her supplementary evidence, paragraphs 23 through 29 and in annexures B and C, but probably
20 annexure B, which sets out, "In the event of a potential non-compliance here's the hierarchy," and then it goes through about how an SSNMP needs to be prepared and that needs to be then reviewed, submitted to the council noise officer and the council compliance officer review and certification.

25 **MR DORMER;**

What paragraphs do you say that is?

MS JANISSSEN:

I'm referring to paragraphs 24 through 29 and annexure B of the
30 supplementary evidence of Siiri Wilkening.

MR DORMER:

I didn't read those paragraphs so as to give me the kind of assurances I was looking for, but I will take the matter up with her when she comes back. But you have an inkling as to where I'm trying to get to?

5

MS LINZEY:

Yes.

1000

10 **MR DORMER:**

I didn't read those paragraphs so as to give me the kind of assurances I was looking for, but I will take the matter up with her when she comes back. But you have an inkling as to where I'm trying to get to?

15 **MS JANISSSEN:**

Yes.

QUESTIONS FROM THE BOARD CONTINUES: MR DORMER

20 Q. So do you think it would be satisfactory Mr Hegley if in the final analysis the decision as to whether folk will be moved out is being made by the contractor or the Agency?

A. No I think that's a bias decision then, or potentially bias.

Q. And you'd want a procedure whereby these folk could be moved out in advance wouldn't you?

25 A. Oh prior to the noise commencing, yes and that was, I think I heard it right, but it should be the council if that's – or the third party makes the decision prior to the event, not after the event. In other words, the best practical option if they're exceeding it is to decide whether that's fact or fiction prior to the event.

30 Q. Because there will be circumstances I imagine – grateful if you can correct me if I'm wrong – there will be circumstances I imagine whereby we know in advance that certain construction activities will go way over

–

A. Absolutely.

Q. – the noise controls?

A. Yes, absolutely.

Q. And we'll have an idea as to how long they'll go over the noise controls for as well won't we?

5 A. Should do.

Q. So should there be any major difficulty in predicting in advance which folk should be moved out?

A. I don't see any major problems.

10 Q. Now could you please turn to Ms Wilkening's supplementary evidence and we'll look at annexure A if we may.

WITNESS REFERRED TO MS WILKENING'S SUPPLEMENTARY EVIDENCE

15 Q. And you'll see there, there's a, I think the fifth column from the left, "Noise Level At Closest Receiver." Could you cast your eye down those figures there, 76, 71, 81 et cetera, and this continues on for a few pages.

A. Yes.

Q. Are they in the right order, so far as you're concerned?

A. Yes I had a look at them in general terms, they're in the right order, yes.

20 Q. I should ask the person whose evidence this is, but I'll ask you as well. Why would you express those numbers in terms of noise levels without mitigation?

25 A. Well I don't have problems with that, but my question immediately is, is it practicable to mitigate? That's the issue. Doesn't matter what it is prior to mitigation. A lot of those columns may well disappear, has being shaded, if you showed yes it was practicable to mitigate and I would have liked to see that extra line or column in there.

Q. How would you head up that extra column?

30 A. I'd put "Noise Mitigation Implemented Where Practicable" or, to use that word, or you know "where envisaged" if you like, or something like that, to give an ind – because this is only preliminary anyway so I'd have another column in there; Yes it's going to be okay or no we're still in problems. So that then hones in. This doesn't really tell me anything other than there's potential problems.

Q. And many of those problems have been fixed already?

A. They may well have been, yeah.

MR DORMER:

5 Yes Ms Janissen, when I asked Ms Wilkening to prepare a table like this I had in mind that what we finish up with was a table that said, for example, “Noise Barrier Construction 86 and we can’t mitigate it because” – whatever, but I didn’t think that we’d finish up with a series of figures which reflect the pre-mitigation situation.

10

MS JANISSSEN:

I think that is best for a question to be raised with Ms Wilkening, but I think as she set out before and explained previously until, for a whole host of reasons, until the contractor’s on site and there’s a whole lot of issues that they need to sort out you cannot be definitive as to what sort of mitigation you’re going to be providing. I think it’s that simple.

15

MR DORMER:

Yes, the purpose of this list I had foreseen might be to enable us to make the kind of decisions about moving people out if we had to. You can make that decision much more in advance if you know, for example, the pile driving is going to take place over certain times and will reach this noise level.

20

MS JANISSSEN:

I think that again is a best question for Ms Wilkening to answer, but I think what you’re asking her to do or the team to do is predict in detail now exactly who’s going to be affected, what works are going to be required when, what mitigation, and that’s simply not possible when this far advance of construction. And I’m not sure that it has been in any other project, but I’m very happy to raise that flag with Ms Wilkening before she comes back.

25
30

MR DORMER:

Because you see in relation to the operational noise she has, with considerable precision, predicted what the noise levels will be house by house

by house, and the motorway isn't open yet. So she's managed to exercise considerable predictive powers in relation to operational noise. I would hope she might be able to exercise similar predictive powers in relation to construction noise. Okay. So that wasn't really a question of Mr Hegley was it.

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP

Q. Mr Hegley just following up on that last question of Mr Dormer, is there a significant difference between predicting the noise levels generated by operation of traffic as distinct from predicting the noise levels that are potentially generated by construction activities?

A. No the concepts are identical. You have to make assumptions that may or may not be true in the same way as equipment has been selected that may or may not be true. It's indicative, but you should be able to get indicative results to give guidance and pile driving is an excellent example. Basically you can't reduce that other than selection of equipment because your pile driving starts up very high in the air it's impractical to screen. So unless you can treat a building you've got certain levels, so that's a good example of where you can be fairly certain early on exactly what's going on. Other equipment you might say, well the excavators taking out the cut material. Initially it will be a potential problem and it may or may not be able to be practicable to screen in that – could say if practicable to screen, this is the result and it appears that it will be or won't be practicable. And then once you get down, say, a couple of metres in the cut, that's self-screening. So there's those sort of issues so you can get an indication of duration, even if it's not possible to implement screening, but it should be guidance should be practicable.

Q. How does that answer accommodate or acknowledge a situation where, as I understand it, there can't be perfect prior knowledge of not only the equipment that the contractor would deploy, but also the number of activities the contractor might be undertaking in parallel. Like, you know, to clarify you could be having pile driving plus activity A, B, plus activity C. For an apparently good contractual re-contractor reason or

alternatively you might just have one of those or two of those going in parallel. How can you have prior knowledge of that?

A. No you can't.

Q. You can't?

5 A. No, what I'm saying this is indicative. This table should be indicative of what's happening, not exactly what's happening. You can't decide exactly until you have let the contract.

1010

10 Q. But just one final observation on the table that Mr Dormer was asking you questions of where the column is heading "Potential mitigation option" the language that's used there in the different rows varies between things that shall be done if practicable, and things that should be performed in the instance of the first row, no indication at all. So we just turn that into a question, should there be some consistency in the way those potential mitigation measures are described?

15 A. They're all fairly loose because it shall if practicable, I'm not shall means you must and practicable means maybe.

Q. I don't how those two can sit in the same sentence but.

20 A. Well that's what I was getting at. So I think there should be, it's only a guide at this stage.

Q. Yes.

25 A. And so I agree completely with what you're saying but I don't get too excited in the words there because they only should be indicative and should be guidance only those comments, in the same the levels are only guidance at this point.

30 Q. Thank you for that Mr Hegley and I guess this part of the questioning will be drawn to Ms Wilkening's attention to assist her. Changing to a different matter if I may, it sometime since I've read Ms Wilkening's evidence-in-chief and rebuttal to be quite frank. And I really would appreciate your assistance with a couple of the operational noise conditions. So do you have the 1 March version of the conditions Mr Hegley. On page 35 we find ON2?

A. I don't have that. I should point out that I've done very little on the operational noise my focus, I've been asked to look at the construction noise I'm happy to answer questions but with that in mind.

5 Q. Is it appropriate for me to ask you any questions on operation noise Mr Hegley because I'm happy to save them, it's just that I was looking to – for the benefit of having a second expert opinion?

A. Well I'm happy to answer them but keeping in mind that I haven't really looked at that in any detail, and so and if I am out of depth I'd certainly tell you straight away.

10 Q. Do you have a copy of G12 the assessment of operational noise at hand?

A. No.

Q. You don't.

THE COURT: JUDGE NEWHOOK

15 Can somebody provide a copy of G12 to the witness.

QUESTIONS FROM THE BOARD CONTINUE: COMMISSIONER DUNLOP

Q. Could you open Appendix E please Mr Hegley. Having done that could you have quiet reading of ON2 to yourself which is in the conditions?

A. Appendix E?

20 Q. On page 35.

A. I just have figures in my appendix E here.

Q. Yes I'm sorry Mr Hegley, I'm referring to condition ON2 which is on page –

A. Oh, sorry.

25 Q. – 35 of the 1 March version, if you can just have a quiet read of that?

A. ON2?

Q. Yes please yes.

A. Yes.

30 Q. And then could you just have a look at say the first sheet in appendix E which is sector 1, preferred mitigation options?

A. Yes.

Q. So the question Mr Hegley is whether apart from the noise barriers which are shown on appendix E being the blue lines?

A. Yes.

Q. With the key in the top right-hand corner?

5 A. Yes.

Q. About from the noise barriers, does appendix E identify preferred mitigation options as well as noise criteria categories?

A. Well it has the categories in the bottom right-hand corner, it has the barriers shown it doesn't talk about the road surface at that extent it is
10 not all there I would suggest, because one would assume road surface is playing an important part because change the road surface you change the noise level.

Q. Nor is there anything in appendix E with regards building mitigation measures as distinct from structural mitigation measures is that correct?

15 A. No it is purely treatment within the designation I assume that's all within the designation.

Q. Right I don't know whether that's problematic or in terms of the construction of the condition or not but it seems to me that – well I appreciate the answer. If we turn over to condition ON 6, I've got a
20 question arising out of that, and if I understand the scheme of things Mr Hegley it's the – just to read it, "Prior to construction of the project a specialist shall identify those premises and facilities where following implementation of all the structure mitigation measures included in the detailed mitigation measures." Sorry, "Detailed mitigation options.
25 Building modification litigation in accordance with the standard may be required to achieve 40 dB inside habitual rooms for category C buildings." From appendix C we know which the category C buildings are, they're shown in red?

A. Yes.

30 Q. And the subsequent conditions and it's roughly 7 through 11, deal with how those category C buildings would be dealt with. Coming to the question, what inside habitual room noise levels are required to be achieved for category A and category B buildings that are identified in appendix E?

- A. There's no requirement through that condition.
- Q. Right.
- A. And it's – I'm not sure it's even required for the category C because it says, may be required.
- 5 Q. Yes. So bearing in mind your qualification about your familiarity with the operational noise which I accept 100%, with that qualification can you tell the board what level of operational noise the category A and B dwellings shown in appendix E will be exposed to?
- A. It would depend on each building how close it is, because it's a range.
- 10 Q. Yes.
- A. But there's potential to exceed the indoor criteria of 40 decibels.
- Q. Right for which category C buildings may be treated to get their habitual rooms at 40 dB, but that's not necessarily the case for category A and B buildings, is that –
- 15 A. Yes if we take category B for instance the external level could be 66 decibels.
- Q. Yes.
- A. With open windows you're not going to get 40 inside.
- Q. Right.
- 20 A. And if you haven't design the house for the closed window, with ventilation you have to assume open windows.
- Q. Right. Would you get some attenuation through the walls Mr Hegley?
- A. Oh, it depends on the percentage of open window, yes you do get attenuation, through an open window you'll still get 18, or 17, 18
- 25 decibels potentially sound reduction if the windows are not too big. The bigger the windows the more open the worse it would be.
- Q. So if the windows closed you could get 17 to 18 dB reduction through the wall?
- A. With the windows closed you'd get 20 plus.
- 30 Q. 20 plus?
- A. Mmm, that's with the windows closed and then depends whether there's timber joinery, or aluminium joinery well it fits.

1020

THE COURT: JUDGE NEWHOOK

Now I'm going to address Ms Janissen and Ms Linzey. The matters on which the witness has been asked to assist as far as he can with the qualifications that he very properly expressed when he started to answer the last set of questions from Member Dunlop, may foreshadow the line of questions for Ms Wilkening and when we finish today's session we'll be working with you to ascertain an appropriate time for her and for Ms Linzey to be answering questions on their supplementary statements. However, just in case it might assist our understanding at this stage, pending hearing from Ms Wilkening, which won't be this week, I think it will be next week and having watched the vigorous head-shaking and forehead rubbing going on on the front bench just now, if either of you is able to take us out of our misery in relation to shortcomings that you can see we perceive exists in this operational area, particularly that's the thing I'm addressing just at the moment. Provide us with any quick assistance that you can out of the conditions and the operation of these instruments that are referred to. If you'd rather leave it for Ms Wilkening just say so.

20 MS LINZEY:

I think Ms Wilkening will be better able to explain how the category A, B and C is derived in the New Zealand Standard and how that's been applied. I think it's her area of expertise and she should be able to address that more completely than I would be able to.

25 THE COURT: JUDGE NEWHOOK

Yes, I've got quite a lot of that open in front of me and I wasn't expecting that you would be doing that, but something that is of interest to some of us is for instance, it may be we're missing something in the construction conditions and which we know you've been working Ms Linzey. Leaving aside the issue, if we used the word "may" in draft condition ON6, it occurred to me when looking over those materials that I might be reasonably happy to be living in a category C house and might be desperately unhappy if I was in a category A

or B house, which 67, for 64 and 67 decibels respectively that are assigned in appendix E in that document. So we're interested to know if we're missing something in the operation of the conditions, category C, leaving aside the word "may" could be looked after. Category A and B, serious, a potentially
5 serious problem not addressed is our current perception.

MS LINZEY:

As I say I think that answer will be best answered by Siiri because my understanding of having read the standard is that certainly it's a hierarchy
10 blamed for A if you can't achieve A you aim for B, if you can't achieve B you aim for C –

THE COURT: JUDGE NEWHOOK

A trickle down, yes.

15 **MS LINZEY:**

So there is a clear preference for achieving A and B, which to my read of the standard, but again Siiri would be able to answer it. You would be looking to achieve A where you could, B where you could and where you can't you move to C and that is that order of the process.

20 **THE COURT: JUDGE NEWHOOK**

We'll put this away for now and await her evidence with some interest.

QUESTIONS FROM THE BOARD: MS JACKSON

Q. Mr Hegley in your evidence you yesterday withdrew a clause about the practicality to allow transparent noise barriers. I was quite looking
25 forward to reading that. What was your reason for writing that off?

A. I've been asked to advise the council, the Auckland Council and initially they were interested in that being followed through, they presumably reached some agreement with the Agency and it was withdrawn, so taken out of my evidence.

30 Q. So you're not against using transparent noise barriers?

A. No, I was for it as an option, and that's what we were following up, but I was asked to take it out of my evidence because it was no longer relevant as far as the council was concerned, for whatever reason. I don't know the reason.

5 Q. That really doesn't help us much does it.

QUESTIONS FROM THE BOARD: MS HARDIE

10 Q. Mr Hegley, just with regards to construction noise and vibration items 8 and 9 on page 34 of the latest conditions. I think it's all pretty clear to everyone that by limiting pile driving or pile removal, that's number 8, for a certain duration is going to address the noise issue. I'm just a little bit unclear in terms of the condition, "The concrete batch plant shall be fully enclosed", what that will actually achieve. Can you give us some guidance on that?

15 A. I looked at that condition, I don't know why it's there quite honestly because it doesn't matter if it's enclosed or not it's the noise received is the important thing. The main noise from concrete batching plant is in actual fact the trucks being filled with concrete and the high engine revs to mix the plant, so it's the trucks that are a problem, not the batching plant. But it should be a noise control not simply enclose it because enclosing doesn't quieten it if it's not done properly but it's enclosed.

20

Q. So following on from that do you see that the conditions in terms of the limitation of noise at receivers that that would cover the condition for enclosing the actual plant is sort of irrelevant and that the important issue is what the noise at the receiving –

25 A. That's right, it's the effects that are important, not what they do on site.

Q. Can you just help me then, just with regards to the New Zealand Standard 6.03. We've got the table in CN2, which gives us some limits. Where would they be measured, are they measured at the property boundary or are they measured, particularly like A, which just talks about project construction, noise criteria, residential receivers?

30

A. Construction noise is measured better from the facade of the building.

Q. From the facade?

A. Mmm.

Q. And that's under NZS 6.03?

A. That's defined in the standard, yes.

THE COURT: JUDGE NEWHOOK

Q. From one metre in front of the facade isn't it?

5 A. Yes a metre from the facade, yes.

QUESTIONS FROM THE BOARD CONTINUES: MS HARDIE

Q. So staying on with CNV 2, page 3, there's a difference between the descriptions in terms of A, B, C and D, just in terms of "Project construction noise criteria", this is A, "at residential receivers." Then we go onto B, "At commercial and industrial receivers." Then C talks about, "Internal structure-borne noise from tunnelling for residential receivers and D, "Is another internal noise for licensed education facilities." The way that you've – if you were looking at this condition, if we looked at D, is that from any operations, or is that similar to C in terms of structural and noise from tunnelling, just not clear.

10

15

A. It simply says to me, that simply says, those are the levels they have to meet from any construction activity at all, regardless –

Q. For any construction?

A. That's how I read it.

20 Q. So going back again a little bit. So for internal for residential receivers, which table, is there a table that just simply refers to for any construction noise, other than from tunnelling, or does there need to be?

A. Well the standard does have a criteria in it for internal noise levels for residential and it's not been followed through to here. But as I understand it, the construction noise weren't succeeding, that's where you get into more descriptive sort of conditions further on, about shall reduce the noise in discussion with people, move them out if need be and things like that. It's not normal to upgrade buildings for construction noise, but if construction noise went on for a year of course that's not normal either. So it doesn't prohibit it, but that would be part of the discussions I think with residents about whether you move them out or how you handle that.

25

30

1030

- Q. So in term – so for the residents, the noise levels that they may get, if say table A they've got an external noise one metre out from their facade and it's 70 decibel, oh 70 – no L Aeq, is the expectation that it's going to be 70 inside or slightly reduced, as we were talking just before with –
- 5
- A. In round figures you can knock off 15 decibels to get the inside level. That's assuming an open window.

THE COURT: JUDGE NEWHOOK

- 10 Q. And up to about 25 with certain kinds of joinery with closed windows?
- A. Correct, yes. And the construction standard acknowledges it's normally short term so people may be happy with the windows closed in short term, as distinct from if it goes on forever, such as ordinary road traffic noise.

15 QUESTIONS FROM THE BOARD CONTINUES: MS HARDIE

- Q. Does the standard define short term?
- A. Yes, less than two weeks.
- Q. Less than two weeks?
- A. Yes, well it has three criterias; short, medium and long term. Less than two weeks, two weeks to 20 weeks I think it is and beyond 20 weeks.
- 20 Q. So going back to those tables again, the CNV 2A, they've got a note in there in terms of the condition where it accepts (inaudible 10:31:520 duration between 15 minutes and 60 minutes. Does that mean that the activity will occur possibly for up to 60 minutes once a day or it can have that occurrence –
- 25 A. I think in actual fact in our caucusing we changed that to just requirements to the standards, which says "between 15 and 60 minutes" depending on the type of noise you're measuring, but what it actually means is you – that's the measurement period. It's not –
- 30 Q. Oh it's not the duration of the activity?
- A. It's not the duration of the activity. The activity could go on all day, but you may only have to measure it for 15 minutes to get a representative

sample of what's going on. For instance, pile driving, assuming they're not moving great distances, different piles, a receiver point over a day will be similar for the whole day so you only have to measure say one or two piles being driven to get a representative sample.

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

- Q. Quite a few of the issues that I wanted to ask you about have been the subject of questions and I don't need to continue for the moment. I do have a question that does extend what Member Hardie was asking you about. In the caucusing agreement in relation to – no, I'll take a step
10 back. We've got a situation overall where the 6003 standard recommends for residential zones night-time noise of typical duration, LEQ 45. The standard being aimed for on this project is 60 at that same period of time. I'm putting it rather crudely, "being aimed for", but you know what I mean. And we have had evidence as to why that needs to be. One of the aspects tackled by you in your evidence was this night-
15 time level and you were looking for some mitigation, some further mitigation around that, and in the caucusing the group who arrived at a draft condition, but more or less I find on page 29 of the new conditions that it seems to stop a bit short of what you were looking for and I'd like your opinion about that. So if you look at page 29, CNV1(ii) second
20 bullet point is the particular article I think, "Methods for ensuring affected residents are notified of scheduled night-time works on any works during the hours 8 o'clock, 6.30 in the morning, at least five days prior to commencement of any such work," and that comes out of causing. You recommended some other aspects. You recommended that the residents be informed of the likely duration of the work that would produce these levels of noise, and be given a phone number of a person in the project team to talk about that. What are your thoughts on those further mitigated items, being not encapsulated in this draft
25 condition?
- A. No I do believe that people's knowledge of what's going on helps a lot with putting up with it. It's like the party next door, if you know it's going
30

to finish at 12 it's not so bad. If you have no idea it annoys a lot more so

–

Q. And how many weeks it might go for?

A. Indeed.

5 Q. Or month?

A. Yes, so I think that people should know what's going on. Sorry, what was the second one?

Q. Oh I think you recommended that they be given a –

A. Oh yes.

10 Q. – phone number of the project –

A. Yes, yes. And although they –

Q. Person?

A. Although they might be told how long it goes on for they might say, "Hey this is really a bit more than I thought it was going to be," and they
15 should have someone to be able to contact and be reassured that it is only going on for another five minutes or be horrified that it's going to go on for another three days or whatever, but they should – again it's part of the information for the resident that they know what's happening and they know at least someone's listening to them.

20 Q. Even allow for some psychological bracing for –

A. Yeah, indeed.

Q. – the inevitable –

A. Indeed.

Q. – or some such?

25 A. Yes the –

Q. Rather than the complete uncertainty of how long –

A. Yeah.

Q. – it might go on for?

A. And if they don't have a contact number they're going to ring council or
30 someone like that and it's going to become very official and the wheels can fall off at that stage. It's better if you can get straight to the person controlling the noise.

THE COURT: JUDGE NEWHOOK

I suspect Ms Linzey's about to tell me that in my very fast reading of this condition I've missed some words. No?

5 MS LINZEY:

I'll just – there are other conditions, but – in terms of the public information contact details and I'm just checking the CNV template for notice.

THE COURT: JUDGE NEWHOOK

All right, you can come back to us on that later. Thank you very much.

10 RE-EXAMINATION: MR LANNING

Q. Some questions about the site specific noise management plan process that you mentioned in response to Mr Dormer's, Councillor Dormer's – sorry, Member Dormer's questions. If you could please Mr Hegley have a look at annexure C to Ms Wilkening's supplementary evidence of 28 February. That's the flowchart setting out the summary process, construction activity and noise assessment litigation response. At the diamond shape at the top of that diagram says, "Confirm compliance of noise criteria expected," can you just confirm that that is the noise criteria set out in proposed condition CNV2. Is that the linkage there?

15
20 A. To me that's what it should be, if it's not that that it certainly should be.

Q. And then it's got a "Yes/No" choice there and off to the right is "No" and that leads to this red box which is the site specific noise management plan commences. So is it your understanding from that chart that any non-compliance with the criteria set out in condition CNV2 triggers this need for one of these plans?

25 A. The protection of non-compliance does, not the non-compliance itself. It should have happened before then.

Q. Because I'm just interested in your comments on – this is annexure B to Ms Wilkening's supplementary evidence, right at the bottom of page 17 where there's a reference to where the model predicted levels are greater than the noise limits in section 2 by less than 10 dBA. And then over the page it says, "If the actual levels are higher than the limit plus

30

10 dBA works shall cease and site specific construction noise management plan will be submitted.” So where does this 10 – how does this 10 dBA sort of fit in with these noise criteria set out in the conditions?

5 1040

A. Well that’s stopping the work there it says, “The work shall cease,” it shouldn’t even start it if it’s higher than 10 dBA if they follow that flow chart. So there’s a conflict between the two.

10 Q. Just my reading of the witness, I’ll have to ask some direction questions to save some time sir. My reading of it is that the intention is that you only need one of these site specific plans if your more than 10 dBA predicted to be more than 10 dBA over the criteria set out in condition CMB 2, is that your understanding?

A. Yes that’s how that reads.

15 Q. Do you have any comments on whether that’s appropriate or not?

A. Well the standard’s been acknowledged and I think if it’s exceeded that’s where the true issue would be quite honestly, because if I’m only woken by 10 d or 9 decibels above the limit, I’m still woken by 9 decibels above the limit. And the fact that once you’re awake this moves to 10 or
20 12 decibels above, so I would say if it exceeds it should be triggered, which is exactly what the flow chart tells me.

THE COURT: JUDGE NEWHOOK

Thank you for asking about that Mr Lanning, if you don’t mind I have a supplementary about that, I’d actually marked this up and intended to get
25 some help from Mr Hegley on the topic and (inaudible 10:41:44)

MR LANNING:

Well yes certainly.

THE COURT: JUDGE NEWHOOK

So have you got another topic to ask him about?

MR LANNING:

No, no that was all.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- 5 Q. Thank you very much I'll do this then. Mr Hegley looking at section 11.14 of Ms Wilkening's rebuttal statement that Mr Lanning has been referring to, and I think in part you've answered with your very last answer to him. 10 dBA is an approximate, adjunct by 10 dBA is an approximate doubling of sound level isn't it?
- A. Yes sounds twice as loud approximately.
- 10 Q. Yes so to limit the triggering of the requirement for site specific construction noise management plan to an exceedance of as much as 10 is leaving quite a wide margin in there isn't there for the contractor?
- A. Significant would be the word I would use.
- Q. Sorry what was your word?
- 15 A. Significant.
- Q. Yes.
- A. I think also they're taking account of the construction standard has been pushed to the upper limits of reasonableness shall we say.
- Q. That was my next question, yes we're already operating at high levels aren't we?
- 20 A. Yes they've already starting high levels.
- Q. Above what's in 6003)?
- A. Yes and even at night time it's 5 decibels above the district plan limit and I don't have a problem with that because it's already up at their upper limit.
- 25 Q. Yes.
- A. And it intends to increase 55 at night is normally the limit you'd expect in the day time you see.
- Q. Yes.
- 30 A. To 10 decibels.
- Q. Yes.
- A. And I would suggest that would cause quite a bit of disturbance.

Q. So if we're going for 60 you would recommend that any exceedance should trigger a site specific construction noise management plan.

A. Well if you're exceeding there should be something done about it, and if it's at all possible so yes.

5 Q. Yes. Thank you. Any further re-examination Mr Lanning?

MR LANNING:

No sir just to note that that's the end of Part A of the council and Auckland Transport case the rest of our witnesses have been held up until next Tuesday, because a couple of them are away. I just signal that's after this.

10 **THE COURT: JUDGE NEWHOOK**

That's all right we'll come to Member Dormer's point in a moment.

MR LANNING:

I was just going to signal sir and get some guidance from the Board as to what ongoing presence we'd like from the council in this hearing and we'll come
15 and go obviously when there are relevant witnesses and parties presenting, they will be quite happy to be available but you'll see there might be a situation or times when our input might be useful.

THE COURT: JUDGE NEWHOOK

Yes well I'll speak for myself and perhaps as panel we'll talk about that at the
20 morning break, just responding to you from myself, yes obviously you will keep track of who is turning up when and be available at the appropriate times. And it may mean that you have to respond quite fast at times -

MR LANNING:

Yes well there's four of us –

25 **THE COURT: JUDGE NEWHOOK**

- if you or whoever is intending to cross-examine is not here or is intending to cross-examine is not here. I believe that we would appreciate a counsel presence from the Council for the balance of the hearing, I'm not trying to be

unduly critical about this but the council's involvement in this case has been in my personal view somewhat minimal anyway.

MR LANNING:

Yes.

5 **THE COURT: JUDGE NEWHOOK**

And I consider that the responsible approach by the council will be to have somebody, counsel keep tabs on the hearing and if it's not you but somebody more junior and somebody who can be in touch with you or Ms Hartley.

MR LANNING:

10 Yes.

THE COURT: JUDGE NEWHOOK

As needs be to gain your assistance, for myself I think that is a minimum that I would want.

MR LANNING:

15 I think that's reasonable sir and that's why I asked, certainly Ms Fassenkloet is available as well, and Mr Fagan as well yes he can attend.

THE COURT: JUDGE NEWHOOK

Yes I don't think he previously entered an appearance would he?

MR LANNING:

20 No.

THE COURT: JUDGE NEWHOOK

I don't know him but it's Mr Fagan is it?

MR LANNING:

Yes.

THE COURT: JUDGE NEWHOOK

Yes if you'll leave his details with the members of EPA I'm sure. Yes I'm getting a certain amount of encouragement for the view that I've just expressed if we want to add to it after the morning break we'll let you know.

5 MR LANNING:

Thank you sir.

THE COURT: JUDGE NEWHOOK

Yes now Member Dormer had a suggestion to make to Mr Hegley who is still here.

10 MR DORMER:

Mr Hegley I wonder if over the break if you could approach one of the EPA staff so that a copy of the transcript of say the first 10 minutes of our discussion this morning be made available to you as soon as can be, it might not be till tomorrow. With a view to making sure that you've got a good note
15 of those couple of quotes you've undertook to come back to us on.

MR HEGLEY:

Yes.

COURT ADJOURNS: 10.48 AM

COURT RESUMES: 11.12 AM

THE COURT: JUDGE NEWHOOK

We're going to hear from the Department of Conservation now, Ms Wilkening. Yes Mr Lanning, we do have a further answer for you on your advice to us
5 before, your query of us before the break. Our feeling is that we would appreciate being assisted by one of the three counsel who have been appearing, yourself Ms Harding and Ms Fassenkloet, no disrespect to Mr Fagan, but we don't know what his part in any of this is, haven't seen him before. So we would appreciate one of the three of you being here and if you
10 can organise it on a reasonably consistent sort of basis, so that the institutional knowledge on the part of counsel for the council is prepared ready and able to spring to our assistance on any issue should we desire it during the balance of the hearing.

15 **MR LANNING:**

Yes it will be primarily in the start with Ms Fassenkloet I would imagine sir.

THE COURT: JUDGE NEWHOOK

Now we do come to you now Ms Houghton.

20

DEPARTMENT OF CONSERVATION:**MS HOUGHTON READS OPENING SUBMISSIONS**

"...Department of Conservation."

5

I'll take the next section sir as read because you will be familiar with our role, but I did add it for the member of the Board who wouldn't be and rather confused about why we have references to the marine reserve and all those other (inaudible 11:14:33) sir.

10

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"The department's submission...in this sector."

THE COURT: JUDGE NEWHOOK

Yes that was the first of their reports I think, 7th of December.

15

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"The submission also...relocation of fauna."

And if I just make some brief comments here on the EMS 42A report and the first was about the –

20

THE COURT: JUDGE NEWHOOK

Now was this the first one, the 7th of December, because there were two in December, there was a supplementary?

25

MS HOUGHTON:

I've got 7th of December the final one sir.

THE COURT: JUDGE NEWHOOK

Yes that's the primary, yes that's the primary one there was a supplementary after that. All right so you're addressing the 7th of December one?

30

MS HOUGHTON:

Yes.

COUNSEL CONTINUES READING OPENING SUBMISSION

5

“And the questio...coastal policy statement.”

THE COURT: JUDGE NEWHOOK

Yes now Ms Houghton you're not advocating are you that there should be any further provision for pedestrian or cycling activity adjacent to the North

10 Western Motorway –

MS HOUGHTON:

No.

THE COURT: JUDGE NEWHOOK

15 - that's been provided by NZTA in its plans?

MS HOUGHTON:

No. No and sir that's why I mentioned –

THE COURT: JUDGE NEWHOOK

20 Not terribly keen on people walking on the motorway.

MS HOUGHTON:

No and –

THE COURT: JUDGE NEWHOOK

25 We had to have a half day induction, safety induction before we were even allowed a half hour visit. I exaggerated a little in the first part of that sentence, but not much.

MS HOUGHTON:

Yes, it's one thing the requirements, and I mention it further on, is that we do have to consider it and then decide that it's not appropriate on the grounds of public safety and there is provision anyway for a cycleway so no we're not
5 envisaging – not advocating for walkways across the reclamation.

THE COURT: JUDGE NEWHOOK

That's the answer I was anticipation, thank you.

MS HOUGHTON:

10 And paragraph 20 I just make the point that it's common ground that the Hauraki Gulf Marine Park Act applies and I'll take paragraphs 20 and 21 as read, except to say any improvement of water quality in the marine reserve will have a flow on effect into the wider gulf and must enhance the Hauraki Gulf. At paragraph 20 I have – I'll cross that out because I understand from
15 Forest & Bird that this is no longer a live issue.

THE COURT: JUDGE NEWHOOK

Sorry which – oh –

MS HOUGHTON:

20 That's at para –

THE COURT: JUDGE NEWHOOK

- at 22? Your paragraph 22?

MS HOUGHTON:

25 Yes, yes which was... So I just took that as read sorry.

THE COURT: JUDGE NEWHOOK

So paragraph 22 headed "Expansion Of Reserves" that you're happy we can delete because that issue's been withdrawn by Forest & Bird?

MS HOUGHTON:

Yes.

5 COUNSEL CONTINUES READING OPENING SUBMISSIONS

“And public access... under section 1082G.”

10 So the situation as we see it is that the Board will need to consider it and then go back to policy 19(3) and say that this is inappropriate that there should be any walking access, but there is public access provided by the cycleway.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

15 “The Department supports... requirement having been” -

THE COURT: JUDGE NEWHOOK

Sorry, just on that last paragraph, what’s your position? Are you happy that it goes to 2014 or are you seeking an extension beyond 2014?

20 **MS HOUGHTON:**

Well we would certainly like an extension beyond 2014 and to have it incorporated into some kind of management plan that is there for part of the life of this public work, that that – I know the community would like that, and Forest & Bird I’m sure would like that as well.

25

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“In the circumstances... this to say.”

30 I don’t if you’d like me to read that or you just take it as read. You’ll probably –

THE COURT: JUDGE NEWHOOK

I think we’ll take that as read. It’s been referred to already I think.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

1130

“It is submitted... the marine reserve.”

5

And sir that was, just by way of background, I know it's beyond the jurisdiction of this case, but we put it in so you at least had some understanding of the values of the marine reserve.

10 **COUNSEL CONTINUES READING OPENING SUBMISSIONS**

“The Department considers... to Traherne Island.”

MS HOUGHTON CALLS**DAVID CHARLES HAVELL (AFFIRMED)**

Q. Is your full name David Charles Havell?

A. It is.

5 Q. Have you prepared evidence dated the 17th of December?

A. I have.

Q. 2010. Are your qualifications as set out in your evidence at paragraph 2?

A. They are, yep.

10 Q. And do you have anything in your evidence that you wish to correct at this stage?

A. No.

Q. So do you confirm that the contents of your evidence are true and correct?

15 A. I do.

CROSS-EXAMINATION: MR LANNING

Q. Just first of all take you to paragraph 14 of your evidence. And there you say, don't you, that you agree with the NZTA's assessment of the values of the plant communities on Traherne Island and relative impacts of the proposed motorway development on those communities?

20

A. I do, yep.

Q. So you're obviously familiar with the existing vegetation types and ecotones on Traherne Island?

A. Yeah. I've – I am. I visited it at least four times.

25 Q. Are you also familiar with the proposed enhancement planting at Eric Armishaw Park described in Mr Slaven's evidence?

A. Yeah, I'm familiar, not in detail.

Q. Not in detail. Have you considered therefore whether the planting, or this planting, at Eric Armishaw Park adequately mitigates the impacts of the proposed motorway development on the ecotones at Traherne Island?

30

A. I'm philosophically opposed to that and I don't think plantings do mitigate the impact.

Q. So what would be your preferred mitigation of the loss of the ecotones on Traherne Island?

A. Management of the adjacent ecotones on Traherne Island.

Q. When you say “management”, what do you mean there?

5 A. I mean weed control and general pest control as we sort of already have.

Q. Sorry what was the last bit of that?

A. Well the Traherne natural heritage restoration plan largely covers that and to me that is the focus of the mitigation. You’ve got such nice
10 ecotones outside the designation zone, to me it was always a bit of a mystery of why you didn’t focus on those ecotones and that adjacent vegetation rather than shift effort into Eric Armishaw Park.

Q. Now in terms of the management plan that you say already exists, is this the one that we’ve just been hearing about –

15 A. Yes.

Q. – through the legal submissions that’s –

A. Yes.

Q. – to end in 2014?

A. Yep.

20 Q. So would it be your preference then for that management plan approach to carry on past 2014?

A. Definitely. I’d prefer ongoing pest management control on that site.

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP – NIL

QUESTIONS FROM THE BOARD: MR DORMER – NIL

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

QUESTIONS FROM THE BOARD: MS JACKSON

Q. Just one question thank you. Mr Havell, when you trying and relocate something like limulus (inaudible 11:36:22) – I don’t know if I’m saying that correctly.

30 A. You are.

Q. If the trial fails how much impact would that have on the remaining plants and the species?

A. In the area it's significant because that's the only population we have, but in the wider context of the Auckland region not much.

5 Q. So it could be replaced?

A. Yes.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK - NIL

RE-EXAMINATION: MS HOUGHTON – NIL

WITNESS EXCUSED

10

MS HOUGHTON CALLS**MARILYN GAY FULLAM (AFFIRMED)**

Q. Is your full name Marilyn Gay Fullam?

A. Yes it is.

5 Q. And have you prepared evidence dated 17th of December 2010?

A. Yes I have.

Q. Are the qualifications – are your qualifications as set out in your evidence at paragraph 2?

A. Yes it is.

10 Q. And do you have anything in your evidence that you wish to correct at this stage?

A. Yes I would like to correct a matter in my evidence.

Q. If you can refer to that.

A. If the Board could go to page 8 in my evidence, under paragraph 4.11 I
15 would like to add in the numeral number four in front of that subheading so it reads, "Application to undertake a public work under section 4(3) of the Marine Reserves Act."

THE COURT: JUDGE NEWHOOK

Q. "Four" was simply missing from the heading? The "4" was simply
20 missing from the heading?

A. Yes it was Your Honour.

EXAMINATION CONTINUES: MS HOUGHTON

Q. So do you confirm that after that alteration that the contents of your evidence are true and correct?

25 A. Yes I do.

CROSS-EXAMINATION: MR McNATTY

Q. Can I refer to your attachment 1 of your evidence and it's the gazette notice of the Motu Manawa Pollen Island Marine Reserve and in that I refer to item 3 in that notice, which has reference to an exception
30 allowing conditions that existing discharges into the marine reserve may

continue. My question is, has that exception clause ever created an operational task within the department?

A. If I understand your question, are you asking if the department has been made aware of an offence?

5 Q. Possibly, or is there a situation where it was brought to an operational manager's notice there that there was a discharge that might not have complied with that?

A. Not that I'm aware of.

10 Q. Most of my other questions Your Honour were actually withdrawn because of that function, but there is a consequence that comes from that and it is, based on should an agreement for environmental mitigation be reached under the Marine Reserves Act process, would the department be able to table that environmental mitigation to the Board for the Board's information. It's hypothetical I know, but it's the possibility of an agreement did reach in the MRA process and it created some environmental benefits, I believe it would be appropriate for the Board to be able to consider that.

15 A. I'm sorry I trying to understand your question, but we don't have a Marine Reserve Act application lodged with the department as yet.

20 Q. I'm asking that if the possibility existed and agreement did occur and there was environmental mitigation in that agreement, would that matter be tabled to the Board?

A. Well once again I'm not sure what you mean by an "agreement", but NZTA are talking to departmental officers including myself, about the types of things that may be mitigation in terms of Marine Reserves Act application. And because I don't know, we don't have an application yet.

THE COURT: JUDGE NEWHOOK

30 Mr McNatty, I suspect particularly having regard to the last part of that answer that you'll just have to leave that matter there. You've withdrawn a certain issue and I've already said to you, I think correctly, and the processes in relation to the Marine Reserves Act are quite separate from the processes

that we have in front of use. Plus, it sounds as though there isn't any relevant action happening as yet that could be drawn to our attention. I suspect that we'll have issued our decision one way or the other and be out of a job by the time that one's dealt with.

5

MR McNATTY:

Thank you Your Honour, then I've got no further questions for the witness.

QUESTIONS FROM THE BOARD – NIL – MR DORMER

QUESTIONS FROM THE COURT – NIL – COMMISSIONER DUNLOP

10 **QUESTIONS FROM THE BOARD – NIL – MS JACKSON**

QUESTIONS FROM THE BOARD – NIL – MS HARDIE

QUESTIONS FROM THE COURT – NIL – JUDGE NEWHOOK

WITNESS EXCUSED

15 **CASE FOR DEPARTMENT OF CONSERVATION CONCLUDES**

20 **THE COURT: JUDGE NEWHOOK**

Right, now we come to Unitec, Ms Batistich.

MS BATISTICH:

I have some very brief legal submissions sir. Sir I appear today with my
25 colleague Mr Gear.

THE COURT: JUDGE NEWHOOK

Sorry, Mr?

MS BATISTICH:

Gear.

THE COURT:

5 Spell that please?

MS BATISTICH:

G-E-A-R.

10

UNITEC:

MS BATISTICH READS OPENING SUBMISSIONS

5 "...between the parties.

And we can confirm that's now been executed and Mr Law has copies of that if the Board would like to see that.

THE COURT: JUDGE NEWHOOK

10 Yes that might well be appropriate.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Mr Conder the...those three options."

15

I'm not sure if it's convenient for the committee to turn to that.

THE COURT: JUDGE NEWHOOK

We're fairly familiar with those.

20 **MS BATISTICH:**

Those options, very good.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

25 "Unitec has no...in Herdman Street."

THE COURT: JUDGE NEWHOOK

Option 3.

MS BATISTICH:

30 Sorry option 3 in Herdman Street.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“However option 2...resources are available.”

MS BATISTICH CALLS**PAUL EDWARD CONDER (SWORN)**

Q. Is your full name Paul Edward Conder?

A. It is.

5 Q. Have you prepared evidence-in-chief dated 17 December 2010?

A. I have.

Q. Is your position and role as set out in your evidence-in-chief at paragraph 1?

A. It is.

10 Q. Do you have anything in your evidence-in-chief that you'd like to correct at this stage?

A. No.

Q. So do you confirm the contents of your evidence-in-chief is true and correct?

15 A. I do.

MS BATISTICH:

Sir, I'd just like to briefly lead Mr Conder in relation to the issue of the stack relocation.

20 EXAMINATION CONTINUES: MS BATISTICH

Q. Mr Conder, do you have Mr Andre Walters rebuttal evidence in front of you?

1150

A. I do.

25 Q. Could you please have a look at annexure E.

WITNESS REFERRED TO ANNEXURE E

A. Yes.

Q. You will be aware that submitters have made issues in relation to the potential relocation of the northern ventilation stack?

30 A. Yes.

Q. Could you provide to the Court your own personal comments in relation to the three stack options?

A. Ah, yes. From a Unitec perspective we are working with Auckland Council on a site development plan, part of that plan is across a campus link that is a possibility into the future. The stack option number 2, which is the northern one would effectively preclude the likely location of that cross campus link and option number is likely to stop any merging lane into Great North Road being possible. So it would mean probably a sharper merging lane there. Option number 3, while a visible impact on the entrance into the campus that may be possible into the future, is of less concern to us.

5
10 Q. Thank you that's all I intend to lead on that point. Sir the only other matter I wish to draw to Mr Conder's attention and to the Board, is that in the various conditions there are various Unitec building numbers referred and we've realised nowhere in the evidence is a site map which shows those buildings numbers on the campus. So I have got an actual
15 map showing the Unitec campus with all the building numbers on which will help you when you want it.

THE COURT: JUDGE NEWHOOK

Yes that would be very helpful one of our members actually created his own and we've been using that.

20 **MS BATISTICH:**

Hopefully this nice digital coloured will be much –

THE COURT: JUDGE NEWHOOK

It looks similar but let's have your nice big one.

EXAMINATION CONTINUES: MS BATISTICH

25 Q. Yes, so Mr Conder have you got a copy of the Unitech Campus map?

A. I have.

Q. Can you confirm that that's a correct reflection of the location of the buildings on campus?

A. It is yes.

30 Q. Sir we'd like to produce that as an exhibit.

EXHIBIT 4 PRODUCED – UNITEC CAMPUS MAP**CROSS-EXAMINATION: MR LAW**

Q. Good morning Mr Conder.

A. Morning Mr Law.

5 Q. Could I first of all refer you to paragraph 1.4 of your statement of evidence.

A. Yes.

10 Q. Now if I can just paraphrase quickly and correct me if I get any of this wrong, but you're identifying there that the Mt Albert Campus is a significant resource and that therefore you've undertaken a structure planning exercise is that correct?

A. That is correct.

Q. And you identified particular four key points, and that there is significant capacity to accommodate growth?

15 A. That's correct.

Q. That there are opportunities to maximise the land resource for development?

A. Yes.

20 Q. That you identify the need to consolidate the campus or the benefit sorry, of consolidating the campus into the southern part of the site?

A. That's correct.

Q. And also as you've just mentioned, additional access is required to Great North Road to enable that development?

A. Yes.

25 Q. Could I refer you to now attachment 1 of your evidence-in-chief?

A. Yes.

Q. And this represents I understand, one preferred option for future development and that's an outcome of the construction planning process?

30 A. That's correct and it is a concept diagram, it is not a detailed diagram, or based on any detailed diagrams at this stage.

- Q. Thank you. Now you've already covered some of the issues around the stack location but just to confirm to the left of this plan that's Great North Road is that correct?
- A. That's correct.
- 5 Q. And the sort of truncated T that's the BP Station?
- A. Ah, yes.
- Q. And the access that you're referring to into the Unitec site beneath that the BP Station, that's that road that goes across Oakley Creek just below there?
- 10 A. That's correct.
- Q. And it's intended to provide bus access to the Unitec site?
- A. Ah, yes.
- Q. As well as pedestrian?
- A. Yes, pedestrian, cycling and bus.
- 15 Q. And so that's why you've chosen a site directly opposite an existing intersection to avoid additional intersections?
- A. Yes, yes.
- Q. Thank you. But you did mention also the stack in the vicinity of alternative vent stack 1, do you consider this would not be ideal either
- 20 for Unitec?
- A. Ah, that's correct if the cross campus link is used for buses, then buses will need a merging lane into Great North Road or we would assume that that would take some space up towards that area.
- Q. Okay. And in that area behind BP at the moment is also quite well
- 25 vegetated isn't it?
- A. Yes it is.
- Q. And so unfortunately that would, I mean you may do mitigation planting, but that would require some – an access there would require some clearance of that vegetation?
- 30 A. That's correct, and we don't have approvals for that at this stage, we're still in discussions with the council.
- Q. No I appreciate that, but that would also leave the – a stack at the a – alternative vent stack 1 location sitting opposite this new intersection and quite exposed?

A. Yes.

Q. So there's sort of a risk of it being an entrance marker to the Unitec campus?

A. Yes.

5 Q. So if I can refer again, I think I've still got it up, yes attachment 1 of your evidence-in-chief, and if I could ask you to compare that and the Board also to compare that with the campus plan that has just been circulated. So the campus plan if I'm correct Mr Conder represents where you're at now?

10 A. That's correct.

Q. And as you said earlier the option plan is the concept, or a concept for where you want to be?

A. That's correct.

15 Q. And at present if we look at the campus plan, that south west corner of the campus is relatively undeveloped?

A. Yes it is.

20 Q. So you have building 76 there which is the quite long building, and for the Board's information that's one of the buildings that's going to be included in the settlement conditions. So you have building 76 there in the south west corner Mr Conder?

A. Yes we do.

Q. And a cluster of buildings around that that's correct?

A. That's correct.

25 Q. But the area to the north of that heading up towards your proposed access at the moment is mostly undeveloped, not necessarily zoned up, I suppose but it's undeveloped, undeveloped land it's lawns and so on?

A. That's correct.

30 Q. And hence Unitec's conclusion that you mentioned before that is has significant capacity for growth and its decision to consolidate growth in that southern half of the site?

A. Yes.

Q. And indeed if we look back at the option plan, your concept plan, now that illustrates development right through that south western corner doesn't it?

A. Yes it does.

Q. You're aware of and indeed, my friend Ms Batistich mentioned it, suggestions by some submit as the shared cycle, pedestrian cycle path be constructed through the Unitec site?

5 A. Ah, yes.

Q. Presumably that would be to tie in with Unitec's structure planning?

A. Yes it would but there are a number of routes along the edge of the road that we can work around.

CROSS-EXAMINATION: MR ALLAN

10 Q. If I could take you please to your attachment 1 which is the document Mr Law was discussing with you?

A. Yes.

Q. And in particular to the possible bus pedestrian cycle link it comes out opposite Herdman Street?

15 A. Yes.

Q. Now that would need to cross reserve land but also BP land wouldn't?

A. Yes it would.

Q. And the BP Station currently has ingress people driving into it, to the north of the Herdman Street intersection, but egress people driving out of it to the south of the intersection?

20

A. Yes that's correct.

Q. So any proposal for a Unitec road there of any form would need to be integrated with the BP Service Station and its access wouldn't it?

A. Yes and significant consultation with them would be required.

25 Q. And have you resolved any tenure issues in terms of purchasing that land or any relationship with them on that?

A. Not at this stage the concept diagram that you see in front of you was developed only about 12 months ago so a lot of work around that is still occurring.

30 Q. Now the intersection at Herdman Street is currently signalised isn't it?

A. Yes it is.

Q. And you would presumably propose that your fourth leg of the intersection would be included in that signalisation?

A. Yes correct.

1200

5 Q. And that would enable vehicles that are wanting to turn left from your road into Great North Road simply to turn left on a left turn arrow or on a green light?

A. Yes that's correct.

Q. So what is your understanding of the extent of the extra lane that you're talking about, in terms of buses having to merge with traffic on Great North Road?

10 A. I'm not an expert on traffic control, but we understand that from discussions with the council that they would be looking at a merging lane so that buses were not controlled by the lights.

Q. So that would result in a separate lane for buses or –

A. That's my understanding from the discussions we've had to date.

15 Q. And if the buses were controlled by lights you wouldn't need to put in a merging lane like that would you?

A. Again I'm not an expert on that, but that's quite possible.

20 Q. Is it your understanding that the merging lane the council officers have in mind would involve requiring some the land that's currently reserve land further to the south?

A. I'm not 100% sure where the boundary of the reserve is on that piece of land so I can't answer that question.

25 Q. There's no concern on Unitec's part, is there, that placing the stack on the right-hand side of Great North Road heading north creates any particular issue, with respect to visual amenity or other concerns, apart from traffic?

A. Obviously any visual impact that it has on any entrance to the site would be of some interest to us, but not gross concern, no.

30 Q. And is that, from your perspective, a negative impact or is it potentially a positive impact?

A. The visual impact would probably be a negative impact.

Q. And why would that be?

A. I think for the issues that have been canvassed by the community on other locations it has a similar impact to us. Entrance into the site is

something that we value, we want to make it as pleasant as possible for students and other users.

Q. And you think a stack like this would detract from that (inaudible 12:02:28)?

5 A. I think so, yes.

Q. Would it do the same if it's located on the other side of the road?

A. As I've already indicated we have less concern with it being on the other side of the road. I'm not in a position to judge from what impact it would have on the community there.

10 Q. And is that because, given that it is on the other side of the road, you see it as being related more to the Waterview side than to the Unitec side of Great North Road?

A. Yes.

15 Q. Just want to deal very briefly with the suggestion from the community, the parties that I act for and I think also the council, that there might be a pedestrian and cycle bridge only further south, but across the same creek, say in the vicinity of (inaudible 12:03:20) Street. That's a proposal that would be beneficial from Unitec's perspective isn't it?

20 A. All access points are beneficial from a Unitec perspective. I do note that Ngati Whatua also have an interest in some land along the edge of the creek there so there would be additional landowners to consult on that.

Q. From your perspective you would co-operate with a proposal to put that kind of bridge in place?

A. As long as it has no constant location to us, yes.

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

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP

30 Q. Mr Conder, just following through on the matter raised by Mr Allan with you about a possible western access to Unitec from Great North Road on the alignment of Herdman Street. Isn't it the case that that would go smack bang through the exit from the service station leaving it without an exit?

A. Yes that is quite possible and that would be something that we would need to consult with the owners of the BP station and be very clear about with them as to what impact that's having with them. This is still a concept plan from our perspective that we are still to do a lot of work around that sort of negotiation.

5

Q. With respect it's more than possible isn't it, it's patently obvious from a, looking at the street map or an aerial photograph?

A. Yes I would agree with you on that.

Q. Thanks. Is it correct that Unitec gets a significant or enrolls a significant number of its students from the western part of Auckland?

10

A. Yes that is very correct.

Q. And is it correct that Unitec would benefit from being able to provide more direct access to those students that come to it from West Auckland?

15

A. Yes it would be.

QUESTIONS FROM THE BOARD: MS JACKSON

Q. Mr Conder, if it's necessary to temporarily relocate the students for any reason where are they going to go?

A. To date we have not identified anywhere for them to go. We have worked with NZTA around their agreement to relocate where that is necessary, but we have not agreed any locations for them.

20

Q. Because it could be quite a problem to those students couldn't it, especially the international ones, they don't necessarily have vehicles so it becomes a significant issue if they have to travel to Unitec rather than just walk?

25

A. That's correct and part of the condition is, or the agreement that we have with NZTA is also about transport for those students.

Q. Is that footbridge that crosses the Oakley Creek, is that still closed?

A. No it was re-opened I understand last week.

30

Q. When it was closed how would the students get across?

A. We were running an additional shuttle service that was doing a loop around Great North Road as well from the internal campus shuttle service.

Q. So they don't walk around, they actually got –

A. We were shuttling them because of the risk of students having to walk a long distance around the site.

Q. So that would happen again if that bridge was closed for any reason?

5 A. Yes and – but there is additional cost to Unitec of providing that service, quite a substantial one, even in the three weeks the bridge was closed it was quite a substantial cost.

THE COURT: JUDGE NEWHOOK

We watched one student who obviously couldn't wait for the shuttle wade
10 down through the creek, clamber up the other side, to get to Great North Road.

MR CONDER:

Yes I've heard of two or three cases of that, yes.

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

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Just one small matter with you Mr Conder. I think – I see you're a signatory to the agreement with NZTA?

A. Yes that's correct.

20 Q. And no doubt you were closely involved with putting this together. You're congratulated on a constructive approach to the issues.

A. Thank you.

Q. I'll have it entered as exhibit 5 in our records.

EXHIBIT 5 PRODUCED – NZTA AGREEMENT WITH UNITEC

25 **RE-EXAMINATION: MS BATISTICH – NIL**

WITNESS EXCUSED

MS BATISTICH:

That adjourns the case for Unitec until next week when Mr Israelson will be available.

THE COURT: JUDGE NEWHOOK

5 Well, let's just address that issue. We have had a bit of a conflagration about that amongst ourselves and we don't think that we have any questions for Mr Israelson from amongst members of the Board and no party has registered to cross-examine Mr Israelson. So I think his evidence may be taken as read and he needn't attend so if he's still unwell next week then he just concentrate
10 on his recovery.

MS BATISTICH:

Thank you sir so if his evidence can be taken as read that –

THE COURT: JUDGE NEWHOOK

15 Yes, yes it's in the record.

MS BATISTICH:

- concludes the case for Unitec.

THE COURT: JUDGE NEWHOOK

20 Can be taken as read.

MS HARDIE:

Sorry sir to interrupt. I just quickly noticed I don't see a date entered on that exhibit 5. It's all signed, I might be wrong.

25

MS BATISTICH:

Ma'am it should be today.

1210

THE COURT: JUDGE NEWHOOK

30 Right now, KiwiRail.

MS DE LATOUR:

Yes sir, Ms de Latour for KiwiRail. Now just before I begin, I've had some discussions with the EPA regarding the attendance of Ms Butler and
5 Mr Buchanan. They're not actually here today with me, they are still in Wellington.

THE COURT: JUDGE NEWHOOK

We understand that, yes.

10 **MS DE LATOUR:**

But they are on standby if they are required for questioning by either the Board. Friends of Oakley Creek had indicated that they did have questions but at this stage we haven't been able to confirm whether in fact they did require them for questioning.

15

MS JANISSEN:

I think they withdrew yesterday, I understand that from Ms Docherty.

THE COURT: JUDGE NEWHOOK

Yes on another piece of paper that I've left in my chambers, I think their
20 involvement with the evidence of Ms Butler was crossed out, I think that's right, that's my recollection.

MS DE LATOUR:

In any event, if they did have a question then it perhaps could be put in writing
25 then I'm sure that would –

THE COURT: JUDGE NEWHOOK

Yes well that in fact is a technique that we have in mind to discuss with you in relation to the evidence of Mr Buchanan. One of the members of the Board has a question that we'd like to put to him and it occurs to us, with your
30 assistance he might respond in writing and that that could be tabled with the EPA and copied to the parties and brought to us. Such that if we had any

subsequent questions flowing from whatever answer he was able to give then he could either do that in writing or you could bring him, sorry I didn't mean a second trip, I think you're all from Wellington aren't you?

5 **MS DE LATOUR:**

I'm actually in Auckland so it's not so bad for me. Sir I'm sure he'd be very happy with that approach that avoids the need for a trip, well support it.

THE COURT: JUDGE NEWHOOK

10 Yes, Wellingtonians don't particularly like coming to Auckland. We don't understand that point of view of course.

MS DE LATOUR:

On that basis then I will just provide my legal submissions, representations.

15 **THE COURT: JUDGE NEWHOOK**

And then we'll deal with the issue of the question from Mr Buchanan.

KIWIRAIL:

MS DE LATOUR READS OPENING SUBMISSIONS

5 “...section 177 approval.”

Now I understand that Mr Law foreshadowed yesterday that that agreement has been reached and signed. There are copies also available if that’s required.

10 **THE COURT: JUDGE NEWHOOK**

If that could be handed up to us at this juncture. Now I’m assuming that no party has any opposition to us receiving this as an exhibit, and in view of the fact that Ms de Latour does not have any of her witnesses here with her today and we may not be needing to hear from her witnesses, it’s my intention to enter it into the record by consent of the parties, as exhibit 6.

EXHIBIT 6 PRODUCED – AGREEMENT

MS DE LATOUR:

20 The terms were foreshadowed in Mr Buchanan’s evidence also and I just note it’s essentially on those terms. The only key difference to note is that section 177 approval has actually been given through the agreement now, rather than upon receipt of detailed design drawings, which was foreshadowed in his –

THE COURT: JUDGE NEWHOOK

25 All right, that’s the key part.

MS DE LATOUR:

30 Moving on to section 2, I just wanted to briefly, and I’ll try and go through this quite quickly, outline the role of the designation in the legal assessment and the agreement reached, because I think it’s just important to cover it quickly.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Designation GO805 is...must equally apply.”

5 I’ve referred there sir to your decision on the Villages of New Zealand, Mt Wellington case which I think, slightly different facts, in that it was an unimplemented resource consent but I think the Court there accepted that the (inaudible 12:16:40) applied.

10 COUNSEL CONTINUES READING OPENING SUBMISSIONS

“KiwiRail’s continued commitment...the designation lapses.”

In respect of lapse of the designation that will now occur until November 2016
15 and I’ll come back to this further on in my submissions.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“The effect on...through the agreement.”

20

Moving onto section 3 sir, I’ve just briefly set out some of the effects and I’ll just, if it’s acceptable to you, run very briefly through these. This is just responding to some submitters concerns that the project will adversely affect the future provision of rail.

25

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Dealing with a...to constructing rail.

I’ll also just note here that it was originally proposed that two temporary sports
30 fields be constructed to the west of the southern portal building. I understand the council’s requested in lieu of that, that an upgrade to Phyllis Reserve occur. I just wanted to note there that that is supported by KiwiRail as it would avoid issues for them with the removal of the fields down the track when rail’s constructed.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Finally the southern...of the option.”

5

Now sir, I do realise there's technically not evidence from Mr Buchanan on that point, but it is something that could be addressed potentially through – in addition to the questions that your Board might have. Just wanted to briefly turn to cumulative effect.

10

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“In terms of...of the options.”

1220

15

Sir, I do realise this is technically not evidence from Mr Buchanan on that point but it was something that could be addressed potentially in addition to the questions that the Board might have. I just wanted to briefly turn to accumulative effects.

20 COUNSEL CONTINUES READING OPENING SUBMISSIONS

“In terms of...for that difference.”

25

There are some other concerns that have been raised by these matters which I will briefly address also.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“Designating rail in...on their merits.”

30

Some of the submitters have also queried the status of the GL 805 which was due to lapse in November this year. Ms Butler outlines in her evidence that an application be made to the council to extend that lapse date. I under that it's

been granted or the council has agreed to it, but there has been no formal decision at this point in time, so I'm not able to provide anything to the Board unfortunately. In any event I submit that it is a separate matter it's not directly relevant to the proceedings.

5 COUNSEL CONTINUES READING OPENING SUBMISSIONS

"While the issues...the rail line."

I've just set out there from Ms Butler's evidence what that condition was. But I
10 note in the revised set of conditions that there is a new condition it's DC 10 on
page 6 of the green conditions.

THE COURT: JUDGE NEWHOOK

Yes.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

15 Now I've asked Ms Butler to have a look at this and I understand that
caucusing is proposed for this Friday which Ms Butler will be also taking part
in it, and may be that that condition satisfies the concern that KiwiRail had
about the effect essentially of these conditions that will apply to the land that it
is actually going to own down the track.

20 THE COURT: JUDGE NEWHOOK

Yes that seems to me to be a very appropriate approach if the members will
caucus about that and see if they can solve that.

MS DE LATOUR:

Certainly sir.

25 THE COURT: JUDGE NEWHOOK

And your NZTA can advise us next week on the outcome of that.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“In conclusion KiwiRail...for the project.”

THE COURT: JUDGE NEWHOOK

- 5 Yes thank you for those submissions. Well I suppose that last matter in relation to conditions that the door needs to be left open for the questioning of Mr Butler by NZTA if agreement isn't reached, one would imagine that it is something that it is something that's capable of reasonable ready agreement. Thank you for that Ms de Latour, Member Dunlop has a question that he
10 would like conveyed to Mr Buchanan if you don't mind if you'd like to speak that into the record.

COMMISSIONER DUNLOP:

- To this effect Ms de Latour subject to being satisfied as to safety and operational matters would KiwiRail have any objection to a cycle and
15 pedestrian way being formed across the railway corridor extending north from Soljack Place?

THE COURT: JUDGE NEWHOOK

Ms de Latour if it's possible for you to lodge a written response at the beginning of next week.

20 MS DE LATOUR:

Yes that should be absolutely fine –

THE COURT: JUDGE NEWHOOK

Next Monday.

MS DE LATOUR:

- 25 In that case I will let the witnesses know that they don't need to be here tomorrow and if we need to re-schedule after that.

THE COURT: JUDGE NEWHOOK

Yes there's no need for them to be in attendance tomorrow.

MS DE LATOUR:

Wonderful thank you.

5 THE COURT: JUDGE NEWHOOK

Now is Mr Turei with us to cover our (inaudible 12:29:04) no sign of him. Is Mr Vipond here?

MR VIPOND:

Yes.

10 THE COURT: JUDGE NEWHOOK

Q. Mr Vipond would you like to come forward and seat yourself near a microphone perhaps in that second row of benches back there that's fine. Now you've got a representation that you wish to offer us I believe.

A. Yes that's correct.

15 Q. Have you got a written version of that?

A. Yes I do.

Q. Yes thank you Madam Registrar if you'd garner that for us and distribute it. Yes thank you, would you like to read your representation to us.

A. Yes thank you sir.

20

MR VIPOND READS REPRESENTATION

“Our statement of... new motorway developments.”

THE COURT: JUDGE NEWHOOK

- 5 Now Mr Vipond has filed some materials by way of evidence and they are in the record. He has indicated that he is available for questioning. No party has indicated a wish to cross-examine you Mr Vipond. I'll just check and see whether any members of the Board have any questions that would require you to be sworn in for that purpose. Mr Vipond the members of the Board don't
- 10 need you to be sworn in to answer any questions. We thank you for your information and your photographs. We believe it's all very clear and thank you for the trouble and the information. One clarification question that you could answer from where you're seated from right now for Member Jackson.

QUESTIONS FROM THE BOARD: MS JACKSON

- 15 Q. Mr Vipond, just the last photo at the end of your submission shows some vegetation. Is that the vegetation that's now been removed or is that what's still there?
- A. You're referring to this picture here?
- Q. The very last – oh yes.
- 20 A. Yeah. That's referring – that shows the bamboo vegetation as it was.
- Q. Right, so that is –
- A. It's all gone.
- Q. – that's what's been removed?
- A. Correct.
- 25 Q. Okay. And then following on from that, the statement that you've given us today talks about concrete panelling?
- A. Yes.
- Q. So are you going to be happy with concrete panelling if the NZTA proposed any mitigation to your property, or are you preferring
- 30 vegetation to be replanted?
- A. The NZTA have expressed a combination of both as likely for that area. There is a reasonable portion of land, as you can see from the photos,

earlier photos, down between the proposed wall on the motorway and our boundary line and they've intended to replant that area. Our proposal I think makes quite a clear case for having a height specified on the wall to reduce and eliminate a lot of the noise coming from the offramp. So to answer your question I think a combination of both is desirable.

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP

Q. Mr Vipond, I'd be assisted in understanding the matter you're discussing in paragraph 5(a) of your evidence, if the Agency's technician were to bring up drawing F16(2)(ii).

A. Mhm.

Q. And we could see it on the screen.

A. Yes.

Q. And you might be able to describe to the Board where the suggested improvement is, in particular the extension of a proposed retaining wall.

A. A diagram was put forward as part of the evidence that showed our position and within the text it shows that the wall there you see finishes at .2 – I don't know if we can zoom in onto that top left-hand area of the diagram. You can see that red line running to the left along the top –

Q. To the left?

A. – part of the offramp.

Q. To the left of the number 2?

A. Yes so the wall is destined – I understand from this map – to finish there. Our request is to extend that along past number 3. If you drew the line from number 2 up to – almost need to get a pointer really so I can show you what I'm talking about.

THE COURT: JUDGE NEWHOOK

Q. Yes well that would help. Would you like to come up and somebody can provide you with a ruler.

A. The wall at the moment is destined to finish here. Our property's up here and this foliage has all been removed through here.

Q. Near the number 3? I'm just going to read –

A. Correct near 3 so –

Q. – certain aspects into the record so our transcription pick this up.

A. So our intention and hope would be to have this wall extended across here. There are a number of houses in this area here that have been affected by this. I don't know if they've submitted. And raising that wall, at the moment it's unspecified regarding the height of that wall and looking at other developments around Auckland they're of a sizeable height and this area could then be backfilled with fill from the development.

10 Q. Yes, so I'll just read into the record. I'll read it back in and that way you'll be able to see if I've got it right Mr Vipond.

A. Sure.

Q. The red line that currently comes around the northern edge of that access ramp to the figure 2 in a circle, you would like that red line extended on round past 2 and past 3 to a position near the eastern end, or at the eastern end, of the green vegetation shown on that plan. And you would like the whole structure to be higher. Is that right?

A. Correct, yes.

Q. Had you in mind any particular height?

20 A. Looking at other developments, probably eight feet seems to be about the height that's adopted for similar sorts of developments where they've mitigated against sound and light.

Q. About eight feet to .6 metres, 2.4 metres thank you, engineer.

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

Q. Mr Vipond, is the extension of a noise barrier that you're seeking require...

MS JANISSEN:

30 Sir if your question is exactly what I was going to just perhaps clarify that is not a noise barrier. It's a retaining wall so it's of no noise benefit or...

THE COURT: JUDGE NEWHOOK

So it's actually below the surface of that ramp is it Ms Janissen?

MS JANISSEN:

5 I'm not sure about that sir, but I think –

THE COURT: JUDGE NEWHOOK

Ms Linzey can tell us.

1240

THE COURT: JUDGE NEWHOOK

10 Ms Linzey can tell us.

MS LINZEY:

No it's not below the surface, but in that area this is where the twin layer
OGPA surfacing is proposed for the noise mitigation rather than the noise
15 barrier itself. And again sir he'll be on the stand, but part of the explanation
for that was the height that those barriers would need to be at.

THE COURT: JUDGE NEWHOOK

Is there a cross-section drawing in the materials?

MS LINZEY:

20 I don't believe so from my memory of it, but I can certainly have a check.

THE COURT: COMMISSIONER DUNLOP

If you want another way of reaching that point might be to have a look at
appendix E of G12 and – yeah it is G12 – and that shows the noise mitigation
25 measures that are proposed with noise barriers being a blue line. That's
where I was struggling, because I couldn't see a blue line. There was
approximating the orange one.

MS LINZEY:

Absolutely correct, so it's just a surfacing in that area that is proposed for noise in that case.

5 **MS JANISSEN:**

And I stand to be corrected, but I also understand that the noise predictions are such that noise will be reduced as a result of the double OGPA and what is currently there.

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

Q. That was going to be my next question, whether this mitigation Mr Vipond was sought to mitigate existing noise generated by existing traffic levels, or future – or your concerns about noise from future traffic. Because we need to understand what's projected.

15 A. Yes.

Q. What happened to traffic volumes on this eastbound offramp from SH16.

A. Yes I think there's two parts to this. One is the traffic on the existing offramp which is in position at the moment. The noise additional from
20 the new development on the other side of the motorway, part of this goes – I've made in the submission a point of view I think's quite clear in that the erroneous removal of that existing, or the foliage that was there in 2009 has not been mitigated, and despite NZTA's desire to approach the stakeholders on such matters we're yet to see any agreed terms
25 within one of the emails to be instated.

Q. Mr Vipond you've got a working knowledge of sheet 211, that was up on the board there a moment ago.

A. Yes.

Q. If the planting that's shown in 211 were to be given effect to, would that
30 reinstate or better what is being removed?

A. I think the planting will take some time to establish itself there. It will certainly improve the visual aspect to the area, and certainly improve the privacy that we've suffered in the last year and a half anyway, yes.

Q. So to summarise, although it would take time it would reinstate and possibly improve what was there originally?

A. Yep. That's –

Q. Is that a fair summary?

5 A. – correct. Yes. It was unclear from the plans as to what the, what their intention was for the area and as you pointed out the retaining wall there, there's another retaining wall from what we've now understood so it was really clarifying what the plans were for that area and we feel there is an opportunity to significantly improve that area for a number of
10 residents, and for the local community and looking at this in a way to, you know, I guess mitigate for the suffering we have at the moment and also to kill a number of birds with one stone basically.

QUESTIONS FROM THE BOARD: MS HARDIE

15 Q. Mr Vipond, have you got a copy of that, the drawing 211 that's been referred to?

A. Yes.

Q. Can you just tell me, at the moment that drawing suggests that there is existing vegetation retained. Do you believe that the general layout of the vegetation where it says "which will be retained", which assumedly is
20 existing, is actually there?

A. It's been removed.

Q. Okay.

A. As other photos within my evidence show.

Q. Sure.

25 A. – it will show, yes. And NZTA have made it clear there's no mitigation for us in the interim until such time that this development's tidied up. It was erroneously removed in the first place and as we've stated, despite their assurances that (12:44:50) won't remove the regrowth that has now re-established itself in part, they've done so on two separate
30 occasions, erroneously again. With no further explanation as to why that's happened.

THE COURT: JUDGE NEWHOOK

Q. And you'd appreciate some fast growing species?

A. Of course.

THE COURT: JUDGE NEWHOOK

5 I'm going to ask NZTA to let us know next week if it has a particular response to Mr Vipond's position. He's taken considerable trouble lodging submission, bringing us information, both written and photographic, and taken the trouble to come and talk to us today about it. And whether it's the remedying of past wrongs and/or mitigation for the future, we'd appreciate having an express
10 response from NZTA on the subject, sooner rather than later, with a copy served on Mr Vipond.

MR VIPOND:

Thank you sir.

15 **WITNESS EXCUSED**

THE COURT: JUDGE NEWHOOK

Mr Turei, you're welcome to have a seat if you would like to or if you'd prefer to stand. You'd like to offer a representation to us and you filed some evidence, I think you've just provided us with a further copy of that too. All
5 right, would you like to commence with your representation.

MR TUREI READS REPRESENTATION

Thank you sir. Can I first acknowledge the Court and the hearing and the opportunity the Court provides for us to be heard. I represent Te Kawerau a
10 Maki, one of the iwi associated with this project which affects our ancestral land. Te Kawerau a Maki have supported, that we support the proposal in part and in reality we desire to support the proposal in principle, and I would like first to explain that principle if I may. In 1865, not far from here, the first meetings of what was then the Native Land Court, which has become the
15 Māori Land Court, our ancestor was asked to explain what the basis of our claim is to our land. Wataruihi opened his address with the following – I'm not going to say the whole of his thing – but the opening statement explains a principle. He stated that this land is a fish. It was hooked up by Maui. He then continued on genealogically to himself. Now he wasn't trying to convince
20 everybody that this land was a fish or that Maui was a person with a fantastic fishhook who fished up land. Rather he was explaining the principle of our association to the land and its species. And that principle is what I want to represent, and I want to define a comprehension of that principle that identifies a completely different set of value systems in our approach to the
25 land and in our approach to this proposal. Now a few hundred years earlier than that, before any European people had arrived here, at one of our conferences in Remuera where luminaries gathered to discuss important issues it was customary for people we call matakite or seeists to be participants of such and one legendary matakite, his name was Te Tau, he
30 had a dream and he woke and he articulated this dream. And what he described was something like the nautilus shells, it was (inaudible 12:50:22) be blown by the wind to these shores and establishing a new authority. It took a little while for people to interpret what that meant, but the arrival of

European ships with their billowing sails and Europeans in general were seen to be the fulfilment of a prophecy and the establishment of a new authority here in Tamaki. That prophecy gives us the basis by which we don't want to oppose the development of infrastructure, just a cut a long interpretation of that (inaudible 12:50:02) short. We want to support the development of infrastructure that provides for people today, all people. So that is the key principle as to why we support in part. The part that, is because there are concerns we have relating to the maintenance of those values I described earlier with regard to how we achieve the provision for the population today, it's growth and in the future. Now the first thing we want to do is to be heard, to exist, and so I acknowledge the Tribunal and the opportunity it gives for us to be heard. We want to be heard so we can be recognised as representing our own unique cultural base. And by "unique" I don't mean Maori, I mean a cultural base that is unique and specific to this environment. This environment which is recognised as an ecology, which is unique within the realm of Aotearoa, New Zealand, unique to this land and quite specifically because a narrow piece of land with two tides on either side separated with a difference which have provided for 50 million years for birds to have breakfast over there and when the water comes in, they fly across and have lunch over on this side. The resulting layers of guano that they left in this process is what was the foundation for our unique environment. Following on from that, the third important principle is that we participate in the activities that happen and how those activities happen, than provide for the population and provide for the future. That we participate as representatives of all that is unique to our special place in New Zealand and our special place in the world. So, the evidence I've presented and why I've come today is not because NZTA, bless them, not because they haven't listened to us, but so that we appear visibly as participants, and as participants we are understood as to why and how we are participating and from what our value base is. Generally, there are several provisions for us to participate, the Treaty of Waitangi, the principles of the Treaty, the Reserves Act, the Local Government Act, the protocols on biodiversity from the Rio Earth Summit in '92 and the rights of indigenous people which John Key, bless him has referred to as a "framework" document for us to refer to. As such, all of those documents provide the references by

which we can participate. However, the quality of that participation has been somehow undermined by the notion of consultation. Consultation which has resulted in an environment I would describe as “corrupt”. Corrupt because it has resulted in an erosion of our natural forms of leadership and supplanted that with people selected to be representatives by a selection process, of another culture. To overcome this corruption of consultation, we seek participation. This is not the first time I’ve presented this notion of participation and consequently I’ve worked on several projects with Transit New Zealand, as a learning curve for both of us. It’s a learning curve for us as an Iwi to find a way to bring our values to the table of decision making and to achieve visible and tangible outcomes that are of benefit to all New Zealanders. I’ve presented a submission which has requested a number of conditions of consent. I haven’t written those out and I’ve come with a blank page in fact with regard to what those conditions of consent may or may not be. The hearing itself might find them unnecessary as conditions, and I’m sure there are people who would argue they are unnecessary. However, from experience working with half a dozen other projects with NZTA and formerly Transit New Zealand, what we’ve found is, there are no people involved in the planning and the design of these projects who are of our culture. There are good people, but they aren’t of our culture, they are good people who are keen to listen and even accept what we may be arguing. However, given the timeframe of the projects, the person we first talked to and introduced to these ideas and perhaps start defining how we might achieve them goes to another job somewhere else and then we have another person and we kind of start all over again. And then we have another person and finally years down the track we come to implementation, tendering and then a whole new group of people come along and so we have to start again and the heat of giving effect to the proposal itself, and that’s where things start falling off the table of discussion, of acceptance and of implementation. I’ve come to be heard in this context, not because I don’t think we’ll get anywhere with the people we’re working with, in fact I have every faith we will, but I have the experience and it is an ongoing experience with Victoria Park Tunnel, with the Newmarket Viaduct, where as new people come in they forget why we’re there and they think that perhaps we’re there, and especially if it’s still under that term

“consultation”, simply to talk to us from time to time about what they’re doing or to invite us to an information session on what they’re doing and what they’ve decided, rather than inviting us to the table of decision making so we can participate. On our own path we’ve looked for ways to be responsible in this process so that we don’t become ourselves corrupt, with the opportunity of extorting resources for ourselves, and so we’ve maintained a discipline of engagement, which is now public record with all of those projects that demonstrates our responsibility with this and I would like to think that the outcomes we have achieved in terms of recognition of heritage, the maintenance of our unique biodiversity, I’d like to think we’ve achieved outcomes which all New Zealanders can celebrate. I don’t want to take up all of the Tribunal’s time in explaining what all of those things are and hopefully there are people here who are aware of them and suchlike that. One factor that has emerged is that rather than seeking outcomes such as specific artworks and suchlike that, in the construction of major facilities within our realm, there are opportunities within that to provide reference to these things so they are in built rather than add-ons or extra costs. And so the process of participation is not an extra burden to the taxpayer, but simply a participation in the mechanism that achieves those outcomes. So basically that is the purpose, the principal, the notion, and the reason why I’ve come today to present to the hearing rather than simply make my submission and walk away tena koutou.

THE COURT: JUDGE NEWHOOK

Kia ora. Your presence is very much appreciated and your representation as well. We’ve read the submission that you filed and the evidence and today as well the statement of evidence again, and your brief or two page heritage report. Now no other party has given notice of wishing to question you. So you might be home free, I’m going to see whether members of the Board have any questions that they wish to put to you.

30

MR TUREI:

Thank you sir.

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

- 5 Q. Mr Turei an aspect of your evidence concerning Te Rangi Matariki, which I'd like to ask you about. I don't know that you were able to be here earlier in the hearing, but I drew the agencies lighting engineer's attention to an article that I tripped over quite by accident in a magazine a couple of weeks ago. Which was reported experience in the Netherlands of reducing lighting on motorways at night. There were perceived energy savings and other advantages in the Dutch experience. But I notice from your submission that you're expressly concerned about the effect of lighting levels on the celestial observations from the site I've mentioned. I asked the agency engineer what potential there might be to dim the lights, and there was – I wasn't very rebuffed entirely, but there was some limited enthusiasm I sensed.
- 10
- 15 Is that an avenue that in your submission could be appropriately pursued further for cultural reasons, based on the observation practice at the Wahi Tapu you've identified?
- A. Yes I'd like to thank you for the question sir. There are a couple of aspects to how I want to answer, first if of all if we go back to how it relates to dimming the lights within a marine reserve for species. There is a little bit of research we haven't used, again from Holland with regard to using light temperature. Not just dimming them, but using different colour tones of lights, by observing which colour tones disturbs species and which don't. I used the reference to the birds before, because we've lost – most of them we've lost. The massive flocks that used to gather there, that in my great mother's time, was the hardest hit, have gone. And it's life that is taken away their opportunities. Light that provides the predators, light that robs them of their own navigational systems and light that takes away our opportunity to observe them. So I really feel we haven't actually done enough work to be responsible to the needs of a marine reserve in that context. And now then bringing it back to celestial observation and the site as it was used. I believe there's a way and I have discussed it with the engineer a little, and so it
- 20
- 25
- 30

has reinforced the notion that there is potential. Every civilisation on earth understood the movement of the sun, the moon, and planets and by this developed a calendar. Those civilisations that didn't, died. All civilisations anchored their comprehension of this somehow, before the written word we did it with stone, Stonehenge was an example of that, everything that can be decoded with the structure of Stonehenge can be found in Samaria, and Egypt, and Ohio and here in Aotearoa. What that indicates to me is that we're creating a major structure with lights on poles, there's no reason why we can't in the execution of that give consideration to these ancient principles that every civilisation understood and position them in such a way so that when we take school children up there, early in the morning, and identify them for them why we call this place Te Rangi Matariki. That we can do it in a way that is actually enhanced by the position of lights, maybe dimmed a little would be good, but so it's that that I think we can achieve with this and that is the reasons why I've asked for that as a condition of consent. Simply so that we don't or so I don't get fobbed off, with no I we can't do that 'cos we have to have the same rhythm of lights all the way through the motorway or people will get confused in their cars and drive off the bridge. I believe there is a way we can give effect those things that would inform future generations as we reinstate the site and it's values for that ancient comprehension of our uniqueness here, and our unique observation of celestial movements.

Q. Thank you Mr Turei I'll have to be guided by my colleagues in their wisdom as to how might take that forward if in fact we're able to but I appreciate what you shared with us.

A. Thank you.

QUESTIONS FROM THE BOARD: MS JACKSON

Q. Mr Turei you talk in your submission about lwi monitoring of excavations how do you envisage that happening do you have somebody standing there just keeping records do you?

A. Well we've practised this since for the last nine years, and generally most of our sites in Auckland as you're probably aware, there is more than one Iwi who has an interest.

Q. Yes.

5 A. So we either toss a coin and see who is busy or whatever, so we make sure we haven't got people standing around a hole looking at it. And then we get a sense, and we've been able to evolve a little bit over that period with things like bore holes, all you get is a bucket of mud so it's not really that useful. So things like that we turn up later and look
10 through the bucket of mud and see if there's any indicators that would suggest that maybe we should have an archaeologist present during it, or not. But one of the key things is to make sure that we're not overlapping, the same with the archaeologists, it's generally we try and schedule things so that we turn up alternately. And make it so that
15 we're not an imposition of the needs of the constructions and so that we're not in the way and everything like that. By enlarge the key reason we initiated that was because when I started working in this field 14 years ago, it was actually a couple of years after I started but, I realised and after asking around all of the Iwi at Tamaki, none of us had
20 any report ever from an archaeologist on any of our sites and so none of us had any awareness of what was or what wasn't found. And then when we started we started realising that archaeologists are interested in material culture and so if you can see it and hit it with a hammer or something they'll be interested in it, but if you can't, they're not. And
25 many things that inform us of the past aren't necessarily like that. Sometimes, simply in the layers of what's there there's information in the way those layers are. We've yet to get to where we ideally want to be where we can gather pollen samples where we know there are garden sites and start mapping out which varieties of food stuffs were
30 grown in different places and let ourselves build up that map of the development of our culture and civilisation. Did that answer the question or did I just ramble?

1310

- Q. Well yes it does, it helps thank you because obviously you work in with the archaeologists and you keep these excavations closely monitored so it sounds good.

QUESTIONS FROM THE BOARD: MS HARDIE

- 5 Q. Mr Turei I'll just follow on from Ms Jackson's questions. Just with regards to excavations and being onsite, I'm just wondering in terms of the information that you have collected from, you mentioned Victoria Tunnel, is that information, does that come back into the public domain or is that – is it written, first of all?
- 10 A. Yes it does and how do we do that is a real question, because the archaeologist haven't actually been irresponsible, they've been writing their reports and they've been filing them with the Historic Places Trust, bless them, but nobody actually gets to go into the Historic Places Trust and look at them, even though the door is open for people to do that.
- 15 Because when you do get them they're site forms and such like that and they're not really delivered in any way that anyone can comprehend. And so our means of passing on what information we gather, and generally we find information that underpins cultural narrative and so the most effective way we've found of doing that is taking it back to the
- 20 schools. If we take something like the central motorway junction which has some symbols of the karaka berries on it and that relates to the name (inaudible 13:12:44)karaka, it relates to things that we've found onsite and the practices associated with the karaka that involve ta moko and the preparation of ink for ta moko from (inaudible 13:12:55), which
- 25 is a parasite which attacks the caterpillars that eat those leaves which are on the things. So if we go to Newton School the kids know all about that and it's part of their schoolwork, their projects, their identification of what their school is, where their school is and what their history is based on and so those kids can take these things for granted, things that were,
- 30 for the population of Auckland, unknown to us all. And so that's become one of the most effective ways of passing on information that we find. There's the lodgement of it and of course in historical record and then the other way is with the museums and the zoo. And so we've looked at

ways of working with places where people go to learn about creatures, biodiversity, botanic gardens as well and how we might include those, that sort of information and those cultural narratives into the experiences people have at those places. So with the zoo we've written, we've

5 developed a project with the zoo called Te Wao Nui which helps the zoo present to a population what is unique about us. What did we have? What have we lost? If we wanted to study extinction this is the best place in the world to do it. We lose things all the time and we've lost lots of things and the things we've still got refer to those things. And so the

10 zoo's a perfect place to like fuel those narratives. At the museum I'm a member of the taumata, and so we're developing exhibitions. We're developing an exhibition at the moment on Taniwha which relates to our metaphysical concepts which are all tied in to the other things of species, the guardianship of them, the protection of them, where they

15 were in the past, where we know they were, and where we know we haven't got them now, where they might be, where we might be able to replace them from. I'm slipping over to the botanic gardens now – and so it's like that. As well we try as much as we can to run programmes with DOC, with the DOC estate. And so yeah we have a multi-tiered

20 way of feeding these things out and so there's the responsibly recording these things with institutions like the museum, conferences with archaeologists, the Historic Places Trust. But really, to my mind, the most important thing is how do we get this information to the children so that it becomes information our population can take for granted and it

25 can help people identify what is unique about us, and it can help everybody achieve that status which we hold jealously at the moment to ourselves as kaitiaki or guardians of these things. Did I answer the question?

Q. Yes you did. Yes you did, thank you.

30 **THE COURT: JUDGE NEWHOOK**

Thank you very much for your presentation today Mr Turei and for engaging personally with the process that we're charged with running and for your engagement with NZTA and the other parties. The personalisation of the

message is something that we regard as important and thank you for your particularly effective way of doing that today. We're most grateful.

MR TUREI:

5 Thank you again sir for the opportunity to be heard and to participate. Kia ora.

THE COURT: JUDGE NEWHOOK

All right, ladies and gentlemen, that I think concludes the amount of business that we were able to set down for hearing today and I think it probably also effectively concludes the amount of business that effectively we're able to deal
10 with this week. We'd also of course signalled to you that we wouldn't be able to sit tomorrow afternoon or Friday, but that we would be making use of that time for fairly extensive further reading which you've presented us with, and I suspect that that ability will extend now as well to Thursday morning and to this afternoon. Through the EPA we will want to work with NZTA to find an
15 appropriate time for Ms Linzey and Ms Wilkening to return and help us further. My current understanding is that there are a number of parties who are keen to appear before us on Monday and Tuesday and get their part in the proceedings concluded, but my understanding is that their participation won't fill the full extent of Monday and Tuesday. Through the EPA I've provided
20 some encouragement to Mr Allan to come with his team and make their presentation or be questioned next week, rather than leave it till the 24th of March because as we sit here we have the feeling that we mightn't still be sitting come the 24th of March. So I don't think he's going to be able to leave his run that late. Are there any matters of housekeeping before we rise for the
25 day, for the week. Mr McNatty?

MR MCNATTY:

Yes Your Honour. It's regards to evidence presentation. When I reviewed Dr Bellingham's evidence I found a number of errors of a date nature and a time
30 nature and there were a few matters of clarification that have come up are part of the causing reports and I just request direction as to do you wish that to be submitted, amended or have supplementary evidence?

THE COURT: JUDGE NEWHOOK

Or led orally, yes. The registrar came and showed me the draft of the amended statement of evidence and through him I directed that you consult the other parties to see what their preferences might be as between tabling
5 the amended evidence to take account of things that have changed along the way, as things do during a hearing, or to lead orally or whether there was some, any opposition to come again at all. Have you been able to talk to the other parties about that?

10 MR MCNATTY:

I have Your Honour. I've had no great preference. There was, it was apparently acceptable in the form that I had presented it and I'm happy to file it this afternoon.

1320

15 THE COURT: JUDGE NEWHOOK

Yes, all right, well if there's no opposition to that course being taken, on the part of other parties then if you will provide that to the EPA after we've risen and they'll convey it to us. Thank you Mr McNatty. Are there any other matters that we can usefully deal with. Mr Lanning:

20

MR LANNING:

Yes just one sir, in relation to the ongoing involvement of the council, that is very clear for us but I also recall Ms Wilson phoning this morning. She and Ms Devine are acting for the Local Board and it's the same issue for them.

25 I'm quite happy to take a message back to them, would you like their continued involvement or are you happy for them to speak in contact –

THE COURT: JUDGE NEWHOOK

My personal response to that is to the extent that they can assist us with ongoing matters we would like them to be present to assist, but if they have
30 signalled that they don't require to question witnesses, and given that they have a lesser involvement than the Auckland Council I don't feel the need for them to be here full-time.

MR LANNING:

We can certainly –

THE COURT: JUDGE NEWHOOK

- 5 But they might keep in touch with the process through you, as after all they're part of the same organisation as your principal client.

MR LANNING:

Of sorts I guess.

10 **THE COURT: JUDGE NEWHOOK**

Any other matters. No, all right well we'll adjourn till 10 o'clock next Monday morning.

COURT ADJOURNS: 1.22 PM

15