

**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 9 – Monday 7 March 2011**

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COURT RESUMES ON MONDAY 7 MARCH 2011 AT 10.03 AM**THE COURT: JUDGE NEWHOOK**

All right, week four. One small matter that I'll mention first thing this morning is that in terms of the order of appearances for representations and evidence
5 in the next couple of days there's one name that hasn't found its way in there and I think it should find its way into tomorrow, and that's Mr Jeff Hsi who has provided us with a couple of pages of supplementary help in answer to some questions from the Board. So maybe if you could see if he's available tomorrow.

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MS JANISSEN:

May need to check sir, he's based in Sydney.

THE COURT: JUDGE NEWHOOK

Oh that's right he is. That's right, I've actually worked out what S-M-E stood
15 for. Snowy Mountain something or other which is quite a long way from here. Yes thank you for that. We will check amongst ourselves to see who we have further questions for, come back to you. Now anything else of a preliminary nature that anybody needs to mention this morning?

20 MS JANISSEN:

Sir just some minor housekeeping matters. You'll have seen that we have lodged today the further information from the Agency with respect to the Vipond property. We've also lodged the second supplementary evidence from Siiri Wilkening, that's with respect to the Board's question about the tent, use
25 of the tent by the (inaudible 10:04:28) Christian Church. And that's all for now, thank you.

THE COURT: JUDGE NEWHOOK

Thank you very much, anybody else? Mr Allan.

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MR ALLAN:

I have one point sir and I don't know if you've received it, but this morning I have sent to the Board and copy to counsel and the major parties one final further supplementary statement which is from Bill McKay. It's a simple one-
5 pager. It has a series of letters to (inaudible 10:04:56) and Living Communities. It's attached and I obviously need to seek your leave to have that admitted. It is essentially the results of the Society's attempts to discuss with all the Waterview based submitters the options, or the alternatives if you like, for the northern vent stack location. So he's simply got a standard form
10 which they've then filled in and he explains what's happening and how.

THE COURT: JUDGE NEWHOOK

Yes I don't think I've got that. No haven't seen that. We should have a look at it to see if we are prepared to give leave to admit it.

15 **MR ALLAN:**

Yes sir.

THE COURT: JUDGE NEWHOOK

Can you hand it to the registrar.

20 **MR ALLAN:**

I've got one, I've got one here from Ms Hartley. So what you're getting is my email which has the request for leave and very brief grounds for that, and then attached to it is a single page of evidence followed by 45 very similar forms. And the forms reflect my client's understanding of all the Waterview based
25 submitters. Those are certainly the ones they identified as coming from Waterview, they managed to get round to see them over the weekend. The hope of course is that we have it to you rather longer time before I was presenting my submissions, but the truncation (inaudible 10:06:26) it's also very truncated.

THE COURT: JUDGE NEWHOOK

Yes well we'll need to talk about this at the morning break. Mr McKay is of course up to give evidence not long from now, today. This morning.

5 MR ALLAN:

Yes sir, yes after – well, I do have an hour and a half or so of submissions before him.

THE COURT: JUDGE NEWHOOK

Right well we'll have a look at that during the morning break I think Mr Allan.
10 I'm not prepared to scramble through that just at this moment.

MR ALLAN:

No and I'm not expecting you to. I just wanted to make sure that you were aware that it was there and had a chance to look at it.

15 THE COURT: JUDGE NEWHOOK

Now the first party to appear before us this morning Margot Phillips. Is she present? Yes hello Ms Phillips would you like to come forward. Ms Phillips, before you speak from there would you like to travel around to the witness box and just approach that great big map on the wall and point out Methuen Road
20 to us. If you're in front of the – not all the streets are named there, but you're probably quite familiar with the neighbourhood and hopefully can find it for us. Travel along behind the witness box. It's probably under one of those big labels is it?

25 MS PHILLIPS:

So this is Methuen Road that runs round here.

THE COURT: JUDGE NEWHOOK

Yes okay, to the west. Immediately to the west of sector 8, almost a join
30 between sector 8 and sector 9.

MS PHILLIPS:

And my house is just there.

THE COURT: JUDGE NEWHOOK

By sector 9 or in sector 9. Okay thank you very much.

5 1010

MR DORMER:

Are you on the park side or the other side of the road?

MS PHILLIPS:

10 The other side.

THE COURT: JUDGE NEWHOOK

Right Ms Phillips would you like to read out your representation statement to us?

15 **MS PHILLIPS:**

I would, and I just wanted to say thank you for the opportunity. I am seeing a number of actions to address the potential for distress from noise from both construction and once the motorway is built. Two groups. Double glazing and therefore a subsequent air-conditioning unit, and the potential for further measurement and potential mitigation from that, of noise at the house. Methuen Road, as I pointed out, curves around the face of a hill, above where the motorway goes higher, and my complaint stems from the fact that I had an experience two years ago, in February, where I made a complaint about noise coming from a party on Hendon Avenue. Two times security officers were sent out by the council and two times they said the noise was not excessive, that was because they were at street level. In Methuen Road a number of residents complain about the parties that happen there, obviously the noise isn't distressing at street level at Hendon Avenue, but it is distressing to residents on Methuen Road and I think that there is some kind of sound bowl effect with noise coming up. I have tried to read the reports that have been put up on the website with regard to this project, I am not a sound engineer or noise engineer, but from what I have been able to read there isn't anything

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that addresses that situation or seems to recognise that effect. The only assessment point for sound that I could find was at 204 Methuen Road, which is much lower than our house and is around the bend, there's considerable bending within Methuen Road. That was assessed at an average of

5 47 decibels though. Other maps that I have looked at imply that the noise around our house will be about 65 decibels and so that's an increase of about 38%. I do think that, because of the potential sound bowl effect that, it could be higher than that. So that's why I would be looking for double glazing, if you double glaze you can't sleep and breath without the windows open, so an

10 air-conditioning unit. So that's the first part why I would like double glazing and an air-conditioning unit, and the second bit refers to the actual choice of mitigation, from my reading of the mitigation choices, option 4 was the preferred one because of its visual effect, not because of its noise mitigation effects, and also safety concerns I think were the other one. So I am

15 concerned that the noise mitigation perhaps is not as good as it could be. The other problem, I suppose, is that when you are reading these potential decibel ratings they are an average over 24 hours, which means that, if you had jumbo jets flying over you for one hour continuously and then it was silent for the rest of the other 23 hours, the average would be really acceptable, but

20 obviously that hour would not be acceptable. I am assuming that with the actual motorway the noise is going to be constant but construction would not be like that, so I am concerned that there is potential for great noise during construction, followed by silence, and therefore the average is fine, whereas you might be driven mad during the construction time. The mitigation that is

25 proposed is just a strength area, I was on a focus group for earlier considerations of this motorway and a lot of – and the focus group that I was on was about noise mitigation, there were lots of different possibilities put forward, low, straight plain barrier was probably the least likely choice for effective noise mitigation. So I am not convinced that that choice is actually

30 the best one that is there, but if it is, if that is what is gone for, then I would ask that there was a condition put on that that could be revisited, that measurements could be taken at mine or surrounding houses and that things are not in concrete, at the point that motorway construction starts. We don't seem to have been consulted in the street. We haven't really been given the

current plan for the motorway. I have talked to neighbours and found that the plan is slightly different to what we have seen. We would like to be consulted I think. I guess it is an imperfect science. I wouldn't like that, once it's decided this is the way that it's going, that everyone accepts that that's the way it is and the measurements will be as they predict, are predicted, because I don't think they will be predicted accurately. If I can say one last thing, I have walked around my neighbours quite a bit and, without being big headed, I am probably the most educated, accessing the Court, accessing the reports, accessing everything to do with this Hearing, has not been simple for me and I fortunately have a relative who has done a planning degree. I know that my neighbours would like some more information. Thank you.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Before you go one or two of us might have questions for you, I've got one that I would like to lead off with. Were you here on Thursday morning before we finished for the week, I don't think you were?

A. I haven't been able to attend.

Q. You haven't been able to come. We have been hearing a lot of evidence and the five of us have been pretty active in grilling the witnesses, particularly the NZTA witnesses about many issues, but in particular about noise, that has been a biggie in the hearing, we have spent a lot of time grilling them in the construction noise aspect that seems perhaps top of mind for you, is one that we were having quite a go at them about last Thursday because their predictions are fairly high and we weren't sure that we were all that happy with what they were coming up with, so I will simply offer you the thought that we are endeavouring, if consent is granted, and that's what goes – that statement has to go in front of everything that we deal with in detail. We are particularly concerned to nail down a workable and fair noise regime and we have been spending quite a lot of time and energy on it.

A. I am pleased to hear it.

Q. I can't promise you that the perfect world would – will emerge if we grant consent to this motorway, we can't wrap it in cotton wool, there will be

effects, but we are very concerned to make sure that something fair and workable emerges if we grant consent to it.

A. Thank you.

Q. Well let's see if my fellow board members have questions for you,
5 staring along on my right.

QUESTIONS FROM THE BOARD: MR DORMER - NIL

QUESTIONS FROM THE BOARD: MS HARDIE - NIL

QUESTIONS FROM THE BOARD: MS JACKSON

Q. Just a couple of questions Ms Phillips. When you have complained to
10 the Auckland Council about the noise, did they come and take measurements at your property?

A. No.

Q. So they just measured them where the noise was being actually made?

A. Yes.

15 Q. So nobody appeared on your street to take measurements at all, so now do they know what the effect on your property was?

A. They didn't, and in fact, that was a source of ongoing conflict between me and the council for some time until they sent me the reports from the security guards.

20 1020

Q. But you still had no idea of what the reading was at your property?

A. No.

Q. That's interesting. The other question is just to make it clear where your property is. So will you be directly in front of the cut and cover, will you?

25 A. I'm assuming that that part of the park is cut and cover, by your question. I mean the only map that we've been given as residents actually shows the road above ground level and I gather that maybe that's changed.

Q. In your submission you said the vent building is visually inappropriate.
30 Will you see it from your property?

A. I don't – that's not my submission.

Q. Oh, because that's what I've written in my notes when I was revising everything.

A. I think I did say that there will be like pollution will be visual, pollution as well. But the thing that I wanted to really submit on was noise because

5 noise drives me (inaudible 10:21:10).

THE COURT: JUDGE NEWHOOK

Thank you very much Ms Phillips for your constructive approach. Thank you very much for your representation this morning.

10 **MS PHILLIPS:**

Thank you.

NATIONAL TRADING COMPANY OF NEW ZEALAND LIMITED:

MS KIRMAN:

I'm also here representing Housing New Zealand as well so I might hand up
5 both set of submissions to save time.

THE COURT: JUDGE NEWHOOK

Yes, why don't you do that. Thank you very much. All right, which one of
these will you address us first?

10 **MS KIRMAN:**

I'll start sir with the National Trading Company. It's a very brief set of legal
submissions.

MS KIRMAN READS OPENING SUBMISSIONS FROM PARAGRAPH 3

15

"...10th of February."

Sir did you want me to outline those conditions? They're fairly
self-explanatory.

20 **THE COURT: JUDGE NEWHOOK**

No I didn't think I feel the need for you to do that.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

25 "In conclusion NTC... and noted above."

THE COURT: JUDGE NEWHOOK

We'll see if members of the Board have any questions for you about the
National Trading aspect.

QUESTIONS FROM THE BOARD: MS HARDIE – NIL

QUESTIONS FROM THE BOARD: MS JACKSON

Q. Just one small question. When you do the assessment of your building before construction starts I suppose this will mean that you'll have a comprehensive photographic record of the buildings?

5 A. I assume so –

Q. Of the structure?

A. – but I don't, I don't know for sure. Perhaps Ms Janissen might be able to answer that question in terms of –

10 **MS JANISSEN:**

Sorry I wasn't – I didn't hear the question.

MS JACKSON:

There's a requirement to do an existing assessment of Pak'nSave before construction starts so that you can identify any damage in the future. I just wanted it clear that that will involve a comprehensive photographic record.

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MS LINZEY:

That – yes, that's a process set up (inaudible 10:27:58). Sorry, that is a process of the settlement management plan what I understand it, do a survey and photographic record.

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QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP – NIL**QUESTIONS FROM THE BOARD: MR DORMER - NIL****QUESTIONS FROM THE COURT: JUDGE NEWHOOK - NIL**

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HOUSING NEW ZEALAND CORPORATION:**MS KIRMAN:**

5 Sir you should have in front of you a set of submissions with an A3 map at the
end of the submissions. And there's also an amended statement for
Ms Orchid Atimalala which just reflects the fact that her original statement
referred to the map being included in the submissions of (inaudible 10:28:47)
so it's just been amended to reflect the fact that it's now attached to the legal
submissions.

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MS KIRMAN READS OPENING SUBMISSIONS

"... 11th of March."

15 And indeed all of the keys have already been handed in for those properties
by the tenants.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

20 "In addition to... Corporation and NZTA."

And sir, on page 4 I begin setting out those conditions where amendments
have been made to reflect the Corporation's concerns. These, since writing
these submissions, these conditions have changed as a result of the
25 caucusing on Friday. So Ms Atimalala was actually present at the caucusing
(inaudible 10:35:36) with the new conditions, but for that reason I don't
propose going through these because they are now slightly outdated.

THE COURT: JUDGE NEWHOOK

So the ones that we have here on page 4 and page –

30

MS KIRMAN:

They go over several pages sir.

THE COURT: JUDGE NEWHOOK

– 5. Several pages, are not the Friday version, they are the pre-Friday version?

5 **MS KIRMAN:**

Mmm.

THE COURT: JUDGE NEWHOOK

This is the planner's caucus isn't it?

10 **MS KIRMAN:**

That's right.

THE COURT: JUDGE NEWHOOK

Thank you for that.

15 **COUNSEL CONTINUES READING OPENING SUBMISSIONS FROM PARAGRAPH 15**

"Southern portal. It... along Hendon Avenue."

20 And sir I've just set out the properties that the Corporation owns along Hendon Avenue.

THE COURT: JUDGE NEWHOOK

Yes we've seen that evidence.

25 **COUNSEL CONTINUES READING OPENING SUBMISSIONS**

"The Corporation considers... general designation condition."

And perhaps I could just pause and give the Board time to read it.

THE COURT: JUDGE NEWHOOK

Yes, thank you.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

5

“The Corporation opposes... amended as follows.”

And sir that's been discussed with KiwiRail and they're happy with that amendment and I think the proposal is that it would be incorporated in the –
10 as part of the caucusing that occurred on Friday in that statement.

THE COURT: JUDGE NEWHOOK

Okay just pause for a moment while we have a look at this. Yes okay, thank you.

15 **MS KIRMAN:**

And just in conclusion sir the Corporation asks that the Board of Inquiry amend the proposed conditions in clause 11, 13. It's a CNV (inaudible 10:42:32) in the manner accorded above. So that's with our earlier conditions sir.

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

Q. I have one question for you Ms Kirman, it's this. You've advised us that certain conditions have been the subject of an agreement by planners' caucusing last Friday and it's helpful that this process should continue. We approve of it. We've yet to see the further iteration of these
25 conditions as a result of that caucusing. If questions arose in our minds about the further amended conditions and we thought that they might impact on your client, would you be available or Ms Atimalala to come and assist us further?

A. Yes sir.

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

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP - NIL

QUESTIONS FROM THE BOARD: MS HARDIE - NIL

QUESTIONS FROM THE BOARD: MS JACKSON - NIL

THE COURT: JUDGE NEWHOOK

- 5 I've nothing further to add of this Ms Kirman. Thank you very much for your participation.

MS KIRMAN:

And were there any questions of our appealing witness?

10 **THE COURT: JUDGE NEWHOOK**

- For myself, no. Does anybody feel that they wish to ask any questions of Ms Atimalala, in which case we would have her sworn in for that purpose. No we're comfortable with her evidence at the moment and we will be weaving it into the mix. I don't think we need to ask her any questions at the moment
15 and we haven't had any other parties signal a wish to cross-examine her either. Thank you very much both of you. All right now, New Zealand Forest & Bird and Motu Manawa Restoration Group, Mr McNatty.

NEW ZEALAND FOREST & BIRD AND MOTU MANAWA RESTORATION GROUP:

MR MCNATTY:

- 5 First there's just a simple introduction of myself and I presume if they can just take that as read.

THE COURT: JUDGE NEWHOOK

Yes we've seen that.

10 **MR MCNATTY:**

- And I move into a clarification. I ask the Board to note that the submission in a subsequent document (inaudible 10:46:29) in the name of the Forest & Bird Motu Manawa Restoration Group and I request the Board note for the record that while there are many branches and interest groups within Forest & Bird
15 there is only a single legal entity, and that is the Royal Forest & Bird Protection Society Incorporated and should the Board consider it either necessary or appropriate the Society will seek leave to be considered as its successor.

20 **MR MCNATTY READS OPENING SUBMISSIONS**

"In a general... the Society contents."

THE COURT: JUDGE NEWHOOK

- Could you pause there please Mr McNatty, before I lose sight of it, I want to
25 take you back to your paragraph 18. You have submitted that the consequence of granting consents for the Patiki interchange 2000 altered the volume of traffic effects on the adjacent non-consented motorway, such that they substantially increased in intensity scale and activity prior to the operation of the interchange. Now, even taking that statement at its face, by
30 remembering that you are not giving evidence to that effect, but even assuming that it's right, where is the evidence in front of us that there has been a change in the character intensity and scale of discharges of

contaminated stormwater at Patiki interchange, where do we find that evidence?

MR MCNATTY:

5 I am not sure that date on, then I apologise, for the date, I was reading the consent application documents there, Assessment of Environmental Effects for the Patiki Project, for that project.

THE COURT: JUDGE NEWHOOK

Yes, so you have made –

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MR MCNATTY:

I've made a –

THE COURT: JUDGE NEWHOOK

– you appear to have made an assumption that increased traffic will have produced increased scale in intensity and character of stormwater discharge contain contaminants, is that the position, or –

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MR MCNATTY:

Consistent.

20 **THE COURT: JUDGE NEWHOOK**

Or can you point us in the direction of some evidence filed on behalf of your society or otherwise that that has occurred?

1100

25 **MR MCNATTY:**

No sir the only evidence I have is that there's a linear co-relation between sediment and traffic volume and that it comes from the evidence of Dr Tim Fisher.

THE COURT: JUDGE NEWHOOK

30 All right, well we'll have a look at that. Thank you. All right please continue.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“The Society contends... included policy 5.”

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And the way I would read that – and I’m sorry if I’m moving away from my script here – there appear to be a double consideration, in other words otherwise avoid remedy or mitigate adverse effects of activities in relation to those purposes is a separate duty than the duty that’s in section 2, or part 2 of the Act. The Society submits that the derived statutory baseline for – and we have, that’s our own derived statutory baseline – for non-permitted discharges from State Highway 16 into Motu Manawa, Pollen Island Marine Reserve under the Marine Reserves Act, is zero. And that the required consideration of item 1(b), (c) and (d) of policy 5 – and I’m sorry I missed, I’ve got a word missing there – of the New Zealand Coastal policy statement is sufficient to warrant a selective scrutiny of the status of the adverse effect, including (inaudible 11:03:09) future effect.

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COUNSEL CONTINUES READING OPENING SUBMISSIONS

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“The Society submits... the following relief.”

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THE COURT: JUDGE NEWHOOK

Just pause for a moment please, I want to take you back to paragraph 33 where you have made a submission that since the 2009 amendment the discretion to regard an affect as limited is permitted either by a National Environmental Standard or the plan. You then offered us at section 1042. In making your submission in paragraph 33 haven’t you read the section you quote as though it had another word added into it, that is in the third line after the word “environment” as though it had the word “only” tucked in there, haven’t you actually turned it on its head? Or haven’t you turned a permissive phraseology into a limited phraseology, a constrained situation?

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MR MCNATTY:

I would read that sir as the consent authority may disregard an adverse effect on the activity if a National Environmental Standard or the plan permits an activity with that effect.

5 **THE COURT: JUDGE NEWHOOK**

Well that's what it says.

MR MCNATTY:

If I, if I have misconstrued that in my opening paragraph of 33 ...

10 **THE COURT: JUDGE NEWHOOK**

Because you see in paragraph 33 you have used the words "is limited" which is not a phrase I find in section 1042, perhaps we will just have to leave the point there shall we?

15 **MR MCNATTY:**

Yes sir, I think I chose a wrong two letter word there.

THE COURT: JUDGE NEWHOOK

Well we will think about what you have submitted to us, carry on.

20 **MR MCNATTY:**

I will move back to 34 then.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

25 "Under examination both ... of this representation."

THE COURT: JUDGE NEWHOOK

I want help with just one more thing please Mr McNatty. Looking at your paragraph 30, you refer to the *Auckland Volcanic Cones Society* case and you record that Transit offered in that appeal hearing, by agreement, sediment
30 treatment to achieve the removal of 90 to 95% total suspended solids. You

haven't given us a paragraph reference within that decision, are you able to do that?

MR MCNATTY:

5 I will definitely do that for you sir.

THE COURT: JUDGE NEWHOOK

Yes, there is a point that I would like to revisit in that decision, if it is quite as you have stated it, and I am also a little bit mystified as to the rather vague and uncertain 92%/95%, that doesn't sound like a scientific condition being
10 imposed by the Court there. So if you would come back to us a bit later in the day with the paragraph number.

MR MCNATTY:

I understand it was an agreed – a sediment treatment volume that was
15 accepted as a result of concerns raised.

THE COURT: JUDGE NEWHOOK

Yes, well I am interested to know what the Court imposed, whether by agreement or otherwise.

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP

20 Q. Mr McNatty, on page 10 of your submission, in paragraph 37.1.1, you seek a relief there that would be applicable for the duration of the project. Could you just clarify whether that means the construction period of the project, or do you mean for as long as the work is in place and the consent is in effect, if it were granted, what do you mean there?

25 A. I have in mind a much longer period than just the construction period sir. It is related to the concept of how the Traherne Island management plan may be incorporated into consent, and whether a document such as that might be able to be built on. So I would, I would say, if I had a wish list there, for as long as State Highway 16 was running as a,
30 running as a causeway, a corridor.

Q. So at least as long as any consent were in effect, would that be a way of summarising?

A. That would be an excellent way of explaining it sir.

QUESTIONS FROM THE BOARD: MR DORMER - NIL

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

QUESTIONS FROM THE BOARD: MS JACKSON – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK - NIL

MR MCNATTY CALLS

MICHAEL PHILLIP ALEXANDER COOTE (AFFIRMED)

1120

Q. Is your full name Michael Phillip Alexander Coote?

5 A. Yes.

Q. Have you prepared evidence dated the 17th of December 2010?

A. Yes.

Q. Was your evidence prepared from your field experience as a team member of the Forest & Bird Motu Manawa Restoration Group?

10 A. Yes it was.

Q. Is there anything in your evidence you wish to correct?

A. No.

Q. Can you confirm that your evidence is true and correct?

A. Yes.

15 **THE COURT: JUDGE NEWHOOK**

Questions from NZTA, Mr Law.

CROSS-EXAMINATION: MR LAW

Q. Just a few quick questions which I think you've already had the benefit of seeing in writing. So just quickly, what expert qualifications do you
20 have?

A. In relation to?

THE COURT: JUDGE NEWHOOK

The business in hand.

CROSS-EXAMINATION CONTINUES: MR LAW

25 A. I'm not sure, when you say "expert" it's very open I'm not sure what you mean.

Q. Well okay then. Let's – could you please advise if you have any formal qualifications in any of the following; coastal processes, marine ecology or botany?

A. None.

Q. And as your evidence is headed “Statement On Non-Expert Evidence” could you please confirm that you do not purport to be giving any expert evidence –

5 A. That is correct.

Q. – on this (inaudible 11:21:47) report.

QUESTIONS FROM THE BOARD: MS HARDIE

10 Q. Just one question with regards to you’ve mentioned that you’d like to see the retention of the culvert at Rosebank. Can you just explain a little more on that for me, why you’d like to see it retained?

15 A. We originally requested that because we wanted to maintain tidal flushing along the edge of the Rosebank Peninsula that abuts the Motu Manawa Pollen Island Marine Reserve. There is a culvert at the moment that doesn’t function very well, but it does allow some measure of tidal irrigation. Our concern was that if that culvert were removed, as was proposed by NZTA , that would mean that there will be a loss of tidal irrigation at that end of the marine reserve where it’s impounded by the causeway of State Highway 16 and the edge of the Rosebank Peninsula, and thus the area would become entirely reliant on tidal
20 flushing coming in only from the overbridge which is nearer to the Oakley Creek end.

QUESTIONS FROM THE BOARD: MS JACKSON - NIL

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP - NIL

QUESTIONS FROM THE BOARD: MR DORMER - NIL

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

RE-EXAMINATION: MR MCNATTY – NIL

WITNESS EXCUSED

MR MCNATTY CALLS**ROBERT MARK BELLINGHAM (AFFIRMED)**

Q. Is your full name Mark Bellingham?

5 A. Actually I need a correction there, my full name is Robert Mark Bellingham but no one knows me as Robert so it's been dispensed with for several decades.

Q. Have you prepared evidence dated 17th December 2010 and amended and resubmitted 1st of March 2011?

A. Yes I have.

10 Q. Are your qualifications as set out in paragraph 3 page 2 of your evidence?

A. Yes they are.

Q. Is there anything in your amended evidence that you wish to correct?

A. No not apart from my name.

15 Q. Can you confirm that your evidence is true and correct?

A. Yes I do.

CROSS-EXAMINATION: MR LAW

20 Q. Let's start off with the same question as I asked of Mr Coote. Do you have any – well let's say adaption – do you have any formal qualifications in avian or marine ecology, coastal processes or stormwater management?

A. Yes I do, ah –

Q. And which - sorry you continue.

25 A. I've got a Bachelor of Science in ecology and zoology and geology actually, and my PhD is actually in planning and ecology but someone had to take the lead and it was planning and it's about biodiversity planning so – and I worked for the New Zealand Wildlife Service for several years as well, mainly working on birdlife on northern harbours.

30 Q. And so when you said "ecology" you're talking about avian and biodiversity, not specifically marine ecology that's not an area of expertise?

A. Oh no I've done work on marine ecology. In fact some of the work that I did in the Pollen Island area was with Professor Val Chapman who did the original work in this area in 1950 something or other, and his information formed the basis of the nomination that Forest & Bird prepared for the marine reserve application.

5

Q. I appreciate Dr Bellingham that you have experience (inaudible 11:26:31). My question was whether you have a specific qualification in relation to marine ecology?

A. Well I – my undergraduate zoology degree is in that and then consequent to that I've, have considerable experience in that and the caucus accepted that for several decades.

10

Q. Let's move on to the culvert –

THE COURT: JUDGE NEWHOOK

Q. Can I just cut in there Mr Law. I'm not entirely happy with the answers you gave and I'm not prepared to sit through questions about other substantive matters without having the qualifications remedied, or the record about the qualifications remedied Dr Bellingham. To my knowledge, because I knew him, Dr Val Chapman was a botanist. Am I right?

15

A. That's correct.

20

Q. Now you've said that you have an undergraduate science degree. I want you to be more specific about what that was. Where was it from? Was it from Auckland University?

A. Partly from Otago and then I finished it at Auckland.

25

Q. Yes. And what was the degree in? What kind of ecology was it in?

A. Well my final year there's a general ecology paper in marine ecology, was the main ecology paper I specialised in. And that was Professor Morton and Professor Chapman's paper. And then at the same time I was also doing geology and that was mainly in palaeontology and marine sedimentology.

30

Q. Yes all right. Well it's not very helpful that you haven't included those qualifications in your statement and qualification in your evidence Dr Bellingham.

CROSS-EXAMINATION CONTINUES: MR LAW

- 5 Q. I'd like to discuss now with you the culvert issue that I think was raised by Member Hardie. Can I refer to your revised evidence-in-chief dated 1st of March, paragraph 24. That's on page 8. Have you got that there Dr Bellingham?
- A. Yes I do.
- 10 Q. So you state there don't you that Dr Stewart also agrees that clearing the blocked culvert under the motorway to increase tidal flow and circulation into the area impounded by the motorway causeway should be revisited. Is that correct?
- A. I don't state that. Oh yes, sorry yes I do. That was what was in Dr Stewart's report in clause 75.
- 15 Q. Now if I could now refer you to the coastal processes expert caucusing statement dated 28th of January, paragraph – sorry first of all to paragraph 5 of that caucusing statement. Do you have that statement? If I could refer you there to paragraph 5, and that records first of all that all parties, Dr Stewart and yourself included, conclude that the existing culvert should be decommissioned because of its poor designed doesn't it?
- 20 A. Yes it does.
- Q. Then if we move on to paragraph 11, where there you and Mr Coote propose a new replacement culvert, that Dr Stewart does not agree with the replacement culvert sought by yourself and Mr Coote, is that correct?
- 25 A. That is correct.
- Q. And that also Dr Stewart does not support a replacement culvert due to the issues around habitat loss and mobilisation of historic sediment bound contaminants, is that correct?
- A. That is what is stated there, yes.
- 30 Q. So the reference in your revised evidence is, well at the very least now, out of date?
- A. No, not at all, it simply – there was a matter of disagreement in this caucusing and there were similar matters of disagreement in the ecological caucusing which the Board sought some clarification on and

the thing is that I disagree – I agreed that the current culvert should be decommissioned because it simply doesn't work and Dr Bell ably demonstrated that and it was a waste of time keeping something open that was simply going to silt-up because it was badly designed right from the start and never properly maintained and so what I was trying to give was some context as to –

THE COURT: JUDGE NEWHOOK

Pause there Dr Bellingham, Dr Bellingham I am not sure that you are actually quite on the point of the question. Mr Law could you put the question again?

10 CROSS-EXAMINATION CONTINUES: MR LAW

Q. Simply that the statement that – in your evidence in your revised evidence, Dr Stewart also agrees that clearing the blocked culvert should be revisited, is now out of date, given the statement in paragraph 11 of the caucusing statement?

15 A. No I don't, I don't concur with that.

Q. You accept that, in the caucusing that Dr Stewart does not agree with the need for replacement culvert?

A. Yes I do agree with what is in the minute.

Q. All right, I don't know that I can take that matter any further. Just quickly, if I could now refer to your revised evidence at paragraph 19. Now, in the section – the additional section, the redlined, sorry the underlined section, you state there that most of the motorway stormwater will only be treated to the TP10 75% removal stated, and then you go on to say that only the small length of the Waterview Bay causeway will be treated to an 80% removal standard. Is that correct – that's your statement?

A. That's what there, yes.

Q. Are you aware that all of State Highway 16 from the Great North Road interchange to Te Atatu is being treated to the 80% TSS removal standard? So that's from Te Atatu to the Great North Road, so that's all the sections that discharge directly into the CMA?

30 A. I stand corrected then.

Q. And so when you refer to “most of the motorway stormwater only being treated to TP 10 guideline level 9 of 75 you are referring there to the remaining areas of surface motorway in sectors 6, which is the Great North Road to St Lukes and sector 9 which of course is the Alan Wood Reserve, so it's a designation area, is that correct?

5

A. My evidence doesn't really concern the stuff beyond the marine reserve going towards Te Atatu. The concern for the society and in terms of preparing my evidence was relating to what was being delivered, particularly into the Waterview Bay area and that's at that lower standard.

10

1135

Q. Even if we look at the causeway length itself, which is at 2.3 kilometres, if that were being put in fresh you would not accept that that was a small area of untreated discharge would you?

15

A. Fresh? Sorry I don't –

Q. So if this was a new application, there were no causeway there and we were proposing 2.3 kilometres of untreated stormwater discharge, you wouldn't I suspect call that a small area of discharge?

20

A. It's relative to the rest of the length of the discharges that are going into – of the motorway system that are discharging into that impounded area and it's – that was the point I was trying to get across.

Q. And finally, do you accept that around 98% of a sediment discharge coming into the inlet, so that's the Waterview inlet here, from Oakley Creek will not be derived from the project?

25

A. If that's what's Dr Fisher's and your other experts show, then I accept that but the problem is at the mouth of Oakley Creek that's the most contaminated area and that's where the continual accumulation is going to be.

QUESTIONS FROM THE BOARD: MR DORMER - NIL

30

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP - NIL

QUESTIONS FROM THE BOARD: MS HARDIE - NIL

QUESTIONS FROM THE BOARD: MS JACKSON

Q. Dr Bellingham, Mr McNatty in his submission referred to historic contamination and the submission request that past contamination be cleaned up. I just wonder what Forest & Bird have done in that time to let things get so bad. Have they been onto the ARC and made any submissions to stop this contamination getting so bad?

A. Well firstly Forest & Bird isn't a regulatory agency and the two agencies that are in charge of this is Department Of Conservation for their reserve and the Auckland Regional Council, who are now the Auckland Council and a small privately funded group has limited resources in terms of actually administering and enforcing the RMA and Water and Soil Conservation Act. So what we do – have done, I mean when we – when I nominated the marine reserve we actually tracked down some, the known sources of contamination, and particularly Auckland City with its unconsented combined sewer stormwater discharges and we managed to get those closed down. And very recently Dr De Luca identified problems with contamination in Waterview Bay from an industrial site. We took that matter to the council's pollution hotline to be investigated. We're not aware that NZTA took that up. So we're trying within our resources, but I'm not sure, you know, possibly the only avenue left for us is maybe to take legal action against the continuing – appears to be unpermitted discharge of contaminated stormwater into that area. But I expect it's something that the council really should be doing.

Q. I agree with you, compliance is often a follow-up of reports from people just out in society so yes it's good to know that you have taken, you've put some importance on the problem, but whether it gets followed-up or not is obviously beyond your control. Thank you.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK - NIL**30 RE-EXAMINATION: MR MCNATTY**

Q. If we go back to the, your statement about the culvert, was that in the context of contamination management within the bay or an absolute must have situation?

5 A. I guess it's in relation to probably contaminant management because that channel at the Rosebank Road end used to provide about 40% of the water to the tidal area of the embayed area. This is the pre-1952 situation. And so it was quite significant in terms of providing water in that area and we're concerned that even with 80% treatment there's still going to be accumulated contaminants going into that bay that won't be carried away, and basically that Rosebank end, they're just going to settle there, they're never going to move and we're concerned with a long term contamination in effect of the (inaudible 11:40:19) right across that whole area as those copper and zinc and PHs and various other contaminants continue to accumulate there. So we're looking at some way of providing better flushing across the embayment. From 15 Dr De Luca's work it didn't appear that there was any significant problems with the untreated contaminated stormwater going into the seaward, the open side of the marine reserve. That seemed to be dispersed, so we were looking at some mechanism to transport the accumulated, accumulating material back into the greater harbour so it 20 will be dispersed.

WITNESS EXCUSED

COURT ADJOURNS: 11.41 AM

COURT RESUMES: 12.02 PM

THE COURT: JUDGE NEWHOOK

Now Mr Jeff Hsi, we don't require him to come from the Snowy Mountains to talk to us about his answers to our questions, thank you Ms Janissen.

5

MS JANISSEN:

And will you not have any questions of Mr Hind either then?

THE COURT: JUDGE NEWHOOK

10 No, that's the second part of that issue. So thank you for supplying that statement. Now a question for you Ms Janissen. In relation to Mr Allan's application to lodge a supplementary statement by Mr McKay today what is your attitude to that?

MS JANISSEN:

15 Sir I've got no objection, but I would seek leave to briefly cross-examine Mr McKay, just five minutes if possible.

THE COURT: JUDGE NEWHOOK

20 Yes all right. Does any other party have any opposition to Mr Bill McKay's supplementary statement dated today being lodged and considered by us?
No. Then it's our decision Mr Allan that it be admitted.

MR ALLAN:

Thank you sir.

THE COURT: JUDGE NEWHOOK

25 Naturally as I think you've anticipated in the carefully worded submission that you placed before us, the matters go to weight and those are ultimately matters of course for us.

MR ALLAN:

Yes I agree to that.

THE COURT: JUDGE NEWHOOK

So that brings us to you Mr Allan and your opening.

5

MR ALLAN READS OPENING SUBMISSIONS

“... cannot be rectified.”

10 And you'll notice sir that probably 90% of my cross-examination was on those
two issues. Probably 90% of my submissions on the facts in this case are
going to be on those two issues as well. It's a critical issue in terms of the
submitter's position. But there is also a second category that is also
important. That is the provision of appropriate improvements in connectivity
15 and compensation for loss of open space.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“As I say... of the conditions.”

20

What I mean by that sir is we might get to the point where that currently green
set of conditions has morphed again or at the end of the hearing there may be
some final wording.

THE COURT: JUDGE NEWHOOK

25 Or well it has already, it did on Friday.

MR ALLAN:

It's a rather – it's a moving target, it's rightly a moving target. I haven't dealt
with those matters in detail at all in these submissions because the outcome
30 on those major issues are the critical things. There may be at some point
towards the end of this hearing but if there's some indication as to where we
(inaudible 12:07:37) certainly on conditions there might be some worth in

having people then comment upon on the remaining detailed work. I'm not going to do it today.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

5

"Now at the... prepared to accept."

And indeed sir it obviously raises jurisdictional issues also for you.

10

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"While the relief... is essentially redundant."

You may recall sir that Mr Parlane dealt exclusively with that topic and issues related to it. Sir Harold supported the general relief of all the other parties and indeed the evidence of the other witnesses who I'll be representing, but it focused substantively on that issue again. So with the Board's leave it is proposed that Sir Harold and John Parlane not now be called as witnesses. That will avoid the need for supplementary questioning of those witnesses.

20

That's acceptable to you sir?

1210

THE COURT: JUDGE NEWHOOK

Yes I don't think anybody else sought to question them, and certainly for myself – oh yes the Auckland Council did. Do you still wish to question Mr Parlane in light of what we have been told?

25

UNKNOWN:

No sir, no we don't.

THE COURT: JUDGE NEWHOOK

So that would appear to be the sensible course, Mr Allan.

30

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"I set out ... the society's consultants."

- 5 So again sir there may not be a lot of questioning of him but I have a difficulty with him and I can't

THE COURT: JUDGE NEWHOOK

- No party has signalled they wish to question to him. I do not wish to question Mr Phillip Chase, let me just see if anybody else believes they wish to
 10 question him. None of us have questions for Mr Chase, so it won't be necessary for you to

MR ALLAN:

I would be very grateful sir if you could take his evidence into account.

THE COURT: JUDGE NEWHOOK

- 15 Yes.

MR ALLAN:

I am sure he will appreciate the (inaudible 12:11:42).

THE COURT: JUDGE NEWHOOK

- Yes.
 20

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"The list is ... then Duncan McKenzie"

- 25 I have got some additional comments to make sir with respect to Mr McKenzie, as I note there he is also a resident of Bollard Avenue and a submitter in his own right. He has addressed in his statement the basis upon which he has prepared or will give his evidence. Mr McKenzie's evidence has been carefully and professionally prepared. It benefits, in my submission,

from his intimate knowledge of the affected areas and it has appropriately acknowledged and responded to his status as a nearby resident. So he explains in some depth the relationship he has with the area and the basis upon which he has prepared his evidence so I would be grateful if we could
5 hear that.

THE COURT: JUDGE NEWHOOK

Yes, yes well we can respond right now about Mr McKenzie's evidence. He is in the unusual position of being a party and of being a local resident, which of course provides him with a great deal of on the ground knowledge as it were,
10 but also being involved in the case as an expert witness. We have quite deliberately, you will have noticed, taken steps to have him involved in caucusing beyond the planning issues in which he is particularly qualified and I think we have probably thereby, and in other ways, signalled that we have respect for the way in which Mr McKenzie has offered his professional and his
15 local evidence and have appreciated that.

MR ALLAN:

Much appreciated.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

20

"Turn now to ... discuss the background."

THE COURT: JUDGE NEWHOOK

It might be appropriate for us to say that we have appreciated the constructive way in which these things have been happening, both through caucusing,
25 meeting, negotiations, and your questioning of various witnesses Mr Allan.

MR ALLAN:

Thank you sir.

30

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“The submitters’ response ... vicinity of Alfred Street.”

- 5 That's the one down (inaudible 12:18:58) View, the one set to be between Unitec and Waterview, and I've called that the Alfred bridge.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

- 10 “Provision of a ... of Phyllis Reserve.”

As I say albeit that the Phyllis Bridge is of less importance to the submitters than are the Alfred and the Soljack bridges and I will explain that later in these submissions.

15

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“And fourthly the... and Harbutt Reserve.”

- 20 In a sense sir, what you have there is a list in terms of importance, so that the critical, the most critical one is at the top and the issues become less important but still desirable, and we say still appropriate for you to impose, as you move down the list.

25 COUNSEL CONTINUES READING OPENING SUBMISSIONS

“The adoption of ... notices of requirement.”

1220

And I don't address this resource consent at all sir. In a sense they follow the fundamental settlement and the proposal which is (inaudible 12:21:20). I'll

- 30 begin with sections 149P, 1744 and 1712.

“The Board's inquiry... under section 1712.”

So then we come to another bit which is section 1711.

THE COURT: JUDGE NEWHOOK

We'll have to give a few I think won't we.

MR ALLAN:

5 I'm sure we will.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

10 "Section 1711 addresses... of mitigation measures."

10

And sir that is one of the changes to the Act that I have to say I supported completely because I think it gave a lot more clarity to what Boards now, and Environment Court and councils were doing in terms of designations anyway, but at least it specified that the primary focus of course if what the effects it generates. So now let's look at the things that you have regard to while carrying out that test.

15

COUNSEL CONTINUES READING OPENING SUBMISSIONS

20 "Section 1711(a) refers... has been undertaken."

I've got a case reference here in following – I haven't bought a case book with me. They're cases you've seen a lot in discussion. I don't think any of them are contentious and the real issue is what does that then mean for this particular case. So if you want me to supply them I can do.

25

THE COURT: JUDGE NEWHOOK

No no. Not unsurprisingly, *Volcanic Cones* has been cited a number of times already and of course it is reported so we have very ready access to it.

30 COUNSEL CONTINUES READING OPENING SUBMISSIONS

"The obligation to... section 171 part 2 stating..."

Sir I'll let you cast your eye across that, but I think you've probably seen it in a number of memoranda submissions sir (inaudible 12:28:49).

THE COURT: JUDGE NEWHOOK

Yes thank you.

5

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"That in my... have been produced."

10 And indeed all the additional evidence that's set out in Mr Linzey's supplementary rebuttal statement is before you. They have clearly considered those issues very clearly and carefully (inaudible 12:30:08).

COUNSEL CONTINUES READING OPENING SUBMISSIONS

15

"Rather the submitters... without public notification."

That section provides some additional but consistent context to the consideration for scope of your discretion.

20

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Section 1813(a) enables... by the submitter."

1240

25 And sir that's the reference to Housing New Zealand of course in terms of option 3 which owns all but one of those most immediate houses and Ms (inaudible 12:40:26) whose note is attached to Mr McKenzie's supplementary evidence, and I'll come to that later. So that's the first category, the changes within the bounds of the designation or of the matters
30 that are integral to the designation. The second category in terms of your jurisdictional issues is the ability to impose conditions requiring offsite mitigation.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“We say there... on public amenity.”

5 In other words if there is a concern about an effect that drives a condition on financial, it's effectively a financial contribution, that in my submission is within your jurisdiction. If there is a general concern about the use of land in an area driving a particular sort of a general requirement for services that's a generic condition of the sort that you couldn't impose on this authority.

10

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“In 421 I... has been compromised.”

15 In a sense sir that's why I'm representing a coalition, because they recognise those issues. They recognise the potential for divide and rule. On a proposal this long where investment here might be great for me, but who cares what happens along the route. They decided we need to work together to get a result that's fair for all the people along the route.

20

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“The Board will... funding of this” –

25 **MR DORMER:**

Mr Allan could you just pause for a minute.

MR ALLAN:

Certainly sir.

30

MR DORMER:

I'm just trying to make a note of something that you said, I think you said, “I think it's important,” and I'd like to note it before you go on.

1250

THE COURT: JUDGE NEWHOOK

Do continue Mr Allan.

COUNSEL CONTINUES READING OPENING SUBMISSIONS FROM 5.8

5

“That brings us... the boundary.”

Sir I wonder if it might be useful, I am not going to refer to in any great detail, but just to have annexure E from Mr Walter’s evidence rebuttal just up on the
10 screen while we are going through this passage so that at least we have got it
in mind. I will keep reading while it is happening.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“There is a... Pt Chevalier and Oakley Creek.”

15

By that sire I am referring not just to the stack in the ventilation but of course
the portal, the structures that put the motorway into the portal and the ramps
that connect it to State Highway 16.

20 COUNSEL CONTINUES READING OPENING SUBMISSIONS

“The motorway will ... will reduce further.”

That brings me sir to the first of those issues I’ve identified, are you intending
25 to break at lunch, for lunch now.

THE COURT: JUDGE NEWHOOK

I am just looking for a place in the middle of this lengthy section as you have
described it concerning the Northern stack and buildings, this might well be a
convenient place. So what you have done is you have told us there are five
30 issues, you’ve brought us the submitters’ concerns as a preliminary to those
five.

MR ALLAN:

Yes.

THE COURT: JUDGE NEWHOOK

We will take a lunch break until 2.15 pm

5 COURT ADJOURNS: 12.58 PM

COURT RESUMES: 2.17 PM

COUNSEL CONTINUES READING OPENING SUBMISSIONS

5 "... within their suburb."

I should add there of course the experts who have been retained by the submitters also have that view. Although Ms Absolum goes into some detail about the compensating or the different sides to the issue.

10

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Even the evidence... a suburban (inaudible 14:21:56).

15 Put another way if you were going to put a structure like that as a sculpture into Waterview you probably wouldn't pick that location. There might be somewhere with a bit more (inaudible 14:22:04).

COUNSEL CONTINUES READING OPENING SUBMISSIONS

20

"Perceptions of art... on the community."

THE COURT: JUDGE NEWHOOK

I'm sure Mr Brown would have liked to turn the tables on you a bit Mr Allan and had you sworn in and cross-examined you.

25

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"Question 4. Public... in Oakley Creek."

30 And by that sir I'm really referring to the fact that the reserve is a very long piece of land, it follows the creek down and we see part of it from the road, but

there's a lot of it behind the houses further south and being the BP station so it's a very, it's quite an extensive piece of land.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

5

"The public's experience... currently proposed location."

And you will recall sir, I haven't got the exact detail, but I've got - the general reference is there, the discussion about the angle at which the stack is located and the fact that it is in the same place, a general point of view when you are walking up from the creek.

10

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"It is accepted ... or desirable to BP.

15

I think if you go on site sir you see that that exit lane comes quite close to the – between the road and the buildings, there is not a lot of space. If you are then going to have a bus lane come in, where there is traffic going in and out, realistically you probably want the lane exiting the BP to be going behind the building then joining that lane and moving across. It is quite a complex little exercise to carry out.

20

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"It would be... from its (inaudible 14:32:03).

25

And sir I, given the time constraints, I struggled to get all the transcript references I would have (inaudible 14:32:09) to get into this document, but you may recall I had some questioning of a number of witnesses on those issues. We went round the houses.

30

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"The BP service... (inaudible 14:33:03).

In other words the whole area is going to be recreated and it will be a different place although the qualities are things that we want to retain.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

5

“NZTA has accepted... the open space.”

And what I mean by that is we have the Avondale Camp Ground immediately to the south on the picture and the houses immediately to the north.

10

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“And it will... with option 3.”

1440

15 And I think sir, on the plan on the screen up there, Housing New Zealand, as I understand it, own all the houses there except number 85.

MR DORMER:

We had it in the evidence, in the submission this morning.

20

MR ALLAN:

Yes, yes.

MR DORMER:

25 I didn't notice – I looked particularly with care and I didn't notice that 85 was missing.

MR ALLAN:

I am sure it will be, they wouldn't just claim for somebody else's house without
30 designating and compulsory acquiring it.

MR DORMER:

Well it is important whether they own 85 or not because if they do own it –

MR ALLAN:

I am sure they don't, I checked to make sure it wasn't sir and I thought it was.

THE COURT: JUDGE NEWHOOK

5 Wasn't 85 the property that Mr McKenzie checked up on?

MR ALLAN:

10 It is, it is, that's the second paragraph of course, which is the letter from the other potentially affect house, 85 Hendon, attached to the second supplementary statement of Mr McKenzie, which Ms Salinger records her preference for option 3 and attached to, I think sir I may have attached it to the memorandum of the document I sent to you, there is a copy of the title of that property, I don't have it just with me at the moment.

THE COURT: JUDGE NEWHOOK

15 Yes, it was either on the submission or Mr McKenzie's supplementary.

MR ALLAN:

Yes and I think it may have been on my memorandum, I don't recall.

20 **MR DORMER:**

I have just gone back to the legal submissions at Housing Corp, Mr Allan you are right. They don't claim ownership of 85.

MR ALLAN:

25 I think sir, if we go through the list of the other houses we find that everything else on the side of the road –

THE COURT: JUDGE NEWHOOK

Yes we do.

30 **MR ALLAN:**

Is, is theirs. Moved on to 7.9.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"In discussions with ... of option 3."

5

So we do have the best, well certainly you have a clear statement from HNZ and you have the best that we could get from the owner of one other property. I gather from speaking Mr McKenzie that she is happy to talk to him for an hour and sign her name, but she really isn't interested in this anymore, so whether we are going to get anything more out of her I doubt and I'd accept sir it's not her evidence, it's evidence that's attached to another witness's statement, but he had (inaudible 14:43:36) question in the process he went through, but it's a clear statement from her as to her preference at this stage, and one would hope, certainly from my client's point of view that that would address the jurisdictional issue for the Board. Clearly you have then got to make a substantive call on whether option 3 is to be imposed.

10
15**THE COURT: JUDGE NEWHOOK**

Well of course there isn't an issue of admissibility so far as concerns the process of this Board akin to the situation in the Environment Court.

20

MR ALLAN:

Yes.

THE COURT: JUDGE NEWHOOK

But it is a matter of weight.

25

MR ALLAN:

Yes.

THE COURT: JUDGE NEWHOOK

That Ms Salinger has commented, second hand as it were, or only through the evidence of Mr McKenzie.

30

MR ALLAN:

I accept that sir and I guess that's a function too of the way that you treat Mr McKenzie and the evidence he (inaudible 14:44:29). It's the best we could do basically, we were given nothing.

5 THE COURT: JUDGE NEWHOOK

Fair enough.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

10 "I then come... reduced in scale."

Again sir I make the same comment about the outline plan of works in the northern stack, at the moment plans show the outline plan of works to be required, naturally relating to, as I understand it, this locality of option 3, if you were to find that option 3 is appropriate and should be required if NZTA then that plan showing the area within which they receive the outline plan of works.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

20 "Turn now to... that the pedestrian."

MR DORMER:

Just slow down we will bring it up on Google.

25 MR ALLAN:

I am talking about the one that crosses close to Unitec and meets up with – in the vicinity of Alfred Street, in the vicinity of the Waterview Bay really is the simplest way of putting it.

30 COUNSEL CONTINUES READING OPENING SUBMISSIONS

"The argument if... of Oakley Creek."

What I'm saying there is that you'll find that where the creek, the walk along Oakley Creek comes out quite near the interchange. Access to that end of the creek is affected by the same things that affect access to Pt Chevalier in the sense that houses are being replaced by motorway and no doubt very attractive planting which is a very different environment from what it is now.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

"One way of... usefulness (inaudible 14:51:34).

10

The second bridge I want to address briefly is the Soljack Bridge which is the one that will provide access across the railway at Soljack Place, a short distance south of the Pak'nSave.

15 "That would be... southern portal building."

That's because you do have a greater degree of connectivity across the open space with the portal moving 70 metres east and because that movement opens up a lot of open space that otherwise not be available. If you look at, consider the plan we looked at earlier you've got all the area that was previously covered by the lizard I think NZTA call it, the long big tall building becomes available and the space between the back building and the new smaller building 80 metres or therefore, quite a distance to the east. So there's a significant benefit to (inaudible 14:52:50) in terms of public open space. We accept that we have some flow on impacts with respect to the need and desirability for this bridge in terms of a condition still sought, but we understand that the requirement is less than it would have been.

20

25

COUNSEL CONTINUES READING OPENING SUBMISSIONS

30

"Phyllis Street Bridge... option 3 design."

In my submission that's the message we get from the evidence, both from NZTA's own consultants and from the other parties.

COUNSEL CONTINUES READING OPENING SUBMISSIONS

“And in the... (inaudible 14:56:09).

5

Sir those are my submissions. If you have any questions I’m very happy to...

THE COURT: JUDGE NEWHOOK

Thank you Mr Allan. Let’s see if my colleagues have questions for you. I’ll start from the left this time.

10 QUESTIONS FROM THE BOARD: MS HARDIE

Q. Mr Allan, you’ve just mentioned a couple of times with regards to the northern and southern buildings that the works, the outlined plan of works should be tendered. What do you mean by that?

15 A. Well handed into council. There’s a statutory requirement for NZTA to provide an outline plan of works and extend those through a council process in terms of council’s recommendations with respect to any changes. NZTA can then accept or reject those changes and the council if it wanted they could appeal. That’s all I’m meaning. It’s just a process of handing it – formally handing it in. I mean it’s not a tender in
20 the sense that –

Q. No that’s what it was –

A. – it’s not a tender, no. My apologies for using that word. I (inaudible 14:57:07) clearer.

QUESTIONS FROM THE BOARD: MS JACKSON

25 Q. Mr Allan, is it possible to put up a map on the board to show us if I wanted to walk now from Waterview to Pt Chev how I would get there?

A. I’m sure the Yellow Map would be...

Q. Maybe Yellow Maps would but – and then the difference once the project is in.

THE COURT: JUDGE NEWHOOK

One of my colleagues suggested that F16 might help.

MS LINZEY:

- 5 I think the evidence of Ms Hancock put a similar plan up showing the Alfred Bridge connection and a walkthrough the existing connection and Alfred Bridge connection. Perhaps if you have a look and see if that covers...

THE COURT: JUDGE NEWHOOK

- 10 Just for the record, where is this exhibit to be found? Is that Ms Hancock's one?

MS LINZEY:

Annexure D rebuttal evidence Lynne Hancock.

15 QUESTIONS FROM THE BOARD CONTINUES: MS JACKSON

- A. What this plan shows is the interchange, State Highway 16, and Great North Road. The portal will be just north of Herdman Street, which is about here. That's that BP (inaudible 14:59:41) location. So the point that my clients are making in terms of connectivity is at the moment if you live in this part of Waterview you can walk through residential areas, you can walk through the park to other residential areas and get down at least to this location before you hit Great North Road. There you've got to walk through this environment here, walk – clamber up and across the bridge if you can but prams and the like there can be – there's issues in terms of the most efficient way to get there, but if you're on Great North Road you walk up here to Pt Chev over here. So there's a distance of that length, which is isolated if you like from residential overview. When the proposal is in place there'll be lanes that come off 16 and join onto 16, going onto the new Highway 20, come down here, all these houses disappear, the park moves over, there's bunding and there's planting and there's motorway onramps and offramps and what have you, through here. And the houses disappear basically from Herdman Street, in fact further than that, but at least
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you've got a residential looking kind of structure at the corner of Herdman Street where you've got the project buildings, the ventilation buildings. But the distance without a residential overview, it's not quite doubling but it certainly, it extends significantly and the issue that they have they say that becomes a different environment, but also one that's less welcoming for people who are a little nervous about walking along a lengthy arterial road. And they will have the arterial road on their right, or they'll be on it whichever side of the road, and then to the left of the arterial road would be the ramps coming out or going into the portal and the lanes from the motorway interchange. So it becomes a very – it's major roads and that (inaudible 15:01:39). There will be planting and that will help to soften things visually I'm sure, but it doesn't change the essential character of it which has gone from being residential, albeit on quite a main road, to very much traffic oriented. Does that answer your

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Q. Yes it does, thank you.

A. - question?

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP - NIL

QUESTIONS FROM THE BOARD: MR DORMER

20 Q. Thank you Mr Allan, that's a very comprehensive and (inaudible 15:02:22) useful submission. And because I haven't had the time to prepare my questions and knew that you had to put this together my questions won't have the same flow that yours, your presentation had. So just starting at page 6 if we may. I'm interested in the choice of your word in para 2.9 of the word "excessive". Do I take it that it is accepted that the proposal in any form will generate adverse effects and that you and Mr Foster are at one?

25

A. I think on that point absolutely, yes. Inevitable. Whatever you do in terms of mitigation you'll have adverse effects.

30 Q. But in this case you say that because of inadequate mitigation the adverse effects are excessive?

A. Yes in a sense that they are worse than they need to be and they're at a point where we say that should lead you to decline the proposal, or impose mitigation that better addresses the effects.

5 Q. Okay, without any particular page reference, because I think it goes to the heart of your submission, there are, it seems to me at least, three categories that affect, well adverse effects, and then our response to each of those three would differ. The first is where there's an adverse effect of the kind that it's absolutely necessary, be mitigated. The second is an adverse effect where the effect can be shown to be related
10 to the work and the mitigation proposed will address that effect. And a third category is, maybe not even a category of this subset, but it's a nice idea, it would be lovely wouldn't it if we could fix up the Onehunga Bridge while we're doing this, but of course the Onehunga Bridge has got nothing to do with –

15 A. Yes.

Q. Now no doubt there are other categories one could arrive at. If it's in category 1 it seems to me that the Board shouldn't require mitigation, almost irrespective of the cost, but I can come to that. The second, if we're dealing with something and it's related to the project and mitigation addresses an effect, yes you'd look at it, but in looking at it
20 are you saying there's no place to look at it in the context of how much the mitigation will cost?

A. No. No I'm saying cost is relevant in terms of your determination because it's – we said earlier whatever you do you're going to have effects. Well there might be some way of doing it at some huge expense that means there would be no effect. I can't imagine it, but it simply is unre – that would be unreasonable and I think even in the first, even in the – in terms of – if I can go back to the first two categories. Necessary to mitigate I think is all I'm saying there there's a category of
25 things which if you didn't mitigate it means the effects are so significant that you couldn't have the project.
30

Q. Yes.

A. And we say that falling into that category are the portals, the treatment of the portals. There's – whatever you do there's going to be adverse

effects, but you can do it in a way that's reasonable and that addresses those issues at a reasonable cost. And my clients would say what's proposed by NZTA in terms of its alternative 1 and option 3 are actually reasonable and appropriate mitigation measures, they do a lot of good and it cost the banker, whilst in absolute dollar terms it seems fine, in terms of the cost of the proposal as a whole is somewhere in the margin of error and it's about 2% or thereabouts, but the benefits you generate from that are very significant. So they say that's in category 1. They have considered cost into it, but they say that when you consider cost in that context it justifies it. You can do it, you don't need to decline if you adopt those. The second category, again cost is clearly relevant. What happens with the second category which in a sense is things that effects that are generated, effects that ideally we'll mitigate, we'd like to mitigate as a community, I think we should, they may not be effects that are so significant that you will decline the designation for, but there's still a determination for this Board to make in terms of what's the right thing to do in the context of what's being proposed and the effects that are being generated. And the sort of financial expenditure you'd accept in category 1 may well be significantly greater than you'd accept in category 2. And I think what you find, when you look at the numbers that have come through, the category 1 issues we'd identified, that the portals happened to be the most expensive by a significant portion. The category 2 activities, which in my – what I'm perceiving will be things like the connectivity and all – and the other open space issues, are less expensive. But they still generate significant benefits to the community and the context of the effects that they generate – my, if you like my clients did a cost benefit analysis on each of these things and said, "Do we pursue it or not?" And the answer is yes on the ones we're asking for because we felt in each case that the cost was less than the benefit that the community would receive and the project would receive overall. But I agree with you, you've got – you have got to take (inaudible 15:09:40) account on both categories, but ultimately if you fail them on the first category the project probably flips over. The third category, nice

idea but unrelated. We're not seeking. We've gone through that exercise and stripped them out.

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5 Q. One of the throw away lines which you used in your answer to me, which resonated well with me, and I mention it because I would appreciate Ms Janissen's response in due course, is that where the cost is at a more modest level, the important thing is that the benefit is being derived by a community that is being severely impacted by the proposal as a whole, whereas the more modest mitigation cost could be borne by
10 the region as a whole.

A. Or the country as a whole.

Q. Okay, moving on and back at – back into sort of page order, I think we are on the same wavelength here but page 14, (c) at the top.

A. Yes.

15 Q. I think there's another category you could add into (c) is there not, because there will be people who have made submissions but who haven't taken a great part in this hearing and who may conceivably have taken a greater part if they had know about, shall we say, option 3?

A. Yes, I suppose I'm, I'm assuming that those people are people who are
20 affected, hence they have lost the submission and the debate is whether they are affected to a great extent, though I accept your point, we have got to give consideration to anybody in the case of option 3 within the scope of that picture we looked at, certainly. Are those people going to be worse off, mutually affected, but differently, or better off, and I guess
25 in terms of option 3 that's the benefit of having heard from NHNZ because they are the party responsible for almost all of those properties.

Q. Don't you think there is something mildly condescending and arrogant in
30 a Board saying, "Oh we know these people are going to get a worse view than what they would have had before, but they are going to get an improved something or other else, and on balance we don't think they would have submitted, or we don't think they would have pursued their submission differently." Isn't that a choice for the owner to make rather than for a Board to make?

- 5 A. Well I think, with respect, it's the sort of choice that the councils need to make all the time in terms of notification issues. It's the sort of decision that would need to be made, for example, with a change to a designation under 181 and I don't deny that you have got to make that judgment call, as a Board you must do it, I don't think there is anything wrong with you making the call and reaching an informed decision on it. The statute enables certain things to happen, the case law enables certain things to happen, but you have then got to make a call as to whether in a particular case it should and ultimately we have a planning system that does take those kinds of decisions away from the individual land owner who no longer has veto and gives it to a decision maker whether it's council or an Environment Court or a Board of Inquiry to make a call on behalf of society as a whole. If you are uncomfortable with the call because you think that the effects are such that somebody objectively would have a problem then I think that clearly goes to your decision substantively. But I don't think there is anything wrong with you exercising your powers as the Board of Inquiry in this matter, within the bounds of the law and that's what I have tried to set out in the –
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- 20 Q. Clearly there is nothing wrong with exercising our powers in accordance with the law, but I am reluctant to accept a proposition that where the effects are going to be – it is accepted that the effects are going to be worse on citizen A than what they were before, that just because he is also going to now receive an environmental benefit that he wasn't going to receive before, we are going to say that he wouldn't have objected.
- 25 A. I guess there is two responses to that. The first is the substantive which is what I would say it's accepted that there is going to be a change visually on certain specific houses. People will see things they wouldn't originally have seen in places I expect they wouldn't have originally have been in. There is a call to be made as to whether that's adverse or just different and if you determine it is adverse, I think there is still space for you to determine to what extent is it adverse and to what extent – what other – what is the general effect of this on that party. Now, if the change in visual effects is no more than minor, less than minor, I am not sure that I see an issue for you. If the change in visual effects is more
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than minor and you as a Board determine it is, then there is another inquiry to be had, which is, is this something that by itself would warrant somebody, you perceive somebody coming along to lodge a submission. In this case you have the advantage of the landowner in terms of option 3, of a vast number of the parties that I think we are really focussing on, which are the ones on the street that back onto (inaudible 15:16:26), saying, we are happy with option 3, we prefer it, and the submissions, I recall, it was that they prefer it in terms of exactly that trade-off issue in terms of individual houses, but Housing New Zealand as a whole, prefers it because their properties generally are better off. And if you look at the plan it is pretty obvious why, they have got others in front of the lizard which is going to disappear, a lot more open space in front of them and a couple of houses that are suffering from exactly the issue we are talking about now. So I think that is something that can give you a great deal of comfort, that you don't have that issue in this case, they have made the call, they have done the work for you, and that as an organisation we pick option 3. That leaves simply the Salinger property and you have had a – the best evidence we can give you with all its flaws, with all its imperfections on their attitude towards it as well, and in my submission those issues between them ought to give the Board comfort that the issues that are legitimately concerning you have been addressed in this case and can be put to bed if you like. Which gives you the discretion, then go away and think if it was a good idea or not to – when you make the balancing call (inaudible 15:17:39).

THE COURT: JUDGE NEWHOOK

Thank you, well it may be academic Ms Janissen but because for all I know you may be prepared to acknowledge that we have jurisdiction on that point.

30 MR DORMER:

She appears still to be thinking about it.

THE COURT: JUDGE NEWHOOK

She can wait until her right of reply if she wishes.

MS JANISSSEN:

5 Yes, I think I will.

MR DORMER:

Oh she can of course she can sir, but if she were going to concede that we have jurisdiction I'm not saying she can't – she can confer jurisdiction on us
10 but if she were going to concede that we have jurisdiction it might save some time in cross-examination and questioning of witnesses. So if you are intending to make that concession I would be grateful if you would do it sooner rather than later.

15 MS JANISSSEN:

Certainly, is that in relation both to the north and the south, so the northern vent location and the southern?

MR DORMER:

20 I suppose the same issue arises in each doesn't it?

MS JANISSSEN:

Yes, yes.

25 MR DORMER:

I had thought of it in relation to the southern, I must say, but no, it's there for the north too.

QUESTIONS FROM THE BOARD CONTINUES: MR DORMER

30 Q. Early on Mr Allan you made a quote that whilst NZTA may have come up with this project in terms of a number of different requirements and a number of different resource consents, we should look at it holistically, not just bit by bit.

A. Yes.

Q. Then on page 20 in item (c), it seems to me that you are doing there what you said NZTA couldn't do, you are saying New Zealand, the Board, can I trade off mitigation between different parts of the route. It seems to me you are looking at it in individual bits here rather than holistically?

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A. What I am saying there, well I am saying - in the first part I am saying we have a proposal before us. Now NZTA happens to have created a series of separate designations and that may be simply because that's the only way realistically all of us can manage it, haven't really put my mind to the rationale for it, but those designations fit together to create a single project. And in terms of your overall assessment you have a single project to address. And in my submission you have some flexibility within the bounds of the overall designated project area. So if for whatever reason the designations finish where the southern portal buildings and the southern portal happens to be at the moment, and there's one designation that says "Portal Tunnel Structures" and another one that says "Above Ground Motorway" that's - you can understand rationally why NZTA might have split them that way. What I'm saying is in terms of a project that boundary isn't fixed by those design - internal designation boundaries.

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Q. Well no, no I quite accept that.

A. You can shift them around. The second point I'm making though is in terms of the way that you assess the effects of the project, because while it's a proposal as a whole the way it affects people is in - in fact it's in discreet areas in some ways, because the length of this proposal means that for NZTA it's one unit, but for the people who happen to live along it they will only be affected or essentially affected by whatever happens to occur in any vicinity of them. So if you live in Avondale Heights, which is where the tunnel goes through, you don't have a lot of effect, apart from something half a mile down the road that way and half a mile up the road that way. And that may be fine, you're happy with the proposal. If you live at Owairaka you've got an issue with portal, you've got an issue with connectivity, loss of open space, a whole lot of things that just don't concern anybody living at Avondale Heights. If you live at

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Waterview you've got a series of entirely new issues again and then of course you've got pony clubs and others at the other end of the entire project. So whilst the project needs to be assessed as a whole, the reality is that the effects impact locally and all I'm saying is that when you're doing your assessment of those effects you need to look at what happens here and how do we mitigate that, and to what extent does mitigation two miles down the road going to mitigate this effect? Answer, probably not, it might do, just seems unlikely.

Q. So we can't gold plate the solution for the folk at the southern end?

10 A. And get yourself off the requirement for the hunt at the northern end.

Q. At the cost of the pony club?

A. Yeah.

Q. Is what you're saying?

A. Well you've got to look at the effects at both, and you've got to give the appropriate mitigation at both. So if there's mitigation required at the pony club end you do the mitigation there. Whatever's appropriate, reasonable in a context. If mitigation's required at the southern end of the southern portal, again do the same thing, but it's not as if, as I said earlier, it's not as if you've got a pocket of money that you can spread around and have a mitigation and put it here but not here. If it's needed in a location you've got to give it.

20 Q. I understand you, thank you. I questioned at lunch whether you had your numbers right in 5.9, but my colleagues assured me you did. Your power bill really is (inaudible 15:23:26).

25 A. It's astonishing isn't it.

Q. Well I had a figure in mind at nearly one million, but no it's 10.

A. That's what the evidence was. I mean it's a make-weight argument. The reality is that the essence of our argument is it's 2% of the project cost. That's the more critical figure.

30 Q. But even that 10 million a year is on the assumption of an incredibly low power price.

THE COURT: JUDGE NEWHOOK

Yes we'd all like our household bills to be at 10 cents a unit.

QUESTIONS FROM THE BOARD CONTINUES: MR DORMER

- 5 Q. Your friend – your clients aren't, nobody environmentalist Mr Allan, otherwise I might have asked them how they could justify flooding more valleys or burning more fossil fuels to generate this electricity in order to preserve their view.
- A. It's the project sir. It's a requirement. Just dealing with what NZTA's brought to us.
- 10 Q. I suppose it's self-evident. I've got a note here. Does the number of people who experience an adverse environment effect have relevance to whether we should require mitigation?
- A. Well I suppose in one sense it does because the more people experiencing, the more disbenefit there is for the community as a whole. You might say that, though that if you're generating an adverse effect
- 15 you need to respond appropriately to it. One way of doing that is to mitigate it. The other way to do it, and it's happened in other sites around here, if you buy the people out. If somebody's going to be affected too severely you simply go and take them out of the equation, and that, that happens. It means that you don't have to put in place
- 20 what might be prohibitively expensive mitigation to make their noise level acceptable when in fact they're the only house within (inaudible 15:25:36) of the particular proposal you've got. So it is I think a matter of balance and it's a matter of the most appropriate technique of addressing the effect.
- 25 Q. And it's going to have a relevance too in terms of the cost of the mitigation works, isn't it, because if the only one person affected in the remedial works would cost 2% in a project value you might decide not to acquire it.
- A. Of course.
- 30 Q. But if there's tens of thousands of folk affected you'd require it pretty quickly perhaps?
- A. And I guess in an urban context such as this, if there was one person affected and the remedial cost were so significant it's probably because they have a large piece of land. Now the reality for this project is you've

got a lot of people living quite close to the line. That's the nature of roads. They run through communities, you've got people living along them, the people who live right next to them are affected by it, the people living a little further away matter less and 150 metres away or in the community, it's a good thing. So it's a function of what you have, and you have here an urban environment. You're tunnelling because to a large extent it's an urban environment, you're putting a road in at all because it's an urban environment. That produces a proximity to quite a lot of people and you've got to address that somehow in the most appropriate way. And of course for the school, you don't have people who live there, but you have a lot of – that's a focus for the community. So it's a different kind of effect, but still significantly affecting a lot of people.

Q. A legal question you can help me with. At the top of page 31 you talk about the stack being visible from within the reserve. I'm sure His Honour will know as well, but just in case he doesn't, can you help me with the name of a case where views by trampers were visitors to a reserve were held to be significant recently?

THE COURT: JUDGE NEWHOOK

Near Wanaka, Mt Little, Mt Maude was the geographical feature or names of the parties exclusive of Queenstown Lakes District Council. The inevitable respondent, the name will come to me, and I will advise my colleague and all the parties.

25 QUESTIONS FROM THE BOARD CONTINUES: MR DORMER

Q. Paragraph, page 32 half way down, B2, has the advantage of – “option 3 has the advantage of shifting the portals 70 to 80 metres to the east which frees up additional open space.” I'm not saying you're wrong but I just can't see why it does. If it's going to take up open space when you move it south why's it going to take up less open space in option 3 location than it would in the original location?

A. Well what happens, we've currently got the lizard structure and we have control building just in front of it, marked there, and the portal's currently

about there. So the portal shifts to here and the building shifts to here, so as a result of the shift of the portal you gain this space here. As a result of the redesign of the building you gain this space here because there's no longer a building that's that long. It's –

5 Q. Well why can't that redesigned building fit within the original?

A. Well I –

Q. If we don't require option 3?

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A. Yes.

10 Q. It's still open to NZTA to put their smaller building back in the original location isn't it?

A. Well that's a – they might come, look if you don't acquire it, yes they could come along possibly and ask that, that involves semi-undergrounding, in a sense that much of the material is
15 underground, but we have got the gantry and the other structures above ground. So the physical footprint above ground shrinks, which means that where – if you put it back here, you have still got more open space than you had before, because you have got less space taken up by building above ground.

20 Q. No, say – pass that by me again?

A. There is two things that are happening, first is that physical footprint shrinks because most of what is happening here now happens underground, and when you do that you have ended up with that amount of building instead of all that amount of building and a little bit
25 here.

Q. So it's open to NZTA to come back and say leave it opposite number 61, 71, 73, and we will go partially underground it?

A. They could if you, particularly if you decided that you would, that you thought partial undergrounding was a good idea, but moving it wasn't.

30 Q. Because that solution, would that give rise to the freeing up of additional space upon –

A. It gives rise to some - it gives rise to the amount of – the additional space that flows from having a small structure, above, a superstructure, if you like, above ground. What it doesn't do of course, is give rise to

the vent (inaudible 15:31:55) that there, which means that all this, instead of having a building on it, is now free.

Q. I can see the choke point argument and thank you for explaining the relevance.

5 THE COURT: JUDGE NEWHOOK

Mr Allan, I don't have to trouble you further, thank you for answering those questions from Member Dormer, with the same clarity that you brought to your presentation at your submissions. In relation to the last of Member Dormer's points I think it is probably something that will be reflected in the minds of
10 most, or all, of us on the Board, that there are these many issues and the parties can rely on us to go back to the detail of the evidence for all of the parties, including the NZTA witnesses, which came to us in a pretty objective fashion on what pieces of infrastructure would appear in each of the locations, but thank you for explaining your understanding of that evidence, appreciate
15 it.

WITNESS EXCUSED

COURT ADJOURNS: 3.33 PM

COURT RESUMES: 3.58 PM

MR ALLAN CALLS

WILLIAM DONALD MCKAY (AFFIRMED)

Q. Is your name William Donald McKay?

5 A. Yes.

Q. Do you live at 73 Alverston Street, Waterview?

A. Yes.

Q. Have you prepared evidence in these proceedings, being a statement of evidence in chief dated 17 December 2010 and a supplementary statement of evidence of 79 March 2011?

10 A. Yes.

Q. Do you have the qualifications and experience set out in your evidence in chief?

A. Yes.

15 Q. Do you have any amendments to make to your statements?

A. No.

Q. Can you confirm to the Court – the Board, pardon me, that the evidence that you are about to give, or you have given in your statements is true and correct?

20 A. Yes.

THE COURT: JUDGE NEWHOOK

Albert Eden Local Board.

CROSS-EXAMINATION: MS DEVINE

Q. I have only a couple of questions for you. My first question reflects on your second paragraph 3 in your statement of evidence on page 2. There you say that the North Western Community Association is an incorporated society, been in existence for 10 years, protecting the environment and representing views of local communities, and you list your environmental concerns as focus on the marine reserve, Oakley Creek, parks and open spaces which come under great pressure from a

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developing city and focusing on ensuring better communities and amenity for local resident schools and businesses. That's correct isn't it?

A. Yes.

5 Q. It strikes me that you bring quite a unique insight into the issue of the northern stack because you've had a longer interest in the Waterview School.

A. Mhm.

10 Q. You've also got an interest in Oakley Creek from an environmental perspective and a strong knowledge of good architecture given your qualifications. So do you consider New Zealand Transport Agency's resistance to shifting the northern stack from one side of the road next to the school to the tunnel, and the tunnel, to the other side of the road next to Oakley Creek and the tunnel either by BP or lower appropriate?

15 A. No I believe it should be moved over the road. I think it's the best solution on balance for the environment and the community.

Q. It's the balancing perspective you had to undertake and given your background interests?

A. Yes.

20 Q. And one last question. Do you consider an urban sculpture to be – it's important that an urban sculpture be prominent, from your architectural background?

A. I've won two public sculpture contests in the past and been the runner up in a couple so I think I have quite an informed view on public sculpture. I don't think that you can just call something sculptural. There are all sorts of things, as Mr Allan has indicated, that go towards making art. Just throwing a few curves into it doesn't make it sculpture, let alone good sculpture.

25 Q. And in terms of it being prominent, is that a feature that must be – that's an important feature of an urban sculpture or not?

30 A. Absolutely not.

THE COURT: JUDGE NEWHOOK

Members of the Board?

MS JANISSEN:

Sir I requested if I could have an opportunity to cross-examine sorry.

THE COURT: JUDGE NEWHOOK

5 That hadn't found its way onto my agenda.

MS JANISSEN:

Sorry, it was just earlier this morning given his supplementary evidence that he lodged.

10 THE COURT: JUDGE NEWHOOK

Oh yes, yes of course. Yes then of course you must so now's your opportunity.

CROSS-EXAMINATION: MS JANISSEN

15 Q. Mr McKay, just referring to your supplementary evidence, you attach there forms from about 41 submitters of the project who live in the Waterview area, correct?

A. Yes.

Q. As of the last census there are approximately 1218 occupied dwellings in Waterview?

20 A. I'm not certain on the number of dwellings, but I do know the population is about 3000.

Q. When you met with the Waterview based submitters to discuss their preferences on the northern stack location I note that you provided to them a copy of annexure E to Mr Walter's evidence, is that correct?

25 A. Yes.

Q. Did you also show them any of the visualisations of the Agency's proposal?

A. No we just showed them the plan with the three alternatives on it.

30 Q. Did you show them any other pictures or other visualisations to give those submitters an indication what the stack would look like on the other side of Great North Road?

A. No.

QUESTIONS FROM THE BOARD: MS HARDIE

Q. Just following on actually. Are there any pictures that show the stack on the eastern side of Great North Road?

5 A. No. Only plans.

Q. Just one more question. You've made a reference and you've said you refer to the tidal river effect and sedimentation that occurs during tidal draining of the lagoon.

A. Yes.

10 Q. Can you just further explain to us what happens there at the moment and would, you know, you perhaps envisage will happen?

A. Yeah, due to the lack of culverts the entire at high water, everything – when the tide comes in it comes in very slowly and gently, but when the tide goes out it's funnelled through that bridge in the causeway and you get a very fast flowing rip effect. And then that, as that rip goes through and hits the harbour side and you've got a bit of, you – it generates chop there so you get a fast flowing rip and then you actually get standing waves, like a chop in the water just like rapids. So it's actually, takes a bit of skill to negotiate your way through there.

20 Q. And do I understand from the evidence that the existing culvert doesn't assist the reduction of flow at the moment, you know, the disperse of flow?

A. As I understand it it won't – the dimension of the bridge is not going to change at all laterally so that I don't expect there to be any change. What is happening is the bridge is going to be lower down and I'm concerned that – because there's not much clearance at the moment, and I'm concerned that people may be knocked out of kayaks and then suddenly find themselves in that rip.

30 Q. Is this the bridge that I think I believe I saw that was something, quite a substantial reduction in height, you know, three or 400?

A. I've been, for some reason the – you know when you see a high tide in the newspaper and it says a high tide in Auckland is 3.4, for some reason their engineers are using a different datum so it's very difficult to

establish exactly, you know, how much lower the bridge is going to come down. From my understanding the mean high watermark springs, which is generally about 3.4, 3.5, which is when everyone goes out in boats or kayaks, there's about two metres clearance at the moment which I've measured and my understanding is that that's going to reduce to 1500. So it's going to come down about 500 ml.

QUESTIONS FROM THE BOARD: MS JACKSON

Q. Mr McKay, in your evidence you refer to the local businesses.

A. Mmm.

10 Q. And the effect that construction is going to have on them for five to seven years of construction time. I'm not sure whether those businesses will – I suppose they'll keep going. Where do the local people shop? What's the alternative?

15 A. Pt Chevalier has a supermarket so quite a few people go there. There's no supermarket at Avondale so Pt Chevalier tends to be logically the shopping centre that people go to. The dairy in Waterview is much better than the dairy in Pt Chevalier and we've got a new bread shop and we'd quite like to keep that for a while as well.

Q. So they'd go to the supermarket in Pt Chev before Pak'nSave?

20 A. I think it would depend very much on the demographic. Some people tend to go, who can afford it, go to Countdown. Other people tend to go to Pak'nSave.

Q. You've said the use of Waterview Glades area in your opinion should not be a construction base due to the delicacy of the environment?

25 A. Mmm. Yeah I'm very concerned about the amount of clay. Having watched the student hostels being built there I'm very – and because of the steep slope of the glades I'm very concerned about the potential for stormwater running off any construction sites, getting down and into Oakley Creek.

30 Q. But you're happy that if it was used it could be restored to –

A. Well –

Q. – what it is now?

A. I just don't know because we've had some discussions about the extent to which the contours will be reinstated just as they are, except for as I understand it a metre or two of the cut and cover wall for about 10 metres or 15 metres, but I've seen nothing at all really on that subject.

5 Q. I just would like you to comment briefly on a statement you, another statement you made in your evidence. Poorly designed and handled process in terms of making submissions?

A. Mmm.

10 Q. This is from the NZTA open days. You're saying that there's substantive changes?

A. Yes.

Q. That we're being shown now compared to what people saw before they made submissions?

15 A. Yes. Through, all through the consultation for instance we saw bridges, for instance a bridge at Phyllis Street and the NZTA have said themselves that they were looking at connectivity through that phase, through the consultation phase, and then they've moved to a land for land solution. So a lot of people were looking at bridges and then they evaporated. The buildings that we see now are different from the
20 buildings that we saw in consultation, you know, it's a different architect and Mr Gibbs' options, and again I'm uncertain about that. They are just options at the moment. I'm uncertain as the extent to which they're actually firm proposals. So that's a, those will be two, you know, the two primary examples of concerns that we've got through that whole
25 exercise.

Q. But would it be your opinion that the public were pretty well educated about the project before they made their submissions?

30 A. There are two issues there. One is we – Waterview is largely a decile 2 community. Those people are not proactive about becoming involved because they're basically at the bottom of the layer, they don't feel they count, they're renting, there's a lot of turnover. All of that sort of thing. So I think a lot of the community there just feel that there's nothing that they can really do about it. Other people have been much more involved through the entire process. I'm familiar with the international

protocols on consultation and I don't think that those standards were met in NZTA's consultation process.

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP - NIL

QUESTIONS FROM THE BOARD: MR DORMER - NIL

5 QUESTIONS FROM THE COURT: JUDGE NEWHOOK - NIL

RE-EXAMINATION: MR ALLAN – NIL

WITNESS EXCUSED

MS JANISSEN:

Sir just a note there and this is in response to Member Hardie's question about the visualisations. I do note that we will be putting visualisations of the stack on the eastern side of Great North Road to Ms Absolum in cross-examination.

THE COURT: JUDGE NEWHOOK

Yes well that may be interesting so far as it goes Ms Janissen, but have those been revealed in evidence of any sort, as yet?

10 MS JANISSEN:

No sir they have just, they were finally finalised today. They arose out of, in part, looking at that issue more closely following Ms Absolum's own supplementary evidence and moving the – I think her evidence is such that alternative vent location number 1, that moving it further to the south to take it with inside the designation. It responds specifically to I guess many of the issues that have been raised by the submitters and their primary case that the visual effects of the stack would be an improvement on the eastern side of Great North Road. We haven't had an opportunity otherwise to actually present that and this is, in my opinion, the best and only way we can do that.

20 THE COURT: JUDGE NEWHOOK

Right well I don't think we're going to sit here and listen to a legal argument right at this minute about whether or not this should occur. However, I would make the following observations. First, that I doubt that we will be getting as far as Ms Absolum's evidence tonight, so there will be an opportunity for the parties to confer overnight about that which you've apparently had team members prepare. The second observation, and it's just a tentative one, is that while we have appreciated NZTA responding to questions from the Board and issues arising in evidence and offering further evidence during the course of its case, and while technically the NZTA case isn't closed because you still have a couple of witnesses that we're to hear from tomorrow, nevertheless we're getting quite a long way into the cases of the opposing parties at this point and one has to at some stage express concern about the nature justice

of material continuing to emerge when some of the other parties have been and gone, so to speak. Presented their cases and perhaps gone. So discuss matters with counsel overnight Ms Janissen and see whether a collective view can emerge and if you can't resolve the issue amongst yourselves then we

5 will deal with it tomorrow.

1615

MS JANISSEN:

Certainly.

THE COURT: JUDGE NEWHOOK

10 But I am just sounding that note of caution at this point, we will see what people say about it after they have looked into it, I will say no more for the moment.

MR ALLAN CALLS**BRONWEN RHYND (AFFIRMED)**

Q. Is your name Bronwen Rhynd?

A. Yes it is.

5 Q. Have you prepared a statement of evidence-in-chief in these proceedings dated 17 December 2010, and supplementary statement dated 27 February 2011?

A. Yes I have.

10 Q. Have you the qualifications and experience set out in part 1 of your evidence in chief?

A. Yes I do.

Q. Do you have any amendments to make to your statement?

A. No I don't.

Q. Can you confirm that the evidence is true and correct?

15 A. I can.

MR ALLAN:

Sir, my friend Ms Janissen over the weekend sent me some material in terms of a proposed condition to resolve, I think, the one remaining issue between
20 the parties, and so she is going to seek leave to cross-examine and I would be very grateful for her to do so.

MS JANISSSEN:

If I could just raise one proposed condition with the witness and I have copies
25 available here for members of the Board.

CROSS-EXAMINATION: MS JANISSSEN

Q. Ms Rhynd, I note that during expert caucusing and also in your supplementary evidence you have raised a concern about whether or not there is a condition that appropriately covers the relocation of
30 services, is that correct?

A. That is correct.

Q. We have placed before you a proposed condition which the Agency now proposes be added to the conditions, probably under the CMP section, and if I could ask if you could, I think you have already read that condition?

5 A. Yes I have read the condition, yes.

Q. If I could ask if that condition, if imposed by the Board, would satisfy your concerns with respect to the relocation of services?

A. Yes it does, it completes that outstanding issue that I have raised and it would provide confidence for us that that would be addressed
10 sufficiently.

THE COURT: JUDGE NEWHOOK

If you just all pause while we have a read of the draft. Any questions from members of the Board?

1620

15 QUESTIONS FROM THE BOARD: MS JACKSON – NIL

QUESTIONS FROM THE BOARD: MS HARDIE

Q. Ms Rhynd, just with regards to this condition. I must admit when I was reading the evidence I wasn't too sure whether or not you're more – the issue was continuation of the service or what you were going to get at
20 the end of the day, whether or not the service was perhaps going to be something visual that it wasn't at the moment. So just want to be quite clear. So you're only concerned about the relocation and the ongoing use of the (inaudible 16:20:38)?

A. Yes I – just to clarify what it was, there's no, at present there's no
25 information about the details of how the services were going to be relocated or the continuum of those services within any of the NZTA evidence. It had been asked for, but hasn't, hadn't been evident. So this condition then covers the continuum of the services, the relocation and during construction and also the effects of this relocation as well.

30 Q. I also note that in your evidence you, in some places you referred to the condition SW9 where your comment sort of reflects that it should be

designed to avoid, whereas the condition now suggests it is to minimise?

A. Sorry you'll have to point me in the...

5 Q. SW – it was right back in your submitter's evidence and there's just a number of general conditions where you sort of said things like the design of the wetlands are to follow ARC TP10 and the latest technical reviews of this guideline, which I don't see – some of your comments haven't actually gone into the condition so I just want to be very clear that in the caucusing that you're quite comfortable with their resultant conditions which we now have in our green book.

10 A. Okay, so just to base the response on the question that you just – for example, the constructed wetlands to follow ARC TP10 and the latest technical reviews. The ARC TP10 guideline doesn't actually provide the level of treatment design that is required underneath what we've agreed in caucusing as what we're wanting to achieve. So for example if you followed the guideline TP10 to a designer wetland you would not achieve 75% (inaudible 16:22:54) removal. So within caucusing and we now have a stormwater condition that reflects the level of treatment rather than the design process.

15 20 Q. Okay so in terms of the condition you've now said you want to achieve 75%?

A. That's correct.

QUESTIONS FROM THE COURT: COMMISSIONER DUNLOP - NIL

QUESTIONS FROM THE BOARD: MR DORMER - NIL

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

RE-EXAMINATION: MR ALLAN – NIL

WITNESS EXCUSED

MR ALLAN CALLS**SHONA CLAIRE MYERS (SWORN)**

Q. Is your name Shone Claire Myers?

A. It is.

5 Q. And have you prepared a statement of evidence-in-chief in these proceedings dated 17 December 2010 and a supplementary statement of 27 February 2011?

A. Yes I have.

10 Q. Do you have the qualifications and experience set out in part 1 of your evidence-in-chief?

A. Yes.

Q. Are there any amendments you want to make to your statement?

A. No.

Q. Can you confirm that the evidence is true and correct?

15 A. I do.

THE COURT: JUDGE NEWHOOK

Forest & Bird, Mr McNatty.

CROSS-EXAMINATION: MR MCNATTY

20 Q. We have one question that comes out of your, the caucusing statement and it is an indication from that, from the caucusing there's that you were concerned about the level of mitigation or disagreement of mitigation between that of Dr De Luca and yourself. Could you expand on that please.

25 A. Certainly and I've got a copy of the caucusing statement in front of me now. And basically what I what, the concerns I do have are stated in that caucusing statement. The main issue I have is the expansion into the marine reserve and loss of habitat within the marine reserve. So I've stated in my evidence-in-chief and also in the rebuttal and in the caucusing that I agree with the recommendation that an expansion of
30 the marine reserve would be a useful contribution to mitigating the effects of that loss of habitat.

CROSS-EXAMINATION: MR LAW

- 5 Q. Could I refer you first of all to paragraph 1.9 of your supplementary evidence. And you indicate in that paragraph that you want the Friends of Oakley Creek to be consulted on a proposed riparian planting in the Waterview Glades area, is that correct?
- A. Certainly, yes.
- 10 Q. I'm just going to take you to a couple of conditions and certainly no one could fault you for not being on top of every latest amendment, but I suspect we may have addressed that and I just want to run you through a couple of conditions and get your view on that.
- A. Sure.
- Q. So if I can get you to turn to page – first of all, do you have the green version, and if not can we...
- A. I think I do, yes I do.
- 15 Q. Excellent. So can we first of all turn to page 53, which is condition OS2.
- A. Yes.
- Q. This condition provides for the preparation of open space restoration plans, including at (c) for the Waterview Glades area in consultation with community liaison groups, is that correct?
- 20 A. That's correct.
- Q. And then if we turn to condition PI5, which is at page 21.
- A. Yes.
- Q. And again if we're looking at (c) we can see there community liaison groups have been expressly defined as including the Friends of Oakley
- 25 Creek. That's correct?
- A. That's correct.
- Q. And does that address your concern about consultation with Friends for Waterview Glades riparian vegetation?
- A. Yes I think it does. I did see these conditions following drafting my
- 30 rebuttal evidence so it's good to see that in there.
- Q. Certainly there's plenty of amendments so there's certainly no fault on you for not picking it up, but I'm glad we clarified that. I'd like to ask you a few questions about the riparian buffer width, so if I could refer you

back to paragraphs 1.7 and 1.8 of your supplementary evidence where you raise that issue.

A. Certainly.

5 Q. You recommend there a 20 metre buffer width and you want that specified in streamworks condition STW20(d), is that correct?

A. Yes that's what I've requested.

Q. And you say that TP148 refers to a 15 to 20 metre or wider buffer as being preferable for larger waterways, don't you?

A. That's correct.

10 Q. Have you got section 2.3 of TP148 there?

A. I do.

Q. Perhaps sir I have copies for the Board if that is useful to follow through the discussion.

THE COURT: JUDGE NEWHOOK

15 Yes thank you.

CROSS-EXAMINATION CONTINUES: MR LAW

Q. Now, so in the second, sorry have you got that page?

A. That's page 15?

Q. Page 15, yes, sorry, it's page 15.

20 A. Yes.

Q. So on – in the second column is the point 3, towards the top of that column, is that the source of that reference there, the 15 to 20 metre or wider on large waterways?

A. It is yes, yes.

25 Q. Now, if we refer back down to, that's obviously a subparagraph, if you refer back to the start of the paragraph, it's clear isn't it that what that paragraph is actually recording are three recommendations made in the Park and others report?

A. That is correct.

30 Q. So that paragraph and through at TP148 is not necessarily endorsing or applying those recommendations?

A. I would just like to qualify that, I was actually involved at regional council in helping to put together these guidelines. The Park et al research informed the development of the riparian guidelines, so I think it is quite relevant to refer to it, and the TP148 is referring to it because, because
5 of the importance of that research to the –

Q. I certainly accept that it is relevant; my question was that TP148 is not necessarily endorsing that 15 to 20 metre buffer through that statement?

A. The riparian guidelines, they put a minimum of, recommended minimum, of 10 metres each side of a stream and that, that really is a
10 minimum because it therefore creates a self-sustaining or the idea of it is to create a self-sustaining ecosystem, but I think it – the reference to Park et al gives a bit more detail around that, around whether you are dealing with a small stream or a larger stream system, and it is certainly indicating that a wider buffer is recommended for larger, more
15 significant, stream systems.

Q. Right then, if we move to the last – to the, it's the concluding two paragraphs of section 2.3, the second to last paragraph starts, doesn't it that, "A buffer with more than 10 metres" then it has brackets "(15 metres preferred of a range of riparian vegetation, will achieve most of
20 the identified aquatic benefits, such as shade, food supply and habitat." That's correct, that's what the (inaudible 16:33:04) states?

A. That is correct.

THE COURT: JUDGE NEWHOOK

Where was that reference please?

25 MR LAW:

Sorry, it was the second to last paragraph on that sheet that you have been given sir, 2.3 on the same page, and the next reference sir is the final paragraph there in bold on that page, where TP148 states, "In light of the above a 10 metre minimum buffer width is therefore recommended as a
30 general guideline for the purposes of this strategy and guideline, with narrower or wider options being considered appropriate, as indicated by site constraints or opportunities."

CROSS-EXAMINATION CONTINUES: MR LAW

Q. And that is what TP148 requires isn't it?

A. It does require that.

5 Q. And so, the only preferred width required in TP148 is 15 metres, albeit that it is indicating there that if there are opportunities for a wider riparian vegetation you should take them?

10 A. Yes, and – but also, the research by (inaudible 16:34:11) goes into quite a bit of detail about buffer woods and also talks about the limitations of even a 20 metre buffer, so I mean 20, 10 metres is a minimum that the TP148 sets, but it certainly indicates that a wide buffer is what is required, in particular for larger, more significant waterways.

Q. And in particular, if the opportunity permits?

A. Certainly.

15 Q. So let's discuss opportunities. The north bank, within – I want to use the terms north bank and south bank if that's acceptable –

A. Certainly.

1635

20 Q. – to you. It's not - I appreciate it's not quite north, true north and true south. The north bank within Alan Wood Reserve presents some opportunities for wider riparian than 20 metres doesn't it?

A. It does.

Q. And you accept that there are many areas on the north where the NZTA's urban design and landscape plans demonstrate that riparian planting will achieve or exceed 20 metres?

25 A. Certainly. I would like to note that the landscape and urban design maps, they're indicative, they show a swathe of vegetation and the scale from my calculations is not, does not always seem particularly correct. It certainly shows that there are, there's a good wide buffer on that northern side so I'd definitely accept that, and in most places it looks like
30 that is 20 metres or more.

Q. Thank you I appreciate –

A. Yep.

Q. – the point about the scale. Mr Slaven indicates, and I appreciate in your comments, about the limitations on I guess the scale of that map.

But Mr Slaven has indicated in his evidence that – in his rebuttal evidence, that some of the planting, in fact he says the majority of the planting on the north bank will be up to 50 metres in width. Do you accept that?

5 A. Well when I've looked at these plans again in some places it indicates that it will be up to 50 metres, but in other parts it doesn't.

Q. Would you accept the comment though that in terms of the north bank of Oakley Creek that the majority, and this is within Alan Wood Reserve, that the majority of the riparian vegetation is in the vicinity of 50 metres?

10 Certainly over 20 anyway.

A. Yeah it's certainly over 20.

Q. If we turn to the south bank now and starting to talk about some of the constraints that we have, following on from TP148, the opportunity for constraints. One of the obvious constraints on a 20 metre buffer there would be that there is not in fact 20 metres of land between parts of the creek and the neighbouring properties is there?

15

A. Certainly.

Q. But in stream with the north and south bank then most of the shading from taller vegetation is presumably going to come from the direction of the north bank anyway isn't it?

20

A. It will.

Q. So the north bank is more important in that sense, is that fair?

A. It is, but the philosophy behind riparian planting is that generally you do both sides because you need both sides to create that ecosystem and shading over the stream which is really important for water quality.

25

Q. You'd accept that in terms of the shading benefits of the riparian vegetation that you wouldn't get much shading benefits from the south bank of the stream presumably, not on the stream itself anyway?

30

A. Well in terms of the northern aspect, the northern side is important in terms of providing that shade, but so is the southern side because it is – the riparian planting is providing shade, but it's also providing filter and a whole lot of other benefits that is required in terms of the riparian buffer.

Q. And in terms also of constraints, you would accept that Oakley Creek is an important community asset requiring recreational use, cycleways, walking, picnics, all that sort of stuff?

A. Oh absolutely, yes.

5 Q. And you would accept that planting in such areas must also be cognisant of – sorry, by “such areas” I mean areas that are being used for these public activities – planting must be cognisant of CPTED principles?

10 A. Yes I do, but I am – the requirements of this planting are to meet the SEV requirements which is around mitigation of stream loss, so therefore the planting is being done in relation to that needs to be - the primary reason behind that is to do that for ecological reasons, and for shading of the stream and for water quality.

15 Q. And so that’s been addressed and I can’t recall now the number of the consent condition, but that’s been addressed in the consent condition that I believe you agreed with Mr Slaven about the 70% -

A. The 70% -

Q. – shading?

A. – shade.

20 **THE COURT: JUDGE NEWHOOK**

STW20(d).

CROSS-EXAMINATION CONTINUES: MR LAW

25 Q. ST20 – yes sub(d), yes. But you accept anyway that there’s recreational use, there’s a need for safety, nonetheless place a constraint on a strict requirement for say a 20 metre buffer don’t they?

30 A. They do put constraints on. I suppose the concerns really are around ensuring that you’ve got a good riparian planting in there which is going to create shade to improve the water quality of the stream, but also to suppress weeds and to allow the maintenance of that planting to be self-sustaining to the future. So those are two issues that...

Q. So would you agree there’s some balancing and some careful thinking that needs to go on when you actually get down on the ground and

you're doing the planting between those, the need to meet that 70% shading and the (inaudible 16:41:21) placement values and also fitted in a way that meets CPTED concerns?

5 A. Certainly, but I also think another issue that needs to be addressed in it is to ensure that that planting is going to be sustainable into the future so that it's not going to be overcome with weeds and be a problem further down the track in terms of maintenance for the community.

10 Q. Could I now just quickly ask you some questions about riparian planting in sector 8 which you refer to in paragraph 1.11 of your supplementary evidence. In that section you seek ecological restoration of Oakley Creek in sector 8 despite that section being obviously in a tunnel and the section of Oakley Creek above it being, as you put it, unaffected by surface construction, is that correct?

A. Certainly.

15 Q. And specifically you suggest a contribution towards riparian restoration or weed control, is that correct? Is that as –

A. Yes.

Q. - as a remedy?

A. Yes.

20 Q. Could I refer you to the vegetation caucusing statement, paragraph 17, which is on page 6 of that statement. Do you have a copy of that statement?

A. I do. Yes. Sorry which paragraph?

Q. Sorry paragraph 17. Sorry, you've got that paragraph?

25 A. Yep.

Q. So Mr Slaven notes here that in the vicinity of Oakley Creek the project will replace primarily exotic vegetation with native vegetation at a ratio of one to five, so that's five times gain, as well as replacing wetlands at the ratio of one to 200. So for the revegetation that's a five times increase
30 in the area of vegetation along the creek as a result of the project. Do you accept that that gain represents a significant positive benefit for riparian vegetation?

A. The one to five, yes, I mean the planting that will occur in the, particularly the Alan Wood Reserve area will be of benefit to the stream

system, as long as it's self-sustaining in the future and is maintained properly and actually is maintained so that it's actually doing the job that it's supposed to be doing. In relation to the one to two wetlands, I'm presuming that's referring to the wetlands that are going to be created for stormwater treatment, which is a slightly separate issue because those –

5 Q. That's all right it's not an issue that I haven't asked you –

A. Yep, okay.

Q. – a question about.

10 A. Sorry about that –

Q. I'm happy for you to –

A. Sorry.

QUESTIONS FROM THE BOARD: MS HARDIE

15 Q. Ms Myers, can you just help me out a little bit here. The piece of paper that we were handed, it doesn't seem to refer to TP148 so I'm a little bit confused as to – is it part of TP148?

MR LAW:

20 Sorry I can clarify that. I've just printed you off the one page because it's a rather longer document. I do have the full copy here if you would rather see.
1645

MS HARDIE:

Is it a part of one – TP148?

25 **MR LAW:**

It's just one page from the document, yes.

QUESTIONS FROM THE BOARD CONTINUES: MS HARDIE

Q. Just one more question, how well does riparian planting work if you have an area that floods?

30 A. Well you design your riparian planting so that it cuts the flow, so in your flood areas you put plants in which can deal with flood – dealing with

flooding. So you generally put your, sedge species and grass species into flood zones, so they basically, sort of, the water flows over them basically, and you put your taller species on the stream bank.

5 Q. In Mr Slaven's rebuttal he gave us a plan, streamworks and flood protection, it's just that in that plan it actually showed a flood protection bund wall along the tunnel portal, which we hadn't had before in our evidence and I just wondered does that then mean that the riparian planting would be quite different along that section of Alan Wood potentially, than riparian planting in other locations - it's drawing sheet 211?

10 A. Right, I don't know if I have that one.

THE COURT: JUDGE NEWHOOK

Let me provide it to the witness please, we have got it on the screen, I think it is, can you see it up there Ms Myers?

15 **QUESTIONS FROM THE BOARD CONTINUES: MS HARDIE**

Q. The line which basically follows the line of the proposed tunnel, along the tunnel portal it said is a flood protection bund wall to be confirmed, I believe, it's got a "TBC" beside it.

20 A. Right. The, I mean, the riparian planting has, the details of that are set out – there is a whole guideline document that sets out how all riparian planting will be achieved and there is different typologies for different parts of the system. So I know that it includes, I mean the riparian planting is basically about planting beside the stream systems in Alan Wood Reserve, so and in parts that stream is being realigned and
25 in other parts the existing stream system is being restored, a lot of it is channelized so it's about turning it back into a more, sort of, natural system. So the planting that you would do in terms of that riparian is all set out, you know, all the plant species are all set out at the back of the landscape plans. Then there are separate plantings for wetland areas
30 and presumably also for the flood zone areas. So you generally put in your parts of your stream which flood and also in your wetland flood plain areas, you put slightly different species in, so the ones that are

adapted to living in those conditions. So in your sort of back wetland, swamp, sort of situations, you would put in your carexes and your – you can also put in, you know, taller species like your cabbage trees and, you know, a lot of those areas would have been once (inaudible 16:49:13) swamps and stuff like that, so –

5

Q. So would that also make a difference to the buffer wood that you would have?

A. Well it would add – so I mean the riparian planting will abut the stormwater wetlands because that's how it has all been designed. So, therefore, you are creating a, you know, quite a wide system there. But I think the issue really is, I mean the stormwater wetlands are there to treat stormwater and are being planted with a good range of native species to act as a wetland system and they will create habit and all sorts of things like that. They will also act as a continuous system with the riparian corridor too. So I am not quite sure if I am answering all your questions.

10

15

Q. You are, you are, that's fine. It's just I was just interested in that we've got this, now this, you know, flood protection bund potentially which could possibly change the requirements for what actually happens along that stretch of the stream, which we hadn't had, you know, before, and I am not sure whether or not it had an effect or not with any parts of the questions, thank you very much.

20

A. Certainly, yes.

QUESTIONS FROM THE BOARD: MS JACKSON

25

Q. On a similar vein Ms Myers, you talk about Hendon Park and Alan Wood sections of Oakley creek being floodplain areas and you said you support the construction of wetland ponds for stormwater treatment?

A. Certainly.

30

Q. But there is two ways of handling stormwater isn't there, you can have a depression which just takes the water when you need the extra capacity and then there is the actual construction of a wetland pond, which then you are obliged to keep wet or the plants and the species that have

moved in die. So you need to be sure though don't you, when you have constructed a wetland pond that you can keep it wet?

A. Oh absolutely but you can put plants in which will cope with being wet and dry, so there are species that will cope with fluctuations in water.

5 Q. But it is not just the plants is it, it's the fauna that will move in when you have got a wet environment, won't necessarily survive if it turns dry for any extended length of time?

10 A. Well the – I mean I am just a bit predicting what might actually go into that area. In natural wetland systems you often get species like, bird species like fern birds and crakes and things like that and I wouldn't predict that this area would – those species are very secretive, very difficult, they wouldn't really survive in an urban area with the predators that are around them, so it is unlikely that those would move into that area.

15 Q. I guess I am looking at it from a maintenance area.

A. Certainly, yes.

Q. Like, you – once you put in a wetland pond as such, other than – well in comparison to a depression, you are obliged really to keep it wet to a minimum degree?

20 A. Well the - I mean the way – I mean I am not a stormwater expert so I will just I will let you know that, but stormwater, the way stormwater used to be treated was with ponds, so open ponds, which are really not great for habitat because you have got a body of open water which heats up and is really hard to sort of keep shaded and for, you know, good sort for ecological reasons. They function in terms of stormwater treatment but
25 overtime the wetlands have been designed and shown to be just as effective and more effective at treating stormwater because you have plants that you can put in them that basically are adapted to doing a really good job of filtering sediments and pollutants and I mean that's
30 basically a function of a wetland system, it can soak up all the flood waters, it can filter, it can basically cleanse all your water, it's an amazing sort of system so you do design them to put the right species in which will adapt to those fluctuations.

Q. Other than flax and cabbage trees?

A. Other than flax and cabbage tree, definitely.

Q. Can I just refer you to a couple of the conditions, and the first one is G12 on page 87 and this is talking about the monitoring in Oakley Creek and it says, "Continuous monitoring results will be reviewed on a monthly basis." Is that enough?

5

A. Yes I attended the caucusing on the – the freshwater caucusing and we talked about this at quite a long extent. In that condition we've basically got in there a link between the groundwater monitoring and the freshwater monitoring to ensure that they are both linked together. I am not a groundwater expert so I can't really comment on whether, you know, groundwater monitoring on a monthly basis is adequate, but what I was pleased to see in that condition was a strong link between the freshwater monitoring and the groundwater monitoring and also the water quality monitoring.

10

Q. On an ecology basis wouldn't it be more prudent to review more often than monthly

15

A. Yes I have looked at, I've sort of looked at that quite a lot too. The freshwater monitoring is being done twice a year, so there is freshwater monitoring which is going to look at the stream profiles, the ad vertebrates, and the freshwater fish and that monitoring will be done prior to the construction period and after the construction period. The difficulty with freshwater ecology monitoring is that you are dealing with freshwater, with ecosystems that changes, can sometimes not be picked up for a long time, so sometimes you have to do monitoring for a long period to actually pick up changes or the affect might not be apparent for a good length of time. So I mean I'm, I suppose I am comfortable that –

20

25

Q. Monthly is –

A. – yes I suppose so, but I – with the freshwater monitoring I still think that it has been concentrated on the – the freshwater monitoring has been done in three different places, so upstream of the works in the Alan Wood Reserve area, and directly below that, and further down upstream of the waterfall, and upstream of sector – upstream of the tunnelling. So I am – there is a lot of monitoring data that has been

30

used through this AEE which provides information on the freshwater ecology further down the stream system, so there is fish data and there is some vertebrate data which can be used as a baseline to check if there will be any affects. But I sort of have a little bit of a residual concern about whether that is enough.

5

Q. The other one was G10, page 86, where you wanted that condition to read, "Measure changes in water level (inaudible 16:58:10), velocity and flows." That seemed like quite a good idea to me. Would you like that written in?

10

A. I mean it would be good to get it totally clarified. I mean my understanding is that they are going to be doing those different parameters and the – and there is going to be baseline flow monitoring.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK - NIL

RE-EXAMINATION: MR LAW – NIL

15

WITNESS EXCUSED

MR ALLAN:

Sir, that brings me to the end of the day.

THE COURT: JUDGE NEWHOOK

That is probably about the appropriate place to break for the day. Something
5 for you to consider overnight if you wouldn't mind Mr Allan and you
Ms Janissen. A question has arisen in our minds, Member Dormer
particularly, but it's something of interest to me as well and maybe to others,
and that is as to what the final situation of the Kindergarten Association might
be, given that we find out the full extent of the agreement with that body, if
10 there were to be a shift of the vent or the stack at the northern portal. We
understand that there is an agreement coming together for the kindergarten to
be moved, and permanently, other than just temporarily. And we wonder,
Mr Allan, particularly given the emphasis that you've placed on the school, but
we infer as well the kindergarten as being at the heart of this community
15 whether there is an issue there for the Kindergarten Association that they
perhaps need to be consulted about by you and/or NZTA and as to whether
your advocating of option 1 being the preferred option if alternative 2 is off the
table, potentially giving the Kindergarten Association cause to re-examine its
position.

20

MR ALLAN:

Well I say sir our case is being run on the assumption for the past little while
that the kindergarten would actually move permanently. My understanding's
that's where things had got to. The issue is really more about the school than
25 the kindergarten in that context.

THE COURT: JUDGE NEWHOOK

I mean there may be a very simple answer. There may be by this time an
agreement with the Kindergarten Association that says they're just going to be
moved permanently if consent is granted to the project.

30

MR ALLAN:

Yes. And I'm not in a position –

THE COURT: JUDGE NEWHOOK

But we still – we just ask about this wrinkle, it's come top of the line for Member Dormer today listening to you and we wonder whether you should be consulting the Kindergarten Association.

5

MR DORMER:

And the school sir.

THE COURT: JUDGE NEWHOOK

And the school because Mr Allan of course emphasised the school as being at the heart of the community.

10

MR ALLAN:

I'm listed I think as asking the school the question and that's going to be the question (inaudible 17:02:20).

15

MR DORMER:

NZTA are promising the school to support their teacher staffing levels. Now it might be that the kindergarten and the school say, "We'll have the payoff thank you, leave the stack where it is." It's quite possible the school would take a guarantee of an extra two or three teachers for five years.

20

MR ALLAN:

Yes I'm not sure from my clients' perspective they think the school has the ability – their school Board has the ability to make that decision for Waterview, put it that way.

25

MR DORMER:

The school Board may well have a view on the matter and we haven't had the chance to get their view.

30

MR ALLAN:

No. I think we will because they're going to be, they're a party to these proceedings and they've exchanged evidence and my expectation is I'll be

able to cross-examine them because they've put their name down to if they want to, and issues I want to raise with the school are in respect of the stack.

THE COURT: JUDGE NEWHOOK

Equally in fairness there might be an issue of consultation and it may be that
5 in the constructive manner in which you and NZTA have approached the
issues of interest to you in the proceedings that there might usefully be some
consultation amongst this wider group of parties on the (inaudible 17:03:32).

MR ALLAN:

10 It may, I don't know, but it may be possible if you shift the stack the issues that
require the kindergarten to be shifted permanently go or equally it may say,
"Actually we want – we don't want to have to shift twice, if we're going to have
to shift anyway we'd like to stay shifted," but I just don't know. But I can ask
my clients to make some enquiries in that regard. They I'm sure have the
15 connections through the community to be able to do so.

MR DORMER:

No one knows and we're grateful, we acknowledge that. We're also aware of
the fact that whilst the view of the chair in either of those kindergarten or
20 school groups might be helpful, much more helpful would be a resolution of
the committee. Whereas the chair might express a view that yes we're
against the thing anyway in principle, but if it went to the wider committee they
might have preferred the payoff. So yes, chairs can't necessarily speak for
their bodies can they?

25

MR ALLAN:

Not necessarily, but I suspect if someone's come along to give evidence they
probably have been authorised to do so. So I'll again ask that question of my
folk too see if they can find that kind of thing out.

30

MR LAW:

Sir I could provide a quick update on where those agreements are at if that
might be helpful.

THE COURT: JUDGE NEWHOOK

Thank you Mr Law yes, that might be helpful.

MR LAW:

5 So we have draft agreements for both the school and the kindergarten and
the Ministry of Education is a party to each of them. The kindergarten
agreement does provide for the relocation of the kindergarten. This is
obviously in its draft form because it hasn't been signed yet, and that's not just
for stack reasons, that's for construction issues as well so it wouldn't be
10 moved back. In terms of the school there's a package of I think about three
million, we're not quite sure. Quite a lot of work that's going to be done in
terms of relocating classrooms, noise insulation and upgrading the school.
There's quite a hefty package involved to try and – and the main focus there is
it's not just to address effects, but also to the extent that there is an issue
15 about perception to say to get those works done earlier and allow the school
to say, "Hey look, as a result of this project we're getting a brand new school
and it's going to be great," and trying to address some of those concerns.

THE COURT: JUDGE NEWHOOK

Perception effects.

20

MR LAW:

Yes, by actually creating a positive perception at the same time. So those
issues are all out there and they're in the agreement. They are aware of the
proposals to shift the stack and they'll have to comment on those two, I
25 wouldn't assume to do so.

THE COURT: JUDGE NEWHOOK

Yes. Well again it's not just for Mr Allan and his clients perhaps to consult, but
equally we would imagine that NZTA should, and indeed would want, to
consult with those parties about what consequence it might have for the
30 agreement –

MR LAW:

And we certainly have been having those discussions.

THE COURT: JUDGE NEWHOOK

5 - if the Board were to follow Mr Allan's urgings about alternative 1. So that we know where everybody stands.

MR DORMER:

Are the school still going to get their three mill, because if they're not they might prefer the stack.

10

MR LAW:

They might indeed. A lot of it of course is noise mitigation work and so on that would be appropriate to (inaudible 17:06:54) anyway. Not directly related to the stack, but some of it is more perception issue based.

15 **THE COURT: JUDGE NEWHOOK**

All right, well there's been a great flavour of communication and consultation during the course of the hearing on a number of issues and this is perhaps another one where those representing the school and the kindergarten could be brought up to date with where parties have been more actively participating are at, and so that we might have a some reasonably holistic view or know
20 where there might be disputes as amongst parties, sooner rather than later, rather than be left in a position of having to scramble to re-call witnesses and re-explore issues which had appeared to be taking on a more settled quality.

25 **MR LAW:**

I can advise sir that the agreements have actually, in terms of (inaudible 17:07:54) parties being settled, it's with the lawyers now to agree the wording. I'm not sure that that's a good thing or a bad thing, but that's where we're at in terms of process.

MR ALLAN:

Sir one other thing sir. I've had a chance to look through these new points which Ms Linzey I think has supplied to Ms Absolum and I'm just – I may have misread it and I haven't had a chance to really talk in any constructive way to
5 Ms Absolum despite our efforts and behind the scenes earlier. When I look at it, it appears to me that the towers on the right-hand side of the road, looking down, are slightly taller than the ones on the left-hand side, which implies to me they may be closer. Now that may be because NZTA has shifted them further up the road out of the back area where they straddle the boundary. It
10 would be helpful, and for my perspective, to be able to understand if that's occurred, and if so if we could have perhaps just a version photocopy of annexure E I think it is from Mr Walter's evidence with the marking showing where the new stack location is, because I don't think they're in quite the same place as (inaudible 17:09:05) 1. And it's no criticism, it's just trying to
15 understand exactly what –

THE COURT: JUDGE NEWHOOK

Yes, who in the NZTA team has prepared this material that is going to be sought to be adduced?

20 MS LINZEY:

Firstly, it has – that shift in terms of bringing it into the designation has been done in these visualisations. The work has been done by Stephen Brown co-ordinating it and Build Media, who did the flythrough visualisation and all the visualisations in Mr Brown's report have prepared the visualisation and
25 construct led by Mr Gibbs, have talked through the architectural form, though that obviously hasn't changed much as Mr Allan will appreciate in terms of the 15 metre stack proposal.

THE COURT: JUDGE NEWHOOK

Just wondering aloud and seeing that Ms Absolum is with us, it may be this is
30 an occasion on which another caucus, yet another caucus, an urgent one overnight might possibly occur as between the visual witnesses for NZTA and her and any other visual witness that might have an interest in the issue.

MS LINZEY:

I'm afraid I think Stephen Brown is overseas today. He's due back tomorrow I think.

5

MS JANISSSEN:

Yes and I think he's in an Environment Court hearing in Napier, but I'd need to check that.

THE COURT: JUDGE NEWHOOK

10 All right well let's, counsel to confer overnight, involve Ms Absolum and anybody else you can find. Take it as far as you can. If anybody is uncomfortable with proceeding and making use of the materials tomorrow we can defer Ms Absolum's appearance if she is available to come at a later time, slightly later time, so later this week rather than tomorrow. No she's not. We
15 now have that information, but the week after next perhaps as an absolute fallback.

MR ALLAN:

We might see if we can just run it tomorrow sir.

20 THE COURT: JUDGE NEWHOOK

Yes okay. We'll leave it to you folk who are present to see what you want to make of it and as to whether there is going to be any dispute over the admissibility of material at this time, and/or what use is going to be made of it. We'll see how far you can get with it.

25

MS JANISSSEN:

For the Board's benefit it is simply an update of viewpoint 7 which is a viewpoint that has constantly been shown in the hearing, looking north up Great North Road and what Build Media has done is they've simply put the
30 tower on the other side in the location which we understand relates to what was in Ms Absolum's supplementary evidence. So it's within designation and

a little bit further south in the area where she indicated it would be appropriate.

MR ALLAN:

Sir one other thing I better indicate to you is Professor Harrhoff, who's sitting
5 over here, I had hoped to get on today. I failed to do so and he's got a bunch
of lectures and things tomorrow so I may struggle to get him here tomorrow.
His evidence is actually subject to very little in the way of questioning, but I
think it would be useful to him to have understood what happened with
10 where the stacks should go. But regrettably sir, I think I may need to push
him out to late in the week.

THE COURT: JUDGE NEWHOOK

You might need to, in view of the fact that he might have an interest in that
which is under discussion with Ms Absolum too.

15

MR ALLAN:

We may need to jump Professor Harrhoff out of order, the other two witnesses
I've got now are Ms Absolum and Mr McKenzie and I think that would wrap up
our case. So he may need to come back later in the week, but I'll have to talk
20 to him now about it.

THE COURT: JUDGE NEWHOOK

All right, we'll leave it to you to do what you can with. Thank you for
mentioning that. We'll rise until 9.30 in the morning.

COURT ADJOURNS: 5.13 PM

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