

Before the Board of Inquiry
Waterview Connection Project

in the matter of: the Resource Management Act 1991

and

in the matter of: a Board of Inquiry appointed under s 149J of the Resource Management Act 1991 to decide notices of requirement and resource consent applications by the NZ Transport Agency for the Waterview Connection Project

Rebuttal evidence of **Michael Foster (Strategic Planning)** on behalf of the **NZ Transport Agency**

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INDEX

**REBUTTAL EVIDENCE OF MICHAEL FOSTER ON BEHALF OF THE NZ
TRANSPORT AGENCY3**

INTRODUCTION3

PURPOSE OF EVIDENCE5

MY ROLE IN THE PROJECT5

ADEQUACY OF ALTERNATIVES AND INVESTIGATIONS6

THE EDGE EFFECTS APPROACH.....10

**THE MANAGEMENT PLAN AND ASSOCIATED CONDITIONS
APPROACH.....11**

REBUTTAL OF SUBMITTERS’ EVIDENCE.....12

ADDITIONAL COMMENTS ON SECTION 42A REPORTS.....16

REBUTTAL EVIDENCE OF MICHAEL FOSTER ON BEHALF OF THE NZ TRANSPORT AGENCY

INTRODUCTION

- 1 My full name is Michael John Foster. I am the Strategic Planning Adviser for the Waterview Connection Project.
- 2 I am a resource management planning consultant and have been a Director of Zomac Planning Solutions Limited (*Zomac*) since October 2001. For the previous sixteen years, I was Director of Planning at Beca Carter Hollings & Ferner Limited, consulting engineers and planners.
- 3 I have a Bachelor of Arts degree from Massey University and a Diploma of Town Planning from the University of Auckland. I am a Fellow of the New Zealand Planning Institute (*NZPI*) and was its president from 2000 to 2002. I am also a member of the Planning Institute of Australia (*PIA*). In 2004 I received the Distinguished Service Award from the NZPI in recognition of distinguished service to the planning profession. I was a member of the 2009 RMA Technical Advisory Group and am Chairman of the 2010 RMA Infrastructure Technical Advisory Group.
- 4 I have over 30 years experience in planning and resource management planning and, in particular, I have extensive experience in assessing the effects of major transportation projects in the context of the Resource Management Act 1991 (*RMA*), including:
 - 4.1 The 30km realignment of State Highway 1 from Albany to Puhoi;
 - 4.2 The Whangaparaoa Access Options Study and subsequently the PENLINK Project (a proposed new road and bridge from East Coast Road to the Whangaparaoa Peninsula);
 - 4.3 The SH18 (Upper Harbour Highway) upgrade through Greenhithe;
 - 4.4 The SH16 and SH18 (Hobsonville Road) realignment study;
 - 4.5 The North Shore Busway and Esmonde Interchange Projects; and
 - 4.6 The Vic Park Tunnel (SH1) project.
- 5 I further note that in 2008, Zomac (in conjunction with Sinclair Knight Merz and Connell Wagner) completed the Waitemata Harbour

Crossing Study on behalf of the five project partners.¹ I was Deputy Team Leader of the Connell Wagner / Sinclair Knight Merz / Zomac study team. I am currently the strategic planning adviser to the NZTA for the Additional Waitemata Harbour Crossing Route Protection project.

- 6 I have been engaged in numerous capacities for the NZTA in the past, including, as an Independent Property Expert in the category of "Rural and Urban Planning", being one of four such appointments throughout New Zealand.
- 7 It is also relevant to note, from a wider strategic transportation planning perspective, that I was retained by the Auckland Regional Transport Authority (ARTA) to provide planning services and strategic advice during the Local Government (Auckland) Amendment Act 2004 submission and hearings process in 2006 / 2007.
- 8 I was also engaged by the NZTA and Land Transport New Zealand (LTNZ) to advise on planning issues related to development proposed under the Auckland Regional Plan: Coastal, Proposed Plan Change 3 (Wynyard Quarter) (*the Plan Change*).
- 9 I am currently Planning Lead for the SKM consortium undertaking the technical studies for the Puhoi to Wellsford Project – a Road of National Significance (*RONs*).
- 10 My rebuttal evidence is given in support of notices of requirement and applications for resource consents lodged with the Environmental Protection Authority (EPA) by the NZ Transport Agency (NZTA) on 20 August 2010 in relation to the Waterview Connection Project (*Project*).
- 11 I am very familiar with the area that the Project covers, and the State highway and roading network in the vicinity of the Project.
- 12 I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court Consolidated Practice Note (2006), and agree to comply with it. In preparing my evidence, I have not omitted to consider material facts known to me that might alter or detract from my opinions expressed.

¹ The five study partners were the former Transit New Zealand, Auckland Regional Council, Auckland City Council, Auckland Regional Transport Authority and North Shore City Council. Refer to Waitemata Harbour Crossing Study (released May 2008).

PURPOSE OF EVIDENCE

- 13 The purpose of this rebuttal evidence is to respond to certain aspects of the evidence lodged by submitters. Specifically, my evidence will respond to the evidence of:
- 13.1 Mr Duncan McKenzie on behalf of Living Communities (Submitter No.167-3);²
 - 13.2 Mr David Mead (Submitter 130-1);
 - 13.3 Ms Tania Richmond on behalf of Auckland Council (Submitter No. 111-14);
 - 13.4 Ms Hiltrud Gruger for Springleigh Residents Association (Submitter No.43-1); and
 - 13.5 Mr Peter McCurdy for Star Mills Preservation Society (Submitter No. 199-1).
- 14 In addition, I will comment on various aspects of the Section 42A Report prepared by Environmental Management Services (*EMS*) dated 7 December 2010 (*Section 42A Report*) and the Addendum Section 42A Report dated 20 December 2010 (*Addendum Report*).
- 15 Specific issues that I will address in my rebuttal evidence include:
- 15.1 Adequacy of alternatives analysis or investigations;
 - 15.2 The edge effects approach; and
 - 15.3 The management plan and associated conditions approach.

MY ROLE IN THE PROJECT

- 16 Before providing rebuttal, I will briefly explain my role in the Project. I have been involved in the Project since the initial option conception phase of investigations commenced in 2000. At the outset, I was the Team Leader of the Beca team and became Strategic Consents Advisor upon leaving Beca in October 2001.
- 17 Broadly speaking, my primary tasks over the life of the Project have been to:
- 17.1 Overview and manage the multi-disciplinary teams as necessary to select, design and consent a transport solution for the Project;

² References are to the Submitter's Evidence as listed on the EPA website.

- 17.2 Overview and contribute to the study approach to ensure a consentable transport solution;
 - 17.3 Assist in managing the implementation of that approach as a member of the Strategic Review Team (*SRT*);
 - 17.4 Make recommendations in relation to the selection of a transport solution which complies with the RMA;
 - 17.5 Peer review applications for resource consent and notices of requirement in relation to the transport solution selected by the NZTA;
 - 17.6 Provide expert advice on matters relating to strategic transportation planning issues, planning instruments and resource management effects;
 - 17.7 Independently advise the NZTA on strategic resource management issues arising during the statutory phase; and
 - 17.8 Peer review the NZTA's technical expert evidence.
- 18 I believe my experience and involvement in most of the NZTA's major transportation projects, in the Auckland region in particular, gives me a sound appreciation of the strategic planning issues arising from and because of the Project, the subject of this hearing.
- 19 It is clear from my reading of the Section 42A Reports, together with some submitters' evidence, that some confusion appears to have arisen with regard to key aspects of the Project. This rebuttal brief will address these issues.
- 20 I have read all the primary and rebuttal evidence to be presented by the NZTA's witnesses at this hearing and I endorse and adopt their conclusions, whether I specifically refer to them or not.

ADEQUACY OF ALTERNATIVES AND INVESTIGATIONS

- 21 Both the Section 42A Report and some submitters (e.g. the Springhleigh Residents Association and the Star Mills Preservation Group)³ question the adequacy of the consideration of alternatives and associated investigations, by for example, claiming that ... "The applicant failed to provide a comprehensive AEE" and "the selection of a motorway route through Waterviewwas fundamentally flawed."

³ Section 8.8 of the 7 December 2010 Section 42A Report; evidence of Hiltrud Gruger, paragraph 8.1; evidence of Peter McCurdy, paragraph 2.8.

- 22 I disagree with these submitters and consider that the alternatives analysis for the Project has been more than adequate and meets statutory requirements. In my opinion, a number of aspects of the Project need particular emphasis.
- 23 First, the Project history and evolution of the Project is described in detail in Section 9 of the Assessment of Effects (in particular Figure 9.1). Second, a period of time in excess of ten years has elapsed since the Project commenced. It is not necessary for me to repeat that information here.
- 24 In my opinion, the four phase investigation process for the Project has been comprehensive, extremely robust, entirely consistent with accepted RMA principles, fully compliant with s171(1)(b) of the RMA and overall entirely 'fit for purpose'.
- 25 It also is relevant to bear in mind that a Project proponent does not have to select the "very best option".
- 26 In this regard, the suggestion in paragraph 8.8 of the Section 42A Report that the NZTA "... provide further fuller documentation to the Board to confirm the adequacy of the multi-disciplinary options analysis of alternatives carried out", is, in my opinion, simply not necessary for reasons I now give.
- 27 The key reasons are as follows.
- 27.1 The overall Project comprises two distinct parts:
- (a) The SH16 section is a retrofit, upgrade and expansion of the Northwestern Motorway, being the principal regional arterial roading connection between the Auckland CBD and the West Auckland suburbs;
 - (b) The SH20 Waterview Connection represents the completion of the Southwestern Motorway originally commencing in the vicinity of the Manukau City Centre (where it meets SH1).
- 27.2 The overall Western Ring Route (SHs 20, 16 and 18) represents the only realistic alternative through the Auckland conurbation to SH1 (the Southern, Central and Northern Motorway spine); and
- 27.3 On this basis, the key question is not whether completion of the SH20 Waterview Connection is necessary (which it clearly is), but whether the Project before the Board of Inquiry for which designations and consents have been sought represents a reasonable, sustainable and acceptable outcome.

- 28 The fact of the matter is that a connection in some form between the disconnected points on SH16 and SH20 is the key requirement. It seems to me that the authors of the Section 42A Report have missed this aspect even though they conclude that "our overall assessment is generally favourable towards the Project".⁴
- 29 The more pertinent question in my view is how to deliver a connection between the disconnected parts of the State highway network in a manner that reasonably mitigates the adverse effects of such a connection so as to satisfy the requirements of the RMA. In my experience, no major roading project has less than minor effects. The challenge has been and always will be to reasonably minimise any adverse effects in the knowledge that some adverse effects are always unavoidable (eg. Northern Gateway, ALPURT B2).
- 30 In this regard, I consider that the Section 42A Report would have been more robust if the following questions were asked:
- 30.1 Would a surface motorway be acceptable?
- 30.2 If not surface, what combination of surface and underground might be acceptable? and
- 30.3 If completely underground, would the economic costs to the nation warrant the local amenity and social benefits?
- 31 In my view, if these questions had been asked in a transparent way the answer to the first question would be an outright 'no', the answer to the second question would be tempered by an assessment of the ability of New Zealand with a relatively constrained population / taxpayer base to afford such expenditure, and the answer to the third question would be an outright 'no'.
- 32 On its face, this may seem to be a relatively black and white response. I do not believe it is, given my involvement with most of Auckland's major roading infrastructure projects over the last 20 years which have been successfully consented through urban, peri-urban and rural environments. (Examples of such projects are set out in paragraph 4 of my evidence above). Almost without exception, these projects have been progressed and consented in the knowledge that:
- 32.1 A new or amended motorway / transport corridor through any type of environment will have some unavoidable adverse effects that can only be mitigated by property purchase and minimisation of adverse edge effects;

⁴ Executive Summary, Section 42A Report.

- 32.2 Any unavoidable adverse effects of a local nature must be balanced against the national, regional and district benefits that flow from the implementation of the project; and
- 32.3 The projects have, within reason, sought to reduce any adverse effects to a level that satisfies the relevant requirements of the RMA.
- 33 In my opinion, the Waterview Project in its current configuration satisfies the issues I list above. I believe the current proposed surface / cut and cover / tunnel configuration is a pragmatic and reasonable alternative to a surface option for a project that is fundamentally needed in order to complete the Western Ring Route.
- 34 In this respect, the NZTA acknowledges that the current configuration brings with it aspects that cause concern to adjacent communities; for example, the need for tunnel vent stacks. A surface motorway would of course have no such requirement. I note that the vast majority of Auckland's motorway system is surface through the Auckland urban area. Both the Board of Inquiry and submitters need to appreciate that no optimum solution is available (if capital cost was no object) that has no actual or perceived adverse effects. In my view, the current configuration has minimised the number of adverse effects that cannot otherwise be appropriately mitigated.
- 35 The final point I wish to make is that any development, whether it be brick and mortar or infrastructure, is required under the RMA to avoid, remedy or mitigate any adverse effects. It is not required to provide environmental enhancement and neither should it be.⁵ Regrettably it has been my experience (and the Waterview Project is no exception) that both submitters and local consent agencies sometimes see the advent of a Central Government project as an opportunity to advance, enhance and fund their own local project "wish lists" in the name of project mitigation. I find such a situation disturbing. Such requests are simply not justified to mitigate effects of the Project and need to be seen for what they are – opportunistic.
- 36 In relation to the Waterview Project, there are a number of instances of this occurring. For example, in my opinion, the following requests are not sustainable:
- 36.1 Open space enhancement of the nature currently being sought by Auckland Council witnesses;⁶

⁵ My understanding of relevant case law is that section 7(c) of the RMA does not require proposals to maintain and enhance amenity values. The requirement to maintain allows a Council to protect rather than preserve or enhance.

⁶ Evidence of Andrew Beer (paragraph 11.45).

- 36.2 Additional marine reserve space as sought by some submitters and recommended in the Ryder Consulting peer review;⁷ and
- 36.3 Completion of the cycle network in the Waterview / Avondale area (i.e. through Sector 8).
- 37 In my view, any mitigation of adverse effects must be directly related to the Project.

THE EDGE EFFECTS APPROACH

- 38 The Section 42A Report seeks a number of instances of further elaboration of the preliminary project design inside the designation footprint.⁸ Such requests, in my opinion, are not generally necessary because of the manner in which the NZTA proposes to procure the detailed design and construction of the Project, as explained by Mr Parker.⁹ More fundamentally, they are not necessary because the edge effects of the Project will be set by the proposed conditions of approval and the designations.
- 39 The designation footprint edges are the defined limits of the Project, while conditions of approval with respect to air quality, noise, dust, landscaping, temporary traffic management and so on, specify limits to edge effects. This type of approach is common to all major roading projects I have been involved in to date. In my view, it does not matter how a project is ultimately to be constructed, provided the designation footprint edge limit and edge effects limits are strictly complied with.
- 40 For these reasons I consider that the words "subject to final design" are entirely appropriate and necessary, and should remain in the relevant conditions.
- 41 For the same reasons the words "in general accordance with" need to be retained in the conditions where appropriate.
- 42 Collectively, these sets of words provide very necessary project flexibility during its construction phase.

⁷ Section 42A Report, Appendix 4 (Ryder Consulting – Review of Marine Ecological Effects (paragraph vi, Executive Summary).

⁸ Addendum Report, Final, Executive Summary, Key Issues Concern 1 and Section 2.

⁹ Rebuttal evidence of Tommy Parker.

- 43 It is also relevant to note that the AEE specifically referred to the edge effects philosophy, where it states:¹⁰

The construction methodology described in this Chapter is intended as a realistic and feasible methodology from which the anticipated effects on the environment of these activities can be identified. The purpose of this description is to provide sufficient detail on the proposed construction activities to assess their potential environmental effects and subsequently to identify any necessary measures to avoid, remedy or mitigate these effects where appropriate (e.g. to assist the specialists and ultimately the consenting agency to identify a suitable suite of conditions for the consents and designations to effectively manage the effects of the construction activity).

It is recognised that once the Project has been awarded and a contractor (or contractors) are in place, the methodology will be further refined and developed. This will be done within the scope of the conditions which will be in place to manage the environmental effects of the construction activities. (underlining added).

- 44 Finally, Mr Parker in his rebuttal evidence outlines very recent major project experiences in the detailed design phase where significant alterations were made to the form of the projects after the consenting phase was completed.

THE MANAGEMENT PLAN AND ASSOCIATED CONDITIONS APPROACH

- 45 The Section 42A 7 December Report (section 14) raises a number of concerns and questions with respect to the adequacy of the management plan process and the associated conditions (eg. at paragraph 14.2.4), while the Addendum Report reiterates these concerns and questions (section 3.9). I, and other NZTA witnesses, do not agree.
- 46 Ms Linzey (in paragraphs 76 to 86 of her third statement of evidence in chief) succinctly explains how the management plan approval process is to operate in conjunction with the draft conditions. Mr Leersnyder in his rebuttal evidence (at paragraphs 44 to 53) addresses management plan / draft conditions issues in response to concerns raised in paragraphs 14.2.1 to 14.2.3 of the Section 42A Report. I agree with Mr Leersnyder's comments.
- 47 Over a succession of major projects, it has been my experience¹¹ that the management plan approval process identical to that now proposed for the Project has worked extremely well and without

¹⁰ Section 5.1, Assessment of Environmental Effects, Western Ring Route – Waterview Connection.

¹¹ For example, North Shore Busway, Victoria Park Tunnel, SH 18 Greenhithe.

inherent problems. This is the first NZTA project where virtually all draft management plans have been lodged with the application, so they are already before the Board of Inquiry to review. This will provide even greater certainty as to the manner in which the effects of the Project are to be managed, compared to the more traditional approach, where the majority of such plans are referred to in conditions lodged and available for the consent authority to review only post-consenting.

- 48 It is also important to note that in order to be effective, management plans have to retain a degree of flexibility to allow for unforeseen circumstances (eg. an encountered difference in ground conditions). This flexibility, for construction purposes, is not available as a mechanism used to alter edge effects or conditions per se.
- 49 I note that Ms Tania Richmond (at paragraph 6.9 of her evidence for the Auckland Council) also disagrees with the approach outlined in the Section 42A Report where it seeks to remove the Council discretion. In my view, removal of the words "to the satisfaction of the Council" would be a backward step and would seriously complicate the implementation of the Project for no sound reason. In my experience, the relationship between the NZTA and the Councils (as the consent agency) during project construction has always been professional, helpful and transparent. I have no reason to believe the Waterview Project will be any different.

REBUTTAL OF SUBMITTERS' EVIDENCE

- 50 I now wish to make comment on the following statements of evidence lodged by submitters:
- 50.1 Mr Duncan McKenzie;
- 50.2 Mr David Mead;
- 50.3 Ms Tania Richmond;
- 50.4 Ms Hiltrud Gruger; and
- 50.5 Mr Peter McCurdy.

Duncan McKenzie¹²

51 At paragraph 2.8 of his evidence, Mr McKenzie, inter alia states:

...there appears to be a view that any additional mitigation measures need to be offset by reductions in mitigation elsewhere.

52 Throughout my ten year involvement with the Project my expert advice has always been that the NZTA is required to mitigate, as far as practicable, adverse effects that are directly related to the Project. The mitigation measures currently proposed by the NZTA in my opinion, satisfy the requirements of the RMA and represent a sustainable balance between the minimum and the optimum.

53 For example, I agree that an optimum outcome would be to have the Southern Ventilation Building completely underground. However, the costs¹³ (and some associated effects) outweigh the benefits. It also needs to be remembered that these structures are located entirely within the designation footprint and the key question, in my opinion, is whether or not the adverse effects of the above ground building can be avoided, remedied or mitigated? The plans prepared by Construct¹⁴ persuade me that the answer is yes.

David Mead

54 From my reading of Mr Mead's evidence, his paragraphs 3.8 and 3.9 appear to sum up the thrust of his evidence. These paragraphs state:

3.8 My plea to the Board is to carefully consider whether the mitigation currently on offer is adequate to at least maintain environmental quality, if not improve it, for the communities directly affected by the project, and to restrain its use of any "balancing" type analysis of whether additional mitigation is needed or not.

3.9 Obviously the Board, when making its decision on the Notice of Requirement and associated resource consents, must, subject to Part 2 of the RMA, consider the effects on the environment of allowing the requirement, while having regard to various aspects listed in Section 171 of the RMA.

55 For the reasons I stated with respect to Mr McKenzie's evidence, the mitigation measures being proposed by the NZTA are entirely appropriate and adequate and hence I disagree with Mr Mead's paragraph 3.8.

¹² Mr McKenzie's evidence contains a number of assertions and claims that are addressed in other NZTA witness rebuttal evidence and I do not repeat them here except to say that I agree with the expert comments.

¹³ As discussed in Mr Walter's rebuttal evidence.

¹⁴ See Annexure A to David Gibb's EIC.

56 With respect to paragraph 3.9, it seems to me that Mr Mead has lost sight of the fact that different tests under the RMA are required to be applied to the Project. The designation test (s.171) is not the same as the resource consent test (s.104D). The latter as a non-complying activity has the "no more than minor" effects test, whereas the designation test is, inter alia, whether the work will have "a significant adverse effect on the environment."
[s.171(1)(b)(ii)]

57 Mr Mead appears to be asking that every aspect of the Project be subject to the "effects should be no more than minor" requirement rather than a balancing of effects as required by section 5. The Project by its nature has adverse effects that are unavoidable and in this respect the wider national and regional project benefits need to be balanced against the local disbenefits. None of the roading projects I have been involved in would in fact have had designations confirmed if the "effects should be no more than minor" test had been strictly applied.

58 I note that the Section 42A Report¹⁵ and other submitters (e.g., Margaret Watson – Submitter No. 225)¹⁶ also do not appear to appreciate this distinction.

Tania Richmond¹⁷

59 From a strategic planning perspective, I find it strange that Ms Richmond as a planner appears to accept other Auckland Council witnesses' assertions with regard to the adequacy of open space mitigation. For example, at paragraph 5.20 of her evidence, where she appears to accept that the Valonia Street reserve extension should be further expanded when the affected residential properties are not part of the designation footprint.

60 As I understand the caselaw, it is not possible to expand a designation footprint in this manner after it has been publicly notified and the statutory process has commenced (without full re-notification). Ms Richmond does not address this issue and in my view she should have. I do not consider such an additional cost in the name of direct project effects is justified.

61 In this regard, at the time of preparing this rebuttal evidence, Auckland Council would have been better focused on adopting a 'win win' position with the NZTA whereby the open space mitigation measures being offered by the NZTA were / are moderated to deliver the best outcome for the affected community.

¹⁵ Executive Summary, paragraphs 6 and 7.

¹⁶ Evidence of Margaret Watson, paragraph 4 under the Decisions heading.

¹⁷ Other witnesses for the NZTA in their rebuttal have made appropriate rebuttal comments and observations with respect to the content of Ms Richmond's evidence and I agree with those comments and observations.

62 In my view, the current Council position on open space provisions appears to be entrenched, unrealistic and in the 'wish list' category I described in paragraph 35 above.

Hiltrud Gruger

63 Other witnesses for the NZTA have made appropriate rebuttal comments and observations with respect to Ms Gruger's evidence and I agree with them. From a strategic planning perspective, I strongly disagree with the following claims:

- The designation has severe adverse effects (paragraph 5.3);
- The assessment of effects of the designation is incomplete (paragraph 5.8); and
- The adverse effects are of national significance (paragraph 5.9).

64 First, for reasons I have already given, no roading project of major scale (particularly a motorway) has no adverse effects. Further, to say that the adverse effects of this Project are severe is a gross exaggeration. If the Project had been surface only, then the claim may have some justification.

65 In my opinion, the suite of supporting AEE documentation prepared for this Project is unprecedented for a major roading project. Ms Gruger's claims as to incompleteness thus lack credibility.

66 In terms of effects of national significance, my understanding of what constitutes a matter of national significance is that it needs to be a matter of national importance, national value, benefit and need. None of the issues raised by Ms Gruger in section 6 of her evidence, in my opinion, trigger a nationally significant concern. On the other hand, for reasons set out in Mr Parker's evidence in chief (paragraphs 28 – 30), the Project itself can be deemed to be a matter of national significance, if only because of its status as a RoNS.

Mr Peter McCurdy

67 Mr McCurdy claims in paragraph 2.5 of his evidence that "the process of developing this project by the Transit NZ followed by the NZTA has been flawed." I disagree; the Project has been evolving for over ten years and no one in the affected area can claim they have been unaware of it. It seems to me that the balance of the criticisms made in paragraph 2.5 are really criticisms of the "call in" process and not of the Project itself.

68 In paragraph 5.2, Mr McCurdy outlines his preferred option involving significant encroachment into the Coastal Marine Area and the marine reserve. I consider that the adverse effects of such an

alternative are likely to be severe and that such effects, quite apart from significant increased costs, would far outweigh any localised benefits to passive and active open space and vulnerable heritage sites. Accordingly, this witness' alternative does not warrant any investigation. At the outset of the Project investigation we undertook an initial fatal flaw / no-go area evaluation exercise. This exercise determined inter alia that any effects on the CMA and Marine Reserve had to be kept to a reasonable minimum.

ADDITIONAL COMMENTS ON SECTION 42A REPORTS

- 69 In the foregoing parts of my rebuttal, I have referred to aspects of the Section 42A Reports. I also note that rebuttal evidence for the NZTA comment at some length on aspects of the Reports. Again, agree with the comments and observations made by other NZTA experts. However, there are some aspects from a strategic planning perspective that are worthy of comment under a series of headings as follows.

The Process

- 70 While not the fault of the Section 42A Report authors, there was a timing disconnect between the preparation of the initial Section 42A Report (7 December) and production of the NZTA's comprehensive evidence (15 November) which, in my opinion, was unfortunate. This situation is acknowledged where the authors state:

Our section 42A report was completed without the benefit of the receipt of this extensive set of primary evidence from the Applicant; and

The evidence of the Applicant was prepared in the absence of our Report being available for their consideration. (Addendum Report, page 1) .

- 71 As a result, that initial Section 42A Report listed numerous issues which the report authors identified as of significant concern to submitters (as raised in their submissions), but without at that time acknowledging that many of those issues had been addressed further in the NZTA's evidence in chief (*EIC*).¹⁸
- 72 As a result, an Addendum Report (dated 20 December) was later prepared to update what issues had been addressed in the NZTA's *EIC*. Unfortunately, the Addendum was not released until after the submitters had lodged all of their evidence (17 December).
- 73 This timing meant that submitters, when preparing their evidence, may have been left with the impression after reading the initial Section 42A Report that many of their issues had not been addressed in the NZTA's *EIC*, when in fact they had been.

¹⁸ For example, the design of the ventilation buildings at the northern and southern portals.

74 Notwithstanding this situation and while appreciating the significant time constraints involved, the authors, in my opinion, did not ask themselves the right questions of the nature that I have set out in paragraph 30 above.

Section 149G Reports.

75 Section 6 the Section 42A Report discusses the Section 149G Reports prepared by the former Waitakere City Council, Auckland City Council and Auckland Regional Council. Both the Waitakere City and Auckland City reports consider whether the permitted baseline test is relevant.¹⁹ The Section 42A Report implies that a permitted baseline assessment is relevant for currently designated areas (at paragraph 6.2.3). This is incorrect; designations by their nature transcend underlying zonings and associated rules. In my opinion, "permitted baseline" issues are not relevant to designations. If they were, then a designation for a public work within a residential area would not get off first base. This represents a confusion by the authors as to the relevant tests that apply to designations and resource consents.

Ventilation Buildings and Stacks

76 On pages 74 and 91 of the Section 42A Report, there is discussion on design of the ventilation structures and buildings proposed at the northern and southern portals. It is acknowledged by the NZTA that the preliminary design of these elements was very utilitarian at the time that the AEE documentation was lodged with the EPA.

77 Subsequent work by Construkt as outlined in Mr Gibbs' EIC is, in my opinion, a considerable improvement. The Addendum Report acknowledges this where it states, inter alia:

3.4.6 The revision is a strikingly and significantly different proposal or concept to those plans lodged to which we made critical comment regarding their utilitarian or industrial type bulk and profile.

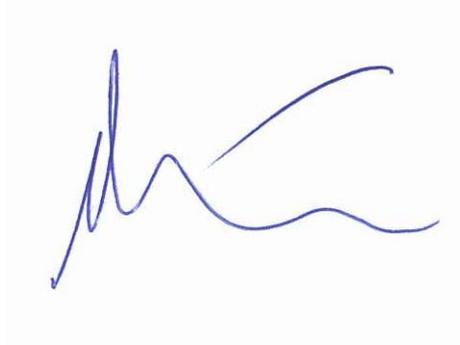
78 However, the Construkt plans are still preliminary and further work will be undertaken in the detailed design phase by the Competitive Alliance. This is typical for a major infrastructure project. In my experience, it is quite appropriate for the final design of the ventilation buildings and stacks to be covered by a condition that specifies the design criteria to be applied prior to final approval by Auckland Council. I note that such criteria are now detailed in the (further) amended conditions.

79 In my opinion, it is not necessary for the Board of Inquiry to be provided nor approve a "final design" as appears to be the S42A authors' concern.²⁰ Rather, it is respectfully suggested that the

¹⁹ See paragraphs 6.2.3 and 6.3.2 of the Section 42A Report.

²⁰ Section 42A Report – 7 December 2010, paragraph 10.10.88.

Board's focus should be on the adequacy and appropriateness of the design criteria so that it can be satisfied that implementation of those will achieve appropriate mitigation for the effects of those structures.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Michael Foster
February 2011