IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Notice of requirement and Resource Consent Application by the New Zealand Transport Agency in respect of the Basin Bridge Proposal

BEFORE A Board of Inquiry

MEMORANDUM ON BEHALF OF THE ARCHITECTURAL CENTRE INCORPORATED and THE NEWTOWN RESIDENTS’ ASSOCIATION IN RESPONSE TO MEMORANDUM ON BEHALF OF NZTA RELATING TO THE SCOPE OF THE NATIONAL WAR MEMORIAL PARK (PUKEAHU) ACT 2012

14 May 2014

1. This Memorandum is filed by way of response to the Memorandum of 9 May 2014 filed by Counsel for the NZTA.

2. The NZTA Memorandum addresses the question of whether the War Memorial Park extension is within the scope of the NWMPA 2012 and submits that it is not within scope.

3. TAC and NRA agree that the extension is not within the area of the NWM Park as shown on figure 2 to Schedule 9, and accordingly is not part of the authorised park. The area of the extension is however included on both the construction plan and the land requirement plans in the schedule.

4. The linkage of the park to Kent Cambridge by way of the extension seems to be highly desirable to fully utilise the benefits of the park and is touted as being a positive benefit for amenity values and urban design. (This is a matter I have explored with a number of witnesses). The Act reflects the desirability of such a connection as follows:

Part 3
Park Design Principles

1 Embed the National War Memorial into City

- Extend the influence and activities of the National Memorial into the broader Te Aro Grid, from Cambridge Terrace to Taranaki Street.
- Reconnect the memorial space to the Basin/Government House precinct.
- Key the broader memorial space into existing axes and streets traversing the site.
- Key the broader memorial space into the primary movements across and through the city.
- Optimise permeability and accessibility between the city and broader memorial space.
- Envelop and celebrate both pedestrian and vehicle movements.

Repair + Renewal

The design should facilitate a strong and viable built edge along the northern edge of Memorial Park, by providing good aspect, access and interface.

Provide permeable and active edges to promote renewal and repair of adjacent areas, to achieve a positive park/neighbor relationship.

Connect the memorial space to the Kent/Cambridge and Taranaki city boulevards.

Key the broader memorial space into existing axes and streets within the neighbourhood.

5. Within this context, it is strange that the extension was not included in the legislation, but the crèche. The reasons why the extension was not included and the crèche was included have not been explained. It is however a reasonable implication that the extension was excluded from the legislation at the request of NZTA, so that the benefits of that extension could be claimed as benefits of the Bridge project.

6. TAC/NRA submit that the appropriate approach would be for the Board to regard the extension as being part of the reasonably foreseeable future environment irrespective of the flyover. While it is clear that the extension is not authorised as part of the NWM Park, it is not clear whether the extension would require any resource consent and if so what the activity category would be. It seems that the earthworks and construction works may be covered by the NWMPA since they are covered by the construction plan and the land requirement plan in the schedule to the Act. This is a matter which Mr Daysh and Mr Ulusele may be able to assist with.

7. In contrast to the exclusion of the extension, it seems that the NZTA actively sought that the Crèche relocation (which relates to part of the extension area) be included in the NWMP legislation. The reasons for that have not been explained, but the implication is that TAC and NRA take, is that this was an attempt to ensure that the adverse effects of that relocation could be excluded from consideration by this Board.

8. It is undisputed that the relocation of the Crèche is required in order to facilitate the flyover. It is also clear that the potential relocation of the Crèche has been under discussion since prior to the decision to proceed with consultation on only options A and B. Serious discussion of the relocation option was pursued in 2012 and the legislation was introduced in August 2012.

9. The evidence to date is that the Crèche relocation is not required for the underpass which is now excavated without the need for the relocation. The shift is clearly not required for the NWM Park which is limited to the area shown on figure 2 of the 9th Schedule.
10. There is no indication in the legislation or in Hansard or the Select Committee Report as to why the Crèche needs to be shifted to facilitate the underpass or any of the other SH1 related purposes stated in the designation. Nor is that apparent from the construction plan which shows Buckle and Sussex Streets, the underpass and the temporary road all to be outside of the construction area. Neither Mr Salmond or Ms Dangerfield were able to assist with explaining why the Crèche relocation was included in the legislation, but it is reasonably clear that this was at the request of the Agency. (Amongst other things, the relocation is referenced to the NZTA designation).

11. The most plausible explanation for the inclusion of the Crèche within the legislation is that it was at the request of NZTA, so that the adverse effects of the crèche relocation would be excluded from the Board’s consideration. I raise this issue now so that the NZTA has the opportunity to respond with evidence (including any relevant reports) to explain why the Crèche relocation was included in the legislation and why its relocation is needed for the underpass or associated works authorised by the legislation.

12. The associated issue is, whether the NWMPA 2012 does as a matter of law, authorise the relocation of the Crèche under the Resource Management Act.

13. The purpose of the NWMPA 2012 is as follows:

3 Purpose

(1) The purpose of this Act is to—

(a) empower the creation of the National War Memorial Park (Pukeahu) on the Park land that includes the National War Memorial, in the area of the City of Wellington known to Māori as Puke-ahu; and

(b) ensure its completion by April 2015, the centenary of the commencement of the Gallipoli Campaign of the First World War; and

(c) ensure the integration of the Park and roading networks with the wider City of Wellington.

(2) In order to achieve the purpose of this Act, the Act—

(a) grants the statutory authorisations to the New Zealand Transport Agency and the chief executive of the Ministry for Culture and Heritage that are reasonably necessary or desirable for—

(i) the completion of the design and construction of the Park, and to enable its maintenance and operation, and the reconstruction or alteration of the roading network; and

(ii) avoiding, remedying, or mitigating any actual or potential adverse effects of the exercise of statutory authorisations on the environment; and

(b) sets the conditions that will apply to the statutory authorisations; and
(c) facilitates the amendment of statutory authorisations granted by or under this Act, or their conditions, and the provision of any new statutory authorisations and conditions that may be reasonably necessary or desirable for—

(i) the completion of the design and construction of the Park, and to enable its maintenance and operation and the reconstruction or alteration of the roading network; and

(ii) avoiding, remedying, or mitigating any actual or potential adverse effects of the exercise of statutory authorisations on the environment; and

(d) establishes a community forum and review panel; and

(e) provides a process for the independent certification of plans and documents required by conditions of statutory authorisations granted by or under this Act.

14. The Crèche relocation is referred to in the conditions of the designation granted to NZTA. The purpose of that designation is as follows:

Schedule 3 ss 5, and 9(1)–(3)

Designation provided to Agency and conditions applying

In this schedule,—

Council means the Wellington City Council
Manager means the Council’s Manager, Development, Planning and Compliance or their nominee

Project means the activities authorised by this designation
Road Asset Manager means the Council’s Road Asset Manager or their nominee.

Part 1 Designation

D 01 All works associated with the design, construction, operation, maintenance, use and improvement of a State highway to achieve the following are authorised:

(a) undergrounding part of Buckle Street (State Highway 1):

(b) a temporary at-grade diversion of Buckle Street to facilitate the undergrounding works:

(c) works to tie the undergrounded section of Buckle Street into the wider roading network.

D 02 To undertake the design and construction of alterations to the local road network in order to facilitate the undergrounding of part of Buckle Street.

15. The relevant conditions are as follows:

NZTA 02 Conditions—General conditions and administration
Except as modified by the conditions below, and subject to final design, the Project shall be undertaken in general accordance with the plans in Schedule 9, being:

(a) figure 1—LR01: Land Requirement Plan:

(b) figure 2—WMP01: National War Memorial Park (Pukeahu) Plan:

(c) figure 3—CON01: Construction Area Plan.

For the avoidance of doubt, none of these conditions prevent or apply to works required for the ongoing operation or maintenance of the Project following construction such as changes to street furniture or signage over time. Depending upon the nature of such works, Outline Plans or Outline Plan waivers may be required for any such works. Where there is conflict between the documents listed above and these conditions, these conditions shall prevail.

All works shall be carried out in general accordance with the management plans required by these conditions.

Conditions—Heritage

NZTA 08 A Relocation Plan for the relocation of the Home of Compassion Creche (former) shall be provided to the Wellington City Council prior to the relocation of the Home of Compassion Creche (former) occurring.

16. The proposed relocation is within the area of the Construction Area Plan figure 3 in schedule 9 and the Land Requirement Plan figure 1.

17. While the relocation of the Crèche is clearly envisaged by the conditions and is within the construction and requisition area, it is clear law that the conditions and the plan cannot enlarge the scope and purpose of the designation. The designation is limited to the specific purposes stated above which must in turn be interpreted in the light of the statutory purpose. Accordingly the relocation of the Crèche and any associated earthworks is only authorised by designation so far as those works are:

Works associated with the design, construction, operation, maintenance, use and improvement of a State highway to achieve the following:

(a) undergrounding part of Buckle Street (State Highway 1):

(b) a temporary at-grade diversion of Buckle Street to facilitate the undergrounding works:

(c) works to tie the undergrounded section of Buckle Street into the wider roading network.

Or, are works:

To undertake the design and construction of alterations to the local road network in order to facilitate the undergrounding of part of Buckle Street.

(emphasis added)
18. There is an additional resource consent which provides as follows:

*Heritage*

*Activities associated with the construction, development and on-going use of the Park involving the potential modification to any listed object or building, with matters of discretion relating to:*

(a) historic heritage:

(b) height, coverage, bulk, and massing.

19. That consent must also be interpreted in the light of the purpose of the Act and in my submission does not authorise the relocation of the Crèche.

20. Mr Cameron has indicated that Mr Kenderdine will be in a position to explain why the Crèche needs to be shifted at this stage and how that relates to the underpass and associated works. Presumably there are also relevant reports from the NZTA to the Ministry of Culture and Heritage which may assist the Board in understanding whether the relocation is in authorised by the NWMPA.

21. The Departmental Report notes that the moving of the Crèche is provided for in BC02 (Agency Designation), refers to submissions on Crèche, and states:

"It is currently contemplated that the final design of the Park will make adequate provision to incorporate the Home of Compassion Creche. The detailed design work is yet to be undertaken and will be subject to consultation with such parties as the Community Forum, Wellington City Council and the New Zealand Historic Places Trust.

The issue of future modifications to State Highway 1 between Tory Street and Taranaki Street is a matter of conjecture and outside the scope of the Bill. "

22. None of the other Select Committee Advice mention the Crèche.

23. The only relevant reference to the Crèche within Hansard which I have been able to find is as follows:

"We have seen some changes to the Ministry for Culture and Heritage, and we would like to see a commitment from the Government benches that the historic Mother Aubert creche, which is right next to this site, will not be moved under this legislation. It is quite important, because I fear that what we are going to see is the Government using these extraordinary powers to see the next project down the line commence, or at least parts of it. This is the controversial, deeply unpopular, quite fiscally irresponsible Basin Reserve flyover. What we do not want to see is the Government using these powers to move things"

---

\(^1\) Departmental Report (September 2012) p. 77.
like the historic creche so it can facilitate its plans for an ugly, unneeded, expensive Basin Reserve flyover.”

24. I raise this issue now rather than in closing submissions, so that the Agency has a fair chance to respond. I have not raised the issue earlier because I did not become aware of this potential issue until this week during my cross examination of Mr Salmond.

25. I note that if the Board concludes that the relocation is outside of the scope of the NWMPA, then it follows that the relocation should be considered as being one of the adverse effects of the Bridge project (as it was originally considered to be).

Philip Milne

Counsel for the Architectural Centre and the Newtown Resident’s Association

DATED 14 May 2014

---

2 Gareth Hughes (Greens) National War Memorial Park (Pukeahu) Empowering Bill - Second Reading Hansard (25 September 2012).