

BEFORE THE BOARD OF INQUIRY

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of a Notice of Requirement and
resource consent applications by
New Zealand Transport Agency for
its Basin Bridge Project

**LEGAL SUBMISSIONS FOR ST JOSEPHS PARISH ON BEHALF OF
THE ROMAN CATHOLIC ARCHBISHOP OF THE ARCHDIOCESE OF
WELLINGTON**

Legal Submissions for St Josephs Parish on behalf of the Roman Catholic Archbishop of the Archdiocese of Wellington

Introduction

1. When I made my opening statement on behalf of St Josephs Parish some little time ago now, the primary focus was on the construction effects on St Joseph's Church, should the Basin Bridge Project proceed on the basis of the conditions as then tabled with the Board of Inquiry. I drew attention, in particular, to construction-related effects in the categories of parking, noise and laydown management.
2. As set out in the summary of evidence of Mr Faherty, the Church has reached agreement with NZTA regarding the way in which the effects of concern to it might be addressed – partly through the conditions proffered by Mr Daysh, and partly through the terms of an enforceable side agreement.
3. While the agreement the Church has reached with NZTA largely resolves effects issues such that St Joseph's is not seeking any additional conditions to address those effects, it is important to record that the end result is not one where all relevant effects have been avoided, or will be remedied. There are material adverse effects on the Church and its operations which I will discuss in a moment. These effects form the basis for the Church's opposition to the proposed shared cycle and pedestrian bridge that forms part of the project as a whole.
4. Summarising the submission, the Church's contention is that:
 - The shared pedestrian and cycleway has material adverse effects on the Church (and its neighbours).
 - The structure is not necessary to serve the needs of pedestrians and cyclists at this time.
 - To the extent that the shared pedestrian and cycleway provides benefits by way of mitigation of the visual impact of the road bridge structure, that is a relevant consideration, but not sufficient to

displace the adverse visual effects in the northeast quadrant, where the Church is located.

- To the extent that NZTA seeks to rely on the second Mt Victoria tunnel to justify the need for the shared pedestrian and cycle pathway, that consideration is irrelevant.

Existing Environment

5. Before addressing the evidence supporting the proposition set out above, I want to spend some little time discussing the legal principles governing the 'existing' environment, as they apply in this case. In doing so, I will also seek to respond to His Honour's request¹ for some assistance from Counsel as to whether the existing environment ought now to be taken to exclude the Project site.
6. The first point to make is that the existing environment and permitted baseline are different concepts. They have come from different directions in the operation of the Act and they have different purposes.
7. As is well known, the 'permitted baseline' had its origins in a series of Court of Appeal decisions in which the Court enunciated a mandatory rule that if permitted non-fanciful activities on a subject site would have an adverse effect, then consideration of a resource consent application, whether for the purposes of determining notification or for deciding whether consent should be granted, should consider only the incremental adverse effects the application would have, over and above those of the permitted activity.
8. The logic of the permitted baseline was that if a relevant plan made an activity permitted, that represented a community view that the effects of that permitted activity were acceptable. Accordingly, a resource consent application for an activity on the same site should similarly be able to take those effects as 'acceptable'.

¹ Transcript Day 40, page 4467

9. The role of the permitted baseline means that it applied only to permitted activities on the site the subject of application².
10. The permitted baseline has now been codified in section 104(2) of the Act, but recognising concerns that had been expressed in various Environment Court decisions that it was not necessarily appropriate to disregard the effects of permitted activities in all cases. The permitted baseline is accordingly framed as a discretion for the decision-maker.
11. The existing environment comes from a different direction. It stems from the fact that section 104(1)(a) of the Act, and section 5(2)(c) both talk about “effects” of activities “on the environment”. The definition of “effects”³ is extremely broad. It needs to be understood in context, and read in the light of the scheme and purpose of the Act as a whole, otherwise it could be taken to extreme and ridiculous lengths⁴. It is clear though that effects do not occur in a vacuum. Effects are on someone or something⁵. To apply these key provisions, it is therefore necessary to determine what or who constitutes the relevant environment.
12. Parallels might be drawn in this regard with application of the Commerce Act, where identifying the correct counterfactual is a key part of market analysis.
13. Moreover, because a decision on a notices of requirement is fundamentally a determination on the effects on the environment of

² *O’Connell v Christchurch City Council* [2003] NZRMA 216

³ In section 3

⁴ Refer *Canterbury Regional Council v Newman* [2002] 1 NZLA 289 where the Court of Appeal noted the classic quotation linking loss of a shoe with loss of a kingdom as an example of taking a chain of causation too far.

⁵ *Alexandra District Flood Action Society & Others v Otago Regional Council* C102/2005 at para. 70

allowing the requirement⁶, the same considerations arise in that context also.

14. In most cases, identifying the relevant environment is relatively easy and the matter is never analysed in any depth. The starting point is that the point of decision is the environment as the decision maker sees it on a site visit (hence the concept of 'existing' environment). The problem is that while this works perfectly well in the generality of cases, it does not universally hold true. In some cases the environment has been altered by illegal activities and hence the Environment Court has emphasised that it is the existing 'lawful' environment which needs to be considered.⁷ Mr Milne has of course relied on this aspect of the existing environment in the course of his submission.
15. Cases involving resource consents of finite duration have also thrown up difficult problems identifying the correct reference point (i.e. the correct 'environment') when those consents are sought to be renewed. The reasoning (and indeed sometimes the outcome) has differed from case to case⁸. Fortunately, the Board of Inquiry does not have to consider that situation here.
16. More recently, the concept that consideration of the existing environment needs to take into account future conditions has come much more clearly into focus. The leading decision is that in *Queenstown Lakes District Council v Hawthorn Estate Limited*⁹ which considered specifically the extent to which it was appropriate to have regard to future changes to the environment. As is well known, the Court of Appeal held that when considering the actual and potential

⁶ Section 171(1)

⁷ *Glenfield Ratepayers and Residents Association v North Shore City Council* A138/2002 at paragraph 65

⁸ See the *Alexandra District Flood Action Society* case (Clutha Hydro re consenting) for a discussion of some of the complexities.

⁹ [2002] NZRMA 424

effects on the environment allowing an activity, “it is permissible and will often be desirable or even necessary, for the consent authority to consider the future state of environment, on which such effects will occur”¹⁰.

17. Given this clear finding on the part of the Court of Appeal, the concept of the ‘existing’ environment is something of a misnomer, as Justice Fogarty has pointed out.
18. The other well-known aspect of the *Hawthorn* decision is its finding that the requirement on decision-makers to envisage the future environment on which the subject application might operate is not completely open-ended. To the extent that resource consents are required to produce a change to the environment as one sees it today, it is only already granted resource consents that are likely to be exercised that need to be taken into account.
19. Subsequently the decisions on the point have emphasised the fact that the *Hawthorn* decision needs to be read in context and that the oft quoted summary of the Court of Appeal’s reasoning¹¹ should not be treated as all-encompassing, as if it were the provisions of statute.
20. Thus, for instance, in *Queenstown Central Limited v Queenstown Lakes District Council*,¹² Justice Fogarty held it was inappropriate to have regard to the effects of proposed retail developments in a currently undeveloped area on the Frankton Flats near Queenstown, on the basis that that land would remain undeveloped given objectives in the operative District Plan providing for industrial development of the land and a clear need for such industrial development in the Queenstown area. A realistic view of the future environment involved taking the likelihood of such development into account.

¹⁰ *Hawthorn* at para. 57

¹¹ In para. 84

¹² [2013] NZHC 815

21. Similarly, in *Far North District Council v Te Runanga-A-Iwi O Ngati Kahu*¹³, the Court of Appeal has reinforced the concept evident in the Hawthorn decision that ‘the environment’ necessarily imports a degree of futurity and that a consent authority is required to consider the state of the environment at the time when it may reasonably expect the activity will be completed¹⁴. The *Ngati Kahu* decision involved a previously granted land use consent for residential unit construction and related development, followed by a subdivision consent to allow the units to be sold off separately. The Environment Court had found as a matter of fact that it was likely that the land use consent would be exercised, irrespective of the fate of the subdivision consent. The Court of Appeal held that that fact was decisive. Having appropriately considered the likely future state of the environment, the Environment Court had no discretion to disregard that factual finding when considering the effects of the subsequent subdivision application. The Court did not regard the part of the reasoning of the *Hawthorn* decision emphasising the role of the permitted baseline within the subject site and the existing or receiving environment as applying beyond the subject site as being decisive.

22. It is submitted that the reasoning of the *Ngati Kahu* decision is understandable and fully justified when one steps back and considers the origins of the existing environment concept. The decision-maker has to make a judgment about the extent of the positive and adverse effects on the environment. Adverse effects on the subject site may be taken out of the equation if the landowner agrees. To state the obvious, the consent applicant is not always the landowner. NZTA has designated the Church’s land, for instance, and the Church assuredly has not consented in writing to the effects NZTA seeks to have on its

¹³ [2013] NZCA 221

¹⁴ Para. 80

land. Similarly, the Court of Appeal has held that a landowner cannot give an effective consent to effects that have Part 2 connotations.¹⁵

23. In such cases, the decision-maker needs a reference point relative to which, the effects 'on the environment' might be judged. Accordingly, the 'existing' environment applies both on and off the site the subject of application (or requirement, as it is in this case).

Application of existing environment

24. So what does all this law actually mean in this case?

25. Clearly Mr Milne has put in issue the lawfulness of the creche movement. That is his argument not mine, and so I say no more about it.

26. Similarly, Mr Milne has put in issue the extent to which various other roading improvements in the general area might reduce the need for the Basin Bridge and should be regarded as part of the existing environment. Again, that is his argument not mine.

27. What I would say, however, is that based on the Court of Appeal's decision in the *Ngati Kahu* case, the Board has to make a factual finding as to the changes that are likely to occur in the future within and in the vicinity of the land the subject of NZTA's notice of requirement before embarking on a consideration of the effects of the Basin Bridge on that altered environment. Those changes might be the result of the exercise of existing currently unimplemented resource consents, implementation of permitted activities or more wide-ranging land use change (as in the *Queenstown* case). The key question however is, 'What is likely to occur?'¹⁶

¹⁵ *Royal Forest and Bird Protection Society v Kapiti Coast DC* [2009] NZRMA 302

¹⁶ The inquiry is therefore much more confined than the application of the permitted baseline.

28. How NZTA has chosen to define its 'do minimum' environment may be relevant to that exercise, but it cannot be determinative.
29. Where the existing environment does come into play for the purposes of my argument is in relation to the second Mt Victoria Tunnel. In my submission, there is no doubt that the second tunnel is irrelevant to any consideration of effects, whether positive or adverse.
30. When opening for NZTA, Mr Cameron appeared to accept that, but then rather sought to fudge the issue by reference to considerations of 'strategic fit'.
31. It is fair to say that I did not understand his argument, sitting listening to it on the first day of hearing, and I still don't.
32. The suggestion, however, seemed to be that the second tunnel could be relevant for some purposes but not for others.
33. As Mr Durdin has observed¹⁷, the concept of 'strategic fit' has been used in a number of different contexts in this hearing, but for the purposes of the Board's decision making process, the principal focus has to be on strategic fit with the relevant RMA policy statements and plans. In that context the planners' caucus statement has concluded that the Regional Policy Statement and District Plan do not provide either guidance as to how conflicting tensions should be resolved, or clear direction either to confirm or not confirm the notice of requirement¹⁸.
34. In any event, it is submitted that the role of a Policy Statement or Plan is ultimately to give more prominence to nominated effects in the implementation of the Act. It cannot make an effect relevant which is irrelevant as a matter of law. Having said that, it may in some cases have the opposite effect (the permitted baseline being a case in point).

¹⁷ See e.g. Transcript Day 49 at page 5724 and Day 50 at pages 5807-5708

¹⁸ Second Planners Joint Witness Statement at page 4

35. Accordingly, it is submitted that the second tunnel cannot materially influence the Board's decision making process whether to confirm the Basin Bridge notice of requirement, and if so in what form.
36. It is submitted that this is entirely appropriate. As others have noted, NZTA made a strategic decision not to run the Basin Bridge and the second tunnel applications together so as to allow an integrated assessment of all of the benefits and all of the adverse effects of both. Having made that decision, it would be entirely inappropriate, I submit, to have regard to some of the benefits of both projects, but only to the adverse effects of the Basin Bridge project. Certainly, at times, that is what Mr Cameron appeared to be suggesting that the Board might do.¹⁹

Adverse effects of pedestrian/cycleway

37. There is uncontested evidence that the pedestrian and cycleway will have material adverse effects on St Joseph's Church and its neighbours. The joint witness statement of the urban design, landscape and visual witnesses concluded²⁰ that the negative effects of the Project are greater in the northeast quadrant within which the Church sits, than elsewhere, by reason along other things, of the fact that the footprint of the Project is increased as a result of the divergence of the footbridge and road bridge and by reason of adverse amenity effects "from the proximity of the bridge structures to non-residential activity".
38. In this case, the pedestrian and cycle bridge could hardly be closer to non-residential activities on the St Joseph's site, because land has to be acquired from the Church to accommodate it.
39. Ms Popova confirmed that the extent of the adverse effect on the Church is moderate-high, that is to say a slight difference in magnitude

¹⁹ Including in the course of his cross-examination of Mr Faherty, for the Church.

²⁰ Paragraph 35

from the adverse effect on the Halakas property at 21-23 Ellice Street (which she classified as high), “but they would be pronounced”²¹.

40. Mr Brewer identified the loss of 28 Ellice Street as a minor negative “because of the quality of the existing environment and the fact that the removal of that building was as much at the property owner’s request than the Agency’s request.”²²
41. In terms of the existing environment, Mr McIndoe thought that the existing building “has merit as an existing character building”²³. Mr Brewer’s understanding of how the proposal to remove 28 Ellice Street came about might similarly be challenged. As Mr Faherty noted in his evidence,²⁴ 28 Ellice Street only has to be converted to carparking as a consequence of the pedestrian and cycle bridge proceeding and requiring a substantial proportion of the existing Church carpark. The Church would definitely prefer that the pedestrian and cycle way not proceed and that it be able to retain the house at 28 Ellice Street.
42. Mr Faherty also noted both the disruption of the Church’s activities and the residual adverse effects from loss of effective carparking capacity at peak times and more difficult manoeuvring in and out of the reconfigured carpark²⁵.
43. In his cross examination of Mr Faherty, Mr Cameron implied that he might argue that ‘stacking’ the existing carpark at peak times is contrary to the terms of the Church’s resource consent. In my submission, that is incorrect. The terms of that consent (annexed to Mr Faherty’s evidence in chief) do not impose a maximum number of cars parked on

²¹ Transcript Day 39 at page 4491

²² Transcript Day 35 at page 4095

²³ Transcript Day 47 at page 5482

²⁴ Transcript Day 64 at page 7422

²⁵ Transcript Day 64 at page 7402

the site, and given that any overflow would create parking demands on the surrounding streets, it is unlikely that would have been intended.

44. If those are the adverse effects of the pedestrian and cycleway, what are the benefits?

Benefit and need

45. It is fair to say that coming into this hearing, I had assumed that NZTA would not be proceeding with construction of a substantial structure in its own right, making up a meaningful element in the project budget at something in excess of \$6 million, if there was not a clear need for the facility.

46. I therefore have to admit being somewhat surprised when Mr Dunlop volunteered the information (in response to a question from Mr Cameron) that the “elevated walkway is not expected to get a huge increase in demand until such time as the second tunnel occurs”²⁶. Subsequently, Mr Dunlop confirmed in response to my own question, that “the benefits a cycleway and pedestrian way provides are intimately connected to the development of the second tunnel”²⁷ and even more frankly (in response to a question from Commissioner Baines), that if it was his \$6 million, Mr Dunlop would not be spending it on the pedestrian and cycleway²⁸.

47. Mr Spence for his part identified the value of the pedestrian and cycleway and providing a better facility for those pedestrians and cyclists seeking to travel east-west past the Basin, but similarly identified the existing poor conditions of the Mt Victoria tunnel as a key constraint which, if enhanced would be attractive to both pedestrians and cyclists²⁹.

²⁶ Transcript Day 7 at page 886

²⁷ Transcript Day 7 at page 901

²⁸ Transcript Day 7 at page 1293

²⁹ Transcript Day 19 at pages 2248-2249

48. Mr Durdin sought to emphasise the potential for schoolboys going to Wellington College to the shared route, but accepted that he had no information as to how many might do so. As he put it, “the project facilitates that possibility”³⁰. As regards the potential for expanded pedestrian and cycle use of the route more generally, Mr Durdin accepted that until the Mt Victoria tunnel is duplicated, the existing facilities will discourage usage through the tunnel connecting to the shared pathway.³¹
49. Mr Dunlop noted that while it has been assumed that a substantial proportion of pedestrians and cyclists exiting the tunnel (65%) would use the shared path, practical considerations suggested that may not be the case- they may continue to follow the valley floor and go down Cambridge Terrace³².
50. Mr Kelly was somewhat more positive regarding the ability of the shared path to meet suppressed east-west demand for pedestrians and cyclists, but ultimately accepted that it was “somewhat speculative”.
51. It is also worth noting that in marked contrast with the position taken by Mr Burgess for the cycling community, supporting the shared path and seeking that it be widened, the representation of Ms Blake for the pedestrian community was one of opposition to the entire project³³.
52. Standing back from the transportation evidence on this subject, it exhibits a “Field of Dreams” approach to the pedestrian and cycleway - build it and they will come- without ever being clear about where or why they should come given, as Mr Spence put it, the “very very disagreeable state” of the existing tunnel for pedestrians and cyclists³⁴.

³⁰ Transcript Day 48 at page 5612

³¹ Transcript Day 48 at page 5614

³² Transcript Day 10 at page 1293

³³ Transcript Day 55 at page 6355

³⁴ Transcript Day 19 at page 2248

53. Obviously, the relevant objective is framed in a way which invites reliance on the creation of opportunities for improved cycling and walking, as distinct from their realisation- something Mr Durdin pointed out.³⁵ That could be viewed as supporting the shared path, even against evidence of limited demand or likely use. In my submission, however, the requirement on the Board to have particular regard to whether the work is reasonably necessary to achieve the objectives in terms of section 171(1)(c) demands cogent evidence that the facility will serve a useful purpose in terms of meeting cycling and pedestrian needs.
54. If that were not the case, my submission would be that the objective is flawed, by analogy with the cases holding that the consideration of alternatives cannot be gutted by selection of objectives that admit of only one option³⁶.
55. So if the benefits to be gained from the pedestrian and cycleway in transportation terms are dubious, and the cost material, why is NZTA pursuing it in advance of the second tunnel?
56. Mr Dunlop had a clear explanation for that too: he said that NZTA added the pedestrian and cycleway because Greater Wellington Regional Council required that, and that without the influence of councils, NZTA probably would not have done so³⁷.
57. For his part, Mr Blackmore staunchly resisted the suggestion that NZTA had bowed to pressure from councils in this regard³⁸. While he accepted that the councils had been strong proponents of the pedestrian and cycleway, he said that there were visual amenity

³⁵ Transcript Day 51 at page 5904

³⁶ E.g. *Wymondley Against the Motorway Action Group Inc v Transit NZ* A022/03

³⁷ Transcript Day 10 at page 1293

³⁸ Transcript Day 27 at pages 3170 and 3175

reasons for the shared path and that it had been advocated by Miss Wraight and Mr Hardwick-Smith for that reason.

58. Mr Blackmore was asked where that recommendation is documented. He could not immediately do so, but said he would endeavour to find it.³⁹ In the event, it does not appear that any documentation evidencing this recommendation has been produced.⁴⁰ I am not suggesting that no such recommendation was made⁴¹ but it is surprising that it was not more clearly documented if this was indeed a key reason for adoption of a \$6 million element of the project.

59. It is also interesting to note that of all the witnesses giving evidence on the benefits of the shared path as a facility for pedestrians and cyclists, the strongest supporter for it was Wellington City's visual amenity witness, Mr McIndoe. The transportation experts were much more circumspect in their opinions.

60. A number of the visual amenity witnesses discussed the way in which the shared path softens the appearance of the road bridge, when viewed down Kent and Cambridge Terrace. Some witnesses also noted that the section of the shared path that is separated from the road bridge in the northeast quadrant reduces the adverse visual effects of the road bridge by providing foreground focus point, albeit at the cost noted above of increasing the project footprint. Both Ms Wraight and Mr Hardwick-Smith also talked about the function of the shared path as a means to "humanise" the appearance of the road bridge⁴². Mr Hardwick-Smith, however, accepted that there was a link

³⁹ Transcript Day 27 at pages 3179-3180

⁴⁰ In the preparation of these submissions, to ensure I had not missed it in my review of the Transcript, I asked counsel for NZTA if they could point me to its production. As at my finalising my submissions, they had not done so.

⁴¹ Ms Wraight for instance gave evidence that she had recommended addition of the shared pedestrian and cycleway to the project- Transcript Day 30, page 3471

⁴² See for example, Transcript Day 30 at page 3473

between the extent of use of the shared path and the urban design benefit – in summary, the more people using the shared path, the more humanising it would be, and vice versa⁴³.

61. Both Mr Lister and Mr Brewer made comment in a similar vein, talking about the relationship between need and sustainability. In Mr Brewer's words, "...it is no use having a beautiful bridge if no-one uses it"⁴⁴.
62. Ultimately, the Board of Inquiry has to determine whether there might be other ways to mitigate the appearance of the road bridge than bolting a three metre wide pedestrian and cycleway to the north side of it, and if not, whether the softening effect identified by the visual amenity witnesses justifies the extent of the adverse effects of the shared pathway. Given the relationship drawn between the acceptability of visual amenity effects and need, my submission is that it does not do so.

Rationale for the Church's position

63. As Mr Faherty made clear when he gave evidence, the Church accepts that if and when a second Mt Victoria tunnel proceeds, the balance of advantages and disadvantages flowing from the shared pedestrian and cycle path will alter significantly. At that point, the facility will move from being a "somewhat speculative" addition to the cycling and walking network to a facility that would offer real benefit.
64. Mr Faherty said that the Church would not oppose the shared path at that stage because there would then be a greater demand for it. The same, however, cannot be said at this point.
65. In cross-examination of Mr Faherty, Mr Cameron sought to query why, if it accepted the shared path might be justified in the context of the

⁴³ Transcript Day 32 at page 3739

⁴⁴ Transcript Day 36 at page 4200. See also Mr Lister on the subject at Transcript Day 41, pages 4795-4796

second tunnel, the Church wouldn't agree to it now, and avoid being disrupted twice.

66. As Mr Faherty made clear, there are two answers to that question. The first is that no-one knows if the second tunnel will proceed. It is yet to be the subject of a consent hearing. It may or may not be granted consent. If it is granted consent it may or may not proceed. It is clearly a much more expensive proposition than the Basin Bridge. Funding priorities may change. Any number of reasons might mean that it is delayed beyond 2021 or indeed never happens.

67. Second, as Mr Faherty noted, the Church has done one full and final settlement with the roading authorities to provide for future roading needs only to find that it was neither full and final. For St Joseph's, this is a case of once bitten twice shy. NZTA cannot guarantee to the Church that part of the second tunnel proposal will not involve it coming back and seeking to take another slice off the Church's land. Accordingly, St Josephs' position is that NZTA ought to take things one step at a time. If as Mr Dunlop stated, the benefits of the shared pedestrian and cycle pathway are intimately connected with the second tunnel, it should only proceed with the second tunnel.

Widening the pedestrian and cycleway

68. One of the sources of debate during the course of the hearing has been whether the proposed three metre width of the shared path is adequate and safe. Mr Durdin recommended that it ought to be another 1.5 metres wider to meet safety guidelines. The advocate for cycling interests, Mr Burgess, supported that position.

69. Although towards the end of the hearing, Mr Kenderdine gave evidence that the shared pathway might be able to be widened a little within its existing proposed corridor⁴⁵, the reality is that the shared path has to be widened in the order of 1 to 1.15 metres, in the section where it crosses the current St Joseph's Church carpark, that will require more of the

⁴⁵ Transcript Day 63 at page 7275

Church's land to be taken for that purpose⁴⁶ and a material increase in the extent of the adverse visual effect on those (like the Church) affected by it⁴⁷. Neither Mr Durdin⁴⁸ nor Mr Burgess⁴⁹ had given any thought to the implications of widening the shared pathway for the Church, still less assessed the extent of the accompanying adverse effects in terms, among other things, of adverse amenity effects and further loss of carparking.

70. In trite law that in any RMA process, he (or she) who asserts, must prove. It was therefore for those contending that the shared path should be widened to establish that the benefits that resulted justified the accompanying adverse effects on affected parties. They made no attempt to assess the latter, and indeed were quite open that that was the position. Against that background, it is submitted that the Board of Inquiry does not have an evidential basis on which to determine that the shared pathway should be widened such as to take in more of the Church's land.

71. Addressing the merits of the position, both Mr Durdin and Mr Burgess accepted that there was an existing constraint where the shared pathway comes into close proximity with the Church building. That meant that there was no room to widen it at that location. Mr Durdin confirmed that he was not suggesting that, and that he was only suggesting that the bridge part of the path should be widened from the point where it is proposed to leave grade, west of the Church buildings⁵⁰.

⁴⁶ Refer cross-examination of Mr Hardwick-Smith on this point: Transcript Day 32 at page 3732

⁴⁷ Refer cross examination of Mr Hardwick-Smith -Transcript Day 32 at page 3728

⁴⁸ Transcript Day 48 at page 5615

⁴⁹ Transcript Day 23 at page 2732

⁵⁰ Transcript Day 48 at page 5615

72. Given the clear acceptance that this particular guideline is just that, and that shared path might be wider in some areas than in others, my submission is that if, contrary to my submissions, the Board finds that the case for the shared path is made out, it should direct that it be widened from the point that it crosses the northern side of Ellice Street, and where that widening will not have an adverse effect either on St Joseph's or on the Halakas property.

Conclusion

73. In conclusion, I would like to thank the Board and my fellow counsel for facilitating the limited role that I have played in this hearing, which has allowed me to come and go, and slot in as appropriate. I would also like to thank the EPA staff for their unfailing courtesy and helpful information about the progress of the hearing.

74. I would of course be happy to follow up on any loose ends the Board may need my assistance with.

T P Robinson

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acting on behalf of the Roman
Catholic Archbishop of the
Archdiocese of Wellington

Dated: 29 May 2014