

HEARING SUMMARY – ANDREA RICKARD – STATUTORY PLANNING

Corrections and clarifications:

1. Since preparing my evidence in chief and rebuttal I have noted the following clarifications and corrections I would like to make to my evidence.
 - (a) At Paragraph 6.10 of my evidence in chief (EIC) I note that Mutukāroa is an ONF, it is also an historic heritage extent of place; and at Paragraph 6.12 I would like to add that The Landing is also an historic heritage extent of place (i.e. the former Manukau Tavern).
 - (b) At Paragraph 6.47 of my rebuttal the first sentence should say "...do not properly acknowledge their presence or their potential for future use." I acknowledge the POAL planner recognises the AT designation is present, though he reaches a different view on its relevance (which is encompassed in the sentence that follows in my rebuttal statement). In any case, I note that a refinement to the boundary has been suggested in expert conferencing (dated 11 July) that would reduce encroachment into the ChemWaste site (and I understand should also reduce width at the Ward Demolition site as well).
 - (c) In my EIC I variously state that I am a co-author or supervisor (e.g. para 8.2) of the preparation of the Statutory Matters report. I confirm I am the co-author.
 - (d) Delete 10.3(e) of my EIC.
 - (e) At 11.47 of my EIC I have spelled "particular" incorrectly.
 - (f) In the attachment to my EIC I summarise consents held by other persons. Mercury (and predecessors) has made several amendments to its consents, at 13(a) the 2012 amendment to the land use consent is the one that addressed the matters identified.
 - (g) Delete 6.24 of my rebuttal.
 - (h) At Paragraph 7.19 of my rebuttal evidence on the 4th line from the end of page, it should read "inappropriate" (one word not two).
2. I am one of the around one third (some 1200 people) of Beca employees who hold shares in Beca Group Limited. I do not receive any additional direct financial benefit if approvals for this Project are obtained; or lose anything if not. My shareholding does not affect my ability to comply with the expert Code of Conduct.

Bundle of Provisions:

3. In order to assist the Board, I have prepared a bundle of statutory documents. These are the ones that are, in my view, most relevant to the project and which have been referred to in my evidence. I have attached an index of that bundle to this summary statement. I am of the view that the bundle reflects the documents that the planners agreed were relevant at the expert conference.

Based on my evidence in chief and rebuttal my key findings are:

4. The East West Link project engages a wide range of statutory planning documents and statutory provisions. Having been involved in expert conferencing and facilitated meetings, read the primary and rebuttal evidence of all relevant submitter parties, and heard opening legal submissions from

Counsel for all parties, I remain of the view that the Project appropriately addresses all the relevant statutory tests.

Section 104D of the Act

5. With respect to the Section 104D “gateway tests” for non-complying activities, it is my view that there will be more than minor adverse effects such that the first gateway test (the effects gateway) would not be passed. Whilst I reach this conclusion, there is both a short term or “immediate” view of the Project and its effects, and there is also a longer term view. It is my view that the Project incorporates comprehensive measures to manage effects on the environment (including through the conditions) such that adverse effects are appropriately managed and that there will be significant positive benefits as a result. For clarity, when I say “short term”, I mean in an environmental impact sense, in that many of the effects will be experienced generally during construction and for a transitory period following construction. I do recognise and acknowledge that some of the experts giving evidence to the Board have identified permanent adverse effects.
6. With respect to the second gateway test (the objectives and policies gateway test), it is my view that the Project is not contrary to the relevant objectives and policies of the Plan or Proposed Plan. In this regard, it is important to reflect that the Act talks about the “Plan or Proposed Plan” and therefore policy statements (including the NZCPS and the RPS) are not relevant to this test. I have reached this view taking a holistic analysis of the relevant provisions of the AUP¹. During the course of the hearing, the reclamation objectives and policies in Part F of the AUP (largely – but also in the legacy coastal plan) have come under much scrutiny. I agree they are important given one of the reasons for the non-complying activity status is the reclamation. While there has been much focus on the “avoid” aspect of the policies I consider that the Unitary Plan’s policy framework is not so black and white, and that infrastructure is provided for. In this context, it’s difficult to say the Project is “contrary to” those provisions. I am of the view that, as a suite of policies, the proposal will not be contrary, and in fact addresses and responds well to some of the relevant policies. However, in my view the reclamation objectives and policies need to be read (both as a ‘whole’ policy set (i.e. all policies in respect of reclamation in the Coastal Plan) and in the context of the wider regional plan (and to some extent the district plan) as there are many other elements to the project other than the reclamation, including this is being transport infrastructure Project located in a high growth urban area.

Section 171 and Section 104 of the Act

7. The Board, in making its decision on the Project, will need to have regard to the relevant provisions of the statutory documents.
8. The Regional Plan gives effect to, the Regional Policy Statement, which although not required to be considered for a S104D assessment, recognises a range of issues for Auckland in each of the Chapters (Part B). The Regional Coastal Plan, Regional Plan and, District Plan, objectives, policies and other provisions, therefore reflect these issues which are many and varied and, include the need to manage and provide for growth (appearing throughout the sub-chapters) and to manage

¹ Recognising my view that for the most part the AUP is largely beyond appeal and should be given greatest weight, with the legacy plans carrying little or no weight.

effects on the natural environment (amongst other things). Mana whenua values are reflected throughout the Plan, not solely in the chapters labelled as such.

9. Overall, the Unitary Plan as a whole (including the RPS) has been required to give effect to other national policy statements (which I list in my evidence) and the NZCPS. In my view the plan reflects the unique issues of relevance to Auckland and therefore the planning documents seek to respond to and address these issues. This is set out at the start of the Unitary Plan in the issues of the RPS which then flow through to the objectives, policies, rules and methods. This requirement to give effect to the higher order policy statements has already been tested to some degree through an appeal to the High Court that has been settled by consent².
10. In my view, the Unitary Plan objectives, policies and provisions demonstrate how the NZCPS has been carefully given effect to in a manner that is specific to Auckland. Similarly this applies to the other higher order policy statements that were in place when the Unitary Plan was prepared.
11. In relation to Section 171 and Section 104, I have also commented on effects and alternatives further below, and specifically with a focus on the statutory tests, because this remains an area of difference between planning witnesses.

Part 2

12. With respect to Part 2, it is clearly an evolving area of law that several legal counsel have already provided views on, as have some of the other planning expert witnesses. Regardless of the outcome or evolution of the law (and cognisant of the changing situation), I have considered Part 2 and provided an analysis of the relevant sections and sub-sections in my evidence. It is my opinion that the Project meets the sustainable management purpose of the Act as in section 5, appropriately recognises and provides for the relevant matters of section 6, has particular regard to the matters of section 7, and meets the requirement of section 8 of the RMA (as elaborated on in Part I of the AEE).

Other Matters

13. There have been comments and questions on the relevance of the Auckland Plan. In my view this is still a very relevant statutory document. It is a forward-looking document for Auckland and takes a 30 year horizon. The Unitary Plan has been prepared as a regulatory tool to respond to the region-wide issues that the Auckland Plan sets out. It does not replace it. As is a forward looking document it includes land use and infrastructure development.

Outstanding Issues:

14. There are differing views from some of the other planners involved, and who have prepared evidence for this Board. I also acknowledge that some counsel have presented legal on the interpretation and application of planning provisions. I consider the key areas of difference are:
 - (a) Adequacy of effects assessment with a particular focus on individual sites;
 - (b) Adequate consideration of alternatives;

² Referred to in the planning JWS – Royal Forest and Bird Protection Society

- (c) Consideration of relevant provisions: Whilst all planners generally agreed on the relevant statutory documents, the planners did not seek agreement on the assessment against the provisions in those documents and hence reach different conclusions in their assessments. This difference of view appears to relate, variously, to Section 104D, 171 and/or 104.

My position on those issues:

Adequacy of Assessment of Effects

15. A number of parties consider the assessment of effects is not sufficient to cover the issues specific to individual sites. Similarly, a number of parties consider the assessment of alternatives is not adequate.
16. These parties have naturally focused on their own sites and the detailed issues that are of concern to them. As Ms Hopkins has said, the assessments have considered the local area, the whole region and Project-wide at the effects, including those that extend regionally and inter-regionally. This recognises that this is a project of national significance and that there are effects that are likely to be felt well beyond the immediate site area. In my view, this Project will have significant local benefits as well as those wider benefits, including for the business community, local residential communities and the environment more generally.

Adequacy of Consideration of Alternatives

17. Similarly, just because parties do not like the option chosen, does not mean the assessment of alternatives is not adequate. In my view the assessment of alternatives was adequate, and Ms Linzey sets out in her evidence the process that was undertaken. In considering alternatives I can confirm that statutory planning matters including Part 2 matters, statutory planning provisions, objectives and policies, mapped areas in the relevant plans and areas that were assessed by the expert team, were all taken into account in the assessment of alternatives.
18. Further to that, and recognising the point I made above, individual site owners were engaged in the process, because they know their own sites and operations and can provide useful information to inform that process.
19. In my view the consideration of alternatives has been robust, and well considered.

Consideration of relevant statutory provisions

20. I remain of the view that appropriate regard / particular regard has been had to the relevant statutory provisions in the context of S104 and S171 – for the reasons I set out in my EIC and rebuttal. I have not changed my view as a result of reading the additional evidence prepared by others. As I set out above, I am of the view that the S104D “objectives and policies” gateway test is met. I acknowledge the additional evidence provided on S104D matters as prepared by Mr Gouge (Auckland Council).

Additional issues arising:

21. I have observed that there have been a range of issues raised (in evidence and at times during this hearing) in relation to the Unitary Plan, its structure and how it is to be read. I would be pleased to assist the Board further by providing comment on the structure of the Unitary Plan and how I have used that structure in preparing my statutory assessments, including how, in my view, the Regional

Policy Statement, Regional Coastal Plan, Regional Plan and District Plan are structured and work together, should this be useful. This could include in the context of bundled consents, the S 104D assessment, and the provisions and their relationship to the consents and NORs.

22. The legal submissions from TOES, MHRS (and others) in opening suggest that the zoning in the broad area is likely to transition to become a more residential environment including what I heard to be a suggestion that there had been housing projects (including SHAs) approved in the Heavy Industry Zone with the inference that the EWL is “wasted”. This followed comments on its (the EWL) purpose being about freight. To the best of my knowledge none of these were in Heavy Industry Zones and I disagree with this proposition. The Project objectives are clear. Further, the provisions of the HIZ are clear. There are many activities that are explicitly discouraged in this zone, and for the most part, activities that are not permitted are either non-complying or prohibited – there is negligible “middle ground” in terms of controlled or discretionary activities.

APPENDIX

Index of Relevant Statutory Planning Provisions

1.		New Zealand Coastal Policy Statement
2.		National Policy Statement on Urban Development Capacity 2016
3.		National Policy Statement on Electricity Transmission 2008
4.		National Policy Statement for Renewable Energy Generation 2011
5.		National Policy Statement for Freshwater Management 2014
6.		Auckland Unitary Plan – Operative in Part
	B	Regional Policy Statement (all chapters except B9 Rural)
	C	General Rules
	D	<i>Overlays</i> D9 Significant Ecological Areas Overlay D10 Outstanding Natural Features Overlay and Outstanding Natural Landscapes Overlay D17 Historic Heritage Overlay D21 Sites and Places of Significance to mana whenua D26 National Grid Corridor Overlay
	E	<i>Auckland Wide</i> E1 Water Quality and Integrated Management E8 Stormwater discharge and diversion E11 Land disturbance – Regional E12 Land disturbance – District E14 Air quality E15 Vegetation management and biodiversity E16 Trees in open space zones E17 Trees in roads E18 Natural Character of the Coastal Environment E19 Natural features and natural landscapes in the coastal environment E22 Artworks E25 Noise and vibration E26 Infrastructure E30 Contaminated land E36 Natural hazards and flooding
	F	<i>Coastal</i> F1 Introduction F2 General Coastal Marine Zone F5 Minor Port Zone
	H	<i>Zones</i> H7 Open Space zones H10 Business – Town Centre Zone H13 Business – Mixed Use Zone H16 Business – Heavy Industry Zone H17 Business – Light Industry Zone H24 Special Purpose – Cemetery Zone
	J	<i>Definitions</i>
	N	<i>Glossary of Māori terms</i>
7.		Note: Operative Regional Coastal Plan (legacy) not included. Can be provided on request