

BOARD OF INQUIRY

**Northern Corridor
Improvements Proposal**

IN THE MATTER

of the Resource Management
Act 1991 (the RMA)

AND

IN THE MATTER

of a Board of Inquiry appointed
under s149J of the Resource
Management Act 1991 to
consider notices of requirement
and resource consents made by
the New Zealand Transport
Agency in relation to the
Northern Corridor Improvements
Proposal.

MEMORANDUM NO. 03 OF BOARD OF INQUIRY
DATED 25 May 2017

Expert conferencing

Introduction

[1] The purpose of this memorandum is to provide guidance to counsel and experts on the procedures for expert conferencing. The memorandum addresses the following:

The primary objectives of expert conferencing;

The relevant requirements of the Environment Court Practice Note 2014;

Matters which the facilitators consider will ensure that expert conferencing is undertaken in the most effective and efficient manner which are therefore endorsed by the Board and which include:

- the preparation of a statement of key facts;
- the preparation of an agreed summary of statutory planning provisions of relevance to the proposal;
- the preparation of agendas for individual expert conferences;
- the administrative arrangements for the conferences themselves; and
- the format of Joint Witness Statements.

Primary objectives of expert conferencing

[2] The primary objectives of expert conferencing are to assist the Board of Inquiry by narrowing and clarifying issues to avoid repetition and to reduce hearing time. This is to be achieved by identifying areas of agreement between experts and areas of disagreement, with reasons for any disagreement clearly set out in a Joint Witness Statement (“**JWS**”).

Relevant requirements of the Environment Court Practice Note 2014

[3] Expert conferencing (and evidence preparation) is to be undertaken in accordance with the relevant requirements of the Environment Court Practice Note 2014. These are Section 7 (Expert witnesses) and Appendix 3 (protocol for expert witness conferencing) of the Practice Note.

[4] Counsel are to ensure all experts read the Practice Note prior to evidence being prepared and it is strongly recommended that experts familiarise or re-familiarise themselves with the requirements. Counsel have an obligation to ensure the requirements are clearly understood by their experts.

[5] To assist experts, and for the avoidance of doubt, we note the provisions of Section 7.2 of the Practice Note are:

- (a) An expert witness has an overriding duty to impartially assist the Court on matters within the expert's area of expertise.
- (b) An expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.
- (c) Every expert witness is expected to treat the evidence of experts called by other parties with the respect due to the opinions of a professional colleague, even if there is fundamental disagreement between the views each expresses....

[6] Particularly relevant requirements of Appendix 3 are:

The expert witness must exercise independent and professional judgement and must not act on the instructions or directions of any person. (Paragraph 1(e))

Sound preparation is essential, and the parties must allow adequate time for this process to be completed. Counsel are responsible for ensuring that the experts have all necessary documentation to enable proper preparation. (Paragraph 1(f))

Paragraph 5 (a)(iv) identifies that one of the requirements for a successful outcome to be achieved is "providing a hard copy, and/or making available electronically, to other participants relevant documents and other exhibits".

[7] It is implicit that relevant information should be distributed before a conference takes place, and that experts will base their opinions on all available relevant information, and that any areas of uncertainty will be clearly stated.

Procedural issues

[8] In order to provide the maximum benefit to the Board, the following processes have been requested by the facilitators and are endorsed by the Board:

- (a) Preparation of a statement of key facts
 - (i) A statement of key facts relevant to each topic for conferencing is to be included in the JWS, generally as required by Section 2 of Appendix 3 of the Practice Note.
 - (ii) The statement of key facts should set out key facts upon which certain experts' opinions will be based. It is to be a concise statement that describes such matters as particularly relevant standards and/or guidelines relied upon, critical design considerations, any sensitive local features taken into account, any models used and the like, as considered appropriate by the experts.
 - (iii) In the event that there is any disagreement between experts on the key facts, the inferences or logical conclusions sought to be drawn from those facts, and/or differences of opinions arising from either the facts or the inferences sought to be drawn from them, these should be stated in the appropriate places in the JWS.

(b) Preparation of an agreed summary of planning provisions of relevance to the topic of each conference

(i) Prior to the start of conferencing, the planning experts are to agree and briefly summarise the planning provisions of relevance to each expert topic to be conferenced, and include them in the template for the relevant JWS. This will enable the topic experts to provide opinions on the extent to which the proposal aligns with the relevant Planning provisions. This could be subject to early planning expert conferencing if the planning experts are unable to agree, or consider that it is more efficient and cost-effective to prepare the relevant planning provisions in this way.

(ii) The summary should identify:

- What the planning experts consider to be the specific provisions of relevance to the proposal from each of the planning documents considered relevant; and
- Any other matters the planning experts consider could be addressed by the topic experts to assist the Board.

Counsel may wish to assist with this task.

(iii) In identifying the provisions of relevance, it would assist the Board if these could be presented in the following order:

- Higher order and directive objectives and policies:
- Non-directive objectives and policies that set regional or district planning directions of specific relevance to the proposal; and
- Other provisions from the same documents which the experts consider may be relevant.

(iv) In terms of the “other provisions”, the experts will need to decide what should be included. One matter to be considered may be that: If a provision simply re-states what is already set out as a requirement in the Resource Management Act itself, would including it assist the Board?

(c) Preparation of agendas for individual expert conferences

(i) Counsel are to confer with their experts and other counsel to agree agendas for each expert conference and provide them to the EPA, the conference facilitator and all participating experts **at least five working days** before the conference. The Agenda should identify outstanding issues to be discussed by experts using the attached JWS framework, with preliminary matters identified in the framework completed as far as possible.

(ii) The facilitator will review the draft agenda and, in the event that he consider additional matters should be added to address issues arising from the evidence or not included in the agenda, he will advise the parties **no later than three days** prior to the conference.

(d) Administrative arrangements for the conferences

- (i) The EPA will organise venues, a computer, a data show and screen and morning and afternoon teas. Counsel are to arrange and provide the draft JWS, the statement of key facts, the agreed summary of planning provisions of relevance to the expert conference topic and any other relevant documents to the facilitator **two days before** the relevant conference. Counsel are also to ensure all drawings and other documents that may assist conferencing are provided to the facilitator at the same time.
- (ii) Counsel, in consultation with the experts, are to arrange for a suitable person to act as a recorder.

(e) Format of JWS documents

- (i) It is important to use simple, easy to understand language that avoids complex technical terms and jargon as far as possible. It is also important to have a common understanding from the outset of the purposes and desired objectives of each conference. As a number of the expert conference topics could be inter-related, it will be important to explain how each set of conference outcomes affects other conferences, to limit any potential for misunderstandings to occur. Where appropriate, any relevant JWS from an earlier conference will be made available to experts at later ones.
- (ii) Any relevant facts (including explanatory drawings) that form part of an opinion expressed in a JWS, regardless of whether the opinion is agreed or disputed, should be clearly outlined in the JWS, as these facts provide context or background to the expressed opinion.
- (iii) It is desirable that all JWS are provided in a common pre-agreed format, thereby avoiding the need to spend valuable time at each conference discussing format issues, and making it easier for readers of different JWS and the Board to follow.
- (iv) A proposed draft format is **attached** and counsel are invited to provide feedback to the EPA by **2pm Thursday 1 June 2017**, after which the facilitators will determine the final format of the JWS template to be used.
- (v) JWS are to be completed and signed at the conclusion of each conference.
- (vi) The EPA will distribute copies of any completed JWS to the witnesses and parties via the EPA website.

For the Board:



Judge M Harland
Chairperson

on behalf of Board of Inquiry for the Northern Corridor Improvements Proposal

Dated: 25 May 2017

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Joint Witness Statement: [insert topic here]

Dated:

Experts participating: *To be inserted prior to conference*

Facilitator: Environment Commissioner Ross Dunlop/Jim Hodges
(Delete as necessary prior to conference)

Introduction

1. All experts confirm that:

- (a) They have read the Environment Court Consolidated Practice Note 2014 Code of Conduct and agreed to abide by it, and in particular:
- (b) They have read the Environment Court Consolidated Practice Note 2014 in respect of Expert Witness Conferencing (section 7) and Alternative Dispute Resolution (section 5) and agreed to abide by it.

2. Purposes of expert conferencing

The primary purpose of expert conferencing is to assist the Board of Inquiry and to reduce hearing time.

Other purposes specific to the topic area to be inserted prior to conference.

3. Issues in contention

Cover here issues in contention relevant to the topic that need to be determined.

Background

4. Terminology

A glossary of the terminology used in this JWS is attached as Annexure 1.

Where relevant, to be completed by experts before or during the conference to explain technical terms used for the benefit of lay readers.

5. Statement of key facts

[See paragraph 8(a) of Memorandum No. 03 – Expert conferencing]

List to be inserted prior to conference where possible and finalised during conference, including the identification of any areas of disagreement

6. Key drawings
[Delete if not necessary]

The following drawings relating to the topic area for this expert conference are attached to this JWS:

List to be inserted and drawings to be attached prior to conference or clear references to where they can be found in the AEE or evidence.

7. Context
[Include only if relevant to the issues in contention]

It could include, by way of example:

- *reference to drawings;*
- *a description of the road network and existing traffic volumes and/or constraints in relation to traffic if there is an issue with predicted future volumes;*
- *a description of construction constraints or other constraints, eg visual impact of an acoustic barrier.*

8. Conferencing outcomes

This part to state matters agreed and matters not agreed with reasons.

A heading should be included for each item on the final agenda prior to conferencing.

9. Technical evaluation of the proposal in relation to relevant planning objectives and policies

The following objectives and policies identified by planning experts/counsel were considered at the expert conference:

Planners/counsel to list prior to conferencing, with particularly important provisions to be set out in full or attached. This will clearly involve a judgement call by the planning experts/counsel and should be limited to directive objectives and policies and non-directive objectives and policies that set national, regional or district planning directions of specific relevance to the conferencing topic and the relevant issues in contention which need to be decided by the Board.

Under each particularly important Plan provision, the experts at the conference are to indicate the extent to which they consider the proposal - subject to conditions - gives effect to relevant objectives and policies or to identify where there is uncertainty.

Summary of key outcomes

- 1.
- 2.
- 3.

Signed

DRAFT