

BOARD OF INQUIRY

Northern Corridor
Improvements Proposal

TRANSCRIPT OF PROCEEDINGS

BOARD OF INQUIRY

Northern Corridor Improvements proposal

Hearing held at: QBE STADIUM, Stadium Drive, Albany, Auckland

on 20 July 2017

BOARD OF INQUIRY:

Judge Melanie Harland (Chair)

Mr Conway Stewart (Member)

Mr Nigel Mark-Brown (Member)

Contents

~Day 3, 20 July 2017 (9.02 am)	207
~Opening submissions from Mr Berry (9.03 am)	207
~Questions from the Board (9.06 am)	208
~Mr Berry continues (9.09 am)	209
~Questions from the Board (9.18 am)	213
~Mr Berry continues (9.19 am)	214
~Questions from the Board (9.23 am)	216
~Mr Berry continues (9.24 am)	216
~Questions from the Board (9.30 am)	219
~Mr Berry continues (9.32 am)	219
~Questions from the Board (9.34 am)	220
~Mr Berry continues (9.36 am)	221
~Questions from the Board (9.38 am)	221
~Mr Berry continues (9.39 am)	222
~Questions from the Board (9.43 am)	224
~Mr Berry continues (9.43 am)	224
~Questions from the Board (9.47 am)	225
~Mr Berry continues (9.48 am)	226
~Questions from the Board (10 am)	231
~Mr Berry continues (10.02 am)	232
~Questions from the Board (10.05 am)	233
~Mr Berry continues (10.06 am)	233
~Questions from the Board (10.10 am)	235
~Mr Berry continues (10.16 am)	237
~Questions from the Board (10.18 am)	238
~Mr Berry continues (10.18 am)	238
~Questions from the Board (10.27 am)	241
~(Adjourned 10.29 am - 10.48 am)	242
~Comments from the Board (10.48 am)	242
~Mr Berry continues (10.50 am)	243
~Questions from the Board (10.54 am)	245
~Mr Berry continues (10.56 am)	246
~Questions from the Board (10.59 am)	247
~Mr Berry continues (11.05 am)	249
~LOUISE STROGEN (Sworn) (11.08 am)	250
~Examination in Chief by Ms Sheard (11.08 am)	250

~Questions from the Board (11.13 am)	250
~(The witness withdrew - 11.50 am).....	262
~Submissions from Ms McIndoe (11.51 am)	262
~TREFFERY BARNETT (Affirmed) (11.53 am)	263
~Examination in Chief by Ms Sheard (11.53 am).....	263
~Questions from the Board (12 pm).....	264
~Cross-examination by Mr Bangma (12.07 pm).....	266
~Document handed out - J1 Definitions.....	267
~Questions from the Board (12.12 pm)	268
~Cross-examination by Mr Bangma continues (12.14 pm).....	268
~Questions from the Board (12.20 pm)	270
~(The witness withdrew - 12.29 pm).....	273
~(Adjourned 12.30 pm – 1.32 pm).....	273
~ROBERT JOHN SCHOFIELD (Affirmed) (1.32 pm).....	273
~Examination in Chief by Ms McIndoe (1.32 pm).....	273
~ Cross-examination by Mr Bangma (1.38 pm).....	274
~Questions from the Board (1.45 pm)	277
~Cross-examination continues by Mr Bangma (1.46 pm).....	277
~Questions from the Board (1.50 pm)	278
~(The witness withdrew - 2.14 pm).....	287
~IAN DAVID CLARK (Affirmed) (2.15 pm).....	287
~Cross-Examination by Mr Willmott (2.24 pm)	289
~Comments from the Board (2.28 pm).....	290
~Cross-examination continues by Mr Willmott (2.28 pm)	290
~Comments from the Board (2.31 pm).....	291
~Cross-examination continues by Mr Willmott (2.33 pm)	292
~Questions from the Board (2.39 pm)	293
~Comments from the Board (2.40 pm).....	294
~Cross-examination continues by Mr Willmott (2.41 pm)	294
~Questions from the Board (2.42 pm)	294
~(The witness withdrew - 2.46 pm).....	296
~TERRY PHILIP CHURCH (Sworn) (2.47 pm)	296
~Examination in Chief by Ms McIndoe (2.47 pm).....	296
~Cross-examination by Mr Willmott (2.55 pm)	297
~Comments from the Board (3.02 pm).....	299
~(Adjourned 3.04 pm – 3.19 pm).....	300
Cross-examination continues by Mr Willmott (3.19 pm)	300

~Comments from the Board (3.35 pm).....	305
~Questions from the Board (3.36 pm).....	306
~(The witness withdrew - 3.37 pm).....	306
~Timetabling matters discussed (3.38 pm).....	306
~ANDREW SHELTON MAULE (Sworn) (3.40 pm).....	307
~Examination by Mr Bangma (3.41 pm).....	307
~Cross-Examination by Mr Willmott.....	308
~Questions from the Board (3.54 pm).....	310
~ Submissions from Mr Bangma (4.04 pm)	314
(The witness withdrew - 4.04 pm).....	314
~ANTHONY DAVID CROSS (Sworn).....	314
~Examination by Mr Bangma (4.05 pm).....	314
~Questions from the Board (4.10 pm).....	315
~Examination in chief continues by Mr Bangma (4.13 pm).....	316
~Cross-examination by Mr Willmott (4.14 pm)	316
~Comments from the Board (4.20 pm).....	318
~Cross-examination continues by Mr Willmott (4.21 pm)	319
~Comments from the Board (4.28 pm).....	322
~(The witness withdrew - 4.31 pm).....	323
~KATHRYN KING (Sworn) (4.32 pm).....	323
~Examination by Mr Bangma (4.32 pm).....	323
~Cross-examination by Mr Willmott (4.48 pm).....	327
~Questions from the Board (4.52 pm).....	328
~Cross-examination continues by Mr Willmott (4.56 pm)	330
~Comments from the Board (5 pm).....	331
~ Cross-examination by Ms Sheard (5.03 pm)	332
~Questions from the Board (5.08 pm).....	335
~Cross-examination continues by Ms Sheard (5.09 pm).....	335
~Questions from the Board (5.09 pm).....	335
~(The witness withdrew - 5.12 pm).....	336
~Timetabling matters discussed (5.12 pm).....	336
~(The hearing adjourned at 5.15 pm)	337

~Day 3, 20 July 2017 (9.02 am)

JUDGE HARLAND: Good morning. All right, so I think today we're starting with you

5 Mr Berry?

I beg your pardon no we have someone else leaping to their feet,
Ms Sheard.

MS SHEARD: Sorry, just one housekeeping matter before we start unfortunately

10 Mr Ridley is not available due to a clash. He is available to give evidence
tomorrow though, so with your leave we'd request that we put him on tomorrow
instead?

JUDGE HARLAND: That's fine. No, that's the trouble with the timetable changing a
little bit, sometimes it doesn't suit; we'll try and be flexible, so that everyone is
not inconvenienced.

15 So now it's your turn Mr Berry.

~Opening submissions from Mr Berry (9.03 am)

MR BERRY: Thank you Your Honour, I have handed in a script, I've got copies being
circulated at the moment and we'll just start at the start.

20 So I just note in the introduction that counsel assisting the Board in
relation to the NCI Project respectfully refer to the communications and
requests we've had from the Board via Miriam and I just note in there without
reading them, just so that you can call into mind, the issue of bundling; the
lawlessness of the conditions concerning monitoring at Rosedale; the
25 desirability of side agreements to deal with mitigation measures; which
conditions should attach to which consents, and as regards to that latter issue,
we advised that the agency's planners are working on a table identifying which
conditions relate to each Notice of Requirement or resource consent. I figure
we should really await the outcome of that exercise, because it's actually quite
30 a big job.

Other issues were also raised during the first and second days of the
hearing. The area of the reclamation for the purpose of assessing mitigation or
offsetting requirements; the legal position of the North Harbour Hockey people;
and procedural issues relevant to the Waste Management New.

35 The purpose of these submissions is therefore to address those issues,
but I also comment on a couple of other issues which the Board may wish to

focus on, which I have said here given the very large measure of agreement largely relates to the question of conditions. And there are three species of issues that I'd like to raise. Not because there are particular concerns, but because I'd like to put them on the radar screen for the Board so that you could explore those issues if you wish to, as you're dealing with the evidence. I won't go through the headings, but I have just listed them there.

And the first substantive issue then is whether the application should be bundled. I think this issue is largely flattened, but as we note the Project requires resource consent for a range of activities and I should say authorisation for a range of activities, because it's got the land use elements for the NOR; so most of them are controlled, restricted discretionary or full discretionary and one non-complying.

The aspect of the proposal which triggers the need for a non-complying resource consent is noted in Mr McGahan's evidence is the reclamation of the watercourse as you well know.

The activity is non-complying on the basis that the Auckland Council planners consider that the modified, that is concrete lined watercourse, constitutes a stream because it follows the same path as a historic overland flow path in that location. There is disagreement between the Council and the agency as to the extent of the stream being reclaimed, which depends upon the interpretation of the AUP. And we'll come back to that at section 10?

~Questions from the Board (9.06 am)

JUDGE HARLAND: Can I just ask you, you may be coming to that, does that depend somewhat on whether it's the 604 metres or the 17.4, or not?

MR BERRY: No.

JUDGE HARLAND: It doesn't at all?

MR BERRY: No, I mean there is still a reclamation isn't there? So, will agency's position is they don't need a resource consent, but they've applied for it.

So the relevance of the area I think is more to do with mitigation than activity status. I could be corrected if I'm wrong.

JUDGE HARLAND: Well everyone can cope with that in closing in due course.

Because that's been sprung upon us, so to speak, and we're trying to get to grips with what the significance of that might be legally as well as practically.

So the practical might be mitigation, but the legal might be something else.

MS MCINDOE: My understanding of the Council's position on this is it depends on whether the stream was extinguished by the dam and that's my understanding of the difference between the 600 versus 17.

JUDGE HARLAND: I understand that. That's factual determination but it's what flows
5 on from that that's actually legally and substantively from a factual point of view is what we all want to get grips with, when you're talking about it.

So whether that means, if we found, if as matter of fact it was in fact 604 where does that take us and what significance does it have in any, none, some?

10 MS MCINDOE: And our legal submissions were that it didn't make any difference but I'm interested to hear.

JUDGE HARLAND: No, and that's point A. Point B is where does that take us?

MR BANGMA: Thank you Your Honour, I think that is the issue, that is accurate. And it would be then a question of what mitigation is required and any difference in
15 mitigation that's required depending if it's 17.4 metres or 604 metres that's being reclaimed.

The Council doesn't have its even ecologists in these proceedings so all I can say is we will ask some questions of that issue of Mrs Barnett in terms of, as you say, Your Honour, factually what the difference might be required so the
20 Board has that evidence.

JUDGE HARLAND: So it's about mitigation for you.

MR BANGMA: Yes, Your Honour.

~Mr Berry continues (9.09 am)

25 MR BERRY: And for what it's worth, Your Honour, that's the conclusion we ended up coming to as well. And while there may be -- may sound like a very big difference between 600 metres and 17 metres, when you have an entirely degraded environment, it may well become a distinction without a difference. But that is for the ecologist to call.

30 So I've just recapped the issues the Board raised.

And then turn to the relevant principles relating to the concept of bundling, and I don't propose to read every word of this script, rather to take you through it. Obviously the RMA provisions, section 87A which sets out various classes of activity status, but doesn't give any direction in relation to the
35 appropriate of treatment of applications in which a number of consents are required for a range of activities.

There is nevertheless a significant body of case law developed to deal with activity status of related but separate consents and this body of case law has been on a bit of a journey, so we'll quickly traverse that.

5 It started way back in 1973 with the old Locke and Avon Motor Lodge case which is the authority for the proposition where a number of consents are required for a Proposal they should not be treated individually, rather the more stringent activity status should apply to the entire proposal which should be considered in the round.

10 Exceptions to that principle were identified in a number of cases and I've listed them in brackets there.

And I should note, Your Honour, that there's quite a significant number of cases referred to in these submissions. I haven't produced copies of any of them at this point on the basis that you'll tell me which ones you might need. But a lot of them are only cited in a fleeting way to show a pattern and so forth,
15 but happy to do that if that would assist.

JUDGE HARLAND: Thank you, that's fine.

MR BERRY: Locke was considered to apply except where one of the activities for which consent was sought was an RD or a controlled activity. In such cases it was not seen as appropriate to apply the Locke because the activity to be
20 considered does not consist of the whole of the proposed development, but only those aspects of it which the Council has specified as remaining for its consideration.

So of course if you need a consent but it's a controlled activity, there's no point putting it in place where you might decline consent to that aspect of it.

25 In Southpark the Environment Court presided over by His Honour Judge Sheppard reviewed the authorities and came to the conclusions set out there. Essentially should not be split artificially into pieces, but the approach is not appropriate where one of the consents is a CAA or an RDA; the scope of the consent authority's discretionary application in respect of one of the consents is
30 restricted or confined, and the effects of exercising the two consents would not overlap or have consequential or flow on effects on matters to be considered on the other application, but are distinct.

And it's really that third concept that has grown some legs and I would say, rightly so. Because the authorities that have followed on from that have
35 confirmed that despite that dictum, but having regard I guess to the third limb, the unbundling of related applications may be appropriate in a broader range of

circumstances and the activity status will not necessarily be a determining factor.

There are a whole stack of cases, but I tend to find that Darby is the most helpful at this point in the journey, because His Honour Judge Bollard reviewed all of the authorities up to that point and came to the conclusion that I've highlighted there:

In many cases it will be appropriate for a consent authority to consider a proposal in the round, because failure to do so would mean artificially splitting it up without considering the interrelating issues. However, if a particular consent that is sought is plainly limited in its scope and nature, the effects of exercising the consent would not overlap or have consequential or flow-on effects in relation to the effects stemming from the exercise - then the application for that consent may be adjudged individually on its merits.

And you can see that's picking up the third of the consents from Southpark.

So, in Darby itself, the Court considered that the application for a non-complying activity consent to a gable intrusion could be assessed on its own, whereas the building's proposed west wing, which required an RDA consent could not be considered separately, so we had a non-complying activity that was unbundled and an RDA that was all in. So, it just shows how that can apply.

So summarising the legal position, the relevant legal authorities can be summarised as follows: The principle in Locke remains the starting point for consideration of proposals requiring multiple consents, so that generally proposals should be bundled and considered together, with the most stringent activity status applying to all consents.

However, subsequent case law has made clear that bundling is not always appropriate and unbundling may be considered regardless of the activity status of the consents sought. In particular, bundling is not appropriate where one or more of the consents is classified as a controlled activity or an RDA because that would expand the consent authority's jurisdiction.

The scope of the consent authority's discretionary judgment in respect of the consents is relatively restricted or confined, rather than covering a broad range of matters and the effects of exercising two consents would not overlap.

And in the recent decision of Mr Justice Whata in Urban Auckland he has confirmed that that law is per Darby and so forth is still current.

So, turning to the current Proposal.

The key issue is whether the reclamation consents should be bundled with the other consents which have a more favourable activity status so that the other ones, if it was unbundled it wouldn't need to be considered by reference to the gateway tests.

The key question, boiling all of the above down, is what is the relationship of the consents sought? Thus if the activity sought to be authorised by the reclamation applications can be considered entirely separate, with the effects that will not overlap or have consequential or flow on effects on other elements of the proposal it would be appropriate to unbundle them, but if not the applications must be considered together.

I have cited there for completeness and won't read them, the comments made by my friends for both the agency and the Auckland Council, which are picking up the very concepts that I've just been running through and both come to the conclusion that there is sufficient overlap for bundling to be what should occur and that approach was also accepted by all of the planners at the planners' conference.

So the conclusion after all of that is very simple. To the extent that both the agency and Auckland Council, and all planners, consider that there are overlapping, consequential or flow-on effects in relation to the discharges and structures required, it is clearly arguable that it is appropriate to bundle the consents.

And given that the legal and procedural risks associated with the bundling lie with the agency, and they're happy to do it, we submit that it's appropriate to proceed on the assumption that the agency's approach to bundling is appropriate.

Bundling the applications so that the Project as a whole as a non-complying activity, and I think Your Honour said that you weren't enamoured about the "all in the pot approach", doesn't however, and I think this might be the question you might be getting to, doesn't preclude the Board from considering the effects of each element of the Project and the proposed mitigation of those by reference to the relevant provisions of the partly operative Auckland Unitary Plan.

Thus, if the Board has any issues in relation to a particular aspect of the Project it can and should assess that activity in light of the relevant plan, criteria irrespective of activity status under bundling and I submit that such an approach

is clearly permissible in terms of sections 104 for the resource consents and 171 for the aspects of the designation.

5 So what we're really saying and it's something I mean, we often see at Council level that bundling comes about not because of any forensic examination of the relationship of the consents, just lazy thinking by lazy processing planners. So we end up in a place that says, well, they're all in, it's all a non-complying activities despite fact that some could quite clearly be considered separately. And the submission I normally make is we'll accept it for present purposes because we can meet the gateway tests anyway, but if you have a concern in relation to any particular aspect look at that by reference to the plan provisions that apply.

10 And what I'm saying is that you obviously have the right to do that despite the fact that we're in a Part 2 world.

15 ~Questions from the Board (9.18 am)

JUDGE HARLAND: Yes. And in this case it might not make much difference, and would that be your overall understanding?

MR BERRY: Yes I would say precisely that and I would agree with the agency in relation to that. The thing is in this insane post-Davidson world until someone gets it right we might have to go to the plan first anyway.

20 JUDGE HARLAND: Well, just on the bundling topic, and it isn't particularly relevant to this thank goodness but I think of more concern with bundling is the fact that applications are not being made for certain activities which obviously if they were would be bundling; so it's rather more of a divide and rule approach, rather than holistic stick approach and I think that was the area that was exercising minds of the Court in the Te Arai series of cases and a few others that are coming up. But we don't need to go there; so we will put that to one side.

25 So you are inviting us, just to summarise, you're inviting us to, having raised the issue properly, to say well yes everyone agrees that we should start from that particular point, but it's the extreme point, if you like, for a small part of the project and it would be quite permissible for us if there was a concern about anything to go back to the rules of a particular part of the Project and view it in the light of that?

35 MR BERRY: Yes.

JUDGE HARLAND: Thank you.

MR BERRY: I don't know if there is any authority for that proposition, it just seems to make total commonsense to me.

JUDGE HARLAND: Well I'm sure if nobody disagrees with that approach we won't have a problem. If it's only if people disagree with it and say we shouldn't do that that we might have a problem.

MR BERRY: Thank you Your Honour.

So that's a fairly long way of getting to the place that says agree with agency and the Council, but thought it was important for the Board as counsel assisting to canvass the case law fully.

JUDGE HARLAND: Thank you.

~Mr Berry continues (9.19 am)

MR BERRY: Which is not to say my friends haven't done an adequate job of that.

So now turning to the Rosedale Landfill.

Development of the busway and the shared use path, SUP requires that the Project encroach upon the Rosedale Closed Landfill. That will need to be excavated and various pieces of monitoring equipment relocated. Auckland Council is monitoring the landfill and Auckland Council and the agency have agreed that, largely for health and safety reasons, the agency should undertake the monitoring required under Auckland Council's consents. This is reflected in the Project Alliance agreement, Appendix A14: Landfill which we'll call a PAA landfill, which is an agreement between the agency and Auckland Council which is yet to be finalised but a draft of which is attached to Ms Eldrige's evidence.

So I have just recapped the issue there that the Board has raised. The lawfulness of conditions concerning monitoring within the construction area of the Rosedale Landfill site.

Now our understanding of the conditions is that the agency is required to develop a landfill management strategy in consulting with the Auckland Council team.

The landfill management strategy is intended to be a document by which the agency and CLCLR agree on a range of matters relating to the construction activities within the landfill area. And they're addressed in the PAA and the LMS must be consistent with it.

The agency is required to prepare various plans including the landfill reinstatement works plan and landfill construction method statements and is

also required that the monitoring programme is implemented in accordance with the LMS. Although the LMS condition does not address monitoring: The PAA: Landfill requires that the agency is responsible for undertaking all monitoring activity in accordance with the existing landfill consent conditions and by that I'm referring obviously to the consent conditions held by the Auckland Council for the closed landfill.

And the LWRP is required to include information in relation to continuous gas monitoring.

Now the outcomes of expert conferencing was that agreement was reached on all issues and the Joint Witness Statement of the landfill experts sought the assistance of the planning experts to draft amendments to the conditions in order to implement their agreed approach.

The landfill experts joined the planning expert conferencing on 6 July in order to amend the conditions to implement the landfill experts' agreement and the outcome of that conferencing was that several amendments were made to the conditions with the result that the landfill and planning experts all reached agreement. So that's a happy place to be.

Mr McGarr, who I should mention Your Honour is here today, and as the planner assisting the Board, undertook a review of the landfill conditions to assess whether all relevant effects are properly addressed. And his conclusion per his memorandum to the Board on 14 July -- it wasn't the day you declared your independence was it Craig -- was that the proposed conditions are sufficient to ensure that potentially significant effects of the works in the landfill area are properly addressed, but could benefit from the amendment and restructure to improve legibility, as set out at Attachment 1.

And his attachment 1 is now attached to these submissions as Appendix A.

I'm sure, although I haven't warned Mr McGarr, he'd be very happy to comment on those given that he's here today if you wanted him to.

~Questions from the Board (9.23 am)

JUDGE HARLAND: Well I think he's proposed there's some questioning of him and I'm hoping that we might be able to deal with all of this without the need for questioning. But are we able to get an indication about that at this point?

5

MS MCINDOE: I had asked Mr Amputch, our landfill expert, to look at these conditions, because there are some changes particularly in relation to landfill gas monitoring that seemed to me to go more -- to go further than simply improving legibility, so I think that once I've got the response from Mr Amputch it might be that I can then discuss with Mr Berry any further changes and if that matter can be resolved perhaps we don't need to question Mr McGarr.

10

JUDGE HARLAND: So that is a work in progress.

~Mr Berry continues (9.24 am)

15 MR BERRY: Very happy to do that, thank you.

So I think probably I'll leave the rest of 3.8 and consider any potential issues that might arise. And this is really putting on our thinking cap and thinking what might be wrong with this for the purpose of satisfying the Board or advising the Board if there is a problem and satisfying the Board that there's not if there's not.

20

So we just identify four issues there that could have been a problem if they transpired to be.

Firstly there is case law to the effect that a condition will be invalid if it requires an applicant to take on a significant part of the local authority's duties. However, of course in this case the duties that the agency would be performing are not Auckland Council's duties as a local authority but its duties as a consent holder. And so, in our submission, that authority doesn't apply. And there's no impediment there.

25

Secondly, thinking about whether there's a problem that the monitoring is happening on someone else's land. The conditions would obviously require the agency to undertake monitoring on Auckland Council's land and there are two relevant lines of case law authority on that. One suggested that if compliance with a condition would impact on the legal rights of third parties, a condition should not be imposed unless the affected third parties consent to the execution of the work and the manner of its execution.

30

35

The other line of authority is that the -- it would be ultra vires to impose a condition requiring off-site work to be undertaken that requires the consent of third parties, when those aren't obtained.

5 But of course in the present circumstances the agency is volunteering the conditions and Auckland Council agrees to them. So, at the very least under Augier, if there was any doubt at all, it's submitted that the conditions are not unlawful because they have been volunteered and agreed to by the third party, and of course they're valid and enforceable and reasonable as well; so we don't see there is any problem from that perspective.

10 Irrespective of the conditions of consent, our view is there is no impediment to Auckland Council appointing the agency as its agent under its existing consent to undertake the monitoring.

15 So we'll come back onto side agreements, but if they wanted to do it that way, I don't think there would be anything unlawful about that either. But I do tend to agree with the approach that for visibility reasons it's good to have the conditions on the face of the consent.

20 And Auckland Council liability: Even where responsibility for monitoring is imposed on NZTA the Auckland Council of course can't absolve itself of its liability under the RMA for anything that goes wrong. So there is no impediment there.

So the upshot of that is that none of these potential issues which really present a bit of a shemera, as I say, we just raised them to knock them down, present an impediment to the adoption of the approach proposed.

25 Having reviewed the conditions as proposed to be amended by Mr McGarr in light of the Newbury tests, and given the matters addressed above, we are satisfied that there are no issues as to the lawfulness of the conditions in respect of which the agency would be undertaking monitoring on behalf of the Auckland Council and I've already traversed that point.

30 For completeness, once again, I've cited the submission of my friends from their opening statements and as a result of that I can indicate that we have no concerns as counsel assisting about that aspect of the Project.

35 So turning now to the appropriateness of side agreements. The context of this is that issues have arisen between the agency and Auckland Transport concerning potential effects of the Project on bus transport, consultation with AT in relation to the need for diversions and damage to roads from

construction, as reflected in the following statements in the Joint Witness Statement; I have just underlined those bits.

5 The Board's request to address the legal perspective regarding the appropriateness or desirability of using side agreements to address effects arises from that JWS.

Now the first two issues above, that's bus transfer and the need for consultation in relation to diversions, have been addressed via amendments to the consent conditions so we can put that to one side and we're left with the last issue relating to road damage.

10 Prior to the commencement of the hearing, counsel for AT, Mr Bangma, advised counsel assisting the Board that AT agrees to the inclusion of the conditions in relation to public transport and consultation and those amended conditions are attached as Appendix B to these submissions.

15 And once again it's a fairly straightforward exercise and we will be spending some time on the conditions.

But there is nothing of any real moment there.

And a side agreement to address the issues regarding damage to roads was being discussed, but in the absence of a side agreement, the issue of remediation should be addressed by way of conditions of consent.

20 The short being that, as I've said here, and apologise for the lack of a colon. The comprehensive changes to the CTMP conditions have addressed issues regarding public transport and consultation issues. And NZTA and AT are continuing to work on the wording of appropriate conditions and AT is hopeful that satisfactory wording can be agreed.

25 It therefore appears that a side agreement may not be the mechanism proposed to address that issue. But of course there is at least one other side agreement we know of in these proceedings, so I'll address it nevertheless.

30 We couldn't find a lot in terms of what the Environment Court's attitude has been to side agreements. And there have been comments from time to time.

In Bonifant Investments his Honour Judge Skelton expressed a reservation about the practice of entering into a side agreement, particularly if at some future time a party sought to enforce such an agreement on the basis of an alleged compromise of proceedings.

35 So I think he's really saying as a matter of public law I have a problem with a settlement via a side agreement being a consideration for the agreement.

~Questions from the Board (9.30 am)

JUDGE HARLAND: Or, I suppose I should maybe have been a bit more clear about what I was concerned about. I was concerned if it was designed to mitigate an effect, and there was a wider public interest included in that, then that is just a
5 private agreement that could be subsequently altered between the parties. And that would be an obvious public law issue. And it was just very unclear from the material presented as to whether or not that the degree to which the -- what the scope of the agreements was without necessarily knowing what they were, we
10 didn't necessarily need to know that, but how that would play out; so I think it was more a lack of clarity about what was proposed to be covered by these things is too generic. And so, I'm sorry if that's opened a can of worms for everybody, but that's how it arose.

MR BERRY: I do address that.

15 JUDGE HARLAND: Sorry, Mr Berry.

~Mr Berry continues (9.32 am)

MR BERRY: No, not at all. His concern in that case was -- I mean I'll just raise this in case you might have a similar concern that the potential for a side agreement to
20 affect future decision making by the Court, because -- or the consent authorities.

Because in that case they entered into a deed so they got over the consideration point, but nevertheless the deed required further consent applications to be made.

25 So you wouldn't want a self-fulfilling prophecy that says this deed has been signed off the by the Court, now you have make the change to consent conditions because the Court said so.

Anyway, in the end, I mean even in that circumstances Judge Skelton was relaxed about it.

30 But I think the most important point for present purposes and, I think we come right onto the point that you've raised Your Honour:

"... I think it is important that agreements or deeds of agreement, as in this case, are carefully scrutinised by the Court before it consents to the disposal of appeals in terms agreed by the parties.

35 So in that regard, as I said, that latter observation is probably the most important aspect of the case for present purposes and is in line with

Your Honour's comments on day 1 of the hearing to the effect that if what is in the side agreement is necessary to mitigate an effect of the proposal, it will require scrutiny by the Board.

JUDGE HARLAND: Whereabouts are you sorry?

5 MR BERRY: I have just been traversing 4.10 and 4.11. And I've just finished reading 4.11.

10 Just to interpolate there, I think there is a spectrum of possibilities for side agreements that at one end of the spectrum it may be regulating a relationship between a consent holder and a third party that has really nothing to do with effects but has to do with being mates, or you know calling me before you call a consent authority or whatever. At the other end you might have a deed that -- or in the middle you might have a deed or a side agreement that is a bit like a management plan in the sense that it says this is how you are going to go about fixing my problem by reference to condition A, B, C. And at the other end of the spectrum you might have a side agreement that says don't worry consent authority, they're mitigating this effect on me so I don't need to worry.

15 But if they remain a party, and this is a bit like the Waste Management thing, the Court is still seized of the matter and so the further down the scale towards mitigating effects the more responsibility the Court has to scrutinise the appropriateness of that deed and whether -- or agreement, and whether it needs to be reflected in consent conditions as well.

~Questions from the Board (9.34 am)

25 JUDGE HARLAND: Would you agree though that would be subject to a party deciding to withdraw their interest completely? Because that's the Amiri decision, a different circumstance, but I'm pretty sure that's the effect of Amiri, even though it was dealing with a consent order, are you familiar with that? It's a High Court one from Christchurch where they had a hearing, or part of a hearing, and then decided that perhaps things weren't going quite the way they wanted and that there would be a withdrawal -- well no, there was a consent order filed which the Court then refused to sign. So then they withdrew. And the Court nonetheless made an order and the High Court said no you can't do that, if one of the parties withdraw that's the end of it.

So the side agreement issue, if there was a concern about it at an extreme end, could be remedied by a party who didn't want that looked at by them withdrawing, do you agree with that?

5 ~Mr Berry continues (9.36 am)

MR BERRY: Yes, and I do come to that in relation to Waste Management because you're facing a similar conundrum.

10 So that if the side agreement is being prayed in aid of a mitigation of effect by a party, then -- by a party that's still a party, then it's The court's decision, you know, the Court is entitled to scrutinise that and then decide how effective that is and to see whether the conditions need to be strengthened.

I give an example just coming up in which we've just settled the expansion of the Ngawha Geothermal Power Station in Northland.

15 In the end the last party standing was the Department of Corrections because the expanded station will be within cooey of the Northland Corrections Facility.

20 So there were conditions on the consent that said, you know, thou shall address fire and explosion risk and so forth. But that stuff was so complex in terms of the type of assessments, risk assessments, you will recall from the Wiri prison case. And, in fact, they banged endlessly on about that decision all through the case in, terms of their obligation. And what we did was had a quite complex and lengthy and technical side agreement that captured everything that was going to be done around risk that we referenced in the consent conditions and made available to the Court. But you wouldn't have put in consent conditions, there was too much of it.

25 And so that was perfectly fine. They were still a party. The side agreement assisted the Court to be satisfied that this was being dealt with down to the finest detail and that the conditions would be effective.

30 But if Corrections had said we're out of here, we're happy with this, there would have been no finding to be made. So that's the difference.

~Questions from the Board (9.38 am)

JUDGE HARLAND: All right. Well that's good to have that clarified. And in this case it may or may not make any difference to the side agreements because they 35 might be more about relationships and other kind of things.

MR BERRY: I guess the guiding principle, I would say, is that if it's about relationships you may not care, you might want to look at it and say we don't care. If it's about mitigating an effect on a party, then you may -- you are entitled to look at it, particularly to see whether it's consistent with the conditions, or the conditions are strong enough.

JUDGE HARLAND: Thank you.

~Mr Berry continues (9.39 am)

MR BERRY: I think we've probably just covered pretty much everything in the next couple of pages.

I just pick up here that side agreements are used all the time and so they're are not inappropriate. They can improve greater detailing conditions, and that's the Ngawha example. And they can address matters that shouldn't be appropriately addressed in conditions about the relationship between the parties, the imposition or obligations on parties who aren't a consent holder and so forth. And I give the Ngawha example there.

The Environment Court's own practice note makes it clear that side agreements are appropriate if they achieve outcomes that are beyond the jurisdiction of the Court. And you're obviously familiar with that, I have just highlighted those parts of the practice note.

And we agree with the concept underpinning the questions directed to counsel by Your Honour on day 1 and I think we've just covered this, that if the purpose of a side agreement is to mitigate the effects of a project, it will need to have greater visibility in the hearing process and be the subject of greater scrutiny by the Board than a side agreement that addresses, for example, the relationship between the parties' side agreement.

As a matter of principle, if adverse effects need to be mitigated to make a grant of consent appropriate, the requirement to do so should be addressed in resource consent conditions even if the side agreement imposes separately enforceable obligations in that regard.

And if, for example, to take an extreme case, the side agreement was the mechanism by which adverse effects were addressed and there were no conditions then I would say that's fully on the Board's table, while a party remains -- while the person is still a party.

JUDGE HARLAND: Well, I suppose that was my thinking behind the question to Waste Management yesterday.

MR BERRY: Yes, that's right. And I come on to them next.

In summary, it's submitted that the following factor are relevant:

They're a valid and useful mechanism for imposing obligations on parties and addressing relationship matters that could not be achieved by conditions of consent. Where mitigation is required to address the adverse effects of a proposal on the environment the mitigation should be addressed via conditions and the role of side agreements should ideally be limited to matters which it is not generally appropriate to address via conditions. But related to that you should scrutinise side agreements to ensure they don't deal solely with matters that should be addressed in conditions.

And here's the sliding scale I was talking about, the more that a side agreement is relevant to addressing effects, the greater the degree of scrutiny. Side agreements cannot and should not preclude consent authorities or the Court from performing the duties and exercising the powers it has under the RMA; nor should they influence future decision making. And of course the enforcement of side agreements is a matter for the civil courts

So short point again, is that we as counsel assisting submit that there's no impediment to the agency and Auckland Council reaching agreement in relation to road damage, or I guess we've just traversed the Rosedale matter as well, I mean there's some quite complex side agreement matters being addressed there and in that context it's entirely visible and scrutinsable, if that's any such word, it probably isn't, I can't think what it would be, able to be scrutinised by the Board.

I just pick up again what my friend for the agency indicated in their legal submissions. And agree with the propositions set out there. And I won't take you through it.

However, in relation to a) and c) and that is the effects are specific to the submitter and the submitter is also a landowner, whose agreement is needed in order for the Project.

We nevertheless, depending upon the circumstances, submit that it may still be appropriate for the Board to wish to scrutinise the agreement.

In our view that is not excluded by the nature of the party that the Applicant is entering into an agreement with.

~Questions from the Board (9.43 am)

JUDGE HARLAND: And that would be because of the public law -- the public aspect of it, is it?

MR BERRY: Yes. It's not a situation in which the Board would be looking to interfere
5 with contractual relationship, but rather just testing its effectiveness if it's being used alongside conditions.

~Mr Berry continues (9.43 am)

Turning now briefly to Waste Management. It seemed to be the logical
10 place to deal with this after talking about side agreements and I don't need to traverse this at any real length.

But after Mr Pilkinton tendered his joint memorandum advising that settlement had been reached, no amendments to conditions would appear to have been contemplated; so Your Honour sought clarification as to whether the
15 submission was to be withdrawn and also whether it was appropriate to withdraw the evidence of his witnesses given that he'd said that the -- I think he said that the submission would stand in case something went wrong, but that the evidence would be withdrawn.

So in response to your request we advised that we're dealing with a
20 similar situation at East West Link. This all happened yesterday where a settlement had been achieved between my client, the Auckland Heliport Limited Partnership and the NZTA based on a side agreement plus amended conditions.

And as regard to the amended conditions the parties agreed that the
25 submission would stand in order to provide the Board with the jurisdiction to impose the conditions, and the evidence would stand to the extent that it was needed to provide the evidential basis for the imposition of the conditions.

And it's interesting to note that yesterday morning in chambers the Board considered that matter and the outcome was that the Board in that case chaired
30 by Sir John Priestley is happy with that approach and the conditions, and will soon issue a minute confirming that it will impose the conditions requested.

So, peace has broken out there, but just to underpin that the importance of the evidence, they're still going to take their site visit and so forth to fully understand the underpinning. And I guess it's nice to travel in helicopters, I
35 think that might be the main reason.

Now that may be of general assistance to the board in this context if similar situations arise.

However, thinking it through, once I got amongst the Waste Management joint memorandum, because that matter has been done entirely legal by way of side agreement with no amendments to conditions, and it seems that no third party's being affected. Then it seems to us that there would be no impediment to the complete withdrawal of the Waste Management submission and their evidence. That's obviously a matter for them, if we're looking at the sort of situation, the Christchurch case you were talking about.

However, we agree with Your Honour that if the Waste Management submission is not withdrawn, you will need to deal with it, because you're seized of the matter and will need to decide it whether wishes to scrutinise the side agreement given that it is the document that is being relied on to address the adverse effect on a submitter. So there is a still a submitter on your table, but there is no visibility to that side agreement; if you are want to look at it you would be entitled to. And Waste Management would need to consider the extent to which the evidence of its witnesses is necessary to support that submission.

Namely, otherwise you're being asked to find that the Waste Management submission has been satisfied without any evidence to support that and without knowing the side agreement.

Now you can take that at face value but you probably don't want to.

~Questions from the Board (9.47 am)

JUDGE HARLAND: I think that was the point of my putting that to Mr Pilkinton. And for him to have a think about what he wanted to do. I can't recall when he's coming back? Maybe for closing? Can you update me about that?

MS MCINDOE: We're still considering this matter. Partly because there are in fact amendments to conditions proposed to address Waste Management's concerns and so I suspect we might need to propose the type of arrangement which Mr Berry has arranged for his client in the East West matter and we're still working on that.

JUDGE HARLAND: That's helpful to have that updated and given the way we're going through these things there will be plenty of time, one would hope, for that to happen.

MR BERRY: So I'll ensure that a copy of these submissions is provided to him and I'll probably give him a call this afternoon.

JUDGE HARLAND: That would be helpful.

MR BERRY: But it does alter the position fairly significantly and, again, it's sort of
5 interesting that I came away from both the exchange and reading the agreement without having any sense that there were changes to conditions.

JUDGE HARLAND: Well there are now I hear?

MS MCINDOE: They have been in there ever since the planners' conference two
10 weeks ago, but perhaps they weren't highlighted as much as they could've been.

MR BERRY: Not meaning any criticism, I'm just talking about the joint memorandum that you would have seen.

So it's even more important that if you need an evidential basis for changing conditions and he takes the evidence away --

15 JUDGE HARLAND: Well that would be -- yes, that would be a hole for people that I imagine in this process people wouldn't want.

What's even more interesting is that this issue has come up in two separate Boards with neither of us knowing about the other's particular approach, and both of us having a similar one, which is of some comfort.

20

~Mr Berry continues (9.48 am)

MR BERRY: We kind of made it up in the last few days, but it worked.

Now there is the issue of whether management plan conditions should attach to designations or resource consents.

25 And as outlined in their openings, the agency, the Council and Auckland Transport disagree as to whether conditions relating to the various management plans required by the authorisations sought should attach to the designations, resource contents or both and so the Board has requested Council assisting to advise on that.

30 For the reasons already outlined we don't address whether conditions should attach to particular designations or resource consents and we'll await the outcome of that analysis.

35 Just to recap so that we're know what we're dealing with, NZTA's position is the conditions should be restructured as follows: Conditions that manage temporary construction effects including management plans and which

should fall away once construction activities are completed should be attached to the regional resource consents.

That only conditions that relate to ongoing operational effects should attach to the designations.

5 The basis for that position is that the resource consents largely relate to construction activities and will authorise the majority of construction effects, whereas the designations relate to the ongoing use and maintenance of the State Highway.

10 They say that that approach avoids any confusion as to whether conditions relating to construction activities apply to future operation or maintenance activities and removes the need for conditions relating to construction affects to be formally withdrawn at later date.

15 Mr Burn considers that attaching any further conditions such as management plans to the conditions would be inconsistent with the principles implicit in sections 176 (2) and A(3) (f).

20 The Auckland Council and AT position is that as a result of how NZTA structured the conditions, the designations are not subject to conditions relating to various management plans, specifically the Construction Environmental Management Plan, Construction Traffic Management Plan, Dust Management Plan and the Lizard Management Plan.

 And these management plans are necessary to avoid, remedy or mitigate adverse effects associated with the land use aspects of the Project and generally do not relate to the activity authorised by the regional resource consents.

25 To be valid a resource management condition must relate to the effects generated by the activity that is being consented and accordingly the conditions should be amended so that the conditions addressing land use effects attach to the designations.

30 Counsel assisting supports the position outlined by the Council and AT for the reasons we will outline below.

 Two legal issues arise: First would the management plans condition be effective and enforceable if attached only to the resource consent conditions as proposed by the agency. Secondly, if the management plan conditions would not be effective and enforceable as structured by the agency, what is the
35 appropriate basis for determining how the conditions should be divided between the designations and the resource consents?

So turning first to the legal principles in relation to the division. We first turn to the Board's power to impose conditions on NoRs and resource consents, under, it should really be the other way around, under 149P and 108 respectively. And, of course, this is well familiar to the Board I have just set it there for completeness, but of course you are entitled to impose any condition that you consider appropriate subject to administrative principles and Newberry. The language of 149P is similar to 108 and cases decided under 108 obviously can be considered in relation to both.

There is a whole swag of case law, but Your Honour, and I'm seeking to seeking to carry favour here, but I must say that the Board's report in relation to the correctional facility at Wiri is a very useful capture of the issues relating to the Board's power to impose conditions. Picking up Newberry and everything else. And I guess I don't need to read it to you because you wrote it. But it would be well known to all of the Committee: "Resource management purpose, not ulterior purpose; fairly and reasonably related; not unreasonable; not ultra vires, not involving a delegation of the Board's duty; be enforceable and it must not lack finality.

So in this case the question is would the agency's management conditions be effective and enforceable if applied only to the resource consents?

Now as a unitary authority the Council will be responsible for administrating and enforcing both the designation and the resource consent conditions. In this context there can, in our submission, be greater flexibility in how the conditions are structured than if those responsibilities were split between separate consent authorities, between a Regional District Council. So at first blush, the unitary nature of the Council can be applied to the question 'does it really matter?' and we heard that question raised the other day and I must say my starting points for thinking about this was a little like Mr Burns that said 'well, if it's got to do with construction on resource consents they can drop away and the long-term things go on the designations.

But we respectfully submit that it does matter from a practical perspective which authorisations, namely the designations or the resource consents, the conditions attach to.

Our concern is that if the Board were to approve the conditions in the format currently proposed, it could not be confident that those conditions would effectively manage all of the Project's effects, particularly construction effects.

Now, the scope of the resource consents required for the Project are regional land use consents, primarily for earthworks; consents for taking, using, damming and diversion, so 9 and 13, and then 14; discharge permits under 15 and the consents under the contaminated soil standard.

5 However, the management plan conditions are intended to address effects that go well beyond the scope of those resource consents and which will arise from the exercise of land use activities authorised by the designations, that is the effects from construction of structures required as part of the project, such as State Highway 1 and State Highway 18 interchange ramps, as a good
10 example.

So the resource consents are a little subset of the actual work we're dealing with, it's part of the implementation of it.

Now if the management plan conditions attach only to the resource consents, there is a risk that the conditions may not be enforceable in respect
15 of construction activities that the NZTA undertakes a reliance on the designation rather than the resource consents.

For example, the Council may not be able to take enforcement action against the agency in reliance on the resource consent conditions to address noise arising from the construction of the interchange structures, as opposed to
20 earthworks activity which may be completed by the time the interchange structures are being constructed.

And the Council wouldn't be able to use the resource consent conditions to address construction traffic arising from materials being delivered and so forth from the site. So we have a mismatch between the activity and the
25 condition they're seeking to address it and it's simple as simple as that. The effect of designations is that the agency does not have to obtain land use consents under the AUP in respect of any activity that is authorised by designations. There will be no other opportunity for those effects to be considered or addressed by Council in the context of resource consent
30 processes. for that reason we consider that the Board must be satisfied that the effects of those activities will be adequately avoided, remedied or mitigated by conditions attached to the designations - not the resource consents that can expire or be surrendered.

And of course they're mostly short-term consents in terms of
35 construction.

The agency's position is that the management effects on the environment where these occur in the designations are addressed through the outline plan of works. We consider that there is a risk that the OWP process will not provide an appropriate or adequate opportunity for the Council to address any outstanding effects given, firstly, the inability for the Council to impose further conditions in approving an OWP and secondly, the short timeframes that are arising in this context.

The agency's rationale for adapting this approach in part, at least, is so that they would not need to remove these conditions from the designations once construction was complete as both Messrs Burn and McGahan are suggesting would otherwise needs to occur.

We submit that there is no legal or practical reason why if the management plan conditions were imposed on the designations, NZTA would not need to remove these conditions from the designations once construction was complete. There are numerous examples of designations for roading infrastructure projects where conditions relating to construction effects have been allowed to remain in the relevant district plan post-construction without creating any issues for the agency.

But, in any event, if that was necessary, the designations can be altered with relative ease, and if that's the right way to do it you've got to do it.

In our submission, neither factor represents sufficient jurisdiction to put in place the system of conditions proposed. Thus, having regard to the legal principles outlined above, it is submitted that the Board should ensure that the management plan conditions attach to the authorisation for the activity they are intended to manage. Thus, if the conditions have been imposed to avoid, remedy or mitigate adverse effects arising from land use activities they should attach to the designations, other than of course the regional land use consents. And if the conditions are imposed to avoid, remedy, or mitigate adverse effects arising from consent under the regional plan, they should attach to the resource consents.

It seems like a fairly self-evident.

But we acknowledge that this may seem highly academic, given that we have one unitary authority and one highly responsible requiring authority and government so the situation may never arise.

Having said that, implementing the agency's proposal would simply be out of line with legal requirements under the RMA - if there is a way to do it

correctly per the preference of the Council that has to monitor and enforce the consents, it is appropriate to do so unless an equally suitable alternative is identified.

5 ~Questions from the Board (10 am)

JUDGE HARLAND: Well, on that point, so the enforcement point is always the point that I come from with this, because with the best will in the world and the best processes in the world sometimes things happen and they happen, as we know, without a requirement for an intention for them to occur.

10 So, I guess what practically we want to have, and I'm hoping that's what we relayed before and that's what's being done now, is that the two alternative sets of provisions that both views wish are set out for us, rather than us having to spend a lot of time figuring out which goes with which. We will know that obviously from an overall perspective, but given the timeframes associated with
15 this, it's not particularly realistic for us to have to do that, and is that -- that's what's being put together at the moment I take it?

MS MCINDOE: Well now that the planners have finished conferencing as at the end of yesterday, the Transport Agency had created an initial table working out which conditions should be allocated to which consents and designations. I
20 don't think that the results of the planning conferencing has yet been put on the website or made available to people. Certainly as soon as that's out will consider that and then discuss it with Mr Bangma and Mr Berry.

JUDGE HARLAND: I know it's a lot of work, but it's going to be even more work for us if we have to do that and, frankly, we don't have time.

25 All right thank you.

MR BERRY: Your Honour, from that perspective, I mean there is the opportunity for the Board to express two or three pinch points along the way where the Board can express a preference, or indicate that it's inclined towards one view or another, because that may assist the conversation we have around conditions.
30 So if out of this, for example, you were to say well it's fairly evenly balanced but I'm inclined towards the Council's view, then that would be useful guidance for us to be addressing the conditions in terms of this issue.

JUDGE HARLAND: I see. Well, if we're invited to do that by everybody, we can certainly talk about it now in a more wholesome way than we would later.

35 MS MCINDOE: No opposition to that.

JUDGE HARLAND: All right well, we will do that thank you.

~Mr Berry continues (10.02 am)

MR BERRY: So that all might seem a bit negative, but there probably is a pretty easy way through it and so the next thing I wanted to think about was how should the conditions be restructured if you accept the criticisms of them that I've just outlined?

And from that perspective we submit that the Board should take a principled but pragmatic approach in deciding how the conditions should be structured and whether the management plan conditions should attach to the designations or the resource consents.

And that's possible because again we have a unitary authority. And a whole lot of people who want to do a good job.

In doing so, we submit that the Board's starting point nevertheless should be to consider the nature of the activity being authorised, as outlined above. It's appropriate for the Board to acknowledge that there will be areas of overlap and that all conditions will be administered and enforced by the Auckland Council as unitary authority.

And for that reason it is not necessary to ensure the conditions are strictly divided in accordance with the respective local authority functions under section 30 and 31. And I guess that reflects the fact that when I started working through the section the other day I had my head in sections 30 and 31 and rapidly realised that I really needed to have my head in sections 9, 12, 14 and 15, because we really needed to focus on the activity and work back rather than work back from the function, because that is particularly unhelpful particularly in the context where there isn't a distinction.

Using that approach, there are at least two options for how the conditions may be structured and where the management plan conditions should sit within the structure.

So, one way would be to maintain a separate set of consent conditions for the designations and resource consents as currently proposed, but attach the management plan conditions to both the resource consents and the designations. So that, again, there will be a job later of taking some things off the designation if they felt the need to, but at least then you know you have complete coverage.

And that approach would be consistent with the condition sets adopted for the MacKay to Peka Peka and Ara Tuhono and also the condition set that is being proposed for the East West Link on the other side of town at the moment.

The other approach would be to develop a single holistic and
5 comprehensive set of conditions that doesn't specifically attach to any conditions, another than the general designation and the resource consents themselves, to either the designations or resource consents that apply to the project, and that was the structure that His Honour Judge Newhook and the Board adopted in relation to Waterview.

10 So, if you look at the Waterview consents they just have general authorisation and a great big set of consent conditions that relate to aspects of the Project.

~Questions from the Board (10.05 am)

15 JUDGE HARLAND: One of the things then, if we got to that point of well which way would it be best to do it, the practicality of how they work in practice would be quite a big factor, and I think that would be a fair point. So it would be interesting to know how the Waterview ones had worked and I suppose in comparison to the MacKay Peka Peka and Ara one.

20 MR BERRY: I guess the Waterview one given it's now up and running is going to be a good example. And of course we'd obviously defer, and so should all parties, defer to the agency in terms of what they've learnt in terms of their preference as long as it doesn't face the legal impediment or difficulties that I've just outlined.

25

~Mr Berry continues (10.06 am)

So I just note here that we are happy obviously to be involved in the conditions review and note there that it's likely to be a more productive exercise if the overall approach to conditions is agreed first and the Board may, as I've
30 said, wish to express a preference in that regard by reference to the various approaches that have been taken in the past.

And I'd add there, you know that we are happy to defer to the agency in terms of its learnings and wisdoms from other campaigns.

This is the first of the topics that we've decided to address of our own
35 volition as counsel assisting the Board and the first one relates to the general accordance condition.

I had originally put these submission a little war story from the Ara Tuhona case where it was proposed there can be no condition 1 at all. But there is a condition 1 here. But it's fairly -- I shouldn't say -- I hesitate to use the word "loose" but it's a little different to many of the condition 1s we see.

5 Bearing in mind of course that condition 1, the old fashioned condition 1s in which everything including the kitchen sink is listed in some great big list including emails between Fred and Jane, you know?

But the condition 1 in this case requires the Project to be carried out in general accordance with the general arrangement sheets.

10 And the general accordance condition in both the NOR and the resource consent conditions has remained in the JWS planning version of the conditions. And while there are slight differences between these conditions in the general versions, the two conditions are now identical other than the reference to the Project Alliance appendix.

15 Mr McGarr has pointed out to us that the conditions themselves refer to specific documents which form part of the application in various places which are not listed in condition RC.1 or DC.1. And while the reference to those specific documents is sufficient to ensure that the Project is undertaken in accordance with the application documents where specifically required, those documents could also be listed in DC.1 and RC.1 if the Board considered necessary. And I'm simply raising that in the open Board hearing in front of my friend in case that's something that could be done.

20 The Auckland Council's key issues report identified that this requirement in terms of general condition 1 falls short of the normal requirement imposed by Auckland Council for consented activities to be undertaken in accordance with all or most of the documentation lodged as part of the application. As I say, while acknowledging that the traditional condition 1 is increasingly falling out of favour.

30 The issues which arises in the context of a condition 1 with flexibility in it, is uncertainty about the scope of the work to be undertaken and whether the effects of the full scope of work that would be undertaken has been assessed; a risk that neighbouring land owners may be affected in a manner not originally contemplated, if once a contractor is appointed, the means of implementing the Project transpired to be different from that reflected in the application documents and a question as to whether the conditions proposed are adequate to avoid, remedy or mitigate the effects of the Proposal.

35

In short, there may be scope for the design of the Project to be altered in a manner that results in effects that are different to the assessed in the AEE or addressed in the evidence before the Board, but still to be in general accordance with the general arrangements sheets.

5 I can't give you examples, I'm really raising this so that the concept can be taken on board and I think I come on to this, so that at least that potential is in the Board's mind as you go through the specifics of the evidence along the route, along aspects of the Project.

10 ~Questions from the Board (10.10 am)

JUDGE HARLAND: Can I say to you I am again very alert to this problem, because one of the first cases I dealt with in the Environment Court was a declaration case concerning the Hawthorn series of cases and it was to do with the interpretation of a general accordance condition. And there then subsequently,
15 when it became apparent that certain aspects of the documentation were not helpful to the subdivision consent, they were sought to be changed and then there was an issue about whether that could have happened and which particular set of conditions therefore and plans applied.

20 So, it's a very real issue, if it comes unstuck. It shouldn't be a road block to achieving an outcome that everybody is working towards, but I would have to say I agree Mr Berry with you that if it becomes unstuck it's extremely messy. So how we deal with that is what I'm interested in really.

MR BERRY: Yes Madam Chair, Your Honour, I think what I'm really saying is that probably in a situation such as this, as you get amongst the detail you will know
25 it when you see it.

JUDGE HARLAND: Well yes, although do we have the time to have that luxury of reflection? Or are people going to help us with that?

MR BERRY: Oh no, I'm saying -- I'm assuming as you work through the agency's evidence, then there may be aspects of the Project where there's more than
30 one way of skinning the cat. And I recall from conversations from Jon Styles and Craig McGarr a week or two back that one of the outcomes of the noise experts caucussing was well it would be a good idea if we extended this wall another X metres. And you go well is that in general accordance with these plans? I don't know, maybe it is, but it's going to have visual effects that
35 wouldn't have been contemplated at the time. So that's the type of thing, I

think, that may flow out of conversations or may be the subject of questions to my friend.

5 But we certainly -- I mean, if you don't have the time, neither did we to try and actually go over the thing with a magnifying glass and say well, there's scope here and scope here and scope here and I may be raising a white elephant, but I felt the need to raise it.

JUDGE HARLAND: Well it's good that it's on the table and we can all think about how we might make our way through it and how big a problem it might be, if at all.

10 MR BERRY: It may well be that in light of airing this, which is the very purpose of doing it, my friend can undertake some analysis that will demonstrate to you that the risk doesn't exist or is acceptable or can be managed.

JUDGE HARLAND: All right, well, we want to have a clear understanding of what the general accordance condition means, I think I'm addressing that to you now.

15 MS MCINDOE: Yes, I mean I indicated I think yesterday when Mr Glucina or Mr Moore was presenting in relation to the Kiwi case that detailed design is still to be done and that's the Alliance's job. We want to make sure that the conditions that are imposed in this case are sufficient to protect the community from effects generated and that they are no worse than the effects which have been assessed for the purposes of this Project and that where it's important
20 conditions are imposed.

25 But in terms of a particular height of wall such as is near the Kiwi site, then that's a matter that the agency would usually expect to deal with throughout the outline plan of works process which follows detailed design. And that is the reason indicative construction methodologies and indicative programmes have been provided rather than the precise ones.

But it is a matter which I'll talk to Mr Berry about, about how the extent to which we can be -- we can put conditions on to ensure that the effects are no worse than have been assessed in this case, because that's really what it boils down.

30 JUDGE HARLAND: That's right, it might well be that it's a drafting issue and there's a bottom line, so to speak. The bottom line is clearly expressed. And if anything deviates from that bottom line then it's clearly --

MS MCINDOE: It's out of scope.

JUDGE HARLAND: Yeah, the answer's no.

Yes, so I think it's important that we've had this discussion, it's important it's been raised. Thank you for raising it and carry on with the submission Mr Berry, if you need to, just to finish off that topic.

5 ~Mr Berry continues (10.16 am)

MR BERRY: Thank you.

So, I think I can move through that submission part, we sort of covered that in conversation.

10 The other manner in which we addressed that in the Ara Tuhona case, in the cases rather than it being a drafting issue was to say well are you going to have -- like as you cross this creek or estuary or whatever it was, are you going to have two piers or three, for example? And under the no condition in that case it would have been down to detailed design later. And the Board would go we want to know what this looks like and how it might affect people. So that the opportunity arises to land in various places and say well there we want a
15 condition about this, and there we want a condition about that, or we want a plan about how that's going to work.

So that's the other way of dealing with the pinch points. And that's what I'm really talking about, that you might identify pinch points along the way where
20 you say well I really need to understand where that -- is that bridge going to be this high or that high, or is that alignment going to be here or there because it's going to impact on people across the road or whatever. So that's more where I was getting to.

But I think a decent look at the narrative obligations imposed by the
25 condition 1 might well be -- at least provide a greater level of comfort than the know it when you see it answer. So we can certainly discuss that as counsel, we'd be happy to.

JUDGE HARLAND: All right, well thank you.

MR BERRY: And 7.10 is just reiterating the point that we're not raising the point
30 because we have any particular concerns or examples, but rather really to raise the issue that, Your Honour, you are already aware of and because we had thought of it; we thought it was important that it be raised in the context of the open hearing so it could be discussed.

35

~Questions from the Board (10.18 am)

JUDGE HARLAND: So sorry, for example, on that point yesterday I asked some questions of Mr Hale about bottom lines, if you like, in construction sense and that might be one area where that could be translated into a little more
5 certainty.

MS MCINDOE: Yes, thank you!

~Mr Berry continues (10.18 am)

MR BERRY: We are getting there Your Honour.

10 The next issue that we're raising of our own motion relates to management plans and monitoring.

And the agency places heavy reliance upon a management plan approach to the consenting management of the Project which of course is not unusual for this type of large and complex Project and we're not raising that in
15 any pejorative way, it's the way we would do it too.

The key issues report notes correctly in our view that management plans should contain objectives as to the purpose of the plan 2 and the methods to be employed to meet the performance standards set by the relevant conditions of the consent.

20 We propose to briefly canvass relevant legal principles and provide one or two examples as a means of raising this issue, so we're doing it in a similar kind of way. We don't have a great big long list of concerns and in fact the concerns are largely dealt with, I think, now.

But the basic requirement for management plan conditions is that the
25 resource consent conditions should specify with particularity the environmental objective or environmental effect that is to be achieved, what I calling "the what with management plans being set out, the manner in which the work is to be undertaken in order to meet that condition, what I call "the how". In other words, it is important for the consent authority to be able to point to a black and
30 white legal obligation that can be the subject of ongoing monitoring for compliance and, if necessary, enforcement action.

And I've come back to good old Judge Skelton in the Wood case where it's said that in terms that a management plan can be required but its purpose should be to provide a consent authority and anyone else who might be
35 interested with the information about the way in which the consent holder

intends to comply with the more specific controls or parameters that are laid down by the other conditions of the consent.

So, for example, in a case of noise, specific noise control limits can be laid down, but the way in which these are to be complied with is for the consent holder who can be required to provide a management plan containing
5 information about the method of compliance.

One of the other things about that of course is if the obligation is contained in a condition, then of course you can only change that condition by a change of conditions under the Act. Whereas quite frequently we see
10 management plan conditions, because it's about the how, that you can change by advising the consent authority and having them approve it.

When you get them all mashed up then you end up with a situation in which the management plan almost becomes a de facto consent condition and it starts to lose its value at that point.

Now as part of our preparation to assist the Board, we assessed the proposed management plan conditions by reference to the conventional and well-accepted approach articulated in Wood and we raised a number of issues with Mr McGarr. So we figured while we saw that, the first opportunity to do anything about that would be to brief Mr McGarr so he could take that idea into
15 the planners caucusing.

So we were concerned that the certainty and enforceability of some management plan conditions were questionable insofar as the purpose of the management plan was stayed to manage adverse effects, without any specific, and I call it a 'rubric obligation' in terms of the narrative requirement, eg, to
25 minimise adverse effects or a specific parameter or performance standard.

A similar but different point is that some of the management plan conditions did not reference back to a condition stating a clearly articulated purpose or rubric obligation that the agency has to meet and in respect the management plan should describe the processes or methods. And some of the
30 conditions provide for management plans to include hard and fast requirements which, applying the convention approach should be imposed way of conditions rather than being part of the management plan.

So we saw management plan conditions that said thou shalt prepare a management plan which shall as a minimum, you know, hard and fast
35 requirement, hard and fast requirement. Whereas we would've thought that

that would have to sit in a condition and the management plan says how are you going to do that?

Mr McGarr raised those issues at the planners conferencing and has advised us that many conditions were amended to address those concerns. And we reviewed the management plan conditions with Mr McGarr and we are satisfied that many of the issues we raised with him have been addressed. As a result, the proposed management plan conditions have been improved further as a result of the conferencing of the planners. And in particular, the conditions now contain more specific obligations to, at least, avoid or minimise adverse effects, rather than manage the effects of the Project.

However, there are still some management plan conditions that could be seen as being out of step with Wood.

For example, many of the management plan conditions still contain hard and fast requirements in the management plan itself, rather than in a rubric condition setting out the obligation with the management plan saying how you do it.

And a good example is the dust management plan conditions which requires the dust management plan to ensure that, and then we've got that very specific obligation that we would have thought we'd see in a condition with the Dust Management Plan saying how you achieve that.

These conditions would in all likelihood be enforceable given that the management plan must be certified by the Council, but it's submitted that these types of specific obligations are more appropriate as a condition in their own right. And in that context, as I've just said, the management plans effectively become conditions themselves.

We reviewed a sample of the Waterview conditions in order to determine how this issue was approached in that context. And while those conditions do have some minor requirements in the management plans themselves for the most part they do contain specific rubric obligations and conditions in their own right.

I now turn to monitoring conditions.

Several of the management plans require the inclusion of a monitoring programme. In most cases, this is no hard and fast requirement for monitoring to be undertaken nor any specific parameters that are required to be monitored - rather the obligation is that the management plan is to include a

monitoring programme. The monitoring programme, that is timing, location and frequency, is left to the management plan, which is not unusual.

It is submitted that this may give rise to enforceability issues in the future, in so far as the Council may find it difficult not to certify the management plan as long as it includes a monitoring programme irrespective of the specific programme being proposed.

Some aspects of the proposals do not have monitoring conditions at all. One example of that is the construction traffic effects, we would have thought that these effects should be monitored and amendments made to the construction traffic management plan if the effects are unacceptable. And this is the approach taken in the Waterview conditions and it's not clear to us why that approach has not been taken here.

We therefore submit that the conditions should be amended to impose a direct obligation to monitor; to set out the basic parameters that need to be monitored and to provide a monitoring programme to be developed in detail at a later stage, much like management plan as we often see.

Now again, some of the observations I have made in relation to these issues could be seen as 'counsels of perfection' given our preference for the good old Wood approach.

The conditions are for the most part certain and enforceable and it is therefore really a matter of the Boards preference in terms of approach as to whether it wishes the conditions to be amended or not.

So we'd be happy to take your guidance in that regard. Again, I'm not asking you to review them all and say change this one and this one and this one. But if you were just to say well we do prefer a traditional approach or as long as it's going to work that's fine.

~Questions from the Board (10.27 am)

JUDGE HARLAND: Well it's got to be lawful. It's got to be lawful, that's my approach.

And if you look at the enforcement provisions in the RMA and work backwards enforcement action can happen where there is a breach of a resource consent which would include a condition which would potentially not include anything that was further down in a management plan.

I'll give you the guidance, without even discussion, that where there are the potential for difficulties that could have significance, it should be looked at. Where it's really not going to matter at the end of the day, perhaps we could be

a bit more flexible, but we would need to understand clearly what was proposed in that regard.

MR BERRY: Thank you that's helpful.

JUDGE HARLAND: Would you like to take a break at this particular point? We've
5 reached almost 10. 30 or if you'd like to carry on and finish up to you.

MR BERRY: I am in the Board's hands.

JUDGE HARLAND: Let's take a break briefly at this point I think and we'll come back in 15 minutes.

10 ~-(Adjourned 10.29 am - 10.48 am)

~Comments from the Board (10.48 am)

JUDGE HARLAND: Before you start again Mr Berry, we have had a discussion
about -- at your invitation, whether we could give you some indication, very
15 preliminary indication, about where these conditions might attach, designation
resource consent or otherwise. And we are going to do that, but it very much is
subject to the fact that we haven't yet heard the other side of the argument
entirely from you yet, Ms McIndoe, and Mr Burn's explanation for it. So, it's got
to be subject to that out of fairness, but we are relatively inclined to the other
20 view that there is merit in pursuing that, and that there would be inherent safety
merit in probably putting conditions to both, as a real safety net, but we are very
persuadable about that. I don't want you to get the impression we're not. It's
just that we do understand the other argument and there is some merit in it.

MS MCINDOE: And I think there might even be a sort of halfway now, we could move
25 some way. Currently what we've prepared, and we haven't shared it with
anyone, is a table which lists the resource consents and designations and then
allocates to them condition numbers, and so it would be relatively easy to
indicate in that table which ones we've -- we agree should be moved, and which
ones perhaps, if there is a difference of view -- another party thinks should
30 attach to both -- during the break we discussed with Mr Berry and Mr Bangma
about the need to sit down as a group of counsel and talk about the conditions,
and so your indication is useful.

JUDGE HARLAND: Yes, we would be helped by that, and the other point moving on
from that, which we've also talked about as well, is we are going through this
35 hearing really quickly and that's great, and if we were, for example, to be
finished by the end of next week, or at least even shorter than that with the

evidence, and we had indicated that there would be time for people to breathe, take, reflect and wanted extra time, we could adjourn the hearing for time not only for closings but also adjourn the hearing for us to consider certain pinch points and then if necessary recall witnesses with the general accordance provision, for example, where we thought there might be some more information we required about that.

Now, that's clumsy. In many regards it would be better to not have to do that, but if we get to that point just, because there's so much you're having to do within the next short while that's another option.

10 MS MCINDOE: It did occur to me that ideally we would have had conditions that we could have asked witnesses about and because they have been continuing to develop through conferencing, I could appreciate that might be difficult for you; it's certainly been difficult for us. So if we can get those conditions in a set, once they're available after the conferencing and to discuss them with counsel, then in fact we might be assisted by that process as well as you.

JUDGE HARLAND: Yes, well we want it to be practical, and we want everybody not to have to waste their time by coming back if at all possible. So, I guess we're giving you the permission to suggest to us a way, when you get there, that we could be best helped by the end result and if it means that you need time before, and we have to get on with deliberating, we can do that by just adjourning the hearing.

MS MCINDOE: That's useful. Thank you very much.

~Mr Berry continues (10.50 am)

25 MR BERRY: Thank you. I am at Chapter 9, top of page 34, the issue that you raised, I think possibly yesterday.

The Project will require the relocation of the North Harbour Hockey Stadium from Constellation Reserve to Rosedale West Reserve. Resource consents have been obtained for the construction of the new hockey facility at Rosedale West Reserve, however changes to the leases of reserve lands are required in order to effect the relocation. The proposed changes have been notified under the Reserves Act but the process is not complete.

And I just refer to the indication from my friend, Mr Bangma, in relation to what Auckland Council has indicated:

35 "While there is a high level of agreement between the stakeholders as to the relocation of North Harbour Hockey, relocation is still subject to a separate

process so it cannot be said for certain at this stage if the proposed relocation will proceed. And so you've asked that we comment on that issue.

Now, the conditions originally proposed in relation to the relocation of the hockey stadium precluded the commencement of any construction works in Constellation Reserve until that occurred.

As a result of the expert conferencing the condition was proposed to be altered, and the planners are of the view that if condition IHF.1 is problematic in the sense that it would operate as a condition precedent and would preclude any work on Constellation Reserve before the relocation of the hockey facility.

Well, that's a problem if you think it's a problem, but it may be what the condition was meant to do.

JUDGE HARLAND: Well, that's precisely what I wondered when I read it; it seemed pretty clear to me.

MR BERRY: So it's something we're -- it tends to flow from an assumption that it will happen, and that the risk is to the hockey people rather than to the agency.

So the flaw in that conclusion is that is precisely what may have been intended. The original condition would have precluded work being undertaken until the Reserves Act process was complete and the hockey stadium was relocated. By contrast, the relevant conditions currently proposed require the replacement hockey stadium on a 'like for like' basis and allows for staging of the relocation but there is no longer any requirement as to the timing of that construction; and there is no certainty in the condition that there will be a functioning hockey facility in existence at all times.

So we agree with counsel for Auckland Council that the relocation of the hockey stadium is not certain, given the need to complete the Reserves Act process, and we know the indication from counsel for the agency that changes are likely to be proposed to the conditions relating to the relocation of the stadium.

In terms of the Harbour Hockey Charitable Trust, counsel for the agency has indicated that the Transport Agency understands that the Harbour Hockey Charitable Trust is comfortable with this method of remedying the effects of the Project on the stadium.

But the evidence of Ms Williamson for the Trust said that the Trust supports the Project subject to its requirements that the stadium be relocated to its proposed new site in accordance with the agreed timeframes and the new facility is constructed. Beyond that indication, it is not clear whether the Trust is

aware of the recently proposed changes to the conditions and their potential impact. The further changes which the agency has signalled will be made and that the Trust agrees to the conditions being proposed.

5 Now, Ms Williamson is scheduled to appear before the Board on the 27th, and we submit that the Board should clarify the Trust's position with Ms Williamson either prior to or at that time.

And in terms of prior to, Madam Chair, I mean we'd be happy to do that for you, or we can just leave it until then, or the agency could well do that.

10 ~Questions from the Board (10.54 am)

JUDGE HARLAND: Well, I imagine too that it would be preferable to have the conditions available to be discussed.

15 MS MCINDOE: Yes, I mean one of the reasons why in the opening submissions I indicated that there may be some refinement to the hockey condition was that as legal counsel I did not agree with the approach taken by the planners in conferencing. Ms Williamson is actually coming down this afternoon to meet with us. I've got certainly no opposition to her meeting with Mr Berry if that assisted the Board.

20 And we are trying to ensure that Ms Williamson is well placed to assist the Board and that she's comfortable presenting in this forum. She's certainly very knowledgeable about the Project and the implications on hockey. So we want to make sure that you are able to get the information from her that she's got in her head.

25 JUDGE HARLAND: Well that's very constructive, and can I also acknowledge that it has been a very constructive approach that the agency has taken. That's absolutely evident, with hockey, and certainly this isn't -- this inquiry is not to -- designed to upset that, but you understand the reasons. It might be helpful for Mr Berry to be at least available, in case she wishes to talk to him about that, and Mr Berry, you are comfortable with that approach?

30 MS MCINDOE: Perfectly comfortable.

JUDGE HARLAND: So perhaps if you are available, Mr Berry, that might be helpful?

MR BERRY: This afternoon? I am wondering whether you meet with her and just tell her she can contact me if she needs an extra ear?

JUDGE HARLAND: Well, thank you for. That's helpful.

35

~Mr Berry continues (10.56 am)

MR BERRY: Last but probably not least, and maybe not the easiest either, is the interpretation of the AUP provisions in relation to the stream reclamation.

5 So we've already canvassed a little bit this morning about what this issue is about. The relevant -- so the issue is the extent of the streams that are to be reclaimed and the relevant infrastructure, the modified watercourses that is in dispute, the 602 metres of Council stormwater infrastructure located within the Constellation dry pond just south of Watercare's number 1 which is actually the Rosedale Wastewater Treatment Plan.

10 NZTA was initially advised by the Council's Healthy Waters team that these modified watercourses were deemed to be streams in accordance with the relevant AUP definitions. NZTA has therefore applied for consent to reclaim the modified watercourses. After the applications for the Project were lodged the Healthy Waters team changed their position, and advised NZTA that they
15 no longer consider the modified watercourses to be streams.

So on the basis of that advice the agency considers that only 17.4 metres of existing watercourses are located to the north of the Dry Pond comes within the definition of "stream" for the purposes of the relevant AUP rules.

20 However, the agency has not withdrawn its consent application to reclaim the modified watercourses.

Now contrary to the current view of the Council's Healthy Waters team, Mr Turner's position is that the existing consent held by the Council to dam and flood the dry pond does not have the effect of extinguishing the historical fresh water systems within the footprint of the pond. So he considers that 602
25 metres -- that should be square metres -- of modified watercourses -- oh no, it says metres -- of modified watercourses within the pond still comes within the definition of permanent or intermittent stream under the AUP, and that the NZTA should provide sufficient mitigation for the loss of these streams, in addition to the 17.4 metres of stream that isn't in dispute.

30 While the agency disagrees with Mr Turner's view, it considers that the difference between the parties is not material because a) consistent with the initial Council advice as to the status of the modified watercourse, Council has sought to reclaim it; then, and the effects of the reclamation on fresh water ecology has been assessed by Ms Barnett and will be adequately mitigated
35 given the low ecological values.

Now, the AUP contains definitions of intermittent stream, permanent river, or river or stream. Unfortunately, these definitions are unclear and ambiguous.

5 ~Questions from the Board (10.59 am)

JUDGE HARLAND: Do they accord with the definitions in the Act, or is it of more concern?

MR BERRY: No, I haven't checked that, no. I can do that if you like.

I was tempted to go to the definition in the AUP that His Honour
10 Judge Kirkpatrick put in which says, "the vibe, that which cannot be defined".
That part of the plan which cannot be defined, but that doesn't really help us
either.

So, accord with the Act. Look, I'll come back to you.

JUDGE HARLAND: Well, I just know it's a minefield. That's all I know, because I've
15 had to deal with it. And it's certainly, in the context of is it a drain or is it a
stream.

MR BANGMA: Just a thought Your Honour, if that's appropriate in trying to help get to
the bottom of this, I do, hopefully, he says, have with me the definitions in the
Unitary Plan which I understand that Mr Turner regards as being relevant, from
20 the AUP. I think there are about three of them; I could double check that. To
some extent that's a planning question, I guess, but we do have Ms Barnett
appearing shortly. So, if it was useful we could put those definitions to her to
confirm that point.

JUDGE HARLAND: I think that would be helpful, thank you. In fact, I'm just bringing
25 up the Act now as we speak, because the Act doesn't define, I don't believe,
"intermittent". In fact, it just says that it is. It's a "water body", I think is the
definition. "Water body means freshwater, geothermal water and a river lake,
stream" et cetera "or any part thereof that is not located within the coastal
marine area."

30 And then we've got river: Continually "or intermittently flowing body of
freshwater. Includes a stream and modified watercourse. Doesn't include an
artificial watercourse", which is a point in itself. "Including any irrigation
channel, water supply race, canal for the supply of water, power generation,
farm drainage canal."

So, anyway that might need to be looked at. The provisions of the plan might need to be looked at in respect of the Act as well, but we'll leave that, and your suggestion is a good one.

5 So, Mr Berry, you might want to just carry on, and we'll hold that thought as well.

MR BERRY: Yes, thank you, Your Honour. I mean the short point is that you can't really get to the -- you can't get to the bottom of it by reference to the definitions. Well, certainly, it becomes -- it's not a strictly legal point and so we haven't -- we're not in a position to go behind the face of the opinions that have
10 been expressed and of course there's a difference of view on that. So, we aren't able to say.

JUDGE HARLAND: But even more particularly if the definition under the Act includes a stream or a modified watercourse it might we will be the 602 or whatever it is, mightn't it? Because it could be an intermittent or continual regardless of
15 whatever advice the Council has given, in the past, or Healthy Waters have given.

Can I just ask how did that come to be? Did they not seek some legal input into that, before giving that opinion, or can't you answer that?

MR BANGMA: Sorry Your Honour, you're referring to Healthy Waters?

20 JUDGE HARLAND: Well, the Agency has been put in a really difficult position here by the Council's conflicting advice, quite frankly, and so do these people not seek legal advice about what is a technical issue first?

MR BANGMA: Not from Simpson Grierson, Your Honour.

JUDGE HARLAND: All right, we'll leave that. It's not helpful though is it.

25 MR BANGMA: No. Look, Your Honour, I do accept it's unhelpful. I suppose all I could say is that the fortunate thing here is that advice was post lodgment, I suppose in some respects, so I think as I hopefully made clear in the counsel's opening we don't think any issue of scope arises. So that's helpful at least. It's just a question of what the correct approach is and what the correct mitigation
30 is, and I think as Mr Berry has suggested, we'll ask Ms Barnett, but she may not think it makes a great difference either way in terms of mitigation.

MS MCINDOE: It occurs to me that perhaps we're making life more difficult than we need to be. We've applied for these consents. If it helps the Board, we're happy to say we accept these consents are required and then it's simply a
35 matter of mitigation.

JUDGE HARLAND: Well, that might short circuit it. It might mean we do not have to go through this torturous argument about what is it is, because it doesn't matter at the end of the day. All right, have a think about that. We would be very grateful to you, if that's where you got to.

5 MS MCINDOE: Yes, okay, thank you.

MS BERRY: And that may mean that I have nothing much more to say Your Honour.

JUDGE HARLAND: Why don't we leave it that we would read what you have to say dependent on what the agency's instructions are?

MR BERRY: But, I mean, I guess we -- I hadn't, to be fair, Your Honour, thought
10 about lining the definitions up and we really only had yesterday so it was a bit tight as it was, but I mean we could do that, but we thought for the purpose of moving ahead, perhaps the Board should adopt a conservative approach and assume it's the larger area, and then test with the relevant witnesses, and particularly Ms Barnett whether sufficient mitigation measures have been
15 provided. And if, as I suspect, the ecological values are as degraded as they would appear to be, we may end up having a distinction without a difference.

JUDGE HARLAND: Yes. Thank you.

~Mr Berry continues (11.05 am)

20 MR BERRY: Yes, so in this way the Board can be confident if Mr Turner's interpretation of the AUP provisions is correct, it has ensured that the Project's effects on the modified watercourses have been adequately addressed and mitigated.

So, that concludes my submissions other than to acknowledge that
25 Ms Vella would like to have been here but she is in Australia, and that two of my other colleagues at the office, Helen Andrews and Craig McGarr have done quite a bit of heavy lifting in the last couple of days and I want to acknowledge them, and I'd like to thank the Board for the opportunity to assist it, and to thank EPA staff for the very helpful assistance they've provided use throughout.

30 JUDGE HARLAND: Well, thank you, Mr Berry. That's been most the helpful and we're not finished with you yet.

But, it's been very helpful, those matters that you've been able to deal with and your team has been able to deal with at short notice. And we are surprised that Ms Vella didn't cancel her trip to Australia to be here today.

35 MR BERRY: I'll pass that on.

JUDGE HARLAND: Now, I'll just check if there are any questions? No. Thank you very much.

MS SHEARD: So the next witness on our list is Ms Strogen.

MR BERRY: While the witness is taking the stand Your Honour, you're happy for
5 me to be excused?

JUDGE HARLAND: Yes, thank you very much.

~LOUISE STROGEN (Sworn) (11.08 am)

~Examination in Chief by Ms Sheard (11.08 am)

10 MS SHEARD: Good morning, do you confirm your full name is Louise Strogen?

MS STROGEN: I do.

MS SHEARD: Do you confirm that you've prepared two statements, first statement dated 20 April 2017 and a statement of rebuttal evidence dated 15 June 2017?

15 MS STROGEN: I do.

MS SHEARD: Do you confirm that the contents of those are true and correct to the best of your belief?

MS STROGEN: I do.

MS SHEARD: And do you confirm that you have the qualifications and experience
20 set out in section 1 of your primary statement of evidence?

MS STROGEN: Yes, I do.

MS SHEARD: And have you prepared a summary statement of evidence?

MS STROGEN: I have.

MS SHEARD: Could you please read that summary?

25 MS STROGEN: This summary statement provides a summary of my Evidence in Chief dated 20 April 2017, and my rebuttal evidence dated 15 June 2017. Summary of Evidence in Chief.

In my opinion... (Reads 2.1 - 4.3 of Summary of Evidence Statement)... and I have not seen the final wording of those conditions or any
30 other amendments made by the planners.

~Questions from the Board (11.13 am)

MR MARK-BROWN: In your evidence, rebuttal evidence, section 7, 7.1, 7.2 and
35 7.3, this is the issue to do with possible relocation of residents' due to excessive noise, and that's dealt with in the management plan and your comment in your evidence was that best practice to reduce the anticipated

short-term construction noise and vibration are needed, and from a social perspective early consultation communication is a key.

So on that, this will be the Alliance that will be doing this, people employed by the Alliance?

5 MS STROGEN: Yes, it will be.

MR MARK-BROWN: Will you have any input into that process, because a certain amount of expertise is needed in doing it and talking to these residents. Can you have any comment on how that is likely to be done by the Alliance and who by, and do you have any overview?

10 MS STROGEN: Unless I was asked by the agency through the Owner Interface Manager I would not have input. However, the -- I would suspect that there are individuals within the Alliance team who will have expertise in that type of consultation. They will have a stakeholder communications team.

MR MARK-BROWN: Have you had any experience in similar projects before where
15 this sort of thing has happened in terms of residents being relocated due to noise?

MS STROGEN: I personally don't.

MR STEWART: Ms Strogen, just returning to your evidence that you've given us today on paragraph 2.8, you are talking about recommending an amendment
20 to the proposed condition to provide for recent consultation events.

Was that as a result of discussions with the team or discussions with stakeholders or how did that come about?

MS STROGEN: So we were looking at the issue of stakeholder engagement and seeing how that could be more robust in the condition set, and also in
25 response to discussions with Auckland Council, and that is where we proposed that more extensive list of stakeholder consultation conditions.

MR STEWART: Right, so that came out -- about through consultation or discussions within the team?

MS STROGEN: Within the team.

30 MR MARK-BROWN: As opposed to going out to the wider community?

MS STROGEN: Out to the wider community, yeah.

MR MARK-BROWN: And the other one. In paragraph 10.6 of your main evidence you said that the business would be likely to close. You said:

35 "It is my opinion that if any businesses were to close as a result of the Project it would not undermine the business and retail sector..."

Did you become aware during your work on this Project of any businesses that were likely to close?

MS STROGEN: We have had some discussions with businesses at Greenhithe shops, which is adjacent the Unsworth Drive area of the Project. They are
5 both the tenants and the land owners were concerned about the impact of that particular closure and how that might affect their businesses and their property holdings. So, from the tenants, it was trade. They advised us that their trade was passing trade, people using that entrance. If that entrance
10 was no longer there they wouldn't have the passing trade. From the land owner's point of view if they can't tenant that building, then they have an unoccupied premises that they couldn't maintain.

So, my recommendation there was that the agency work with those particular business owners and tenants around signage and reconfirmation that their businesses were still -- were there, functioning, and could continue
15 to operate after the closure.

MR STEWART: Right, so this is probably not your area exactly, but I assume from what you say that if they were going to be resigning and all that sort of stuff that's basically aimed at the local road networks, since there won't be any access off the State Highway.

20 MS STROGEN: It could be local road, it could be flyers, just reinforcing the fact that they are still there and open for business.

MR STEWART: Yes. I think in section 12 of your evidence and onwards, I'm just wondering whether you think that many of the issues that you raised in that section will be addressed -- or have been or will -- yes, have been addressed
25 in the joint witness conferencing? In section 12 you're talking about response to submissions and my question really was just to see whether --

MS STROGEN: I believe they have.

MR STEWART: I've got here a note about section 9 of your rebuttal, but I'll just have to look. This is fairly obvious. I was just really wanting to know whether
30 that conclusion in section 9 of your rebuttal is still your opinion?

MS STROGEN: Yes, it is.

JUDGE HARLAND: Picking up on a point that Mr Stewart's just asked you about the business owners and the flyers and all that kind of thing, was your recommendation associated with ongoing assistance for these people if it
35 becomes an eventuality, because it's one thing to do a one-off, but it might take people longer to understand the impact of the changes and this

construction Project is 3.5 years and there would be a change after that. Is there any thought been given to the length of time over which such assistance might need to be given?

5 MS STROGEN: I personally have given it some thought, and as you've touched on, it's not just a case of one hit, either just before the closure or after the closure, but it will take some time in terms of reinforcement. So that would be over a period, I would say three months, because you're reinforcing. But that's my personal opinion.

JUDGE HARLAND: Right. Well that's three months after construction's ended.

10 MS STROGEN: After that road closure.

JUDGE HARLAND: And so implicit in all of this is that the agency hasn't -- or has taken the view that this is not a Public Works Act situation and so there wouldn't be any compensation?

MS STROGEN: That's right.

15 JUDGE HARLAND: So how would your expert opinion about what should occur actually be implemented?

MS STROGEN: So, there is a property strategy being developed by the agency, so that's one potential method. But the other is through the stakeholder and communication work stream that will be part of the Alliance.

20 JUDGE HARLAND: Right, well, where's the certainty that those ideas will be carried through into those documents that don't have any parameters particularly around the conditions to that effect?

MS STROGEN: Currently it is not there.

25 JUDGE HARLAND: Right, well, do you recommend that there is something included in there to provide certainty to these people?

MS STROGEN: Yes, we could.

JUDGE HARLAND: Do you think three months is enough? What do you base the three months on?

30 MS STROGEN: That period is -- to me, it's a period where people will take notice of something being put up and something that they will potentially receive in their letterbox. Thereafter it's not new anymore, so it's just -- it's trying to capture people's attention spans.

JUDGE HARLAND: Right so what's the science around the three months?

MS STROGEN: There isn't one.

35 JUDGE HARLAND: So it could be longer, it could be shorter?

MS STROGEN: Potentially.

JUDGE HARLAND: And is there any science or any sort of accepted methodology around how many times this kind of thing needs to happen?

MS STROGEN: The only thing that I can relate it back to is when we send information out about meetings such as the -- as community meetings. If you
5 do it too regularly people take no notice. If you do it for a long period of time, equally there's a bit of fatigue and disengagement with the information coming forward.

JUDGE HARLAND: So, how would these business owners, if there is an effect which you've identified, how would they be able to influence whether or not
10 what was put in place was effective for them or not?

MS STROGEN: As I said, the individuals have advised us that's it's passing trade, so if they are still getting trade once that particular closure has taken place, then the messaging is being effective.

JUDGE HARLAND: For sure, but what if it doesn't? What I'm getting at is what's
15 their remedy if what you are proposing doesn't work? Then what we've got is an unmitigated effect.

MS STROGEN: Their remedy would be -- we'd need to -- there would need to be another form of reinforcement of those businesses being open over and above signage, advertising.

20 JUDGE HARLAND: And what if that didn't work? What would their remedy be then? How would they get that fixed so it was mitigated?

MS STROGEN: For a tenant, the tenant's solution would be obviously to relocate to somewhere that was more active.

JUDGE HARLAND: Is that really mitigating an effect?

25 MS STROGEN: No, it's not.

JUDGE HARLAND: No, all right.

What I'm hearing is there wouldn't be any mitigation in that situation if it didn't work, if these flyers over the period of time didn't work; there's no mitigation. That's worst-case scenario --

30 MS STROGEN: Scenario.

JUDGE HARLAND: Do you agree with me that there's nothing in the conditions to provide for that?

MS STROGEN: I do agree.

JUDGE HARLAND: So, one of the concerns I have about these conditions is that
35 they took a lot of about consultation which I think is a great thing and involving people, but where are the teeth if people disagree with the

approach that is taken and there is an effect which is still being experienced by them? How does that get dealt with in these conditions?

MS STROGEN: So the conditions have been changed to ensure that there is a feedback; so, individuals will have the opportunity to express their opinion about the information they have seen. There will need to be a balancing act because everybody may not be of the same opinion. And the conditions require that the output of certain meetings be circulated so it's clear what has been said, what the balanced opinion is, and that is also provided to individuals to make comment and the loop then closes with that information being fed into a management plan.

JUDGE HARLAND: Right, well, that's a plan, and that's information, but where does it go to? If someone's really got a particular concern, complaint perhaps, because this does provide for complaints to be made and as I understand it it's the Alliance that would be managing the complaints, is that right?

MS STROGEN: Yes, they will be.

JUDGE HARLAND: And the Council gets notified if there's been a complaint?

MS STROGEN: Yes.

JUDGE HARLAND: And then what happens then?

MS STROGEN: So clearly if there is a breach of a condition, let's say one of the noise conditions or vibration conditions, that's your teeth, because you are in breach of your condition and something needs to be resolved.

There will also be processes within the Alliance if people are not satisfied with the processes that are taking place on site; then there would need to be another round of consultation, or alternatively you need to look at what is happening on site and there needs to be tighter control on how things are occurring on site.

JUDGE HARLAND: Okay so, what oversight in relation to that kind of complaints process does the agency envisage that it would have?

MS STROGEN: So the agency will have the Owner Interface Manager who will be saying "how are you operating?" -- that one.

JUDGE HARLAND: Sorry, can I just pause there. I understood that was an Alliance person not an NZTA person?

MS STROGEN: No, the Owner Interface Manager is an agency person.

JUDGE HARLAND: I see, and they would be notified if that --

MS STROGEN: They would be notified.

JUDGE HARLAND: Is that clear in the documents? We haven't seen those documents, so we don't know.

MS STROGEN: That is not clear in the documentation, but that is the practice in Alliance, that the Owner Interface Manager would see any complaints register.

5

JUDGE HARLAND: Right. And have you been involved in that process either as -- or have you been, from the agency's perspective, involved in an Owner Interface Manager for an NZTA Project talking to you about complaints processes or complaints?

10 MS STROGEN: I have been involved as part of the Owner Interface Team on the MacKays to Peka Peka Alliance and as part of that project I attended weekly meetings at which complaints were raised and the Owner Interface Manager and the Alliance management team discussed those and how they should be dealt with, or how they -- reviewed how they had been dealt with.

15 JUDGE HARLAND: All right, so how -- you said there were weekly meetings where the complaints were raised. Were the complainants present at those meetings or was that just to advise you about the complaints?

MS STROGEN: That was to advise and to advise how complaints had been dealt with.

20 JUDGE HARLAND: And then there was a review of what had been agreed had happened --

.MS STROGEN: Agreed had happened.

JUDGE HARLAND: -- yes, and you were involved in that. And they were weekly meetings for how long?

25 MS STROGEN: For the period of time that I was in that project, they were -- I mean it happened every week, so it's part of the weekly management meeting that takes place for the Project.

JUDGE HARLAND: So, sorry, I wasn't clear enough. How long -- for how long did you have those weekly meetings? Was it throughout the entire construction period?

30

MS STROGEN: It was throughout the entire construction period.

JUDGE HARLAND: And were there complaints every week that had to be reviewed?

MS STROGEN: No.

35 JUDGE HARLAND: So how many complaints were there?

MS STROGEN: Complaints were ad hoc and you could have, because of a certain type of activity taking place, one or two, or you could have nothing.

JUDGE HARLAND: Right. So, again in relation to this particular project, am I hearing that something similar is not proposed as that which you experienced during the MacKays to Peka Peka one?

MS STROGEN: I would anticipate that the Alliance team would have a weekly meeting and that complaints would be part of that process?

JUDGE HARLAND: Yes, all right. Well that's fine. We've seen nothing to do with the Alliance, right. That's got nothing to do with us, we know nothing about it, it's not been put in front of us apart from in a very limited way to do with the landfill. So, this is why I'm asking these questions because it has the appearance of "trust us at some later date some people will manage this in some particular way and you can have confidence about that". We need to have confidence about this, because there are potential difficulties. So, I need to understand where the agency's role is in all of this to make sure that in fact what your anticipating is really going to happen here.

MS STROGEN: So I am quickly looking at the conditions, because I know that we have proposed a community liaison manager.

JUDGE HARLAND: Yes, I see that.

MS STROGEN: So at the moment the way the stakeholder and communication plan conditions are written there isn't a requirement for complaints to be reported to a forum or process.

JUDGE HARLAND: Do you think that would be a good idea?

MS STROGEN: Yes.

JUDGE HARLAND: And you were talking about, or you had referred to the community liaison manager, that's in SCP3D --

MS STROGEN: That's correct.

JUDGE HARLAND: -- to be appointed by the requiring authority, that's to be the agency, correct?

MS STROGEN: Yes, that is correct.

JUDGE HARLAND: Right. That's contact details. In fact, on that point I couldn't see where it was in the conditions that that person had to be actually appointed? A minor point perhaps but someone could pick that up.

MS STROGEN: Your Honour, sorry if I could draw your attention to proposed condition SCP8 and SCP9.

JUDGE HARLAND: Right, so it's further on.

MS STROGEN: Where we do have the agency shall respond to any complaint within 48 hours and SCP9 maintain a record of its responses and any remedial actions undertaken.

JUDGE HARLAND: Right, I see, so that's now gone back to the agency.

5 But I couldn't see, and this is just a quick read, so you will know more than I, but I can see that there's contact details for a community liaison manager to be appointed. Is it anticipated that this part of the condition is the authority for the appointment of the manager as well?

MS STROGEN: Yes, I would interpret that.

10 JUDGE HARLAND: My next question is that the approach taken to the community liaison in this case is -- and the conditions is different from that which was in the Waterview Connection, are you familiar with that?

MS STROGEN: Yes, I am.

JUDGE HARLAND: Were you involved in any part of the Waterview Connection
15 project?

MS STROGEN: No, I was not.

JUDGE HARLAND: No, all right. Well, the approach to the conditions there was to establish a community liaison person, similarly, and to have various plans, include a communications plan. Is that communications plan function what's
20 now encompassed in the idea of the strategy?

MS STROGEN: Yes, it would be.

JUDGE HARLAND: Right, so what is the -- what's the force of the strategy going to be, or is it just a bigger picture document that's going to deal with what? Because there's also a mention of a charter, or has that gone?

25 MS STROGEN: No, the charter is still there at SCP3 c iii. So --

JUDGE HARLAND: Perhaps start with the charter seeing as we've gone there. So that really doesn't tell me anything about what it's going to do apart from provide some kind of overview to consultation events and information days, is that what it's going to do?

30 MS STROGEN: So, the charter would do that and it would also effectively sign the agency up to, again, delivering on the things that it said it would do in that charter.

JUDGE HARLAND: All right, so, is there a draft of the charter somewhere so we can see what it's going on about?

35 MS STROGEN: No, there is not.

JUDGE HARLAND: So what's the function of the charter?

MS STROGEN: The function of the charter would be to -- would be an additional agreement or testimony on behalf of the agency to say they will do what they say they're going to do in terms of communication.

JUDGE HARLAND: Okay, so what are they going to do in terms of communication?

5 MS STROGEN: So the stakeholder and communication plan will be devised; its purpose will be to advise the community and stakeholders of the construction periods, the methods proposed to avoid, remedy, and mitigate, as far as practical, disruptions to businesses, schools, and other activities while the Project is taking place. And it would also set out the methods for informing
10 the affected communities throughout the construction process. So, that could be quite specific in terms of the tools available for engagement with the public, and it may advise that you have neighbourhood meetings, one-on-one meetings, or indeed if it is felt, community liaison groups for specific areas within the Project.

15 JUDGE HARLAND: Well, that leads me neatly on to the next part which is exactly that. In the Waterview conditions there were specific community liaison groups set up, it was very clear, they were related to the key construction areas, and I'm wondering why that's not thought to be a good idea in relation to this Project?

20 MS STROGEN: The agency have looked at how community liaison groups have operated and the feedback is that initially these groups are well attended and, however as the Project continues they become less well attended. They also, as a consequence tend to be a particular number of people will attend those meetings and a regular basis. So, they're not as inclusive as they
25 could be. And what has been found is that in addition to the liaison groups, other forums or tools to engage with the community have been undertaken and they have been more effective in terms of getting feedback and inputting to the management of the Project.

JUDGE HARLAND: So who gave the feedback that these groups were not
30 operating well?

MS STROGEN: So I have had that feedback from the Transport Agency.

JUDGE HARLAND: Right, what about from the people who were part of that group?

MS STROGEN: Not from the people who were part of those groups.

35 JUDGE HARLAND: So, from the agency's perspective they didn't prefer them as much as other ways, is that it?

MS STROGEN: They didn't see that they were achieving the outcomes of engaging with the community.

JUDGE HARLAND: Right, so you said they weren't seen as being effective. What test was used to establish effectiveness?

5 MS STROGEN: That was around attendance.

JUDGE HARLAND: Right, was that the sole thing or were there other things?

MS STROGEN: And feedback.

JUDGE HARLAND: Feedback from whom?

MS STROGEN: From -- so if there was nobody there to engage with, or hear what
10 was being said, then the feedback in terms of management plans or proposals was not being received.

JUDGE HARLAND: Right, so, because there was low attendance it was felt that that the feedback that was needed wasn't being --

MS STROGEN: Wasn't gained.

15 JUDGE HARLAND: Were there other tools used in addition to the conditions to gain feedback?

MS STROGEN: Yes, they have all manner of tools.

JUDGE HARLAND: Right, so it wasn't necessarily just a problem with the group, because the feedback was being obtained in other ways?

20 MS STROGEN: It was, yes.

JUDGE HARLAND: And there were other people that attended -- there were still some people that attended those groups?

MS STROGEN: Yes, they did.

JUDGE HARLAND: Right, and for none of those particular groups, did they have
25 any of those people on those groups have any input into what they thought about the effectiveness of the group?

MS STROGEN: I can't answer that, sorry.

JUDGE HARLAND: But there's nothing on your files or anything to indicate that
30 they were given the opportunity to give feedback on what they thought of the groups?

MS STROGEN: Nothing on my file, no.

JUDGE HARLAND: No, all right.

MS MCINDOE: Your Honour, I understand that Ms Strogen didn't in fact take part in Waterview she is unlikely to have anything on her files in that respect.

35 JUDGE HARLAND: No, but she's prepared to give evidence that they weren't effective.

MS MCINDOE: I understand her of giving evidence about what the Transport Agency has told her about the matters.

JUDGE HARLAND: Yes. So again, in the conditions that were imposed for Waterview there were a number of specific inputs into specific plans. We've
5 got a lot of management plans here, and it was specified that there needed to be consultation with certain groups in some cases about -- into certain plans. Is that approach being replicated in these conditions, or is that "let's wait and do it later"?

MS STROGEN: No, the -- there isn't a list of management plans specified in the
10 conditions but there is a requirement for at SCP 3 c vii for consultation events, reporting on any unforeseen effects along with the recommendations on the measures to mitigate these effects, which, to me, I interpreted it as the consultation on the management plans.

JUDGE HARLAND: Right, so you think it's a good idea for there to be consultation
15 about all of the management plans, or just some of them, or which ones? Because there is a few.

MS STROGEN: There are a few. The obvious ones would be around construction noise and vibration, dust and operational noise potentially, where certain parts of the community may be interested in other management plans.

20 JUDGE HARLAND: Right. Yes. And that's not fair to put that to you, because it might -- other people will be able to do that, but as a general rule you think, do you agree that input to some of the plans is a good idea?

MS STROGEN: Yes. For the community, yes.

JUDGE HARLAND: Is there any requirement for publicly available results of
25 environmental monitoring if any is to be undertaken? Is there anywhere where that is able to be reflected?

MS STROGEN: Not in the condition set as it's drafted.

JUDGE HARLAND: Do you think that would be a good idea?

MS STROGEN: Yes, because the individual -- people will have the opportunity to
30 see that a), monitoring is taking place and b), what that monitoring is showing.

JUDGE HARLAND: And do you understand, or do you think, perhaps I should put it more directly, do you think that the consultation should be something more than just asking people their opinion, but that it should be that the opinion
35 needs to be listened to and where appropriate taken into account?

MS STROGEN: Yes, because otherwise it's, why are we doing it?

JUDGE HARLAND: In relation to education, you talked about the Ministry for Education -- or there is provision for the Ministry to have involvement at certain stages, is that correct?

MS STROGEN: That's correct.

5 JUDGE HARLAND: Do you think that's a bit high level? Because the Ministry might deal with schools and that kind of thing, maybe even the University over here, but what about private daycare centres and things like that?

MS STROGEN: I would see private daycare centres as a group that the Project needs to engage with. There are a number of child care facilities in this area, reflective of the community. And a number of them are immediately adjacent to the Project, and I'm thinking of Meadowood Community Centre here, so
10 yes.

JUDGE HARLAND: All right. Is there anyone that you are aware of who's involved in this case giving evidence for the agency that can help with the Waterview conditions and how they worked in relation to the community liaison group aspect?
15

MS STROGEN: I, don't, no.

JUDGE HARLAND: That's all right, that's fine.

All right, well, thank you very much, I don't have any further questions.
20 Does anyone have any matters arising?

MS SHEARD: No, thank you.

~(The witness withdrew - 11.50 am)

~Submissions from Ms McIndoe (11.51 am)

25 MS MCINDOE: Your Honour I will make some enquiries and see if we can't provide a witness who will be able to assist you further with implementation of the Waterview Connection conditions, if you think you'd find that useful.

JUDGE HARLAND: Well, it's highly relevant. What's slightly irritating, to be honest, is that new approaches are presented that there's no evidence to suggest they're tried and true. There's no evidence to suggest, or very much detail
30 around what the Alliance is supposed to do or not supposed to do. And there's frankly areas of uncertainty. So there might be philosophical reasons why people want to change it, it might be a new approach, there's nothing in the evidence to explain really why this approach is being taken and there's
35 nothing to explain why approaches that have been put in the past haven't worked.

MS MCINDOE: I won't try and answer that question myself but we can fill that gap for you.

JUDGE HARLAND: Yes well you don't have to but it's pretty obvious from the questioning that it's open to us then to do --

5 MS MCINDOE: Yep, what you see fit.

JUDGE HARLAND: -- what we see fit so you might want to flesh that out a little bit.

~TREFFERY BARNETT (Affirmed) (11.53 am)

~Examination in Chief by Ms Sheard (11.53 am)

10 MS SHEARD: Good morning could you confirm that your full name is Treffery Jean Barnett?

MS BARNETT: Yes.

MS SHEARD: And do you confirm that you have produced two statements of evidence dated 20 April 2017 and 15 June 2017?

15 MS BARNETT: I do.

MS SHEARD: And do you confirm that the contents of those statements of evidence are correct to the best of your knowledge and belief?

MR BARNETT: Yes, I do.

MS SHEARD: And do you have the qualifications set out in your Evidence in Chief
20 in section 1?

MS BARNETT: Yes, I do.

MS SHEARD: And have you produced a summary statement?

MS BARNETT: I have.

MS SHEARD: Could you please read that summary statement?

25 MS BARNETT: This summary statement provides a summary of my Evidence in Chief dated 20 April 2017 and my rebuttal evidence dated 15 June 2017 ... (Reads 1.1 - 4.4 of Summary of Evidence in Chief)... no offsetting is necessary. I confirm that my view that no offsetting is required remains the same.

30 I'd also like -- this is in addition, I'd also like to just clarify the length of the drains and watercourses in this area. Although 602 metres were referred to in the AEE the length is approximately 560 metres, as stated in my lodged assessment of fresh water ecological effects, page 49, and in my Evidence in Chief, paragraph 8.8.

35 And with the exception of my rebuttal evidence, I address the effects on the whole area in my report and in the Evidence in Chief.

MS SHEARD: You would have heard the questions from the Board of Mr Berry during his legal submissions, there were some issues raised during that questioning about the definitions in the Unitary Plan; I'm not going to ask you about those definitions you will be relieved to hear, I will leave that
5 bookmarked for the planners, but it might be useful if you could just provide an overview for the Board about those watercourses, how they're formed and where they come from what their function is? Thank you.

MS BARNETT: The main watercourse that drains through that area is a stormwater drain that comes out of that --

10

~Questions from the Board (12 pm)

MR MARK-BROWN: Excuse me, just quickly to help me, can you refer to your figure 7 on page 26 of your Evidence in Chief please, I would find that useful.

MS BARNETT: Right, so the main watercourse, which is number 2, that drains from
15 that whole subdivision around Caribbean Drive, so that's -- comes out of a manhole, it's a concrete lined drain, that entire length right the way through to the stormwater pond area that is running around the edges. Now this area has been totally modified and yeah terraformed over the years. When the oxidation ponds were originally put in, there was a watercourse that came
20 down that valley and it's obvious on the aerial photographs. And so that main stem was originally a watercourse but is -- all the tributaries going to it are piped now. And that is the remaining section of the watercourse which is piped.

MR MARK-BROWN: So it's been modified for farming purposes, in your view?

25 MS BARNETT: Originally, prior to development of the wastewater treatment ponds it was farmed and then when the ponds went in, the watercourse was entirely diverted because they wanted to get it to go around the ponds and they didn't want the stormwater to go into the ponds.

MR MARK-BROWN: Yes further down, but I mean in this particular area where
30 you've got your 1, 2, 3, 4, that would have been modified initially for farming --

MS BARNETT: Yes it was originally farming.

MR MARK-BROWN: And it's still farming, it's still stocked?

MS BARNETT: Yeah. But also it is likely that when they constructed the ponds and
35 also when they put the Upper Harbour Highway in they've modified it again

because none of the watercourses have a natural form or a function, they're all in size and/or they're in drains.

JUDGE HARLAND: Was historically the main stem intermittent or free flowing?

MS BARNETT: I would say from the size of the catchment that it would have been
5 a permanent stream.

MR MARK-BROWN: So the Stream 1 is not concrete lined?

MS BARNETT: No Stream 1 is not concrete lined, it's an effluent trial area. So
there is a big sign on the front of it. If you look at my, I don't know if you have
access to my main document, but there's a series of photographs in there
10 and, I will just refer to them, they are figures 31 to 38 and they illustrate what
the area looks like there, but that area is used for effluent trails.

MR MARK-BROWN: And then what's number 3 on your big figure 7?

MS BARNETT: Number 3 is a femoral watercourse that had been constructed but
just on a -- just maintained a mud bottom and it just had patches of sludge
15 and dried algae in it. Again I can refer you to the photographs if you actually
want to see specifically what it looks like?

MR MARK-BROWN: And number 4?

MS BARNETT: And number 4, that is a -- that one's tricky. That one is, in size it's
very narrow, it's about 20 centimetres wide and it leads from this wetted area
20 at the base of the North Harbour Highway and it drains to a culvert. When I
visited after rain the culvert was completely dry. So it looks like it's been dug
out to drain that area somewhat so that the -- this is supposition, so that the
area was less boggy for the stock.

JUDGE HARLAND: You were going to, I think explain some more things to us, and
25 we've kind of taken over with referring to figure 7, because that's where we
had got to.

MS BARNETT: So basically the catchment coming into this area is fully urbanised
and all the stream is piped. So everything is coming off roads and off roofs
and into stormwater pipes and then it comes out of a culvert which is
30 illustrated at the start of Stream 2 and then the watercourses then
diverged -- merge into this area around the edge of Pond 2 and then they
drain towards the east and disappear down a massive vertical culvert
that's -- I couldn't see the bottom.

JUDGE HARLAND: We saw that.

35 MS BARNETT: And yeah, historically the whole area is so modified it would be very
difficult to determine where the original watercourse would have been. But it

certainly wouldn't have gone east, it would have drained north-west towards Oteha Stream.

MR MARK-BROWN: So essentially I hear you saying that your original assessment assumed that it was a stream, so you assessed it on that basis, then we had that change, but it doesn't really change the outcome --

MS BARNETT: No.

MR MARK-BROWN: So it's irrelevant whether or not it's a stream under --

MS BARNETT: Yeah, the planning arguments are on top of the HMI original assessment which was presented in the -- my report and also in my Evidence in Chief.

MS SHEARD: Thank you, I think that clarifies it, I will now ask you to answer any questions.

~Cross-examination by Mr Bangma (12.07 pm)

MR BANGMA: I have a couple of questions of clarification. I don't want to belabour the point, and I think we've got to the bottom of the important issue which is Ms Barnett's assessment in relation to the offset mitigation that's required, whether it's 17 metres or the larger figure.

Just a couple of questions of clarification, if I might, so Ms Barnett, as you've made clear the original application that was lodged is on the basis that NZTA is seeking consent to reclaim 602 metres of streams, and in case it's useful for people, the page reference in the AEE document is page 203 on the fourth bullet point. But I note that there and in your summary we're using the term "streams" in inverted commas, and that perhaps when looking at some of those pictures on the slide show I could at one level understand the inverted commas. But I just -- I wondered if it might be useful, Your Honour, I do accept that this issue of the definitions is perhaps a question for the planners, but there is also a technical component to it. I do have the copies of the three definitions in the AUP that Mr Turner considers relevant, if the Board thought it was useful I could provide a copy to Ms Barnett and to everybody in case she was able to assist?

JUDGE HARLAND: Well she's not a planner. I suppose you can put them to her and then if she -- it's pretty technical, the definition of these things and I'm not entirely convinced they're actually even consistent with what the Act says to be honest. Which is -- it's the overriding document, but look you put them and I'm sure she will say if she can't answer it from a technical perspective.

MR BANGMA: If she can't or feels it's outside of her expertise I would move on. I am just conscious in NZTA's opening that they have raised this issue about whether it's a stream or not. I'm not sure if that's -- and there may be movement on that, but anyway.

5 JUDGE HARLAND: Well you put them and let's see where we get to.

~Document handed out - J1 Definitions

MR BANGMA: Ms Barnett you should have in front of you some extracts from the Auckland Unitary Plan operative in part. For the record I note those are pages 62 -- sorry they're different pages from the J1 definitions section and just at page 62 there's a definition of "intermittent stream" there and I understand from that definition that a body of water can still be classed as an intermittent stream, therefore there would be a requirement for consent in relation to the reclamation of that, even where it ceases to flow for periods of the year?

15 MS BARNETT: That's correct.

MR BANGMA: If I could move you to page 92 in the extracts I've given you there's a definition there of "permanent river or stream" and that refers to "the continually flowing reaches of any stream or river". Just by way of clarification are there any permanent streams or rivers within the area that's proposed to be reclaimed? Or to put it another way, are there any bodies of water which would be continually flowing, as you understand it, within this area.

MS BARNETT: I don't think so. I can't -- and that would depend very much on the time of year. I would suppose that all those watercourses will cease to flow in summer conditions.

MR BANGMA: Thank you, that's helpful.

And then the last definition I want to take you to, so that's page 103 in the definitions from the extract chapter I've given you. So that definition states "river or stream" and it refers to "a continually or intermittently flowing body of fresh water"; so your view is that these streams would be intermittently flowing, but intermittently flowing is referred to there in the definition, and it also includes a modified watercourse.

And I understand from your assessment that most of these streams are modified watercourses with concrete linings, or is that straying into a planning question perhaps?

MS BARNETT: You've only presented part of the sentence, the next part says "but does not include any artificial watercourses." So that's where it becomes unclear.

5 ~Questions from the Board (12.12 pm)

JUDGE HARLAND: And that's the definition in the Act in fact. Because river is "continually or intermittently flowing body of fresh water"; water is defined "includes a stream, a modified watercourse, but not an artificial watercourse." And then the question becomes is it an artificial watercourse or is it not, and
10 a lot might depend on what it was originally and we've heard that it was a stream originally.

MR BANGMA: Right, that does sound quite complex, Your Honour.

JUDGE HARLAND: Yes.

MS SHEARD: My recollection is that artificial watercourse is also defined in the
15 Unitary Plan.

JUDGE HARLAND: Yes but it's not in the Act -- it is in the Act to a limited degree under "river".

~Cross-examination by Mr Bangma continues (12.14 pm)

20 MR BANGMA: Well look, all right, well perhaps I have no further questions on that definitions aspect. I think it's common ground that NZTA has -- that this is a complex area and NZTA has applied for all necessary consents, perhaps for taking a conservatism approach from the avoidance of doubt type basis.

So I just had two other quick lines of questioning and it's just around
25 your methodology Ms Barnett. So I understand from your summary statement and the references you've made to the fresh water ecological effects, that the situation is in your rebuttal evidence you only assessed the effects of reclaiming 17.4 metres, because that's what you understood the situation was. However you're saying if the full 602 metres requires
30 reclamation then your view is you are still comfortable that no further offset mitigation is required, is that a fair summary?

MS BARNETT: It's not 602, it's 560. I clarified that just at the end of reading my summary evidence.

And also not all of it will be reclaimed/piped. A significant amount of it
35 will be in the Constellation Dry Pond and the wetland, which is not considered reclamation.

MR BANGMA: Two further lines of questioning.

First, just the methodology you've used to assess the values of these streams. I understand from your assessment of fresh water ecological effects, which is attached to the AEE, there are some stream areas in which you've used the SEV methodology, is that correct?

5

MS BARNETT: That's correct.

MR BANGMA: But that's only for particular watercourses I understand, which you've listed on page 8 of your report?

MS BARNETT: Correct.

10 MR BANGMA: And that's for Lucas Creek, the Oteha Stream tributary, Alexandra Stream south, and Alexandra Stream north?

MS BARNETT: Yes.

MR BANGMA: So you haven't applied the SEV methodology to assessing the particular streams within the Constellation dry land area that will be reclaimed?

15

MS BARNETT: No they didn't meet the criteria.

MR BANGMA: Are you able to expand just briefly on why that --

MS BARNETT: The criteria for carrying in the SEV is that the watercourse needs to be permanent. So that's one of the many criteria. And there's also length criteria as well.

20

MR BANGMA: Thank you for clarifying that.

Last line of questioning, it's just in relation to the offset mitigation which is proposed. So as you've indicated in paragraph 4.4 of your summary statement, you established -- you considered there will be a significant biodiversity gain from the establishment of the new stormwater wetland.

25

MS BARNETT: Yes, correct.

MR BANGMA: And therefore no offsetting is necessary?

MS BARNETT: Correct.

MR BANGMA: Are you just able to expand for the Board on your methodology behind that?

30

MS BARNETT: Right, offset, just to be clear, that the mitigation and offset are two completely different things. So, the mitigation for the area comprises of the things mentioned in my evidence, which is quite clear. Offset is required when there's been a significant residual adverse effect on the ecological functioning and biodiversity of an area. And that's under -- that was E3, which is the -- and where they discuss it under the Unitary Plan. So, my

35

argument as I put forward in both my -- in my rebuttal evidence primarily, is that this is not showing a significant residual adverse effect on ecological functioning or biodiversity because the values are so low, it's a concrete lined drain - yeah, it has no habitat for fish, very little habitat for invertebrate, it's
5 anoxic. It's -- yeah.

MR BANGMA: Thank you I think that's clear. Whereas by contrast the stormwater ponds -- sorry the new stormwater wetland that's being proposed, that will offer opportunity for some of those animals?

MS BARNETT: That's right. Yeah, you'll have flora and fauna, you'll have wetland
10 plants, you'll have birds, you'll have variations in depth and it will be -- form significant habitat for invertebrates. And then -- on which the birds and other fauna will feed. Which is currently not the situation.

MR BANGMA: Just one final matter, the Council mentioned in its opening submissions that it considers the damming consent must factually form part
15 of the existing environment on which the effects of reclamation must be assessed. So, in terms of the effects of that damming consent, am I correct in understanding that would allow the dry pond area to be flooded at times?

MS BARNETT: I don't know, I'm sorry I can't answer that question. It's outside of my ecological assessment that I carried out.

20 MR BANGMA: All right fair enough. No further questions Your Honour.

~Questions from the Board (12.20 pm)

MR MARK-BROWN: Just clarifying for our information on the benefit of a wetland, "there is also a benefit in terms of temperature" when you're getting -- can
25 you perhaps just explain what that might be?

MS BARNETT: Right, the current concrete lined drained has no shading. When I visited it in May it had about -- no, I think I -- I checked it twice. The last time I checked it had about 1 centimetre of water in it and it just acts as a big
30 heatsink, so the temperature within that watercourse would have been -- yeah, it just basically acts like a big heatsink.

In a larger body mass of water where you've got variations in depth, and I recommended that they shade the northern side of the wetland as well with planting, then that will create an environment that is a lot cooler and New Zealand flora and fauna is adapted to a cooler environment.

35 MR MARK-BROWN: So on that shading the northern side, is that reflected in the consent conditions to your knowledge? You said you've recommended that.

MS BARNETT: I have recommended that.

MR MARK-BROWN: And would you like to see that come through in a consent condition, do you see the need for that? Or do you think that would be good?

MS BARNETT: It's a recommendation to improve the quality of the area. And a lot
5 of that would depend on what -- who they got to design their wetland in terms of what plants they used within the wetland and what they would recommend for planting. And I think that that would be included in any competent planting plan.

MR MARK-BROWN: Right, so you don't want to be too prescriptive, is that what
10 you're saying?

MS BARNETT: No because the thing with planting plans and with wetlands is that they're unique for the area that they are in and if we prescribe too closely exactly what's going to happen, it means that the landscaper or arborist or whoever is designing it, will be prescribed to that. They follow a standard
15 practice as to source plants from the area and to plant out. So that it's similar to what it would have been.

MR MARK-BROWN: So are there guidelines in the current consent that it's referring to, do you recall or do you know?

MS BARNETT: No I don't know.

20 MR MARK-BROWN: Do you think it should, in other words, should the planting design of the wetlands be in accordance with particular guidelines?

MS BARNETT: It could be written as a condition of consent, but it seems to be something that's going against what is considered best practice. Because this is what -- how they would be addressing it, you've got technical
25 publications from the Auckland Council that address things like this.

MR MARK-BROWN: I'm not suggesting a new guideline should be inserted in the consent, I'm saying should the consent condition refer to particular existing technical guided lines?

MS BARNETT: Yes, you could, yeah. Yeah.

30 MR MARK-BROWN: Yes. I guess where we're at is because the conditions have been a moving feast we haven't got down to that much detail, so I'm not sure that -- I'm not sure, they might at the moment, I haven't --

MS BARNETT: Certainly writing a condition of consent regarding the planting of the wetland would not be a difficult thing to do. And -- but that would link you
35 back to a plan that had to be then approved by the consents manager.

MR MARK-BROWN: So you're probably relying on that plan approval process, rather than prescribing what should be in accordance.

MR BARNETT: Yes.

MR MARK-BROWN: So is that really your evidence --

5 MS BARNETT: Yes.

MR MARK-BROWN: -- that you'd would be happy that it was relying on certification by the Council rather than saying it had been to in accordance with a particular guideline?

MS BARNETT: Yes.

10 MR MARK-BROWN: Just getting back to that shading does the vegetation in the wetland itself provide mitigation of heat, do you think?

MS BARNETT: Yes it does.

MR STEWART: I do have one question, I thought I didn't, but I couldn't find the answer that I thought I found.

15 In your paragraph 3.2 you refer to the fact that the "low value stream is consistent with the objectives and policies of the AUP" and you refer in a previous paragraph to Mr Turner's comments.

Now I thought I'd find in your Evidence in Chief where you had made some comments about those objectives and policies but I can't find them.

20 And I know that you're not a planner, but I'm just wondering whether you actually did do some analysis, which I can't put my hand on, in terms of the objectives and policies, or are you leaving that to the planners? Although you have made the comment that it's consistent with the objectives and policies so I'm just wondering whether that summary statement you've got here is amplified?

25 MS BARNETT: 3.2 in my summary statement, or my Evidence in Chief?

MR STEWART: In 3.2 in your summary you've just given us now you've said it's consistent with the objectives and policies which I assume is a sort of summary statement and you will have analysed that somewhere else?

30 MS BARNETT: No, I haven't specifically analysed it in my evidence. But I'm very familiar with it because it's part of what I'm required to make my assessments against.

MR STEWART: So my question I suppose is because Mr Turner as a planner has said that he considers that it's not consistent, or is contrary to, presumably, 35 the objectives and policies and I just wondered whether you had done that

analysis yourself or whether you are relying on your feeling about the objectives and policies?

MS BARNETT: No, I analysed that as an ecologist working with section E3 which is the lakes, rivers and streams, or -- and wetlands.

5 I read through Mr Turner's planning Joint Witness Statement that has most recently come out and he, from my understanding, he didn't seem to have any major objections in terms of the -- in terms of the policies. The major area that seemed to be under discussion was whether mitigation should be offered.

10 MR STEWART: Yes you've addressed that.

MS SHEARD: I do actually have Mr Turner's statement in front of me in that Joint Witness Statement if that would be helpful?

MR STEWART: Well I think it probably will be, but I wonder whether my concern is probably going to be better addressed better by Mr Turner?

15 MS SHEARD: Certainly, yes.

JUDGE HARLAND: So any questions arising?

MS SHEARD: No thank you.

~(The witness withdrew - 12.29 pm)

20 JUDGE HARLAND: So that brings us to the lunch break. And I do apologise Mr Schofield we were to get to you before lunch, but we haven't yet but we will after lunch and then we will just continue on with the witnesses as scheduled and hope we get through them all. Thank you.

25 ~ (Adjourned 12.30 pm – 1.32 pm)

~ROBERT JOHN SCHOFIELD (Affirmed) (1.32 pm)

~Examination in Chief by Ms McIndoe (1.32 pm)

MS MCINDOE: Can you please confirm for the Court that your full name is Robert
30 John Schofield?

MR SCHOFIELD: I do.

MS MCINDOE: And that you have prepared two statements of evidence, the first being a statement of Evidence in Chief dated 20 April and the second a rebuttal evidence statement dated 15 June?

35 MR SCHOFIELD: I confirm that, yes.

MS MCINDOE: And that you have the qualifications and experience set out in section 16 your statement of Evidence in Chief?

MR SCHOFIELD: That's correct.

MS MCINDOE: Do you have any corrections to make to that evidence?

5 MR SCHOFIELD: No, I don't.

MS MCINDOE: Please confirm for the Board that the evidence is true and correct to the best of your knowledge?

MR SCHOFIELD: I so confirm.

MS MCINDOE: Now you have prepared a summary statement for today, do you have
10 that in front of you?

MR SCHOFIELD: I do.

MS MCINDOE: Would you be able to read that statement for the Board please?

MR SCHOFIELD: This summary statement provides a summary of my Evidence in Chief dated 20 April 2017, and my rebuttal evidence dated 15 June
15 2017...(Reads 2 - 2.3 of Summary of Evidence Statement)... development, as shown in Figure 1 below. And that figure was shown in my Evidence in Chief. In summary, following the Project's inception in 2014 an initial stage of consultation ...(Reads 2.4 - 4.1 of Summary of Evidence Statement)... I have no updates or amendments to make to my evidence.

20

~ Cross-examination by Mr Bangma (1.38 pm)

MR BANGMA: I'd like to ask you some questions in relation to the alternatives assessment for the upgrade of the Alexandra Underpass and I wonder if you could turn to paragraph 4.2 of your rebuttal evidence where you address this?

25 MR SCHOFIELD: Yes.

MR BANGMA: At paragraph 4.2 of your evidence you refer to the lodged design for this Proposal and say that "seek some minor upgrades of the underpass".

Now I understand in response to answers from questions from Mr Moore and Mr Hale yesterday those upgrades consist of shifting the alignment of the
30 path through Rook Reserve that approaches the underpass from the south to try and improve the visibility?

MR SCHOFIELD: That's what I understand, yes.

MR BANGMA: And also lighting and CCTV coverage in the underpass?

MR SCHOFIELD: That's what I understand, yes.

35 MR BANGMA: And that's the entirety of the upgrades that are proposed?

MR SCHOFIELD: As far as I understand, yes.

MR BANGMA: So turning to paragraph 4.3 of your rebuttal evidence, and the alternatives assessment for the upgrades which I understand you undertook or were involved in, that identified three different options in relation to upgrading the underpass, but obviously none of those options are being pursued are they?

5

MR SCHOFIELD: Not with the lodged design, no.

MR BANGMA: And the outcome of the alternatives assessment, I'm now really referring to paragraph 4.4(b) of your evidence was that of the three options considered in the assessment, it's Option 3 that was determined as being preferable from a crime prevention through environmental design and public safety perspective, or I suppose user experience, due to the improved visibility and sight distances, is that correct?

10

MR SCHOFIELD: That's correct, yes.

MR BANGMA: And then I understand the outcome of the alternatives assessments however was, despite those, I guess -- acknowledging those benefits, the agency's decided not to proceed with that option on the basis of the cost of Option 3, or the cost relative to the benefits, is that fair?

15

MR SCHOFIELD: That is one of the reasons, yes.

MR BANGMA: Are there other reasons?

MR SCHOFIELD: Yes, the counts are too low to warrant a significant upgrade, as outlined in my rebuttal. The existing underpass is basically unaffected by the Project, so it's not mitigating any effects of the Project. And the connections can be retained as they are and the CPTED issues, for short, apply to the whole pathway and not just the bridge.

20

MR BANGMA: Thank you, I think that's fair and that's explained in the evidence of other witnesses, we can get to that, but focusing on the cost benefit analysis and I guess we'll come to the costs and the numbers; so in terms of the cost of Option 3, was a costing done as part of your alternatives assessment, a high-level costing?

25

MR SCHOFIELD: As part of the input from the design engineers broad level costing was undertaken.

30

MR BANGMA: And I understood from answers I think it was from Mr Hale yesterday that broadly speaking the cost of the Option 3, which is what the Council is pursuing is \$5 million, is that correct?

MR SCHOFIELD: That is what I understand, I also understand that about a fifth of that million dollars relates to traffic management required to build, construct the underpass.

MR BANGMA: Yes, so are you able to give us any greater visibility about that \$5 million and what it's comprised of, if that was part of your alternatives assessment?

MR SCHOFIELD: No I can't, it's not within my scope of expertise.

MR BANGMA: Interesting position then, so the agency's position is it's not seeking to pursue this option on the basis of cost, but I just -- there's -- but no-one seems to be able to give evidence on what those costs are exactly. Who would be the appropriate person to ask that in your view?

MR SCHOFIELD: One of the design engineers involved in the process.

MR BANGMA: Well I will just ask you a couple of further questions and if you feel you can't answer them, then that's fine.

So we have established that the cost of this option would be \$5 million and I understand that that would be \$5 million if it was undertaken as part of this Project, is that correct?

MR SCHOFIELD: That's what I understand, yes.

MR BANGMA: So do you accept that if it was not undertaken as part of this Project and was undertaken as a separate Project at a later date, if that was to happen, there could be additional costs that would apply above and beyond the 5 million?

MR SCHOFIELD: That is what I understand.

MR BANGMA: Thank you. One example of those we have in evidence would be the additional traffic management costs; I understood from Mr Hale's evidence yesterday that if the Project was undertaken -- sorry upgrade was undertaken as part of this Project then it could be incorporated into existing traffic management measures, I don't have the transcript, I believe he said with very little additional disruption, and I take him to mean if it was to be undertaken separately the traffic management costs could be a further million dollars?

MR SCHOFIELD: I don't know that the equations quite work out like that, but I do understand that it probably could cost more if undertaken as a separate Project later on.

MR BANGMA: But coming back to the \$5 million which is the cost assessment for undertaking it as part of this Project it would -- that presumably would include

little or no allowance for traffic management, it would be all part of this project, is that fair, are you able to answer that?

MR SCHOFIELD: I understand that a fifth of that \$5 million is for traffic management costs.

5

~Questions from the Board (1.45 pm)

JUDGE HARLAND: Well let's explore that, because if the traffic management's going to happen anyway, regardless of the underpass, then the 1 million for that let's say would have to be deducted from the \$5 million, so what we've been trying to establish here is actually what is the cost of the actual underpass without the extra traffic management? That's what you're trying to get at isn't it?

MR BANGMA: Thanks for your assistance, yes.

JUDGE HARLAND: So it's not a cost of the underpass if they're already doing the traffic management, that's the idea behind that question.

15 MR BANGMA: Thank you Your Honour.

MR SCHOFIELD: I understand, but I could be corrected, that that million dollars cost was specific to dealing with the underpass construction.

JUDGE HARLAND: So you understood it to be additional traffic management cost to what would be involved?

20 MR SCHOFIELD: As part of that 5 million cost.

JUDGE HARLAND: Well, we have to be a bit clear about what we're asking. I'll leave it back to you.

~Cross-examination continues by Mr Bangma (1.46 pm)

25 MR BANGMA: Thank you Your Honour. I suppose what I was trying to explore with you, I was clear from Mr Hale's answers yesterday that traffic management measures in relation to construction of the underpass could cost in the region of \$1 million. If the cost of undertaking it as part of the Project is 5 million then in terms of the cost of undertaking this Project separately is it 5 million plus 1 million for traffic mitigation? So, to do it as a separate Project could cost 6 million was essentially my question?

MR SCHOFIELD: I couldn't give you specifics, I understand that it would cost the 5 million which -- but plus some for additional traffic management costs.

MR BANGMA: That's fair. Thank you.

35 And then in a similar vein, and perhaps without getting too hung up on the specific numbers, if you're saying you don't have those to hand, in

questions with Mr Hale yesterday, I explored with him if the underpass upgrade was undertaken as part of this Project, then presumably it could rely on the construction yard, site office and all of the other sort of general measures you'd need for a project, compared to if it was undertaken as a separate project later,
5 it would need to have its own construction yard and site office and that would be an additional cost, wouldn't it?

MR SCHOFIELD: That's what my understanding would be, yes.

MR BANGMA: That makes sense. And are you able to -- so my assumption -- what I'm asking if you can confirm, is does the figure of \$5 million then, I would
10 assume that doesn't include provision for start-up costs, the construction yard and site office, because if that was saying 5 million was part of this Project those items would already be covered by this Project, wouldn't they?

MR SCHOFIELD: I can't answer that really, I wasn't involved with the estimation side of things.

15 MR BANGMA: As I think I've traversed with you then, the cost is 5 million as part of this Project, but you accept if it was undertaken as a separate project there would be additional costs for things such as traffic management, construction yard and site office which would push the costs of this Project up above the \$5 million mark --

20 MR SCHOFIELD: That's my understanding.

MR BANGMA: -- at a general level, is that fair?

MR SCHOFIELD: That's fair.

MR BANGMA: And then in terms of the -- one other aspect to this, obviously if this is -- upgrade is undertaken now as part of this project, you heard Mr Moore's
25 evidence that it could rely on the existing traffic management measures. Obviously if it was undertaken as a separate project, that would require separate traffic management measures to be put in place. Are you aware of the duration of that, how long the construction would take and how long there'd need to be traffic management measures for this, if it was a stand-alone Project
30 on State Highway 18?

MR SCHOFIELD: No, I can't answer that, no I'm not aware.

~Questions from the Board (1.50 pm)

MR MARK-BROWN: I have some questions regarding the pedestrian access. I just
35 really want to get clear in my mind the history of it. So if I tell you my understanding, can you just see if that's right?

So it was -- part of the lodged design was to provide access through that Alexandra Underpass, but it sought minor upgrades per your 4.2, so that's your understanding of the original lodged Proposal?

5 MR SCHOFIELD: I'm not aware whether those minor upgrades came in response to concerns around CPTED issues at a later point or whether they were part of the original scheme. The original scheme is just basically to widen the underpass slightly to accommodate the motorway on top.

MR MARK-BROWN: You mean lengthen?

MR SCHOFIELD: Yes, just slightly.

10 MR MARK-BROWN: That was the main point of it?

MR SCHOFIELD: Yeah, but I don't know at what point when those minor upgrades were.

MR MARK-BROWN: So the original was to lengthen it, but essentially maintain public access through it.

15 And then when it came down to the option analysis the three options that were looked at were too expensive to justify it, would that be a fair way of --

MR SCHOFIELD: Relative to the benefits of that cost, and also the fact that it's not mitigating any effects caused by the Project.

MR MARK-BROWN: Well that's the key thing actually, so you're saying that the benefit -- you are saying there's no need to mitigate the effects of the overall Proposal, that's your --

MR SCHOFIELD: Not when you weigh up all the factors involved that the agency had to weigh up, no.

MR MARK-BROWN: Can you just go through what those are?

25 MR SCHOFIELD: Basically they're the fact that the basic condition of the underpass is being unaffected by the Project; that there are mechanisms for dealing with some of the CPTED issues around that particular part of the pathway.

MR MARK-BROWN: So I'm not sure what that means in terms of looking at the benefit, mechanisms of dealing with the CPTED. So you're saying that the existing path could be made better, the CPTED issues could be made better without renewing things, is that what you're saying?

MR SCHOFIELD: The costs of trying to address some of those CPTED issues as proposed with the lodge design are a lot less than reconstructing a whole new underpass.

35 MR MARK-BROWN: And I think you said before in response to Mr Bangma's question that it's not just the CPTED at each end of the thing, it's going some way back?

MR SCHOFIELD: That's right, I don't know if you've walked the walkway but --

MR MARK-BROWN: We've walked down from the Rook Reserve side, we've yet to walk right through.

MR SCHOFIELD: Yes, so really you'd have to address comprehensively the whole
5 CPTED issue of that pathway.

MR MARK-BROWN: So other items, cost relative to benefit?

MR SCHOFIELD: There were some issues around the flooding, the likelihood of increasing the flooding going downstream.

MR MARK-BROWN: Yes, so we've heard that you can't raise it and make it wider
10 because that's going to be adverse effects from flooding?

MR SCHOFIELD: That's what I understand.

MR MARK-BROWN: Yeah, so I guess the key thing is what was envisaged as needed at the original lodged design versus now and this issue of is it needed for mitigation, which I think probably interests us the most. So do you have any
15 view on the severance and whether it's needed as mitigation for the severance of the Project, or is that outside your area?

MR SCHOFIELD: No, I mean the road that's there already is a pretty major physical severance and those footpaths are dangerous, and trying to cross that bit of road would be hazardous and extreme.

20 I would add that in addition to the minor upgrades, the SUP and its connection proposed, which includes connections to this point as well, is a major sort of improvement in the connectivity and around the severance issues for this neighbourhood.

MR MARK-BROWN: So in your view that more than mitigates or mitigates adequately
25 for the effects?

MR SCHOFIELD: Yes.

MR MARK-BROWN: Just from your memory, how far back do you think the CPTED improvements would be required, just approximately, are you that familiar with the layout or not really?

30 MR SCHOFIELD: Because the path does movements away, it's really confined to around the entrances to the underpass plus perhaps better lighting inside the underpass itself. Beyond that, you're getting into sort of outside the underpass and sort of more general CPTED issues.

MR MARK-BROWN: Okay, thank you.

35 MR STEWART: Just following on from that then, yesterday I'm not sure whether you were here yesterday but I asked a question, I can't remember which witness it

was now, about the fact that the northern SUP was justified, in part, not mainly, in terms of the objectives of the Project and it seemed to me that it was more in terms of those objectives rather than in terms of any mitigation. So, I'm sort of hearing you now saying, you're not the only that's said it, that the upgrading of the Alexandra Underpass is not required in terms of mitigating any effects.

But then I look at the northern SUP and say well that's been put in, or proposed, not because of any effects, it seems to me, more because it's part of the design of the objectives of the Proposal to increase connectivity and all that sort of stuff, and I'm just wondering whether you could use the same argument that the improvement of the underpass could be justified not so much perhaps on the basis of mitigation of effects, as in terms of increased connectivity as is the case with the northern SUP, do you have any comment on that?

MR SCHOFIELD: Only one in that the connectivity is there already. I think it's a question of the safety around the use of that pathway and the underpass is more the point of what work you could do and/or replacing it. And that's the whole reason for some of these suggestions, is to improve that whole safety issue with lines of sight and visibility and things like that. It's not to provide an extra connection, it's just to improve the quality of the current connection.

MR STEWART: So in your opinion, what's proposed is sufficient to do that?

MR SCHOFIELD: Given all those factors I've outlined yes.

MR STEWART: I think you've probably already answered this, but I had a question relating to the Alexandra Road Underpass, if it wasn't upgraded now as part of this Project would it be your opinion that there's still a future option for a bridge or an underpass for that matter in future? I mean, it's not as if carrying out this Project will cut off that option. It may be more expensive, but it hasn't cut off the option?

MR SCHOFIELD: No it definitely wouldn't foreclose it. But I would indicate that there may be other locations you would want to think about making connections in future, not necessarily here, but other points along this section of State Highway 18. You'd want to look at it comprehensively and try to figure out where you could make those connections.

MR STEWART: Yes, well then in paragraph 9.2 of your evidence, I think that's your Evidence in Chief, you talk about the possibility of a new road link across State Highway 18 between Unsworth Drive and Omega Place occur during the final design. So, you've let that possibility float out there in your evidence. And I guess -- and you talk about final design. I'm just wondering how do we treat

that? It's not part of the Proposal it seems, but it's stated by you as being a possibility as part of final design. How would that work?

MR SCHOFIELD: That's an historic kind of record of what happened at that time.

5 There was consultation undertaken around that time that some of the local residents would have -- prefer some sort of overbridge to connect the two roads. And as an outcome of that process it was recommended to look at that in further depth during final design. And that is what has happened in the time that I've been involved with the Project. And there were just too many constraints, particularly due to metric constraints with changes in topography and things to allow that to happen that met standards, roading standards. But
10 what I'm referring to in terms of shared used pathways there are future options that could connect that for pedestrians and cyclists in future. And it doesn't foreclose that possibility.

MR STEWART: But your section 9.2 specifically talks about a new road link.

15 MR SCHOFIELD: That's right, because at the time that was a recommendation to move forward into the next design phase to have a more closer look at that possibility.

MR STEWART: So would it be true that your paragraph 9.2 has been overtaken by events in respect of the Proposal as a possible road link?

20 MR SCHOFIELD: Yes it's been overtaken by that further detailed look at how it could be done, achieved, with the conclusions that it couldn't be done that met adequate standards for road design.

MR STEWART: But the option still exists, as we just discussed before, of possibly in the future, some sort of link whether it's a road or pedestrian access path?

25 MR SCHOFIELD: That's correct yes, but for a road design you would probably need some more property acquisition on the downhill side.

JUDGE HARLAND: So this whole business with the underpass, is it fair to say it's about who should pay for it, because it seems pretty obvious that if it's to happen it would be smart to do it while this is going ahead for a lot of reasons,
30 but the agency is saying we shouldn't have to pay for that for the reasons you have expressed. Have you been part of any discussions about some kind of joint cost sharing for this, or not, or is that subject to privilege? If it's subject to confidential commercial discussions or privilege you should not answer. But if it's not, then please tell me.

35 MS MCINDOE: I think probably the answer from Mr Schofield, and he can confirm this, is that he hasn't been involved.

JUDGE HARLAND: No, well that will be a simple answer. Do you know?

MR SCHOFIELD: No, I don't but I would say from a personal viewpoint that a joint sort of exercise would be preferable given all the CPTED issues along the side pathway, without fixing one bit.

5 JUDGE HARLAND: Yes. It would make sense, it's a question of the dollars and the agency's position is it's not required to mitigate any effects that it should have to fund, is that right?

MR SCHOFIELD: That's correct.

JUDGE HARLAND: And that was part of the alternatives consideration that was
10 before you when you were leading that part of it. Yes.

Again just a very brief point of clarification, you talked about sensitivity testing, in paragraph 2.2 of your summary statement today, to the criteria and forgive me if you've included what that was in your Evidence in Chief, but it's escaped me as to whether you did, so what was the sensitivity testing that you
15 undertook?

MR SCHOFIELD: That is in reference to the earlier phases of the Project in terms of the earlier designs for it.

JUDGE HARLAND: So this is your 2.2 from today, just at the end you were talking about the MCA process, the options being evaluated et cetera and then you
20 said right in the last line there:

"Sensitivity testing was also undertaken to determine the robustness of the findings."

Now that looks like it's the findings to do with everything to do with the MCA process. Was that just to do with the design element, or what?

25 MR SCHOFIELD: That was to do with certain parts of -- elements of the design progress, but sensitivity testing wasn't undertaken in all situations.

JUDGE HARLAND: Tell me what that was. Because sensitivity testing can be a whole heap of different things, right, just to double check, so what was it?

MR SCHOFIELD: It's a question of -- with an MCA process you score according to
30 relevant criteria, and then you give a weighting to that score in terms of the overall score how much you weight. So the sensitivity testing there you would say, particularly for instance on projects where section 6 matters of the RMA were important, whether you gave a lot more weight to that would that affect the outcome of the overall score.

35 JUDGE HARLAND: So that was a second look at it once you'd scored it and looked at it from an overall perspective, is that right?

MR SCHOFIELD: Yeah.

JUDGE HARLAND: And so what were the factors that you took into account in that weighting process, when you sensitivity tested it?

MR SCHOFIELD: It was primarily around that factor, or what weight you would give to
5 environmental matters over say transportation outcomes.

JUDGE HARLAND: We might be talking past each other. You've said that that's what you did, right, and I'm wanting to know what it was you actually did in this case to sensitivity test the findings or the criteria or the weighting that you'd given?

MR SCHOFIELD: No what I said was sensitivity testing was undertaken. That was in
10 the preceding phases of the design process.

JUDGE HARLAND: I know, but what was it?

MR SCHOFIELD: It had been outlined in the IBC.

JUDGE HARLAND: Okay, so we'd have to go back there and have a look.

MR SCHOFIELD: Yes.

15 JUDGE HARLAND: All right that's fine. We won't go any further with that.

The next question is more a fundamental one because it arose yesterday in the submissions from Kiwi, counsel for Kiwi, and counsel for Kiwi's clearly not cross-examining you today, but it's only fair that you respond to this, that there was a suggestion that an adequate alternatives assessment had been
20 undertaken in relation to the different gradient that's now proposed, that's putting it very simplistically, that the different gradient that's now proposed for the off-ramp bus lanes SUP that is next to their property. That wasn't covered in your rebuttal evidence, and I'm just wondering whether you've had a chance to consider that?

25 MR SCHOFIELD: Mmhmm, I have.

JUDGE HARLAND: All right, well tell us about it.

MR SCHOFIELD: Okay, I think that if an MCA was done for that specific element of the Project, which would be highly unusual given that it's a very small element of the overall project, but if an MCA was done on the options of changing the
30 formation and design of the ramps et cetera as per in the evidence of Kiwi, I would be pretty confident that the MCA would score negatively for that outcome in terms of overall, because you could -- the outcome would be lesser standards, less than the standards for the design of those ramps and the motorway, as opposed to weighing that up against the effect of the visibility of
35 the advertising of a particular site.

JUDGE HARLAND: Well see that's very interesting because how do you weight that?

What would be the factors that you would take into account from a visibility perspective when you were doing that as the top exercise? Because

5 essentially wouldn't that involve quite a bit of information from the person affected? And perhaps if I can just help a little bit more, you see what they're telling us here is that between up to -- well 19% plus, up to 24%, of their business in the last year has come from motorway visibility. We haven't been able to test that yet, but that's the basic proposition. So if you were doing a desktop exercise, that's not something that you would necessarily know about,
10 is it?

MR SCHOFIELD: No, or necessarily factor in as a significant factor to assess, as well.

I mean, commercial premises that move next to motorway and rely on that, they're moving into an area where the environment, if you like, or that

15 transportation corridor is always likely to change and particularly if they're improving the screening for the motorway, particularly with say upgrades to a motorway, and can be contributing to things like planting, intervening planting and things like that. So in terms of weighing it up, as opposed to having steeper gradients for the walking and cycling area. I would say, you know, that if you had specifically -- could focus on that, that you still would weigh up the effects on the safety and the convenience for pedestrians and motorists and
20 buses greater than the advertising sight line for one particular premise.

JUDGE HARLAND: Again, forgive me if this is already outlined and I just need to go

back and read it, but is there any science to this weighting? Or is it a bit like sometimes the landscape experts tell us that there's someone does a graph

25 and they give that weight to that and different people could give different weight to different things? I mean, is there a consistent scoring process or -- I mean, clearly it's not the vibe of the thing one would hope, but how scientifically do you go about doing all of this to make it fair?

MR SCHOFIELD: The MCA process relies on a workshop sort of forum to do this. So

30 it's not just experts going off in their own little office and scoring things. So when experts score things they are open to challenge and discussion and debate and it's always open to review as well.

The science behind it is giving some sort of visibility to all the relevant factors that are important to make decisions between different options. Also

35 giving particular weight to say, for instance, matters that are section 6 matters

for the RMA versus more broader amenity or commercial sort of factors like that.

So, there is a very sort of standard technique with multi-criteria assessments, but not everyone is all the same.

5 So, in that sense, they have to be bespoke to the particular project and not all factors will be important to a particular project. For instance, coastal issues might not always be important for one project.

JUDGE HARLAND: But there's no scale of, for example, safety matters weigh up here and visual matters weigh down there? Or is it just that you decide at the time?

10 MR SCHOFIELD: No, well the experts in around sort of meeting safety standards and road design, they will consider for instance well what are the risks of different safety breaches, for instance, what are we talking about? Are we talking risks of death versus inconvenience? Things like that. So they do bring those sort of factors into the weighing process for that aspect.

15 JUDGE HARLAND: Well, I suppose what I'm trying to do is tease out your suggested opinion that if there had been an MCA done on this it's likely to have been negative to Kiwi. And I guess what I'm inviting you to consider is whether it's not really possible to give an accurate opinion on that without all of the relevant information and the kind of process that you've talked about.

20 MR SCHOFIELD: That would be correct before the evidence was circulated, but there's been quite a bit of evidence produced by Kiwi. And having read all that evidence and considered the factors involved, and particularly if you did apply an MCA to that particular process, and this is just my sort of personal view of it, that breaches of safety standards for the SUP and for the busway in particular, I
25 would have imagined to have weighed more heavily than commercial sight lines for premises.

JUDGE HARLAND: Well, I suppose in fairness to you, you should know that yesterday, I think it was Mr Hale, or it could have been the previous witness to him, said that the safety concerns were less paramount for that particular
30 aspect. In fact, I think it was the previous witness to that, but rather it was more, if I can put it in a very generic way, the interrelating design aspects linking up with the other components that would be in there. So less safety, safety is still a factor, but possibly less that and more the other. That would be put in the mix you'd agree with that?

35 MR SCHOFIELD: Yes, I'm not an expert in that side of things.

JUDGE HARLAND: I think that's as far as I need to take that thank you.

MR MARK-BROWN: Perhaps just following on on that matter, my memory with the evidence yesterday from the engineers, in relation to Kiwi's evidence, is that Kiwi had a couple of options. One was over 5%, but there was also one at 5%. And then talking with the engineers their evidence was, well they didn't want to go with Kiwi's because in the detailed design, the Alliance might want to be able to get away with a gradient that was lower than the 5%, they wanted to keep that flexibility because of other aspects to do with keeping it not so steep. So, yeah, there were other aspects than safety I guess in that as well.

MR SCHOFIELD: Yes, I may have been using safety as a layman's term to cover all those things.

JUDGE HARLAND: Any questions arising?

MS MCINDOE: No thank you Your Honour.

~(The witness withdrew - 2.14 pm)

~IAN DAVID CLARK (Affirmed) (2.15 pm)

~Examination in Chief by Ms McIndoe (2.15pm)

MS MCINDOE: Can you please confirm for the Board that your full name is Ian David Clark?

MR CLARK: That's correct.

MS MCINDOE: And that you have prepared two statements of evidence for this Board, the first being statement of Evidence in Chief dated 20 April, and the second being a rebuttal statement dated 15 June?

MR CLARK: That's correct.

MS MCINDOE: And do you have any corrections to make to those statements?

MR CLARK: No, I don't.

MS MCINDOE: And that you have the qualifications and experience set out in section 1 of your Evidence in Chief?

MR CLARK: Yes, I do.

MS MCINDOE: Can you please confirm for the Board that the evidence is true and correct to the best of your knowledge?

MR CLARK: That's correct.

MS MCINDOE: Now you've prepared a summary statement, do you have that?

MR CLARK: Yes, I do.

MS MCINDOE: Would you be able to read that for the Board thank you?

MR CLARK: Yes, good afternoon. So I'll start at paragraph 2.1 of the summary.

My Evidence in Chief assesses the area-wide traffic and transport effects of the Project ...(Reads 2.1 - 5.2 of Summary of Evidence Statement)... in my view, these connections are not required as mitigation of adverse effects of the Project.

5 MS MCINDOE: One further question which I wanted to ask. There's been some questioning of witnesses over the last couple of days regarding the impacts on traffic arising from construction associated with the Alexandra Stream Underpass or its replacement. Have you been present for any of that questioning of witnesses?

10 MR CLARK: I heard Mr Hale yesterday afternoon, not Mr Moore yesterday morning.

MS MCINDOE: And were you here for the questioning that just occurred of Mr Schofield?

MR CLARK: Yes, I was.

15 MS MCINDOE: Are you able to assist the Board at all by providing a comparison of how traffic would be impacted by the lengthening of the current underpass, which is proposed, as compared with a replacement underpass which is sought by Auckland Council; how the two situations would compare in terms of the impacts on traffic?

20 MR CLARK: Mr Hale yesterday covered the likely traffic effects and he said while there is a bottleneck around the Paul Matthews new interchange and new bridge, then there is likely to be fairly limited adverse traffic effects during construction. However, there is a pedestrian and cycle issue. Because it's been stated that the underpass would need to be closed to allow that
25 underpass to be extended. I understand that could be closed for a couple of months, and that's led to the condition that was discussed that there needs to be a temporary pedestrian cycle connection which would cross State Highway 18 at Caribbean Drive. If the new underpass is put in, then I understand that pedestrian cycle access under State Highway 18 would still
30 need to be closed, and it could be closed for longer.

So, firstly Mr Hale explained the intention is to widen State Highway 18 above the underpass to allow the space to then do the switch of traffic lanes.

35 So you'd probably still need to do that, and therefore, that leads to the closure to allow you to extend the current underpass.

He then explained you would probably cut and cover to build a new underpass. And I understand the new one will be very close to the current one to the point that you'd need to close it for a second time.

JUDGE HARLAND: Mr Willmott had asked to ask some questions for about five
5 minutes. Is that right, Mr Willmott?

MR WILLMOTT: Yes.

JUDGE HARLAND: All right, it's your chance to do that now, thank you.

~Cross-Examination by Mr Willmott (2.24 pm)

10 MR WILLMOTT: Firstly, with regard to the general traffic effects, I would say I apologise for not having communicated with you before on this since the joint witness statement, but I think what I have to ask would not have been solved by an earlier question.

15 Firstly, the general traffic effects you say they will be improved and I fully accept your modelling and your conclusion that there will be some traffic improvements on the general road network. My question however relates to the congestion underneath the State Highway 1 Constellation Drive interchange and the additional extent to which that congestion might have been ameliorated if west to south ramps had been included as well as the
20 west to north ramps. Did you do an evaluation or an analysis which compared the outcome of such analysis with that which you did do for the proposed design?

MR CLARK: So, the assessment of transport effects did give the predicted performance of the Constellation Interchange for the queue situation without
25 and with the Project. And so through taking the traffic between State Highway 18 and 1 north away from the interchange it leads to some improvement. If you were to remove further traffic from the interchange, so you then take traffic State Highway 18, State Highway 1 south away, yes it would relieve more than Constellation Interchange. However, the evidence
30 of Mr Church and myself in chief did say this would lead to adverse traffic effects on State Highway 1 from the Constellation Interchange. I would say at least as far as the Tristram Ave interchange.

MR WILLMOTT: So are you saying that State Highway 1 is already at capacity and you do not plan to improve it further?

35 MR CLARK: In the morning peak there are queues going towards the bridge which extend beyond the interchange. In the afternoon peak, conditions can be

quite busy on that two-lane section from Constellation to Tristram, and even if you widened through that section, there is then a queue approaching the bridge given there's only three lanes going across the bridge to the city in the evening peak. There are also queues on occasions at weekends.

5 MR WILLMOTT: Well, I would naturally ask, well, why are we bothering to improve access to Northland, which will add traffic on to State Highway 1? And why are we allowing more residential developments in the Warkworth area, and --

~Comments from the Board (2.28 pm)

10 JUDGE HARLAND: I'm sorry, I'm going to stop you there, because we can't deal with residential development. We've got enough to deal with here today. We can't deal with that.

~Cross-examination continues by Mr Willmott (2.28 pm)

15 MR WILLMOTT: Well, what I'm saying is that there will be additional traffic coming on to State Highway 1 and the existing two lanes is totally inadequate, now, and will be in future, especially if the traffic is forecast to grow as indicated.

JUDGE HARLAND: So I think the question is why are we bothering, given that?

MR CLARK: There's probably two questions there. One is "why are we bothering?"

20 We are expecting -- and I just mentioned that the experts involved who accepted the predictions of the traffic models which indicate quite significant travel time benefits at all times of the day. And, in fact, there's now improved conditions forecast on the motorway then leads to secondary effects of traffic diverting onto the State Highways from the local road networks, giving
25 benefits to those people as well.

But the second part of the question is the Project does help State Highway south of Constellation Drive. It certainly won't solve the problem, but we expect some people to divert via State Highway 18 and 16 and then maybe via the new tunnel rather than keeping to go down across the harbour
30 bridge on State Highway 1.

MR WILLMOTT: Now, I have been told, as well as it being recorded in the literature associated with this project, that it would be possible to add those south facing ramps at a later date when the motorway is widened from two lanes south of Constellation. Are you now saying that there is no intention to widen
35 the two lanes, therefore, to enable such south facing ramps to be built? You'll note from my evidence that I have requested that such a design

of -- for south facing ramps be provided even if the ramps are not provided at this stage, so that they can be added at a later stage when State Highway 1 is widened from two lanes south of Constellation Drive. Are you now saying in effect, that there is no intention to provide south facing ramps or even to
5 widen the two lanes?

MR CLARK: The evidence of Mr Moore states that the future connections can be provided. The Evidence in Chief that I gave did talk about the limited benefit in providing, particularly the State Highway 18 across to State Highway 1 south, the benefit of that will be limited until there is further widening away
10 from the Project.

JUDGE HARLAND: So the answer to that is it hasn't precluded in the future for either of those things happening, however, at the moment the situation is that -- what was the last part?

MR CLARK: There is little benefit in doing so unless there is capacity available to
15 accommodate those increases.

MR WILLMOTT: So there will be no difficulty in providing a schematic design of such a south facing ramps as a condition of approval, in other words to demonstrate that it can be achieved in future?

20 ~Comments from the Board (2.31 pm)

JUDGE HARLAND: No, Mr Willmott. No, we're not doing that. They've put forward a Project that we have to decide whether to decline or to accept and it doesn't currently include those ramps, it's not part of the Project and we wouldn't be putting it in as part of the Project, because it would be outside the
25 scope of what we're being asked to determine.

MR WILLMOTT: Yes, but I'm saying that it has been suggested, both verbally to me and in written text associated with the Proposal, that it will be possible to add south facing ramps at a later date.

JUDGE HARLAND: Yes, but that's one thing to say it's possible and you've got the
30 answer to that, that it still is possible, but I'm not going to let you put a question to this witness that that means there's got to be design drawings for it, of whatever level high level or other at this point; it's not part of their project. But you've got your answer, which is that it doesn't preclude it happening in the future, is that correct?

35 MR CLARK: That's correct.

MR WILLMOTT: I have additional questions if I'm allowed additional time.

JUDGE HARLAND: You've got your five minutes up, what's the topics?

MR WILLMOTT: I beg your pardon?

JUDGE HARLAND: What topics do you want to ask questions about?

5 ~Cross-examination continues by Mr Willmott (2.33 pm)

MR WILLMOTT: Well, I was going to ask first of all if Ian had any involvement in the detailed design or just in the modelling, in which case I can reserve?

JUDGE HARLAND: All right, that's fair enough. That's fair enough, there's the question. Have you had any involvement in the detailed design?

10 MR CLARK: Yes, in terms of the transport planning of it. So, for example, number of lanes at the intersections was developed by myself and my colleagues alongside Aurecon as part of the NZTA team. And similarly, Mr Church has talked about his involvement in other design aspects such as the need for five lanes northbound on the motorway.

15 MR WILLMOTT: Are you not concerned about five lanes north versus only two lanes south of this interchange?

MR CLARK: Five lanes north is after a large volume of traffic comes on from State Highway 18. And going northbound there are currently three lanes from Tristram as far as Constellation. So it's three on State Highway 1, plus in effect two lanes from 18 leads into five in the subsequent weaving area. So that is a good balance as far as I'm concerned.

20 MR WILLMOTT: For the off-ramp from State Highway 1 northbound to Tawa Drive, which is the extension of Greville Road, would your traffic volume projection for 2031 require two lanes between State Highway 1 and Albany Expressway or just the one?

25 MR CLARK: Maybe we can refer to the general layout plans?

MR WILLMOTT: Well, as you all know I have proposed that direct flyover ramps be provided between Albany Expressway and State Highway 1 south as a way of substantially reducing the traffic on the Greville Road surface ramp ends. And I note from the traffic volumes provided that there will be a net of 29,000 additional vehicles disgorged onto Greville Road with the Project compared to without the Project, and that -- sorry, 24,200 additional vehicles added onto the Greville Road Tawa Road cross route, and that compares with the 28,000 that will be there anyway even if the Project doesn't proceed. So I see the net increase as being perhaps a half of the 24,200, being 12,000, say, and adding that to the 28,000, gets to 40,000. Whereas your figures

here suggest only a 2,000 increase with the Project compared with the without Project case. Can you explain the difference?

MR CLARK: Well, the first question was around the layout, so we've just mentioned there are five lanes from the Constellation Interchange from where the State Highway 18 connection comes in as far as the Greville off-ramp. So there is a two lane off-ramp shown on the sheet on the screen, that's sheet 4 of the general arrangement plans. So two lane off-ramp and three through lanes on the motorway.

Then as you get onto the off-ramp there are additional lanes formed as is currently the case as you approach the traffic signals. The operation of this interchange is assessed in the assessment of transport effects, and there's reference to that being close to capacity in 2031 in the evening peak.

MR WILLMOTT: Which is why I'm proposing an overpass for that traffic bound for Albany Expressway, and that overpass would use the existing off-ramp and then depart from that off-ramp, whether one lane, I believe is now possible, somewhere, halfway between the overpass and the Tawa Road Greville Road east-west connection. In my assessment it will be easily possible to clear over the Tawa Road Greville Road intersection with a flyover and there's ample space to connect that back in to the Albany Expressway. That would enable quite a lot of traffic to be taken off the intersection.

~Questions from the Board (2.39 pm)

JUDGE HARLAND: Mr Willmott, just pause there. I need to ask a question. Was this covered at the joint witness, the expert conferencing? All of this kind of topic?

MR CLARK: Yes, it was.

JUDGE HARLAND: Right, and were there agreements reached at the conferencing? Can you just point me to that, because we're not going over things that have already been dealt with. If they haven't been dealt with or they are still moot, then we can deal with them, but otherwise we can't.

MR CLARK: Mr Willmott did raise these connections and they were within the Joint Witness Statement of 26 June.

JUDGE HARLAND: Just bear with me because the dates they've been uploaded here might be different. Is this the General Transport and Traffic?

MR CLARK: Yes.

JUDGE HARLAND: Thank you. And what number are we looking at?

MR CLARK: On page 7. Well, firstly I need to say I'm aware of the old terms that were assessed, but the evidence of Mr Church and Mr Schofield actually covers where these additional connections were assessed at an early stage as part of the IBC stage of the study, but on page 7, bullet point b, there's reference there to the alternatives that were carried out -- that were assessed, sorry.

JUDGE HARLAND: And so is your point there that that's not a matter you can assist with?

10 MR CLARK: That's correct.

~Comments from the Board (2.40 pm)

JUDGE HARLAND: Yes. All right. So really the question's not for this witness, Mr Willmott. It's for either what was for Mr Schofield or Mr Church. And Mr Church is next.

MR WILLMOTT: Yes.

MR CLARK: There's also reference to Greville interchange at bullet point 8J on page 14 of the same joint statement.

JUDGE HARLAND: So, Mr Willmott, does that help that question that you can ask that one to Mr Church?

~Cross-examination continues by Mr Willmott (2.41 pm)

MR WILLMOTT: Yes, except for the traffic volume and the ability to take a one lane over-ramp flyover from State Highway 1 south to link into directly into Albany Expressway, whether one lane would be sufficient or whether the volume of that requires a two lane?

JUDGE HARLAND: All right, well there we go, you can answer that one.

MR CLARK: I'm not sure I can answer that one. It's probably one I'll pass on to Mr Church.

30 JUDGE HARLAND: All right. So that's Mr Church as well. So you've finished your questioning of this witness?

MR WILLMOTT: Yes.

JUDGE HARLAND: So that leads then only to the Board's questions.

35

~Questions from the Board (2.42 pm)

MR MARK-BROWN: Mr Clark, with the modelling, with the overall SATURN modelling I think you call it, for population that relies on population based on the plans or the zones in the Unitary Plan, is that right?

MR CLARK: That's correct.

5 MR MARK-BROWN: And then it assumes average number of people per household and that sort of thing?

MR CLARK: That's correct.

MR MARK-BROWN: Have you considered in that modelling into the future any changes of habits that might affect number of people commuting into town, for example, by way of ride sharing apps, or the tendency that we hear about with perhaps more and more people working from home. Is that something that you've taken into account with the overall modelling?

MR CLARK: That is taken into account through the regional models. So the SATURN traffic model takes its demands from a more wide area regional model. That derives trips by all modes and it's based on the expectation of people's behaviour. So, for example, it assumes if it's more convenient that some people will go by bus. There are also some manual interventions in the model to reflect some changes of behaviour such as if there's more people walking to school, that sort of thing. Clearly we are in a very fast moving area and things may change, and that's partly why the assessment of transport effects did include a range of sensitivity tests so they included higher demands and lower demands by traffic and still demonstrated the savings to be had if the Project goes ahead.

MR MARK-BROWN: So you've looked at a range of conditions. And would it be true that if the commuter traffic might change it would still be justified perhaps on a freight basis in terms of the amount of freight that was carried? Is that different modelling or part of the same modelling?

MR CLARK: It is similar in terms of the regional model does predict increases in freight, and it's generally the case throughout the country that freight is predicted to grow at a quicker rate than general traffic. That's probably not the case here given the local population increases, but generally a large increase in freight is predicted, particularly long distance between the regions.

If there was not much growth in traffic then that's really covered by the sensitivity tests that had no further growth beyond 2021. Now again, that

seems quite unrealistic given the growth we see in houses in North Auckland.

But it is a test we often do to re-test the traffic with a lower level of growth.

MR MARK-BROWN: So even with that, it's still justified?

MR CLARK: Yes sir, and you can see the queues that are there today and so it

5 doesn't take too much imagination to say well, these things are likely to get worse with growth in the region.

MR STEWART: I just have a very brief question and it just is really to prove that I have actually read your evidence. Do you have your evidence, the main Evidence in Chief in front of you?

10 MR CLARK: I do, yes.

MR STEWART: On page 20, you will see there is a table there.

MR CLARK: Yes.

MR STEWART: And on the left-hand side it says "morning peak" and then there is some sub-headings and then it also says "morning peak" and then "morning peak". Should that actually be morning peak, mid interpeak, and evening peak?

15

MR CLARK: That shows you read your own work you don't see mistakes like that, you're very correct.

MR STEWART: Do you mean to say I'm correct?

20 MR CLARK: Yes. So to make sure we're clear, there should be four rows of information for each of the three time periods. So the first row should say "morning peak" then the second set of four rows should say "interpeak", then "evening peak".

MR STEWART: Thank you, that makes much more sense to me now.

25 ~-(The witness withdrew - 2.46 pm)

~TERRY PHILIP CHURCH (Sworn) (2.47 pm)

~Examination in Chief by Ms McIndoe (2.47 pm)

MS MCINDOE: Good afternoon, Mr Church. Can you please confirm for the Board that your full name is Terry Philip Church?

30

MR CHURCH: Yes.

MS MCINDOE: Not Terence, just to be sure --

MR CHURCH: No it's Terry, thank you.

MS MCINDOE: And that you have prepared two statements of evidence for this Board being a statement of Evidence in Chief dated 20 April and a rebuttal statement dated 15 June 2017?

35

MR CHURCH: That's correct.

MS MCINDOE: And that you have the qualifications and experience set out in section 1 of your Evidence in Chief?

MR CHURCH: Yes.

5 MS MCINDOE: Now I understand you have a correction to make to your evidence. Could you please advise us what that is?

MR CHURCH: It's more of just clarification in my rebuttal evidence at paragraph 3.3, just in the top line of paragraph 3.3. I'll let you get to it. It's just where I talk about "the Evidence in Chief states that queues were not predicted to".

10 I'd just like to change it to "states that 95 percentile queues are not predicted to".

MS MCINDOE: With that correction, can you please confirm that the evidence is true and correct to the best of your knowledge?

MR CHURCH: I can.

15 MS MCINDOE: You have prepared a summary statement. Do you have that in front of you?

MR CHURCH: I do.

MS MCINDOE: Could you please read for for the Board?

MR CHURCH: Starting at paragraph 2.1, summary of Evidence in Chief.

20 My evidence assesses the methodology used to assess the design of the Project ...(Reads 2.1 - 2.6 of Summary of Evidence Statement)... The Project does not provide direct motorway connections between State Highway 17, that's Albany Expressway, and State Highway 1 at the Greville interchange. While these connections do not form part of the project, improvements to the Greville interchange are proposed. Improvements in performance of the Greville interchange are predicted through the following upgrades ...(Reads 2.7a - 4.4)... this position was on the basis that 5 northbound traffic lanes is delivered, as included in the lodged design.

30 ~Cross-examination by Mr Willmott (2.55 pm)

MR WILLMOTT: With regard to the last point, that five lanes were being provided between Greville and Constellation southbound, why is the motorway unbalanced with only four lanes being provided northbound?

MR CHURCH: The five northbound lanes were required as a result of the safety audit. The safety audit team was trying to address, or needing to address, the safety and weave to do with the northbound flow. As a result of that

35

discussion, five northbound lanes was provided in order to provide additional capacity through that section of motorway and therefore provide a safe outcome.

5 With regards to the southbound having four traffic lanes, the flows and the distance between the interchanges were suitably designed to cater for four traffic lanes in that direction, it didn't need a fifth lane to mitigate an effect.

MR WILLMOTT: Granted, you don't need a fifth lane without the direct flyovers between Albany Expressway and State Highway 1 south, but I submit that
10 the future situation will be so bad as to require such ramps to be added at a later stage if then possible, and that provision for a fifth lane is a natural protection for future development which could be added at this stage at minimal pain, especially as there is a 5 metre wide shared use path which will have comparatively minimal traffic on it compared with the travel lanes on the
15 motorways.

JUDGE HARLAND: So I think the question is why not add the fifth lane in the southbound now anyway to future-proof?

MR CHURCH: The scope of the Project doesn't require a fifth lane. We've done forecasting using 2031 forecasts. These forecasts account for the regional
20 land uses and I think it would be pretty difficult for us to widen the scope of the designation to try and future-proof a lane we don't require to cater for the demand that we're assessing.

MR WILLMOTT: Well, you're talking about only 12 years ahead and only 10 years ahead of a constructed motorway, whereas the motorway itself will last for
25 hundreds, maybe a thousand years or more. Would it not be wise to at least provide for a fifth lane even if it's not constructed now?

JUDGE HARLAND: Perhaps I can help and ask that in another way. Does the design preclude there being a fifth lane added at a later date were it to be needed?

30 MR CHURCH: Yes.

JUDGE HARLAND: It does. Absolutely?

MR CHURCH: Yes. A fifth southbound lane cannot fit within the currently designation being sought.

JUDGE HARLAND: So therefore Mr Willmott's question is how will you deal in
35 future with the problem if traffic congestion or traffic demands after 2034 mean that that's required?

MR CHURCH: Through a separate Project.

JUDGE HARLAND: Right.

MR WILLMOTT: So, in effect your present design precludes the over-ramps I'm talking about between State Highway 1 and Albany Expressway?

5 MR CHURCH: The State Highway 1 to 17, or Albany Expressway connection, we looked at in the indicative business case. The concepts included connections, I think it was Concept 2, and the assessment of alternative support, written by Mr Schofield, summarises as to why those connections cannot be delivered. So, section 7.6.1 of the assessment alternatives
10 chapter within the AEE summarises that after investigation, the possibility was discarded as it would have required the exit point of the motorway to be shifted further south. They had crest curve issues, sight line issues, and significant safety concerns. So the 17 to 1 connections were looked at but discounted going forward.

15 MR WILLMOTT: With regard to the crest issue I would like to make it plain that I don't accept that that would preclude a northbound off-ramp which clears over the top of Tawa Drive being precluded by that over-ramp, because the existing off-ramp could service both that over-ramp of Tawa Drive and the residual traffic which would still proceed to the intersection on Tawa Drive.
20 There is room enough for such an over-ramp to depart from the departure ramp. In other words, the distance would not be increased and the over-ramp would have no additional effect to that which it already has on the existing departure ramp, which will remain.

JUDGE HARLAND: All right. So the question is, really, what do you say is that
25 being an acceptable alternative?

MR CHURCH: I'd suggest that that question be put forward to the geometrics engineer.

JUDGE HARLAND: Which is?

MR CHURCH: Mr Moore.

30 JUDGE HARLAND: Mr Moore. All right. I think we've had Mr Moore, yesterday, or the day before. But that's not a question you can answer?

MR CHURCH: I can't answer that question, no.

~Comments from the Board (3.02 pm)

35 JUDGE HARLAND: Mr Willmott, we're going to take the afternoon break just at the moment, do you have any other questions after that?

MR WILLMOTT: Yes, I would like, if there's time enough.

JUDGE HARLAND: All right, yes, well we'll see how we go. But they need to be fairly constrained questions. I appreciate that you are a lay person in the sense that you're not familiar with asking questions in the way that lawyers
5 might be, but try and see if you can ask -- put your proposition and then ask the witness to comment on that and maybe have a look and see whether your question is addressed to the right person?

MR WILLMOTT: Yes. Thank you for your clarification incidentally of my somewhat clumsily worded question.

10 JUDGE HARLAND: No, don't worry about that, that's my job and I'm happy to assist, but if you can just think about that, you might be able to just as well do it yourself. So we'll take the break for 15 minutes, thank you.

~(Adjourned 3.04 pm – 3.19 pm)

15

JUDGE HARLAND: So Mr Willmott, just when you are ready, you are welcome to start with your questions.

Cross-examination continues by Mr Willmott (3.19 pm)

20 MR WILLMOTT: First, with regard to the south facing ramps we've been discussing, you say in your statement today that the north bound connection is less reliant upon the receiving environment and could be built as soon as funding is available et cetera. But that the problem is with the south facing ramp plugging into a two-lane motorway in effect when additional lanes would be needed.

25 Would you agree that they're already needed, now?

MR CHURCH: There would be little benefit in providing additional capacity southbound when there's wider constraints or further constraint downstream. So currently as Mr Clark discussed with regards to the PM peak period, you've only got three lanes crossing the Auckland Harbour Bridge. During the morning
30 peak you've also got a large bottle neck that occurs at the eastern interchange and that has been, I guess, around for some time. So any further widening southbound, yes, you could get some benefit for those local connections that exit the motorway earlier, but for the longer strategic connections there would be little benefit the further you travel through the network.

35 MR WILLMOTT: So what you're saying in effect is that it's okay for additional traffic to come from the north and to take up what little residual capacity there might be

out of peak on those two lanes, but it's not okay for the local Albany and Rosedale traffic to utilise that residual capacity? There is in effect a preference going on in favour of longer distance traffic at the expense of local traffic?

MR CHURCH: It comes back to the fundamentals of what the Project is trying to seek through its objectives in terms of providing motorway connections, I guess it's the function of what that -- those connections are trying to achieve. I guess it's a balance between how much you benefit providing motorway connections to better improve local trips versus providing motorway connections to benefit lengthier trips. The objectives of this Project relate more so to the completion of the Western Ring Route and also the connection of the Northland route.

MR WILLMOTT: So it's okay for Northland traffic to travel west around the city but not to travel into the city itself via the Harbour Bridge?

MR CHURCH: We haven't closed the southbound connection going south, you can still travel south on State Highway 1 so the connection still exists.

MR WILLMOTT: I think I've made my point, which is that it's arbitrary that some traffic is being preferred over others and that the demand at the moment, and I'm familiar with this intersection using it two or three times a week, the demand from the west is to the south by about twice the amount of demand for traffic heading north. I'd expect it will be a long time before, would you agree that it will be a long time before the northbound traffic catches up with the traffic wanting to turn south?

JUDGE HARLAND: So the proposition being put to you is that the demand is from the west to the south and that that's not particularly recognised by what you're doing here.

MR CHURCH: It is recognised because table 20 of the traffic assessment report demonstrates that those vehicle trips going from State Highway 18 to State Highway 1 southbound still benefit as a result of the Project.

MR WILLMOTT: Yes, you say in paragraph 2.5 that there are some benefits for these traffic improvements and I would agree. The question is how much and for how long will they be sufficient to ameliorate the present situation before it catches up with, and then surpasses the present degree of congestion.

JUDGE HARLAND: Well that's a question, so that's how long will it take, you've already told us about 2034 in the predictions?

MR CHURCH: The prediction to 2031 it was assessed. As I said, in terms of the time it takes we haven't assessed the time in which those south facing connections would be required, it wasn't part of our scope.

MR WILLMOTT: A matter that was unresolved at the conference was that of the simpler design where the off-ramps from the west on State Highway 18 disgorged directly onto Paul Matthews Drive at the present -- where the service station is currently at the end of Paul Matthews Drive. The Proposal was that it would be far simpler there than to carry those ramps parallel with the motorway requiring a much wider motorway reserve and impinging more particularly on the traffic -- on the hockey grounds than otherwise necessary for the sake of reducing the number of signalised intersections on Paul Matthews Drive from two to one. Are there any other advantages other than that reduction in the number of signalised intersections for carrying that traffic all the way eastwards to Caribbean Drive before terminating the off-ramps, the ramps?

MR CHURCH: Sorry, so what's your question?

JUDGE HARLAND: So the question is that one of the reasons for the ramps Paul Matthews argument that's just been discussed with you that was given is that there's a reduction in the number of signals there were needed, were there any other reasons associated with that decision?

MR CHURCH: The design of the Paul Matthews interchange is driven in terms of its location by geometric design requirements in meeting their necessary motorway standards. The outcome that we've reached in the design I guess meets those standards and I guess Mr Moore would be more appropriately answering that question in terms of why the intersection's located where it is and the benefits of that.

JUDGE HARLAND: So just to summarise then, as well as the reduction in signals as being a reason, there are geometric design reasons as well?

MR CHURCH: That's correct.

MR WILLMOTT: Do you know what those geometric design reasons are?

JUDGE HARLAND: I think he said he couldn't answer that, because that was Mr Moore's job.

MR WILLMOTT: All right. Just one further question, and it relates to the Caribbean Drive -- at least, I beg your pardon, the Greville Road intersection and the two flyover ramps that we've previously discussed. The southbound flyover ramp would be possible provided there are signals on the ramp, as there are today, and as could be continued to meter the on-traffic, and thereby manage the weaving, which is something of the order of a kilometre which is well in excess of design requirements, but it would be somewhat simplified and a more generous approach allowed if a fifth lane was added on southbound

direction as well as the northbound direction. Were you involved in any way with the shared use path and its provision at a point next to the landfill which in effect restricts the -- or at least makes it more difficult to widen the motorway from four lanes to five lanes?

5 MR CHURCH: The answer to your question that relates to my involvement of the shared used paths is no, I was not involved with the shared used path design.

In terms of the discussion that you mentioned about the ability to connect State Highway 17 to State Highway 1 southbound with ramp meter signals, that would not be possible, it was again addressed in the assessment of alternatives
10 report. The ability to have a 17 to 1 connection provides multiple or a significant weave issue.

Again probably better addressed by Mr Moore from a design perspective, but the safety implications of having consecutive on-ramps come on and the off-ramp to State Highway 18 westbound discounted the 17 to 1
15 southbound connection.

JUDGE HARLAND: I think what was suggested by Mr Willmott was that you could do it if you put signals there, is that right Mr Willmott, that's what you were saying?

MR WILLMOTT: Well if you maintain the signals there and in my design you would first of all merge the overbridge, the flyover ramp from Albany Expressway
20 directly into the motorway south and then you would merge about 150 metres further down the extended on-ramp. And the extension would provide additional capacity and the on-ramp would take in the much more traffic than exist today under those circumstances. So the present day metering of
25 on-traffic could be -- could prevail and indeed, if necessary, and as and when necessary, the frequency of the green signal could be increased so that fewer traffic was admitted to the motorway from Greville Road.

JUDGE HARLAND: All right, just pause there and I'll see if I can help with asking the question. So are you familiar with the design option that Mr Willmott has put and he's described to us now?

30 MR CHURCH: The design option of the 17 to 1 southbound connection was a concept included within the indicative business case. Concept 20 I believe.

So from that, with regards to that particular element, I'm familiar with what he's discussing.

JUDGE HARLAND: Yes, all right. And what he's suggested is the combination of
35 factors would enable this to occur, and you had answered to say previously no you wouldn't be able to a) manage the weaving and b) it seemed that you were

saying there was also an issue with consecutive on-ramp access issues, is that correct?

MR CHURCH: Yes.

JUDGE HARLAND: Is there anything else that would be problematic that you want to
5 respond to, to the suggestion that's being put to you as an alternative?

MR CHURCH: I've got nothing to add other than Mr Moore would probably give a
more in-depth reasoning as to the safety and geometric constraints that prohibit
that from occurring.

JUDGE HARLAND: Right, you've highlighted the weaving and the consecutive
10 on-ramp issues, Mr Moore would possibly be able to amplify safety and
geometric design issues.

MR CHURCH: That's correct.

MR WILLMOTT: Was the business case you've just alluded to considering only four
lanes or did it include for consideration of on ramps into a fifth lane and into a
15 five-lane configuration?

MR CHURCH: South bound? You are referring to southbound still?

MR WILLMOTT: Yes.

MR CHURCH: No it didn't consider the fifth lane.

JUDGE HARLAND: So would your answer change if it had a fifth lane had been
20 included, would there still be the issues that you've been able to address
namely the weaving and the consecutive on-ramps?

MR CHURCH: My answer wouldn't change.

JUDGE HARLAND: Why not?

MR CHURCH: Because the space between the connections remains the same, if
25 anything you've made the matter worse because you've got to get across more
lanes if you are heading on from 17, you've still got to get across more lanes to
get south. And the receiving line of the interchange as well because you've
only got a number of lanes going southbound.

JUDGE HARLAND: All right, and then in fairness picking up the other point that was
30 asked, would the signalisation help with that difficulty?

MR CHURCH: No.

JUDGE HARLAND: And why not?

MR CHURCH: My understanding, again Mr Moore would probably be better to deal
with this, but I don't think the signalisation would change the geometric
35 requirements, the signalisation would be a means to meter traffic to join

motorway to control the amount of traffic coming through the system, it doesn't change the geometric requirement from my understanding.

MR WILLMOTT: Would you agree that the weaving distance between Khyber Pass and Gillies Avenue is the same as that between St Marks Road and Market Road in the city with a distance between the two receiving -- the
5 generating and receiving roads being just under a kilometre. So the weaving distance is being 650 metres on both of them?

MR CHURCH: I wouldn't go near considering there is similarities between what's happening at the Khyber Pass Gillies connection, that's an 80K speed
10 environment. It's got big departures in terms of the design; you wouldn't consider that sort of design within this environment which is a hundred K speed environment. So the distances which I believe, again Mr Moore could confirm, there still requires departures to get the current design forward. But the comparison with the Gillies to Khyber weave merge issue, they don't compare
15 in terms of this Project in that as an example.

MR WILLMOTT: Would you agree that the weave possible between Greville Road and Constellation Drive is at least two and a half times the weave length between those first two city cases I mentioned, which operated at a hundred
20 KPH until recently?

~Comments from the Board (3.35 pm)

JUDGE HARLAND: Well, I think we're probably going off track here. I understand your point, your point is that there are other comparisons elsewhere. He said he doesn't think there are compare -- they are comparable. Because now it's
25 80Ks and regardless there might be other reasons as well. I'm not sure it's very helpful for us to go down this track Mr Willmott. Because just because it happens somewhere doesn't mean it's a good idea.

MR WILLMOTT: Right, the only other factor I wish to include is the present day metering of on-traffic which didn't occur for most of the time that those earlier
30 two city on and off-ramps operated as pairs, and it was considered more desirable to provide for local traffic to access the motorway in that situation, than for a slight reduction in the safety factor. Whereas here it appears that the safety factor is being regarded as being absolute. And I submit it's in consequential in this situation.

35 JUDGE HARLAND: All right, well that's a matter really of submission and when we get to your case you're welcome to make that point to us again.

MR WILLMOTT: Thank you. In that case I rest.

JUDGE HARLAND: Thank you very much. Wait there please for a moment
Mr Church we will see if there are any questions from the Board.

5 ~Questions from the Board (3.36 pm)

MR MARK-BROWN: I have one regarding the, I'm not sure if you were here when we heard from Kiwi storage, about the changes that they were wanting in terms, or put forward in terms of the alignment of the ramp?

MR CHURCH: I was not here sorry.

10 MR MARK-BROWN: Essentially my question is that NZTA evidence we had was that it's really important to minimise these grades as much as possible specifically in the bus ramp because if they're too steep, well if they are say steeper than 3%, then that will have a significant effect on speeds and overall traffic flow. I just wondered if you agree with that?

15 MR CHURCH: I've got nothing to add on that one sorry.

MR MARK-BROWN: You would concur with that, are you able to say whether you would agree with that in general or it's too general without knowing that particular case?

MR CHURCH: I wouldn't like to comment, sorry.

20 ~(The witness withdrew - 3.37 pm)

~Timetabling matters discussed (3.38 pm)

JUDGE HARLAND: That takes us to Mr Tindall's evidence.

MR BANGMA: I have been discussing with the witnesses for Auckland Transport and
25 my learned friends from NZTA; we might propose a slight change to the orders just to accommodate people's schedules and commitments subject to that being acceptable to the Board.

JUDGE HARLAND: That's right, Ms King needed to be on today if at all possible, is that right?

30 MR BANGMA: Yes that is correct and in addition to that, Mr Maule who is only recently back from overseas I understand has an important medical appointment tomorrow, I believe, which is when he's currently down for, so the suggestion Your Honour would be perhaps if we could have Mr Maule and then I noted that there were no questions in cross-examination for Mr Cross,
35 Mr Anthony Cross. So perhaps he could perhaps be dealt with reasonably quickly and then we might move to Ms King?

JUDGE HARLAND: All right, well, I just need to check with Mr Willmott have you talked to him about this? Mr Willmott are you in a position to ask your questions of Mr Maule today? He is the Auckland Transport bus man, I believe, he probably doesn't like to be called the "bus man", but he is the bus man. Are you in a position to ask your questions of him today?

MR WILLMOTT: I could prepare some questions if it's necessary, especially if he's doing a presentation first.

JUDGE HARLAND: Yes I think he will, because we would like to accommodate his personal situation for tomorrow. Would that be acceptable? If for some reason it doesn't work out and you want to ask some questions at another time it might be possible.

MR WILLMOTT: Thank you yes, in that case yes.

JUDGE HARLAND: All right Mr Maule, let's do it the way you suggest.

~ANDREW SHELTON MAULE (Sworn) (3.40 pm)

~Examination by Mr Bangma (3.41 pm)

MR BANGMA: Is your full name Andrew Shelton Maule?

MR MAULE: It is.

MR BANGMA: And do you confirm you've prepared a brief evidence in this matter on behalf of Auckland Transport dated 25 May 2017?

MR MAULE: I did.

MR BANGMA: And that your and qualifications experience are as set out in paragraphs 1.1 and 1.2 of that evidence?

MR MAULE: Yes, that's correct.

MR BANGMA: And are there any amendments you wish to make to that evidence?

MR MAULE: No, no amendments.

MR BANGMA: Do you confirm that the contents of that evidence is true and correct to the best of your knowledge?

MR MAULE: Yes.

MR BANGMA: I understand you have prepared a summary statement to assist the Board and you have copies of that, which I see are sitting with you?

MR MAULE: They are.

MR BANGMA: Apologies for that, perhaps if they could be handed out?

Could I ask you to read your summary statement starting at the beginning?

MR MAULE: Okay.

In summary my Evidence in Chief identifies potential effects arising from the construction of the northern corridor improvements proposal on buses ... (Reads 2 - 5.4(d) ... the planning and operation of the bus network, I actually understand that that's now been resolved through conferencing.

5 Point 6: With the amendment I propose to CTMP.6D above, I consider the proposed CTMP conditions setup a framework for ongoing consultation with AT to ensure the construction of the proposal appropriately manages potential effects on buses.

MR BANGMA: Thank you Mr Maule. I just have one question for you, as you will be
10 aware Kiwi Self Storage Limited is seeking changes to the gradient of a section of the busway and I understand those changes would result in a change of 5.34%. Kiwi Self Storage has referred in their opening legal submissions, I think it's reference is paragraph 42(f)(iii) to an existing section of the Northern Busway as I understand it, running roughly between the station at Sunnynook
15 and up the hill to the ridge at Sunset Road which they state has a grade of also 5.34% for a length of approximately 630 metres.

There was evidence I think from one of the NZTA witnesses that they understood that that sort of gradient could cause -- was causing difficulty for fully loaded buses travelling -- double decker buses traveling up the Northern
20 Express, are you able to comment on that in any way?

MR MAULE: I can comment on the experience that we have to date, which is fully loaded buses on that hill do suffer some speed reduction and certainly can't maintain a constant speed up the hill. We see -- we definitely see that on fully loaded buses on a daily basis.

25 MR BANGMA: So is the upshot of that it just reduces the speed at which those buses travel and therefore their efficiency is that the extent --

MR MAULE: We haven't done a full analysis -- it's fair to say we haven't done a full analysis of it, but we do know from looking at the speeds that they drop from probably about 20 kilometres an hour on that hill by the time they get up to the
30 top, we don't see that when the buses are less full. It actually is when they are full, but we do see a performance reduction on the hill.

MR BANGMA: Thank you for explaining that.

~Cross-Examination by Mr Willmott

35 MR WILLMOTT: Mr Maule, you will be aware that the bus services on the North Shore have been realigned recently to connect directly to the northern

busway replacing the old system whereby the whole of the North Shore was interconnected with itself with relatively little emphasis on the city other than via the busway per chance, as it were, but that today with the connections directly onto the northern busway the bus passenger usage is significantly increased? I presume --

5 MR MAULE: So I didn't know if that was a question? Yes, that is correct.

MR WILLMOTT: So crossing the Harbour Bridge it has been suggested a couple of times in the media that buses crossing the Harbour Bridge in the peak hour carry something of the order of a third of the total traffic heading into the city; that seems to me to be somewhat of an exaggeration, if not a gross
10 exaggeration, can you provide some actual figures of patronage across the Harbour Bridge in the peak hour?

MR MAULE: I'd prefer to defer to Mr Cross's evidence, I think it's stated in Mr Cross's evidence, it is approximately a third. I don't have the numbers at hand, but that
15 is my understanding that yes, it is approximately a third.

MR WILLMOTT: I take it that you are more concerned with management of the construction phase than with the general planning of bus services then?

MR MAULE: Mr Cross looks after the planning of bus services, I look after the operation. So, yes, it's fair to say I'm concerned with the effects of the scheme
20 on the performance of bus services, yeah.

MR WILLMOTT: Are you also concerned with the potential drop off of lateral patronage given that now only that 10% of jobs located downtown is being serviced by the Northern Busway, whereas the 90% of jobs which are actually on the shore and which were serviced by the traditional network, are now less
25 efficiently serviced by bus services which terminate only on the Northern Busway? And that the overseas experience of a diminution of local bus usage in favour of increased radial usage is occurring?

JUDGE HARLAND: Right, I'll help with those questions I think Mr Willmott. So the first one is are you aware of the statistics about, I imagine we're talking about
30 the hub and spoke model here are we?

MR WILLMOTT: Yes.

JUDGE HARLAND: Yes right, that percentage-wise drops in patronage, or -- I'll start again, are you aware of the percentages of people on the shore that are transported to work each day?

35 MR MAULE: Am I aware, yes.

JUDGE HARLAND: Do you know the numbers, do you know that percentage?

MR MAULE: Not off the top of my head no.

JUDGE HARLAND: Could you make an educated guess, or would that be speculative?

MR MAULE: I'd prefer not to answer it.

5 JUDGE HARLAND: All right that's fine. So the proposition being put to you is that in fact there are more people from the shore working on the shore, that are not being serviced by the current bus scheduling at the expense of this new approach which is to favour taking people into the city, is that what you are really talking about Mr Willmott?

10 MR WILLMOTT: Thank you yes absolutely.

JUDGE HARLAND: And he's asking you to comment about that, so whether that's correct or not?

MR MAULE: So again, I will answer as much as I can, but I would defer to Mr Cross for at least some of this -- for some of that question. I mean, what I would say
15 is that there are approximately 37,000 people daily, on a weekday using the Northern Busway, approximately, and around about 34,000 of those travel to the CBD. So a high percentage of those using public transport are using it to get to the CBD. I think that's probably about as much as I can offer and would refer to Mr Cross for anything else.

20 JUDGE HARLAND: So you can't provide any comparative figures of people that might be able to use a bus within the North Shore to compare with that figure?

MR MAULE: No.

MR WILLMOTT: Thank you, I think I should leave it there and hope to ask that sort of question of the other chap.

25 JUDGE HARLAND: Yes, all right thank you for that.

~Questions from the Board (3.54 pm)

MR STEWART: A question of clarification I suppose really, in your statement here you've helpfully in paragraph 5 talked about some of the additions to the CTPF,
30 which I think you agree with, and am I correct in assuming that the only thing that you are really drawing our attention to is the paragraph (b) where you say "I do consider that AT should be involved in this review process", so that's something you would like to see added?

MR MAULE: Yes, it is.

35 MR STEWART: So the other ones you're fine, you're okay with?

MR MAULE: Correct.

JUDGE HARLAND: This is just because I haven't quite caught up on the detail yet, but there was a lot of evidence early on about this business of effect on the buses if the right-hand turn into Paul Matthews and out of Paul Matthews was interrupted in some way. I take it that's now been resolved by the conditions, has it?

MR MAULE: Yeah the detail hasn't, but the condition will assist with working that through, yes I'm comfortable that we can solve that through further conversations, yes.

JUDGE HARLAND: So that's a work in progress with the formulation of the wording of the conditions, or is it something that the conditions have resolved at a high level and you have enough faith that you will be able to figure out the details --

MR MAULE: Correct.

JUDGE HARLAND: -- later?

MR MAULE: Yes.

JUDGE HARLAND: I see. Well the other question I had was in relation to your paragraph 5.4 here where you talk at paragraph (c) about monitoring, the process of monitoring. Has there been agreement about how regularly that monitoring is to occur?

MR MAULE: No not yet, that is part of the next question of the discussion.

JUDGE HARLAND: Well, are you comfortable that that's certain enough at this particular point? Because I read in other evidence and it may have been Mr Cross' rather than yours, that you or the bus service experienced considerable effect with the management of the Waterview part, there was a drop off in patronage, and that part of the learning from that was that you didn't want that to occur again, is that you or Mr Cross?

MR MAULE: That was me.

JUDGE HARLAND: That is you? Right.

MR MAULE: Yes.

JUDGE HARLAND: And so I was interested in that. I was firstly interested in what happened there that needs to be fixed? And if it needs to be fixed have we got enough certainty in the conditions as they stand to ensure it's not repeated?

MR MAULE: So what happened was during the construction of Waterview some of the bus priority measures were lost and buses were effectively running in general traffic. There were no agreements put in place prior to those works and the impact of buses was quite significant both in delay but also people effectively moved to another mode of transport, it put people off. So we

suffered significant effects on those services and we're yet to actually see that come back as Waterview has opened actually, it's too early, but we haven't seen -- we're not seeing patronage increase, it's put a large amount of people off using public transport in the west. And, therefore, we don't want to see that happening in the north. We certainly don't have an alternative system like they do in the west which is an alternative for people to use, they have either the car or the Northern Busway. So we need to maintain the performance and this really cuts I suppose to the chase of what I'm asking here which is that we need to make sure that we monitor the effects quite closely on the Northern Busway to make sure that it is maintaining its performance and its reliability for customers.

JUDGE HARLAND: How long did it take for things to start getting bad in terms of performance drop off on the Waterview connection?

MR MAULE: A few months, three or four months I think.

JUDGE HARLAND: So would it be something like monitoring every month would be required, or -- because as I read it at the moment the monitoring is not that certain, it's left to be discussed at another date, but if you reach disagreement about that it's not particularly certain. So I suppose I'm trying to push to find what level of monitoring you think needs to occur to make sure it doesn't happen again?

MR MAULE: In my opinion a minimum of a monthly report, but I would probably recommend at this stage starting with a weekly report.

JUDGE HARLAND: Right. And just from your perspective what would be involved in that, that would be a report to you or your equivalent?

MR MAULE: No actually -- well it's probably generated by Auckland Transport actually because we've got the GPS data from the vehicles readily accessible, so I would see Auckland Transport generating that report and sharing it with NZTA on a regular basis, actually.

JUDGE HARLAND: And if the monitoring did show a drop off, and it would be difficult to ascertain what the reason for that was entirely wouldn't it, because the GPS reporting wouldn't be able to say why that was, there might be other things going on.

MR MAULE: Correct. Although the way that Auckland Transport uses its data it's a trigger for then further monitoring. So we normally would put a team of people out to monitor the effects based on a trigger from the data.

JUDGE HARLAND: And so then it would be reviewed, say, how would that review look? What would you think would need to happen?

MR MAULE: You mean in terms of the review of what's happening?

JUDGE HARLAND: Well, so you have -- you get your monitoring and it's not looking
5 good and you want some immediate action. How is that going to happen?

MR MAULE: So, again, we haven't worked any of this detail with NZTA but my
preference is that -- if you're asking what my preference would be, that we have
access directly with NZTA to agree what measures we put in place. I would
have expected AT to offer a recommendation based on the information that we
10 had to hand through the GPS and also roadside or vehicle monitoring.

JUDGE HARLAND: And we've heard a bit about the Alliance arrangements and that it
seems as if the Alliance will be managing most of the -- well all of the
construction, but there will be oversight provided by NZTA to a degree. Would
you also want to include the Alliance partner in that or would you prefer your
15 first port of call to be the agency? Doesn't matter?

MR MAULE: I guess it doesn't matter to me. What I'd hope is that we had a channel
that we could directly have conversations with to resolve it. I'm not quite sure
who would take the lead on that, whether it would be NZTA or the Alliance, but
either for us I think would be fine.

20 JUDGE HARLAND: Would you require the recommended measures that you had
suggested to be not just for consultation but that you might have the end say
about whether they should be implemented or not, would it be people can
consult and then the answer is no anyway?

MR MAULE: Well I think it's important to just clarify there's probably two main effects
25 that AT are particularly worried about. One is such as the Paul Matthews
where there are likely to be a collection of households that are cut off from
public transport that would have already had access to public transport that's a
potential outcome. And so that's likely to result in at least a diversion, if not an
additional service being put on. And then the other impact that we're worried
30 about is the performance of the busway itself which may or may not result in the
need for additional services to be put on to supplement the delays, if you like, to
counter the delays.

JUDGE HARLAND: So in the first set of conditions or suggested things that AT
wanted there was a requirement that any cost be met by the Transport Agency
35 if it resulted in additional services being required. Has that been abandoned?

MR MAULE: Not that I know of. You will have to forgive me, I've been away a couple weeks overseas and there's certainly been a couple of conversations with our planners and NZTA, so I actually don't know the answer to that.

JUDGE HARLAND: All right that's fine, we can leave that for another time.

5

~ Submissions from Mr Bangma (4.04 pm)

MR BANGMA: Just one point of a very minor clarification, not for Mr Maule, but from Commissioner Stuart's question, and that was just to clarify, Your Honour, that this final amendment to the conditions to require Auckland Transport be consulted when there is a review of the Public Transport Traffic Management Plan. We recorded in paragraph 4.8 of the opening for Auckland Transport that we understand in principle that is acceptable to the agency and we'll work on some revised wording. So we understand in principle things have changed.

10

(The witness withdrew - 4.04 pm)

15

~ANTHONY DAVID CROSS (Sworn)

~Examination by Mr Bangma (4.05 pm)

MR BANGMA: Is your full name Anthony David Cross?

MR CROSS: It is.

20 MR BANGMA: Do you confirm that you have prepared a Brief of Evidence on behalf of Auckland Transport in this matter, dated 25 May 2017?

MR CROSS: I have.

MR BANGMA: And that your qualifications and experience are as set out in 1.1 to 1.4 of that Brief of Evidence?

25 MR CROSS: That's correct.

MR BANGMA: Are there any corrections you would like to make to your evidence?

MR CROSS: No.

MR BANGMA: So you confirm that the contents of your evidence are true and correct to the best of your knowledge?

30 MR CROSS: They are.

MR BANGMA: I understand you have also prepared a summary statement for the Board, Mr Cross?

MR CROSS: I have. Yes.

MR BANGMA: And you have copies of that with you?

35

Mr Cross, are you able to read your summary statement starting at paragraph 1?

MR CROSS: Certainly. My name is Anthony David Cross. I am the network development manager at...(Reads 1 - 2 (c) of Summary of Evidence Statement)... The New network concept is explained in section 6 of my evidence in chief and in particular Figure 2.

5 And if I just may clarify in addition to that, that the new network for the North Shore has not yet been introduced. It is scheduled to be introduced in the second half of 2018, but there was a reference to, and Mr Maule was the witness, to some changes. We did make some changes as part of the west new network last month in June, which affected Greenhithe through to
10 Constellation Station in particular, but no other parts of the North Shore.

~Questions from the Board (4.10 pm)

JUDGE HARLAND: So sorry, can I just interrupt? So the connected network option you're talking about is the one that's depicted in model 2, in figure 2, in your
15 Evidence in Chief. Is that the one, at page 9?

MR CROSS: So that, in very simple terms, sets out I guess the principles behind the network.

JUDGE HARLAND: I think that's what I'd call the sort of hub and spoke type of idea; is that the concept?

20 MR CROSS: Yes.

JUDGE HARLAND: So sorry, to go back to what you were saying, you have started a little bit of that with the connection you've just talked about into Constellation from the west?

MR CROSS: Yes. So the service concerned there was the west Auckland to North
25 Shore service, across the Upper Harbour Bridge, and so that meant that there were some changes to the Greenhithe bus service which -- and there had been trips in that timetable that had gone all the way to the city centre in the morning peak period, and that's no longer the case. So that may be what was being referred to.

30 The northern busway acts as a central spine providing rapid services ...(Reads 2(d) - 4 of Summary of Evidence Statement) ...it also supports the operation of any network and will help Auckland Transport to provide more attractive and effective public transport services.

35

~Examination in chief continues by Mr Bangma (4.13 pm)

MR BANGMA: Mr Cross, you would have been here for the question Mr Willmott put to Mr Maule, just in relation to the percentage of trips over the Harbour Bridge that are on public transport, and Mr Willmott asked Mr Maule to
5 confirm whether that was around one third. I see that you have addressed that at paragraph 7.5 of your evidence, and you state that around one third of peak trips on the Harbour Bridge are public transport?

MR CROSS: Yes. I think it's important to clarify that that's talking about the
10 numbers of people, not the number of vehicles crossing the bridge.

MR BANGMA: Thank you. Please answer any questions. Your Honour, I understand from the schedule Mr Willmott is not down to ask any questions of Mr Cross, and it depends on that?

JUDGE HARLAND: Well, I think in fairness he probably just got the wrong person.
15 And that's understandable.

So Mr Willmott, if you want to ask Mr Cross some questions about those public transport matters, you can do so.

~Cross-examination by Mr Willmott (4.14 pm)

20 MR WILLMOTT: Would you agree with Mr Maule's number of 34,000 approximately day long, crossing the Harbour Bridge, on public transport?

MR CROSS: Yes, that seems to be correct.

MR WILLMOTT: So my rough calculation would suggest that's about 3,000 people per peak hour. Is that your understanding too?

25 MR CROSS: Oh, that sounds pretty light to me.

MR WILLMOTT: That's 1/10th, which is at the bottom end. Many roads would carry 1/16th in the peak hour of the day long traffic, and I've taken the extreme bottom end of 1/10th, 3,000 per peak hour over the Harbour Bridge. Would you accept that in a peak hour vehicular traffic over the Harbour Bridge is
30 about 2,200 vehicles per lane, on average?

MR CROSS: I'm not familiar with those numbers, but that --

MR WILLMOTT: I would expect you to be familiar if you are -- if you have come to the conclusion that one third is from public transport?

JUDGE HARLAND: No, I don't think he said one third -- you said, one third of --

35 MR CROSS: So one third of the people crossing the Harbour Bridge in morning peak are on buses. So it's definitely not one third of the traffic.

MR WILLMOTT: Well, that makes the situation even worse from my point of view, because I would expect the traffic to be towards the 1/16th end in peak hours.

JUDGE HARLAND: All right. Well let's ask whether he knows about that or not.

5 What do you say about that?

MR CROSS: I'm not sufficiently familiar with the traffic numbers, and, you know, I'm a public transport person. So, you know, I don't have those comparisons at the top of my head. I'm sorry.

MR WILLMOTT: Well, I will be submitting an appendix to my evidence, and you
10 may care to comment on this, to the effect that traffic volumes over the Harbour Bridge are about 180,000 vehicles per day, and that of that, something in the order of 20 to 25,000 cross in peak hours, meaning that vehicles per lane would be of the order of 2,200 vehicles per lane, and with
15 five lanes into the city, that's almost 11,000 vehicles per hour and at an average occupancy rate of 1.3, that's about 14 or 15,000 people per hour crossing the Harbour Bridge in cars compared with your 3,000. Now to me that's a ratio of one fifth.

JUDGE HARLAND: I think he said he can't really make that comparison.

MR WILLMOTT: Right. So his original figure of one third --

20 JUDGE HARLAND: Well, one third of people he says, that he has gained the knowledge from his public transport aspect, and he can't comment on your other figures, because he doesn't know.

MR WILLMOTT: I'm talking about people.

JUDGE HARLAND: Right.

25 MR WILLMOTT: I used the factor of 1.2 to 1.3 per car.

JUDGE HARLAND: But the problem is he doesn't know the figures of the cars in the first place, so he can't extrapolate that. So I think your point is really a submission point, that we can make later, because I don't think he's going to be able to help you with this, but I can ask him.

30 MR CROSS: Sorry, just to clarify, I don't know the exact numbers, but I'm very comfortable with the concept that it's a third of people crossing -- you know, that's a figure that we often use and we're very confident about that proportion, and in addition to that, it's a higher proportion of people who are actually travelling to and from, towards the city centre, in the peak period. So
35 roughly a half of all people travelling into Auckland city centre in the morning peak period are on public transport.

JUDGE HARLAND: And you challenge that don't you?

MR WILLMOTT: Yeah, absolutely.

JUDGE HARLAND: All right. So perhaps I can help. Where do you get that figure from?

5 MR CROSS: That is a figure that comes from -- obviously we have data about public transport journeys and passenger vehicle trips are collected elsewhere in the organisation, and there is, as Mr Willmott points out, a standard figure of people per vehicle, 1.2, 1.3 people per private motor vehicle, and so that's collated, to make that.

10 JUDGE HARLAND: Right. So what I'm hearing you say is that you achieve your statistic for public transport with reference to an extrapolated average figure for people in private vehicles?

MR CROSS: I believe that's the way it is calculated, yes.

JUDGE HARLAND: Right. And so you challenge that Mr Willmott. It's probably not
15 fair to put to anybody that idea without giving them the statistics and where they come from?

MR WILLMOTT: Well, I would expect them to know those, so?

JUDGE HARLAND: Well, perhaps you can help us with that. Would you -- how
20 would you get the figures that provide the comparison to enable you to extrapolate?

MR CROSS: I would be able to go away and talk to people and find those figures. Relatively easily, I should think.

JUDGE HARLAND: Right. Well maybe that's a hold over question, if it's an
25 important point that needs to be covered. It's not a difficult task for you to achieve?

MR CROSS: I don't believe it is.

~Comments from the Board (4.20 pm)

JUDGE HARLAND: No, all right. Well, in order to assist that Mr Willmott, you
30 probably need to provide -- is this material you're talking about new material? I'm not going to be very happy if it is.

MR WILLMOTT: The one third figure cropped up in evidence and I'm responding to that.

JUDGE HARLAND: Well, the one third figure was in the Evidence in Chief of
35 Mr Cross here. That's been available for some time. What I was just a little alarmed to hear is that you had some appendices to your evidence that you

thought you might want to present. Are they not ones that you've provided before?

MR WILLMOTT: They're ones that I've listed before as being provided at a later date to substantiate claims I've made in my evidence, statements of
5 evidence.

JUDGE HARLAND: Oh, I see. Well, it's hard for me to understand whether this is a relevant point for this witness or not. What we're going to do is hold that thought, and I'm going to ask you please, Mr Bangma, to talk to Mr Willmott about this and to get access to these documents that he says substantiate it,
10 and to understand where they might fit in with this witness or otherwise, because there is a fundamental challenge to the end extrapolated figure of one half, one third to one half. So it's only fair that we have an opportunity to have that explained a little better.

So in the meantime, can I just suggest -- so Mr Willmott, is that the
15 main thrust of the questions that you wanted to ask?

MR WILLMOTT: No.

JUDGE HARLAND: There's more?

MR WILLMOTT: It's taken far longer than I expected.

JUDGE HARLAND: Oh, no, but for this witness is that the only area you want to
20 talk about?

MR WILLMOTT: No.

JUDGE HARLAND: What are the other areas?

~Cross-examination continues by Mr Willmott (4.21 pm)

25 MR WILLMOTT: Well first of all the usage of the busway. Is Mr Maule aware that only one tenth of Auckland employment is downtown, and that the other nine tenths is distributed throughout the Auckland region?

MR CROSS: That proportion sounds plausible; I don't know exactly what that proportion is.

30 MR WILLMOTT: Secondly, I live in Greenhithe, so I have experienced the reduction of what used to be four services to different parts of the North Shore to one service now, which delivers only to Constellation Drive. Sure, there are other interchanges; there are other buses we can access by waiting at the Constellation Drive interchange, and as efficient as it was before, to get into
35 town, for those trips that we wish to get into town. My concern though, it is less efficient to get around the North Shore for that 90% of those workers,

and I'm not employed in that way. So I'm not one of those that needs it, but I do need, from time to time, to get around for other purposes, all of which have commercial consequences -- like shopping trips, or those trips to the pump house, or some other recipient destination which earns money from my attendance. So my trips are all commercial trips and I find that now I'm less able to use the bus service than I was previously. And this conforms with my experience in America, which is much larger and has many more cities and more particularly, is much better at gathering data from all those cities, and they have experienced a drop off in the bus services which used to serve -- the traditional bus services which used to serve people's needs versus the bus services today that laterally access only the northern busway. Sure, that pumps more traffic onto the northern busway, and it results in an increase in traffic going downtown, but overall, jobs downtown have decreased from 50,000 --

5
10
15 JUDGE HARLAND: Right. I'm going to stop you there Mr Willmott. You're starting to talk your own submissions, and we don't want that. We're here to ask questions. So I think what you're trying to ask, is that there seems -- the proposition is that there's been a reduction of intershore bus services, to other parts of the shore, for people at the expense of this idea of taking people into town?

20
25 MR CROSS: Okay. In the case of Greenhithe that is technically true in the short term, between our implementation of the West Auckland new network in June this year and rolling out the North Shore network in the second half of next year, when the Constellation station will probably be the most well connected part of the place in the whole North Shore, in terms of the ability to get to most suburbs on the North Shore from Constellation Station. So although it's very important that we connect with the busway to enable people to make journeys into the central city easily, it's also a very important principle and objective of the New Network Project to enable trips -- for people to make

30
35
There were some concerns when we consulted on our proposed network for North Shore that we were diminishing services between suburbs and within

the North Shore, and we addressed many of those concerns when we finalised the network following the consultation process. So, it may well be that Mr Willmott is thinking about some of the concerns that were expressed at the time we consulted, and because we do still hear some of those concerns even though we actually addressed many of them when we announced the final network.

JUDGE HARLAND: So the message there Mr Willmott is that yes, that might be the short term, but it's not the long-term goal, and the long-term goal is to increase those services.

10 But I am very concerned that we don't get off topic too much here, and I understand your point will be about efficiency, efficiency gains and all of that kind of thing, but we can't get into challenging the new network strategic. This is not the place for that.

15 So, have you any other questions that are relevant to what we have to decide here?

MR WILLMOTT: Yes, about five years ago I stood on the Akoranga Bridge, overbridge, pedestrian overbridge, and observed buses moving into town in the morning peak at about 5 minute intervals. I understand it's been reduced now, crossing Harbour Bridge, to about what interval, between buses, today?

20 MR BANGMA: Is Mr Cross the person to answer that question? I understand he is strategic?

JUDGE HARLAND: Well, I just -- again, I just need to understand why this is relevant. What's the point? What is the ultimate point that you are trying to make here?

25 MR WILLMOTT: Well, the ultimate point is that even more than the -- to a lesser extent than the 5 metre shared use path, the busway is far less efficiently used than motorway lanes.

JUDGE HARLAND: Ah, I see. All right. That's fine, I understand what you are saying. So the question is that the busway is not that efficient as is being made out because it's not used by as many buses?

30 MR WILLMOTT: And you can fit about 200 cars between buses.

JUDGE HARLAND: And you can use more cars on the busway and you understand what's being asked here. Do you want to comment on that? Can you comment on that?

35 MR CROSS: I will comment on that. So in the last five years the frequency of buses on the busway has increased considerably. We've introduced the

double decker fleet, and, as I stated in my evidence, there's very substantial year-on-year growth and patronage on the busway services, averaging out at 14 and a half percent per year, but it's often - we publish those figures monthly, and often the figure, the percentage, is higher than that.

5 And one of the reasons of course why the service is so attractive and is increasing, is attracting increasing numbers of people, is because the buses are able to be free flowing along the busway because they are unimpeded by general traffic.

MR WILLMOTT: And because of the congestion on the motorway?

10 MR CROSS: Of course.

MR WILLMOTT: So it would be to the advantage of the public transportation system if that congestion continued indefinitely.

~Comments from the Board (4.28 pm)

15 JUDGE HARLAND: Oh, I don't think he can comment on that.

MR WILLMOTT: I think you well understand the point I'm trying to make, and --

JUDGE HARLAND: I understand the point. No -- and really, I don't want to cut you short, but we've got to be careful about where things fit. I think it's more a matter of submission.

20 MR WILLMOTT: I'm happy to rest that and I will add some actual figures to my submission.

JUDGE HARLAND: Well, what I'd like you to do, is to make sure that you, in fairness, provide those to Mr Bangma -- all the figures, the figures you are relying on, because you can't just pull them out of the air when people
25 haven't had a chance to look at them, all right? And then Mr Bangma can liaise with Mr Cross, if Mr Cross is the right person to look at those, or can get that information well and good. If not, I'm sure you will hear about it.

MR WILLMOTT: Thank you.

JUDGE HARLAND: All right.

30 MR BANGMA: Just a brief point of clarification on that, and I guess how we responded to that information might be in Auckland Transport's hand to some extent, but do you envisage supplementary evidence and Mr Cross being recalled to respond to that, or can it be dealt with in submission?

JUDGE HARLAND: Well, my first issue is, is it relevant? All right? And I'm not
35 trying to cut any argument off, but we need to make sure what it's aimed to address. Then we need to make sure if it is relevant, who is the right person

to answer it? If it's new information, that people haven't had a chance to comment on before, of course supplementary evidence would be appropriate. The way to do that would be to prepare it, and give a copy to Mr Willmott so he knows about it, and then we do it the last. I don't want to extend this unnecessarily.

We've had lots of time to get this organised, and Mr Willmott, I do have to say that that information should have been provided a lot earlier. But be that as it may, we'll have a look at it, and see whether it's not going to prejudice anybody by its late production. All right.

10 MR WILLMOTT: Thank you.

JUDGE HARLAND: That then means we've got Board questions I think for Mr Cross. If there any further? No.

So Mr Cross, where we've got to is you are excused temporarily. You may need to come back again, but you may not, and you have heard the interchange.

So thank you.

~(The witness withdrew - 4.31 pm)

~KATHRYN KING (Sworn) (4.32 pm)

20 ~Examination by Mr Bangma (4.32 pm)

MR BANGMA: Is your full name Kathryn King?

MS KING: It is.

MR BANGMA: Do you confirm that you've prepared a Brief of Evidence on this matter on behalf of Auckland Transport dated 25 May 2017?

25 MS KING: Yes, I do.

MR BANGMA: And that your qualifications and experience, including projects you've been involved in, are set out in paragraphs 1.1 through to 1.3 of that Brief of Evidence?

MS KING: That's correct.

30 MR BANGMA: Are there any corrections that you wish to make to that evidence?

MS KING: No.

MR BANGMA: So you confirm that the contents of that evidence are true and correct to the best of your knowledge?

MS KING: That's correct.

35 MR BANGMA: Now Ms King, I understand that you have prepared a summary statement for the Board?

MS KING: That's right.

MR BANGMA: Ms King, if I could just ask you to read out that summary statement, starting at paragraph 1?

MS KING: Certainly. My name is Kathryn King. I am the walking, cycling and
5 safety manager at Auckland Transport ...(Reads 1 - 7)... over time the path
will likely develop into the centre of the upper North Shore cycle network.

MR BANGMA: Now Ms King, I just have some questions in clarification, and it's in
relation to the two conferencing statements, and in particular Kiwi Self
Storage in their opening legal submissions, at paragraph 42, subparagraph
10 E, are referring to particular statements in the conferencing statement, where
they say Ms King has agreed in principle that a gradient of 5.34% for the
shared use path, which I understand is what Kiwi is seeking, they say
Ms King has agreed in principle that this is acceptable to her in respect of the
SUP. So I just want to take you to the Joint Witness Statement for that, in
15 that regard. So, that statement's made in the Joint Witness Statement
transport and traffic site specific impacts, dated 23 June 2017. First of all I
just want to clarify, you didn't attend that conferencing session, did you?

MS KING: No, I did not.

MR BANGMA: So the first page of that conferencing statement identifies the
20 attendees as being Mr Clark, Mr Moore, Mr Tindall, Mr Peake, Mr Hall and
Mr Maule, but you didn't attend.

And if I could just turn now to the relevant part of that conferencing
statement, which Kiwi Self Storage has referred to in their opening. So that's
at page 4, of the conferencing statement, I think the paragraph reference
25 would be paragraph 8(c), about the fourth bullet point. So what that says
there, I found this a bit confusing at first, but I think hopefully I've got to the
bottom of it, it says:

"Ms King has agreed in principle (in the Joint Witness Statement traffic
and transport general design layout model alternatives) that a gradient of
30 5.34% is acceptable to her because of the mitigating factors that will apply.
This applied to the SUP only. Not the busway".

Now as we've established, you weren't at that particular conferencing
session, and what I take from that paragraph, is that they're simply referring
outwards to the other conferencing statement, and they're trying to
35 summarise in that conferencing statement what your position is, but you
weren't in attendance at that conference were you?

MS KING: No.

MR BANGMA: Well, if I could just -- I think it might be easiest then if I just took you to the conferencing statement, took everybody to the conferencing statement which is referred to. So that is general desired layout model alternatives, dated 26 June 2017. The part of that conferencing statement, Ms King, which deals with the shared use path gradient issue is on page 11, and it's relatively short or confined; it consists of four bullet points. I have read those four bullet points and I must admit I can't see anywhere in that statement where it says that you agree in principle that the 5.34% is acceptable. There's reference to a separate session between Mr King and Mr Hall, discussing the gradient issue, but of course it was not possible to resolve this fully. Accordingly, this matter will need to be addressed at the hearing.

So I just wanted to bring that to your attention, and I suppose in light of that, are you able to confirm to the court what your position is on the 5.34% gradient issue?

MS KING: Certainly. What my feedback at the hearing was, was that we had a minimum standard of gradient of 5% in order to protect the ability for all users to comfortably make use of such a facility, and we have a process in place, a deviation process, departures process, that we apply to projects in order to follow a design process that looks at means of mitigating any of the effects of an increased gradient. And that ensures that we're able to look at plateauing or rest stops or facilities that make it comfortable for anyone to use a steeper facility.

MR BANGMA: Thank you, Ms King. And I understand, just following on from that response you've given, in relation to that mitigation including rest stops, I believe at the back of your summary statement which you've just presented to the Board Attachment 1 of that says:

"Shared use path gradients in Auckland Transport's design manual", and then it sets out what I understand to be grades and then maximum distances in between rest platforms.

Now, I understand that that would be the mitigation that would be provided, is what you've said. Can you explain the design process that would have to be undertaken around those rest stops? Has any of that work been done yet?

MS KING: No, it has not. We would expect that to be done as part of the detailed design process, once our gradients are understood and we -- there has been sufficient investigation into the amenities within the area to look at what sort of mitigations would be appropriate for that area, and, in lieu of having that information available to us, we would not agree to a deviation in principle.
5 We would need to follow that design process in order to understand what would be most appropriate to make the facility attractive and usable.

MR BANGMA: So I understand from that answer, that the provision of rest stops would be a matter of detailed design. It's something that would happen
10 through a deviation process. Are there any, I suppose, potential constraints or technical difficulties which would affect whether you could accommodate a rest stop along this section of the shared use path?

MS KING: Absolutely. We would have to look at available width, within which we were able to work. We would be looking at the ability to ensure safe use
15 between, for example, someone travelling slowly up a hill and someone coming quickly down a hill and therefore sight lines, width and distances. There's a range of things we'd need to look at depending on the nature of the site.

MR BANGMA: So I understand from your answer, cyclists would be required to pull
20 off the shared use path, to access the rest area? Is that correct?

MS KING: The rest areas would be there really to enable someone less able to stop and rest, in the case they needed to, particularly travelling up the hill. That's a design feature that we have put in place on a number of our shared use paths across the Auckland region to date. The width of the facility is to
25 ensure that there's sufficient separation between users, particularly users travelling at quite a different speed, whether they're travelling up or down the hill.

MR BANGMA: I see. And you've mentioned other parts of the region where these rest stops are in place. What's the typical reason that they're needed in other
30 locations?

MS KING: It's the gradient. So, for example, we have a path that travels down the eastern side of the city centre, down the Grafton Gully corridor, which reaches a steeper gradient, and we have put in place a rest stop along that distance to make it more comfortable for users.

35 MR BANGMA: Thank you, and I understand, so that's in place to address the existing terrain and geography, but I think, as I understand, what you're

saying is, well there's this -- sorry, to put that another way, in the conferencing statement you've referred to a recommendation of a maximum gradient of 5% in order to ensure a facility is accessible, and available. So you've described that as the maximum, if you like. Are you able to comment on that? That you are saying it's a maximum? That implies it sits in a range or towards the upper end of the range of what you would like to see?

5

MS KING: 5% is the maximum grade beyond which we would require a departure and mitigation for the increased gradient. So beyond 5% we would expect to see design features put in place to make that facility more comfortable for a wider range of people to use.

10

~Cross-examination by Mr Willmott (4.48 pm)

MR WILLMOTT: First of all you say two things. In 2.3 that the SUP also links to key destinations, most noticeably public transport interchanges, and then in 7, you say "it fills a gap in the existing network", that's these SUPs. Are you aware of the Apollo Drive, Hugh Green, North South connection that exists at the moment, which at 50K PH travel speed is significantly safer as an environment, and more pleasant, in my submission, than alignment next to a busway and/or a motorway?

15

20 MS KING: Yes, I am aware of that facility.

MR WILLMOTT: Have you done any traffic counts or are you aware of any traffic counts of current day pedestrians or -- and/or cyclists who use that as a way of getting to work, for example?

MS KING: No, I'm not.

25 MR WILLMOTT: All right. Have you got any basis for assessing the existing usage of these new SUPs? If they were built overnight, what would be the usage tomorrow?

MS KING: We have developed a demand model which was produced by a consultancy called Flo and peer reviewed by our own joint modelling group and the New Zealand Transport Agency's modelling group. That demand model covers the Auckland cycling network across the entire region and maps out potential future use if a base number of connections are made within the Auckland region to -- currently to the year 2026, and that's the projection numbers that we use for looking at where best to invest in cycling facilities across the region.

30

35

MR WILLMOTT: Right. So does that -- would that study have considered the amount of traffic, for example, on the Apollo Drive Hugh Green parallel route?

MS KING: It would project -- potentially, I'm not sure if it does cover that route -- it would project potential uptake by 2026 if cycling facilities are built connecting to that across the region.

MR WILLMOTT: Right. Now I have struck this potential demand before, and when you look, drill down and look at it more closely, you find that it's aspirational rather than actual projection of existing numbers, in other words, it's a hoped for number, rather than a projection of what exists?

MS KING: It's a projection based on the 2013 Census data of Journeys to Work.

MR WILLMOTT: But you don't have any indication of what exists on Hugh Green Apollo at the moment?

MS KING: The census data maps out the shortest possible route between someone's home and work; it doesn't tell us exactly which route they travel down to get there.

MR WILLMOTT: Right. I've talked about the Hugh Green Apollo that's a little bit further away from the motorway than the Bush Road/Paul Matthews route which links into Constellation and parallels the proposed SUP which follows the Upper Harbour Highway. Are you aware of similarly the same questions apply and I presume the answers are the same, the existing demand on that? I personally travel that from time to time, not often in peak hours I have to say, but I have not personally noticed any pedestrian usage or cycling usage of that route, and I'm just wondering where these aspirational numbers are projected from, if they are actually projected rather than just plucked out of the air?

~Questions from the Board (4.52 pm)

JUDGE HARLAND: Well, just pause there, because there is a question in there.

So you've told us a bit about the model that's been developed and you've told us that that's based on census data which doesn't include the exact route that someone would take, but includes the shortest route. What other inputs are there to that model? Because I think what's being gotten at here is how accurate it is in terms of its predicted value?

MS KING: So the model takes Census Journey to Work data and models it out based on population projection across a range into the future.

The model then we calibrate taking annual manual counts and our fixed counters to look at how accurate the 2013 census data was. We've also looked at where we have built cycle facilities across the region in the past five years and whether the 2013 projections are proving to be accurate and so far, of the routes that have been built, they are proving to be accurate.

JUDGE HARLAND: What's the degree of accuracy, can you give me a plus or minus?

MS KING: I can't no.

JUDGE HARLAND: So you are not the modelling person; you are just an interpreter or use that information in a planning sense?

MS KING: Exactly.

JUDGE HARLAND: All right. So are you able to generally say then whether or not it depends on what the route is as to how much it gets used?

MS KING: Absolutely, yes.

JUDGE HARLAND: And so can you give us an example of a route that you have been able to verify or calibrate by actual counts?

MS KING: Absolutely. The north-western cycle way along the motorway, the State Highway 16, we first introduced that cycle way in 2013 with connections made finally into the city centre I believe in 2014.

Last year we made a further connection into the western side of the city centre. Once those three connections were made and the start of the network through there, we've seen considerable growth along the north-western cycle way in the past year. That's seen growth of 44% in ridership. And that is -- the trend of growth there is in line with the model's predicted growth.

JUDGE HARLAND: So the 44% increase is from what base?

MS KING: That's the year-on-year growth.

JUDGE HARLAND: Right. So that's a cumulative figure is it?

MS KING: That is. It's the one year versus the previous year.

JUDGE HARLAND: And so to give us an idea of the numbers of people you're talking about, do you do it by vehicle -- well, obviously you do it by bike. There is usually only one person on the bike, correct? So what are the numbers you are talking about.

MS KING: The north-western cycleway is currently average around a thousand trips a day.

JUDGE HARLAND: That is to and from?

MS KING: No, that is trips a day. So one person crossing across the counter is counted as a trip.

JUDGE HARLAND: Right. And one thousand a day?

MS KING: Mmhmm.

5 JUDGE HARLAND: From, do you know what previously? From when you started?

MS KING: Well, there was no cycleway when it started. That's grown from in the early years very small numbers. So under a hundred.

JUDGE HARLAND: And does that vary from weekdays to weekends?

MS KING: It's actually quite consistent. There is a very high number of recreational
10 weekend riders that bring up the weekend use along there. It's remarkably popular with people commuting, people travelling to school, and then at the weekend with people going on a leisure ride.

JUDGE HARLAND: So and how did that compare to that your model prediction?

MS KING: It was very similar.

15 JUDGE HARLAND: Very similar. So that's one example, but that might help.

~Cross-examination continues by Mr Willmott (4.56 pm)

MR WILLMOTT: I can certainly understand recreational use of that in the weekends, and that might help bring the numbers up, but the thousand per
20 day, to my mind, equates to something in the order of 70 to a hundred per peak hour. Is that your understanding too?

MS KING: It's very peaked. So there's very high use in the morning and in the afternoon during peaked hour, rather than a consistent number of a hundred people per hour.

25 MR WILLMOTT: Now, do you know what the model forecasts, and I'm pleased to hear that there is some calibration, even if it's off a 0 base which means that it's pretty speculative. Are you aware of what the model predicts for usage of say the east west route between Albany Highway and State Highway 1 as compared with --

30 MS KING: No, I'm afraid I don't have those figures to hand. I'd need to --

MR WILLMOTT: Because you see I live there Greenhithe and I don't know whether anybody would use that route, particularly when there is the much more pleasant parallel route Bush Road/Paul Matthews Drive which exists at the moment?

35 MS KING: There is very good data to support that there's a fine balance in people's choice in walking and cycling between pleasantness and directness. The

north-western cycle ways is a good example of that; it's the most direct route into the city centre. And it's also had a lot of landscaping and so forth to make it a pleasant route to travel along, and we'd expect to see a similar approach with the cycle way planned, and walk planned here. So people will generally, given they're walking or cycling and physically carrying themselves, will looking for the most direct route possible.

5

MR WILLMOTT: I see you mentioned in the -- in 2.4 if cyclists cannot safely and easily reach the SUP this may reduce and delay the benefits that might otherwise be expected. Can you quantify the benefits in terms of financial advantage, for cyclists alone, as distinct from comparing them with other modes of transport?

10

MS KING: The financial benefit to the individual or to the city?

MR WILLMOTT: I'm talking about, say, the route east west following the State Highway 18.

15 MS KING: I'm not sure I understand your question. I'm sorry?

MR WILLMOTT: What I will get to in about two questions down the road, which I would like you to prepare for, is that the benefits need to be considered on a section 32 of the Act, but it seems to me that it's more of a policy decision to develop a cycling and walking network, special purpose 5 metres wide, to promote that form of transport as distinct from to accommodate it, accommodate existing demand, and that that policy overrides any consideration of section 32 analysis of demonstrating that it's beneficial to spend scarce public money on this Project?

20

25

~Comments from the Board (5 pm)

JUDGE HARLAND: I think we might be getting a bit skewed here because section 32 is dealing with plan changes. We're dealing with a designation and resource consents here.

30

MR WILLMOTT: Doesn't section 32 also deal with any rule, plan or policy or proposal?

JUDGE HARLAND: No, it's a fairly legal test that has to be applied, and it doesn't apply here.

Just if I could help. We can't challenge any of the policy direction that has been set down, all right? That's not a function of our role here.

35

We are required to apply statutory instruments, planning instruments which are settled instruments. Underneath those there are a variety of

different plans that we might consider in certain circumstances, but we certainly can't challenge the policy decisions relating to the overall Auckland Unitary Plan approach to this type of topic.

MR WILLMOTT: So my line of questioning was to, and you might decide that it's
5 out of order, was to explore the fact that the land for the cycle way has been purchased by road user charges --

JUDGE HARLAND: We can't go there, I'm sorry.

MR WILLMOTT: -- on the understanding that those road user charges were to be provided for roads, and that I could understand a cycle way being provided if
10 the financial benefits exceeded that of a road lane, but hardly if we're talking about the economic development of Auckland which the plan is full of words about that.

JUDGE HARLAND: Well, I share your sympathy about policy, but sadly, in my role I can't have anything to do with that, and I think the answer to those things for
15 you is political, rather than judicial, which is what this process is.

So I don't think this witness can help with that, but you certainly made the point about the model, and how accurate that might be and how much it might be used and I understand where you're going with this. So I'm not sure if there are any other questions that you can ask?

20 MR WILLMOTT: No, not if it's out of --

JUDGE HARLAND: And don't worry that you've asked this because it's hard sometimes to understand with the whole processes we have associated with these things where everything fits, but we can't challenge the policies that have been settled. That's not all policies, but some of the higher level things
25 are set, and we just have to follow them and implement them.

MR WILLMOTT: All right. Thank you. I think that pretty much covers that.

JUDGE HARLAND: All right. Well, let's -- now we are just past 5 but I think it would be good for Ms King if we could finish today, and I'm not sure that you might have too many more questions?

30 MS SHEARD: Yes, I have some questions.

JUDGE HARLAND: A number? Would you prefer to wait until tomorrow?

MS SHEARD: It shouldn't take longer than ten minutes.

JUDGE HARLAND: Well, I'm happy to sit until then. I'll just have to ask the others if they're okay with that? Let's go.

35

~ Cross-examination by Ms Sheard (5.03 pm)

MS SHEARD: Looking at paragraph 7.2 of your evidence, you state there that Auckland cycling network shows major cycling routes along State Highway 1 and State Highway 18?

MS KING: That's correct.

5 MS SHEARD: And I think it's in 7.3 you refer to those two majors cycle routes as being the backbone of the cycle network?

MS KING: That's right.

MS SHEARD: So it's safe to say that the cycle way along State Highway 1 is a very important component of that network?

10 MS KING: Absolutely, yes.

MS SHEARD: So as part of that backbone the design standards that are applied to that State Highway cycle way are really important, aren't they?

MS KING: Yes, absolutely. It will generate the benefit and the investment if they are of a high enough quality.

15 MS SHEARD: And that principle applies to the part of the cycle way next to the Kiwi Storage Site doesn't it?

MS KING: Yes it does.

MS SHEARD: And that Kiwi Storage Site is also quite close to the Constellation Station, isn't it?

20 MS KING: Yes. Yes, it is.

MS SHEARD: And Constellation Station will be an important destination for cyclists?

MS KING: Yes, our programmed business case is primarily built on the strategy that connecting to public transport is one of the key uses and benefits of cycling investment.

25

MS SHEARD: So you have previously mentioned that a 5% gradient is the maximum gradient provide for in the AUSTROADS standards, isn't it?

MS KING: Yes.

30 MR BANGMA: And in terms of that gradient, safety is a key issue when you're thinking about what gradient is appropriate, isn't it?

MS KING: Absolutely.

MS SHEARD: And the key concern there is for cyclists going downhill too fast, to put it simply?

MS KING: Yes.

MS SHEARD: And in terms of functionality, it's also really important for people going uphill isn't it, in terms of fitness, and who can actually make it up that slope?

MS KING: Yes, to make it as useful to as many people as possible.

5 MS SHEARD: So when you are designing a cycle way on this very important part of State Highway 1 that connects into the Constellation Station, you'd normally be seeking to have the least gradient you possibly could, wouldn't you?

MS KING: Yes.

MS SHEARD: And as a starting point for that your ideal gradient would obviously
10 be 0?

So in terms of working away from that gradient, you were talking before Grafton, Gillie and situations where this topography which makes it necessary to move away from that gradient?

MS KING: Yes.

15 MR BANGMA: So topography is one of the key reasons why you would seek to move away from a gradient which is 0, Correct?

MS KING: Correct.

MS SHEARD: Are there any other reasons why you might move away from that gradient apart from topography, or in your experience is it generally
20 topography?

MS KING: It's really only topography.

MS SHEARD: So you also mentioned rest stops and platforms and I understand that those platforms also have safety issues?

MS KING: Can you clarify? I'm not sure I'd agree they have safety issues.

25 MS SHEARD: In terms of, the -- if they're on line, in terms of a cyclist coming downhill?

MS KING: They'd have the same, or slightly less of an impact than if there were no rest stop, but agreed, yes, there could be some safety concern.

MS SHEARD: So you would only put the platforms in where you had a concern
30 about people either getting up -- it's primarily for people getting up the slope?

MS KING: Absolutely.

MS SHEARD: But there is a safety risk associated with those platforms?

MS KING: There is a safety risk associated with any topography or gradient higher than 5%.

35 MS SHEARD: So is it fair to say that you only increase the gradient and use those platforms as a last resort?

MS KING: That's right.

~Questions from the Board (5.08 pm)

JUDGE HARLAND: Well, can I just clarify that because I thought what you were
5 saying was, where there is a gradient over 5%, you could get a departure
and there would be mitigation, and part of the mitigation would probably be,
most likely be, a rest place that would have to be designed to take into
account the gradient, but also the fact that there might be two people up and
down et cetera. Is that how it works?

10 MS KING: That's right. In Auckland we don't have the luxury of avoiding steep
gradients. So we have a policy in place that defines where the gradient is
steeper than most or -- yeah, most people can comfortably travel, that we
want to ensure that we mitigate that in order that people can continue to use
it safely and comfortably.

15 JUDGE HARLAND: So I think the safety then seems to be attached to the gradient
level which has been assessed and thereafter there need to be other things
to make it safer, is that how it works?

MS KING: Yes, that's correct.

20 ~Cross-examination continues by Ms Sheard (5.09 pm)

MS SHEARD: But you are only forced into using the platforms where the gradient
dictates?

MS KING: That's right.

MS SHEARD: And they're not your first preference?

25 MS KING: No. Our first preference would be a flat cycle way.

~Questions from the Board (5.09 pm)

MR STEWART: Just one little one; I promise I'll be quick. In your evidence you've
mentioned in quite a number places, and I can think of Oteha Valley Road,
30 for instance, on the western end of State Highway 1 where it goes
underneath the Albany Highway, where what you might call SUPs exist,
where there is SUP stops, and there is either a lack of connection or potential
for a future connection. And I'm not sure what your position is there because
the NZTA have said fairly clearly, I think, that it's not within the scope of the
35 Project, but the design doesn't preclude. I think that's the words that have
been used -- preclude connection in future, and so I'm just wondering what

your position is now, given the position of NZTA which I think has been fairly clearly expressed?

MS KING: We've worked closely with the Transport Agency to look at where the most important connections to make to the shared use path are and agree
5 improvements that can be made to those. The cycle network, our target is to deliver that over the next 15 or so years. This Project is a really crucial one for the North Shore to start to build a good network for use, particularly linking to those public transport journeys. So we have prioritised the connections that are linking to existing facilities or to public transport stations
10 and agreed those with the Transport Agency, but we have not been able to, I guess, build as much of the network as in an ideal budget list world you possibly could.

MR STEWART: Well, do you think that the -- in your opinion, the position taken by Transport Agency to provide that connecting ability for future connections is
15 appropriate? And goes far enough?

MS KING: Absolutely. Yes. It's absolutely crucial to enable that future connection. In my opinion, we have agreed the most important connections to make and those are built into the Project.

MR STEWART: Okay. So overall, although you might like to see Transport Agency
20 doing a bit more, am I hearing that you are accepting what has been proposed?

MS KING: Yes. We have worked with them on the agreeing the connections that we deem to be the very important ones to make.

MR STEWART: So is this, to quote from Mr Berry, harmony breaking out here?

25 MS KING: Yes, I would say so.

~(The witness withdrew - 5.12 pm)

~Timetabling matters discussed (5.12 pm)

JUDGE HARLAND: That takes us to the end of today. I'd like to just do a very brief
30 overview of where we might be heading tomorrow. We have Mr Tindall tomorrow, and we have Mr Ridley. Is he tomorrow, or?

MS MCINDOE: Yes, that's correct, Your Honour. And I could also indicate that my -- the number of questions I have for Mr Tindall are reduced. So I think I
35 have -- currently have three lines in the schedule I'm looking at, but I would be surprised if I needed all three, perhaps more like 1 or 2.

JUDGE HARLAND: All right. And we've also got Mr Peake tomorrow, correct?

MR BANGMA: Yes, we do Your Honour.

JUDGE HARLAND: So let's just find out what order we're going to do people are, are we doing Mr Tindall first?

MR BANGMA: In the Board's hands, Your Honour. Not sure we feel strongly either
5 way. We can do. I suppose that's what's anticipated by the previous schedule?

JUDGE HARLAND: Well, it might be, or it might not be, because we've got Mr Ridley hanging over there. So it's just -- what would you prefer?

MS SHEARD: Shall we get Mr Ridley out of the way first?

10 JUDGE HARLAND: Right. We will have Mr Ridley first and then we will carry on with Mr Tindall and Mr Peake. So where that leaves you Mr Willmott, if I were you, I'd be here at 9 o'clock tomorrow because we might be getting very quickly onto Mr Tindall's evidence, for which you have questions for him, and thereafter Mr Peake, who you don't have questions for.

15 So 9 o'clock we'll start.

My assessment then is that we'll probably be finished by morning tea, probably?

MR WILLMOTT: I was going to ask if I could enjoy the same accommodation as you afforded today with a few questions of Mr Peake?

20 JUDGE HARLAND: Well, I don't think there'd be any problem as long as you stick to a relatively confined series of questions. Now you've had a chance to practice you might be able to work a little bit more on going to the heart of what you want, but I'm not being critical in that statement, because I can assist with that.

25 MR WILLMOTT: Thank you. All right.

JUDGE HARLAND: All right. So that's fine.

Anything further we need to deal with today?

Thank you very much. We'll adjourn and we'll be here again tomorrow at 9pm.

30

~(The hearing adjourned at 5.15 pm)