

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 18 July 2017

BOARD OF INQUIRY:

Judge Melanie Harland (Chair)

Mr Conway Stewart (Member)

Mr Nigel Mark-Brown (Member)

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(Powhiri)

(Morning Tea)

(Health and Safety Briefing – 9.49 am)

5

(Hearing opened at 9.51 am)

~Opening Remarks from Judge Harland (9.51 am)

JUDGE HARLAND: Good morning, again. My name is Judge Melanie Harland; I

have been tasked with chairing this particular Board of Inquiry and the two

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Members of the Board who you see beside me are Conway Stewart and

Nigel Mark-Brown. Mr Mark-Brown has extensive experience in engineering

matters and other matters; Mr Stewart, extensive experience in planning. All of us are familiar with the local Auckland environment.

So, we're going to commence the hearing very shortly. I don't have any

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matters that are preliminary that I am aware of at this stage that we need to

deal with. Can I just say that we want this to run smoothly. If you have any

concerns, anyone, about timing, obviously we have the help of our wonderful

EPA staff here, but please do not feel shy in asking if there are matters that we

need to deal with. We want to make sure that all of you have a fair opportunity

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to present the cases that you wish us to hear in a manner that ensures that we get all of the information we need to make the best decision about this.

So, let's have appearances thank you.

~Appearances (9.53 am)

25 MS MCINDOE: Your Honour, Ms McIndoe for the Transport Agency; I appear

together with Ms Christina Sheard and Louisa Trevena-Downing.

MR BANGMA: Mr Bangma for Auckland Council, Auckland Transport and Watercare

Services Limited.

MR BERRY: Mr Berry, as counsel assisting the Board.

30 CHAIR: Are there any other appearances today?

MR ATKINS: Mr Atkins for Waste Management.

JUDGE HARLAND: Any other appearances? All right.

Today we're to have opening addresses so I'd like you to invite Ms McIndoe to open for the agency.

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~Opening from Ms McIndoe (9.54 am)

MS MCINDOE: Your Honour, I understand there are copies of the legal submissions, if we can get those handed out?

5 My intention was to present the first four sections of the submissions and then to hand over to Ms Sheard to present sections 5 and 6 and 7 before I step back in to finish off.

JUDGE HARLAND: I should have said that because we've had the powhiri this morning I believe it's been relayed to you that we're moving through until lunch, but we probably need a break, all of us, and so we'll leave it to you to break at
10 an appropriate time.

MS MCINDOE: Thank you.

I will start with an overview of the Transport Agency's case.

15 The Northern Corridor Improvements Project sits at the junction of State Highway 1 and State Highway 18. It will provide the northernmost motorway connection for the Western Ring Route and increase options for multi-modal travel in the Project area. State Highways 1 and 18 are classified as high volume, nationally significant routes in the New Zealand Transport Agency National State Highway Strategy. The highest classification of state highway in New Zealand, and is reserved for strategic routes that provide the backbone for
20 national economic growth and productivity.

The stretch of State Highway 1 between State Highway 18 and Greville Road currently experiences high levels of congestion due to bottlenecks and constrained interchanges. Completion of the Waterview Connection Tunnel, and future land use growth in the town centres of Albany, Massey North, Westgate and Hobsonville are expected to add further to these
25 pressures. State Highway 18 immediately west of State Highway 1 is currently constructed to expressway, rather than motorway standard, which will be inadequate to accommodate growth in the north and west of Auckland.

30 The Northern Busway currently terminates at Constellation Station and as a result of the congestion along State Highway 1 and the lack of sufficient bus priority measures, buses currently suffer from a lack of journey time reliability between Constellation Station and Albany Station. And the walking and cycling network is not sufficiently developed in this area, further reducing accessibility.

So, to address all of those problems the Transport Agency has lodged notices of requirement and applications for recourse consent which you are asked to consider.

5 Paragraph 1.5: The Project includes: Direct motorway interchanges between State Highway 1 and State Highway 18; capacity and safety improvements of State Highway 1 between Constellation Drive and Oteha Valley Road and on State Highway 18 and State Highway 1 and Albany Highway; also extension of the Northern Busway from Constellation Bus Station to Albany Bus Station; reconfiguration of Constellation Bus Station and the
10 addition of shared used paths along the length of the Project.

Completion of the Western Ring Route is recognised in the Auckland plan as a priority project, to be completed within the first 10 years of the plan. The extension of the Northern Busway and State Highway 18 elements of the Project are also recognised in the Auckland Plan.

15 The Project aims to provide transportation, economic and social benefits to the Upper Harbour and North Shore communities in the wider region. It will provide critical infrastructure to service special housing areas being developed north of Auckland, and the growing Albany metropolitan centre.

20 The Project has the potential to make a nationally significant contribution to economic growth and productivity through substantial improvements in: Journey time reliability; easing of severe congestion on Auckland's North Shore; relieving capacity constrain; more efficient freight supply chains; and by providing a secure and resilient transport network.

25 The Minister for the Environment has determined the Project to be a proposal of national significance and has directed the notices of requirement and resource consent applications to you for consideration and decision. Consultation feedback and public submissions showed the high level of support for the Project. Only thirty-three people lodged submissions on the Project and almost 85% of submitters asked for the Project to be granted (or granted
30 subject to conditions). Key stakeholders, Auckland Council and Auckland Transport submitted in support of the Project.

35 Expert witness conferencing and stakeholder engagement have resolved many of the issues raised in submissions. In particular: There are no outstanding matters as between the Transport Agency and Auckland Council witnesses regarding the closed Rosedale Landfill; there are no outstanding matters as between the agency and council stormwater witnesses; there are no

substantial points of difference between the acoustic experts; conditions have been agreed with Watercare Services Limited, although I note there that they are being refined by the planners to improve clarity, it was noted in the Joint Witness Statement that that should occur; conditions have been agreed with
5 Transpower; Waste Management has agreed that there are suitable options for accommodating its operation both during construction period and post construction.

And if I could just note there, that discussions with Waste Management are continuing, we have agreement in principle, it's looking very promising but I
10 am hoping to be able to update you on that matter as the hearing progresses. I am confident enough to write that sentence in the legal submissions though.

JUDGE HARLAND: On that point, there will be movement during the hearing, we understand that and if that impacts somehow on the schedule we've got we'll be
flexible.

15 MS MCINDOE: Thank you for that indication.

While the planning witnesses have different views about the detail and structure of some of the proposed conditions, they recorded in conferencing that there were no fundamental matters of disagreements that would preclude the Project being granted subject to conditions.

20 Prior to the pre-hearing conference earlier this year, we lodged a statement of issues and topics which was prepared in consultation for Auckland Council, and with reference to the issues in the appendix to that memorandum, it is submitted that: Submitters and witnesses largely agree that the Project provides crucial transport infrastructure to support the future form of
25 urban growth in Auckland.

Now I say "largely agree", because Mr Willmott I understand does not agree, but I understand the rest of the witnesses who have prepared evidence do agree.

In relation to impacts on reserve land, Mr Greenaway and Ms Barrett
30 agree the effects on individual reserves will be positive, negligible, or mitigated depending on the reserve. They also agree that there are further opportunities to improve connectivity.

In terms of the effects of the Project on urban design, landscape and amenity, Mr Bray and Mr Brown are aligned on most matters. The key
35 remaining method of difference relates to the location of the shared used paths on State Highway 18, potential upgrading of Alexandra Stream underpass and

the provision of a shared use path link from Paul Matthews Drive Interchange to Rook Reserve.

Now I understand that of these Auckland Council is only continuing to pursue upgrading of the Alexandra Stream underpass; although I'm sure
5 Mr Bangma can clarify that with you when he appears.

Human health and the environment will be protected from the effects associated with the disturbance of the Closed Rosedale Landfill and contaminated land. Further information on this matter will be provided as part of the Transport Agency's response to the Board's request for further
10 information.

The Project contributes transport infrastructure compatible with Mana Whenua values.

The Proposed stormwater management will sufficiently manage effects associated with the proposed increase in impervious surfaces and contaminant
15 loads.

In relation to natural hazards, there are no matters in dispute between the stormwater experts. They agree that the modelling is acceptable and this indicated that flooding will be less than minor. And the Board has also asked for further information relating to seismicity and so we hope to be able to
20 provide that to you during the course of the hearing.

The only expert ecology evidence is that called by the Transport Agency. The evidence of Ms Barnett and Mr Don is that effects of the Project on terrestrial and fresh water ecology will be no more than minor.

Mr Seyb's uncontested evidence is that the effects of the Project on
25 water quality can be appropriately managed during construction and will be positive during operation.

The planning witnesses for the Transport Agency and Council disagree as to whether particular conditions should be imposed on the resource consents, or the designations, but as I have already noted, there is very little left
30 in dispute about the substance of the proposed conditions.

Now of course they are further conferencing today, the planning witnesses, on noise conditions, so we shall all see what arises as a result of that conferencing.

JUDGE HARLAND: Just on that point, one of the things I'm interested in about that, is does it make a difference for everybody? Are we talking six of one and half a dozen of another, or are we not? So just think about that as the hearing progresses thank you.

5 MS MCINDOE: Could I just seek clarification, do you mean does it make a difference whether the conditions are imposed on the designations or the --

JUDGE HARLAND: Yes, does it make a substantive difference? I understand the procedural aspects and the argument which I imagine you will develop, but at the end of the day, does it matter? Is really the question.

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~Ms McIndoe continues (10.06 am)

MS MCINDOE: Thank you. Paragraph k: The effects of the Project on existing infrastructure will be appropriately avoided, remedied or mitigated. Conditions have been agreed with Watercare, Transpower, Vector and other infrastructure providers. Concerns about impacts on the local roading network will be positive overall, even though some locations will experience higher vehicle numbers. Concerns about impacts on the operation of the Oteha Valley Road interchange have been resolved through further modelling.

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20 And there I refer to a further Joint Witness Statement which was provided by Mr Peake and Mr Clark I think only yesterday to the Board, or to the EPA.

~Questions from the Board (10.06 am)

JUDGE HARLAND: Sorry, so that's just a recent one. Do you have a date, was that provided yesterday?

25 MS MCINDOE: The document itself isn't dated, but it was prepared by the witnesses who mustn't have thought to put a date on it. But I understand it was provided to the EPA in the last couple days, perhaps over the weekend.

JUDGE HARLAND: Okay.

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~Ms McIndoe continues (10.06 am)

MS MCINDOE: Paragraph (l):

The construction effects are short term and can be adequately avoided, recommend need or mitigated:

35 Mr Ridley's evidence regarding the effects of earthworks required for construction is that the suite of proposed erosion and sediment control

mechanisms represent best practice, and will ensure that all adverse effects are kept at a less than minor or negligible level.

Auckland Transport's concerns regarding traffic impact during construction have been resolved through further conferencing and the addition of further conditions.

The acoustic witnesses agree that there will be significant adverse effects from daytime noise and vibration, and from night-time construction noise, but this will affect a relatively small number of receivers, for discrete parts of the overall construction period. They also agree there are methods to reduce effects, and this will require very careful management through the Construction Noise and Vibration Management Plan process.

It's submitted that the only issues of disagreement between the Transport Agency and submitters and the Board's witnesses are firstly whether the Alexandra Stream underpass should be upgraded or replaced; second whether the shared used paths should be on the north or south side of State Highway 18.

And in relation to that, I understand, and Mr Bangma can confirm when he appears, that Auckland Council no longer seeks the shared use path to be relocated to the south, but Mr Fogarty, a submitter on this matter, did raise that in his evidence and submissions and so I've left it in the list.

Third, whether the Project should incorporate south-facing ramps; impacts on the Kiwi Self Storage site; paragraph (e): The extent to which the Project should future-proof for future works; additional shared used path connections and lastly, matters relating to the detail of conditions, such as whether the construction conditions should attach to the resource consents or designations.

~Questions from the Board (10.08 am)

JUDGE HARLAND: Just to ask again, have we got in relation to (f) "additional SUP connections" have we got a list of those ones that are still outstanding? Because there was a generic objection or comment about that, and then there were specific ones that were at grade that weren't going to make any difference, and then there were others that were in dispute. So, do we have clarity about which ones we're talking about there?

MS MCINDOE: At the moment the Transport Agency and Auckland Transport and Auckland Council have been discussing --

JUDGE HARLAND: All right, we'll hold that thought then.

MS MCINDOE: We'll come back to it later in the legal submissions as well. There's no provided list at this stage. The intention is that the organisations would work together to progress many of the connections sought when the Project is constructed, but that there isn't is a need to impose conditions on these consents and designations which are being sought relating to those connections.

JUDGE HARLAND: All right, well I will just signal that I am interested then in the connectivity argument, which comes under a couple of headings, and how that's going to be helpful if it's just left for another day.

MS MCINDOE: Thank you, that's useful.

JUDGE HARLAND: Because the outcome for that, could be none. That's the worst case scenario, which is what we would have to deal with.

MS MCINDOE: Yes.

JUDGE HARLAND: Right. So, you might want to think about whether it's better to have some rather than none.

MS MCINDOE: There's still some of the details being worked through and we'll take that on board.

JUDGE HARLAND: Thank you.

~Ms McIndoe continues (10.10 am)

MS MCINDOE: Paragraph 1.14 b: The only outstanding issues being pursued by Auckland Council are whether the Alexandra Stream underpass must be upgraded, and whether mitigation is required for the stream reclamation.

These opening submissions firstly briefly describe the Project; I discuss statutory considerations, including the Transport Agency's alternative assessments, whether the Project and designations are reasonably necessary to meet the Project objectives, effects on the environment and other relevant matters; specifically respond to matters raised in the submissions and evidence regarding: Alexandra Stream underpass; location of the State Highway 18 shared used path; south-facing ramps, impacts on the Kiwi site and requests for future-proofing. I discuss the Transport Agency's proposed conditions; consider Part 2 of the Act and outline the Transport Agency's evidence.

So, the Transport Agency is the statutory body charged under the Land Transport Management Act with operating the State Highway network and there is also a requiring authority under section 167 of the RMA.

The Transport Agency's statutory objective under section 94 of the Land Transport Management Act is to undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest. Its functions relevantly include: Contributing to an effective, efficient and safe land transport system; managing the state highway system, including planning et cetera that goes with that, and managing funding of the land transport system.

The Transport Agency has three requiring authority approvals and it relies on the two most recent approvals for this Project. Those approvals authorise the agency as a requiring authority for the purposes of firstly: Construction and operation, including maintenance et cetera of any State Highway.

I have just noted there in the footnote that of course the Transit New Zealand Act 1989 no longer exists, it has become the Road Controlling Powers Act, it's been renamed.

And second, constructing or operating or proposing to construct or operate cycle ways and shared used paths.

The Project itself:

In 2009, the Government identified Roads of National Significance and set priorities for investment in these roads as the most important transport routes, the RONS, as we call them, are roads which are critical to ensuring that users have access to significant markets and areas of employment and economic growth. This Project forms the northern most link of the Western Ring Route, which is one of the seven RONS.

The Project covers the area of State Highway 18 between Albany Highway and Constellation Drive, and State Highway 1 between Upper Harbour Highway interchange to just beyond the Oteha Valley Road interchange. It also includes some land and local road connections adjacent to the existing State Highway. The busway component of the Project will be located to the east of the upgraded State Highway 1, and the new shared used paths will be to the east of the new busway and north of the upgraded State Highway 18. The Project also includes reconfiguration of the existing Constellation bus station. And that's to allow buses to drive out the end if you like, and two-way use of that station.

The key components of the Project are shown on a video fly-through for the project, which I would like to play for you now, the video is intended to be

5 simply a tool to assist understanding. I am not proposing that it be entered as evidence. And in particular I'd like to note that it's not accurate in the following respects: First of all it shows an overbridge entering Albany bus station and that overbridge is in the incorrect location, annexure A to Mr Moore's evidence shows the overbridge arrangement which is now proposed. And secondly, the video shows pedestrians and cyclists using the new bridge at Spencer Road, but applications for this new bridge are not part of the suite lodged for consideration by the Board and I will explain that further shortly.

10 But if I could now play the video?

~Video played (10.14 am)

~Ms McIndoe continues (10.17 am)

15 MS MCINDOE: The Transport Agency and Auckland Transport have been working collaboratively to facilitate across all transport modes for the Project.

Accordingly, connectivity to the Busway stations and to the existing proposed cycling network are key parts of the Project. There are not any outstanding issues between the Transport Agency and Auckland Transport in this respect.

20 ~Questions from the Board (10.18 am)

JUDGE HARLAND: Can I just ask you at this point, and it might be that it's a matter that a witness needs to address, but the funding, there seemed from the evidence to be, particularly with the cycling, and the cycle way shared use paths, some disconnect between the various plans that allocate the funding, and I wondered whether I was right or wrong in reaching that potential view, because it seemed that there wasn't the funding available for certain things that all other things being equal Auckland Transport might have money for, or Auckland Council, or whoever might have money for, but because of the planning process, it was unable to be changed. So, I'd just be helped if someone could put me right if I'm wrong about that, because there seemed to be a lack of flexibility in funding if this Project had been brought on at national level for there to be a response at a local level, and that might be right, it might be wrong, I don't know. So, if someone could help me with that at some point that would be really good.

35 MR BANGMA: If now is a good time Your Honour, I understood from Ms King's evidence for Auckland Transport that obviously her evidence raised issues with

a number of additional connections or segments that might be added to the SUP to better connect it with existing established shared use paths or reserves or local roads. Your Honour is correct that I think generally there is a funding issue in the sense that this particular part of Auckland has I think a limited budget for walking and cycling and hasn't generally been identified as one of those higher priority areas and I think that's the issue Your Honour is raising in terms of there being no extra money from Auckland Transport's perspective to provide some of these additional linkages which they think are desirable for greater connectivity.

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10 JUDGE HARLAND: It's more the issue of the flexibility to do it; so if you've got in a long-term plan or some kind of funding around that doesn't occur for ten years or whatever then it's not going to have the flexibility to be able to respond to a Project that's brought forward. So, it's more to do with that aspect and it could be that your planner is able to assist with that. It's not a big point, it's just I don't want to draw an inference that isn't correct based on structures that might already be in place that nobody can do anything about unless they're changed at a more significant level. It might be something we comment on.

15
MR BANGMA: So Your Honour's question is whether there is contingency in the budgets?

20 JUDGE HARLAND: One of the impressions might be, and I'm not saying it is but it might be that there is an attempt to get as much out of this Project as possibly could be got to make maximum benefit of it and the question is who pays now if there is a funding structure that is inflexible because of the way it is, nobody's fault, that's just how it is, then is that something we should be commenting on given that the whole approach to planning these days for these sorts of things is an integrated approach? So, it's not to cast assertions on anyone, it's just to reflect the reality of what the situation might be. And I don't want to get it wrong, and we might not even go there, but it just seemed, reading between the lines, that there were some opportunities here to do something that might be more holistic, but there are some road blocks and that might be one of them.

25
30 MS MCINDOE: I just looked back down the room as well, Mr Glucina who is the Transport Agency's first witness will be able to provide some explanation of the Transport Agency's role in funding works that occur at a local level. So, it might be that we can put some questions to Mr Glucina and he can provide you the information that he has on that matter.

35

JUDGE HARLAND: Look, my approach in all of this is everyone always pays huge attention to what the questions are and sometimes they assume a lot more significance, in your minds, than they are in ours. This is just a question that we want to maybe consider, maybe not. All right?

5 MS MCINDOE: I think it would be useful to have it clarified.

JUDGE HARLAND: All right, thank you.

~Ms McIndoe continues (10.22 am)

MS MCINDOE: The next paragraph, paragraph 3.8: In addition to the NCI Project the
10 Transport Agency and Auckland Transport are currently investigating options for a new bus station and park and ride facilities near Rosedale Road. The new bus station will be consented separately and it's not necessary in order to achieve the NCI Project objectives or the benefits delivered by the project.

15 What I mean to say there of course is that our Project doesn't rely on that additional extra bit.

The Transport Agency and Auckland Transport have also been working together with Watercare on the design of the bridge at Spencer Road. This is the bridge shown in the video with the walkers and cyclist travelling across it. This bridge does not form part of the Project but will be delivered as a
20 multipurpose structure that accommodates both pedestrian and cycle way facilities and Watercare's new pipeline between the Albany and Pinehill reservoirs. The outline plan of works for those works have been issued and works are currently estimated to commence in September 2017.

25 So those works will proceed irrespective of the outcome of this hearing.

~Questions from the Board (10.24 am)

JUDGE HARLAND: So that's all go, it's a timing issue at a later date, is that the point?

MS MCINDOE: It's all go and it will be probably wrapped up together with construction works for this Project at some point in time, but it's been authorised and the
30 Project is proceeding on the basis that it certainly will be constructed.

JUDGE HARLAND: Thank you.

MR STEWART: Maybe a question then arises, and it's probably fairly obvious if that's going to start in September this year can we assume that the construction of that bridge is not impacted in any way by the construction of this Project? In
35 other words, are you going to run and you know get in the way of each other, is one Project going to affect the other?

MS MCINDOE: It's a good question, not something I had thought of before and it's probably a question best put to Mr Hale who is the construction witness for the Transport Agency, and I am looking over here to make sure we remind Mr Hale.

JUDGE HARLAND: If you could make a note to cover that point off thank you.

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~Ms McIndoe continues (10.25 am)

MS MCINDOE: So the applications by the Transport Agency, we have instances of requirement for new designations, notices of requirement to alter existing designations, application for regional resource consent and applications for consent under the Resource Management National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations.

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Detailed design will be completed and a construction methodology prepared for the Project once the necessary statutory approval has been obtained. The NCI Project is to be constructed by an alliance. The Transport Agency is currently working with a preferred alliance proponent, who is likely to be appointed to construct the Project.

~Questions from the Board (10.26 am)

20 JUDGE HARLAND: If we can pause there.

We are aware of difficulties that may have arisen in the other Board of Inquiry concerning witnesses who are part of the alliance. Is the alliance arrangement here to -- developed to such a degree that we need to be concerned about any of those kinds of issues?

25 MS MCINDOE: I'm probably not the -- Ms Sheard is offering to answer that, in which case I'm happy she does that.

MS SHEARD: No it's not. So, the alliance hasn't been formally confirmed at this point. So, this consenting process is proceeding at the current time based on the plans et cetera you have in front of you. There will of course be in the background, as you know after the alliance is formally appointed, the further development of detailed design et cetera. But for the current purposes, no.

30

JUDGE HARLAND: So none of the witnesses appearing before us are subject to any financial arrangements in relation to the alliance that we might need to pay attention to in terms of the expertise?

35 MS SHEARD: Is your question are any of the experts part of the alliance?

JUDGE HARLAND: Yes, but more particularly, the Code of Conduct talks about people not having any interest in an outcome, we want to make sure that there are no issues to do with that in this case.

MS SHEARD: Certainly none of the experts before you are part of the alliance. I

5 would need to double check in terms of consultancy arrangements. I know that Aurecon, for example, is advising the alliance on the project, because of course they're the ones that prepared the concept design, so they're briefing them and trying to -- the alliance component, so they're briefing them and trying to bring them up to speed with what the Project involves.

10 In terms of payment I might need to clarify that aspect.

JUDGE HARLAND: Well, deal with it on a witness-by-witness basis and if that could be covered off. We just want to make sure that we're right on board with all of that.

All right, thank you very much for that.

15 MS SHEARD: Certainly.

~Ms McIndoe continues (10.28 am)

MS MCINDOE: The alliance contractor will undertake detailed design, prepare a construction methodology, and carry out the works themselves. Those works
20 will need to be in accordance with any approvals which this Board grants, or the alliance will need to seek alterations to the designations and changes to resource consents or new resource consent.

To authorise construction, operation and maintenance of the Project, the Transport Agency lodged six NORs with the EPA. NOR1 is to alter existing
25 designations to 6750.

Perhaps if I could have it taken as read that there is a list there of the NORs that have been lodged?

Paragraph 3.13: Designation 6753 currently applies to the section of State Highway 18 immediately to the west of State Highway 1. This area will be
30 contained within the boundary of the altered Designation 6756.

So, if I can explain a bit further, designation 6756 already applies to State Highway 18. The intention is to grow that designation so that it spreads over the area currently occupied by Designation 6753. So that 6753 will no longer be necessary and can be withdrawn. It's simply a tidying up exercise to
35 remove the sort of little bits and pieces of designations.

As mentioned in relation to the video, the Transport Agency refined the Busway designation through design after the applications were lodged. This section of the Busway which enters the Albany bus station now proposes to which if I can use the word "land", on the western side of State Highway 1
5 rather than in the middle of the bus station carpark. This option has a number of advantages including minimising the number of carparks that need to be removed within the station carpark and the reduction of the visual effects of the structure. A small part of the new busway will fall outside the of the footprint of NOR4, but it will fall within the footprint of NOR2.

10 So, the redesign puts part of the bridge outside of that area that we had previously identified as the formal busway.

While the alteration sought to NOR2 is very broad and could authorise this section of the busway, for operational purposes the Transport Agency would prefer all of the busway components to be included within the busway
15 designation which is NOR4. Accordingly, the Transport Agency requests that the Board modify NOR4 under the RMA so that it extends over the land shown in the plans which I've appended to my submissions.

If I could take you to those. Appendix A, there are a number of plans.

So, the first two plans are revised general arrangement plans.

20 Now these are the same as were appended to Mr Moore's Evidence in Chief I think it was, but are here for convenience.

So, they show the new location of the busway ramp. It inconveniently is near the join of the two plans and that's why there are two plans to address the matter.

25 The next plans are designation plans. So, these show the new locations of the designations themselves in terms of their footprint.

And then the final two plans are the Notice of Requirement plans.

~Questions from the Board (10.32 am)

30 JUDGE HARLAND: You might just need to go a bit slower here.

So, we have numbers on these plans, do we, so that the record can accurately show. The last two ones are 9 and 10, is that correct?

MS MCINDOE: They are in Appendix B, I think you might have jumped to

Appendix B. It should be General Arrangement plan sheet 1, and then General
35 Arrangement plan sheet 2.

JUDGE HARLAND: Yes.

MS MCINDOE: Then designation plans 1 of 10.

JUDGE HARLAND: Yes.

MS MCINDOE: And designation plans 2 of 10.

JUDGE HARLAND: Yes.

5 MS MCINDOE: And then finally Notice of Requirement plans, 1 of 10. And Notice of Requirement plans 2 of 10.

JUDGE HARLAND: Right.

MS MCINDOE: So they all relate to the busway ramp landing in Albany.

10 ~Ms McIndoe continues (10.33 am)

Paragraph 3.16: The Transport Agency also requests that the Board modify Notice of Requirement 3 in the location of Bluebird Reserve. Now at the time the applications were lodged, Auckland Council had not determined whether it preferred the proposed stormwater pond to be located in Rook Reserve or Bluebird Reserve. And for that reason the NOR allowed for both options. It is now clear that Rook Reserve is the preferred option and there is, therefore, no reason for the designation to encompass as much of Bluebird Reserve as is shown in the Notice of Requirement plans. So, we therefore request that the Board modify Notice of Requirement 3 to reduce the area of land affected as shown in the plans in Appendix B. And so we could run through those plans.

15 So, we could run through those plans. The first one is general arrangement sheet 9. Bluebird Reserve is located towards the right-hand side of that sheet just to the left of the match line, if you like, north of -- it's south because the plan is upside down, south of State Highway 18. So, you will see that the designation and NOR lines which are shown on the general arrangement plans have been relocated so they no longer encompass Bluebird Reserve.

20 30 ~Questions from the Board (10.35 am)

JUDGE HARLAND: So hold on a second, let's just get this right. So, what is the key for the re-located --

MS MCINDOE: Previously the stormwater pond, there was -- we were trying to keep options open about whether it would be in Rook Reserve or Bluebird Reserve.

JUDGE HARLAND: I understand that, but I'm just trying to understand what the key says is ow the line for the designation, is it the blue dotted one, no that's the culvert.

MS MCINDOE: Yes, so the designation boundary that we're seeking is the pink or red, I guess it is. So, the blue designation -- the blue dotted line is the
5 designation which currently exists right now. The pink one, the pink dotted line, or red depending on your printing, is the one that is now being sought.

JUDGE HARLAND: Right, thank you.

MS MCINDOE: Just again, because of the location of the match line I've had to
10 include sheet 10 which again, just shows that on the very left-hand side of that page that the designation or the NOR no longer extends over Bluebird Reserve.

And then equivalent changes to the designation plans.

Now the key -- the legend for the NOR plans and the designation plans is in the A3 volume folder which was lodged with the application documents.

15 These have been prepared so they can simply replace the ones which are in that folder.

JUDGE HARLAND: I see, thank you for that. So that's 9 of 10 and 10 of 10?

MS MCINDOE: That's right.

And then NOR -- Notice of Requirement plans 9 of 10, and 10 of 10.

20 JUDGE HARLAND: Thank you.

~Ms McIndoe continues (10.37 am)

MS MCINDOE: Back to paragraph 3.17: The Transport Agency is seeking 25
resource consents, which are described in Mr McGahan's evidence. These
25 consents will authorise those aspects of the Project which cannot be authorised by a way of a designation - being generally those aspects which do not comply with the regional rules in the Auckland Unitary Plan.

In summary -- now I've said "in general", because of course the national
environmental standard relating to contaminated soils also requires a resource
30 consent, although it's a district resource consent, it's a matter that can't be authorised by designation.

These consents are firstly the removal or alteration of vegetation both
within riparian margins and within a SEA; carrying out earthworks including
within a SEA; carrying out works on existing structures or to construct new
35 structures and associated bed disturbance or depositing any substance, reclamation, diversion of water and incidental damming of water with a SEA;

reclamation and piping of a naturally occurring intermittent or permanent watercourse; diverting and discharging surface water; ground water taking and diversion; stormwater diversion and discharge; authorising use of a high use road and associated discharge; authorising impervious surfaces within a stormwater management area; discharging water and/or contaminants onto or into land and/or water associated with the upgrading of network utility infrastructure; discharge of contaminants to air, and disturbance and removal of soil from contaminated or potentially contaminated soils and that's under the soil NES.

In relation to reclamation, the Transport Agency has taken the conservative approach of applying to reclaim both 17.4m of stream north of Constellation Dry Pond, as well as approximately 680m of 'stream', if it can be called that, I have put that in inverted commas because most people might not think of it as being stream inside the Constellation Dry Pond footprint. The values of both streams were assessed in the Assessment of Freshwater Effects as being very low. After lodging the application, Auckland Council staff advised that reclamation consent is not required in relation to the stream within the Dry Pond and that is explained in the evidence of Mr McGahan and Ms Barnett.

But contrary to that earlier advice, Mr Turner for the Council now considers that resource consent is required for reclamation of the streams with the Constellation Dry Pond. Now the Transport Agency and its experts disagree with that view, but the difference is not material. Resource consent applications have been sought to reclaim the larger area and the effects of that reclamation have been assessed. I'm sure that Mr Bangma can cover this area in his opening submissions. I guess the summary from our position is that we don't think a consent is needed to reclaim those streams, but applications have been made and the effects have been assessed. And therefore, it does not amount to any -- there is no jurisdictional reason to prevent you granting the larger area.

As Mr McGahan's evidence explains, the activity status for the resource consents sought is generally restricted discretionary or discretionary, although there is one activity with non-complying activity status. Non-complying activity status is only triggered because the Projects will involve reclamation of the artificial watercourses discussed above, which Auckland Council seems to be a 'stream'.

The Board's Minute and Direction from last week instructed counsel to address whether it is appropriate to bundle in this case, or if the matters are sufficiently unrelated to the non-complying activity so that the application can be unbundled.

5 Where there is an overlap between two consents, so that consideration of one may affect the outcome of the other, it's generally appropriate to treat the application as one requiring overall assessment on the basis of the most restrictive activity.

10 The general approach would not be appropriate where: One of the consents sought is classified as controlled activity or restricted discretionary, as is the case here; the scope of the consent authority's discretionary judgement in respect of one of the consents required is relatively restricted or confined, and lastly rather than covering a broad range of factor; or have consequential or flow-on effects on matters to be considered on the other application, but are
15 distinct. And that is where the problem arises here in terms of unbundling. In this case, given the extent to which the proposed activities are interrelated or overlapping, it is considered appropriate for the resource consent applications to be bundled together and considered jointly as being for a non-complying activity. The non-complying reclamation activity occurs as a consequence of
20 filling watercourses, and is therefore not distinct from the earthworks, diversions and construction of structures to be authorised by other resource consents. And the Transport Agency's not asking the Board to unbundle, if you like, but instead to treat all of the applications as being bundled together for a non-complying activity.

25

~Questions from the Board (10.43 am)

MR MARK-BROWN: Can you just clarify what you mean by "is not distinct from" are you saying that they're all earthworks, so it's part of the earthworks, therefore it's not distinct? I'm just trying to follow that.

30 MS MCINDOE: What I was trying to explain is that the earthworks activity actually gives -- implements if you like the reclamation, and so it's difficult to distinguish the activity of depositing the earthworks from the activity of the reclamation. Those two go hand-in-hand and so we're not suggesting that you try and treat the reclamation itself as a stand-alone activity.

35 MR MARK-BROWN: Okay thanks.

MR STEWART: Further to that, on the same point, putting it another way, is it your point that the bundling is necessary because the earthworks are an integral part, I think it's of the overbridge, the connection, so you can't provide the connection without doing the earthworks, and therefore, it's part of the whole project, therefore it needs to be bundled?

MS MCINDOE: The earthworks consent that's been sought relates to the entire project, it hasn't been sought on a geographic basis. And so, it's difficult -- it would be difficult to pry them apart, like you say.

No resource consents are required under the National Environmental Standards for Electricity Transmission Activities, which contains regulations relating to the relocation of existing transmission lines, and this is because the Project has been designed to avoid impact on existing transmission lines within the Project area, so no changes to those transmission lines are required.

~Ms McIndoe continues (10.45 am)

Turning to the statutory assessment.

The Board is required to act in accordance with section 149P(2) of the RMA in considering and determining the resource consent applications, and in accordance with section 149P(4) in determining the NORs. These sections require you to apply sections 104 to 112 as applicable as if it were a consent authority and have regard to the matter set out in section 171(1) as if you were a territorial authority. The Board also has the power to cancel, confirm, modify or impose conditions on the NORs as it thinks fit.

The Minister's reasons for his direction referring the Project to this Board are firstly: That the proposal has aroused wide spread public interest and is likely to generate further interest particularly associated with improvements to public transport, and impacts on public reserves, the Watercare Rosedale Wastewater Treatment Ponds, and disturbance to the Closed Rosedale Landfill; the designations included as part of the proposal will impact on property ownership, including privately owned land, and public reserves; lastly, the proposal is required to realise the full benefits associated with the Western Ring Route of National Significance, as I've already discussed.

Section 149P(1) of the Act provides that you must have regard to those reasons and you must consider any other information provided by the EPA under section 149G which are broadly the notices of requirements and

applications themselves, the submissions, and the local authority key issues report.

Your determination on the applications primarily falls to be considered under section 104 and 171 of the Act. Under section 181, those same matters are to be considered with any necessary modifications in respect of a NOR for an alteration as if it were a NOR for a new designation.

If the resource consent applications pass the section 104D test, all resource consents sought in this application can be considered for determination by the Board pursuant to section 104B and 104. Sections 105 and 107 contain further requirements which the Board must be satisfied of before granting a discharge consent.

The balance of this section addresses firstly, particular NOR consideration, being -- the reasonable necessity test and the adequate consideration of alternatives requirement. The resource consent considerations relating to section 104D gateway; section 104 matters; alternatives; and section 105 and 107 matters.

The effects of the Project on the environment will be discussed in the next section, section 5.

The relevant planning and policy instruments are extensively discussed in the Joint Witness Statement by the planners and that discussion will be repeated in the submissions. The views of the planning witnesses with respect to the relevant objectives and policies are summarised in the tables at Annexure 2 to the statement and in most cases the planning witnesses were in agreement, and concluded that the Proposal was consistent with the provision in question. They concluded that there are no fundamental matters of disagreement between them which would preclude the Project being approved, subject to conditions.

Just to be clear, and on that basis, I'm not going to traverse the objectives and policies within any great detail with these submissions.

The NOR considerations.

Section 171 requires that particular regard is had to whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

As you will see on page 18 I have created a table which on the left lists the Project objectives and then indicates which Notice of Requirement that Project objective relates to, because not all of the Project objectives relate to all

of the NORs. But there's not -- neither is there a straight matched one objective to one NOR. It's a bit of a mixture approach.

So, to run through the objectives themselves. They are firstly to help facilitate interregional travel between Auckland and Northland by completing the Western Ring Route to motorway standard. And I think it's quite clear that that objective related to the State Highway sections, the State Highway NORs, 1, 2 and 3.

Second objective to improve connectivity of State Highway 1 and State Highway 18 interchange. Again, that's the State Highway NORs.

To improve safety, efficiency, and reliability and capacity of the State Highway, again particularly to the State Highway NORs.

To improve safety, efficiency, capacity and reliability of State Highway 18 between State Highway 1 and Albany Highway, again that's particular to the State Highway NORs.

To provide safe walking and cycling facilities adjacent to State Highway 1 and State Highway 18 and to add connections to local transport networks.

And this objective is relevant to the State Highway 18 Notice of Requirement because of the shared used path which is to be located north of State Highway 18 within that designation.

It's relevant to the Notice of Requirement 5 which is particular to the shared use path which is to run alongside State Highway 1, and it also relates to the Constellation Station designation.

And then lastly, to extend the northern busway from Constellation Bus Station to Albany bus station.

And that objective is relevant to the busway extension Notice of Requirement as well as the Constellation Station designation alteration.

Both the works and the designations, including alterations, are reasonably necessary because: Firstly, the works are reasonably necessary to provide the motorway standard connections between State Highway 1 and 18 and increase the capacity of the State Highways and to provide for the new shared used path and northern busway extension. The new designations are reasonably necessary because they will authorise the construction and operation of the northern busway extension and the new shared used paths; they will allow the required land to be identified and will provide a clear indication of intended land use; they will provide a more efficient planning mechanism than a resource consent or plan change; they will authorise

functionally separate assets that may be possibly transferred in the future. And for this reason, separate designations rather than alteration of existing designations are appropriate. Having separate designations for these facilities is also consistent with the existing northern busway being authorised by a designation which is separate from the State Highway designation.

Now the alterations are reasonably necessary because firstly, they will authorise the Transport Agency to undertake the work; they will widen the State Highway corridor to provide for additional features such as new connections between State Highway 1 and 18 and additional State Highway lanes; they will allow the Project to be clearly and accurately identified in a unitary plan, by updating the existing designation to show what will be constructed; they will provide a more efficient planning tool than using resource consents or plan changes to authorise the project, given the complexity of the design detail and mitigation planning. In addition, altering, i.e. widening the existing designation footprint is more appropriate, in my view, than adding on new designations, or if you like, sort of tacking on new designations. So more appropriate to spread the existing designation than to tack on new bits on the side where the works will occur outside of the existing designation footprint. And that's because it will mean the conditions can be imposed over the entire Project rather than -- in a coherent way. So early on in the Project development we considered whether the existing designation should be grown, or new designations should be sought along the edges, if you like, where the existing designation wasn't wide enough. And the decision was made that the existing designation should be grown so that there wasn't any "roadblocks", I hate to use that word, to the integrated management of effects across the entire project. We didn't want to get to a space where the existing designation had one set of conditions which had been decided way back when it was originally put into the plan, and then you get your consideration restricted simply to the bit on the edge. That's not the approach that's being taken by widening the existing designation.

~Questions from the Board (10.55 am)

JUDGE HARLAND: Can I just go back a step and ask you why you say it's a more efficient planning mechanism?

MS MCINDOE: Well in that instance it's more efficient because it means that the conditions don't need --

JUDGE HARLAND: I understand that point, but you've said under iii in b and iv, "a more efficient planning tool than using resource consents or plan changes"?

MS MCINDOE: Certainly in relation to a plan change, that's a -- it doesn't -- a plan change wouldn't provide any -- and a resource consent, neither of those
5 processes would provide any protection of land or identification of it in the plan. A designation operates so that anyone who wants to do activities on the land needs to get the prior written approval of the requiring authority.

JUDGE HARLAND: So it's really about identification, isn't it?

MS MCINDOE: Yes, it is, yes.

10 JUDGE HARLAND: A plan change might do that.

MR STEWART: Seeing we've just interrupted your flow on page 20, just top of the page, subparagraph 4 you talked about "may possibly be transferred" so just so I get a feel for what you really mean by that, do you mean transferred to some other body?

15 MS MCINDOE: There's no intention to transfer at this stage.

MR STEWART: No, I understand that.

MS MCINDOE: But you could probably imagine a situation where the shared use path might be better looked after in the future by Auckland Transport and we wanted to make sure that if the decision was made along those lines in the future, then
20 the designations themselves didn't prevent that transfer from occurring. The process under the RMA is that where responsibility for a Project transfers then the designation automatically transfers, I think it's under section 182. But that would be difficult if the shared use path was tangled up in the designation for the State Highways which were themselves going to remain the responsibility of
25 the Transport Agency. So that's really what I was hinting at there, that the shared use path designation is created as a stand-alone designation because it wouldn't surprise me if in some time in the future there was a decision made between Aucklands two transport operators that perhaps it would make more sense for Auckland Transport to be responsible for maintaining that facility in
30 the future.

MR STEWART: Thank you.

~Ms McIndoe continues (10.58 am)

MS MCINDOE: Page 21, paragraph d: It's reasonably necessary for the State
35 Highway 1 designation to be extended over the same area as the busway and shared used path, you might have noticed this in the plans that there is a fair bit

of overlap between the designations, and that's in order to enable services beneath those assets which will support the State Highway. So, I understand there will be underground services provided under the shared used path which will be for the benefit of the State Highways.

5 And lastly, the expanded designations will provide space for construction service areas. Following completion of construction, there may be the opportunity to reduce designations subject to providing sufficient space for maintenance activities. And there are conditions proposed to provide for that.

10 The planning evidence of Mr Burn describes how the effects subject to the Notices of Requirements acting together and the designations and alterations to designations as a planning tool are reasonably necessary to achieve the Project objectives. These matters are also addressed in the evidence of Messrs Church, Mr Glucina and Mr Moore which sets out in detail how the Project design will ensure that the Project will meet the Project
15 objectives.

 The circumstances in which a work and designation qualify as reasonable necessary were recently considered by the Environment Court in the Queenstown Airport case. And by way of non-exhaustive criteria the Court observed that the work and designation would be reasonable necessary where
20 "there is a nexus between the works proposed and the achievement of the requiring authority's objectives ... the spatial extent of land required was justified in relation to those works; and the designated land is able to be used for the purpose of achieving the requiring authority's objectives for which the designation was sought."

25 Some submitters have suggested that additional work or additional or other works that have not been proposed as part of the Project are also reasonably necessary to achieve the Project objectives and therefore, should be included in the Project works. Examples of these are upgrading State Highway 18 Alexandra Stream Underpass, installing south facing ramps and
30 additional shared used path connections.

 And the details of these are going to be addressed in these submissions in relation to specific submitters issues which are grouped in section 6 of the legal submissions.

35 But in terms of the Board's wider consideration of section 171 I've submitted that the relevant general principles remain relevant.

 Now the one I want to particularly take you to is c) within the quote:

The paragraph does not impose some higher threshold or standard of proof that would require a requiring authority to demonstrate that the project and designation would better achieve its objectives than an alternative project or means of seeking authorisation; nor that they absolutely fulfill its objectives.

5 So, item c) is particularly relevant to claims that additional work should be incorporated into the Project.

 The Agency is not required under section 171(1)(c) to demonstrate that the Project works would better achieve its objectives than an alternative project or alternative works, it is merely required to demonstrate that the works that are
10 proposed as part of the Project are "reasonably necessary".

~Questions from the Board (11.01 am)

JUDGE HARLAND: Looking at that paragraph c) that is a quote you say from the Queenstown case?

15 MS MCINDOE: Yes.

JUDGE HARLAND: Was that particular portion cited by approval in the High Court?

 Because what I'm wondering is where does the standard -- we get into all sorts of trouble with standard of proof. And I'm just wondering where that idea came from in Queenstown, whether it was something that the High Court's endorsed, rather than just the end result and if it is something that was raised in that case,
20 whether there was any other authority for it?

MS MCINDOE: It was raised in the Queenstown case, the Court referred back to the Board of Inquiry considering the Transpower North Island grid upgrade Project where Judge Sheppard laid out I think pretty much the same as these general
25 principles and they were referred to by the Court in the Queenstown case. That case was appealed to the High Court. But not on this point.

JUDGE HARLAND: No.

MS MCINDOE: And it didn't -- the High Court didn't specifically endorse this section, but equally it didn't say anything disparaging about it, it just remained silent.
30 The High Court did endorse paragraph b) when it said that in terms of the word "necessary" that that falls between expedient or desirable and the High Court specifically noted agreement with that section, but it simply didn't comment on the rest of it.

JUDGE HARLAND: Right, so we've got a couple of first instance decisions taking that
35 particular approach.

MS MCINDOE: Yes, that's right.

JUDGE HARLAND: And the "reasonably necessary" is also, the b) one that you're talking about, that is also a national transport, if I'm right is that a High Court decision is that right? Anyway, it doesn't matter, I think it's reasonably settled.

5 MS MCINDOE: Yes, that portion is -- paragraph c about whether it would absolutely fulfill its objectives, that is the point which I see as being important for this case and, as I said, the only instances where I know of that being referred to are the Nigup(?) decision, and this decision where it wasn't referred to in the High Court on appeal.

JUDGE HARLAND: Thank you.

10

~Ms McIndoe continues (11.04 am)

MS MCINDOE: Consideration of alternatives:

15 In circumstances where the requiring authority does not have an interest in the land sufficient for undertaking the work, or it is likely that the work will have a significant adverse effect on the environment, you are required under section 171(1)(b) to have regard to whether adequate consideration has been given to alternative sites, routes or methods of undertaking work.

20 This is a relevant consideration for this Project because the Transport Agency does not own all of the land required, although it does own a substantial part. In addition, some of the short-term adverse effects of the Project during the construction period such as noise and vibration have a potential to be significant and dust has the potential to be offensive or objectionable and thus the need to consider alternatives is triggered. Importantly, "adequate consideration" does not mean exhaustive or meticulous
25 consideration, but means that the consideration must be sufficient or satisfactory and will depend on the circumstances. The High Court held in the Queenstown Airport case that the measure of adequacy will depend on the extent of the land affected by the designation: the greater the impact on private land, the more careful the assessment of alternative sites not affecting private
30 land will need to be. Similarly, the greater the adverse effects, the more rigorous the assessment of alternatives that may have lesser effects may be required but this is not necessarily a strict requirement in every case.

35 The Transport Agency is not required to demonstrate that it has considered all possible alternatives or that it has selected the best of all available alternatives. It is not required to eliminate alternatives that are clearly speculative or suppositious, nor is it required to consider every alternative that

is non-suppositious with potentially reduced effects. It is for the requiring authority to establish an appropriate range of alternatives and properly consider them.

I have referred here to what I'm going to call the Basin Bridge decision that found that:

"In circumstances where the requiring authority's consideration of alternatives involves the application of evaluation criteria which are variably weighted, the decision to allocate the variable weightings should be subject to Part 2."

This Project is essentially an integrated package of connection and linkage improvements for an existing transport network structure. The consideration of alternatives for the Project is addressed in the evidence of Messrs Schofield and Hale. In particular, the evidence sets out firstly, that the alternatives assessments undertaken, and how they have focused on specific design options for the various connection improvements including alignment and siting options, as well as determining appropriate arrangements of elements to ensure the greatest level of efficiency and safety; and how the alternatives assessment process was informed by and responded to a series of staged stakeholder and community engagements, as investigations and options were developed.

The evidence of Mr Ridley, Ms Wilkening and Mr Moore also covers alternative construction methodologies. And that evidence sets out alternative construction water management tools; construction methods for mitigation of noise and vibration; development of the off-line construction of McClymonts Road bridge as an alternative designed to mitigate construction effects.

Overall, the evidence for the Transport Agency is that the consideration of alternatives for the Project has been thorough, rational and robust and meets the requirements of section 171(1) and schedule 4 of the Act.

Issues raised by submitters in relation to the assessment of alternatives are addressed in section 6 of these legal submissions. They relate to the location of the new shared used path near State Highway 18; south-facing ramps issues; a suggestion by Kiwi that the busway should be designed so as to better preserve views of its site; alternative designs which would futureproof for future transport projects; a suggested new bridge from William Pickering Drive to Bluebird Crescent; a suggestion to upgrade only the westbound section

of State Highway 18 to dual lanes and alternative designs of the Constellation and Greville Road interchanges.

I wonder whether that might be an appropriate place to take just a five minute break?

5 JUDGE HARLAND: Yes I think, that's fine. In fact, we'll take a ten minute break because that gives everybody an opportunity to really stretch their legs.

~(Adjourned 11.09 am - 11.20 am)

10 ~Ms McIndoe continues (11.20 am)

MS MCINDOE: I was at paragraph 4.28. Under the Section 104D Gateway tests.

Under Section 104D the Board must first consider whether either one of the two tests under that section can be met, being first: The adverse effects of the activity on the environment will be minor, or the application is for an activity that will not be contrary to the objectives and policies of the relevant plans. The resource consent components of the Project are assessed against the 'gateway tests' in Mr McGahan's evidence; he concludes that the potential adverse effects of the project will generally be minor or less than minor, with the exception of temporary adverse structures or adverse vibration effects.

15
20 Nonetheless, he has assessed the Project against the objectives and policies of the relevant planning documents, and concludes that the Project is consistent with, and not contrary to, the relevant policy provisions. During expert conferencing, witnesses for the Board and Council agreed with this conclusion. Accordingly, it is submitted the Project passes this limb of the gateway test and can be considered under sections 104B and 104.

25
30 During expert conferencing, Mr Turner, for Auckland Council, reserved his position in relation to whether the area of stream within the dam footprint for Constellation Pond should be considered a 'stream'. And in addition, Ms Brabant, for Waste Management, disagreed about consistency with particular RPS level AUP objectives regarding infrastructure.

35 I understand that neither of these witnesses consider these discrete matters to mean that the Project would be contrary to the objectives of the policies and the relevant planning documents. And just to clarify, my understanding is based on the statement in the Joint Witness Statement that all the planners agree there is no reason why -- there is no planning reason why

the consents could not be granted. That's what I base that understanding on.

~Questions from the Board (11.22 am)

JUDGE HARLAND: Well, if Mr Turner doesn't agree that we're talking about a stream

5 here, isn't that a reasonably significant point?

MS MCINDOE: He considers it is a stream.

JUDGE HARLAND: Yes.

MS MCINDOE: And he -- he -- I shouldn't just try to remember; I will just grab the

10 planning Joint Witness Statement for you. The reason I'm checking is actually there's something Mr Steered has reminded me of; he doesn't actually state in the table whether he thinks it's consistent or not; he simply states his view on whether it should be considered a stream, and I didn't want to oversell, if you like, my conclusions about objectives and policies without just checking.

JUDGE HARLAND: Well perhaps he should be asked to clarify what he meant by
15 that, because if I -- it seems a bit loose to me, quite honestly, and it's either a stream or it's not. It's a complex question as to whether something's a stream or not, but if he's saying it's not a stream, then that's got huge implications I would have thought?

MS MCINDOE: I understand he is saying that it is a stream, and -- you are right; he's
20 the best person to ask about that.

JUDGE HARLAND: So what's he saying then? Just could you just read it out to me please?

MS MCINDOE: So in relation to, for example, the objectives of -- the objectives relating to freshwater systems, he states that:

25 "In the context of what is currently proposed and the specific -- the relevant specific activities for which consent is sought, being the reclamation of 17.4 metres of stream, Mr Turner acknowledges Mr McGahan and Ms Barnett's rebuttal evidence and accepts that there is no other evidence to suggest that the -- and then he goes on to say, on this basis -- it's quite a long -- sorry, I'm
30 just trying to pick out the key bits -- he now accepts the proposal overall does not present an inconsistency with these objectives, and then he goes on to say that he's not persuaded that the existing consents which authorise the dry retention dam have the effect of establishing the freshwater systems within the flood footprint of the dam and they are therefore not to be considered as
35 streams.

So, I understand, in terms of section 104D, he does not see an inconsistency. In relation to whether we need consents to reclaim the streams or not, he thinks we do. We think we don't, but we've applied for it anyway.

That's where I understand that matter.

5 JUDGE HARLAND: Well, we will ask him what he means by all of that.

So, what -- a reference? Could you just give me the reference that you've just read from please?

MS MCINDOE: That is pages 21 and 22 to the planner's Joint Witness Statement.

JUDGE HARLAND: Thank you. That's the first one?

10 MS MCINDOE: Yes.

In paragraph 4.32, I note as well that Ms Brabant, for waste Management, disagreed about consistency. I've already mentioned that.

Section 104: The main substantive considerations under section 104 are the effects of the proposal, and the relevant planning and policy instruments.

15 Effects are addressed in section 5 of these submissions. The evidence for the Transport Agency is that the effects of the resource consent applications can be appropriately avoided, remedied or mitigated. The Transport Agency, Council, and Board planning experts agree that the Project as a whole will be consistent with the relevant provisions of the applicable planning and policy instruments.

20 JUDGE HARLAND: So, is "as a whole" good enough? Do we just mop it all in together, or do we have to look at each one? You can answer that some other time.

MS MCINDOE: I think I'd prefer to answer that in my closing submissions, because I certainly know different approaches that have been taken, and I'd rather give it
25 a more considered response.

JUDGE HARLAND: Thank you.

~Ms McIndoe continues (11.27 am)

MS MCINDOE: Sections 105 and 107, as part of the resource consent applications,
30 the Transport Agency is applying for various discharge consents under section 15. During construction, earthworks will contribute to associated discharges, these are discharges of construction water, discharge of dust to air, and discharge to air associated with the Rosedale Landfill works. During its operation, the Project will involve the discharge of stormwater from new
35 impervious surfaces.

Section 105 addresses further matters that the Board must "have regard to" when considering discharge permits (in addition to those in 104(1)), and those are, the nature of the discharges and the sensitivity of the receiving environment, the applicant's reasons for the proposed choice, and lastly,
5 alternative methods of discharge, including discharge into any other receiving environment.

These matters are addressed in the evidence of the witnesses I've listed there, and summarised in the evidence of Mr McGahan.

In summary, the available choice of locations or methods is constrained
10 by the Project for which the Applications are sought. In this case it's not feasible for the discharges to be made into a different receiving environment. Mr Hughes' evidence sets out the comprehensive assessment that was undertaken both in relation to the type of treatment approach selected and the location of the proposed stormwater ponds and devices.

15 With the proposed mitigation measures in place, it is anticipated that any potential adverse effect on the receiving environment will be minor.

Section 107 imposes restrictions on discharge permits in cases where, after reasonable mixing, any discharge of contaminants or water is likely, directly or indirectly, to give rise to certain effects in the receiving waters, but
20 you may nonetheless grant a discharge if the discharge is of a temporary nature and it is consistent with the purpose of the Act to do so, and I have listed in paragraph 4.42 the specified effects.

The potential for such effects has been addressed in the evidence of Messrs Bluett, Seyb and Ridley and Ms Barnett, and the evidence for the
25 Agency is that none of the identified kinds of effect are expected to arise after reasonable mixing.

While the consideration of alternatives is not required in determining resource consent applications under section 104 (as compared with section 171 for NORs) Schedule 4 of the RMA requires an assessment of alternatives in
30 specific instances, being when, and firstly, it is likely that an activity will result in any significant adverse effect on the environment. If that's the case alternative locations or methods for undertaking the activity must be described, and second, where the activity leads to the discharge of any contaminant, any possible alternative methods of discharge.

35 This latter consideration aligns with section 105, under which the consent authority in considering an application must in addition to the

section -- matters in section 104 have regard to possible alternative methods of discharge, and I have just addressed this.

For the resource consent applications (which include the discharge permit applications), as I've noted, the available choice of locations is
5 constrained by the Project. Locations or methods that will not enable the works for which the designations are sought are not 'possible' alternatives. In this sense, the alternatives to be considered in relation to both the designations and resource consents must align.

The alternatives considered in relation to the design of the Project are
10 addressed in the evidence of Mr Moore, and the evidence of Mr Hale, and Mr Moore and Ms Wilkening provides further details on alternatives considered in relation to construction methodology.

The next section in the submission goes through the various effects of the Project, and I was going to at this point sit down and have Ms Sheard take
15 over.

JUDGE HARLAND: Yes, thank you.

~Ms Sheard continues opening (11.32 am)

MS SHEARD: So we're at section 5 of the submissions. You will be well aware in
20 terms of effects on the environment, that you are required to consider section 104, 104D and section 171. So, the starting point for that assessment is to really understand the receiving environment which you are operating within. So, turning to paragraph 5.3, you will be well aware from your site visit that the Project is on Auckland's North Shore, as a starting point, and traverses
25 established residential and commercial areas, as well as areas currently undergoing quite a bit of development.

Works are focused on the existing highly urbanized transportation corridor. Key features in the Project area include the Rosedale Waste Water Treatment Ponds, electricity transmission and distribution assets, and the
30 Closed Rosedale Landfill, a range of reserves and the North Harbour Hockey Stadium.

In Hawthorn, the Court of Appeal formulated a view that the environment also includes the future environment, and I'll just read that quote for you:

"...the future state of the environment as it might be modified by the
35 utilisation of rights to carry out the permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of

resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented."

5 Therefore, the receiving environment to be considered here includes both: Activities authorised by resource consents which have been granted, where it appears likely that those resource consents will be implemented; and activities permitted by the plan, if they might be utilised.

10 The receiving environment for the purposes of this Project (in the Hawthorn sense), is summarised in Chapter 4 of the AEE, and in section 6 of Mr Burn's evidence.

15 In most respects the 'receiving environment' that needs to be considered here (in the Hawthorn sense), is largely the same as the actual environment as it exists, and we are operating in a highly urbanized environment; it's quite well developed. And that's summarised in Mr Burn's evidence. However, one respect in which it potentially differs, and that's so that the 'future environment' also needs to be considered, is in respect of the land located to the east of State Highway 1. This includes an area proposed for a development known as 'Colliston Rise', authorised by resource consent and subdivision consent granted in 2014.

20 You will be aware that you have commissioned a report by Mr McGarr, as to how noise is to be managed or addressed in relation to the Colliston Rise development.

25 In summary the McGarr report concludes that: The consent granted for Colliston Rise development is subject to particular conditions requiring measures such as a noise barrier to be erected inside the western boundary land common with State Highway 1, and designed so that internal sound levels do not exceed 40 DBA in all habitable rooms (with such design to allow for increases in noise arising from increased vehicle traffic growth using State Highway 1 during 10 years following the construction commencing). The titles that have been subsequently created include a consent notice to this effect under Section 221 of the RMA.

35 The particular rule that requires such an outcome (in force at the time the consent was granted) was not carried over into the current operative Auckland Unitary Plan. Any similar application heard today would be considered as a discretionary activity, and in light of a range of objectives and policies in the Auckland Wide provisions of the AUP (subdivision, noise and infrastructure)

which seek to protect the operation and capacity of infrastructure from incompatible subdivision, use and development, and reverse sensitivity effects. Mr Burn, for the Transport Agency, agrees with that aspect of Mr McGarr's analysis.

5 The assessment of operational noise effects carried out for the project, or the Noise Report, has assumed the Colliston Rise development will proceed in accordance with the resource consent granted. The Noise Report records that for all of the six sites in respect of which building consent had been sought at the time the Report was prepared, buildings were to be double storey and
10 constructed in accordance with the High Noise Route Provisions in the North Shore District Plan. On the basis that remaining dwellings would also be double storey, it was considered that noise mitigation in the form of barriers would be ineffective for the upper floors, so that building design was the most practicable option to mitigate noise and reverse sensitivity effects.
15 The Transport Agency submits that it's entirely appropriate to consider effects on 'receiving' (future) environments that includes the Colliston Rise development completed in accordance with the consented conditions. In terms of Hawthorn it is not merely 'likely' that the subdivision consent will be implemented, it actually has been implemented and the titles have been issued
20 in reliance on it. There is no basis to suggest that the buildings subsequently constructed will not comply with the requirements of the consent.

 If a landowner now sought to remove the consent notice from the title they would need to apply to the Council under section 127 of the RMA. The Council may consider the Transport Agency should be notified of any such
25 application (for reverse sensitivity reasons), and there is no guarantee that it would be successful.

 In terms of the possibility of an alternative new proposal for the remainder of the site i.e. beyond the parcels already developed: Any such application would have to be considered discretionary activity, against the
30 'environment' (including the future environment) as at the time it was determined -- this may or may not include the NCI Project, if it had been approved at that time, and, in relation to noise and reverse sensitivity effects in the AUP.

 In terms of likely outcome of such a proposal under the current
35 consenting framework, Mr Burn considers that it would not be sound resource management practice to grant such a consent unless it were subject to the

same conditions as those which apply to the existing one. The consent authority would need to manage effects from the existing motorway as well as to manage reverse sensitivity effects. Such an application would also be made at the election of the property owner and with the full knowledge of the potential effects of not providing noise attenuation, and in the context of the existing notices of requirement for the Project.

Nonetheless, the acoustics experts agree that the conditions will operate to protect individual owners of land in Colliston Rise who have taken their dwelling design to an advanced stage prior to the Project being notified. This is reflected in proposed condition ON2 and associated Appendix A to the noise conditions.

~Questions from the Board (11.39 am)

JUDGE HARLAND: Can I just ask you, Colliston Rise isn't impacted by construction noise, correct?

MS SHEARD: That's correct.

JUDGE HARLAND: So it's only been assessed for operational and the basic point is that the 40 DB limit that's there already and the rules would apply basically and we should take that into account.

MS SHEARD: Correct. And I just note at paragraph 15, I've talked about the -- some new provisions being recognised in the conditions, but those conditions were changed as a result of the noise conferencing, and those are the same conditions that are the planners are considering today. So, we should have an update on that in a few days' time.

JUDGE HARLAND: So was that one of those conditions where the experts said this is what we want to achieve, planners, please go away and do it?

MS SHEARD: Yes. So, I am anticipating that there may be potential for the planners to draft something and then have to run it back past the noise experts.

JUDGE HARLAND: Yes, that would be really good.

MS SHEARD: It would be quite helpful. There is the added complication that the noise experts are currently in the east west hearing, appearing today, or tomorrow.

~Ms Sheard continues (11.41 am)

Permitted baseline consideration. So, turning to paragraph 5.16:

In respect of the resource consent applications, section 104(2) provides that the Board may disregard an effect of the activity if a national environmental standard or plan permits an activity with that effect. Mr McGahan's evidence does not suggest the Board apply a permitted baseline when considering the resource consent applications. That will be the assessment of effects undertaken by the expert as has been undertaken on that basis and we also agree with that approach.

Section 171 does not contain an equivalent 'permitted baseline' consideration in respect of a notice of requirement (although the permitted baseline is relevant in determining whether a notice of requirement should be publicly notified).

In the present case, many aspects of the proposed work (particularly that to which the alterations relate) could be carried out within the existing designation footprints and under the authority of the existing designations. This work could include construction, re-surfacing, and widening. This work could also potentially have material adverse effects, and it effectively is already authorised by existing designations. The Transport Agency would simply need to submit an outline plan of works in order to carry out that work.

Of course, rather than adopting that approach, the Transport Agency has sought to have all aspects of the work considered together in a holistic way, through the Board of Inquiry process. Nonetheless, it is submitted that the fact that much of the work could be carried out without further approvals is relevant in understanding the scale of the effects of the Project and assessing whether they are reasonable; will have informed the expectations of nearby landowners about the level of amenity they can expect to enjoy; and, is, if not a permitted baseline consideration, a relevant other matter to be considered under section 171 (1) (d).

~Questions from the Board (11.43 am)

JUDGE HARLAND: Is there any authority for that last proposition?

MS SHEARD: I haven't cited any authority there; I can do another check to see if there is any. I think it's relatively broad in section 171 (1) (d) in terms of what other matters can be considered, and I think, in this respect, I think it is relevant that there is such a broad range of permitted activities that can be carried out.

MS MCINDOE: I can add relevantly that I am aware that the designation permitted baseline was applied in a case called Bungalow Holdings, but that was prior to the Act being amended to specifically recognise permitted baseline within section 104, and of course no equivalent recognition within section 171. So,
5 there is an example of a case which has applied a designation permitted baseline.

JUDGE HARLAND: Thank you.

~Ms Sheard continues (11.44 am)

10 MS SHEARD: Turning now to positive effects. The positive effects of the Project are significant and I've outlined some of those effects in paragraph 5.20. Firstly, the Project will improve the efficiency and effectiveness of travel along the strategically significant routes of State Highway 1 and State Highway 18, which will benefit inter-regional travel and freight and provide inter-regional
15 network resilience. In addition, it will provide an alternative western route for light and heavy freight vehicles moving through and around Auckland.

Second, the Project will increase traffic volumes on State Highway 1 State Highway 18, while generally reducing traffic volumes on the local road network. This will result in increased safety and improved journey times to local
20 traffic, public transport, and walking and cycling modes on these local roads. The Project will also offer significant benefits for public transport in terms of providing quicker and more reliable journeys by bus, through the extension of the Northern Busway to Albany. In particular, northbound buses will no longer need to travel with general traffic at the Upper Harbour Interchange, as they will
25 leave the Constellation Bus Station. This will lead to benefits in terms of reduced travel times for buses, which are further improved through reduced congestion on local roads as a result of the Project.

Connectivity and safety for pedestrians and cyclists will also be significantly improved both north-south along State Highway 1 corridor and
30 east-west parallel to State Highway 18, through the provision of continuous, safe, shared use paths along these corridors, bridging significant gaps in the existing walking and cycling network, and finally, a range of safety improvements on the State Highways and local road networks will also be delivered as part of the Project.

35 A number of submitters have expressed support for the Project as summarised in Mr Clark's evidence. The submitters' support shows that the

transport and traffic benefits and improvements set out above are sought and valued by the community.

Similarly, the evidence of the submitters themselves shows support for the Project, as I've outlined in paragraph 5.22. In particular Mr Newcombe
5 outlines that Auckland Transport "strongly supports the transport benefits of the Proposal including improved network resilience, lower traffic volumes on residential streets and arterial routes, improved connectivity between State Highway 18 and State Highway 1, resulting in improvements to freight and general traffic efficiency, and the extension of the Northern Busway to enable
10 improvements to public transport.

Ms Hart and Mr Turner outline the positive effects of the Project which reflect those listed above.

Mr Tindall considers that the Project will deliver significant net traffic and transportation benefits, including improved safety for road users.

Mr Cross considers the long-term, post-construction effects of the
15 Proposal on public transport will be positive and significant, and that "Extension of the busway north of Constellation station (...) will form an indispensable part of the New Network." He notes that the Project will improve public transport travel time and significantly enhance reliability along this stretch which: ...will
20 directly benefit: Passengers who will see a reduction in the length of time of their journey and be provided with a better and more attractive service, and, bus operating companies and AT by reducing operating costs, which means that this efficiency and benefit can then be reinvested further improving public transport services, thereby further benefitting current and prospective
25 passengers."

Ms King also strongly supports the improved walking and cycling links to be provided as part of the Project.

And Mr Brown, for the Council, states that:

"The proposed shared use path would offer appreciable benefit in
30 relation to walkway and cycleway connectivity at both the local and more strategic levels", and that, "The proposed shared use pathways would also help to improve connections for cyclists and pedestrians around the Greville Road, Constellation Drive and Caribbean Drive, and Paul Matthews Road interchanges."

The transport and traffic experts (except for Mr Willmott) agree that the
35 "Existing busway has been outstandingly successful in increasing public

transport patronage and mode-share. (...) The extension of the busway to Albany Station will increase these benefits by reducing public transport journey times."

5 So, there are a number of additional positive effects that have been identified by the Transport Agency witnesses and I've listed those in paragraph 5.24.

10 Once the Project is operational, it will generate improved accessibility, connectivity, travel times and public transport service reliability for local residents. This will result in positive effects on people's patterns of daily living and wellbeing.

The Project includes the implementation of a stormwater management system that will improve both the quality and the quantity of stormwater management compared to the currently existing situation.

15 Due to proposed increase in stormwater quality and aquatic habitat diversity, there is potential for a number of positive effects in relation to freshwater ecology.

20 Mitigation planting and amenity planting will contribute positively to the local natural environment. Mr Bray states: "The road corridor will have improved landscape amenity, lower whole of life costs, and contribute to wider landscape outcomes (such as wildlife corridors)." In addition, he considers that the Project will have positive urban design effects;

On an air-shed scale, the Project is likely to result in a slight net benefit for regional air quality as compared to the air quality if the Project were not built.

25 And finally, the Project will have a positive effect on Arrenway Reserve because the area is currently not used by the public and will be activated by the means of the shared use path. There will also be benefits associated with the Rook Reserve mitigation work.

30 So, turning now to the effects on utilities. The Project does affect a number of utilities, including telecommunications, electricity transmission and distribution, gas, potable water, wastewater, and stormwater. Consultation with utility operators has enabled these effects to be identified and avoided, remedied, or mitigated. Mr McGregor's evidence describes the utilities that are affected, consultation with those utilities, and efforts that have been made to avoid impacts on those utilities.

35 Vector, Transpower, and Watercare all lodged submissions on the Project. The Transport Agency has now agreed resource consent conditions

with these submitters (and other utility providers) which will protect the existing assets and accommodate future works. So those conditions are included in the set of conditions that are appended to the rebuttal evidence of Mr McGahan, and I would note they have also been attached to -- those conditions are
5 attached to the Joint Witness Statement that the planners have produced. The conditions include requirements to prepare and implement an Electricity Infrastructure Management Plan, implement a range of measures agreed with Watercare, and the development of a stormwater treatment plan in consultation with Auckland Council. And as you will have seen, Transpower lodged a
10 memorandum with Council on 25 May, which set out a number of the changes to the conditions which have been discussed and agreed with the Transport Agency.

So, they were fairly minor changes to conditions NU.2 to NU.7. While it's anticipated that Transpower's cables will be accommodated within a new
15 conduit within Transpower's existing designations, conditions NU.3 and NU.4 have been amended to ensure that if the cables are required to be relocated outside that designation that no work will occur inside Transpower's designation until such time as all necessary authorisations have been obtained for the new cables, and any new cables have been constructed and commissioned and the
20 existing cables have been decommissioned.

We don't think it's likely, but there is that fallback position if it's required, but it's so that Transpower has that comfort that it's concerns can be dealt with. Noise and vibration effects: As is usual for the construction of major
25 infrastructure projects there are locations where the recommended noise criteria for both residential and commercial activities will be exceeded during the construction work. There is also potential for vibration generated from the construction phase of the project having an adverse effect on properties adjacent to the Project corridor. The evidence of Ms Wilkening and the noise
30 Joint Witness Statement describe these effects, that they will be temporary, and how they can be avoided or mitigated.

There is also some potential for increased operational noise in some locations, as a result of the Project, as Ms Wilkening describes in her evidence, new noise barriers are proposed in a number of locations where this is
35 considered the best practicable option to manage operational noise effects. In other locations, noise levels will be improved. There may be some effects of operational vibration but these are unlikely to be significant.

Some submitters have raised specific concerns about noise and vibration effects of the Project, in particular Auckland Council and Mr Fogarty. The Board's expert raised concerns about operational noise effects on Colliston Rise, as we've already discussed. These concerns have been discussed during expert conferencing and amendments to the resource consent and designation conditions have been suggested. The resource consent conditions include a requirement to prepare and implement a construction noise and vibration management plan, while the designation conditions include requirements for the mitigation of operational noise. And as mentioned a couple of times, there is likely to be an update as a result of the planning conferencing.

Turning to visual effects and effect on landscape and urban design: Permanent visual effects will predominantly result from the removal of vegetation and the presence of built structures including walls, bridges, and on-ramps/off-ramps. Mr Bray's evidence is that contextually appropriate noise walls, extensive mitigation planting, and views towards new pedestrianised features will ensure an acceptable level of visual change. Adverse landscape and visual effects during construction will largely be due to earthworks and the removal of vegetation. However, these effects will be temporary and are anticipated to be staged across the Project area.

I'd also note here too that the level of earthworks proposed is actually relatively low. Apart from State Highway it is essentially a widening exercise. The place where you are going to get some more earthworks is in relation to the State Highway 18/1 ramps up in that corner.

Mr Brown, Auckland Council's witness, is generally satisfied that most of the Project would have "a low level of additive or incremental amenity effects for most receiving environments". He considers that overall the anticipated changes to the physical landscape near State Highway 1 and State Highway 18 would be acceptable.

The only outstanding issue in relation to landscape and visual effects, and the effects on urban design -- actually it probably more relates to urban design than the earlier two -- is the Alexandra Stream Underpass, and we will return to this issue later in the submissions. The designations conditions provide for an Urban Design and Landscape Plan, including a reserve reinstatement plan.

So, looking now at stormwater effects: As I mentioned before, the Project will increase the amount of impervious area generating increased run-off from motorway surfaces with the potential for adverse flooding effects. Mr Seyb's evidence is that stormwater quality will be managed through treatment devices and adaptive monitoring. During the operational phase, the proposed enhanced stormwater quality treatment of existing impervious areas will result in overall loads of key contamination from the Project's impervious areas being reduced. Mr Hughes' evidence sets out the stormwater management design, the level of treatment that will be achieved, and the stormwater erosion and flooding impacts. He concludes that the Project will result in a small localised increase in flood levels but also improves existing flooding issues at some locations.

The planning witnesses agree that the amended stormwater conditions suitably address the impact on Council's Healthy Waters stormwater infrastructure, via the proposed Project Stormwater Strategy, including the extant dam consents.

~Questions from the Board (11.59 am)

JUDGE HARLAND: Can I just interrupt you there? So, the statement in paragraph 5.35, that there will be a small localised increase in peak flood levels, again, not wanting to put everything in the wash, pardon the pun, and just average it out, you are talking there specifically about near the road, are you? Anywhere else?

MS SHEARD: I think there are some other locations where there are minor increases, but I don't have that list to hand. I can provide that to you.

JUDGE HARLAND: Right. Well, it would just be helpful, I think, to have that summarised by the witnesses when we get to it.

MS SHEARD: Certainly. We can extract that from the evidence as well.

JUDGE HARLAND: We are getting an awful lot of information in a short period of time; we want to make sure we've got it all right at the front, where there are potential difficulties. You might have gathered that I'm not very much enamoured by this overall let's "put it in the pot" approach. I'm not entirely convinced that's what the RMA requires us to do, understanding that it's not an offence statute. So, we just need to get a feel for -- a very accurate feel for -- where there are things that might be problematic, how significant that problem is, and what's not proposed by way of management, but what's proposed by way of mitigation.

MS SHEARD: All right.

JUDGE HARLAND: Right. That would be helpful. I've looked at the -- the Greville one was the biggest one that sprang to mind, and the point I think the Agency had there was, well, that's an existing problem anyway, which isn't AT's
5 responsibility, but there are other ones you are saying as well.

MS SHEARD: Personally, I think it would be useful if Mr Hughes provided a table. He has gone through site-by-site and he has looked at the degree of increase in each of those and I think it was a maximum of point 4 metres; I can't recall.

Forty centimetres or something like that, and he's looked at each of those on an
10 individual basis.

JUDGE HARLAND: That would be very helpful, very helpful, thank you.

~Ms Sheard continues (12.01 pm)

MS SHEARD: So I think we are at paragraph 5.37. We are looking at the
15 Meadowood Community Crèche, National Mini Storage, and Auckland Council; they have all raised concerns about site specific flooding. The experts agreed, at conferencing, that: Potential flooding at Meadowood Reserve is appropriately addressed by amendments to conditions NU.9 and, potential
20 flooding issues from the Greville Road off-ramp and northbound carriageway off State Highway 1, between Rosedale Road and Greville Road, can be addressed during the detailed design stage.

Transport and traffic effects: During the construction period, there will be an adverse transport and traffic effects due to road closures, temporary lane
25 closures, temporary speed restrictions, and additional construction related traffic to and from the work site, which will cause increased congestion in some parts of the State highway and local road network. This, together with construction work at the bus stations, will also adversely affect local bus services. Messrs Clark and Mr Hale's evidence describes those effects and sets out the mitigation proposed to deal with these effects during construction.
30 At conferencing, the experts agreed that there are no remaining issues of contention (just some issues which required further discussion).

Mr Clark and Mr Peake have now filed a further Joint Witness Statement which you were referred to earlier, which discusses the impacts on traffic during construction. This state: "Mr Peake considers that the diverted traffic volumes
35 and intersection delay are of a quantum that would appear to be manageable. Mr Peake is comfortable that the proposed condition as attached..." to the Joint

Witness Statement "...will enable the effects on general traffic and buses to be addressed."

5 Once operational, traffic and transportation effects are predominantly positive, except that traffic flows along State Highway 1 and State Highway 18, and along some of the local roads, are predicted to increase, which may result in increased travel times along some arterial routes.

10 Auckland Council, Auckland Transport, Kiwi and Waste Management raised concerns with the effects of construction on local traffic and damage to local roads, carparking at Albany Station, effects on public transport, and effects on Kiwi's site. Many of these concerns have been resolved through changes to the conditions which provide for a Construction Traffic Management Plan and a Stakeholder and Communications Plan, and I've listed a number of examples in paragraph 5.41.

15 Counsel understand that there are no outstanding traffic and transport matters as between the Transport Agency and Auckland Transport or Waste Management.

20 Outstanding traffic and transport related issues are whether the Alexandra Stream Underpass should be upgraded as part of the Project, location of the shared user path at State Highway 18, sought by Mr Fogarty only, and whether the gradient of the shared use pathway and busway should have an increased gradient adjacent to the Kiwi site. I think Kiwi also had some issues about on site manoeuvrability. These matters are discussed below. Finally, the fundamental design and transport planning issues raised in Mr Willmott's evidence remain unresolved.

25 Effects and on contaminated land, and the Closed Rosedale Landfill: A number of sites along the Project alignment have been identified as posing a risk, due to potential land contamination. In addition, the Project will include works within the Closed Rosedale Landfill, which will involve significant disruption to landfill infrastructure. Mr Dee and Mr Amputch's evidence is that the mitigation measures will include consideration of specific construction management aspects and health and safety issues, and be addressed during the design in the vicinity of the landfill.

35 Auckland Council's submission and evidence expressed a number of concerns in relation to the management of effects on landfill infrastructure, monitoring, design requirements, and ongoing liaison with the closed landfill team. During conferencing, the experts agreed that Auckland Council's

concerns are addressed by the relevant resource consent conditions. I think a number of changes were made to those conditions. The conditions provide for landfill management strategy, a reinstatement works plan, and construction method statements. Somewhat unusually, the conditions agreed between the experts also refer to part of the Project alliance agreement, and that's the minimum requirements attached to that draft agreement. The Transport Agency is comfortable with referring to this document, in this instance, as that part of it can be made public and we note that a draft was appended to Ms Eldridge's evidence and these minimum requirements won't change.

The minimum requirements that the Transport Agency is going to impose on the Alliance have been really important between the discussions between the closed landfill and the Transport Agency's landfill experts, because they give counsel that confidence about how the work is actually going to be taken out and what the instructions are to the contractor on the ground.

Effects on reserves and recreation (including the Hockey Stadium): There will be some temporary effects on public reserves, which will be used during construction. Mr Greenaway's evidence is that measures to mitigate construction impact will be agreed as part of the reserves reinstatement package with Auckland Council Parks, to ensure remediation and return to public use in an effective and efficient manner.

The Project also permanently affects some reserves, including land occupied by the North Harbour Hockey Stadium. As these effects will significantly compromise the complex, it's proposed that the hockey facilities are relocated to an alternative location, and I note here the Transport Agency has been working very closely with the Harbour Hockey Trust, Auckland Council and other stakeholders to relocate the facilities, including applying for the relevant resource consents, which were recently granted by Council on 10 July.

~Questions from the Board (12.08 pm)

JUDGE HARLAND: And thank you for providing -- whoever did it -- a copy of that decision. We are quite interested to hear, and will be asking questions and just might want to flag this for you, about the extent to which the new resource consents change the activities that are authorised currently. For example, there's reduction from 14 international events, and they were granted 6. I would

be interested to know what the current position is there and whether there's likely to be any appeal from that.

MS SHEARD: Certainly. We have got both Mr Glucina appearing for the Transport Agency and I believe Ms Williamson for the Harbour Hockey Charitable Trust later in the proceedings.

JUDGE HARLAND: Well, I just noted that the Harbour Hockey people don't have legal representation. So, it's a question of how much they are actually aware of some of the legal traps or the hold ups that can occur and if there's a like for like indicated desire on behalf of the Agency to swap that, how realistic is that? What are the risks associated with that? Because we saw that the condition -- precedent condition had been removed, and replaced, and whether that provided enough of a safety net or not to achieve the objective basically. So, we're not challenging the objective that's been outlined, rather the -- where there are the likely problems.

MS SHEARD: Certainly, and although Harbour Hockey Charitable Trust isn't represented at this hearing, I am aware they do have -- they are seeking legal advice. So Ms Williamson will be able to update you.

JUDGE HARLAND: Right. Well, that would be helpful. I think it's better that we have that out there, in the open, so everybody can address it as they need to.

I did note that, in reading the decision of -- was it Mr Clark -- the transport witness was also a witness in that particular case. Can I just ask you whether -- did NZTA advance that resource consent for the hockey people?

MS SHEARD: That's correct.

JUDGE HARLAND: Thank you.

~Ms Sheard continues (12.10 pm)

MS SHEARD: Turning now to paragraph 5.48: The designation conditions, which we have already noted, provide for the relocation of the hockey facility and construction of a new facility in a different location. The proposed conditions will require the Transport Agency to provide a replacement hockey facility. And I do just note here that the planners are planning to do a little bit more work on those conditions. They weren't entirely accurate in terms of what was actually proposed. So, it would be helpful if it did actually align with what they need to do.

~Questions from the Board (12.11 pm)

JUDGE HARLAND: Well, just on that point, another thing I had noted in the conditions was that -- and I might not have this absolutely correctly expressed -- but there was some limitation accepted by the agency in relation to when they could start the project, but it seemed to only relate to the part of the Project that might
5 impact on hockey. Which might mean, and I don't know if this is correct, that part of that over bridge which is due to take most of the construction period, could be commenced first, without the hockey being sorted completely, thereby creating a potential risk to them, because it's already started. The work's already started. And then if it -- the worst case scenario occurs, where does
10 that sort of leave them? So, we're just interested to understand how that's all going to fit together? Understanding that no certainty is able to be achieved until the end of that process.

MS SHEARD: Yes, certainly, Transport Agency wouldn't have any property rights at that point either. Auckland Council holds the lease on which Hockey currently
15 sits. So, there would certainly be no property rights to move on to the Hockey land, had there not been an alternative sorted out.

JUDGE HARLAND: But would that entirely solve the problem for them if they reached a worst-case scenario position? And another point is how it all relates to their international schedule, if there is a hold up. So, some understanding of how
20 long this could take, worst case scenario, best case scenario would be a good thing to do.

MS SHEARD: Certainly.

JUDGE HARLAND: Thank you.

MR STEWART: I suppose it's sort of related to that, and that's, we will know whether
25 there is an appeal by the end of this hearing, and so, I'm assuming that somebody, before the end of the hearing, is going to advise us as to what the implications of that might be if there is an appeal.

MS SHEARD: Certainly. We can update you on that. I think -- sorry, I can't
30 remember the closing date for the appeals, but it will be before the end of the hearing, assuming we don't go way ahead of schedule.

JUDGE HARLAND: But if we do, we might just adjourn it, to allow for that potential, and on that point, which I am sure you were hoping the EPA had found time to pass on to you, if we do finish ahead of time, you might want a little bit of time to reflect, think, and do your closings a bit later.

35 MS SHEARD: Certainly.

JUDGE HARLAND: So, to wrap that up, that discussion up, it's really about the worst case and best-case scenarios.

MS SHEARD: Okay, thank you. That's very helpful.

MR BANGMA: Would it be appropriate for me to add, just following on from

5 Mr Stewart's observation about the appeal period for the resource consents, the other issue of course, which the Board will be aware of, is the leasing issues under the Reserves Act. I can address those further in my opening, but that is obviously a separate statutory process which would need to be completed, and it might be a bit longer than the 15 or 20 working days that is the appeal period
10 for the resource consents, in other words, before we know the outcome of that.

JUDGE HARLAND: Yes, and certainly, I should have been clearer that the worse and best-case scenario would incorporate that as well.

MS SHEARD: Certainly.

15 ~Ms Sheard continues (12.15 pm)

So, we are now at paragraph 5.49: Auckland Council's submission and evidence raised concerns about the effects of the Project on the reserves directly affected by the Project and also on recreation space generally in the Albany area. During conferencing, the experts agreed that the Project's effects
20 on individual reserves would all be appropriately mitigated by the designation conditions which provide for a Reserve Reinstatement Plan (including the Rook Reserve Management Plan). A related issue is the loss of two to three future sports fields that could be developed in the Constellation Reserve, and I note there was a bit of confusion between the experts and ourselves as to the
25 naming of those reserves, so we're adopting the naming from the Joint Witness Statement. It's just been -- there are maps attached to that which clearly outline where Constellation Reserve is; there's Rosedale south, Rosedale north, and Rosedale west. Confusingly, Rosedale west is actually to the east of Rosedale north.

30 JUDGE HARLAND: Except if you are standing in the other direction.

MS SHEARD: Depending on which way you look at it, but yeah, that's the place to go to, to make sure you have got your reserve names straight. It did all our heads in quite frankly.

35 So, yeah, they've agreed, in witness conferencing, they agreed that the replacement to all hockey facilities and the release of the remaining area of Rosedale park south for two to three sports fields to address the loss of the two

to three potential fields at Constellation Park will mean that all effects on sports field provision are mitigated.

The only outstanding recreation and reserve issue, as I have already mentioned, is in relation to the Alexandra Stream Underpass.

5 Turning now to effects on terrestrial and fresh water ecology: Large
volumes of earthworks are required for the construction of the Project, although
as I said before, within the context of a normal construction Project they are not
massive. They will generate sediment with the potential to enter waterways. In
10 addition, during construction, freshwater habitats may be affected by
watercourse modification, removal of stormwater ponds, works adjacent to or in
watercourse and existing stormwater ponds. There is the potential for adverse
freshwater ecology effects arising from stormwater runoff from roads, including
hydrocarbons. Mr Dee's and Ms Barnett's evidence shows that, overall, the
15 terrestrial and freshwater ecological values within the Project area are
considered to be low, and that there are no potential adverse effects on ecology
once the Project is operational. Mr Ridley's evidence discusses the erosion and
sediments control measures. Which are proposed to minimise erosion and then
control and treat sediment run off prior to any discharge of construction waters.
Mr Seyb's evidence is that, with these measures in place, sediment discharges
20 will be appropriately managed. Based on this, Mr Done and Ms Barnett's
evidence concludes that, with mitigation planting, managing potential effects on
nesting native birds within the waste water treatment plant, and construction
sites, and relocation of any lizards found in vegetation to be removed, the
construction effects on terrestrial and fresh water ecology can be appropriately
25 managed through the resource consent conditions. And those conditions
provide for the lizard management plan, the avifauna management plan, and
the erosion and sediment control plans.

 In terms of air quality effects, it's relatively straightforward. During the
30 construction phase dust emissions will need to be managed, and there are
conditions to require that. Once operational, the Project will not generate
adverse air quality effects. Mr Bluett's evidence is that dust emissions can be
controlled through the preparation and compliance with a Construction
Environmental Management Plan and within that, the dust management plan.
So, in terms of archaeology and historic heritage, the Project area has no
35 recorded archeological or other heritage sites within its corridor, and so the
potential for the Project to impact on unidentified subsurface archeological

remains is low. Where any sites are encountered, we've got standard resource consent conditions that require accidental discovery protocols to be adhered to.

Turning now to effects on mana whenua. Engagement has occurred, right throughout the development of this Project, with interested mana whenua groups. It's all outlined in Mr Rama's evidence which states that the Project has taken into consideration the views and concerns raised through the various hui and in cultural assessments that have been prepared. Overall, it's considered that the Project has addressed the concerns identified and has minimised any potential adverse effects on mana whenua values.

So, I am now at Section 6 and I am going to take you through some specifics of submitter concerns. The first one is over the Alexandra Stream Underpass.

So, as you will be well aware, the Project includes an existing connection from the proposed shared use path on the northern side of State Highway 18, through to Omega Reserve. The pedestrians and cyclists using the new shared use path to the north of State Highway 18 will have the option to utilise the existing underpass to cross under State Highway 18 and travel southwards. Ms Barrett, from Auckland Council, considers that the underpass should be upgraded as part of the NCI Project, as one of the objectives for the Project has been defined as providing safe walking and cycling facilities adjacent to State Highway 1 and State Highway 18, and connections to the local transport network.

From an urban design perspective, Mr Bray and Mr Brown agree that the Alexandra Stream Underpass needs to be upgraded. The key deficiencies that they've identified are the site distance on the ramp approaches, the narrow effective width, and the fact that it's prone to flooding which can affect its use. While Mr Greenaway -- he's the recreational witness for the Transport Agency -- agrees that the Alexandra Stream Underpass falls short of basic standards required for public access, it does not form part of the Project, and he considers its replacement is not required to mitigate an adverse effect of the Project, from a recreational perspective. Similarly, the planning witnesses agreed in conferencing that there is currently no evidence that the Project creates an observable effect that requires mitigation by way of a pedestrian over-bridge to replace the Alexandra Stream Underpass if it's not upgraded. The planning Joint Witness Statement records Mr Lovell's confirmation that Auckland Transport will not do the upgrade of the Alexandra

Stream Underpass as part of its Project, if council does not pursue it through the current proceedings.

5 The Project includes measures to improve the path alignment on the approach to the southern end of Alexandra Stream Underpass, to provide additional visibility into the tunnel, and improved lighting and CCTV coverage. However, more substantial upgrades are not included as part of the Project. The options assessment with respect to potentially upgrading the underpass is set out in Mr Schofield's evidence. Several upgrade options were considered, but ultimately it was decided not to replace the underpass because: The current
10 pedestrian and cyclist counts are too low to warrant a significant upgrade. The existing Alexandra Stream Underpass in its current form retains the current level of connectivity across State Highway 18; and there are CPTED issues on either side of the Alexandra Stream Underpass that would need addressing.

15 Critically, Mr Clark does not consider that upgrading the underpass is necessary to mitigate 'severance effects' (as suggested by Mr Tindall for Auckland Transport) -- actually, I think Mr Tindall is Auckland Council -- and he considers that the Project will reduce and not increase transportation severance across State Highway 18. This is because pedestrians and cyclists will be able to use the proposed Paul Matthews Road overbridge, with a shared use
20 pathway to be provided along the southern side of the overbridge.

It's also really important to note that Mr Clark considers that any increase in demands for the existing underpass, as a result of the new share used path, will be offset by the reassignment of some walking and cycling trips through the new connection on that Paul Matthews Road overbridge and the fact that there
25 is already a connection to the Alexandra stream path from Omega Street.

Mr Tindall considers that unless it is upgraded now, as part of this Project, it will be much more difficult to upgrade the underpass in the future. That may well be correct, but simply because additional work is convenient, does not mean it is actually required. Mr Schofield's evidence is that all three
30 upgrade options would have significant construction issues requiring State Highway 18 to be excavated with significant traffic management required. The effect of any such upgrade would also need to be fully assessed.

~Questions from the Board (12.26 pm)

35 JUDGE HARLAND: Can I just ask you, and it might just be that I've lost this in the detail, but do any of the witnesses talk about when this underpass was actually

put there, historically? It would be quite helpful to know a bit about that, probably Auckland Council is best to address that. It's obviously an old one.

MS SHEARD: Yes.

JUDGE HARLAND: But it would be -- just a little bit of a history would be quite
5 interesting.

MS SHEARD: Yes, certainly.

MR STEWART: Also if I can interrupt again, in some of the evidence it was stated
that -- the reasons were given why the SUP couldn't go on the southern side
and I read the evidence along with all the other words, and I can't remember
10 very precisely exactly the reasons for that. I know you can't necessarily answer
that but I wondered if the relevant witness could just be aware that I might like
know a bit more about the reasons why it can't go on the southern side.

MS SHEARD: We do come to that in our submissions in response to Mr Fogarty who
still raises that as an issue.

15

~Ms Sheard continues (12.27 pm)

So, turning to paragraph 6.9, one of the Project objectives is to provide
'safe walking and cycling facilities to State Highway 1 and State Highway 18,
and connections to local transport networks'. The emphasis of this objective is
20 on providing safe facilities, in this case the shared user path, along the north
side of the State Highway 18. The Transport Agency is not required to upgrade
existing components of the local network.

Even if you were to accept that upgrading the existing underpass would
assist the Transport Agency to achieve the Project objectives, that does not
25 mean that this additional work must be added to the project, or that the work
proposed is not reasonably necessary. The Transport Agency is not required to
demonstrate that its proposed work will completely or perfectly fulfill its
objectives.

So, turning now to one of Mr Fogarty's key concerns, the shared use
30 path location: Ms Barrett and Mr Brown for the Council have suggested that the
proposed shared use path on the northern side should instead be located on
the south. Mr Fogarty also makes the same suggestion.

Council is no longer pursuing that issue, but as I pointed out, Mr Fogarty
is.

35 However, the decision to locate the shared use path on either the north
or south side is not being challenged from a traffic perspective by either

Auckland Transport or Auckland Council. And again, I've noted that Auckland Council are no longer pursuing that issue.

As explained in the evidence of Mr Moore, a possible southern alignment for the shared use path (which moved State Highway 18 further to the north) was assessed using a multi-criteria analysis. This option was not preferred, for a number of reasons including that: While from a transportation perspective both alignments scored similarly, the southern alignment scored poorly in terms of requiring more of State highway 18 to be realigned north, increasing the construction period, and the constructability difficulties, and duration in managing construction over a busy 'live' road.

Drawbacks from a design perspective included that the shared use path would have to be moved or relocated in the event of State Highway being widened or a busway introduced into the State Highway corridor in the future. An alignment to the south would be more expensive to construct and maintain, due to the need to realign State Highway 18 and the additional retaining walls and noise barriers. From an environmental perspective the southern alignment would have greater impacts in terms of the effects on stream environments, vegetation clearance, and adverse visual and landscape effects on reverse, and locating the shared use path on the north locks it in place but leaves open the option of an additional path to the south to be considered in the future.

Accordingly, it's submitted that the alternative option of locating the shared use path to the south of State Highway 18 has been adequately considered by the Transport Agency, and that the Transport Agency has very sound reasons for preferring the proposed alignment to the north.

Turning now to the Centre for Urban and Transport Studies submission by Mr Willmott.

JUDGE HARLAND: At that point would this be a convenient time to pause for lunch?

MS SHEARD: Certainly.

JUDGE HARLAND: We will resume again at the appropriate time, which is 1.30.

(Adjourned 12.31 pm - 1.33 pm)

-Ms Sheard continues (1.33 pm)

MS SHEARD: So we're picking up at paragraph 6.15 of my submissions and we're looking now at the submission relating to the south facing ramps. So at paragraph 6.15:

5 Note that Mr Willmott's evidence suggests that the Project should incorporate or provide for south facing ramps, connecting State Highway 1 northbound traffic with State Highway 18 westbound, and State Highway 18 eastbound traffic with State Highway 1 southbound, i.e. that's ramps in both directions. And similar concerns are made by Mr Broadbent and Mr Fogarty. The Transport Agency rejects these suggestions. The decision not to provide south-facing ramps between State Highway 18 and State Highway 1 was made at an early stage of the Project's development. Even if south-facing ramps can be considered as an alternative rather than simply an add on, then the Transport Agency has adequately considered this issue.

10 You could not impose conditions requiring the construction of south-facing ramps without expanding the scope of the Project, and that would add significantly to the Project cost and subsequently substantially change the Project effects.

~Questions from the Board (1.34 pm)

20 JUDGE HARLAND: Are you saying there that there's a scope issue?

MS SHEARD: Exactly.

JUDGE HARLAND: So regardless of anything else, you're saying we don't have the ability to do that?

MS SHEARD: Correct.

25

~Ms Sheard continues (1.34 pm)

The Project objectives are focused on vehicle movements between Auckland and Northland. In particular, an objective of the Project is to help facilitate inter-regional travel by completing the Western Ring Route to motorway standard. Even if the project objectives, which we don't accept, the provision of south-facing ramps is not required to meet this objective. Traffic modelling indicates that providing such connections would increase traffic volumes on State Highway 1 south of Constellation Drive, thereby exacerbating the congestion levels currently experienced on the motorway, which would require very significant levels of investment to mitigate.

30

35 Nonetheless, as explained in the evidence of Mr Moore, the Project has been designed to as not to preclude the later addition of south facing ramps. The

design was developed with all four ramps considered. That was development of the design at a high level, not a detailed design. The south facing ramps were then removed from the design ensuring future compatibility with the north facing ramps. It's envisaged that the State Highway 18 eastbound to State Highway 1 southbound future ramp would be located in the available space between State Highway 1 and the Constellation Drive southbound on-ramp (some realignment may be required).

Kiwi Self Storage limited. So, we're now going to look at the busway design.

Kiwi has sought a range of alternative design options to reduce adverse effects on, and/or allow better visibility of, its site located to the north of Constellation Drive and east of State Highway 1. These suggested changes include altering the alignment of State Highway 1, reducing the height of the busway and the shared use path, or providing for the busway on a bridge structure with a shared use path underneath, reducing the width of the busway and shared use path, and relocating the shared use path and/or busway to the western side of State Highway 1.

...(Reads paragraphs 6.19 - 6.21 exactly as submitted)...

In any event, we note that: There will still be views of the Kiwi site from other parts of the State highway network. Mr Bray considers that the most prominent view of the facility is actually for southbound traffic approaching site, rather than immediately adjacent to it, and that this view will be enhanced by the Project work.

Kiwi's resource consent application for the facility relied on screening of the site within the motorway corridor in lieu of on-site planting. In other words, at the time it was established, there was no expectation that site signage would be visible from or focused towards the State highway.

~Questions from the Board (1.41 pm)

JUDGE HARLAND: So yes, I see that point that's been raised, it's not in the evidence yet, it's in the JWS isn't it?

MS SHEARD: That's correct.

JUDGE HARLAND: So it hasn't got an evidential basis yet, but you are intending to cross-examine about that point are you?

MS SHEARD: That's correct.

JUDGE HARLAND: And so, is the point, just so that we can fully understand it, that in fact there was supposed to be some kind of screening on the corridor that was never done?

MS SHEARD: No I think the point was that they relied on existing screening in order
5 to say that the effects of that particular building, the visual effects of that would be no more than minor. At the time I understand there was some additional planting between the site and the motorway.

JUDGE HARLAND: I see. Oh well, we'll listen to that when the evidence happens.
Can I just ask, I seem to recall reading somewhere that some of the witnesses
10 were going to go away and reconsider the gradient issue, there's a difference between 5.4 and 5, is that right? And that was parked in one of the JWSs as to whether or not that could be re-looked at.

Anyway, you don't need to find it now, but that's just something I
wondered whether that's the gradient issue you are referring to when you are
15 talking about why it's not suitable?

MS SHEARD: Yes, the gradient issue has two aspects, it's the gradient of the shared use path and the gradient of the busway.

JUDGE HARLAND: Which one are you talking about, the busway or?

MS SHEARD: Both.

20 JUDGE HARLAND: Because I thought that the evidence, or the JWS was a little equivocal about that, because there were, as I understand it, some reference to other busways that had a steeper gradient and so the question that was asked was well why not this one? And people were going to come back about that, so if we could just pick that up at a particular point?

25 MS SHEARD: Certainly.

JUDGE HARLAND: Thank you.

And the business about commercial reasons and economic reasons effects, are you saying that they would never be relevant or is that --

MS SHEARD: In this particular context or generally?

30 JUDGE HARLAND: Well you seem to be saying that, and then you seem to be limiting it to -- well it's not -- there's no right to a view, so there's no right to be seen. And, in any event, it's an economic effect. But economic effects can be effects that get taken into account, can't they?

MS SHEARD: I think in terms of this site economic effect is quite narrow in terms of
35 being very much linked to the signage.

JUDGE HARLAND: So you're linking that, you're not talking about it in the round as wanting a general announcement about that?

MS SHEARD: Yep.

JUDGE HARLAND: Good.

5 MS SHEARD: No, very much linked to the signage.

JUDGE HARLAND: So it's really focused on the visibility?

MS SHEARD: Correct.

JUDGE HARLAND: Visibility link to patronage?

MS SHEARD: Correct.

10 JUDGE HARLAND: Thank you.

~Ms Sheard continues (1.44 pm)

MS SHEARD: So picking up at paragraph 6.22: In terms of the substance of what's being sought, as recorded in evidence and the relevant Joint Witness

15 Statements: Mr Hall, the traffic witness for Kiwi, argues that the minimum clearance required over Constellation Drive is 4.9 metres, in accordance with the Transport Agency Bridge Manual. By comparison, the busway and shared used path design for the Project provides a 6.1 metre clearance. Mr Hall suggests that this can and should be reduced to 5.6 metres;

20 However, as Mr Moore explains, it is not best engineering practice to provide only the absolute minimum head room, ie 4.9 metres, unless this is 'absolutely necessary'. He considers in this case it is not necessary. While Mr Moore agrees that a reduction to 5.6 metres would be theoretically possible, this would require a safety departure.

25 Mr Moore considers that the lodged design already achieves appropriate standards. Nonetheless, Mr Moore agreed with Mr Hall in conferencing that 5.6 metres is an appropriate clearance at this location.

30 As discussed, it is submitted that it is not appropriate to propose a departure from safety standards simply to preserve views across to a commercial use.

35 Mr Hall also suggests a steeper gradient on the shared used path and busway in order to increase visibility of the Kiwi facility i.e. that this be increased to 5% to 5.34 percent. This would also require a safety departure in relation to AUSTROADS and would adversely affect cyclists, pedestrians and buses. Mr Moore considers that any increase about 5% would not provide the Transport Agency or Auckland Transport with any significant transportation

benefits, and so it unlikely to be approved. While it is acknowledged that there are examples of bus ways with a gradient of more than 5%, the AUSTRROADS guide states that the gradients steeper than 5% should not be provided for unless it is unavoidable. Mr Moore considers that because a steeper gradient is avoidable in the present case, there would need to be a very good reason for departing from the guide as this will affect a number of stakeholders.

JUDGE HARLAND: Yes, well is that going to be developed? I noticed that that was in the evidence as well, but it didn't say who the stakeholders were?

MS SHEARD: Certainly, yep.

The safety departure process involves consideration of a range of issues including the magnitude of the reduction and the value to the Transport Agency if the departure was approved. The safety requirements could not be waived in response to submitter concerns, even if the witnesses considered this appropriate, as this is subject to internal review within the Transport Agency, and would need to be accepted by the relevant stakeholders, which includes Auckland Transport. In any event, the Transport Agency does not support progressing the design through the safety audit process.

The witnesses for Kiwi have also raised concerns in relation to the effects of land acquisitions associated with the Project...(Reads 6.23 - 6.25 exactly as submitted)...

Finally, Kiwi's concerns about site security have been recognised and proposed condition CEMP.7k, has been added to the CEMP as set out at paragraph 6.26.

So, turning now to the bridge from William Pickering Drive to Bluebird Crescent issue.

Mr Greenaway and Ms Barrett considered that whilst there was no loss in connectivity as a result of the NCI Project, there were 'good opportunities' to improve connectivity for pedestrians and cyclists across State Highway 18 to the west of Paul Matthews Road. the options considered were either an improved underpass on the southern side of State Highway 18 with an improved underpass at Alexandra Stream, or, if there is no shared used path on the southern side, an overpass from Bluebird Reserve to William Pickering Drive. This overbridge is provided for in condition UDL.6B (I) attached to the Joint Witness Statement for the Recreation and Reserves witnesses.

However, the planning witnesses record that they were not persuaded that there is a sufficient enough effect that requires to be mitigated, or that

there's sufficient demand to justify a State Highway 18 overbridge. In terms of whether additional connections were necessary to achieve the Project objectives, the planners recorded that they were satisfied with the response in the landscape, urban design joint witness statement. In that witness statement both witnesses agreed that increased connections across State Highway 18 is a desirable outcome, but Mr Brown acknowledged that additional connections would be difficult to achieve in a practical sense. Mr Bray's view is that connections do not have to be achieved by the NCI Project alone, and reiterates that no aspects of the current proposal precludes future connections across State Highway 18.

~Questions from the Board (1.51 pm)

JUDGE HARLAND: So just to be clear again, the planning witnesses, that included the Council's planners as well did it not?

15 MS SHEARD: Yes.

MR MARK-BROWN: At 6.27 you are saying that that condition is part of the Recreation and Reserves Joint Witness Statement; that's in conflict with the evidence of the others that says it's not needed?

MS SHEARD: Correct, it was dropped.

20 MR MARK-BROWN: It was subsequently dropped?

MS SHEARD: Yeah, so the recreation and reserves witnesses met first, recommended to planners that then said no.

MR MARK-BROWN: That superseded. Thank you.

MR STEWART: Just to follow that up then, when I read the joint witness statements but I'm not clear now. The planners had a different view than the landscaping visual people. So, in the planners conferencing were the landscape people involved, or did the planners just come to that conclusion despite the fact that the others had -- the landscape people had come up with that first suggestion?

MS SHEARD: It was separate conferencing. So, I assume they weren't consulted. They came to their own conclusion.

MR STEWART: So we have a difference of view between the landscape people and the planners.

MS SHEARD: I think the difference of view is between the planners and the recreation and reserves witnesses. The landscape and the planners are aligned.

JUDGE HARLAND: Could I just note that even amongst the reserve witnesses I've got the Joint Witness Statement open in front of me and condition 6B(l) is actually highlighted as one being proposed by Ms Barrett and not agreed by Mr Greenaway, so, that's probably an important piece of information, sorry about that.

5

~Ms Sheard continues (1.52 pm)

MS SHEARD: We're looking now at the new shared used path connections. I'm at paragraph 6.29:

10

The landscape witness conferencing considered whether additional shared used path connections might be appropriate...(Reads 6.29 - 6.30 exactly as submitted)...to ensure connections near the landfill and Centorian Reserve are not precluded.

15

The Transport Agency's position in relation to the additional connections is that they're not required as a result of the Project; therefore, it does not agree to conditions which would require these additional connections. Despite this, many of the suggested connections may be able to be provided at the same time as the Project is constructed and the Transport Agency is working with Auckland Transport to construct the additional connections sought. In particular, the two organisations have agreed to amend the UDLF so that the shared used path connections are shown at Carbello Place and through Jumento Place subject to the reopening of that actually being feasible during the detailed design phase.

20

25

~Questions from the Board (1.54 pm)

JUDGE HARLAND: Just help me with this, is that Jumento Place a different one from the closed pedestrian connection between State Highway 18 and Barbados Drive? Or is that the same one?

30

MS SHEARD: It's the same one. It's currently. If you drove past it on your site visit, it's currently boarded up with a quite a high boarded fence, it's quite narrow; quite easy to miss.

JUDGE HARLAND: So the Paul Matthews and Rook Reserve that you've referred to in 6.29, that is still a point of disagreement or is that part of this discussion?

MS SHEARD: Yes that is a point of disagreement.

35

MR BANGMA: Would it be appropriate for me to clarify?

JUDGE HARLAND: Yes.

MR BANGMA: The connection between Paul Matthews Drive and Rook Reserve was something that was suggest in Mr Brown's evidence. That's an additional piece of connection shared used path which he suggests to be provided on the southern -- the Unsworth Heights side of State Highway 18 but the Council is
5 not pursuing any relief in relation to that on the basis it would be out of scope as it would require additional property purchases.

MS SHEARD: Correct. And I think that's where, Your Honour, if we do a table for you summarising all these paths we might get it straight in everybody's head.

JUDGE HARLAND: That would be good because it looks like there's three here now,
10 this one we've just heard about, then there's Jumento Place which is the same as State Highway 1 and Barbados and then there's Carbello, is that correct?

MS SHEARD: Correct, there is also the stub at the landfill and the stub at Centorian which the landscape experts recommend going to the UDLF.

JUDGE HARLAND: Yes, but there wasn't disagreement about that, am I correct, that
15 at least it would be provided for a future option?

MS SHEARD: Correct, yes.

JUDGE HARLAND: So it looks like from this, even though you're going to provide us with a helpful table that there might be a definite -- well it might be that none of these are really in dispute anymore, particularly because the Council is actually
20 saying well, there is a scope issue with what Mr Brown had been looking at; you are prepared to look at Jumento, but that's subject to detailed design obviously; you're agreeable to Carbello, and the other two you're agreeable to keeping your options open?

MS SHEARD: Correct.

25 JUDGE HARLAND: Thank you.

~Ms Sheard continues (1.58 pm)

MS SHEARD: Turning now to upgrading only the westbound section of State Highway
30 18 to dual lanes, and that's between Paul Matthews drive and just past Unsworth Drive.

There is a suggestion by Mr Fogarty that upgrading the 500 metre westbound single lane section of State Highway 18 to dual lanes between Paul Matthews drive to just past the Unsworth Drive was a better alternative.

This suggestion, which would also extend the existing left turn into Paul
35 Matthews Road has been considered by Mr Moore, but is not supported

because it would include an at-grade junction at State Highway 18 which is not legally permitted on a motorway route.

So, the design of the Constellation and Greville Road interchanges. CUTS also suggests changes to the design of the Constellation Drive and Greville Road interchanges.

Mr Willmott's evidence suggests a reorganisation of the State High 18/State Highway 1 ramps...(Reads 6.35 - 6.36 exactly as submitted)... this option was discounted due to the large number of geometric departures required, and the increase in land and property impacts resulting from the necessary service roads. However, the Project does not preclude these additional ramps being provided in the future.

So, turning now to the future proofing issues raised by Auckland Transport.

Auckland Transport did suggest that additional work or changes to the design was required in order to accommodate upgrades to existing infrastructure or other projects that may be implemented in the future. Counsel understands that Auckland Transport is no longer pursuing this relief, but for completeness we've covered it in this section of the submissions.

Requiring authorities are constrained in terms of the extent to which they can responsibly future proof their projects. The High Court in Basin Bridge considered the relevance of 'contingent benefits, being those benefits reliant on another consenting process or event in order to materialise; and 'enabling effects' being the fact that the Project under consideration would enable/facilitate or provide for other future projects to be implemented as distinct from the benefits that would flow from the actual implementation of such future projects.

The High Court held that contingent benefits cannot be considered; in order for the positive effects of a future development to be taken into account the approvals for that development need to be sought at the same time or in advance of the Project being considered; and a Project's enabling element 'can' constitute and effect to be taken into account under section 171(1) and/or section 5. However, whether it would be appropriate to treat it in this way, or instead to consider it in terms of subsections 171(1)(a) and (d), would 'turn on the particular circumstances'. Further, while enabling benefits did not need to be 'unique to a project, guaranteed to go ahead and able to be quantified' in

order to be given weight, the weight a decision maker allocates to enabling benefits may be correspondingly less when those features are not present. In light of this, 'future proofing' features are difficult to justify even when they require -- particularly where they require additional land to be taken for the Project or would cause additional adverse effects. This is because the work would have no immediate tangible benefit - the ability to consider 'enabling effects' is limited where the benefit in question could only be realised if a future project is actioned and meets with RMA approval. As such there would be no immediate positive effect on the existing environment from a 'future proofing' feature, given that future projects to which the feature proofing work would relate: May not ultimately proceed; or if they are progressed, may not be approved under the RMA. Is self-evidently not 'reasonably necessary' for achieving the objectives of the requiring authority for which the designation was sought; future proofing work is not needed as a part of the project, but instead may assist in the future if other projects are progressed and meet with approval. The Transport Agency agrees that, where possible, infrastructure improvements should be designed in an integrated and forward-looking way. Accordingly, as Mr Moore explains, the Project has been designed: "To accommodate future likely roading upgrades, but only where that accommodating has not resulted in a greater level of adverse effects or the need to acquire additional land. Future proofing is important, but if the adverse effects of that future proofing are immediate, and the future projects and their benefits are uncertain, then a balance must be struck."

The specific 'future proofing' issues that have been raised, and the Transport Agency's responses to these are detailed below.

So, turning first to the four-laning McClymonts bridge. Mr Peake suggested for Auckland Transport suggested that it would be prudent to future proof for the widening of the bridge from two lanes to four lanes and that this should be -- should this be demanded by the operation of the network at later date.

Mr Clark considers that the McClymonts road bridge does not need to be widened to mitigate the adverse effects of the Project. New bridge has been designed so that it will be possible to provide additional traffic lanes in the future. The Transport Agency understands that Auckland Transport accepts this response.

Turning now to upgrades to local roads.

Mr Lovell for Auckland Transport suggested that a number of upgrades to local roads should also be included as part of the Project and that the designation should be extended over affected local roads. Suggested drafting is included in his condition -- he called it X.2, that he sets out in his evidence.

5 As noted above, where possible, and without increasing the effects of the project, the Transport Agency has sought to provide in practical terms for the kind of future projects referred to. However, a condition of consent requiring these outcomes is not appropriate, and it is understood that Auckland Transport no longer seeks this condition.

10 Light rail.

Mr Newcome, for Auckland Transport sought that the Project should be designed to enable a shift from busway operation to a future model such as light rail. Similarly, the outcomes specified in the conditions proposed by Mr Lovell include that "the Northern Busway extension and its structures are designed to support future Mass Rapid Transport options, i.e. advanced bus or light rail transit."

15 As explained in Mr Moore's evidence, the Project has been designed to accommodate a Mass Rapid Transit System, as the horizontal and vertical alignment of the busway will allow conversion to light rail trains in the future.

20

~Questions from the Board (2.06 pm)

JUDGE HARLAND: Can I just ask you there, is the gradient issue next to Kiwi a factor that gets fed into this design issue or not? If it's not maybe we can have some evidence about that?

25 MS SHEARD: I haven't heard it raised as an issue, but I haven't specifically asked the question, so I shall ask that of Mr Moore and ask him to respond.

~Ms Sheard continues (2.07 pm)

30 However, conditions specifically requiring this, i.e. that's the ability to accommodate Mass Rapid Transit System, are not considered appropriate. The Transport Agency and Auckland Transport have agreed to continue working on this issue when undertaking detailed design and no conditions are required.

Turning now to the possible future Rosedale Busway Station.

35 Auckland Transport and Auckland Transport are presently in the process of investigating and designing a new busway station between Constellation

Albany. The preferred location is not yet confirmed. Mr Newcome considers that "the design of the busway must be future proofed for this station.

5 To that end Mr Newcome sought a condition requiring the detailed design of the Project to "not to prevent or foreclose the integration of a possible future Rosedale Road Bus Station and associated park and ride, as identified by AT."

Clearly as a practical matter, the Transport Agency will be mindful of this consideration at the detailed design stage, given its role in relation to the proposed station.

10 I just clarify there that it's AT and the Transport Agency progressing that Project jointly together.

~Questions from the Board (2.08 pm)

JUDGE HARLAND: So would that be a -- it would be a joint Project or it's possibly a
15 joint Project?

MS SHEARD: At the currently time it's a joint Project.

JUDGE HARLAND: Right. Thank you.

~Ms Sheard continues (2.08 pm)

20 MS SHEARD: The possible future bus station is at a comparatively early stage, however Mr Moore is confident that the NCI Project has been designed such that a future bus station can be designed to connect into it.

And I guess the aim there being that you wouldn't have to demolish half of the motorway to connect into a future busway at the potential locations
25 they're currently looking at.

As noted in Mr Glucina's evidence, several site options are still being assessed, and this process is unlikely to be completed before the end of the hearing. Accordingly, a condition requiring integration of the Project with a bus station at Rosedale is considered neither appropriate nor necessary. The
30 Transport Agency understands such a condition is no longer sought by Auckland Transport.

~Questions from the Board (2.09 pm)

JUDGE HARLAND: Just before you go on, you cited some authority from the High Court in Basin Bridge that discussed contingent benefits?

5 MS SHEARD: Correct.

JUDGE HARLAND: Do you accept that that might also relate to the hockey?

MS SHEARD: Probably need to give that some further thought.

JUDGE HARLAND: I'd quite like that developed, because on the face of your submission it looks as if it would equally apply to the hockey situation.

10 MS SHEARD: I will certainly give it some further thought.

JUDGE HARLAND: In which case, there are many ways around the mountain and one of the things that I had been thinking about, if everyone is ad idem about something of course one wants to make it happen if it possibly can, and certainly there's the possibility of Augier conditions, which I don't know that
15 we've put out there absolutely yet, but that might be something to flag for people to think about as well?

MS SHEARD: Certainly that's helpful, thank you.

JUDGE HARLAND: Thank you.

20 ~Ms Sheard continues (2.10 pm)

MS SHEARD: I am now at paragraph 7, proposed conditions.

The Joint Witness Statement for the planning witnesses recorded that there are no fundamental matters ...(Reads 7.1 exactly as submitted)...some differences that remain with the experts for submitter parties.

25 So, we haven't attached another version to these legal submissions you will probably be pleased to hear, because the expert planners, as we've already discussed, are continuing today. But we anticipate that there will be a further version of those conditions available following that conferencing.

This new version that the planners are now producing we are
30 anticipating will allocate conditions to the respective NORs and resource consents as appropriate, and indicate where the Transport Agency suggests changes to the conditions agreed between the experts. Changes are likely to be proposed to a number of conditions. I've listed them there. I have already indicated there will probably be some changes to the hockey condition.
35 Referencing plans in DC.1 and RC.1 to account for those revised plans. There is also going to be some minor changes to the Watercare conditions to improve

the drafting. There's been a dispute resolutions clause suggested I think by the planners, but not actually pulled into the conditions so they are looking at that.

~Questions from the Board (2.12 pm)

5 JUDGE HARLAND: There might be some legal issues associated with that mightn't there?

Can I suggest that do not be in a rush to present conditions to us that you haven't had an opportunity as legal counsel, and I include Mr Berry in that, to sit down and discuss. Because then all that will happen is you will have to go away and do it again. So, if that means we're confident we're going to get through the timetable and it just needs a day somewhere and it might even be soonish, let's do that, so that we can practically deal with everything in one hit rather than a couple of dribs and drabs.

MS SHEARD: That is an incredibly sensible approach definitely.

~Ms Sheard continues (2.13 pm)

And as I have noted at the bottom of 7.3 there might be some other tweaks just to improve the draft and certainty.

So, one of the key areas that remains outstanding between the planning experts is whether to attach the conditions to the NORs or resource consents. We have briefly discussed that this morning.

I note that for the Transport Agency, Mr Burn considers that the imposition of conditions on the NORs, except as agreed, is inconsistent with the principles implicit in section 176(2) and 176A of the RMA.

It is submitted that these sections ... (Reads 7.5 exactly as submitted)... This enables effects to be regulated without the need for such conditions to be attached to the designations themselves.

~Questions from the Board (2.15 pm)

30 JUDGE HARLAND: So has this approach been followed by others, or is this a novel new approach? I mean, leaving aside the six of one half a dozen of other argument, the substantive issue, is this a new approach that's been promulgated or is this something that's --

MS SHEARD: I think there is no specific examples of this approach apart from perhaps southern corridor where the Transport Agency did adopt this approach. But I would note too, that in relation to other designations it's sort of been a bit

of a mix. There's not sort of one single 'this is the way, you know, it's always been done.' But certainly southern corridor provides a precedent.

JUDGE HARLAND: So southern corridor, is the Takanini interchange part of that, is that -- is that the one we're talking about?

5 MS SHEARD: Yes.

JUDGE HARLAND: That's the southern Project; so most of that was resolved by consent correct and most of it was determined at Council level?

MS SHEARD: Correct.

JUDGE HARLAND: So there was one appeal, as I recall, and that was settled at the
10 last minute.

MS SHEARD: Correct.

JUDGE HARLAND: So we didn't really get to test that theory legally did we?

MS SHEARD: Correct. I think from a practical perspective though, that's a Project
15 which is currently under construction which the Council is dealing with on the ground, so it may be interested to hear from the Council officers.

JUDGE HARLAND: Certainly the aim is not to provide road blocks, it's to do what is legally permissible. And if it does get to the point where everybody has had a look and says well it probably doesn't matter either way, it's legally sustainable on either level, then you might say pragmatically and practical is a better way to
20 go.

MS SHEARD: Mmm, certainly.

MR STEWART: On that subject, the consolidated, if I can call it that way, list of conditions that you are going to present to us at some point, this presumably will contain the two points of view represented by Mr Burn and the Council
25 witnesses I think it is?

MS SHEARD: I don't think we have a clear view at the current time as to which conditions the Council would like to see on which consents; so hopefully that's something the planners are addressing today I think that would be really useful.

JUDGE HARLAND: Yes, well that might -- well, the devil is always in the detail, isn't it,
30 and it might once people get down and think about it not prove to be such a difficulty. Yeah. Let's hope.

MS SHEARD: You never know.

JUDGE HARLAND: You never know.

And so the other thing I was going to ask is in relation to that, the outline
35 plan of works changes to the legislation might have made a difference, perhaps, because one of your submissions here is that, I see reading between

the lines, it's enabled in any event by that particular process, it would be covering some of the things, so we don't need to worry about it, isn't that part of the argument?

MS SHEARD: Correct, yes. Yep.

5 JUDGE HARLAND: All right. Well think about that and develop the ideas further and bring them back to us once you've had a chance to do that.

MS SHEARD: Certainly.

~Ms Sheard continues (2.18 pm)

10 Turning now to the landfill conditions.

You've asked Council to address the lawfulness of the conditions around monitoring within the landfill on the basis that does it require the Applicant to take over any responsibilities of the Council?

15 It's understood that this request relates to the position reached at expert conferencing on landfill issues, which recommended conditions in relation to the landfill management strategy to be developed in consultation with Auckland Council as consent holder in relation to resource consents for the landfill, and monitoring to be undertaken consistent with the requirements of Council's resource consents.

20 Following this, the landfill witnesses met on Thursday 6 July with the planning experts. ...(Reads 7.8 - 7.9 exactly as submitted)...

25 However, as a practical matter, just wanted to point out that that there is nothing improper about the Transport Agency undertaking monitoring under the NCI resource consents, and the results of that monitoring being used by Auckland Council to satisfy requirements of its own consents. Auckland Council, rather than the Transport Agency, would remain legally responsible for satisfying the Auckland Council consent conditions. In that way, it would be just like Auckland Council commissioning Tonkin and Taylor.

30 ~Questions from the Board (2.20 pm)

JUDGE HARLAND: As an agency. So, I suppose the issue was raised because it wasn't particularly clear with the way they were drafting it? So that's helpful to know that, and in any event the risk is Auckland Councils, is it not?

MS SHEARD: Correct.

35

~ Ms Sheard continues (2.21 pm)

So, turning to the side agreements you've also requested that we consider the desirability of side agreements to deal with mitigation. And that was proposed as an option particularly in relation to the Joint Witness Statement for transport in the construction session.

The Transport Agency has been discussing aspects of the Project with Auckland Transport ... (Reads 7.12 exactly as submitted)... but which both organisations recognise could efficiently be provided at the same time as the Project.

I mention in paragraph 7.13 that an agreement is also being progressed with Waste Management. It relates to the particular effects on Waste Management, that in many respects would otherwise have been considered at the land acquisition stage. But also consider some mitigation of the RMA. Where amendments with Waste Management have related to mitigation of effects, using management plans these are reflected in the proposed conditions and I've listed the relevant ones there. As we pointed out earlier, we're in the process of trying to conclude that agreement with Waste Management.

~Questions from the Board (2.22 pm)

JUDGE HARLAND: Well again, not wanting to be difficult but there are some legal difficulties with these things that you will be aware of. So, what you are saying in relation to Auckland Transport is that in any event the side agreement would be irrelevant to matters of mitigation which is when we would need to be concerned about it.

MS SHEARD: Correct, we've been through the agreement with Auckland Council and agreed which matters are necessary for mitigation and which matters are more relationship matters. We're agreeable to working together to enable certain outcomes, but they're not mitigation.

JUDGE HARLAND: Yes, but with Waste Management it seems that it might be that some of the conditions relate to, potentially, that the agreement covers might relate to matters of mitigation that we might need to be satisfied about?

MS SHEARD: Yes.

JUDGE HARLAND: All right. And you're still having discussions about that?

MS SHEARD: Yes.

JUDGE HARLAND: All right. And we've already covered the landfill, I think.

MR MARK-BROWN: Can I clarify that with the 7.13, are you saying that if you have a side agreement that deals with adverse effects that will be -- those effects will be addressed in the management plans, is that what you're saying?

MS SHEARD: No --

5 MR MARK-BROWN: It will be addressed as well in the management plans?

MS SHEARD: -- where the matters in the Waste Management agreement relate to mitigation they will be carried through to the conditions in some shape or form. It may not be as part of a management plan, it may just be a stand-alone condition.

10 MR MARK-BROWN: Sorry, in the proposed conditions somehow?

JUDGE HARLAND: It might be better to be a condition rather than a management plan mitigation, if I could just suggest that?

~Ms Sheard continues (2.24 pm)

15 MS SHEARD: So I have just concluded at paragraph 7.14 that it's appropriate for such matters to be addressed in agreements where the effects at issue are specific to the submitter.

In this instance, a side agreement is akin to an affected party approval and provides the flexibility for solutions to be altered in the future by agreement
20 between the parties and without the need to change conditions. Where there are related to relationships between organisations or where the submitter is also a landowner, whose agreement is needed in order for the Project to proceed, such as in local roads or the Closed Rosedale Landfill. the Board can in these instances be confident these issues will be resolved to the satisfaction
25 of the landowner.

Side agreements are commonly used to resolve environmental disputes and are recognised by the Environment Court's Practice Note for this purpose.

~Questions from the Board (2.25 pm)

30 JUDGE HARLAND: We won't go into that completely now, but I do think there are some legal issues associated with private agreements where there is, if you like, a "well don't worry about this we've got an agreement about it, you don't need to be concerned", short on people withdrawing, which you can do in the court process and can't necessarily here, or maybe you can here, maybe you
35 can withdraw your submission, maybe that's another way around if parties

decide they don't want a determination on a particular issue, they want to stick with a side agreement.

But thank you, that's helpful for setting out what the approach is in that.

MS SHEARD: I will now pass back to Ms McIndoe.

5 MS MCINDOE: I should note just in relation to the side agreement matter, although there is still some thinking to be done, but I started to worry while I was sitting there, that if the Board was to indicate that parties shouldn't progress things through side agreements, then that would, I guess, remove the motivation for the Applicant to discuss matters with the submitters, and I'm -- I guess I'm
10 reluctant to see such a thing as a benefit. I do think it is beneficial for the Applicant to discuss matters with submitters, it's just a matter of, I think, of us providing you the comfort that we've captured all of the mitigation in a form that's physical to you.

JUDGE HARLAND: Where we need to have it visible to us. And of course, there are
15 layers always, as you know, within these things. There are some things we need to worry about, there is a lot we don't, but where we do need to worry about, where it sets precedents and where it's a public interest issue we do need to be concerned.

MS MCINDOE: Turning then to Part 2, which is a considerably more muddy than it
20 was a few years ago.

~Ms McIndoe continues opening (2.27 pm)

So, the Board's determination under section 104 and 171 are both expressed as being subject to Part 2. And traditionally this was understood to
25 require the decision maker to undertake an 'overall broad judgment'.

But of course, following the Supreme Court's decision in King Salmon the case law is somewhat more uncertain with respect to the validity of this approach.

So, dealing first with the Notice of Requirement.

30 In respect of designations, the High Court in the Basin Bridge distinguished King Salmon on the basis that section 171 of the RMA requires a different approach to that taken in the plan change context and I've just noted a quote there, the Court particularly gave weight to the fact that section 171 was expressed as being subject to Part 2.

35 And that approach by the High Court, being to preserve the traditional subject Part 2 approach, has been subsequently adopted by the Environment

Court this year in the Queenstown Airport corporation decision, which I have quoted there.

So accordingly, at present the 'overall judgment' approach remains valid, and we say is required, in line with authorities, in relation to consideration of the Notice of Requirement components of the Project.

A different approach though is required in relation to the resource consents.

So, post-King Salmon the case law in relation to resource consents has taken a rather different course.

The High Court in R J Davidson recently upheld the Environment Court and found that the reasoning in King Salmon does apply in section 104(1) because the relevant provisions of the planning documents, which include the New Zealand Coastal Policy Statement, have already given substance to the principles of Part 2.

So, while the High Court noted the approach, this is the High Court in the R J Davidson decision, noted the approach that had been taken in the Basin Bridge, it did not explain why it chose to take a different approach in the context in 141, as compared to 171.

The R J Davidson decision has been appealed to the Court of Appeal, but for the time being we have got the High Court's decision on that matter which remains the leading authority with respect to the role of Part 2 and resource consent decision making?

So, what do we do with this?

~Questions from the Board (2.29 pm)

JUDGE HARLAND: Does it matter in the context of this case is my question to you?

MS MCINDOE: And we say it doesn't. We haven't separated out designations from the resource consents and applied a different Part 2 -- subject to Part 2 test if you like to the two categories.

The planning witnesses have considered Part 2 in relation to the applications as a whole and see that Part 2 supports the granting of the consents and confirming of the notices of requirement.

They have also looked at the objectives and policies, and so if you are to take Part 2 as being expressed through those objectives and policies, then again, the planners find that the Project is consistent with those objectives and policies. So, regardless, this is what I'm getting to, regardless of which

approach you take, then we see no reason why Part 2 would prevent the confirmation of the applications.

JUDGE HARLAND: Well here's how I look at everything to do with the law,

Ms McIndoe, if I don't need to decide it, I'm not going there. And there's very
5 good policy reasons for that, actually. If we don't need to go there and nobody
here is saying well, there is a conflict at some level, we won't.

MS MCINDOE: No, no evidence is suggesting that there is a Part 2 issue with this
Project.

JUDGE HARLAND: Right. Good.

10

~Ms McIndoe continues (2.31 pm)

MS MCINDOE: So then I simply jump to section 9 and note that in appendix C to the
submissions I list the witnesses for the Transport Agency has lodged evidence
by 25 witnesses in support of its application. These witnesses comprise
15 Transport Agency staff, project designers and independent experts.

It might be opportune at this point to respond to a question, which you
had earlier this morning in relation to the future alliance for construction of the
Project; I have been told that the only agency witness who will become part of
that alliance, when it is confirmed, is Ms Amy Brock. She is the witness on
20 stakeholder matters. She is not giving expert evidence and she does not
include a Code of Conduct statement in her evidence because she is a
Transport Agency employee. The intention is that she will be seconded to the
alliance, and therefore, her pay and everything else remains the same. But in
any event, she is not giving expert evidence and therefore I don't think there is
25 a Code of Conduct issue.

JUDGE HARLAND: Thank you and we've indicated we don't have any questions of
her today. So that I think there was only the Board questions for her, and there
are none.

MS MCINDOE: Thank you I was going to come back to that at the end of the day,
30 perhaps just an indication of those witnesses that are on the list for tomorrow
which have them actually need to turn up. I think the other witness who is on
the list was Mr Campbell McGregor dealing with utilities. No-one is seeking to
cross-examine Mr McGregor?

JUDGE HARLAND: He was actually on Thursday, but has he come forward has he?

35 MS MCINDOE: In the hearing schedule I was sent last night he was listed for
tomorrow.

JUDGE HARLAND: That's interesting, the one I've got says he's listed for Thursday.

Miriam, what's the story

MS ROBERTSON: Yes, unfortunately Mr McGregor has moved forward.

JUDGE HARLAND: What we'll do is at the afternoon break we'll have a quick talk

5 about that and hopefully he will be able to be released.

MS MCINDOE: That would be useful.

JUDGE HARLAND: Would it be too inconvenient for him if we can't make that call at
afternoon teatime, for it to be known first thing tomorrow morning?

MS MCINDOE: I'm sure that would be fine.

10 So simply, just to conclude, it's submitted that the evidence will show the
Project will have substantial benefits and any adverse effects will largely be
temporary and associated with construction. And in all instances, will be
mitigated to an appropriate level. The Project is well supported by the
community and for these reasons the Transport Agency asks the Board to grant
15 the applications, subject to the conditions -- subject to the modifications which I
have explained in paragraphs 3.15 and 3.16 of these submissions thank you.

JUDGE HARLAND: Thank you very much. I will just check and see whether there are
any other questions? No. Thank you very much Ms McIndoe and Ms Sheard.

20 ~Opening submissions from Applicant concluded (2.35 pm)

JUDGE HARLAND: So that takes us now I think to you Mr Bangma, is that correct?

MR BANGMA: I believe that is correct Your Honour.

JUDGE HARLAND: So you're not Mr Lanning, obviously?

25 MR BANGMA: No, I'm not. Mr Lanning is representing the Council in the East West
Link Board of Inquiry and he may be some time.

JUDGE HARLAND: All right. So, he is obviously not going to be here, you're going to
be here helping us, is that right?

MR BANGMA: That's right, Your Honour.

30 JUDGE HARLAND: Are you wanting to have a brief break before your presentation or
are you ready to go?

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

JUDGE HARLAND: All right. Well let's go.

35 Can I just check this is to be the opening statement for
Auckland Council, and Auckland Transport opening is to be tomorrow?

MR BANGMA: I have a separate opening statement for Auckland Transport, Your Honour. I wasn't sure in terms of the timing. If you are saying in the schedule it's tomorrow then it will be tomorrow.

JUDGE HARLAND: Let's go on with the Auckland Council submissions and see
5 where we get to.

MR BANGMA: The Auckland Transport opening is ready to go today, if that's the question?

JUDGE HARLAND: Yes, it was. And so we could continue with that today, you weren't expecting anyone from your client to turn up that isn't here this
10 afternoon?

MR BANGMA: I have final instructions on the opening, Your Honour, and can proceed.

JUDGE HARLAND: All right well let's hear from the Council first thank you.

15 ~Opening from Mr Bangma on behalf of Auckland Council (2.37 pm)

MR BANGMA: So starting at paragraph 1.1, overview, Auckland Council supports the Northern Corridor Improvements Project.

The Council considers that the proposal will result in signet transport benefits, and will achieve the Project objectives set by the New Zealand
20 Transport Agency.

The proposal is consistent with key planning and strategic documents including the Auckland plan and the Auckland Unitary Plan.

And the benefits arising from the proposed extension of the northern busway from Constellation Station to Albany Station in terms of increased
25 patronage and efficiency are comprehensively addressed in evidence on behalf of Auckland Transport. the Council agrees that these benefits are significant as assessed by Auckland Transport.

While the Council is supportive of the proposal and acknowledges its benefits, it has sought amendments to the proposal to address variation
30 matters. In the counsel's submission, these amendments are necessary to ensure that adverse effects of the proposal on the environment are appropriately avoided, remedied or mitigated; and address adverse effects on various Council assets, including stormwater, landfill and open space and reserves. And obviously as Your Honour will be aware, I'm referring here to
35 matters which were raised in the Council's original written submission and

through conferencing and amendments, these concerns have been addressed as I'll get to over the next page in fact.

5 So as a result of discussions and conferencing between expert witnesses, the following issues raised in the Council's submission have been resolved: Effects on reserves and public open space; landscape and urban design matters; noise and vibration effects; stormwater effects and effects on closed landfills.

10 In relation to the proposed shared use path, the Council supports the provision of the shared used path by NZTA. However, there are three issues arising from the evidence.

Mr Barrett for the Council proposes various additional connections be provided to the shared used path to improve its connectivity to local roads and reserves.

15 Then in relation to the portion of the shared used path proposed to be located on the northern side of State Highway 18, so between Paul Matthews Drive and the interchange with Albany Highway, Mr Brown and Ms Barrett consider there would be greater benefit if this was relocated to the southern side of State Highway 18, adjoining the residential areas of Unsworth Heights; and lastly, the Council considers there is a need to upgrade the existing
20 underpass running under State Highway 18 between Rook Reserve and Alexandra Stream as part of this proposal.

25 As a result of discussions and expert conferencing with NZTA and Auckland Transport NZTA has agreed to various amendments to the shared used path to provide additional connections and to extend it in places to connect with existing facilities.

The Council strongly supports these amendments to the shared use path, and considers it will enhance the shared use paths benefits, and I provide a bit more detail later on in the opening, Your Honour, about those extensions and additions.

30 In relation to the portion of the shared used path on State Highway 18 between ...(Reads 1.8 exactly as submitted)... and would impact on, and require land, from other property owners.

35 Furthermore, on this issue, the witnesses acknowledge that in the long term it's more desirable to have the -- it's desirable to have a shared used path on both sides of State Highway 18 and that if the shared use pathway is constructed on the northern side of State Highway 18 now, as is proposed by

NZTA, this would not preclude providing a shared used path on the southern side of State Highway 18 at some point in the future.

5 However, conversely, if the shared used path were constructed on the southern side now this would most likely prevent constructing a SUP on the northern side as it would require a realignment of the motorway. And you will see there Your Honour I have included a footnote to where that's discussed in the conferencing statements.

10 Accordingly, the Council is not seeking that the shared used path be relocated to the south side of State Highway 18. However, the Council does wish to note the 'undesirable amenity' provided by the shared use path due to its location between State Highway 18 and the buildings on the northern side of State Highway 18 and the noise -- so locating in that relatively constrained corridor of land on the northern side, I think as Mr Brown and Ms Barrett's motivation for suggesting it be moved to the southern side was essentially to improve the amenity or quality of experience that would be provided and obviously there would be opportunities for greater connectivity from the Unsworth Heights area and those reserves if it was on the southern side.

15 So that is the evidence of the Council's witnesses, but the Council accepts there is no scope to alter the proposal in that way as part of this process.

20 Accordingly, this means the sole area of disagree agreement between the Council and NZTA in relation to the shared used path is in respect of the upgrade of the underpass, that's obviously referring to the Rook Reserve Alexandra Stream underpass, and this will be addressed in further detail later in the submissions.

25 The other issue, Your Honour, is the Council understands there is a difference of opinion between it and NZTA regarding whether consent for reclamation is required for the streams which are located within the Constellation dry dam. And this is the issue that was raised by Mr Turner during expert conferencing.

30 As we've already heard from Ms McIndoe, NZTA has applied for resource consents to essentially fill in the area which is currently located within the dry dam and that is necessary in order to be able to build over the top of that area the ramps which are going to connect to State Highway 1. Now that area within the dry dam is currently subject to a resource consent for damming which is held by the Council at present and I will be addressing this in more

5 detail later in the submissions, but I understand essentially the issue that's
arisen is it's clear from NZTA's application that they have applied for resource
consent to fill in all of this area including reclamation of all of the various
streams in this area, but post-lodgement of the application as is set out in the
evidence for the NZTA's witnesses, they had discussions with Healthy Waters,
that part of the Council, and my understanding is Healthy Waters advised that
their view was consent to reclaim the streams wasn't required and essentially
they didn't think you needed to reclaim a stream if there was a damming
consent that applied over the top of it. I believe that was the logic.

10 So look, Mr Turner has raised this issue in terms of what the correct
approach is through expert conferencing, he obviously has a duty to the Board
to set out his views as a witness to the Court about what the correction situation
is and now consequently the Council is addressing what it considers to be the
correct approach in these legal submissions. Obviously it will be subject to a
15 decision by the Board, in due course, so that the Council's overall position is
that it does not consider the existence of this damming consent, in relation to
the dry dam, extinguishes any requirements to obtain consent under section 13
of the RMA for reclamation which NZTA has acknowledged and applied for.
However, what we would say is that the damming consent is obviously part of
20 the existing environment and would be relevant to the assessment of any
effects of basically reclaiming this particular area of streams and, as I've
indicated here in the opening, the Council will explore with Ms Barnett the
ecologist being called by NZTA from a practical perspective what difference, if
any, this might make to her assessment of the effects of the proposal, and
25 what, if any, further offset mitigation is required due to this difference in legal
approach.

Moving on to 1.13, these submission are structured as follows: The
benefits of the proposal; the changes to the shared used path; effects on
reserves and public open space, landscape and urban design matters; noise
30 and vibration effects; stormwater effects; effects on the Rosedale Closed
Landfill; the scope of the reclamations required for the proposal; amendments
to the busway and shared used path proposed by Kiwi Self Storage; some
various issues that have been raised by the Board which they've asked for the
Council to provide a response; conditions, and conclusion.

35 So, turning to the benefits of the proposal.

The Council considers that the proposal will provide benefits by completing the last section of the highly important Western Ring Route to a motorway standard; provide for an additional four lanes on State Highway 1 between Constellation driven Greville Road; allow for motorway to motorway travel from State Highway 18 to State Highway 1, at least if you are heading east and then north, or if you are heading from State Highway 1 to State Highway 18 heading south and then west, as I understand it.

The Project will also extend the highly successful northern busway from Constellation Station to Albany Station and will enhance walking and cycling facilities on the North Shore by providing a shared used path from Oteha Valley Road to Constellation Station, and from Constellation Station up to the interchange between State Highway 18 and the Albany Highway, note that part of it is proposed to be located on the southern side of State Highway 18 up to Paul Matthews Drive, at which point it then crosses over to the other side.

The Council acknowledges that the proposal will deliver significant transportation benefits and that it will achieve the Project objectives set by the NZTA.

In relation to ...(Reads 2.4 - 2.5 exactly as submitted) ... However, it considers that the benefits of the shared used path can be further enhance by changes that have been agreed with NZTA which are discussed below.

So, as we've already noted above, there are essentially three issues arising on the evidence in relation to the shared used path: The additional connections set out by Mr Brown, Ms Barrett, and Mr Tindall; the issue of the relocation of the shared used path, which as I've already indicated the Council is not pursuing; and the upgrade of the underpass.

So, turning to the issue of the agreed amendments, so the shared used path.

As a result of a conferencing and discussions, it's been agreed that NZTA will make the following amendments to the proposal:

First of all, to, as I understand it, not preclude two sections to the shared used path being provided in the future off the portion of the shared used path that runs along parallel to State Highway 1. One of these will be at the Rosedale Closed Landfill Site, this is on the basis that that might become public open space at some point in the future, in which case a connection would be desirable. And the second would be at Centorian Reserve around Pond 1.

5 So, these have been discussed and agreed as being desirable as part of
conferencing; I've included footnotes referencing the various parts of the
conferencing statements where that's been agreed. The Council understands
from discussions with NZTA that this is acceptable to NZTA and that these
would essentially be enabled through the detailed design process and there
would be amendments to the conditions relating to the urban design landscape
framework principles to make sure that those additional connections weren't
foreclosed in the future. And for clarity, what we're talking about here is not
preventing a connection from being provided in the future, so it's not saying that
10 the connection will be provided now. So, in practice I understand that that may
mean some sort of stub or something which could be connected to in the future
would be put in place in those locations.

15 And a similar issue in fact then with two further connections, these ones
are ones that are off the portion of the shared used path that runs along the
southern side of State Highway 18. One Carbello and then a further one or at
least the possibility of a further one being provided at -- it's in fact, as
Your Honour pointed out, it's not at Jumento Place, it's a connection that would
go through from State Highway 18 to Barbados Drive; I think it is directly
opposite Jumento Place which is a cul-de-sac and that's why it's been referred
20 to as the 'Jumento Place connection'.

In relation to the Jumento Place connection as I've noted there, the
Council understands that NZTA is in principle supportive of providing this
connection and that's provided this is shown as feasible through detailed
design.

25 There are one or two issues there, but in particular there's the noise
bund and landscaping bund, which will be provided between State Highway 18
and where this connection would come out. So, the issue as I understand it,
would be ensuring that a pedestrian connection could be provided through
there in a way which didn't compromise the noise and landscape outcomes
30 which we're seeking to achieve through the bund.

~Questions from the Board (2.54 pm)

JUDGE HARLAND: This might be something that gets developed in the evidence, but
if the Council had a preference between the noise bund and the landscaping
and that was on the one side and on the other side was this connection, which
35 would the Council choose? You don't have to answer that now.

MR BANGMA: Perhaps it might be appropriate to address that later. I have had some preliminary discussions with Mr Brown; he can obviously inform the panel of his views he doesn't think -- he thinks a solution that wouldn't compromise the landscape outcomes is possible. I haven't had any feedback from Mr Hegley yet in terms of this.

JUDGE HARLAND: And it might be an unfair question, it might be simply something we have to make a call about. But if you are in a position to make a call about it you are welcome to. Don't feel obliged.

MR BANGMA: Thank you Your Honour.

~Mr Bangma continues (2.55 pm)

Moving on to paragraph 3.3 of the submissions. What I detail here, Your Honour, is basically some additional extensions which has basically arisen off the back of evidence provided by -- I think these ones it's probably primarily Auckland Transport, but perhaps also the Council, in suggesting that there would be additional benefit to extend the shared used path proposed by NZTA in a couple of places and the objective of that would be to make sure it can connect up with existing cycle path facilities where these are located at comparatively short distance away to basically maximise the benefits of what NZTA is proposing.

So as the Board will be aware from reading the conferencing statements, that's something which has obviously been discussed in the conferencing and I think there was reference in a few conferencing statements to the experts reporting back to the Board on this, potentially. So, the current state of play is NZTA and Auckland Transport have agreed to certain extensions and improvements to the shared used path and that agreement is sitting in a side agreement and I have been told by counsel for NZTA that their preference is that NZTA would provide these things through a side agreement; so, these additions would in that sense sit outside of the current proposal which is before the Board. I understand that shouldn't present any particular difficulty in that these additional connections are within road reserve and that the types of activities we're looking at would be permitted. So that's all sitting in a side agreement, but in terms of some I suppose, high level detail, in terms of what's been agreed or proposed, and as I say, these are largely responding to matters which have been raised in Ms King's evidence for Auckland Transport.

So NZTA has agreed to extend the proposed shared used path along Oteha Valley Road to connect with existing cycle path to the northern side of Oteha Valley Road, and then essentially under the motorway to connect with existing cycle path to the west of the motorway interchange.

5 3.3 (b) NZTA has agreed to provide pedestrian and cyclist refuges at McClymonts Road and Medallion Drive Intersection and near the intersection of McClymonts Road and Elliot Rose Avenue, and protected cycle facilities along McClymonts Road.

10 3.3 (c) NZTA has agreed to extend the shared used path from where it currently terminates on Albany Highway up to the existing cycle paths located further north on Albany Highway in the vicinity of the intersection with Bush Road.

15 And lastly NZTA has agreed to an upgrade of what's currently a proposed footpath, I believe of about 1.8 metres in width to widening that to 3 metres so that that could be a shared used path along the eastern side of Caribbean Drive to approximately the boundary of the designation. And that's provided Auckland Council would provide the additional land required and Auckland Transport would provide any necessary approvals.

20 So, on the basis of NZTA's agreement to do that as part of a side agreement, the Council essentially considers its concerns are being addressed and would not seek any further relief in terms of extensions to the shared used path as part of that proceeding.

~Questions from the Board (2.59 pm)

25 JUDGE HARLAND: So I think a couple of issues arise. One is that you might withdraw that relief? All right, that's one option. I'm not -- you don't have to answer this right now. And the second is that, or as part of that you might decide that the things that were sought were not necessary to mitigate any adverse effects. So, have a think about that and I don't want to push you in any particular direction, it's up to you to decide what way you want to go. If any of those, you might just prefer to leave your submission on the basis that it is, and we'll see where we get to after that.

MR BANGMA: Thank you Your Honour.

JUDGE HARLAND: We're just about to come to the next topic, would this be a convenient point for us to take a break for 15 minutes?

35 MR BANGMA: Yes, that would be fine Your Honour.

(Adjourned 3.01 pm – 3.17 pm)

MR BANGMA: I think that takes us to Part 5 Your Honour, landscape and urban design matters.

5 In relation to ...(Reads 5.1 - 5.2 exactly as submitted)... In particular, NZTA has:

Confirmed that all areas of planting shown in Attachment 6 to Mr Bray's statement will be implemented. These are obviously specific concerns or criticisms that he had.

10 The NZTA has relocated the Albany Busway overbridge and termination of it at the eastern edge of the Albany Bus Station carpark. NZTA has made provision for additional cycleways and walkways, both sides of the have proposed McClymonts Bridge. They confirmed the stormwater pond will be located in Rook Reserve, in conjunction with redevelopment of the wider park, and is proposing to provide new screen fencing near Barbados Drive to address the amenity effects of the Paul Matthews drive interchange.

So those are detailed in Mr Brown's executive summary.

So noise and vibration effects. Obviously, there's extensive experts conferencing on that and the planners are now working on conditions.

20 In terms of Mr Hegley's evidence on behalf of the Council, Mr Hegley in his written statement was always clear that did he not have any particular concern's in relation to NZTA's assessment of operational noise and operational vibration effects.

25 However, Mr Hegley in his evidence did identify some concerns in relation to potential construction noise and vibration effects of the Proposal, and in particular his concerns centred at a high level around the adequacy of the information that was initially provided, and a concern regarding the drafting of conditions the potential for the conditions to allow the noise levels during construction to be higher than they were actually assessed, is likely to be due to how the conditions were drafted.

30 And, obviously, there's been extensive expert conferencing on this matter and as a result of that, Mr Hegley's concerns that he expressed have been addressed.

Moving onto stormwater.

35 In relation to stormwater the Council sought amendments to the Proposal to address the effects of stormwater discharges from the Proposal, on

water quality and quantity and the effects of the Proposal on Council stormwater assets.

And, essentially, through expert conferencing these concerns have all been resolved through changes to the conditions and there are no remaining areas of disagreement between the experts.

Moving onto effects on -- well, it's closed landfills, plural I've noted in the submissions, but it should really just be singular. The Rosedale Closed Landfill. Now the western boundary of this obviously abuts State Highway 1. The Proposal will require excavation of approximately 250 metres of the length of the closed landfill, affecting landfill infrastructure in these areas.

The Council in its evidence sought some -- I think what were described as relatively minor changes -- to the Proposal and conditions of consent to ensure that any adverse effects on the landfill were appropriately avoided, remedied or mitigated.

And again, as a result of conferencing, the concerns that were raised in the Council's evidence have been resolved and the experts basically have agreed on changes to the conditions which they are satisfied with.

So this, Your Honour, would bring us to the reclamation issue, which I already mentioned briefly at the start of this opening.

So, as the Board is aware, there is a potential difference -- sounds like from NZTA's opening, there is in fact a difference in opinion, between NZTA and the Council regarding whether consent is required for reclamation of streams located in the constellation dry dam. It's clear from the application and AEE, that NZTA has applied for resource consent to fill in all of these areas within the dam, as part of the Proposal, and that it has also sought non-complying activity resource consents for reclamation of the stream beds under section 13 of the RMA. And there is a quote there from the AEE which describes the series of water courses. So, these are located between Watercare's Pont 1 of the waste water treatment plant and essentially State Highway 18 near Caribbean Drive. And as acknowledged there in the AEE, these are considered to be either naturally occurring intermittent or permanent streams, despite the fact that they're heavily modified. So, it would seem to be an acknowledgment there that they come within those definitions in the PAUP in relation to streams, and that quote goes on to note that obviously these will be reclaimed and filled to accommodate the Paul Matthews Road connection.

The AEE further notes that: It provides a figure there I think of approximately 602 metres of these streams and stormwater drains which are going to be reclaimed and the AEE notes that they're obviously -- well, they are considered to be a poor quality habitat.

5 Mr McGahan in his evidence records that: NZTA has applied for non-complying activity resource consent, however "post lodgement" the Council's Healthy Water Team, who is the current manager of that asset, advised that their approach had been that the areas of stream within the dam were not stream, and as a result of this I understand that's how we get to the 10 17.4 metres of stream, referred to in paragraph 9.5 (c). So essentially streams which are located outside of the dry dam area, so between the dry dam and the pond. In fact, there is I think it's a diagram attached to Ms Barrett's evidence which shows this, would it be useful to --

JUDGE HARLAND: We saw it on our site visit. So that was very helpful to see that, 15 and I think we do know we've seen the thing, thank you.

MR BANGMA: Thank you.

 So that's the 17.4 metres which has then consequently been assessed by Ms Barrett, in her evidence, rather than I understand the figure of 602 metres, which is referred to in that quote in the AEE.

20 Now, Ms Barrett's conclusion as an ecologist is that the values within that 17.4 metres are low, ecologically. She notes that NZTA's providing a stormwater wetland which will provide significant ecological benefits and therefore she considers that no further offset mitigation is required.

25 ~Questions from the Board (3.52 pm)

JUDGE HARLAND: And the offset mitigation is as a result of the interpretation of the Rule which covers situations does it not, within the plan?

MR BANGMA: Yes, Your Honour.

30 ~Mr Bangma continues (3.53 pm)

 So Mr Turner, in his evidence, considers that there is a strong emphasis in the plan provisions on providing offset mitigation, for situations where streams are being reclaimed. So while his overall view, as set out in his evidence, is that the Proposal is not contrary to the objectives and policies as a 35 non-complying activity, he considers that there is this strong emphasis on providing offset mitigation, and it could potentially be more consistent if offset

mitigation were provided, is his view. But obviously, ultimately whether offset mitigation is needed and what the appropriate quantity is, I think, we would all accept, a question that needs to be answered by Mrs Barnett, as the ecologist. And that obviously depends on the Board's interpretation of the situation legally and whether in fact it's 602 metres of stream that's being reclaimed, or only 17.4 metres.

And as I note in 9.7, while there is this existing damming consent, in the Council's submission the existence of the damming consent does not extinguish any requirement for consent for reclamation under section 13 of the Act, although the Council would obviously acknowledge that damming consent forms part of the existing environment.

So again, it would, I think, be relevant to explore with Ms Barnett the implications of a damming consent on ecological values. And that's what the Council tends to do through some brief questions in cross-examination of Ms Barnett, so that the Board has evidence on these matters.

~Questions from the Board (3.56 pm)

JUDGE HARLAND: Right. So, to be clear, the Council's position is that it's 602 metres, is it?

MR BANGMA: Yes. Yes, Your Honour.

So that brings us to the end of that section of the submissions unless there are any further questions?

~Mr Bangma continues (3.56 pm)

All right. Section 10 of the submissions: Amendments to the busway and shared used path proposed by Kiwi Self Storage. I just briefly note there that Auckland Council adopts the submissions made on this matter by Auckland Transport which we will potentially be hearing next. In particular the Council, like Auckland Transport, does not support the design changes proposed by Kiwi Self Storage, on the basis that these changes are not required to address an adverse effect on the environment, noting as Ms McIndoe does, more indicating that there is no property in a particular view, and the design changes proposed by Kiwi Self Storage would permanently reduce the efficiency of the operation of public infrastructure, in this case for a claimed private benefit, and lastly, Council and Auckland Transport consider that it would set an unhelpful precedent for the design of public infrastructure in the future, if requests to

redesign them in a way which reduces their efficiency was entertained on the basis of submissions about visibility for, you know, private interests.

So, there is a more fulsome submission on that in the opening for Auckland Transport, which essentially the Council adopts.

5 Section 11 of these submissions, issues raised by the Board, the Board has requested Council address the following matters: The issue of "bundling" of the application, and non-complying activity status, and whether that is defined in all of the resource consents that have been sought. The lawfulness of conditions in relation to the Rosedale Landfill site and monitoring obligations,
10 responsibilities, which Ms McIndoe has already addressed, and the appropriateness and/or desirability of side agreements to deal with mitigation measures, and I think that was with particular reference to the Joint Witness Statement for transport and construction although perhaps might apply more generally than that.

15 So, on the issue of bundling for non-complying activity status, I think Your Honour, there is essentially agreement or alignment of approaches -- the Council's submissions, with the submissions from Ms McIndoe for NZTA on this issue. NZTA has put forward its application on the basis that the resource consents will be bundled, and we've included reference to recent High Court
20 authority on when it's appropriate to bundle consents and that notes I think two key components, the first is where there is an overlap of effects then it's appropriate to bundle, but conversely, sometimes where there are restrictions on matters of control in relation to particular consents, if you're dealing with restricted discretionary activities with very narrow matters of discretion, that can
25 count against bundling being appropriate.

 But in this particular case, as has already been explored in questions to Ms McIndoe and her submissions, there is a non-complying activity resource consent for reclamation of these areas within the constellation dry dam, and there is also a range of other consents which have been applied for but I think
30 in particular it would be the earthworks consents, and, given streams are involved, the diversions and discharges which all apply in relation to this same area. And in the Council's submission, paragraph 11.5, on that basis Council considers there is an overlap between the various consents. Essentially they are sought in a way that they cannot be separated out from each other, which
35 means bundle is appropriate in this case.

Moving on then to the conditions regarding monitoring in the Rosedale Landfill site.

The Board has asked Council to address the lawfulness of conditions concerning monitoring within the construction area of the Rosedale Landfill site, that may require NZTA to take over responsibilities that Auckland Council has under its consents.

And I think the point was captured well in discussions before. What's essentially envisaged is that NZTA would be acting for the Council as agent in these situations and undertaking the monitoring for the Council. The Council accepts that it's still the consent holder and obviously has responsibility for all of its existing obligations under those consent conditions, and essentially the need for, or why it's proposed that NZTA would undertake the monitoring, as I understand it, is due to potential difficulties with Council officers accessing certain parts of the landfill site during the construction period. So NZTA has proposed or it has been agreed that NZTA would undertake that monitoring instead and provide that data to the Council, with obviously the aim of ensuring that the council's existing obligations under its consents can still be complied with at all times.

And lastly, at paragraph 11.11, I note there, to the extent that the Board may have any concerns around the lawfulness of NZTA agreeing to undertake this monitoring, effectively as the Council's agent, it's noted there in the conferencing a statement that NZTA has volunteered to do this, on an Augier basis, as part of the landfill management strategy that's proposed.

Moving on to the issue of the appropriateness of side agreements to deal with mitigation measures.

I understand that the origin of this question, it may be that there are a number of places in the conference statement for construction, traffic essentially, where the witnesses agreed that it would be appropriate for certain things to be addressed either through, and they use this phrase "conditions and/or a side agreement".

In the Council's submission, where a mitigation measure is required to address the adverse effects of the Proposal on the environment, then this should be addressed through conditions. However, the potential role of any side agreement between the parties should be limited to matters beyond that which aren't required to address adverse effects on the Proposal, and -- including the potential examples there, relating to the operation of the

road network or public transport services, communication between the parties or funding arrangements, those are just by way, of example. But the Council does accept that mitigation measures required to reduce adverse effects of the Proposal probably belong in conditions, and continuing with construction traffic effects, where this issue first arose, Council notes that basically comprehensive changes to the traffic management conditions have been agreed through expert conferencing and will ensure that in relation to construction traffic effects, all effects are appropriately avoided, remedied or mitigated:

Moving on to part 12 in the opening statement, conditions:

As has already been noted, as a result of conferencing between the planners there is now essentially an agreed set of designations and resource consent conditions. Noting that there is a further session of planning conferencing taking place today, in relation to the noise conditions. The sole area of disagreement between the experts is this issue relating to the allocation of conditions to either the Notice of Requirement or the resource consents.

Looking at the proposed approach that's been taken by NZTA, land use matters, so the construction and operation of the additions to the motorway, the extension of the busway, and the shared used path, are proposed to be authorised under the designations and various resource consents. Resource consents have been sought for matters such as earthworks, reclamation, damming and diversion and discharges of stormwater and contaminants to air.

As the Board has probably picked up on, the way the proposed conditions are structured, the only conditions which would attach to the designation relate to operational noise, urban design and landscape matters, stakeholder communications and the relocation of North Harbour Hockey.

The regional consents include all of the conditions relating to the various management plans. So, the construction environmental management plan construction management plan, dust management plan, lizard management plan and the stakeholder communications management plan.

~Questions from the Board (4.08 pm)

MR MARK-BROWN: What about contaminated land?

MR BANGMA: I thought that might, apologies for the oversight sir, I thought that was attached to the -- that might have been attached to the regional consents?

Ms McIndoe is nodding. So, apologies for that oversight.

But picking up on Her Honour's question this morning, I suppose in terms of, effectively, does -- or yes, there is a difference of opinion between the experts. I guess, does it matter in the sense you can have conditions on the resource consents or you can have consents on the designation, what's the
5 significance?

The Council's submission on that point would be simply that it's necessary to ensure that conditions that are imposed are lawful conditions, essentially, and essentially for that to be the case they need to relate to the particular effects of the particular activity. So, the Council's preferred view of
10 reordering the conditions, if you like, is to ensure that they do properly relate to either the land use activities, or the regional consents. And looking at all of the various matters which are proposed to attach to the regional consents, in Council's submission, those don't largely relate to the regional consenting matters. Many of those would seem to relate more to the land use aspects of
15 the Proposal. So, in particular the construction of the motorway infrastructure, busway infrastructure, and shared used path which is authorised under the designation.

So, as I've already noted, for a condition to be a valid resource management condition, it needs to relate to the effects that are generated by that particular activity. And that's the basis on which the Council suggests the
20 various conditions should be reordered.

MR STEWART: Mr Bangma, presumably the results of the planning conferencing which is going on today, I imagine that will be one of the topics on their agenda, is that correct? Do you know?

25 MR BANGMA: I'm not sure of that sir.

JUDGE HARLAND: I think it's noise.

MR BANGMA: I think it's noise related conferencing. This issue as I understand it, of allocation of conditions to the designation or resource consents has already been the subject of conferencing, and obviously conditions have been prepared
30 and agreed. At the moment it's on the basis -- well, on the basis that it's been presented in conferencing, with various things attaching to the resource consents, but I think the Council experts have just noted that in principle they consider it should be allocated differently. But I don't know if that's something which is going to be considered further as part of any conferencing.

35 JUDGE HARLAND: Well, I think we'll wait and see how the hearing pans out and there might be questions around it, but I suppose where I'm currently thinking,

I'm loathe to ask you to do any more work because you've all been working so hard, but I'm hearing that the downside for NZTA, or the upside depending on which side you look at it, is that they then wouldn't need to apply to remove some conditions from a designation. So that's an up for them. An upside for them, and then it would be a question of degree as to how onerous that is and we can probably make a call about that.

And then from your side, which is a more fundamental point, is probably relating to 108, I imagine, of the Resource Management Act, and the purposes of conditions; what lawfully we're able to do, and I'm picking you would say there is a precedent effect, albeit maybe not a practical one at the end of the day.

So, I am trying to still get and will through the hearing, I think we'll all be wanting to, by the end of it, get a feel for does this really matter practically? But if it doesn't matter practically, or there are some slight benefits to one party, particularly for what's proposed, does it matter legally? So, I think that's kind of where I'm hearing the two sides are coming from.

I haven't heard anyone say that there would be pragmatically huge differences or problems for either side if conditions were attached to either. So, it's those two aspects, is that fair comment?

MR BANGMA: I think that's fair, Your Honour. Look, it's an issue which has obviously come up through conferencing, and it is recorded as an area of disagreement in the conferencing statement, so Council considers it appropriate to address in opening and say what its position is. Not sure there are grave practical implications, one way or the other.

Just one last point on that matter, Your Honour, when Ms McIndoe was doing her opening before I think she was talking to you about previous projects in which conditions have been structured so that certain -- a bit like this, certain management plans were attached to resource consents. It would've been impolite to interrupt again, because I had interrupted a few times already, but a case I was involved in at the end of last year, I think Your Honour, before Judge Kirkpatrick for Watercare Services, that involves designation and conditions, as here. It's the Watercare Services Limited v the Pukekohe East Preservation Society. And the approach that Watercare took in that, from memory was I think, most of the conditions basically went on the designation rather than the resource consents. And that was confirmed by the Court in the conditions, albeit, to be fair, I don't think there was legal arguments one way or the other. It

wasn't an issue that was in contention; it was just the way it was put forward by Watercare.

JUDGE HARLAND: I have read that case, and that case was about management plans. There were some issues around management, am I right in that? It's a while since I read it, and about the lawfulness of being able to delegate aspects of conditions to plans. Did it cover that? Doesn't matter, we'll forget that report. We won't get confused; it could be me that's getting confused. It's likely to be, actually, on that.

MR BANGMA: That was just a recent example.

10 JUDGE HARLAND: So it has happened, is what you are saying?

MR BANGMA: I would acknowledge that perhaps there are examples both ways.

So, I think I was at the conclusion of the opening statement, paragraph 13.1.

~Mr Bangma continues (4.16 pm)

15 To finish on a very positive note, the Council wishes to acknowledge the generally collaborative approach of NZTA and its witnesses to resolving the issues raised by the Council and the improvements made to the proposed mitigation and conditions.

20 The Council supports the Proposal and seeks that it be confirmed by the Board for the reasons outlined in the Council's evidence and in this opening statement.

JUDGE HARLAND: Thank you Mr Bangma. Do you have any questions? No. Thank you very much.

25 Now we have reached quarter past 4. Would you like to start your submissions on behalf of Auckland Transport or would you prefer, and I am giving you the option here quite genuinely, to wait until the morning to do that?

MR BANGMA: I'd be happy to push on Your Honour.

JUDGE HARLAND: All right. Well let's go. You don't need a break?

MR BANGMA: No, no. Happy to push on.
30

~Opening for Auckland Transport (4.19 pm)

JUDGE HARLAND: Just when you are ready, thank you.

MR BANGMA: Paragraph 1.1 of Auckland Transport's opening statement.

35 Auckland Transport strongly supports the Northern Corridor Improvements Project. Auckland Transport is a key stakeholder with the New Zealand Transport Agency for the Proposal and as we've already heard, the proposal

will deliver an extended busway which will provide for Auckland Transport bus services; an upgraded Constellation Station that will be owned and operated by Auckland Transport, and a new shared used path which will eventually be maintained by Auckland Transport.

5 Auckland Transport considers that the proposed extension to the highly successful northern busway from Constellation Station to Albany Station aligns with key strategic documents including the Auckland Plan, Auckland Transport Alignment Project Recommendation Report, Regional Land Transport Plan, and Regional Public Transport Plan. All of these
10 documents identify the need to improve core public transport, which will be achieved by this Project. The proposal will support increased public transport trips, improve the efficiency of the bus network and assist in providing a move to outstanding public transport.

15 The Proposal will also improve walking and cycling links on the North Shore by providing a proposed shared used path from Oteha Valley Road to Constellation Station and from Constellation Station to the interchange of State Highway 18 and the Albany Highway.

20 The Proposal will improve network resilience and generally lower traffic volumes on residential streets and arterial routes, it will improve connectivity between State Highway 18 and State Highway 1, resulting in improvements to freight and general traffic efficiency.

Auckland Transport appears at this hearing to provide evidence in support of the benefits of the Proposal, particularly in relation to the extension of the busway and shared used path.

25 Auckland Transport considered that further benefit could easily be -- in relation to the shared used path this is, could easily be obtained by providing some small extensions to the shared used path as notified so that it connected to existing walking and cycling facilities, and by improving connections to the shared used path in some places. These additions and
30 amendments have been the subject of expert conferencing. And as a result of expert conferencing and discussions, NZTA has largely agreed to the extensions and amendments proposed by Auckland Transport. This will be covered in a side agreement between NZTA and Auckland Transport. Auckland Transport in its submission and evidence also sought amendments
35 to conditions to ensure that the construction effects of the Proposal on bus services, and the Local Road Network were appropriately managed. In

addition, Auckland Transport sought to clarify the operational effects of the Proposal on the local road network, and ensure these effects were mitigated by NZTA where appropriate.

5 As a result of expert conferencing and on-going discussions with NCI on these matters, Auckland Transport's concerns have been addressed through a combination of: The provision of further information by NZTA; amendments to conditions; and agreement between NZTA and Auckland Transport that various matters will be addressed by way of a separate side agreement between NZTA and Auckland Transport.

10 The one remaining area of disagreement between NZTA and Auckland Transport at this stages relates to potential damage caused by construction traffic to local roads where these are the key access to the construction site and will be used by high volumes of heavy vehicles, for example, for delivering earthworks, aggregate, superstructures. Auckland
15 Transport has sought a condition requiring NZTA to survey the affected local roads pre-construction, monitor truck movements and any damage, and remedy any damage that occurs. In expert conferencing on this issue, Mr Hale for the Agency, agreed that it would in principle be appropriate for construction traffic effects on local roads to be dealt with through either a
20 condition or a side agreement. There have been ongoing discussion between NZTA and Auckland Transport aimed at reaching agreed wording on a condition that will satisfactorily address this issue. Counsel understands there is a willingness on both sides to resolve this issue and discussions recently have been focusing on, I suppose, matters of technical debate or
25 argument that would input into the condition.

~Questions from the Board (4.23 pm)

MR STEWART: Mr Bangma, do you have any indication of whether there's going to be an agreement imminently, or before we're finished?

30 MR BANGMA: We're hopeful sir, I don't know if -- can we provide any more indication than that?

MS MCINDOE: No we're very hopefully. That's about as far as I can take it.

MR STEWART: Very hopeful. I suppose we can't expect more than that.

~Mr Bangma continues (4.24 pm)

MR BANGMA: Auckland Transport does not support the design changes sought by
Kiwi Self Storage to increase the gradient of the busway and shared use path
5 to preserve views of Kiwi Self Storage's site from the motorway. These
design changes require a departure from what's recognised as being the
optimum design standards and would permanently reduce the efficiency of
public infrastructure for no public benefit.

And I list there the witnesses that will be called by Auckland Transport.
10 Section 2 of the opening statement - the extension of the northern busway.
Auckland Transport strongly supports the proposed extension of the Northern
Busway, and upgrades to Constellation Station.

~Questions from the Board (4.25 pm)

15 JUDGE HARLAND: Can I just pause there? Sorry, I should have asked that a little
bit before we got on to that topic, will your witnesses be covering the rail point
that was to do with the gradient that I raised with I think Ms Sheard, that was
the busway that is on that particular side proposed, would the gradient issue
in relation to Kiwi have some impact on the future rail Proposal if there were
20 to be one? Because if it was, that would be a factor that would militate
against even considering a gradient change. And I don't know whether it is
or it isn't, but there might be one of your witnesses that can address that?

MR BANGMA: Yes, I'd be happy to check with the witnesses, Your Honour, if they
felt that that was within their expertise. It's not something I've discussed with
25 them yet and can only note the conferencing, as you have, the conferencing
statement only considers effects on the efficiency of the busway and the
shared used path at present.

JUDGE HARLAND: Yes, but wasn't it your client that wanted to ensure it for the
future proofing aspect?

30 MR BANGMA: It was Your Honour.

JUDGE HARLAND: Yes, okay, well then it's your witness.

MR BANGMA: Absolutely, Your Honour.

MR STEWART: Yes, my understanding of what I read, but I think we need
confirmation of this, is that it had been stated by Kiwi Self Storage that the
35 grade they were seeking was no more than the grade leading north up
towards Sunset Road. And I think it was on that basis they were claiming

that the gradient they were seeking was no more than what was on the other side of the ridge. Now I think we just need some clarity about that.

MR BANGMA: Yes sir.

JUDGE HARLAND: So sorry, I interrupted you. The extension of the northern
5 busway.

~Mr Bangma continues (4.27 pm)

MR BANGMA: So the extension of the northern busway.

10 Auckland Transport strongly supports the proposed extension of the northern busway, and upgrades to Constellation Station.

The northern busway lies at the centre, both geographically and figuratively, of the North Shore Public Transport Network and forms a core component of the Regional Rapid Transport Network. It provides an important spine for north-south trips within the North Shore. As part of the
15 North Shore Rapid Public Transport Route along the motorway and over the Harbour Bridge, it provides the main high patronage public transport access to the city centre.

The busway first opened in February 2008. Levels of patronage on the busway have been consistently higher than projected. Over the past
20 three years, patronage has continued to grow at a rate of over 14.5% per year. At present, approximately one third of peak trips over the Harbour Bridge are on public transport. During the morning peak the North Shore Rapid Transport Network over the bridge carries approximately 10,000 people. The predicted number of people using the Rapid Transport Network
25 over the Harbour Bridge is expected to at least double in the next 30 years while the number of vehicle trips is forecast to remain relatively static. By the mid-2040s public transport is forecast to be the dominant mode of crossing the Waitemata Harbour.

A key part of the success of the Northern Busway is its performance
30 and reliability. The busway is currently fully separated from general traffic from Constellation Station. However, after Constellation Station, buses are required to travel with general traffic. This affects the reliability of the service, and can result in considerable variability in trip length. Travel times between Constellation and Albany Stations can vary significantly, with some trips
35 taking up to 85% longer on average.

Increased variability in journey time tends to make public transport less attractive. It also results in additional costs for bus operators by

requiring them to either add more time to the timetable, which is either increased journey time, or increased layover time. Sorry there might have been an additional "either" in there. This increases the number of buses and drivers on a particular route. Accordingly, Auckland Transport considers the provision of the dedicated busway between Constellation and Albany Station will improve patronage and reduce bus operating costs.

The Auckland plan sets a number of challenging targets for public transport patronage. These include: Doubling public transport from 70 million trips to 140 million trips by 2022; increasing the proportion of all vehicular trips made by public transport into the city centre during the morning peak from 47% to 70% by 2040; increasing non-car, so walking, cycling and public transport mode share in the morning peak from 23% to 45% of all trips by 2040; and increasing the annual number of public transport trips per person from -- there is obviously a number missing there I suspect, perhaps I need to confirm what that is, perhaps might be 44 million to a hundred million by 2040 is a guess? I see that's in Mr Cross's evidence. Would Your Honour like me to --

JUDGE HARLAND: No, we can check that.

MR BANGMA: You can check that yourselves, thank you. Oh, sorry look my mistake, helpful clarification from Ms McIndoe, I think I misread that, it's obviously public transport trips per person in Auckland Your Honour.

JUDGE HARLAND: Per annum?

MR BANGMA: Sorry, annual number of public transport trips per person.

Overall, the Proposal will help implement the Auckland Plan. In particular, it's expected to: Increase public transport trips; support the residential and commercial growth of the Upper North Shore and Hibiscus Coast areas and assist the operation of a more efficient and optimised new bus network.

So, moving back to the issue of the shared use path.

Auckland Transport acknowledges the provision of the proposed shared used path from Oteha Valley Road to Constellation Station and Constellation Station to the interchange of State Highway 18 and the Albany Highway will contribute positively to the North Shore's walking and cycling network. Auckland Transport strongly supports this element of the Proposal.

A number of strategic planning and policy documents support further investment in walking and cycling. These include: The Auckland Plan, which

sets a target of completing the Auckland cycle network by 2030 and achieving a 45% mode share for non-car based trips in the morning peak; Auckland Transport's Regional Land Transport Plan which includes an accelerated programme for the delivery of the Auckland Cycle Network in the 2015 to 2018 period; the Government Policy Statement on Land Transport funding which includes investment objectives on transport choices and safe cycle networks, and the National Land Transport Programme, which earmarks over 250 million nationally for walking and cycling activities.

Auckland Transport considers the shared used path will fill a strategic gap in the North Shore Cycle Network. However, Auckland Transport considers that the shared use path that's proposed should be further enhanced by providing some additional connections and the rationale for this is set out in Ms King's evidence, as she notes:

"While each of the connections had some utility in isolation, the true benefit of each, and of the shared use pathway itself, is fully realised when connected to other routes, either in the present or the future. This network effect is demonstrated through recent additions to the City Centre network which have delivered a 44% percent increase in cycling trips on routes that are linked to the north-west cycle way, compared to a 6% increase in the City Centre routes overall.

Auckland Transport is pleased to advise, that as a result of conferencing and ongoing discussions, NZTA has agreed to: Extend the proposed shared used path along Oteha Valley Road to connect with the existing cycle path on the northern side -- these are essentially the same changes, Your Honour, which I outlined in the opening for Auckland Council so happy to read through those or take them as read?

JUDGE HARLAND: Yes, we are happy to take those as read thank you.

MR BANGMA: So picking up at 3.6, Ms King in her evidence also identified an additional connection that could be provided along Albany Highway, southwards, to the existing cycle facilities which start at the intersection of Albany Highway and Upper Harbour Drive, a distance of approximately 400 metres.

And that's not something which has been agreed as part of a side agreement and Auckland Transport considers this would be most appropriately incorporated into a future Project to upgrade Albany Highway south between State Highway 18 and Sunset Road.

And as I have already noted, Your Honour, the additions which are outlined in paragraph 3.5 are being covered by a side agreement through Auckland Transport and the NZTA and on that basis Auckland Transport is not pursuing any relief in relation to these matters as part of this proceeding.

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~Questions from the Board (4.35 pm)

JUDGE HARLAND: And so again, I reiterate are you saying or acknowledging thereby that these are not required to mitigate any adverse effects?

MR BANGMA: Yes; is it possible to give some further thought to that matter,

10 Your Honour?

JUDGE HARLAND: Yes, certainly.

MR BANGMA: Could be addressed through closing, or would you like an indication sooner than that?

JUDGE HARLAND: No, it's fine to deal with it through closing. Yes, thank you.

15 MR BANGMA: So moving on to construction effects on buses, paragraph 4.1.

Auckland Transport is responsible for management of the local road network and public transport, including buses.

In its submission and evidence it sought amendments to conditions to ensure that effects on local roads and buses from construction of the Proposal are appropriately managed.

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As a result of conferencing, NZTA and Auckland Transport have agreed to changes to conditions that address Auckland Transport's concerns, apart from in relation to two specific matters which are outlined below.

Comprehensive changes have been made to the Construction Traffic Management Plan as a result of the exchange of Evidence in Chief, rebuttal evidence and expert conferencing. The Construction Traffic Management Plan conditions now require consultation be undertaken with Auckland Transport on the preparation of the draft Construction Traffic Management Plan; give greater recognition to the need to minimise delays to road users, pedestrians, cyclists, and buses, especially in relation to buses travelling at peak times on week days; require any temporary road closure to minimise adverse effects on buses and general traffic and require a Public Transport Traffic Management Plan to be developed in consultation with Auckland Transport that specifically manages adverse effects on bus services. This is to include performance thresholds for bus services that will be monitored by

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the consent holder, and for the consent holder to provide a response, when performance thresholds are not being met.

JUDGE HARLAND: Does that deal with the issue of the right-hand turn in and out of Paul Matthews? You can address that later, but I just recall reading it was quite a key feature, especially for the bus people.

MR BANGMA: Auckland Transport supports the use of the Public Transport Traffic Management Plan to manage effects on bus services, and ensure that performance is maintained.

And there is only one issue in relation to the drafting of these conditions which we have been able to raise and discuss with counsel for NZTA and that is in relation to CTMP6D which relates to reviews of the Public Transport Traffic Management Plan and that those are to be undertaken by the consent holder; and that the consent holder will determine any amendments to be made to achieve the performance thresholds when those are not being met.

Auckland Transport considers the condition should be amended so that Auckland Transport may request the initiation of a review where performance standards are not being met, and that the consent holder be required to consult with Auckland Transport in relation to this review as it is required to consult with Auckland Transport in the preparation of the PTTMP itself. Auckland Transport is the affected party responsible for planning and managing bus services and can provide specialist advice to the review on how these agreed thresholds can be met. And obviously these are conditions were all drafted through expert conferencing, Your Honour, and I've -- having reviewed them, had a chance to discuss this with counsel to NZTA and understand that they agree in principle that amendments along those lines would be acceptable to NZTA, and so we will work on revised wording for this condition to present to the Board.

JUDGE HARLAND: Thank you.

~Mr Bangma continues (4.35 pm)

MR BANGMA: So construction effects on local roads. This is the road damage issue.

Auckland Transport seeks that any damage to the local road network, by construction traffic is remedied by NZTA.

As I've already noted, Mr Hale for NZTA agreed as part of the expert conferencing that it would be appropriate for this to happen either through a

condition or side agreement. To date parties haven't quite got there in reaching agreement on exact wording.

In Auckland Transport's submission: Any damage that's caused to local network by construction traffic is an adverse effect of the Proposal on the environment, and a condition should be imposed requiring NZTA to remedy this, along the lines of what was set out in Mr Lovell's Evidence in Chief.

The concern here relates to damage that is beyond the normal "wear and tear" caused by heavy vehicles. It relates to discrete damage caused by a significant increase in heavy vehicles associated with access to the construction site using local roads. And at this stage Auckland Transport understands that there are at least two access points to the construction site using local roads, one off Cowley Place and one off Arrenway Drive. It's not clear how many vehicles per day might be using those.

But as we've already indicated, Auckland Transport is continuing to work hard with NZTA on this issue and is hopeful that agreed wording can be reached on a condition that is satisfactory to both parties and that this can be presented to the Board.

~Questions from the Board (4.41 pm)

JUDGE HARLAND: So that is one CSA, one construction service area, that we're dealing with, but two access ways to it, is that if? It doesn't matter, someone can clarify that later; there is a helpful map somewhere that has the construction site areas.

MR BANGMA: Yes.

~Mr Bangma continues (4.41 pm)

I'm moving on to part 6, operational effects on local roads.

Auckland Transport in its submission in evidence raised the following matters regarding the operational effects of the Proposal on the local road network: Future proofing of McClymonts Road Bridge to be widened to four lanes, and the provision of pedestrian and cycle facilities; increased traffic the on Albany Highway South as a result of the Proposal, requiring mitigation measures; so those set out in the Albany Highway South improvements package to be brought forward as a result of the Proposal; and the need to further investigate the effects of the Proposal on Oteha Valley Road, including the State Highway interchange and Munro Lane roundabout. If

cues from the Oteha Valley Road northbound off-ramp in the PM peak are too long then the interchange could be operated in a way that would adversely affect Oteha Valley Road.

As a result of expert conferencing and further discussions in this matter, the position in respect of these matters is now as follows: In relation to McClymonts Road, the experts agree that there are a range of solutions that could be pursued. NZTA has confirmed in its rebuttal evidence that the design does not preclude the future widening of the bridge; so that the concern of Auckland Transport has been addressed, I should add. With respect to increased traffic on Albany Highway south of State Highway 18 as a result of the proposal, Mr Clark, on behalf of NZTA, acknowledges the Proposal is projected to result in an increase in daily traffic flows of under 5% on Albany Highway South, and that should be in 2031. However, he considers that there is a need for the Albany Highway South Project regardless of whether this Proposal proceeds or not. The witnesses for Auckland Transport and NZTA agree that this matter is essentially a funding or timing issue between Auckland Transport and New Zealand Transport Agency. Accordingly, Auckland Transport is committed to resolving this matter with NZTA outside of the hearings process.

~Questions from the Board (4.44 pm)

JUDGE HARLAND: So I suppose the same question arises about whether -- yes, so you know that's another one you just need to flag for closing.

MR BANGMA: Yes, Your Honour.

~Mr Bangma continues (4.44 pm)

Moving on to paragraph 6.2 (c).

In relation to Oteha Valley Road it was agreed that as a result of the Project providing more capacity on State Highway 1 south of the intersection, more traffic is likely to use Oteha Valley Road and the interchange. Further modelling work provided by NZTA has demonstrated that the forecast cues on the northbound off-ramp can be confined within the available storage on the ramp. Auckland Transport is now satisfied that this concern has been addressed, that's essentially by the further modelling work that has been undertaken, provided that the final design subject to appropriate review by Auckland Transport.

Moving on to part 7 of the submissions, the Rosedale Station. Auckland Transport is currently engaged in discussions with NZTA regarding a possible future busway station between Constellation Albany Station. One of the options being considered is locating a station at Rosedale Road.

5 The proposed draft conditions attached to Mr Lovell's Evidence in Chief in those Auckland Transport sought a condition in relation to the proposed Rosedale Station, as part of the outline plan of works requiring that:
"Consideration is given to the need to widen the Rosedale Overbridge piers to support the upgrade of Rosedale Road four lanes with bus and walking
10 and cycling priority, as part of the safe and efficient operation of the future Rosedale Busway Station Proposal should this be the preferred busway station option.

Auckland Transport will continue to work with NZTA in relation to finalising the design of the Rosedale Bus Station.

15 While the matters raised by Auckland Transport in the condition are valid design matters, Auckland Transport will seek to ensure these matters are addressed through a side agreement with NZTA, rather than as part of conditions on this Proposal.

20 ~Questions from the Board (4.46 pm)

JUDGE HARLAND: Same issue.

MR BANGMA: Same comment Your Honour.

JUDGE HARLAND: Well it's just because they were raised in the evidence as being part of mitigation.

25 MR BANGMA: Certainly Your Honour.

 ~Mr Bangma continues (4.46 pm)

Part 8 - changes to the busway and shared used path sort by Kiwi Self Storage.

30 Kiwi Self Storage has proposed changes to the design of the busway ... (Reads 8.1 - 8.3 exactly as submitted)... Counsel is not aware of any case law that supports that particular proposition.

 And we've referred below to a case which Ms McIndoe also referred to, the Meridian Energy case which has essentially held there's no -- while
35 you have to have regard to visual amenity issues and other considerations that's not the same thing as saying there is a right to a view or property in a view -- sorry, picking up that quote Your Honour.

The second is:

"That a land owner is permitted to use their land as they see fit, provided that the use of it does not breach any legal requirement. It follows that the use of land by a neighbour in some circumstances can lawfully
5 change an existing view. "

Which is essentially what's happening here.

Auckland Transport submits that these principles apply and Kiwi Self Storage. Has no right to a view of the motorway - or perhaps more particularly, a view by people travelling down the motorway of its site. NZTA
10 is entitled to provide public infrastructure essentially in a way which would interfere with that view, I think is the blunt legal position.

And it is acknowledged by witnesses involved in expert conferencing that the design changes to the busway and shared used path require a departure from recognised design standards. Auckland Transport does not
15 support these design changes on the basis that they would permanently reduce the efficiency of operation of public infrastructure for a private benefit. Furthermore, noting there's no long-term guarantee that Kiwi Self Storage's business will remain on that site.

Auckland Transport is also conscious that a decision to change the optimal design of these facilities in response to private interests could set an
20 unhelpful precedent for other projects in the future.

Conditions: Your Honour, there is the further noise condition related conferencing today.

The only outstanding issue is in relation to the allocation of conditions
25 between the designation and the regional consents, and in this regard Auckland Transport adopts the submissions of the Council in that matter. Conclusion: Auckland Transport wishes to acknowledge the generally collaborative approach of NZTA and its witnesses to resolving the issue raised by Auckland Transport, and in particular: The improvements to
30 conditions agreed through the exchange of evidence and conferencing, particularly in relation to management of construction traffic effects on busses; and the additional benefit provided by the modifications to the shared use path have been agreed to by NZTA following conferencing. Auckland Transport strongly supports the Proposal, and seeks that it be
35 confirmed by the Board for the reasons outlined in Auckland Transport's evidence, and in this opening statement.

~Questions from the Board (4.51 pm)

JUDGE HARLAND: Thank you.

I have one question, which is that Auckland Transport "strongly supports" this Proposal', Auckland Council "supports" it, is that a deliberate
5 use of language or just two different submissions written at two different times?

MR BANGMA: That difference is used advisedly, Your Honour, and it reflects the wording that was used in the original written submissions lodged on the Proposal by the Council and Auckland Transport.

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~Board Questions to Mr Berry (4.52 pm)

JUDGE HARLAND: Thank you very much. Thank you Mr Bangma.

I think we've reached a point in the day where everybody has had a big day and thank you very much for your attention to detail. It's been most
15 helpful.

Mr Berry, there is a couple of issues which you probably were intending to address in your opening which I understand is still Thursday, is that correct?

MR BERRY: Yes that's correct.

20 JUDGE HARLAND: The reclamation issue I think we'd helped by you having a look at that and that's the is it 602 metres or 17.4 metre issue? And the whole business to do with the damming consent and what your view is on that.

And also, perhaps the hockey situation as well, which you may have been intending to cover, but I think that would be helpful.

25 MR BERRY: At the moment, Madam Chair, we were intending to cover the matters that had been specified, and not beyond that. Otherwise we'd end up with a great big long list. Happy to add these and whatever else you might come up with tomorrow.

JUDGE HARLAND: Just from a legal perspective. I think the issues have been
30 very well articulated and highlighted. It's just another pair of eyes over it would be helpful.

Thank you very much.

And so tomorrow have all counsel had a chance to look at the hearing schedule that Ms Robertson's prepared?

35 MS MCINDOE: I think it's the same schedule and I have had a chance to look at it thank you Your Honour.

JUDGE HARLAND: So now that we know that Mr McGregor is the man for hockey as well, then I think we do need everybody that we -- that was down for cross-examination tomorrow.

MS MCINDOE: With the exception of Ms Brock, which you said earlier in the day
5 was not required.

JUDGE HARLAND: Yes, that's right and so the amended schedule doesn't have her on it?

MS MCINDOE: No.

JUDGE HARLAND: I might not have that yet.

10 Tomorrow, just to be clear we've got Kiwi's opening, Waste Management opening, Watercare's opening. Then we have Mr Glucina, Mr Moore, Mr McGregor and Mr Hale. That's how we're down to deal with tomorrow.

15 It would be helpful if you gave some consideration after we adjourn today to the planning issue as to how you would like to address that; whether you wanted to have a break to get the one set of conditions together and if that was needed, to cross-examine any of the witnesses, then I suppose there's two ways of dealing with that, you might just pull out conditions relevant to that witness with a general indication that they're part of what has
20 been agreed that will be presented later. But if we're still not in a position where things have been agreed. Pragmatic. We'll leave it to you to discuss, but it would be good if we just had the one version, if that's at all achievable. So, is that clear?

MS MCINDOE: Yes, hopefully we've got time this evening before we go home we
25 can talk about that and report back in the morning.

JUDGE HARLAND: That's fine, or you could send a message through Ms Robertson but it's not critical, it's just to get some sort of feel for that. I think that's all I have.

30 Mr Berry, I have got another response for you, you had inquired as to whether or not you needed to -- whether or not there was cross-examination of Mr Willmott, whether -- well, you have raised that as being something that Ms McIndoe you felt obliged to cross-examine him in relation to the Brown and Dunn issue.

MS MCINDOE: Yes although, it doesn't feel constrained by the Brown and Dunn
35 matter, this being a Board of Inquiry, perhaps it's not necessary to put all points of disagreement to Mr Willmott. And I am conscious that he's not

legally represented and I don't want to cause him any more trouble than I need to. And actually not to question him, if the Board is not troubled by Brown and Dunn in this instance.

5 JUDGE HARLAND: We can be flexible about that, but we had a discussion about it, and I think we thought that it would be only fair for him to have the main points put to him. If they're small points that can be just dealt with by submissions, do that. But if they're big points and then I think he probably needs to have them put so that we can hear what he has to say about that within boundaries.

10 MS MCINDOE: I'll try and be concise.

JUDGE HARLAND: Was there anything else that we needed to deal with today that anybody had queries about?

MS MCINDOE: One matter which would be useful would be a response from the Board on our clarification we sought relating to the section 92 request. It's simply a matter the sooner we can get the clarification, the sooner we can have that matter finalised.

JUDGE HARLAND: Can I just ask Ms Robertson where that is at?

MS ROBERTSON: It is just going to need a final review, and should be issued tonight.

20 JUDGE HARLAND: So it's a final review at your end, then to us, and then out.

When we did discuss this, we didn't want this to be problematic for people. It's just from our perspective, all of you have been involved in this for a very long time and you are extremely familiar with everything associated with it. We like to think we are familiar with it; we certainly have an overview and we certainly have a lot of detail, but we do not want to miss anything that's important. And given that this hearing has become a lot smaller, we want to make sure that we've got it covered, so to speak.

25 So that's what the thinking is behind those things, it's not to create unnecessary or great difficulties for you. So if it does, you need to tell us and we'll try and be a little more clear about what would be helpful and whatnot. Does that help, at least in the interim?

MS MCINDOE: Yes.

JUDGE HARLAND: Anything else from anybody?

Thank you all very much we'll adjourn for the day.

35 ~-(The hearing adjourned at 4.59 pm)