

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 11 August 2017

BOARD OF INQUIRY:

Judge Melanie Harland (Chair)

Mr Conway Stewart (Member)

Mr Nigel Mark-Brown (Member)

Appearances

~Day 9, 11 August 2017 (9.02 am).....	750
~CEDRIC OWEN BURN (Sworn) (9.03 am).....	750
~Examination in Chief by Ms Sheard (9.03 am).....	750
~Questions from the Board (9.16 am).....	751
~(The witness withdrew - 9.47 am).....	761
~DAMIEN RYAN MCGAHAN (Affirmed) (9.48 am).....	761
~Examination in Chief by Ms Sheard (9.48 am).....	761
~Questions from the Board (10.01 am).....	762
~Comments from Ms McIndoe (10.06 am).....	764
~Questions from the Board (10.07 am).....	765
~(The witness withdrew – 10.18 am).....	769
~Closing submissions on behalf of Watercare (10.19 am).....	769
~Closing submissions on behalf of Auckland Transport (10.21 am).....	770
~Questions from the Board (10.45 am).....	779
~(Adjourned 10.47 am - 11.05 am).....	779
~Closing submissions on behalf of Auckland Council (11.05 am).....	779
~Questions from the Board (11.15 am).....	783
~Submissions on behalf of Auckland Council continues (11.16 am).....	784
~Questions from the Board (11.18 am).....	784
~Submissions on behalf of Auckland Council continues (11.25 am).....	787
~Questions from the Board (11.29 am).....	788
~Submissions on behalf of Auckland Council continues (11.29 am).....	788
~Questions from the Board (11.30 am).....	789
~Submissions on behalf of Auckland Council continues (11.31 am).....	789
~Questions from the Board (11.41 am).....	793
~Submissions on behalf of Auckland Council continues (11.46 am).....	795
~Comments from the Board (11.53 am).....	798
~(Adjourned 11.54 - 1.31 pm).....	799
~Closing submissions on behalf of Kiwi Self Storage (1.31 pm).....	799
~Questions from the Board (1.39 pm).....	802
~Closing submissions on behalf of Kiwi Self Storage continues (1.41 pm).....	802
~Questions from the Board (1.44 am).....	803
~Closing submissions on behalf of Kiwi Self Storage continues (1.45 pm).....	804
~Questions from the Board (1.49 pm).....	805

~Closing submissions on behalf of Kiwi Self Storage continues (1.50 pm).....	806
~Questions from the Board (2.04 pm)	810
~Closing submissions on behalf of Kiwi Self Storage continues (2.04 pm).....	810
~Questions from the Board (2.05 pm)	811
~Comments from Ms Sheard (2.15 pm)	814
~Comments from the Board (2.15 pm).....	815
~(The hearing adjourned at 2.18 pm to resume at 9 o'clock Monday, 14 August 2017).....	816

~Day 9, 11 August 2017 (9.02 am)

JUDGE HARLAND: We are going to start with Mr Burn is that right?

MS SHEARD: That's correct.

5

~CEDRIC OWEN BURN (Sworn) (9.03 am)

~Examination in Chief by Ms Sheard (9.03 am)

MS SHEARD: Good morning, do you confirm that your full name is Cedric Owen Burn?

10 MR BURN: I do.

MS SHEARD: And do you confirm that you've prepared three statements of evidence: your primary statement dated 20 April, your rebuttal statement dated 20 June and your supplementary statement dated 7 July 2017?

MR BURN: I do.

15 MS SHEARD: And do you confirm that you've the qualifications and the experience set out in section 1 of your Evidence in Chief?

MR BURN: I do.

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

20 MR BURN: I do.

MS SHEARD: Could you please read your summary statement?

MR BURN: This summary statement provides a summary of my Evidence in Chief dated 20 April 2017 ...(Reads 1.1 - 2.1e of Summary Statement)... on the environment. That should read "of the Project on the environment".

25 The Project aligns with the other policy and strategic documents outlined in section 10 of my evidence.

I have considered the submissions received ...(Reads 2.2 - 7.5 of Summary Statement)... these criteria include visual amenity, impact on traffic safety and public safety.

30 MS SHEARD: Thank you Mr Burn, if you could just quickly turn back to paragraph 4.1, there's one very minor change that needs to be made just to avoid any confusion, paragraph 4.1 states that your supplementary statement is dated 7 June, can you please confirm that that supplementary statement is actually dated 28 June 2017?

35 MR BURN: Yes.

MS SHEARD: Thank you.

~Questions from the Board (9.16 am)

MR STEWART: Let's start at the back first, where you talk about the signage and I think your comments there are very helpful thank you very much, because
5 yesterday we asked the question about signs and one of the witnesses, I can't remember who it was, Mr Lovell, and I think he hadn't really had time to look at it in any depth, he sort of gave a bit of on off the cuff comment. And I think his comment would be -- it would probably be for restricted discretion, but it sounds like you've done a bit more research and if I've got it right, in your opinion, it
10 would fall to be considered under the bylaw is that right?

MR BURN: That's right there's a fairly unusual arrangement of provisions of signs and billboards in Auckland. The signs must relate to activities that take place on the site. They can only be consented by way of resource consent if they're part of a comprehensive development. In other words, if they were on the, you know, to
15 take the Kiwi Self Storage example, if they'd shown those signs on the building at the time that they sought consent for the building, subsequent signs would require then approval under the bylaw.

That's the regime that applies now that the Unitary Plan is operative. In the past, prior to the Unitary Plan being operative, the North Shore plan dealt with signs under the district plan. So, it's a rather complicated arrangement
20 that's evolved over time.

Is that a clear explanation?

MR STEWART: Thank you. And so really, I put a couple of marks here on paragraph 7.5 because I think that's the guts of it, isn't it?

25 MR BURN: It is.

MR STEWART: You could apply under the bylaw but the criteria which would be taken into account would include visual amenity, impacts of traffic safety and public safety, which is not surprising, is it?

MR BURN: That's right.

30 MR STEWART: Just going back to your paragraph 2.1, 2.1b, you say that the Project is consistent with the relative objectives and policies and I think Mr Turner used the same words yesterday and I accept that on face value, but in fact, the words of the Act for non-complying refers to "contrary to" and so you're saying the Project is "consistent with", but insofar as one of the applications is for a
35 non-complying activity, would you care to comment on whether you consider the Project is not contrary to the objectives and policies?

MR BURN: In short, I would. I was referring to the test for Notices of Requirement here, but if you're asking me about the resource consents, I would concur.

MR STEWART: Yes, oh of course I've made the momentary lapse that you're dealing with designations, not so much resource consents.

5 Thank you.

I said yesterday that I had a few comments about the conditions, and last night I went and reviewed my comments at home and I found that the comments I've got are really related in all fairness to more matters of editing and I don't think it's going to be much point in trawling you through various edits. But there are one or two things that I think possibly I do need to just ask you about. If you would just bear with me, I'll deal with them.

10

If you look at DC.6 which is dealing with "... the outline plans shall include the following plans for the relevant stages of the project ..." do you see that?

15 MR BURN: Yes.

MR STEWART: And if you go over the page, in the last line of that condition it says:

"... once implemented would result in a materially different outcome ..."

Do you see that?

MR BURN: Yes.

20 MR STEWART: My question really was is that going to -- those words "materially different" going to be clear enough for using the implementation of the conditions? Now, I'm not quite sure how you would define "materially different", do you have a view of that?

MR BURN: Yeah, possibly could be worded more precisely and referenced to "materially different effects". I think that might be a more appropriate language in the context of a condition.

25

MR STEWART: Well, to put it another way, I've raised the question and really what I'd like to know from you is whether you and I might have a different opinion about the words, but do you, having drawn your attention to those words, do you still think they would be able to be -- the condition would be complied with and understood easily, or would you agree that different wording might be better?

30

MR BURN: I think with the change that I've suggested they would be adequate.

MR STEWART: Just so I've got this down you are suggesting the word "outcome" becomes "effects".

35 MR BURN: Yes.

MR STEWART: Okay thank you.

On page 10 CTMP.4D, do you have that in front of you?

MR BURN: Yes.

MR STEWART: And it starts:

"Traffic measures to address and maintain traffic capacity and minimise
5 adverse effects including where applicable to the relevant outline plan".

The word "including" I just wondered about that, so that means, to me,
that if when you say "including" it must include all those matters 1 to 6 below?

MR BURN: Mmm.

MR STEWART: But the word "including" is not exclusive, is it? So, I'm left wondering
10 whether they may be other things that would -- that it could address and if there
were other things that it could address what would they be? In other words, is
that word "including" precise enough, would it be better to -- so it's not
including, you have to include all of those things from 1 to 6? Or do you believe
that that allows you some flexibility?

15 MR BURN: Well, I'm not a traffic engineer and we took advice from traffic engineers
on the -- in fact, they crafted this condition, so look, I'd have to defer to their
expertise in commenting on that. I guess it is -- it is a sort of fairly
comprehensive condition and I guess those words are there in case, and I'm
speculating as a planner here, there are other effects that haven't been thought
20 of in providing greater specificity in the sort of Roman 1 down to 6.

MR STEWART: I suppose what I was looking at when I read it was that if I was a
member of the public reading that condition and I could see clearly that the
condition required you to have a look at subparagraphs 1 to 6, but I might think
well, that's fine, but they might spring some other ones on me as a member of
25 the public that I don't know about, because it's inclusive, not exclusive.

MR BURN: Yes, although, I mean, in my reading of it it might be different from yours,
the measures are "to minimise adverse effects", so I think a member of the
public could be assured that anything else would be going to minimising those
effects, and not for some other reason.

30 MR STEWART: Yes okay, that's a good answer. That's probably about as far as we
can take that, so thank you for that.

In the following, next page is page 12, I should have said before, this is
McGahan's evidence, but page 12 the condition CTMP.5D, and again we've got
the words "may include", that last line of the beginning part of the condition
35 says: "In order to achieve the thresholds, such a review may include amongst
other things".

And again, I know this is a very standard condition in resource consent applications I've seen and it always worries me that that's a bit open ended. What's your opinion about that?

5 MR BURN: Well, I guess it is on first blush, but again, you know, I defer to the traffic experts who were crafting this, and I can only speculate as to what the reason for that, and I presume it's because, look, there is a possibility there may be other things at play, and rather than confine the review to the listed matters A through to E, they left some opportunity to address those other matters.

MR STEWART: Okay, well as a planner, do you have any problem with that wording?

10 MR BURN: No, I don't.

MR STEWART: Page 22, and I think this is probably more an editing matter really, OV.1a it says -- do you have that?

MR BURN: Yes.

MR STEWART: It says:

15 "In the event there is a complaint about vibration in any lawfully established occupying building, the Requiring Authority shall, subject to land owner approval, investigate whether: a. The vibration does not comply..." Should that not really say "whether the vibration complies", not "does not" there seemed to be a double negative there?

20 MR BURN: Yes, I think you're right.

JUDGE HARLAND: That must have been drafted late at night.

MR STEWART: UDL.4, which is on the same page, now UDL 4, when you read that condition it seems to assume that there is in existence an urban design and landscape plan, but UDL.1 and 2 appear to suggest that a plan needs to be prepared.

25 So, if you look at the first two conditions, it says:

"Shall submit to the Council a plan".

And then UDL.2 says."

"The purpose of the plan is to outline ..." and it goes on.

30 But then when you look at 4, it says:

"Shall be given effect to through the UDLP".

I'm not quite sure now -- these notes were written some time ago but it seemed to me that there was some -- I wonder whether we needed a reference to the existing documents that would have been presented to us?

35 MR BURN: The way I read this and you may be reading it differently from me, but UDL. 3 requires that a plan be prepared for -- to go with each outline plan, and

that urban design and landscape plan shall reflect the matters set out in the urban design and landscape framework, which was the document submitted with the AEE.

5 So, the UDLF is more a statement of principles, to a certain extent, the plan then is intended, or the conditions are intended that those statements of principle are articulated more specifically, if you like, in the urban design and landscape plan that goes with the outline plan.

MR STEWART: So, having drawn your attention to my concerns about how it all fits together you're happy that the wording in UDL.1 to 4 achieves the required
10 result?

MR BURN: Yes.

MR STEWART: UDL5A, which is on the next page, 23, you will see in the second line there requires mitigation planting for monitoring -- maintaining monitoring for a minimum of two years.

15 And I understand that's actually quite standard in a lot of conditions of this kind. But I don't know if you were here, but Mr Stephen Brown gave as his opinion that two years was an absolute minimum, that he would prefer to see three, I think he probably would have preferred even more, but he said three. And I wondered whether that had been a matter for discussion amongst the
20 planners when they were preparing this?

MR BURN: No it hadn't. I think we took two as being a fairly consistent and standard monitoring requirement. So, I wasn't here when Mr Brown was questioned on that matter.

MR STEWART: Okay. So, as far as you are concerned as a planner, that's sort of
25 fairly standard condition and you see no reason to change the time period?

MR BURN: No I don't see any reason to change it.

MR STEWART: Now the last one I thing I got is the SCP, which is referred to on page 25, but the condition I'm concerned about, or the thing I'm concerned about, or interested in, is the stakeholder and communications plan contains
30 details of a community liaison person appointed by the Requiring Authority. And my question is in terms of these conditions how does the affected -- how do affected parties, for instance the landowner in the area, or the business holder or whatever, how do they get to know about this? How do they find out who the community liaison person is?

35 I mean, there's a process set up here for doing lots of things identifying stakeholders and various other things, but there doesn't seem to be any specific

way of notifying the stakeholders individually about who the community liaison person is and the contact number for that person and I just wondered if you had any comment about that as a planner?

5 MR BURN: At SCP.4 there is a regime for information, events and briefings and in my view, these would be pretty adequate in providing the information to, you know, those affected stakeholders who the individuals were that they needed to communicate with if they had concerns or required further information.

10 MR STEWART: Well you see in SCP.3 it says that the SCP shall contain the following and there is a list of information, including the contact details of that community liaison person.

15 So, that's in the plan but my question really was how does a person living in Barbados Drive or wherever get to know about this if they don't go on the internet or the website or whoever? In other words, how do they -- it's all very well for the community for the plan to contain these details and all this information, but how do individuals on the ground get to know about that if they don't have something like a letterbox drop or a business card or a fridge magnet or something like that put through their door?

20 MR BURN: Well, the SCP.3b requires the plan to set out methods for informing the affected community and it goes on in the last words that "... including the expected duration of the works and, proposed hours of operation outside normal working hours and Project contact details".

25 MR STEWART: Okay, so I can see that that gives the consent holder the ability or the instruction to do that, but we don't know how they're going to do it, and so it's more like trust me we know what we're doing type conditions. I mean, there's no specific condition there which requires the requiring authority to notify individuals is there?

MR BURN: Just give me a little bit of time to read through the condition again.

30 JUDGE HARLAND: Well, can I pick up on that? I think the concern is this, and it's just a very practical one, there's no magic to what needs to happen if there's a problem, and that is that there needs to be a quick response within a reasonable timeframe and a way by which people can let someone who can do something about it sort it out.

35 And so, I guess, what the question here is addressed at is why it can't be a little bit more specific at this stage? It doesn't out rule the possibility of having other ways of doing things, but as it stands, it seems pretty vague. So, it would seem, I think picking up, that it's perfectly reasonable to provide a very strict

requirement that if there is a problem there needs to be a response, as I say, within a certain timeframe, that's reasonable, and a person that's able to be contacted and we, I think as a group are wondering why it's left to another day if that's an obvious outcome that needs to be included? Why it can't be tied down now?

5 MR BURN: I would agree. I'd defer to the -- I'm not a communications expert.

JUDGE HARLAND: No, I understand that.

MR BURN: And I would have to -- I'd have to seek their advice as to what the best mechanism and timeframe would be for that sort of thing to take place and how it should take place.

10 MS SHEARD: I do note that we have got all the planners here so if you would like us to have a look at that over the break we'd be happy to come back with some wording.

JUDGE HARLAND: Well, frankly, there is a lot of words about the communication that aren't very effective at communication to be quite honest. It's pretty clear, and I'm just going to say this quite directly, sorry to interrupt, but it seems that what the communications liaison person or what this is all designed to do is a) to provide information to people, which is a good thing b) to provide circumstances where there needs to be consultation and with whom, in other words, who do we need to ask about things at various stages. And the third one is a marketing exercise, in other words, telling people about how this is going ahead, giving them an opportunity to attend events and be involved in all of those good sorts of things. So, there are a lot of words around these three principles that aren't very clearly expressed, frankly, and one of the thing we're concerned about is if someone's got a problem with this particularly during construction where do they go to, how quickly does somebody need to respond to it? And average Joe person needs to know who to go to. It's not good enough to say we'll go to the Council because we know that the response from Council sometimes doesn't solve the problem. So, that's what we want to address and I don't think they are provided really sufficient parameters to clearly express that as it stands.

25
30
35 So, that's what this is all addressed to, it's probably not fair to put it to the planners because, as we say, he's the person who's relying on expert advice as to that effect, but that's where I have got to at least and I think my colleagues have too with this whole business of the communication issue.

MS SHEARD: We have the other expert here as well, so we are able to address that during the break.

JUDGE HARLAND: Well, having given you that guidance perhaps people can think about it over the weekend and you might be able to make it a little clearer and a
5 little bit more substance. It's not to say that it's bad it's just to say that there's an awful lot of words around it when we're supposed to be effectively communicating as I understand it three very clear messages about what this is designed to do.

MS SHEARD: Thank you, we appreciate the opportunity to do that.

10 MR STEWART: Well the Judge expressed it much better than I did.

Thank you Mr Burn I think that's all the questions I had apart from the editing ones which we can take up in a different forum.

MR MARK-BROWN: I've just got one question Mr Burn, regarding the proposed closing off of the Unsworth, the current Unsworth Drive off-ramp, that's going to
15 have some effects on nearby businesses in particular. There hasn't been a lot of information provided that I've sort of been aware of, it might be buried somewhere about long term effects of changing of traffic patterns and effects on businesses there and whether that needs to be mitigated, are you able to comment on that particular area?

20 MR BURN: I'm not an economic expert or an expert on business activities, so I'm afraid no, I can't.

MR MARK-BROWN: But as part of your overall assessment that's not something that you recall being addressed by other experts that you've had some overview of?

MR BURN: Not specifically, there was some, I think opinion expressed in the traffic
25 evidence, but I don't recall any specific comment on that matter.

MR MARK-BROWN: Okay. Thank you. That's all.

JUDGE HARLAND: I've just got one question, and thank you very much for researching for us the issue with signage, that's appreciated.

30 But it does raise a question, and this might be more a question for the lawyers, but if we look at 7.3, you've talked about the bylaw applying to publicly visible signage which is defined as signage on or visible from a road or a public place but it excludes motorways. So here we've got a sign if one was to be put there, that could be seen from a) the motorway, and b) potentially from a public place.

So, my question is that the bylaw might apply to the public place but it might not apply to the motorway, and what would be the process that would need to be followed then?

MR BURN: As I read the bylaw, the bylaw I would have to say is fairly obtuse in its
5 wording.

JUDGE HARLAND: That's helpful, that might be another thing that needs to be redrafted.

MR BURN: The way it's worded, it excludes motorways, but it, for example, would include the busway, because that's not a gazetted motorway.

10 JUDGE HARLAND: I understand that, but there's also the opportunity to view from cars on the motorway.

MR BURN: That's right.

JUDGE HARLAND: So, there is the potential for it to cover two scenarios that might impact on this particular instance and how do we deal with that? Or how would
15 it be dealt with? And where this comes from is because if we did find, for example, that there was a visual effect that how is it able to be mitigated? Now, I understand the Agency's view is that there isn't an effect that needs to be mitigated. But if we didn't agree with that, how is it to be mitigated? And so, then we'd need to look at well what process would people need to go through
20 and how easy would it be for them to get another alternative to cover the signage issue? Obviously you've provided the bylaw issue, but it might not deal with all aspects of the visibility i.e. it might deal with visibility from the busway and the SUP, but it might not deal with visibility from the motorway?

MR BURN: In this you are referring to an effect on Kiwi Self Storage?

25 JUDGE HARLAND: Yes, I'm just wondering, so what would happen if the bylaw didn't deal with the situation of being able to see from the motorway?

I think it's a legal question actually, to be fair. I've raised it and we might need to have a copy of the bylaw just to see. We don't need to go into things that we don't need to go into, but I think you understand the issue?

30 MS SHEARD: Certainly, it's actually relatively straightforward. If it can be seen from any public road which would include the shared use path or the busway or a public place which would include the reserve next door, then you're automatically thrown into the bylaw and you need to get exemption.

JUDGE HARLAND: And what about from the motorway?

35 MS SHEARD: The motorway isn't counted, but the shared use path is closer anyway.

JUDGE HARLAND: I understand that, but would there be an impediment, I'm just trying to see how there would be -- so there's nothing that would be of concern to the Agency from a sign from the motorway?

MS SHEARD: No. So, unless the Agency is consulted as an affected party the
5 agency doesn't get any say at all.

JUDGE HARLAND: But if the agency was consulted, what would its attitude be about visibility from the motorway?

MS SHEARD: So, it has its own signs guidelines which are quite comprehensive.

JUDGE HARLAND: Right.

10 MR BURN: Perhaps I could help there, having been involved in an application for a sign adjacent to a motorway, this occurred on State Highway 16, a Project I was involved in some years ago the Agency's -- the Agency, as I understand it, has a set of guidelines and standards to do with signage visible from
15 motorways which is really about the safety of drivers and it sets out size of lettering and space of lettering and I think even sort of acceptable fonts. And in the case I was involved in the Agency experts applied those tests to the sign and then determined that it was okay.

JUDGE HARLAND: Okay.

MS SHEARD: In this case, Mr Burn, there's no requirement in the signs bylaw for the
20 Transport Agency to be consulted in relation to the exemption is there?

MR BURN: No.

JUDGE HARLAND: No, all right well I think if you helpfully set out all of that.

So, you understand where this is coming from?

MS SHEARD: Yes.

25 JUDGE HARLAND: If, for example, we do find there was an adverse visual effect or there was something, one solution to that would be well you can put a sign on the top of your building or on the side of it. But if there are so many other impediments to that that make it uncertain, a little like the hockey argument, where does that takes us in terms of this? I was tempted, and I'm not trying to
30 be flippant, well what about a blimp? But I'm sure there's rules against that as well.

MR BURN: There are.

JUDGE HARLAND: Yes, I imagine there are. Goodness. Well, thank you very much for that. Is there any other questions arising?

35 MS SHEARD: There was just one other question in relation to UDL.4, and this was something that Commissioner Stewart raised and I think he actually had a point

here, was that you referred to the UDLF there -- UDL.4, the reference to the UDLF.

MR BURN: Yes.

MS SHEARD: But there's no reference as to where you might find that document or
5 what revision it is et cetera?

MR BURN: Right that's true. I guess given that the UDLF has gone through a couple of iterations it would be helpful if that condition referred to the most recent version.

MS SHEARD: Thank you.

10 JUDGE HARLAND: All right. Well, Mr Burn, I'm going to say to you too, quite genuinely on our respective behalf, thank you very much for the constructive way that you've approached working with others on this and we understand and really acknowledge and thank you for the considerable work that's gone into improving these conditions over the period of this Project. So thank you.

15 MR BURN: Thank you.

~(The witness withdrew - 9.47 am)

~DAMIEN RYAN MCGAHAN (Affirmed) (9.48 am)

~Examination in Chief by Ms Sheard (9.48 am)

20 MS SHEARD: Good morning can you please confirm that your full name is Damien Ryan McGahan?

MR MCGAHAN: It is.

MS SHEARD: And that you have prepared a statement of evidence dated 20 April, 15 June and a supplementary dated 4 August?

25 MR MCGAHAN: I can.

MS SHEARD: And can you confirm that you have the qualifications and experience set out in section 2 of your Evidence in Chief?

MR MCGAHAN: I can.

MS SHEARD: And can you confirm that the contents of those statements of
30 evidence is true and correct to the best of your belief?

MR MCGAHAN: I can.

MS SHEARD: Can you please read your summary statement?

MR MCGAHAN: Yes.

This summary statement provides a summary of my Evidence in Chief
35 dated 20 April 2017 and my rebuttal evidence dated 15 June 2017. It also includes ...(Reads 1.1 - 4.5b of Summary Statement)... considers the Project

may not necessarily be consistent with RPS objectives B3.2.1.1 to B3.2.1.8. I understand that Waste Management may have subsequently withdrawn their submission.

5 In relation to the stream reclamation issue, prior to lodging the resource consent application I did not consider ...(Reads 4.6 - 5.2d of Summary Statement)... weekend closures of Rosedale Road may be required to aid in clarity.

Five new conditions are proposed to address remediation of damage to local roads.

10 DMP.3 (f) now requires ...(Reads 5.2f - 5.2k of Summary Statement)... of the trigger levels.

I would just note that those conditions were agreed with both Mr Seyb and Mr Ridley.

15 Landfill gas trigger levels have been deleted ...(Reads 5.2l - 6.2 of Summary Statement)... through the proposed conditions as amended.

~Questions from the Board (10.01 am)

MR STEWART: This is a massive piece of work.

20 Just so that I'm sure that I am dealing with the right things, I have in my hand your supplementary statement dated 4 August which I have annotated and the one that came to us this morning, is that the same?

MR MCGAHAN: No.

MR STEWART: This one we got this morning just a moment ago?

MR MCGAHAN: Yes, sorry I'm told it is.

25 MR STEWART: So I don't have to worry about this because I've got the other?

MS SHEARD: Yes, correct.

MR STEWART: That's a relief.

30 I just have a few questions and the first one I could have asked Mr Burn, but I'll ask you because I'm sure you probably have the same view. There would have been discussion, I assume, about the general condition number 1, which is the in general accordance condition. And I see it's quite clearly stated there that all the planners are proposing that there be a general condition clause. And I just wondered if you'd like to enlighten us little bit on the reasons for and against, you presumably discussed this at your various
35 meetings, am I correct?

MR MCGAHAN: Yes, we did discuss it. So sorry, your question is?

MR STEWART: My question is I'd just like to have a little bit of information about the pros and cons for having a general accordancy condition or not and why you came to the conclusion that a general accordancy was appropriate, I think that's what was original proposed in fact?

5 MR MCGAHAN: Well, certainly the discussions we had with other experts really revolved around the extent I suppose of the general accordancy condition that we have included. Council experts indicated that they would have preferred to have seen a much more extensive list of documents outlined and the like. Our general accordancy condition really looks to just apply the
10 general arrangement plans and a couple of really important documents that underpin conditions and those plans themselves.

And it's fair to say we, as the Transport Agency planners, in pulling that together felt that that was appropriate. It set a clear expectation in terms of the footprint and the extent of the environmental effects that are being
15 assessed.

And so, we were comfortable that that combined with many of the bottom lines that are outlined under the conditions, for example, the stormwater conditions are quite prescriptive in terms of what some of the requirements are there, that that provided enough in terms of the general
20 accordancy condition that we've subsequently -- well, included.

MR STEWART: And I assume that I think, from what you're saying, that the general accordancy condition would, although it's backed up by all those other plans you talked about, would provide a certain measure of flexibility?

MR MCGAHAN: Yes it would, yeah. Yeah, I mean there are processes available to
25 test whether you are in general accordancy, you know, with the application as considered. But, at the same time, there is a degree of flexibility there. So, for instance, you may have a stormwater pond in a certain location, but ultimately the design may put it 50 metres to the south, for instance. There's still quite a bit of prescription within the stormwater conditions around volume
30 metric requirements and discharge requirements and the like to ensure that, you know, you could argue you're still in general accordancy. So, I'm comfortable that the condition as it stands, you know, will provide enough flexibility.

But look, there may be occurrences where something clearly wouldn't
35 be in general accordancy. It may be very different to the plan, or may not align with certain conditions. And, therefore, you know, there are appropriate

processes available to alter a designation, if required, or alter resource consents.

MR STEWART: You've probably answered the question, but I'd go on to say, I mean perhaps the conditions is for well-meaning purposes, the main one I supposed is to control the activities of the NZTA and the Alliance, but the other purpose of them is to give security and comfort to people in the community as to what's actually going to happen, and so that's where the argument about the general accordance condition comes in; does that give enough certainty to people living in the community about the effects of the Project? And I think what you're saying is yes it does.

MR MCGAHAN: Yeah, I am saying that. I'm comfortable with the condition as it is in terms of providing enough surety. There could well be exceptions whereby the Alliance or the Transport Agency in the future, sorry, have to go through a process to alter something and that will enable the community to understand that at later point in time, if that was to arise.

MR STEWART: Going from the general to the specific, if you look at that condition RC.1, do you have it in front of you?

MR MCGAHAN: Yes, I have it.

MR STEWART: The version that I've got has the last -- the very last two words they're actually outlined in yellow and it says "insert numbers", so obviously this is a work in progress and there will be some numbers attached to that as consents. So, it's not a question for you, probably more probably for your legal advisors presumably at some point we're going to receive a version which is a final version?

25

~Comments from Ms McIndoe (10.06 am)

MS MCINDOE: There will be a final version provided with the closing submissions, but I think these consent numbers will be allocated by the Council so that the Council can find them on their records. So, that was the intention, that these consent numbers would be numbers allocated by the Council system.

MR STEWART: Okay, so they won't actually be part of any decision we make?

MS MCINDOE: No, I wouldn't expect the Board to themselves allocate the numbers, I expect that's something that the Council could do after it receives the Board's decision. It's simply a filing mechanism to enable them to be located.

35

MR STEWART: Yes.

MR MCGAHAN: If I could just add, there were in the notice that went into the paper, there were numbers applied to all the different resource consents and they were applied by the Board, they could be the place holder, and those are the types of numbers I think we're talking about, whether Council takes those forward as suggested and they may well do, it may be just transposing those out. But yeah, at present, we don't know the specifics around how that will work.

~Questions from the Board (10.07 am)

10 MR STEWART: Thank you.

There's another sort of general question, I asked Mr Burn the same thing, but if you look at CEMP on page 4 of the resource consent conditions, CEMP.7 I think it is - no, 6, 6 at the bottom of the page, you will see there that it says:

15 "All CEMPs shall be prepared in accordance with ... and shall include. Now you remember I asked Mr Burn about those words "shall include" and whether he thought they were specific enough or whether they were slightly open ended and I'll ask you the same question.

MR MCGAHAN: I think they're specific enough. I'm comfortable that those are the necessary requirements, so therefore, the plan shall include them. There could be other aspects that could be included beyond that, but that will be up to the particular contractor I'd suggest. But, what we have attempted to do there is really identify, and you can see we added some additional items, you know, quite recently, you know, based on other Project experiences and the like. But certainly those things I see as being quite important to have in that plan and therefore, I consider the wording "shall include" as being appropriate.

MR STEWART: So that's, in a sense, the bottom line, that there may be other things, but they shall, shall include those matters A to O?

30 MR MCGAHAN: Yes.

MR STEWART: Okay, thank you.

LW.1B.

MR MCGAHAN: Sorry LW.1B?

MR STEWART: I'm just trying to find it myself now.

35 MR MCGAHAN: Page 23 I've got.

MR STEWART: Oh yes, that's right.

Now if you look at the -- it actually goes over the page, and the last two lines of that condition it says:

"The condition is offered by the Consent Holder on an Augier basis."

5 Now those who have been involved in resource management for some time might know what Augier is. But I wondered if that's a sufficient reference really? Augier refers, as I understand it, to a particular case, or the Augier principle. But I'm just wondering whether in conditions of consent whether that is actually terribly helpful to the general public to understand what you're talking about. It may be a legal question.

10 JUDGE HARLAND: Well, it mightn't not even be needed to be there. It doesn't matter how it got there, it's now a condition. Anyway, your lawyers can help with that.

MR STEWART: Maybe we delete it?

15 MS MCINDOE: Yes, I think it was probably a useful place holder during the discussion of conditions, but it might not be needed going forward.

MR STEWART: Okay. I suppose just as a minor matter of editing I have noticed it was interesting you can tell that these conditions were produced by different people and there are some people who believe that the word "Council" with a capital C should always be preceded by the word "the" and generally speaking it has been, but there are certain sections of the conditions where that principle has been forgotten, or maybe you might like to have a look at that yourself?

MS SHEARD: Certainly that's an age-old debate between the planners and the lawyers as to whether it's a "the" before or not.

25 JUDGE HARLAND: Well, I am old fashioned, things need an indefinite or a definite article.

MS SHEARD: Thank you, I appreciate that comment.

JUDGE HARLAND: I think it's an age thing, actually.

MS SHEARD: I don't appreciate that.

30 JUDGE HARLAND: No you might not.

MR STEWART: And there is another old chestnut of mine, which I will draw to your attention, and it comes up in SW.19 and I think there are one or two other places, yes, it does in several plays, SW.14, 17, and 19 and probably others that I haven't identified. Let's deal with SW.19, that's page 41.

35 MR MCGAHAN: Yes I have it, thank you.

MR STEWART: Now, you said at the end of that first paragraph it says:

"The stormwater operation and maintenance plan shall include, but not be limited to ..."

And I first of all think that the grammar of that is wrong anyway, but secondly, there should be another "shall" included there, "shall include but shall not be limited to."

5

MR MCGAHAN: Yeah.

MR STEWART: So, that's the first thing, the second thing is though "but not be limited", so, in other words it seems to be saying that you could actually have some other things there as well? And I'm just wondering whether you think that's sufficiently precise?

10

MR MCGAHAN: No it's probably not as precise as it could be. Certainly based on the conversation earlier this morning and again back to your point around consistency across some of the different areas, I think we'll obviously take that away over the weekend as well, I'd suggest.

15

But certainly the intent here, and obviously we worked extensively with the Healthy Waters Team to get these conditions to where they sit now. And so, yeah, there are a few different authors involved and the like.

But certainly, and I know Healthy Waters are certainly interested in not foreclosing any other matters that may arise as a result of the impacts on their particular infrastructure. In particular, but equally it applies to the Transport Agency's infrastructure as well.

20

But, look, I'd suggest we take that one away and perhaps just review that wording.

MR STEWART: Yes. Thank you, that's the end of questions that I've got, except to say, that despite my detailed look as far as I could, I think the conditions are really well done and I think they seem, to me anyway, to be pretty comprehensive.

25

MR MCGAHAN: Thanks.

MR MARK-BROWN: Mr McGahan, I've just got one question regarding your statement, summary statement that you've tabled this morning. 5.21, page 7, and the landfill gas and trigger levels have been deleted.

30

MR MCGAHAN: Yep.

MR MARK-BROWN: So, was that deletion agreed to by Ms Eldridge in terms of the review capacity with the experts?

35

MR MCGAHAN: I believe it was. Sorry, I just need to go back and look at when that change was made, sorry.

MR BANGMA: Sir, if it assists certainly my understanding is Ms Eldridge was involved in all discussions on the landfill related conditions and reviewed the most recent version which has been included in Mr McGahan's evidence.

MR MCGAHAN: That is my understanding. Also, I just wanted to check the
5 chronology of things where that change was made, just to double check that. But I'd that comment.

Yeah, that change was made as of the 29th of July and I'm -- I believe Mr Amputch gave evidence after that date and he and Ms Eldridge had been in close discussion.

10 MR MARK-BROWN: It's probably in the relevant Joint Witness Statement.

MR MCGAHAN: It may have been outside the expert conferencing, I think.

MR BANGMA: Yes, I think even in both their summary statements they, as I recall it, the witness for NZTA and Ms Eldridge for the Council commented on those final conditions, as I understand it sir.

15 MR MARK-BROWN: Thank you.

JUDGE HARLAND: I've only got one question; it's to do with annexure C to the conditions that you provided with your supplementary statement. This is the schedule of designations, consents and conditions where you have helpfully set out the numbers of the designations and consents sought. And the
20 conditions that are to apply to them. And I just want to confirm that's the most up-to-date and accurate version? It might not be right now, or you would like to review that? It's just a very helpful document.

MR MCGAHAN: Yeah, yeah I think we will take the time to review that again and perhaps offer up a copy early next week, on Monday. I do understand there
25 was a little bit of discussion around some of the finer details on conditions over the last couple of days raised by Mr Lovell, for instance. So, we'll just go away and check that. I think overall it probably won't change things too much, but it would just be useful for us in the wrap up to finalise that, so we'll do that.

30 JUDGE HARLAND: Thank you for that, is there anything arising from our questions?

MS SHEARD: No thank you.

JUDGE HARLAND: Well, Mr McGahan, you also have put in an enormous amount of energy to helping us focus our intention on what we need to. And it's very
35 much appreciated. We just only have to look at this last supplementary

statement with the annexures, particularly, that -- to understand the amount, the hours that have gone into this. So, thank you very much.

Whilst it might have been a lot of work, it's really helpful to us to have it put in this particular way, so thank you very much.

5 MR MCGAHAN: Agreed. So, thank you, appreciate that.

~(The witness withdrew – 10.18 am)

JUDGE HARLAND: All right.

10 So, that now takes us to you Mr Bangma, would you like us to take the adjournment briefly, or would you like to close for Watercare first?

MR BANGMA: I have a very brief and succinct summary for Watercare

Your Honour, it's only one page, more than happy to address that now.

JUDGE HARLAND: Let's do that now. Thank you.

15 ~Closing submissions on behalf of Watercare (10.19 am)

MR BANGMA: As we noted in the opening, Your Honour, Watercare's interest in this Project is limited to the potential effects it could have on the operation of the Rosedale Wastewater Treatment Plant, including the two associated treatment wastewater ponds. Watercare understands that the Board made a site visit to the Rosedale Wastewater Plant on 6 June 2017.

Watercare's submission raised a number of potential issues and accordingly sought changes to the proposed conditions.

25 Watercare provided two briefs of evidence in this matter from Mr Bourne and Dr Mitchell, both of whom were excused from attending the hearing.

30 Dr Mitchell's evidence included specific changes to the proposed designation and resource consent conditions to address Watercare's concerns. A memorandum of agreement between Watercare and the NZTA recording agreed proposed conditions was lodged with the EPA on 14 June 2017.

35 Following the planning conferencing, amendments were made to the drafting of these conditions. These amendments did not change the substance of the conditions set out in the memorandum of agreement dated 14 June 2017, and revised -- a memorandum attaching revised conditions was lodged with the EPA, and those conditions have -- agreed conditions

have been included in the conditions appended to the supplementary statement of Mr McGahan, as he has noted.

Watercare has no outstanding issues of concern in relation to this Project.

5 JUDGE HARLAND: Thank you Mr Bangma. Any questions? No. Well, thank you very much.

So that takes us to Auckland Transport, and you have the choice now of whether you would like to start that now or whether you would like to take the break now?

10 MR BANGMA: I'm happy to box on Your Honour.

~Closing submissions on behalf of Auckland Transport (10.21 am)

MR BANGMA: Paragraph 1.1, of the closing statement for Auckland Transport. As set out in Auckland Transport's opening statement, Auckland Transport
15 strongly supports the grant of consent to this Proposal.

Auckland Transport particularly wishes to acknowledge the collaborative approach of NZTA and its witnesses to resolving the issues raised by Auckland Transport, and in particular: The improvements to conditions agreed through the exchange of evidence and conferencing
20 (particularly in relation to management of construction traffic and effects on buses); and the additional benefit provided by the modifications to the shared use path, agreed to by the NZTA, following conferencing, and to be provided under the side agreement.

As indicated by Mr Lovell when he gave evidence yesterday, all of the
25 areas of interest raised by Auckland Transport have been addressed, through a combination of agreed changes to the conditions, the minimum requirements for the project, or the side agreement between Auckland Transport and the NZTA.

This closing statement addresses the following matters: The
30 appropriateness of Auckland Transport and NZTA agreeing to address various matters by way of a side agreement; damage caused to local roads by construction traffic; the upgrade Alexandra Stream Underpass; the design changes to the busway and the shared use path sought by Kiwi Self Storage Limited.

35 Part 2, the appropriateness of addressing matters in a side agreement.

The Board has asked Auckland Transport to address in its closing statement the appropriateness of it seeking to address the following matters through a side agreement with NZTA: The extension to the shared use path which were outlined in paragraph 3.5a-d of Auckland Transport's opening statement; the implications of projected increases in daily traffic flows on Albany Highway South, as a result of the Proposal, so the 5% -- projected 5% increase by 2031, resulting in the need to bring forwards planned improvements to Albany Highway South, and the possible need to widen the Rosedale overbridge piers to facilitate the upgrade of Rosedale Road to four lanes, as part of the operation of a possible future Rosedale bus station.

In Auckland Transport's submission, where a proposed measure is required to address an adverse effect on the environment to be managed by the Council (as consent authority), it should be addressed through conditions of consent, rather than side agreements. The potential role of any side agreements should be limited to matters which are not generally appropriate to address through conditions. For example, matters relating to the operation of the road network (that are within the road controlling authority's powers/responsibilities), communications between the parties, or funding arrangements.

The approach Auckland Transport and NZTA have taken in this Proposal is consistent with this. In particular: Auckland Transport's concerns in relation to the effects on the local road network and buses will be addressed through conditions (rather than a side agreement).

With respect to the extensions to the shared use path, which are covered under the side agreement, these are generally outside the designation for this Proposal. The proposed works will be within Auckland Transport's road reserve and the design of the works approved by Auckland Transport in its capacity as the controlling authority. As noted in Ms King's evidence, the purpose of extending the shared use path under the side agreement to connect to existing cycle lanes, is to maximise the benefit of the Proposal through the creation of a "network effect". In other words, joining up the gaps, or making sure there's no small gaps between infrastructure where we reasonably can. The extensions to the shared use path have been agreed to with NZTA on that basis.

In relation to Albany Highway South, Mr Clark, on behalf of the NZTA, acknowledged that the Proposal is projected to result in a 5% increase in the

5 volume of traffic on the Albany Highway south of State Highway 18, by 2031. This is likely to bring forward the need for Auckland Transport's Albany Highway South upgrade Project, noting that this Project will be needed at some point in the future, in any case. NZTA will financially contribute to the Albany Highway South upgrade Project. Accordingly, in Auckland Transport's submission, to the extent that this Proposal could bring forward the timing of the Albany Highway South Project, this is essentially a funding matter to be resolved between the two parties (and in accordance with relevant legislation). A condition on this Proposal, relating to NZTA's funding of the Albany Highway South Project is not necessary, or appropriate, to address this matter. Furthermore, the exact funding implications are unclear at this point, and there could be difficulties with trying to capture this in a condition.

15 In relation to Rosedale Station, Auckland Transport is currently exploring with NZTA the location of a possible future bus station in this vicinity.

20 The Project has yet to be confirmed, and has not been consented. Accordingly, in Auckland Transport's submission, it does not, at this point, form part of the environment for the purposes of assessing the Proposal, that's this Proposal before the Board, under the RMA. If the Rosedale Station Proposal does proceed, it could result in the need to upgrade and widen Rosedale Road to four lanes. This is like to result in a need to widen the piers of the Rosedale Road overbridge. Works on the overbridge will be undertaken anyway as part of this proposal due to the need to widen the overbridge to incorporate the proposed extension to the northern busway. Accordingly, Auckland Transport wishes to ensure that the design of the overbridge for this Proposal does not preclude the Rosedale station road widening in the future. This is matter that can be addressed through the detailed design of the Proposal, if, by that time, it has been decided that the Rosedale Station works will proceed. Auckland Transport and NZTA have agreed this a matter which will be dealt with by way of a side agreement. In Auckland Transport's submission this is appropriate, given that NZTA will be a funding partner in the Rosedale Station, if that proceeds, and fund part of that project. This is a matter which can be left to the detailed designed stage of this Proposal and accommodated within the designations.

35

And lastly, a condition in relation to this matter is not necessary to address any effect on the environment, and the Rosedale Bus Station does not, in any case, form part of the "environment" as defined under the RMA as consent has not yet been obtained.

5 Part 3 of these submissions, damage to local roads.

Auckland Transport indicated in its opening statements that it was conditioning to work with NZTA and it was hopeful that agreed wording on a condition satisfactory to the parties could be presented to the Board.

10 The NZTA and Auckland Transport have now reached agreement on this issue. Conditions CTMP6 to CTMP6D attached to the supplementary evidence of Mr McGahan dated 4 August 2017 address this issue and require: Prior to commencement of construction, the identification of all access points from the Project construction areas to the local road network, confirmation of existing levels of traffic on the relevant local roads, and
15 estimation of construction traffic volumes, and a monitoring programme to be implemented during construction; at least 4 weeks prior to commencement of construction, a RAMM, a visual condition assessment to be undertaken, including pavement strength testing; weekly inspections of the relevant local roads during construction, or upon a complaint being received; and any
20 damage attributable to the Project to be repaired within one week, or an alternative timeframe agreed with Auckland Transport.

In Auckland Transport's submission, the condition agreed with NZTA is appropriate, and will ensure any damage to local roads attributable to the Project is remedied. While the condition has been agreed or volunteered by
25 NZTA, Auckland Transport considers the condition to be consistent with recent statements of principle by the Environment Court in relation to damage to local roads in *Norsho Bulc Limited v Auckland Council*.

JUDGE HARLAND: Is that the Pukekohe case, which case is that?

MR BANGMA: That is a clean fill case involving an application for a clean fill before
30 Judge Kirkpatrick.

JUDGE HARLAND: Yes, is that the one out in Clevedon Whitford Way, or somewhere out there? I'm familiar with the one --

MR BANGMA: I think that's right. It says Black Ridge Road, Pine Valley. So, I hadn't picked up from my reading of the case which part of Auckland that
35 was.

JUDGE HARLAND: Well, the road is this way apparently, but I know the case.

MR BANGMA: Well, that's what I initially understood.

JUDGE HARLAND: Yes, thank you for that.

MR BANGMA: It was a case Mr Lanning was involved in, and in that case,

5 Your Honour as I've mentioned in the footnote, ultimately a condition, I
guess, with many similarities to the condition that's been agreed here in
relation to the survey and damage to local roads was imposed by the Court
and there were statements of principle that the local road network is a
resource, and that the parties shouldn't just rely on general levies or budgets
10 by Auckland Transport to fix matters where it's -- where there is going to be
wear and tear that's above and beyond what ordinarily might be expected to
occur.

And that's essentially what has been agreed between NZTA and
Auckland Transport here and -- or at least there is a condition in place which
will enable that to be assessed.

15 The next issue, I'll save most of that one for the Council's closing. So
just very briefly, at part 4 of these submissions for Auckland Transport, the
upgrade, the Alexandra Stream Underpass. Auckland Transport supports
the upgrade of the Alexandra Stream Underpass sought by the Council,
which is Option 3 identified in NZTA's alternatives assessment. I just note
20 there Auckland Transport adopts the submissions of the Council on this
matter.

Part 5 of the closing statement, the design changes to the busway and
shared use path sought by Kiwi Self Storage.

25 In its opening statement, Kiwi Self Storage referred, in support of its
proposed changes to the gradient of the busway and shared use path, which
would increase the maximum gradient of those facilities to a gradient of
5.34% to -- in relation to the busway -- the fact that the existing northern
busway had a grade of 5.34% for a length of approximately 630 metres
between Constellation Station, that should probably be, and Sunnynook
30 Road. Accordingly, their proposed design changes would not require buses
on the busways to ascend or descend at a gradient greater than they are
already undertaking. And in relation to the proposed shared use path,
Ms King had agreed in principle that a gradient of 5.34% was acceptable.
With respect to the existing section of the busway, that has a gradient of
35 5.34%, Mr Maule indicated that this stretch of the busway affects the efficient
operation of fully laden double-decker buses, and can result in them reducing

in speed by up to 20 kilometres per hour. Furthermore, the gradient at this part of the busway is a result of topography and the hill that rises to a peak at Sunset Road.

5 Mr Hall, on behalf of Kiwi Self Storage, sought to distinguish the design changes Kiwi Self Storage proposed (also a maximum gradient of 5.34%) on the basis that, due to the location of Constellation Drive in relation to the proposed area of increased gradient, the increased gradient would assist with acceleration of buses heading down hill, from Constellation Station towards Albany Station, and the additional gradient would assist
10 buses travelling uphill, from Albany Station towards the city, to decelerate before coming to a stop at Constellation Station.

No detailed analysis of how the proposed changes in gradient would affect acceleration or deceleration of buses has been undertaken. In Auckland Transport's submission, in the absence of such analysis, it is
15 difficult for the Board or parties to establish that the efficient operation of this important public infrastructure will not be affected, to at least some degree. In particular, Auckland Transport's notes that Mr Hall accepted that, from a traffic engineering perspective, the most efficient outcome for the busway is a gradient of zero, (or as he noted, travelling downhill). A gradient of more
20 than 5% is a departure from recognised design standards for the efficient operation of buses, and locking in Kiwi Self Storage's proposed design (with a maximum gradient of 5.34%) may prevent NZTA from achieving, through detailed design, a gradient of less than 5%, which is acknowledged, would be an even better or more efficient outcome.

25 In terms of Ms King's position on the appropriateness of a gradient of 5.34% for the shared used path, Ms King confirmed that: She did not attend the conferencing for Transport and Traffic Site Specific impacts resulting in the conferencing statement dated 23 June 2017. The reference in that conferencing statement to Ms King having agreed in the Joint Witnessing
30 Statement Traffic and Transport General/Design/Layout/Model/Alternatives that a gradient of 5.34% was in principle acceptable, is not recorded in that earlier conferencing statement, and does not reflect her views.

With respect to the gradient of the shared use path, Ms King's
evidence is that: A shared use path that was flat, or a gradient of zero, would
35 be the most desirable for users; a gradient of 5% would be the upper limit of what was desirable; for a gradient even steeper than 5%, this would need to

be approved by Auckland Transport through a departures process. Through departures process, Auckland Transport would consider whether appropriate mitigation could be provided for the increased gradient, as part of the design of the shared use path. This would most likely consist of providing rest stops at specified intervals, as set out in Auckland Transport's design manual. I note that the relevant extract from that was attached to Ms King's summary statement. Whether these rest stops could be incorporated as part of the shared use path was a matter of detailed design and cannot be confirmed at this stage. Although there are other examples of shared use paths in Auckland with gradients steeper than 5%, these were due to topography and it would not be desirable to deliberately design a shared use path with such steep gradients.

The evidence of Mr Southall of Bike Auckland on this issue was: A gradient of less than 3% would be ideal, a gradient of more than 5% would be a disincentive to members of the public to use this infrastructure. In Auckland Transport's submission, the evidence establishes that amending the design of the busway and shared use path to increase the gradient to 5.34% as sought by Kiwi Self Storage will permanently reduce the efficiency of this important public infrastructure, and is not desirable.

The reason proposed for these design changes is to preserve views from the motorway of a commercial storage business. There is no public interest in preserving such views -- unlike for example views from public places of the Auckland Volcanic Cones, Museum, or prominent heritage buildings. The reason for preserving these views is the private interest of Kiwi Self Storage.

In relation to effects on Kiwi Self Storage's business, the evidence of its registered valuer, Mr Doyle, is that the loss of views of Kiwi Self Storage site as a result of the Proposal would be likely to reduce its facility from an exceptional site to a prime site. This could potentially affect its turnover by around 10%. However, Mr Doyle accepted that, even with reduced visibility, the site would occupy a highly favourable position on the eastern side of the motorway.

Mr Allan, for Kiwi Self Storage, maintained it was the visibility of the Kiwi Self Storage buildings and storage units that was important to its brand and attracting customers. However, in Auckland Transport's submission, signage is clearly a possibility.

Can I just pause there, Your Honour? I drafted this closing last night before I'd had a chance to consider the evidence of Mr McGahan on this matter, and obviously Mr Lovell gave us evidence yesterday aiming to assist the Board, but I guess the relationship between the important provisions and the bylaw would seem to be -- it's a complicated issue. I wonder if I might just -- I mean, that is Mr Lovell's evidence. Alternatively, I could just strike the reference to?

JUDGE HARLAND: No, not at all. I think -- we understand that that was given in the context of not researching it properly. If you want to look further at what's arisen today for Mr Burn's evidence in the discussions, that's fine. You could address that on Monday.

MR BANGMA: Thank you, Your Honour. And as Mr Lovell explained yesterday, fairly generous provisions for signage, with respect to size and height, apply to the site under the rules in the AUP, accepting as we've heard today there are also requirements under the bylaws. Signage is used by other self storage businesses. The ability to provide signage that would be visible from the motorway, and the visibility of the site from the proposed busway, which has currently -- it is projected to have increasing levels of patronage, might reasonably be expected to offset, or at least partially offset the effects on Kiwi Self Storage's business.

Irrespective of the precise level of effect on Kiwi Self Storage from a reduction in the visibility of its property from the motorway, as Auckland Transport noted in its opening statement, the Courts have held that there is 'no property in a view'. As the Court stated in re: Meridian Energy --

JUDGE HARLAND: You don't have to read that out; I wrote that bit. Thank you.

MR BANGMA: Auckland Transport submits these principles apply in the present case. Kiwi Self Storage has no right to a view of the motorway, or a view of its site from people using the motorway. NZTA, is entitled to provide public infrastructure in a way which blocks or interferes with that view, or to plant trees, erect noise barriers, or other lawful activities which might reduce views of Kiwi Self Storage site from the motorway. Furthermore, while the busway and shared use path is likely to be present for a long time, perhaps permanently, the nature of the use of the Kiwi Self Storage site may change.

JUDGE HARLAND: Just to ask a question here, isn't this not really a right to a view, it's more, isn't it, a right to be seen that they're arguing in an economic sense? Slightly different argument.

MR BANGMA: I think, Kiwi has identified through the evidence that's Kiwi's concern, being seen, and what that might mean in terms of its customer base. I suppose my submission on that, Your Honour, is that that is linked to the issue of the view, in the sense that they can only be seen by users of the motorway if there is nothing obstructing that view. I mean, to me that case law is applicable.

JUDGE HARLAND: Right. All right, well, we won't take that any further. That's fine. Thank you.

MR BANGMA: At paragraph 5.13: It is acknowledged by the witnesses involved in expert conferencing that the design changes proposed to the busway and shared use path require a departure from recognised design standards. Auckland Transport does not support these design changes on the basis they seek to permanently reduce the efficiency of operation of public infrastructure, for a private benefit - when there is no 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 unhelpful precedent for other projects in the future.

Conditions:

Auckland Transport has reached complete agreement with NZTA in relation to conditions. Auckland Transport supports the draft conditions attached to the supplementary of evidence of Mr McGahan dated 4 August 2017. This is subject to the two minor changes outlined in Appendix 1, to the summary statement of Mr Lovell, dated 11 August 2017. NZTA has indicated to Auckland Transport that it agrees to these two amendments, and that they will be included in NZTA's final set of draft conditions, that will be provided to the Board with its closing statement.

And if I might just add there, Your Honour, on the subject of conditions, obviously, Your Honour and the Board Members have suggested some refinements, perhaps fairly minor refinements to the drafting. I would expect that Auckland Transport, and for that matter the Council, would liaise with NZTA in relation to those minor amendments, and probably arrive at an agreed position supporting those -- potentially supporting those minor changes that are being suggested by the Board.

JUDGE HARLAND: Thank you very much.

MR BANGMA: Conclusion:

Auckland Transport strongly supports the Proposal and seeks that it be confirmed by the Board, for the reasons outlined in Auckland Transport's evidence, opening statement, and in this closing statement.

JUDGE HARLAND: Thank you, Mr Bangma.

5

~Questions from the Board (10.45 am)

MR STEWART: Sorry, I just have one question, and it's really just to make sure that I have got it very clear in my mind and to put it on the record. It appears that what you're saying in relation to Kiwi Self Storage, on your page 7, paragraph 5.4, I suspect -- I'm sure it's clear, but I just want you to say it, that your argument that the conditions should remain -- or the Proposal should remain the same is really because your gradient of 5% is basically a worst case scenario, isn't it? And it could actually become better or a lower gradient through detailed design, or not. But it could. But what you're saying it seems to me, and I want you to just confirm that, that the Proposal is proposing a 5% gradient and it's not going to be any higher?

10

15

MR BANGMA: Yes, I confirm that; that's my understanding. I'm relying on that understanding, I think, on answers given in response to questions from the Board by one of the NZTA witnesses, Mr Moore, I think it was.

20

MR STEWART: So that's certainly the understanding I got. I just wanted you to confirm that. So that the situation -- the as-built situation may have a lower gradient, or not.

MR BANGMA: There could be an improvement on that situation, yes.

MR STEWART: Yes, thank you. But it won't be worse?

25

MR BANGMA: That's my understanding.

JUDGE HARLAND: Thank you very much, Mr Bangma. That's a very helpful summary of your case and we are grateful for that.

So, we will take the break now for 15 minutes and then you can have a rest and come back and give us the closing for Auckland Council, thank you.

30

~(Adjourned 10.47 am - 11.05 am)

~Closing submissions on behalf of Auckland Council (11.05 am)

MR BANGMA: Hopefully the Board has before them a copy of the closing statement for Auckland Council and also one decision, the Supreme Court decision in

35

Estate Homes, which of course is well known and widely available but I thought I'd provide a copy for ease of reference.

JUDGE HARLAND: Thank you.

MR BANGMA: Starting with the overview at paragraph 1.1, as set out in

5 Auckland Council opening statement, the Council supports the Proposal, and seeks that it be confirmed by the Board. The Council considers that: The Proposal will result in significant net transport benefits, and will, over all, achieve the objectives set by the New Zealand Transport Agency.

10 The proposal is consistent with key planning and strategic documents including the Auckland Plan and the Auckland Unitary Plan (Operative in Part). The proposed extension of the highly successful Northern Busway will result in benefits in terms of increased patronage and efficiency. These benefits have been comprehensively addressed as evidence on behalf of Auckland Transport. The Council agrees that these benefits are significant.

15 In relation to the proposed Shared Use Path, the Council supports the provision of the shared use path and acknowledges the benefits that the shared use path will provide in terms of walking and cycling on the North Shore. NZTA has agreed to enter into a side agreement with Auckland Transport providing further extensions to the shared use path to ensure that it connects to existing
20 cycling facilities.

In addition, NZTA has agreed to amend the Proposal to not preclude two connections being provided to the Shared Use Path at the Rosedale Closed Landfill and Centorian Reserve in the future, and provide two connections to the Shared Use Path, one at Cabello Place and the other through the currently
25 closed connection at Jumento Place (the latter connection is to be provided if it is shown to be feasible through detailed design).

30 The Council strongly supports these amendments to the Shared Use Path, and the additional benefits they will provide in terms of enhancing connections between the Shared Use Path and local roads, reserves, and existing cycleway assets.

35 This closing statement addresses the following matters: The upgrade of the Alexandra Stream Underpass; the proposed relocation of North Harbour Hockey; effects on recreation and reserves; the area of stream to be reclaimed by the proposal, and the adequacy of the offset mitigation provided by NZTA; whether or not it's appropriate to address certain matters in a side agreement; the correct approach to take under section 104D of the Act in addressing

whether the proposal is contrary to the objectives and policies of the plan; the design changes to the Shared Use Path and busway sought by Kiwi Self Storage; and the conditions.

Part 2 of the submissions. The upgrade of the Alexandra Stream Underpass.

As the Board will be aware, this was the key remaining area of disagreement between NZTA and the Council during the hearing.

The evidence before the Board establishes that the cost to upgrade the underpass, that's Option 3, identified in NZTA's alternative assessment as sought by the Council as part of this Proposal is approximately \$5 million based on accommodating the upgrade within the Proposal's traffic management measures; if the underpass was upgraded as part of a separate project, it would require separate traffic management measures that could be expected to cost approximately \$1 million. Other costs required as part of a separate Project such as a construction yard, Project management office, and establishment costs could generally be expected to add a further 10%, or approximately \$500,000. Accordingly, the evidence establishes the costs of up greying the underpass as a separate Project would be likely to be approximately \$6,500,000, this is \$1,500,000 more than completing the upgrade as part of this Proposal.

Undertaking the upgrade now as part of the Proposal would also minimise disruption to traffic on State Highway 18. The evidence is that the upgrade could be provided within existing traffic mitigation measures with little or no disruption to traffic on State Highway 18. Conversely, undertaking the upgrade as a separate Project would require separate traffic management measures resulting in between one to three months of traffic disruption on State Highway 18.

In light of the evidence outlined above, in the Council's submission, upgrading the underpass now, as part of this Proposal, rather than as a separate Project in the future, would be a more efficient use of resources under section 7(b) of the Act because it would cost less; and it would reduce traffic disruption on State Highway 18, avoiding a future adverse effect in terms of a second period of disruption on State Highway 18, if the upgrade was undertaken as a separate project.

Whether the upgrade is required to mitigate an adverse effect of the Proposal.

Witnesses giving evidence on behalf of NZTA stated that upgrading the underpass is not required to mitigate an adverse effect of the Proposal; and that the upgrade to the underpass that is proposed by NZTA, the more limited upgrade in other words, compared to what is sought by the Council, will be an improvement on the existing environment.

Mr Brown, in response to questions from the Board, gave evidence that, in his view, the upgrade is necessary to mitigate adverse effects of the Proposal because the proposed Share Use Path on the northern side of State Highway 18 will generate additional usage of the underpass. This will create an adverse effect on people using the underpass, because the existing underpass is acknowledged to be substandard, and while the proposed pedestrian connection at Paul Matthews's Drive, this is the new connection that's proposed, will help reduce severance between Unsworth Heights and the Shared Use Path on the northern side of State Highway 18. In Mr Brown's view, other aspects of the Proposal such as noise walls and visual screening will reinforce the isolation of Unsworth Heights, creating severance in a broader sense.

The correct legal test for a valid condition: Waitakere City Council and Estate Homes.

However, in the Council's respectful submission, neither of the propositions set out in the paragraph 2.4 above set out the correct legal test. In Waitakere City Council and Estate Homes the Supreme Court found:

That a condition must be "logically connected to the development" and not relate to "external or ulterior concerns unrelated to the Proposal".

For a condition to be "validly imposed", it must be for a "planning purpose rather than one outside of the purposes of the empowering legislation..."

And overall, the condition must be reasonable.

Paragraph 2.7. In the Council's submission, it cannot be said there is no connection between the underpass upgrade and the Proposal because the underpass sits inside of NZTA's designation and NZTA is proposing to undertake works to upgrade the underpass as part of its Proposal in relation to (brighter lighting, CCTV footage, and changing the alignment of the southern approach to the underpass).

Moving to the evidence on this matter, paragraph 2.8. In terms of the degree of connection, so that's the first part of the Estate Homes test, between

the need to upgrade the underpass to the standard sought by the Council and NZTA's proposed Shared Use Path on the northern side of State Highway 18. The evidence from Mr Bray and/or Mr Brown is that: The underpass provides an important connection between residential areas in Unsworth Heights,
5 particularly the western portion of Unsworth Heights, and NZTA's proposed Shared Use Path on the northern side of State Highway 18, which will continue on to connect with existing cycleway facilities on Albany Highway.

The underpass provides one of only two connections between NZTA's proposed Shared Use Path and Unsworth Heights, the other being at Paul
10 Matthews Drive. Mr Bray accepted that the underpass is likely to provide the most direct, and pleasant connection (when compared to other alternatives such as travelling down Albany Highway from Unsworth Heights), for some of the pedestrian and cycle trips from Unsworth Heights.

Usage of the underpass is likely to increase as a result of NZTA's
15 Shared Use Path on the northern side of State Highway 18. The Shared Use Path will provide a link up to the existing cycle path on the Albany Highway and to schools, employment, and entertainment opportunities along the highway.

~Questions from the Board (11.15 am)

20 JUDGE HARLAND: Can I just ask you, is there any evidence on the schools and the employment, obviously there's the employment that we can see over there, but -- we could look on a map.

MR BANGMA: Look, apologies Your Honour, I don't think any witness particularly covered that. I don't mean to give evidence from the bar.

25 JUDGE HARLAND: No, but it's a matter of probably common knowledge, it wouldn't be too difficult --

MR BANGMA: I was assuming so, Your Honour. If it assists, I could mention the schools.

MS SHEARD: I think Ms Strogen's evidence certainly mentions the schools. I'm not
30 sure if she maps them though.

JUDGE HARLAND: That's all right. If everyone is happy for us to have a look ourselves, we'll do that.

MR BANGMA: Yes.

JUDGE HARLAND: Yes, sorry.

35

~Submissions on behalf of Auckland Council continues (11.16 am)

MR BANGMA: Not at all. In that regard, Mr Bray considers that usage of the underpass is likely to increase from current levels.

5 Mr Brown considers that usage of the underpass could increase quite significantly as a result of NZTA's proposed Shared Use Path on the other side of State Highway 18, generating demand from both commuters and recreational cyclists.

10 Both witnesses considered that the level of safety and amenity in the underpass could affect levels of usage, with Mr Brown describing this as a chicken and egg situation. This conclusion was also supported by Mr Southall of Bike Auckland who noted it was no surprise cycle numbers through the underpass were currently low, given the existing underpass is so, in his words "unattractive".

15 With respect to the upgrade of the underpass that's proposed by NZTA, it was acknowledged by Mr Bray that this will not resolve CPTED issues, it's not best practice for urban design, it is inconsistent with principles in section 5.6, page 36 of the UDLF for this Proposal, and will not achieve the Project objective of providing a safe walking and cycling connection.

20 Mr Bray accepted that the upgrade of the underpass sought by the Council would better resolve CPTED issues, be more consistent with the principles developed by NZTA in the UDLF for this Proposal, and provide a higher amenity environment, with more width, I think it's 3 metres compared to the current 1.5 metres, to accommodate pedestrians and cyclists.

25 Option 3 has been acknowledged as being technically feasible, and not requiring any additional land acquisition.

30 Evidence from Mr Southall and Ms Cuthbert from Bike Auckland is that a width of 3 metres, which is what is proposed in Option 3, the minimum requirement for pedestrians and cyclists to safely accommodate each other on a shared use path.

~Questions from the Board (11.18 am)

JUDGE HARLAND: Can I just interrupt you there and ask you what does the Council want us to do with the further evidence provided to us yesterday by Ms Barrett annexing all of the applications to do with the upgrade of that underpass, which
35 seemed to indicate that CPTED issues -- there was a special report on it, and

there were recommendations which were followed and now we find ourselves in a position where people are saying "well, they didn't address those issues", how do we deal with that?

MR BANGMA: Yes, look obviously, I have considered that resource consent in the reports attached to Ms Barrett's evidence. She wished to provide those to the Board in response to a question from the Board about historic management and whether anything had been done previously by the Council, or Auckland Transport. It's correct that the upgrade that was proposed as part of that resource consent granted in 2010, I think could be described as being a fairly modest upgrade, and it's also correct that it hasn't resolved existing CPTED issues, or I think on the basis of evidence of any witness resulted in a facility which is regarded as being attractive or meeting current standards for infrastructure that would be provided today in other parts of the city. But I think, Your Honour, there are some key differences in terms of the upgrade which the Council's seeking the option which was identified in NZTA's own alternatives assessment. And the key differences, as I understand it, that would better remedy the situation compared to at present or in that resource consent. As I understand it, the skewed alignment -- so skewed relative to State Highway 18 as I understand it, which would provide much clearer visibility and lines of sight. And I understand it's on that basis that all of the witnesses, including Mr Bray, say Option 3 would better address CPTED issues because those concerns are primarily a lack of visibility caused by the current poor sight lines, and also, I think the other key component is the increased width, as we explored with Mr Bray. The NZTA's guidelines or best practice would be to provide an underpass that was 5 metres in width, and in addition to providing additional space for pedestrians and cyclists to move past each other safely; I understand that the wider the underpass, that it also improves visibility and natural light and that's considered to have benefits in terms of CPTED issues as well.

So, I think Your Honour's correct to point out the issues in relation to the underpass haven't been resolved to date, but for those reasons I think all of the experts involved in this process acknowledge Option 3 would certainly be a large improvement on the evidence, that would be my submission. The issue then of course, I believe, becomes a legal issue for the Board in terms of applying the case law to that evidence. Whether the Board can say NZTA is required to go that far on the case law to undertake this upgrade. And as I think the witnesses from NZTA have consistently said throughout, they consider that

NZTA should only be required to do that to mitigate an adverse effect of their Proposal, and I think all of us in this field often think in those terms, perhaps, that the purpose of a condition is to mitigate an adverse effect. But, as I'm exploring it in my submission, I think the issue -- the test under Estate Homes is
5 little bit broader than that, so that might be a slightly crude or shorthand way of looking at it, to say it's only if it's to address an adverse effect.

JUDGE HARLAND: And you're linking the upgrade into what you say will be increased patronage that is likely to occur as a result of the SUP on the other side of the road, State Highway 18?

10 MR BANGMA: That's correct, Your Honour.

JUDGE HARLAND: Yes.

MR BANGMA: Yes.

JUDGE HARLAND: So that, if you like, is the trigger that you say means it should be looked at by NZTA, we should look at it from the perspective that NZTA should
15 improve what's an unsatisfactory situation. But as well, the test being broader in Estate Homes as you say, enables us to do that?

MR BANGMA: Yes, and on that point, Your Honour, as we've been exploring through evidence, and I do develop this submission later, but I think Your Honour referred to the trigger for this to be looked at, I suppose it's, based on the
20 evidence, the relationship that the shared use path that's proposed has to the underpass and Unsworth Heights and how it will be used and projected increase in numbers, if we're tying that back to the language that's used in Estate Homes, in my submission, that will be relevant to the degree of connection to the upgrade.

25 JUDGE HARLAND: Yes, so furthermore, it's to deal with a severance effect in any event you would say, but not a severance effect but an increase in connectivity which is directly linked, you would say, to a severance effect resulting from the closure of one accessway to Unsworth, is it?

MR BANGMA: Well, Mr Brown says he considers it's necessary to reduce severance
30 in the broader sense. To be fair, and I'm sure Ms McIndoe might point out, from a transportation perspective there obviously will be this additional connection at Paul Matthews Drive, so --

JUDGE HARLAND: But you are saying, nonetheless, it justifies increased opportunity?

MR BANGMA: Yes, Your Honour. On the basis that that's the logical connection between this proposed Shared Use Path and essentially the need for the upgrade.

JUDGE HARLAND: All right, thank you.

5 You were up to -- after you'd finished with 2.12, you were up to the next section.

~Submissions on behalf of Auckland Council continues (11.25 am)

MR BANGMA: So, as we were exploring, Your Honour, this section is the upgrade of the underpass and whether that's logically connected to the proposal, which is
10 the first of the Estate Home's requirements.

Accordingly, in the Council's submission, the evidence establishes that upgrading the underpass is logically connected to NZTA's proposed development of a Shared Use Path on the northern side of State Highway 18 because: The underpass is within the designation and project area; the
15 underpass provides an important connection between Unsworth Heights and the proposed Shared Use Path on the northern side of State Highway 18; for many users it will provide the most direct, and over all, the most pleasant connection to the SUP; and the usage of the underpass is likely to increase as a result of the proposed Shared Use Path on the northern side of State
20 Highway 18; and upgrading the underpass, as proposed by the Council (from 1.5 metres to 3 metres in width) it will provide more space to accommodate pedestrians and cyclists. It is the minimum width required for it to function as a Shared Use Path.

So, those are the factors which the Council says mean this upgrade is
25 logically connected to NZTA's Proposal.

Turning to the second and third requirements set out in Estate Homes.

The upgrade is for a valid planning purpose and is not unreasonable. Upgrading the underpass in the manner sought by Council is to achieve a "valid planning purpose(s)" by: Promoting the efficient use of resources under section
30 7(b) of the Act, as we've outlined; ensuring that principles for CPTED are complied with; ensuring that good urban design outcomes consistent, or at least more consistent with NZTA's UDLF for this Project are achieved, and to achieve NZTA's Project objective of providing a safe connection for pedestrians and cyclist, for this part of the Proposal.

35 Lastly, it is submitted that requiring NZTA to upgrade the underpass to comply with the principles of CPTED, to be more consistent with the UDLF and

achieve its own Project objective in relation to walking and cycling is not unreasonable; as I understand it, in an administrative law sense, the last of the requirements in Estate Homes.

5 And just on the final point of this part of the submissions, this issue, if Your Honour, we compare to the extent we can the facts here in this case and what the Board's being asked to endorse compared to the facts in Estate Homes, in the Council's submission, the facts outlined above in this case are in contrast to the facts in Estate Homes. That case involved a condition on an application for subdivision requiring the construction of a road to an arterial road
10 standard - when it was common ground that construction of a road to this standard was not needed for that particular subdivision.

On the connection point the Supreme Court found that the requirement under the condition to construct the road to an arterial road standard did have the necessary degree of relationship and connection with the proposed
15 subdivision. However, the question then became whether this requirement was reasonable. And the Supreme Court, as I understand it, remitted to the Environment Court the question of whether a collector road or local road was the appropriate basis for assessing the compensation to be paid to the developer.

20

~Questions from the Board (11.29 am)

JUDGE HARLAND: And what happened when it went back, do you know?

MR BANGMA: I must admit I haven't followed that up.

JUDGE HARLAND: That's all right. I can find that out.

25 MR BANGMA: But that was a narrow issue, as I understand it. The appropriate road standard that would be needed to meet that particular development.

~Submissions on behalf of Auckland Council continues (11.29 am)

MR BANGMA: In the Council's submission, this contrasts with the situation in this
30 case. The Council is not seeking that the underpass, which forms part of the Project area, be upgraded to a higher standard than is needed to serve NZTA's proposed Shared Use Path on the northern side of State Highway 18 or some other ulterior motive. Rather the Council is simply seeking that the underpass be upgraded to a standard consistent with the rest of the Project. In other
35 words, a Shared Use Path of 3 metres that meets the principles in the UDLF

that the NZTA has set itself for this Proposal, and that provides a safe connection for walking and cycling.

That's the end of my submissions on that particular issue Your Honour.

JUDGE HARLAND: I'll just pause and see if there's questions for you on that.

5

~Questions from the Board (11.30 am)

MR STEWART: Just on the last point, I think I've got that fairly clear, but I suppose if the situation was that there was no existing underpass and NZTA as part of the Project had proposed the SUP on the northern side plus an underpass, would it be your submission that they would not construct the underpass to its present standard?

10

MR BANGMA: As it is currently?

MR STEWART: Yeah.

MR BANGMA: I think that's my clear understanding from the evidence that's been given and the conferencing statements. I think even NZTA's own witnesses have acknowledged it wouldn't comply with current standards today or for this Project. But the difference in opinion really between the Council and NZTA comes down to, I suppose, the legal consequence of that and whether this Board can require NZTA to upgrade it to those standards. And as I understand it, the key difference there is whether -- there's a narrower view that upgrade could only take place if it was necessary to mitigate an adverse effect, or if the issue is as the Council sees it, more broad in terms of Estate Homes, and whether there's a logical connection and the upgrade is for a valid planning purpose.

15

20

25

~Submissions on behalf of Auckland Council continues (11.31 am)

MR BANGMA: All right, shall we move on?

The relocation of North Harbour Hockey.

The Council wishes to address the following matters arising from the proposed relocation of North Harbour Hockey, and these were matters which were raised by the Board during the course of the hearing: Whether in relation to the proposed leases which are currently going through the notification and hearings process under the Reserves Act, there is a right of appeal; the nature of the resource consents required for the proposed relocation of the pony club and BMX club, and whether the condition relating to the relocation of Hockey should be a condition precedent.

30

35

I address each of these issues under the sub-headings below.

In relation to the proposed leases that have been notified under the Reserves Act.

5 The closing date for submissions, or I believe the terms under legislation is of "objections" is 24 August 2017.

Having considered this issue, section 120 of the Reserves Act 1977 requires full consideration to be given to any objections that are received. However, there is no right of appeal written into the statute.

10 Turning to the nature of the resource consents required for the pony club and BMX club, and I'm just really referring to Ms Barrett's summary statement here.

Mr Barrett confirmed that the overall status of the resource consents sought by the BMX club, in relation to its proposed relocation, is non-complying, and the overall status of the resource consents required by the pony club, for its proposed relocation, is restricted discretionary.

15 Whether the condition relating to the relocation of North Harbour Hockey should be a condition precedent.

20 The condition relating to the relocation of Hockey that was agreed in the recreation conferencing provided for this to be a "condition precedent", in other words, the relocation of Hockey was to be completed prior to construction, or at least construction on that part of the Project, involving Hockey's site.

This condition was subsequently amended during the planning conferencing, so that the condition precedent aspect no longer applied.

25 Ms Barrett confirmed that she considers the condition precedent aspects to be important, as if there was just a general obligation to relocate Hockey, but no timeframe specified, there could be a lag period in which no facilities, or only reduced opportunities on the North Shore.

30 The conditions as currently proposed, and I can see the Commissioner turning to them, are attached to Mr McGahan's evidence, do provide that the relocation of Hockey is to be completed prior to any works commencing unless otherwise agreed by Hockey. Council understands this wording, so in other words, the "unless otherwise agreed" part, is proposed to allow for a staged relocation, if Hockey considers this to be acceptable.

35 The Council supports this condition.

Effects on recreation and reserves.

In relation to the effects of the Proposal on recreation and reserves, a very high level of agreement has been reached between Ms Barrett and Mr Greenway through expert conferencing.

5 In relation to the specific issue of the effects of the Proposal on recreation at Constellation Reserve, Mr Barrett confirmed in answers to questions yesterday that there are no recreation activities being undertaken on the part of Constellation Reserve proposed to be occupied by the Proposal at present.

10 If the Proposal proceeds and that part of Constellation Reserve is required for the Project, there will be no adverse effects on recreational values.

15 The Council has plans to provide additional sports fields in the future. At present, these could be located on Constellation Reserve. However, if the Proposal proceeds, there are other locations within Albany where the future sports fields could be accommodated.

Accordingly, Ms Barrett's only outstanding area of concern in relation to the Proposal and conditions was in respect of the proposed reinstatement plan for Rook Reserve.

20 Ms Barrett noted, and there's the reference to her summary statement, it had been agreed in the recreation expert conferencing that the reinstatement plan for Rook Reserve should include mitigation above and beyond what was then included in the version of the relevant condition, UDL.6B, attached to Mr McGahan's supplementary evidence.

25 Following discussions between counsel, NZTA has agreed to amend this condition by inserting a new subpart (ba) that would provide as follows: So in other words, the reinstatement plan would provide for, in addition to the other matters, "re-contouring and landscaping of the remainder of the reserve..." I don't know if we need an "and" in there, perhaps it's just "including features such as walkways and seating."

30 Mr Barrett confirms that she supports this amendment.

35 As a result of the proposed amendment, Ms Barrett confirmed her only area of concern for Rook Reserve relates to the proposed 10 metre by 10 metre hard stand area that's proposed to have a dual purpose, both as a basketball half court and, from time to time, to be used by maintenance machinery for the stormwater pond.

Ms Barrett's expressed a concern that the use of this area by maintenance machinery would necessarily reduce recreation opportunities. To address this effect, Mr Barrett considers a second area should be constructed as a basketball half court.

5 The Council acknowledges the value of Ms Barrett's evidence on this point, however the use of the hard stand area by maintenance machinery in relation to the stormwater pond is expected to be a relatively rare occurrence. Accordingly, any adverse effect on recreational opportunities is expected to be low.

10 The Council does not seek that a second basketball half court area be required under condition UDL.6B.

 With the addition to that condition now proposed by NZTA, the Council and NZTA are in complete agreement.

15 Coming back to the stream issues -- or hopefully the stream non-issues, by this stage, Your Honour, if I could put it that way.

 In its opening statement, the Council indicated it understood there was a potential difference in opinion between it and NZTA regarding whether resource consent for reclamation is required for streams within the Constellation Dam.

20 The Council considers it is important the Board's decision on this aspect of the Proposal is legally correct, and I understand that's the context in which Mr Turner wished to bring his issues to the Board.

25 NZTA has applied for resource consent to fill in all of the streams within the dry dam. However, Mr McGahan advises that post-lodgement, the Council's Healthy Waters team advised that it did not consider any area of stream within the dam to be a stream, and as a result only 17.4 metres of stream north of Constellation dry dam is considered to be affected by the Project.

30 In the Council's submission, and Ms McIndoe has confirmed, NZTA has applied for resource consent to reclaim all of these relevant waterways on the basis they are streams.

 In the Council's submission, the existence of a damming consent for the dry dam over this area does not extinguish any need to obtain resource consent under section 13 of the RMA.

Accordingly, should the Board decide to approve the Proposal, it should be on the basis that it grants resource consent to reclaim the full 560 metres.

5 In practical terms, the Council notes that regardless of what conclusion the Board reaches on the extent of the streams that are to be reclaimed NZTA has applied for resource consents for the entire area; accordingly, no issues of scope arise. And it's also clear from the evidence of Ms Barnett that further off-set mitigation is not required, even if all 560 metres are streams, that's compared to the 17 metre figure, due to the low
10 ecological values of the streams being reclaimed.

The Council maintains there is strong support in the policy documents for offset mitigation to be provided and that's the point which Mr Turner has consistently made in his evidence. However, in light of Ms Barnett's evidence, as an ecologist, that from an ecological perspective offset
15 mitigation is not required, the Council is not pursuing this matter any further.

~Questions from the Board (11.41 am)

JUDGE HARLAND: All right. Well, there is a couple of ways we can deal with this in our decision, and actually having heard yesterday, I'm a little concerned
20 that we might need to respond to some of the evidence that has been given on this topic, but I guess what you are saying is that, at the end, there isn't really an argument here, from the Council's perspective, because of the way that NZTA has framed its current application and because of the proper way that you've dealt with the evidence matters.

25 But there are some issues, I would have to say, about the Council's interpretation of the provisions, which appear from Mr Turner to be something that's regularly being done, and he is doing it himself quite regularly, and questions about the expertise to make certain findings or certain recommendations or express certain opinions in relation to those matters.

30 So, I'm picking you want us to deal with it in a very straightforward way, is that it? Or you are just going to leave it to us to decide how we deal with that?

MR BANGMA: Well, it's really as Your Honour pleases. I mean, I think the key point is that the Council doesn't wish to create any difficulty in terms of
35 NZTA's application.

JUDGE HARLAND: Right, that's helpful. Thank you.

MR BANGMA: As Ms McIndoe has said, I mean, there might be these differences of view, perhaps slight differences or perhaps not, but in the end, NZTA has applied for consent for all of that, and is, as I understand it, happy for the Board, if it were so minded to, to grant consent on that basis. There is no
5 difference in terms of effects that flows from that, according to Ms Barnett's evidence.

So, Your Honour, the purpose of these submissions was really to say that these matters have been raised by Mr Turner in his evidence through the conferencing; the Council considers it appropriate to provide some response
10 on this matter to try and explain its position, but if Your Honour is minded to make any observations, that's at the Board's discretion.

JUDGE HARLAND: All right. Well, that's helpful, and you've covered that in a very respectful way. I think I understand what you would prefer, but we will see where we get to with that.

15 So, the 560 metres, can I just question that because I thought yesterday that had been reduced somewhat to 300 and something, not from your application perspective but from -- I'll re-read the evidence.

MS MCINDOE: I understand it was 420 or 30, plus another 100 and something of concrete channel.

20 JUDGE HARLAND: That's what I'm talking about.

MS MCINDOE: So, the total is 560. I understand there is agreement about that.

MR BANGMA: And that was Ms Barnett's evidence where that figure comes from, and I noted the 560, the Council accepts that. I think the application was originally lodged by NZTA on the basis it was 602, 3?

25 MS SHEARD: No, it was 560.

JUDGE HARLAND: Well, we don't need to worry too much, because whatever it is, everyone agrees it's within the amount.

MR BANGMA: The common ground is 560, yes.

JUDGE HARLAND: And so, do you make any comments or submissions in relation
30 to bundling, or not? I'm not suggesting you need to.

MR BANGMA: No, Your Honour bundling was a matter which, from memory, was addressed squarely in the Council's opening. And also in the opening statement from NZTA, Your Honour is correct, that the reclamation consents -- that's the non-complying aspect of the Proposal, and I
35 understand it's common ground through the evidence of all the witnesses

that it would be appropriate to bundle on the basis, essentially, of overlapping effects.

JUDGE HARLAND: Yes. Well, and I think it's been Mr Berry who has probably set the cat among the pigeons by saying you don't need to do that, actually. But
5 anyway, everyone is content for us to deal with it on that basis and we will.
All right.

MR BANGMA: And the evidence is on the non-complying activity approach from all the planners, the relevant statutory tests would be satisfied.

10 ~Submissions on behalf of Auckland Council continues (11.46 am)

Perhaps moving on to part 6, the appropriateness of matters being dealt with by way of a side agreement, and Your Honour, this is something that has also been covered in Auckland Transport's closing statement, in
15 more detail.

The Council indicated in its opening statement that following expert conferencing between the witnesses for NZTA, the Council, and Auckland Transport, NZTA has agreed to provide the following additions or extensions to the proposed shared used pathway by way of a side agreement.

20 And these additions would extend the proposed shared used path along Oteha Valley Road to connect with the existing cycle path on the northern side of Oteha Valley Road, and with the existing cycle path west of the motorway interchange; provide a pedestrian and cyclist refuge at McClymonts Road and the Medallion Drive intersection, and the intersection
25 of McClymonts Road and Elliot Rose Avenue, and protected cyclist facilities along McClymonts Road; extend the shared use path from where it currently terminates on Albany Highway, to the existing cycle paths located to the north, in the vicinity of Bush Road; and upgrade a proposed footpath to a 3 metre wide shared use path along the eastern side of Caribbean Drive to the
30 boundary of the designation (provided Auckland Council provides the additional land required, and Auckland Transport obtains any necessary approvals.) And I understand my learned friend for NZTA is also happy to confirm, if they haven't already, that the side agreement does cover those matters.

35 JUDGE HARLAND: Thank you.

MR BANGMA: The Council further indicated that, as a result of these matters being addressed through the side agreement with NZTA, the Council is no longer pursuing any relief in relation to these matters as part of the hearing, or in other words, as conditions on the Proposal.

5 During the hearing, Your Honour expressed reservations about the appropriateness of using side agreements in certain circumstances, and in particular where a side agreement covers matters which are needed to manage the effects of a proposal.

10 In the Council's submission it is appropriate, for the extensions to the shared used path outlined above, to be provided by NZTA by way of a side agreement. This is because the extensions will increase the benefits of the proposed shared used path by connecting to already existing shared used path facilities nearby by to create a network effect. However, the extensions are not required to manage any adverse effects of the Proposal on the
15 environment.

 Then I come to part 7 of the Proposal, whether the Proposal is contrary to the objectives and policies of the plan under section 104D.

20 While Ms McIndoe was presenting the opening statement on behalf of the NZTA, Her Honour queried the correct approach to take to the assessment of whether the resource consents for the Proposal are "contrary" to the objectives and policies of the relevant plan under section 104D(1)(b) of the Act.

25 In particular, Her Honour has asked whether the Act requires the resource consents to be not contrary to the objectives and policies of the relevant plan "as a whole", given that Mr Turner and Ms Brabant had raised some issues with respect to consistency of the Proposal with some provisions.

30 Counsel understands, in light of Mr Turner's answers to questions from the Board, and the questions from Ms McIndoe, that Mr Turner does not consider the Proposal to be contrary to objectives and policies, particularly in relation to stream reclamation. Rather he considers the Proposal is not entirely consistent with certain objectives and policies. In his view, or his intention in that statement, is that this is a lower threshold than being contrary to those provisions.

35 Accordingly, it may be that -- or it appears to be, none of the planning witnesses who have presented evidence consider the proposal to be

"contrary" to specific objectives and policies. I note in the footnote there, I understand from my learned friend, the evidence from the other planning witness, Ms Brabant, who had made some statements about objectives being contrary, has been withdrawn as I understand it.

5 JUDGE HARLAND: That aspect of it, yes. Thank you.

MR BANGMA: So perhaps, Your Honour, that means that on the evidence, that is non-issue in a sense, I suspect. However, for completeness I just note the case law there, in terms of whether a Proposal is contrary to the objectives and policies of the plan.

10 In any event, there is not a requirement for the Proposals to be consistent with every objective and policy. A holistic approach, looking at the objectives and policies as a whole, can be taken. In terms of what contrary means, a Proposal will not be contrary to the objectives and policies simply if it is inconsistent with some of them. It must be "opposed to the nature and
15 thrust of the objectives and policies as a whole".

And in 7.6, I just confirm Mr Turner does not consider the Proposal to be contrary to the objectives and policies of the plan and he is clear in his evidence that the Proposal passes the section 104D gateway test for non-complying activities.

20 In relation to the design changes by Kiwi Self Storage, I just note simply the Council adopts the submissions of Auckland Transport, rather than repeating those here.

Lastly, the approach to conditions. There have been ongoing discussions between NZTA, the Council, and Auckland Transport in relation
25 to conditions.

NZTA lodged revised conditions, with the EPA, on 4 August 2017, attached to the supplementary evidence of Mr McGahan. With respect to the proposed management plans which was an issue identified in the Council's opening, the revised conditions now structure these as follows:

30 The proposed construction noise and vibration management plan and Construction Traffic Management Plan attached to the designation.

The Construction and Environmental Management Plan, Dust Management Plan, Avifauna Management Plan, Contaminated Site Management Plan, Construction Erosion and Sediment Control Plan, and
35 Landfill Reinstatement Plan, attached to the regional consents.

The Council supports the proposed split of the management plans between the designation and regional consents, on the basis that: Management plans which are needed to manage land use effects, so the traffic and noise, are now attached to the designation, which as part of this proposal NZTA is liable for its lands use authorisations. The other
5 management plans listed above have been considered by the Council's planning witnesses and are considered to more appropriately address regional matters and, therefore, it's appropriate they attach to the regional consents.

10 The Council considers this to be an appropriate and orthodox approach to structuring that, and this addresses the concerns raised in the Council's opening statement.

There are no areas of disagreement between the Council and NZTA in relation to this.

15 Conclusion:

The Council wish to acknowledge the collaborative approach of NZTA and its witnesses to resolve 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 opening statement, evidence, and this closing statement.

JUDGE HARLAND: So thank you very much, Mr Bangma. That's a very clear and a well argued, if I might say, summary of the Council's position. Are you going to be with us on Monday?

25 MR BANGMA: I will Your Honour.

JUDGE HARLAND: All right. Well, I won't thank you until then.

MR BANGMA: Thank you, Your Honour.

JUDGE HARLAND: But if there are people present who won't be present from the Council today I think they can be satisfied that you have very carefully
30 summarised, and responsibly, and well, summarised the issues that we now need to consider.

MR BANGMA: Thank you. Your Honour.

~Comments from the Board (11.53 am)

35 JUDGE HARLAND: All right. So that takes us to the end of today apart from Kiwi's closing, and Ms McIndoe, we will hear the submissions from Ms Tree at 1.30.

I'm sorry, in my indication I hadn't even considered that it would be helpful to you, which was not very polite, and I think it is appropriate that we hear it today. So, we'll adjourn for lunch a little earlier, come back at 1.30, and retire formally after that. Thank you

5

~(Adjourned 11.54 - 1.31 pm)

JUDGE HARLAND: All right, thank you Ms Tree?

10 ~Closing submissions on behalf of Kiwi Self Storage (1.31 pm)

MS TREE: Thank you, Your Honour, there should be a copy of a closing statement with you, or maybe just coming?

I'll make a start.

15 So, my closing submissions respond to key issues raised during the hearing of the Project in respect of Kiwi's Self Storage facility at 12 Holder Place in Albany.

20 Overall, Kiwi seeks that the Board of Inquiry cancels in part and/or modifies the notices of requirement sought by the NZTA to avoid or at least mitigate the significant impacts of the proposed extension of the Northern Busway to Albany and shared use path adjacent to Kiwi's Site. The best and most efficient way to mitigate these impacts is to ensure that the busway and SUP are at a lower relative level adjacent to the Kiwi Site compared to the NZTA lodged design. And in that I'm referring to the conditions that are sought.

25 So, in terms of these closing submissions, I'm going to cover the matters addressed in paragraph 3.

And so now turning to those key issues.

30 NZTA is obliged to consider and address the effects of the Project on Kiwi. NZTA does not have all necessary interests in land sufficient to undertake the Project. The Project will permanently require a strip of land along the western boundary of the Kiwi site and during construction additional strip of land is required. It will also require interests in other private land.

35 NZTA is obliged to consider the environmental effects of the Project. As the Project will require part of Kiwi's site, and it will have significant adverse effects on Kiwi, NZTA must also give adequate consideration to alternative sites, routes and methods of undertaking the work, which could potentially

mitigate the effects of the Project on Kiwi. Section 171 clearly requires the decision-making body, in this case the Board of Inquiry, to consider whether NZTA has discharged this obligation.

Kiwi's facility is purpose-built along the frontage of State Highway 1.

5 The Kiwi site is a critical site for Kiwi's self storage business. It is prominently located along the frontage of State Highway 1 and has high visibility to traffic flows in both directions, but particularly from south, also south bound. The facility was purpose-built at this location and designed to be as visible as possible to passing traffic to market the business and enhance brand awareness. This is recognised in the design of the facility with its frontage facing State Highway 1. This State Highway frontage of the facility is critical to the Kiwi business as the Kiwi site is down a right-of-way off Holder Place, a no exit street, and has no other street presence.

15 Kiwi's approach to the Project has been to find solutions that would mitigate the effects of the Project on its business, while also giving effect to the objectives -- giving effect to NZTA's objectives.

20 Kiwi's approached this Project by trying to find solutions that will mitigate its effect. In proposing solutions, Kiwi has been cognisant of meeting NZTA's requirements for the Project while also seeking to mitigate the effects as far as reasonably practical. And the solutions proposed and discussed through the evidence, but also noting that there's been a private agreement that's been entered into to address construction related effects and also the impact of encroachment into the facility on vehicle circulation, particularly during construction, and ensuring that the fence for the is constructed of a material that does not impede visibility of the Kiwi facility. And secondly, that the two alternative sets of conditions are sought to provide that the busway and SUP will be at least no greater than a specific relative level adjacent to the Kiwi facility, and that's just at a single point, to still enable flexibility, but that will provide certainty and reduce the blocking effect of the structures and views to the facility from State Highway 1.

30 While NZTA has engaged with Kiwi in respect of the agreement addressing the site specific concerns, NZTA and its expert team have been adamant that they are not willing to assess the Kiwi alternative designs at this stage. They've also not appreciated the benefits of the design to Kiwi and the Project as a whole.

35

The Project will have significant adverse effects on Kiwi. And this is clear in the visual simulations provided by Mr Land. It's very clear in those in terms of, you know, what's existing and then the impact of the new structures in terms of visibility, which completely blocks it and as we know the structures go well beyond the roof of the existing two storey Kiwi buildings.

The blocking effect of the proposed busway and SUP to the Kiwi site will impact on Kiwi's business operations, customer uptake and brand awareness, resulting in significant business loss.

The nature of Kiwi's business means that it has a high customer turnover rate. Kiwi needs to consistently find and attract new customers.

As Kiwi's evidence has demonstrated, from a marketing and brand perspective, a self storage business is best communicated visually. The visibility of the Kiwi facility from State Highway is vitally important to attracting new customers to Kiwi's business. This is why the facility was purpose-built in its current location facing State Highway 1. It is the visibility and public recognition of the buildings as a self storage facility and not just the signage that is important.

And I think Mr Allan made that really interesting comment which I think we can all relate to in questioning, that think about what buildings you recognise when you're driving along the motorway compared to what signs you recognise. Information collected by Kiwi confirms the importance of the visibility of the facility from State Highway 1. For the year ended 31 March 2017, 19% of all new enquiries and 26% of all new sales were from drive-bys which Mr Fraser confirmed was also consistent with the previous financial year. These drive-bys can only be as a result of visibility from State Highway due to the lack of any visual presence of the facility from any other street frontage. The blocking effect of the busway and SUP will directly affect the ability to attract new business which combined with a high turnover and need to find 14 new customers a week, has a compounding impact. The blocking effect will also detract from Kiwi's brand as a whole, which will have flow-on impacts for customers obtained through other channels. And that's kind of that recognition, like you might go on and Google a self storage facility, but then it might be that -- you know, so that was the way that you got there to find that site but it's that then you go oh actually I know where that site is, I've driven past it on the motorway.

~Questions from the Board (1.39 pm)

JUDGE HARLAND: So where's the evidence supporting that?

MS TREE: Well, I think Mr Fraser talks about the different channels that -- other
different channels such as the internet that people use to find their site, but I
5 suppose that was more of a comment in terms of, I suppose, how we tend to
use the internet and make that connection between locations.

JUDGE HARLAND: Well, I'm just wondering if that's an inference we can draw
without an evidential basis? Because other people might say well if I'm looking
for a storage facility I'm just going to Google the one nearest to me and find out
10 where it is and then just go there. What I'm just trying to point out is that how
can I rely on that statement with any degree of certainty? It's one conclusion.
But, the law about inferences is pretty clear, if there's two equally likely
conclusions then you can't speculate.

MS TREE: And I suppose the more important point is in terms of Mr Allan's
15 evidence --

JUDGE HARLAND: Right, so that's Mr Allan's evidence.

MS TREE: -- about the importance of the building and that it's recognised and
remembered.

JUDGE HARLAND: Right. Thank you.
20

~Closing submissions on behalf of Kiwi Self Storage continues (1.41 pm)

MS TREE: And also, in terms of the wider impact, just note at the end of that
paragraph in terms of its other facilities in New Zealand as well.

Mr Doyle's evidence is that the Project will reduce Kiwi's occupancy by
25 approximately 10% as it will no longer be an exceptional site and advertising
costs will increase. Mr Fraser confirmed that sales from other channels, such
as the internet, are more price sensitive and therefore prices will also be
reduced. Mr Doyle considered that the facility would become less desirable,
with secondary locational characteristics, with lower investment yield. And as
30 the Kiwi facility was purchased at a premium due to its exceptional location, the
loss of this visibility has a significant economic effect.

And that just goes to that yield, in terms of being a significant economic
effect, because of the high cost to purchase the site and that it's an exceptional
facility and high quality facility in terms of the buildings and investment, then all
35 these effects in terms of reducing the occupancy and reducing the price have a
greater economic effect relative to investment.

NZTA has not presented any evidence that challenges the significance of the adverse economic effects of the Project on the Kiwi facility.

5 The high retaining walls on the Kiwi site that will support the SUP will significantly affect the amenity of the Kiwi facility. As demonstrated in the visual simulations appended to Mr Land's summary evidence, the busway and SUP will be supported by a retaining wall with a height of 5.7 metres rising to 9.1 metres from the northern to the southern boundary. So that's a very significant retaining wall. I think it's always, when you read measurements like that, it's easy to say oh 9.1 metres but actually when you kind of pace that up against a building and considering, you know, the height of that, and that in this case that retaining wall is only 7 metres away from the Kiwi -- western facade of the Kiwi buildings, so there's going to be this very narrow corridor with very high structure.

15 The shear height of the retaining wall and its close proximity to the buildings on the Kiwi site will significantly impact on the amenity of the entire length of the western boundary.

20 In addition to concerns about amenity, the encroachment of the project onto the site and the construction of the Project also raises a range of site specific issues for Kiwi. And in particular in terms of the safety concerns for customers and their goods due to the lack of visibility and loss of current openness of the site. It is critical for a self storage business that customers perceive the site as being safe and secure. That's addressed in Mr Fraser's evidence. It is also important as some customers access the facility on a 24 hour basis.

25 These effects will not only affect Kiwi's existing and future business operations and economic performance, but they significantly detract from the high level of investment in the facility. The existing investment of the Kiwi facility is an existing use that must be recognised as a physical resource under section 5 of the Act.

30 There is a requirement under the RMA to consider the impacts of these effects on Kiwi, and in this forum to address how the effects can be mitigated to give effect to Part 2 of the Act.

~Questions from the Board (1.44 am)

35 JUDGE HARLAND: So, I'm interested in your argument about existing use, what's the authority for that? Because that has a particular meaning under the Act.

MS TREE: I wasn't making an argument in terms of existing use, I was saying the existing investment. So, there's been an existing development on this site; so that's a physical development.

5 And then under Part 2 in terms of considering the impacts and efficient use and development of existing natural and physical resources, this is a physical resource.

JUDGE HARLAND: Right, thank you.

~Closing submissions on behalf of Kiwi Self Storage continues (1.45 pm)

10 MS TREE: Kiwi has proposed two alternative design options to mitigate the impacts on its business.

Kiwi has proposed alternative designs for the business way and SUP that will reduce their height reducing the blocking effect of the structures on views to the facility from State Highway 1.

15 The first alternative design reduces the clearance of Constellation Bridge from 6.1 to 5.6 metres while keeping the busway and SUP gradient at 5%.

And the second alternative is again to reduce the clearance of Constellation Bridge from 6.1 to 5.6 and increase the gradient of the busway and SUP to 5.3%, just for part of that length.

20 The Kiwi solutions propose changes to the vertical alignment of the busway and SUP for discrete sections of these structures. And effectively, tie in to the existing alignment, and therefore do not require any changes outside of the area of Kiwi.

25 NZTA has acknowledged in its opening submissions that Kiwi's solutions constitute alternative design options and Kiwi's alternative design options, being Solution 2 and 1, could be considered either an alternative route or an alternative method of undertaking the Project works under section 171.

The terms "route" and "method" are not defined in the Act and we have not identified any case law authorities that provide a definition.

30 But in terms of the dictionary definition, the term "route" is "a way or course taken in moving from a starting point to a destination; a regular line of travel or passage". And the term "method", "a way of doing anything, especially according to a defined and regular plan."

35 So, in light of those definitions, it's considered the Kiwi alternative design solutions could be considered an alternative route in that they involve a change

in the vertical alignment and gradient, or an alternative method in that they are an alternative way of giving effect to the purpose and aims of the Project.

No issues have been identified that should prevent Kiwi's alternative design solutions from being implemented.

5 In respect of Solution 1, only the clearance distance over Constellation Drive will be reduced. The maximum gradient of the busway and SUP adjacent to the Kiwi site will not change, it will remain 5%.

10 But then in addition to that, which is a positive, the length of the busway and SUP at the 5% gradient will reduce from the NZTA lodgement design of 303 metres to 228 metres.

In expert conferencing and during questioning on 19 July it was confirmed that a reduction in the bridge height to 5.6 metres would be acceptable.

15 Ms King agreed during questioning earlier this week that the Kiwi Solution 1 is a better design for the SUP than that lodged by the NZTA. It is clear that Kiwi Solution 1 achieves the objectives of NZTA and, in particular, so it reduces the length of the gradient at 5% and substantially mitigates the adverse effects on the Kiwi facility.

20 I think we referred to in our opening submissions as solution 1 as the no brainer, because there's nothing in evidence that says that -- to challenge that. It's improving the NZTA lodgement design.

~Questions from the Board (1.49 pm)

JUDGE HARLAND: So can I just -- I should have asked this slightly before when you
25 were talking about alternative methods and/or about routes. Are you saying, therefore, that the Agency hasn't adequately considered alternatives? Was that in your submission?

MS TREE: Yes.

JUDGE HARLAND: It was?

30 MS TREE: Yes, it was.

JUDGE HARLAND: And you're talking about that as a direct challenge to an alternative assessment?

MS TREE: Yes.

JUDGE HARLAND: Thank you.

35

~Closing submissions on behalf of Kiwi Self Storage continues (1.50 pm)

MS TREE: And in respect of Solution 2, so the clearance distance over

Constellation Drive will be reduced again to 5.6 metres, and the maximum
5 gradient of the busway and SUP adjacent to the Kiwi site will change by
only -- there is a typo there, it should say 0.34% from 5% to 5.34.

This increase in gradient is only a rise of 1 metre over a distance of 300
metres. So, those triangle diagrams were put to try and give some context,
because it's quite difficult, I think, when you talk about gradient as a
10 percentage, what does that mean in practical terms? So, it's only an additional
rise of 1 metre if you had that increase over a distance of 300 metres.

The length of the gradient at 5.34% is only over a distance of 158
metres. So, and I suppose then in terms of thinking in that sense, so here
we've got kind of half the length that I just gave in terms of the rise, and in this
15 case, it's only 0.4 rise over that distance compared to the NZTA design, with the
5% gradient.

As confirmed by Mr Hall during re-examination, when you have two fixed
points increasing the gradient in one section will result in a decrease in the
gradient in the balance of the section. So, although we might be increasing it
20 slightly in this middle section to 5.34, that means because we've got two fixed
points, so we're still going from A to B, but then it actually results in a decrease
in the gradient.

The change in the gradient over 5% will require assessment under two
transportation design guides for busways and SUPs. As demonstrated by
25 Mr Moore during questioning on 19 July, the process for approving a deviation
from these guidelines is relatively simple, taking 3 to 4 weeks, and involving
internal approval processes by NZTA and AT, and potentially some input from
an external consultant.

In its legal submissions, NZTA indicated that the reason that it has
30 refused to consider Kiwi's Solution 2 -- this is just in relation to Kiwi Solution 2,
there seems no reason why Kiwi Solution 1 couldn't have been assessed. Or I
suppose, Kiwi Solution 1 didn't need to go through the deviation process
because it didn't go over the 5%.

So, refused to consider Kiwi Solution 2 by way of a deviation process is
35 primarily one of safety. However, NZTA has not produced any evidence on the
safety implications of Kiwi Solution 2. Further, Mr Moore in questioning advised

on 19 July that the main reason that NZTA refused to consider Solution 2 by way of the deviation process is not one of safety, but because there are too many other parameters in the design of the structures that could be affected by the process. Mr Moore advised that locking in a gradient now may limit the ability to change these parameters or to optimise them through the detailed design process. And, as I stated earlier, Mr Hall confirmed that the Kiwi Solution 2 -- both 1 and 2 both tie in to the NZTA lodgement design. And Mr Hall also described how the conditions proposed by Kiwi by setting a maximum bridge clearance and a maximum single point RL level for the busway and SUP deck adjacent to one point on the Kiwi facility site, that will enable flexibility during the detailed design process.

Mr Moore also advised during questioning that the NZTA takes issue with the increase in gradient in respect of the busway as it will impact on the speed or performance of double decker buses. And in response to questioning, Mr Maule also indicated that fully loaded buses coming out of Sunnynook station suffer some speed performance reduction when moving into a gradient of 5.34%. Mr Hall has presented evidence that there are a number of important distinctions to be made between the rise adjacent to the Kiwi sign and the existing Sunnynook rise. And particularly, you know, if you wanted to refer back to his attachment C, that provided that distinction between Sunnynook and the rise by Kiwi, and particularly thinking about the length of them, but also their locations relative to the station. And he detailed that, there was a lot of questions he commented on, in terms of, you know, the buses needing to go uphill, but they're going up to the station so they want to slow down anyway, and that normally buses would be wanting to start slowing down about 400 metres from a station before they stop. And, equally, when they're coming out of the station at Constellation Drive and moving to the north, they're then wanting to accelerate, so actually having the slope actually assists in terms of that acceleration.

Mr Hall has also advised that a gradient of 5.34 adjacent to the Kiwi site will not require vehicles of any higher specification to be able to navigate the gradient, and that the negligible increase in gradient over the distance proposed by Solution 2 will not result in a measurable change in the busway performance.

During questioning on 9 August Ms King advised that she considers the increase in gradient of the SUP to be a small difference and a gradient of

around 5% in the relevant location can not be avoided, I mean we have a slope here, and it's just, you know, it's going to be about 5% so if it's a little bit more or a little bit less.

5 She agreed that as Solution 2 will only exceed the guideline gradient by 0.34% it is possible that it would proceed through the deviation process without any additional safety mitigation being required, particularly in terms of the mitigation that's already provided for in the design of the SUP.

Kiwi's alternative design solutions can be incorporated into the Project through the conditions of the designation.

10 It is not appropriate having regard to the effects on Kiwi to defer consideration of Kiwi Solutions 1 and 2 to the detailed design phase. Deferring these matters to the detailed phase does not provide Kiwi with any certainty about the final impact of the Project on its facility, or whether the adverse effects will be adequately mitigated. It also does not assist the Board in its
15 analysis of the effects of the Project.

Kiwi seeks that additional conditions are imposed on the Notice of Requirement for the Project to ensure that the busway and SUP are at an appropriate height adjacent to the Kiwi site to maintain sufficient visibility of the Kiwi buildings and reduce that retaining wall adjacent to their boundary. The
20 proposed conditions are attached as Appendix A and would allow Kiwi's Solution 1 or 2 to be incorporated into the final design.

The proposed conditions refer to relative referrals. These levels were calculated by -- and I think this is in terms of the large plan that Mr Hall took you to in terms of -- which had the Kiwi buildings and there was an "RL" for the roof
25 level, so the RLs that have been specified in the conditions, so it's taken the roof level RL on the corner of the Kiwi building, so that's the 52.3, and then in the brackets it provides for the distance that the effect of the SUP and busway are in terms of the new alignment.

30 And so, there's a figure there for the red alignment and a figure for the blue alignment.

So, the blue line is 2.6 metres lower than the roof line of the Kiwi building. And the red line is 3 metres lower than the roof line of the Kiwi building.

35 So, those RLs specified in the conditions are simply the 52.3 minus the 2.6 and the 52.3 minus the 3.

You will note in the conditions that one of the RLs is to three decimal places. There were some specific figures that were used. So, I suppose it's more accurate in the condition as it was taken off the original data. While it is more of a round figure for the red line.

5 The conditions have been drafted with only one RL point as a maximum which will provide NZTA with flexibility when it comes to the detailed design stage of the Project. NZTA will have the ability to change the height of the busway and SUP adjacent to the Kiwi site, as well as clearance of the
10 Constellation Drive bridge, and so it's kind of there is a general agreement that the Constellation Bridge height is appropriate at 5.6 metres, but just I noted again there, that actually the existing clearance of State Highway 1 over Constellation Drive is 5.3 metres. So, it may be that in detailed design that that 5.6 metres is reduced even further. So, again the conditions are just noting that 5.6 is a maximum but still provides flexibility to reduce that if that's appropriate.
15 NZTA can also adjust the design, including increasing the height of the SUP and busway either side of that RL level point.

 So, in terms of flexibility, I suppose the best thing about providing an RL point and just one point, it gives that certainty for Kiwi that, you, know this is going to be the level and it is dropping. But in terms of final design, still enables
20 some flexibility in terms of the slope and as we heard Mr Hall talk about in terms of the curves, the troughs and curves of that slope in terms of how that would best be achieved in terms of final design.

 There are considerable benefits associated with Kiwi's alternative design solutions.

25 Both solutions will reduce the blocking effect of the busway and SUP on views from State Highway to the Kiwi facility, mitigating the business loss impacts. Solution 2 provides better mitigation in this regard than Solution 1 - it will allow drivers on State Highway 1 to see more of the Kiwi buildings, including the storage units within the glazed mezzanine section of Kiwi's
30 northern building. Identification of the facility as a storage facility by showing storage units is a key marketing future.

 There will be significant cost savings if Kiwi's solutions are incorporated into the design of the Project. In response to questioning on 19 July Mr Moore advised that NZTA had estimated a cost difference between the lodged design
35 and Kiwi's Solution 2 in the region of 1 to 1.5 million. It is expected that a similar figure would apply to Kiwi Solution 2.

JUDGE HARLAND: Is that one, which one's 1? Because they are both referring to solution 2?

MS TREE: Oh sorry, the second one should be Solution 1, thank you for picking that up.

5 Incorporating the conditions sought by Kiwi into the notice of requirement will be consistent with the wording of NZTA's revision 3 of the urban design landscape framework. And I've just -- and I appreciate that this is going to be submitted with NZTA's closing submissions, but I was provided with a screen shot of the relevant page, and so I appended that as Appendix B to my
10 submission, so just under 5.1, and it's about two-thirds of the way down:

 "To provide visibility to existing commercial and industrial landholdings, between the Rosedale Water Treatment Ponds and Albany Park and Ride, and to Kiwi Self Storage, which are currently seen from the highway (noting commercial benefits). This recognises that the visibility to commercial
15 properties from State Highway 1 is important for these businesses and shall be maintained in the design outcomes that are sought across the Project.

 Other conditions proposed by NZTA for the Notice of Requirement such as UDL.4 which requires the outcomes of Part 5 of the UDLF to be given effect to through the urban design and landscape treatment of all major structures.
20

~Questions from the Board (2.04 pm)

JUDGE HARLAND: So, is it your position that without one of the solutions that you propose being imposed, that the UDLF statement of intent would be unable to be achieved in relation to Kiwi's site?

25 MS TREE: Yes.

~Closing submissions on behalf of Kiwi Self Storage continues (2.04 pm)

 So, to conclude, the evidence presented by Kiwi strongly supports the inclusion of the conditions sought by Kiwi into the notice of requirement to give
30 effect to Kiwi's alternative design for the busway and SUP, and this has not been effectively challenged by the evidence of NZTA and AT. The conditions sought by Kiwi will assist in mitigating the significant adverse effects on the Kiwi facility caused by the Project and the movement of the motorway onto part of its site. The incorporation of Kiwi's alternative design into the Project is also likely
35 to have wider benefits for the Project, including significant cost savings and consistency with the UDLF.

Thank you, I'm happy to answer any other questions.

~Questions from the Board (2.05 pm)

MR MARK-BROWN: Ms Tree, in your section 12 of the statement you've just read
5 talking about proposed alternative design that will reduce the height and will
reduce the block effect, you don't cross-refer there to amenity. You've talked
before about the high walls having an adverse amenity effect, but you're not
linking that into the proposed alternative design specifically?

MS TREE: I suppose it does relate -- I suppose I've talked in different sections about
10 effects and included, you know, the effects. And one, I suppose just as a point
of clarification, that obviously reducing the height in this location will reduce the
height across the boundary of Kiwi's site; will obviously improve the amenity of
the site, and all those other kind of safety visibility concerns that were raised by
Mr Fraser.

15 MR MARK-BROWN: Okay thanks, that's all I had.

JUDGE HARLAND: I just wondered whether you'd had an opportunity to read the
Auckland Transport submissions that were made to us this morning?

MS TREE: No, I haven't Your Honour.

JUDGE HARLAND: All right. Are you intending to be here on Monday for the closing
20 of the Agency or not?

MS TREE: I wasn't intending to be.

JUDGE HARLAND: I'm not suggesting you should be, I was just wondering if there
was anything in this that you wanted to respond to? But if you haven't seen
them you won't know whether you need to respond or not.

25 But there was some submission made this morning about the right to a
view, that there being no right to a view from the motorway, and where the
private benefit versus the public benefit should lie. What do you want to do
about that?

MS TREE: Well in this case, Your Honour, we're dealing with a designation, Notice of
30 Requirement and that Notice of Requirement is taking part of Kiwi's site, and
so --

JUDGE HARLAND: Yes, I appreciate that.

MS TREE: And so, in that circumstances, where you are having then a structure that's
being built on what was effectively part of their land and then impacts on their
35 business, both in the economic and in the amenity sense, then that's a relevant
consideration under the Act.

JUDGE HARLAND: All right, well I don't think that was being challenged that it was a relevant consideration. What was being submitted was slightly different. You might want to have a look at those submissions and see whether you wish to respond to them, and obviously you won't be in a position to do that today.

5 MS TREE: Yeah. I suppose, just in terms of that right to a view, that's always come across from the point from someone's site and being able looking across someone else's site, you know, and having the benefit of the view of the sea, for example. So, this is again, you know, quite a different situation. And I think it comes -- and then it's recognised as well in the UDLF, of you know, that the
10 visibility of various sites from the motorway is recognised in terms of that it should be maintained because of noting the commercial benefits for those sites.

JUDGE HARLAND: Yes, well understand the UDLF point it was just to give you an opportunity to consider what Mr Bangma has said to us. I did challenge him on his right to a view to say well isn't this more a right to be seen, and is there such
15 a right? But I understand your argument is slightly more subtle than that, it's not based on that absolute idea, it's based more on the flow-on effects in relation to this particular business, --

MS TREE: Yes.

JUDGE HARLAND: -- isn't it?

20 MS TREE: Yes.

MR STEWART: I do have one question which arose because I had the opportunity to read Appendix A while you were answering the other questions.

In Appendix A, which is the conditions you have sought to be included you refer to the busway barrier of 1.1 metres and that's I think a fairly standard barrier of
25 that type --

MS TREE: Yes.

MR STEWART: -- and it refers again in B at the bottom of the page. But yesterday Mr Land was talking about his 3D images and he was referring us to the drawing of a person walking on the SUP and a barrier which I think which was
30 1.8 if I remember rightly, or was it 1.6?

MS TREE: No, so he had the barrier at 1.1 metres but then he was referring to the SUP fence at 1.8.

MR STEWART: Yes, okay the SUP fence. So, this condition doesn't refer to the SUP fence, does it?

35 MS TREE: No, it doesn't.

MR STEWART: So, it would seem to me that from the evidence of Mr Land and the questions he was asked, it appeared that if there was a fence of 1.8, or if that was the figure, I think he said 1.8, then it would be effective only if it was a glass or acrylic or something that you could see through.

5 MS TREE: The material of the fence has been addressed in the side agreement.

MR STEWART: Oh the side agreement. Well thank you, that was really going to be the question I was going to ask.

MS TREE: To ensure that it's permeable.

JUDGE HARLAND: Just to come back then to your point -- or I raised with you the
10 argument Mr Bangma seemed to be raising, that there was a private benefit sought from this to be weighed against the public benefit. So, the subtlety of your argument in response is that there's a private detriment, is that it? It's the private detriment that is the trigger that we need to be the starting point for that, is that right?

15 MS TREE: Yes.

JUDGE HARLAND: I see. So, it would be slightly different if it wasn't that land was being proposed to be taken for Kiwi?

MS TREE: I think it would be slightly different, yes.

JUDGE HARLAND: So, regardless of all the marketing -- the evidence about the
20 marketing, are you saying that if the land wasn't being taken or part of it wasn't being taken, that's not a consideration that could be raised?

MS TREE: I think it still is a consideration that could be raised, because it depends about how still, in terms of the structures and how close they are to the Kiwi site, even if, you know, part of the Kiwi wasn't required. But we still have these
25 very large tall structures, you know, right on an existing boundary. That still gives rise to effects that are relevant under the RMA.

JUDGE HARLAND: I see, all right, so you're not limiting it to the designation as a general proposition, but you're saying that that's what's relevant for this particular case, and in fact you're saying it supports the argument that you're
30 making.

MS TREE: Yes, I am.

JUDGE HARLAND: Okay, I understand that.

So, this morning we also heard some evidence from Mr Burn about signs and what the AUP or the bylaw, has anyone filled you in on that matter?

MS TREE: No-one has filled me in on that discussion, but I do have some general knowledge in terms of the signage bylaw and the billboards provisions in the unitary plan.

JUDGE HARLAND: Well again, you might want to have a look at the transcript in
5 relation to that, because one of the suggestions as you know as well, that a
sign could be put up and that would be the same thing; I understand your
position is it wouldn't be. But we were keen to try and find out how easy it
would be to put a kind of a sign there. If it's very prohibitive that would not be a
persuasive argument, if it's not; how certain is it; all of those kinds of issues
10 come into it. So, you might want to have a look at that evidence from Mr Burn.
There's some difficulties, I think, with -- I don't know the bylaw, I haven't had to
look at it before. But even the material that he provided to me it seems it's not
particularly clear about all sorts of things. So, people are hopefully going to fill
us in on that, and you might want to too. I'm not suggesting you should, but if
15 you want to, you need to know that that's been raised.

MS TREE: Well from my own experience in terms of the signage bylaw it's not an
easy task to get approval. And then it's got the added issue in terms of if you're
not successful that there's kind of no other appeal right to that. So, it is a highly
uncertain route to go down.

20 JUDGE HARLAND: All right well, how are we going to deal with this? Do you want to
address this in a more fulsome way or not?

MS TREE: Well maybe if counsel for NZTA are providing -- have you asked counsel
for NZTA to provide further information on the signage?

JUDGE HARLAND: Well, we just want to know how -- well let's hear and see what
25 you're are intending to do Ms Sheard?

~Comments from Ms Sheard (2.15 pm)

30 MS SHEARD: Well I think Mr Burn's evidence this morning was an exemption would
be required from the signs bylaw and that accords with what Ms Tree has just
told us. So, it does leave us in a position that there is no certainty in terms of
being able to get the signage.

JUDGE HARLAND: Well that's helpful, thank you, you don't need to address it any
35 further.

MS TREE: Thank you ma'am.

JUDGE HARLAND: But do you agree that there's no right of appeal from a decision on the bylaw determination?

MS SHEARD: That's correct, there is no right of appeal.

5 ~Comments from the Board (2.15 pm)

JUDGE HARLAND: Goodness, no right of appeal for all sorts of things now. Never mind, what can we do about that, not a lot.

So, all right, thank you very much. No further questions?

No, thank you very much Ms Tree.

10 Can I say that it's been most helpful the way that you've put this altogether for us, there are clearly matters that we are going to have to consider very carefully as a result of Kiwi's presentation and thank you for your assistance in that regard.

MS TREE: Thank you, my pleasure, and if I can take my leave now that would be
15 appreciated.

JUDGE HARLAND: Yes certainly, well we're in fact finishing for the day. We've run out of things to do and we've got to come back on Monday to consider the, no doubt substantial, closing from NZTA.

MS MCINDOE: I'm hoping not too substantial because my assessment of matters is
20 actually there are some combined matters to address you on, but not a large number of them. So, we'll try not to make it any longer than we need to.

JUDGE HARLAND: Please don't see that as a criticism. I don't want anything we say -- you've got to present what you want to present to us in a way that you want to --

25 MS MCINDOE: I accept that.

JUDGE HARLAND: -- so that wasn't intended as criticism.

MS MCINDOE: It's partly for my own voice that I hope it's not long.

I wanted to signal that we are intending to lodge supplementary evidence, hopefully this afternoon from Mr Clark. I think I might have already
30 indicated that he would be the right person to talk about the number of cars using the current off-ramp into Unsworth.

His supplementary evidence is also likely to address whether it would be useful to include a condition monitoring construction traffic as well. This is a matter which was raised by counsel assisting the Board and we don't have any
35 evidence on the matter yet, there've been discussions between the parties but there's nothing before you.

So, the intention was to have that evidence filed today, so that Mr Berry could consider it over the weekend and if he wanted to question Mr Clark on that, then he would be able to do that on Monday morning if you wanted to hear Mr Clark first thing in the morning, then Mr Berry could choose to question him if he wished to.

5

JUDGE HARLAND: Well, we don't want you to speak anymore, because it sounds as if that might be a problem, but that's fine.

MS MCINDOE: Thank you.

JUDGE HARLAND: All you need to do is to let Ms Robertson know what you want to do and she can liaise with Mr Berry. You can all sort it out. We're all be here on Monday and if we need to hear some evidence, that's fine we'll hear the evidence and then the closing.

10

So, thank you, is there anything else we need to cover?

Thank you very much, we'll adjourn.

15

~(The hearing adjourned at 2.18 pm to resume at 9 o'clock Monday,
14 August 2017)