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Event: Mount Messenger Bypass Hearing

Date: 1 August 2018 (Day One)

Before: Mr S Daysh - Hearings Commissioner

Witnesses: Mr M Dreaver - Engagement with tangata  
whenua  
Mr P Roan - Alternatives  
Mr R Napier - Project manager and  
consultation  
Mr K Boam - Project design  
Mr B Symmans - Geotechnical matters

Also present: Mr D Allen - Solicitor for NZTA  
Mr T Ryan - Solicitor for NZTA  
Mr P McKay - Hearing manager  
Ms R McBeth - Reporting officer, New  
Plymouth District Council  
Ms K Hooper - Reporting officer,  
Taranaki Regional Council  
Mr J Winchester - Advisor

**THE COMMISSIONER:** Thank you very much for that welcome. Good morning, everyone, and welcome to this hearing for the Mount Messenger Bypass. My name is Stephen Daysh, I am an independent hearing commissioner. I hail from the other side of the North Island from Hawke's Bay but have sat on many hearings around New Zealand, including large roading designation hearings, sitting and making decisions so that is my role.

I have been appointed jointly by the New Plymouth District Council and the Taranaki Regional Council to firstly head and make a recommendation back to NZTA and the Minister on an alteration to the Mount Messenger designation; so that is a recommendatory function. I have also been requested to hear and determine a range of separate resource consent applications, one made to the New Plymouth District Council and a series made to facilitate the project to the Taranaki Regional Council.

I would like to introduce also on my left Mr McKay who is the hearing manager, so Mr McKay, he is a colleague of mine, but he will be acting not in any decision making role at all, he is here to help with the smooth running of the hearing. Just to start off, I would like to just get a record of key parties that are here today those that are being represented and just also submitters who would like just to let me know they are here in

the room today so I can get a feeling for who is here. So I will just work around the room, starting from the applicant, if we could just record appearances for the applicant and then we will move around the room with other parties that are here just for the record, thank you.

**MR ALLEN:** Thank you, Commissioner. My name is Mr Allen and appear with Mr Ryan and Ms Sinclair on behalf of the applicant, being the New Zealand Transport Agency. In terms of the team, we have the entire cast and crew here at present for the next couple of days and I also understand Ngāti Tama is here but their counsel, Mr Hovell, is not able to be here today. So in terms of the Transport Agency, Thad and I will be providing the opening submissions and then we will be here for the entire hearing as well.

**THE COMMISSIONER:** Are there representatives of NZTA here as well?

**MR ALLEN:** Yes, we have Mr Gard(?) who is the project manager from the NZTA and beside him Mr Milliken who is the Alliance manager. Then also on behalf of the NZTA we have Prue sitting over in the corner there who is observing today from a legal aspect.

**THE COMMISSIONER:** Any other parties here that are being represented?

**MS ONGLEY:** Kia ora, Commissioner, Sarah Ongley for the Department of Conservation and this is Michelle Lewis with the department as well. She will be attending for the duration but I will be coming and going if that is all right with you, sir.

**THE COMMISSIONER:** Yes, welcome. And your witnesses will be appearing next week, will they not, Ms Ongley?

**MS ONGLEY:** That is correct.

**THE COMMISSIONER:** Thank you. Any other parties?

**MR ENRIGHT:** My name is Rob Enright, counsel for Te Korowai. We have members of Te Korowai here. Our expert witness, Greg Carlyon, will be along later today too.

**THE COMMISSIONER:** Thank you, Mr Enright. Anyone else like to make themselves known? Certainly I would like to introduce the council reporting officers, Ms McBeth for the New Plymouth

District Council and Ms Hooper for the Taranaki Regional Council. All right, that is very good.

The next order of business, Ms Holdt would like to just talk to us about some matters around housekeeping, so I will ask her to do that.

**MS HOLDT:** All the important things. First of all, the bathrooms are out of the door and turn to your right. For health and safety in the event of an emergency please follow the instructions of council staff, a couple of them are here that you will be able to follow. If we are not, please exit through the main entrance; that is the entrance that you came through, and once you reach the footpath please turn to your right and assemble outside the Spark building, which is up to your right towards Pukekura Park. Our staff will guide you to an alternate route if necessary.

If there is an earthquake, drop cover and hold where possible. In this room we do need to be mindful that we have a lot of glass overhead so preferably do not drop and hold over there. Please remain where you are until further instruction is given.

Just a couple of things is tea/coffee is available there, biscuits, et cetera. There is a cafeteria on site, which is a staff café, but you are welcome to use it in the break. They have been alerted that there are a number of people around. In the event that you are not from this district, if you go out and turn to your left and you head into town there are a number of cafés and things like that if you need anything for your break.

**THE COMMISSIONER:** Thank you, Ms Holdt, thank you very much.

Right, I would just like to move to the order of hearing, there is a schedule that has been circulated and that is the current order of batting for our hearing, this one here, so I am not sure whether there are copies available. Ms Holdt has some copies. Essentially the hearing will proceed on the basis that the applicant will present its case first and we will be hearing legal submissions and then from a series of witnesses. All submitters are then being programmed to be heard next week and some, including Mr Enright's client, the following week.

Then I will be asking the reporting officers to provide me with their advice at the conclusion of that part of the process. There has been a lot of information provided, evidence. Just so everyone knows, the process started with the application

obviously, the staff prepared some reports first, then we have had some evidence and some supplementary evidence from the applicants, some submitter evidence and some rebuttal evidence. So what has happened in the meantime, between the council staff preparing their first report, there is quite a lot of new information, so they have prepared for me an updated report. They will also be carefully listening to all of the information in the hearing and their role is to assess that and provide their views and recommendations to me at the hearing.

I would just like to stress from my point of view the council staff are experts in their own right, I will be taking their points of view on board on the same basis of all of the other information, expert advice, coming to me. So they have no sort of preferential position in that regard, although a very important role. They will not be having any involvement in my decision-making or decision-writing, that type of thing, so it is the independent role that I hold. I will be assisted in writing up my decision by Mr McKay, but in terms of any decision-making points they are solely my role to make those decisions.

The last part of the process after the staff report, the applicant will have a final right of reply. That is likely to

be perhaps some verbal comments but then I am likely to want to get a written right of reply, which I think is a very tidy and good way of concluding these sorts of processes so I will just signal that, Mr Allen.

Any questions at all from anyone about any of those matters? All right.

There are a couple of procedural matters I need to deal with. The first is some late submissions that have been received by the council. I am not quite sure whether it is 17 or 18, there are different numbers in different reports, but I do not think it particularly matters. So those submissions have been received out of time. I do have the discretion to waive that timeframe to allow those submissions in and after consulting with the applicant, who has no particular problem with those submissions being accepted, I have made a decision to accept those late submissions through waiving the timeframe under section 37 of the Act. So that is my decision on the late submissions. In fact I think all of them are part of a series of submissions, which were on a form-type basis, so there is no new matters raised that have not been raised by other submissions and thank you to the Agency for accepting those.



The other preliminary matter is that Mr McKay and I, we have undertaken a site visit of sorts. Last Monday we did a really good drive-through with Ms Buttimore from the council and a representative from the Alliance who has no involvement in the hearing whatsoever, but he was just a guide, and we looked all around the existing highway. We also had the benefit of a helicopter ride, which was pretty extensive, we had a very thorough look around the site and got into a lot of places I do not think we would have ever seen or got the impression of the project by tramping through those wild valleys and things, which I think a lot of you have probably done before. So we have undertaken that site visit. I may well decide to go and refresh some matters after this hearing, so that was the site visit.

All right, the last thing as an introduction is I would just like to talk a bit about the conduct of this hearing. I have read all the relevant information and am continuing to catch up reading as we all go through the hearing. I will not be asking the witnesses to work through and read me out all the evidence; I have read that. I have asked for each witness though to have what I call a highlights package or a key points summary, which I will ask them to read out. That is really important for me because some of the evidence that has been prepared, there has been further information supplied and those

sorts of things, so I really do want to have that read out to me, so just taking some time to really get across the key points. I think that is quite an important part of the process.

Just for parties that have not been involved in these sorts of hearings, there is no cross-examination in this hearing, so parties will not be able to ask questions of other experts or parties, the questioning will come through me. I do not really favour staff questioning as we go along either but if the staff have any particular points of clarification they would like me to raise from their points of view, if you could do that before the witness and I can look at those and ask those questions on your behalf.

I will expect everyone to be courteous and will not tolerate any disparaging remarks or behaviour. This is an important matter. I am certainly not going to be influenced by any behaviour that is not just courteous and calm and getting the best information out so I can make the best decision possible.

I think that is really all I have to say by way of introduction. We have just done a bit of an introduction so if you could make yourself known to everyone?

**MR WINCHESTER:** Good morning, everyone, my name is James Winchester. I am advising New Plymouth District Council and Taranaki Regional Council in relation to their section 42A reporting roles and also I will be providing process advice to the Hearings Commissioner.

**THE COMMISSIONER:** Yes, welcome, Mr Winchester.

I think those are really my introductions. Does anyone have any questions whatsoever about the way the process is going to run or anything I have said so far? All right, I think, Mr Allen, I am in your hands. Can I just signal that I would quite like you to be reasonably fulsome in introducing your case, we have some time this morning to do that, so just please be as fulsome as you need to be. I will be chipping in with some questions as you go, so I think if we can take those as we go that will be great. Thank you.

**MR ALLEN:** Thank you, Commissioner, and in terms of the legal submissions they were pre-circulated yesterday afternoon. We will be fulsome and we do invite questions as we go. Equally, there are parts of the submissions that will be well known to the Commissioner, we will flag those and move through those

parts quite quickly, for example the relevant statutory provisions.

The other key questions in terms of this having been read is happy, as I have mentioned, to answer questions at any time and to pause at any time and explain as we go. So the Commissioner has a copy?

**THE COMMISSIONER:** Yes, we have.

**MR ALLEN:** Thank you. So, just in terms of the introduction, and this has already been covered, the Transport Agency lodged a notice of requirement and resource consent applications for the Mount Messenger Bypass Project.

The Project will deliver a new section of State Highway 3. The new section of State Highway 3 will be a 6 kilometres long, two lanes to the east of the existing Mount Messenger alignment. So you will be familiar with that, Commissioner, from your helicopter visit where it lies and also I think to your side, Commissioner, you have the planning set of plans, maybe in those A3 folders?

**THE COMMISSIONER:** I have a drawing set.

**MR ALLEN:** Drawing set, yes, that is it, Commissioner. So just in terms of that drawing set, on the front page of it, there are a number of sheets that show the different sheets as you go through the project and also for the help of everyone in the room. For the Commissioner, if you need it, and witnesses as they present and submitters, to your left, Commissioner, is an A1 diagrammatic plan of the project and project footprint. So witnesses and submitters, as need be, can point out to that or can be directed to it. That plan matches this front sheet in the first set of plans attached to this drawing set, which is some 90-odd pages of plans.

The front page of that one in particular has the existing Mount Messenger alignment in a pinky-red colour winding its way up through to the west and then the new alignment, as I have mentioned, to the east.

In terms of a high-level overview of using that map and it starting at the northern end, which is sheet 1 on the left-hand side of that overview, that is where the project commences to the north, and this is paragraph 3 of the submissions, beside the Pascoe property and so that is at the northern end, through the Pascoe property on the Mangapepeke Valley. It then proceeds

up through the valley, through sheets 2 and 3. You will see at sheet 3 there is a yellow-dotted property boundary line; that is where it enters land owned by Ngāti Tama and the project then proceeds through on the Valley side up through towards sheet 5 and at sheet 6 under the wording "for sheet 6" is the location of the tunnel, where the tunnel cuts 95 metres under the ridge line.

Then it proceeds carrying on south through sheet 7 descending down to the southern end. There is there in sheet 7 a bridge; that is the 230 metre long bridge over a tributary to the Mimi Wetland, which we will come to soon. Then it comes back down to the south and reconnects on to the State Highway around sheet 8 and sheet 9 will be some works done just to ease the corners of the curve there down on sheet 9. Then sheet 10 you are through, out and to the south, travelling towards New Plymouth.

**THE COMMISSIONER:** Thank you. I do have one question that is not particularly meritorious, I do not think, but the existing Mount Messenger route, some parts are shown in pink and some in orange; is there any reason for that, is there any distinction being meant there?

**MR ALLEN:** The orange parts and the pink parts are existing State Highway 3, I think that might just be a printing colour issue. As far as I am aware there is nothing except obviously the orange to the south of sheet 10 and to the north of sheet 1, there will be no works done within those areas because they are outside the project area.

**THE COMMISSIONER:** So there is no particular reference to the different colours, thank you.

**MR ALLEN:** So paragraph 4, in addition to the tunnel and bridge that have briefly been mentioned there is a second bridge that is being introduced across a tributary valley of the Mangapepeke Stream and that was introduced through the evidence in response to fish passage and the Commissioner will hear evidence about that from Mr Hamill and from Mr McEwan as well. Mr McEwan deals with the construction, civil engineering side of it. Mr Hamill deals with the ecological effects.

**THE COMMISSIONER:** They present some replacement drawings?

**MR ALLEN:** That is right. So those will all be updated. So the set you have before you is the set as per earlier on, there has been the supplementary evidence, rebuttal evidence, and then

these plans I am sure will be tweaked as we go through the hearing. With final closing submissions propose any changes to be done in a new set and also will have final proposed conditions by the applicant, which we will go through a little bit later on, and final proposed management plans. So that will be another lever-arch folder - I apologise - of conditions, plans and management plans.

**THE COMMISSIONER:** So your proposal, Mr Allen, is to present those at the end of the hearing as a final set?

**MR ALLEN:** As has been tweaked through the hearing, so we will flag all the changes as we go through the hearing, address them in closing, and discuss it, answer any questions in closing.

Also, sir, one point that I forgot to mention is you may have seen that in the submissions I erroneously said towards the end that the conditions were as per Mr Roan's rebuttal evidence; that might have thrown you awry because yesterday we said it was supplementary evidence. It is the supplementary evidence and I will correct that when we get to it.

So in terms there is the new bridge, a main construction yard will be on the Pascoes property end, there will be 17



temporary and 19 permanent culverts. There will be various cuttings and embankments, storm water swales, constructed storm water wetlands, and fill disposal areas.

So the project has a total earthworks footprint of up the 36 hectares. Of the 36 hectares approximately 18 hectares is the additional works area. So what the additional works area is, and we are getting plans drawn up at the moment - unfortunately they are not in that drawing set - to show the parameters of the additional works area, is a buffer around the project footprint shown in the plan of 20 metres along the entire route except for - and this is explained in the evidence of Mr Singers - ecologically significant areas where it is pulled in to 5 metres.

So the intent of that is it allows a plus or minus 20-metre tolerance for the final earthworks area to be set. The approach that has been taken is that total area, the total 36 hectares, has been assessed in terms of all the environmental affects.

**THE COMMISSIONER:** Can I just ask the question, all those earthworks are within the designated area?

**MR ALLEN:** Yes, and the AWA shrinks down the works area within the designation boundary and Mr Roan will provide those plans and talk to them with his evidence on conditions and management plans.

**THE COMMISSIONER:** Is the intention to - if you are shrinking it down - if there is any part of the designation that may not be required that would be uplifted, or has that been thought about?

**MR ALLEN:** That is correct, as the design has gone through and we have come through, we have managed to pull the boundaries in and it is the additional works area, the key part is that is works, there might be some mitigation plantings to be done slightly outside that and that will be explained through the ecology evidence.

**THE COMMISSIONER:** Is the intention to refine the designated area as part of this process?

**MR ALLEN:** We will still go for the designated area but will have conditions on earthworks within the AWA. So it will be refined in that way. So the project footprint, which includes, when you look at the plans, et cetera, all the embankments, cuttings, et cetera, plus the AWA to the side, storm-water

ponds, et cetera, is the project footprint of the 36 hectares. As I have mentioned that the use of the AWA has been assumed and provided for full clearance within all the affects assessments. So all the affects assessments are based on the 36 hectare footprint.

So the project earthworks volume is approximately 960,000 m<sup>3</sup> and the bulk volume of fill is also given there.

The project will remove up to 31.7 hectares of predominantly native vegetation, and will require stream diversion of a total of approximately 3.7 kilometres of stream and a comprehensive and detailed package of measures to address those are within the restoration package and we will go through the restoration package in detail later on.

In terms of overall description of the project, Mr Boam - who we will hear from this afternoon Skyped in from Cyprus - provides more detail on that and Mr Milliken will present - and he will do it now - a run-through of the visual simulation of the project. That will just allow the scene to be set in terms of where everything is at.

So I will just pause for now, I think everything is all ready on the system.

**THE COMMISSIONER:** Before Mr Milliken does that - and that will be useful - I have a question about the restoration package, which has been a bit of a moving feast over the last sort of few months with various positions and various different concepts coming in.

**MR ALLEN:** And the two adjournments that have occurred as well.

**THE COMMISSIONER:** So that is part of the conditions package, is there like a single summary package or is it a set of different various elements, is that how you describe the package?

**MR ALLEN:** The package is the diverse elements as set out in Mr McGibbon's evidence. The conditions set out the core components of the package and it also includes all the various management plans that sit under there. There is a pest management plan, for example, which deals with long-term pest control. There is a bat management plan. There is a series of other management plans too for various issues, bio-security management plans, et cetera, that all fit in with the restoration package.

**THE COMMISSIONER:** When you talk about the restoration package, it is a set of provisions?

**MR ALLEN:** It is all within the ELMP, the Environmental Landscape Management Plan, and we will go through the various management plans, but the Environmental Landscape Management Plan is the core package for that restoration or the core delivery mechanism for the restoration package.

**THE COMMISSIONER:** Okay, so the ELMP is the delivery mechanism for what you call the restoration package?

**MR ALLEN:** That is correct. Now, Mr Milliken.

**THE COMMISSIONER:** Mr Milliken, just to confirm, this was an attachment to your evidence that was a DVD?

**MR ALLEN:** It is an attachment to Mr Boam's evidence but we thought doing Skype and having him run through may be too challenging.

**MR MILLIKEN:** So it is an overview, it does tie in; it matches the plan that is on the wall. It really shows the finished

product, so it does not show restoration areas; it is really focused on the finished civil works product. It does not really show landscaping, permanent stockpiles, temporary access tracks, property boundaries, et cetera.

(Video presentation played)

**MR ALLEN:** Thank you. So just back to the submissions, the Commissioner has already pointed out and mentioned the resource consents and NOR provisions, they are at paragraph 9 and 10. Just one matter before that, paragraph 8, in terms of the conditions there are conditions management plans and a lot more discussion on that will occur later in the submissions so we will address it then.

**THE COMMISSIONER:** Just a general request or comment from you, in your view the project is premised, like large projects typically are, on a series of management plans. In your view, do the management plans have appropriate objectives and all have measurable performance standards associated with them? I will be covering that off with Mr Roan I know later, but just signalling that is a particular favourite topic of mine to make sure that management plans do have very clear objectives and do have measurable performance standards to manage against.

**MR ALLEN:** So maybe if the Commissioner could turn to page 64 of the submissions --

**THE COMMISSIONER:** No, maybe we will pick that up later on, but I just thought I would signal that as a ...

**MR ALLEN:** Certainly the approach is to provide for - in the conditions - the parameters for the management plans and then in the management plans themselves the detail as to how the parameters in the conditions will be achieved. So the rationale and the driver for drafting the conditions in the management plans is the conditions set the limits, the management plans set out the methods to achieve those limits. So that is the high-level summary of the approach to the management plans and their relationship with the conditions.

Moving through paragraphs 9 and 10 - as I have said they have already been covered in terms of the consents - notification, the Commissioner has already mentioned the joint appointment, so I will not repeat paragraph 12. Paragraph 13 simply sets out the structure of the submissions in a various number of parts that Mr Ryan and myself will read.

In terms of a summary then at page 5 the submissions are in detail and we can be fulsome in our coverage of them, equally we are aware of the timeframes and the limits so we will move through things quickly. In terms of the summary, obviously the project delivers a much-needed upgrade to the existing Mr Messenger section of State Highway 3 that will provide safety, travel-time reliability, resilience and travel-time saving benefits. Those benefits in turn will have significant benefits for the economy of the district and the region.

In terms of the project, the location of it - and that has been illustrated through the fly-through but also the Commissioner will have got a good understanding of the wider area from the helicopter visit - that this area has few other alternative routes. The alternatives assessment has assessed various routes but in terms of its location all the various routes traverse sensitive environments; it is the nature of the location, and those environments are particularly sensitive in terms of cultural, ecological and landscape matters.

The project selection and refinement has been to reduce potential affects, however significant cultural, ecological, landscape affects remained, so there has been a carefully designed package to mitigate, offset and compensate, for those



affects. In particular, Ngāti Tama have played a key role in the design of the project and in terms of that there has been ongoing discussions with Ngāti Tama since 2016 and the Transport Agency has committed not to compulsorily acquire Ngāti Tama land for the project. That way the project will not go ahead unless Ngāti Tama is satisfied as the landowner through its treaty settlement land.

**THE COMMISSIONER:** Mr Allen, just a question on that process, how do you suggest that is dealt with in conditions? Is it some form of condition precedent that would need to be ...?

**MR ALLEN:** It is a property right issue, so in terms of the designation and the resource consents, Te Rūnanga's position is as per Mr White's evidence of support and they have come to that on the basis that, as separate to the RMA, there is the property acquisition process and in terms of the property rights the agency has said it will not compulsorily acquire that land.

**THE COMMISSIONER:** So that provision for a satisfactory outcome with Ngāti Tama is a property issue?

**MR ALLEN:** It is a property issue and agreement outside of the Resource Management Act.

**THE COMMISSIONER:** So your understanding is that Ngāti Tama are comfortable with the designation to be confirmed as per the evidence?

**MR ALLEN:** As per the evidence of Mr White; that is correct.

**THE COMMISSIONER:** And that the effective way of dealing with the recompense of dealing with cultural affects will be through a property arrangement, is that it?

**MR ALLEN:** That is it and Mr Dreaver will be presenting evidence today and can discuss those matters, equally Ngāti Tama will be presenting as well.

**MR RYAN:** Commissioner, I would just flag that there are more detailed submissions on those matters, which we will come to later on as well.

**THE COMMISSIONER:** Thank you, Mr Ryan.

**MR ALLEN:** Then moving to paragraph 18(b) - and we have already mentioned the restoration package - a key feature of that package is 3,650 hectares pest management in perpetuity and the

restoration of 8.5 kilometres of stream length and that is restoration through riparian planting as described in the evidence of Mr Hamill and Dr Neale.

Then landscape and visual matters are addressed through a detailed landscape and environmental design framework and that is as per the evidence of Mr Lister and the latest section 42A reports from the council seem to be that the landscape matters have been addressed as between the applicant and the council.

**THE COMMISSIONER:** Just coming back to your 18(b), I received the joint memorandum from council for the Department of Conservation and NZTA requesting a deferment of this hearing to provide more time to work those issues through. Certainly my observation is that there has not been a resolution. We have three sets of experts and that is still a contest.

**MR ALLEN:** That is correct, Commissioner, and there has been extensive discussions and conferencing, et cetera, hopefully those discussions will continue, but every effort has been made I think by all the parties to try to resolve points of disagreement. There are some in the latest updated 42A reports that came through on Monday where potentially things may or may not have been missed, we are still going through it, but beyond

those low-hanging fruit there are fundamental issues of disagreement that the Commissioner will have to decide on.

**THE COMMISSIONER:** So just so everyone is aware, the third parties, the council have engaged Wildland Consultants to advise their view and just as I think yesterday or the day before received another report from Wildlands where they have made some comments. Because this may be a question for the staff to think about, while I have their report, is anyone from Wildlands going to be summarising the view, Mr Shaw or anyone, was that the intention?

**FEMALE SPEAKER:** (Offline comment)

**THE COMMISSIONER:** Goldwater, yes.

**FEMALE SPEAKER:** (Offline comment)

**THE COMMISSIONER:** So the Wildlands team will be sitting through the hearing and available for questions at the end when the staff present their final recommendations, all right, thank you.

**MR ALLEN:** Thank you. In terms of moving on rapidly through that, there is a brief at the bottom of page 6, a brief summary

of the Transport Agency's statutory role. The Commissioner is aware obviously of the role of the Agency, it is the Crown entity focused on providing an integrated land transport system that helps people get the most out of life and supports business. The various investments over the page are the statutory objective from the Land Transport Management Act and the statutory functions. At the bottom there too there is reference to the Civil Defence Emergency Act as well, so I do not plan to go into those in any more detail unless the Commissioner has any questions.

**THE COMMISSIONER:** No.

**MR RYAN:** So, Commissioner, I am going to take over now, so part B sets out the background and context of the project, so State Highway 3, as you will be aware, is a strategically important route at a regional and national level connecting Taranaki through to the Waikato and obviously on to key economic and transportation hubs. It is Taranaki's only arterial connection to and from the north, so it is of particular importance to the economic wellbeing and the future of Taranaki. It also provides the main route north for the people of Taranaki for employment as well as for social purposes and to access services. So the route is essential o enabling people and

communities of Taranaki to provide for their social, economic, and cultural wellbeing.

That is reflected in One Network Road classification as a regional road, noting the significant contribution to the social and economic wellbeing of a region. And just noting as well that, because of the poor quality of the alternative route options when the highway is closed, it is critical to emergency connectivity.

So there is clearly a mismatch between the importance of this route and its current state, which is - in simple terms - inadequate and not in keeping with its strategic importance. Mr McCombs explains that in detail in his evidence but there are significant constraints and deficiencies affecting its safety, reliability and resilience. So steep grades, tortuous winding alignment, restricted forward visibility, a narrow tunnel at the summit and vulnerability to interrupted service. I imagine the Commissioner will have experienced that on his site visit.

So there have been investigations into this section of State Highway 3 dating back to the 70s and this is the latest iteration of that, so in early 2016 the Minister announced there would be funding for the project from the Crown as part of their

accelerated regional roading programme. So overall the project will address the issues with this section of State Highway 3 and it will provide an appropriate level of service for this vital piece of infrastructure. It will be - again in simple terms - a modern, fit-for-purpose, safe and resilient road.

So there is a broader programme of works on State Highway 3 north of New Plymouth that this project is part of and that is the Awakino Gorge to Mount Messenger programme. So, just briefly, the other parts of the programme are the Awakino Gorge project, effectively bypassing the existing Awakino Tunnel, and there will also be safety upgrades through this section of State Highway 3 within the existing corridor.

Just backtracking, just to point out that the RMA authorisations for the Awakino Tunnel bypass are currently being considered by the relevant councils.

So purpose and key benefits of the project, so we have explained the purpose of the project. So more specifically the Transport Agency's project objectives for the purposes of section 171 are to enhance the safety of travel, enhance the resilience and journey time reliability of the State Highway network, contribute to enhanced local and regional economic

growth and productivity for people and freight by improving connectivity and reducing journey times between Taranaki and Waikato, and managing immediate and long-term cultural, social, land use and other environmental impacts by - so far as practicable - avoiding, remedying or mitigating any affects through route and alignment selection, highway design and conditions.

So the first three project objectives, (a) to (c), are effectively why the Transport Agency is doing the project. The main benefits of the project respond to those three objectives, so there will be a significant improvement in the safety environment and greatly improve connectivity. There will be greatly improved journey time reliability with fewer closures from slips or crashes and reduced maintenance requirements, significantly increased resilience in terms of natural hazards. So that in turn will provide for the overall goal or greater journey time reliability for people and freight.

There will also be an average one-way journey time saving of just over four minutes for light vehicles and 6½ minutes for heavy vehicles. Noting also that with the full programme, wider programme, in place there will be significantly reduced journey



times for over-dimension loads because they will be able to use this highway and that will save them 3 hours and 45 minutes.

Then finally I guess to wrap that all up, all these things will contribute to enhanced local and regional economic growth and productivity for people and freight.

**THE COMMISSIONER:** So just to confirm that point about the over-dimension loads, they have to go via a long route through Wanganui?

**MR RYAN:** Yes, they - in simple terms - cannot use this section of State Highway 3 so they have to go a very long way around. Mr McCombs explains that in his evidence.

So at 46, the fourth project, it is not a reason for doing the project as such obviously, but what it reflects is the Transport Agency's focus on managing the potential environmental effects of the Project.

So in terms of Ngāti Tama, so Ngāti Tama have a unique position in respect of the project. The project traverses Ngāti Tama's rohe and perhaps more specifically a large block of land to either side of the existing highway was returned to Ngāti

Tama as cultural redress in its historical treaty settlement in recognition of Ngāti Tama's deep traditional, historical and cultural, associations with this land. So the project footprint does run through this land and, as with the ecological effects, it would be difficult to provide for this project without doing that.

So, with that in mind, the Transport Agency recognised early on the project would very likely require land that had been returned to Ngāti Tama to be reacquired by the Crown. It was recognised it would be critical for the Transport Agency to enter into intense engagement and negotiations with Ngāti Tama to explore whether Ngāti Tama's consent could be obtained for the use of that land. Respect for Ngāti Tama and the unique treaty settlement context was a primary and critical driver from the outset.

As Mr Allen has flagged, the Transport Agency has committed not to acquire the Ngāti Tama land by compulsion, meaning that, in simple terms, the project can only in fact proceed with Ngāti Tama's support and blessing.

So at 53, the Transport Agency has engaged with Ngāti Tama primarily through the Rūnanga, which is the mandated iwi

organisation under the RMA and in particular under the treaty settlement framework, again bearing in mind this is treaty settlement land. That engagement has allowed the Transport Agency to benefit from Ngāti Tama's vast knowledge of the project area, including in particular the conservation efforts that they have been leading over the last 15 years on the Parininihi land to the west. We have just mentioned the example there that Ngāti Tama played a central role in the MCA process for considering alternative route options where their input was invaluable given their close knowledge of the land.

**THE COMMISSIONER:** Mr Ryan, we have heard already this morning that Ngāti Tama have made quite a shift from the submission position of neutrality to one of support.

**MR RYAN:** That is right, yes.

**THE COMMISSIONER:** They have signalled in Mr White's report.

**MR RYAN:** That is right.

**THE COMMISSIONER:** In your opening submissions, are you going to be discussing with me the legal positions around other iwi submitters and how, in a decision-making sense, I should be

thinking about those issues because obviously we have Ngāti Tama. There are other submitters; Te Korowai and Poutama, particularly. So you will deal with those issues.

**MR RYAN:** We will, yes. So this is a background section. There is a relatively detailed specific session on cultural effects. It also addresses those other submitters.

**THE COMMISSIONER:** Right, thank you.

**MR RYAN:** So the local environment. At 57, this is a relatively high-value environment in ecological and landscape as well as, of course, cultural terms. Just noting again, it would be very difficult to provide for the project without having significant effects on ecological and landscape values.

Importantly, the project does avoid the Waipingao Valley and Parininihi land to the west of the existing highway, which are considered to be generally higher value than the project route, in ecology and landscape terms. Just noting that DOC -- obviously there are outstanding issues with DOC but DOC is on record as supporting at least the choice of this project route.

Considerable work has gone into avoiding and minimising ecological effects through project design, and those are addressed in detail later in these submissions. But just recording that, notwithstanding those efforts, the Transport Agency recognises the project will have significant ecological effects. I guess at a higher level, flagging the loss of up to just under 32 hectares of predominantly indigenous vegetation and 17 trees classified as significant, and the loss or alteration of 3.7 kilometres of stream length.

Again, significant effort has gone into designing and proposing a comprehensive package of measures to avoid, mitigate and offset or compensate these effects, in particular, through the restoration package that we have noted already. That package is a central and fundamental part of the project itself.

Commissioner, Mr Owen will go through the environmental effects of the project, including the restoration package in detail later in these submissions. We have just noted there what the key components are. But if you are happy we will come back to that.

**THE COMMISSIONER:** Thank you.

**MR RYAN:** So over the page at 62, moving on to the human environment, I suppose. There are relatively few people who live in the vicinity of the project or whose land is required for the project. Just to illustrate, there are only four relevant houses that have needed to have been subject to formal construction and operational noise assessments.

We do want to flag though that the project does traverse the farm owned by Mr and Mrs Pascoe in the Mangapēpeke Valley and runs within close proximity of their existing house. The project also traverses farmland owned by a small number of other landowners, and conditions are proposed to address effects on those landowners and property acquisition discussions are ongoing.

**THE COMMISSIONER:** Does one of the witnesses deal with the current status of the properties that are affected?

**MR RYAN:** In terms of the acquisition discussions?

**THE COMMISSIONER:** Yes.

**MR RYAN:** So Mr Napier --

**THE COMMISSIONER:** Mr Napier, yes.

**MR RYAN:** -- was until very recently running those discussions.

**THE COMMISSIONER:** He has got some evidence. I will ask him some questions.

**MR RYAN:** I think he will be able to give you the updated position as well.

**THE COMMISSIONER:** We are talking to him later today, are we not?

**MR RYAN:** Yes, that is right. I think 4.00 pm.

**THE COMMISSIONER:** Yes, thank you.

**MR RYAN:** On engagement and consultation. The Transport Agency has carried out extensive and detailed engagement and consultation dating back to early 2016. So in terms of key stakeholders that have been a particular focus, these include: the directly affected landowners; Ngāti Mutunga and Ngāti Maniapoto, who are, in effect, the iwi neighbouring Ngāti Tama; DOC, bearing in mind the ecological effect situation; the two

councils and the State Highway 3 Working Party, as representatives of the users of the road.

There has also been engagement with Poutama, who claim mana whenua status, and more recently Te Korowai, who were formed in February this year. So, again we will address those later in submissions. Mr Dreaver discusses in more detail engagements of those entities.

In terms of public consultation, detailed consultation rounds took place in 2016 and 2017. Reflected in the number of submissions in support of this project, the overriding theme of the feedback was that the Transport Agency should simply get on and build this much-needed improvement to the highway.

**MR ALLEN:** Turning now to the statutory framework, and I propose to go through this quickly because the Commissioner is well aware of it and can then answer any questions. That way we can move on to, given timing, the effects section.

In terms of the framework, obviously the Transport Agency are requiring authority. As such it is seeking the alteration to the existing designation. It is also seeking resource consents.



In terms of those consents and the designation, many but not all of the conditions will apply only during the construction period rather than to the ongoing operation of the road. So there are a lot of conditions that will be going through over the next few weeks. Most of those conditions relate to the construction.

The Commissioner is aware, at paragraph 74 of section 171, of the RMA and the requirements under a designation. So I will not go through paragraph 74. The new inclusion of section 171(1)(b) in terms of the positive effects of offsetting and compensation is addressed at paragraph 75, as proposed or agreed to by the requiring authority.

**THE COMMISSIONER:** Just on 171(1)(b), Mr Allen, that is a new provision?

**MR ALLEN:** It is.

**THE COMMISSIONER:** It came in last year?

**MR ALLEN:** It came in last year and these applications were lodged on 15 December such that section 171(1)(b) applies as

does section 108AA, which we will come to later on in terms of conditions.

**THE COMMISSIONER:** Has there been any direction from the courts on this provision? It is very new; I suspect not.

**MR ALLEN:** No actual detail, as I am aware. There has been brief commentary but no actual detail. The Council's lawyer may have more information on that, but certainly, as far as I am aware, it is still at a high level. No sort of robust pulling apart, word by word, of that provision. The same in terms of section 108AA, as far as I am aware too.

**THE COMMISSIONER:** But this is on point to the contest around ecological effects particularly.

**MR ALLEN:** It is, but to a large degree it reflects the existing case law. It has just brought that case law into the statute to avoid argument.

**THE COMMISSIONER:** So this offsetting approach has been practised for a long time, accepted by the courts, but this is a statute recognition of that?

**MR ALLEN:** Correct, and the compensation part.

**THE COMMISSIONER:** Compensation part as well. Thank you.

**MR ALLEN:** Just briefly then there is the outline --

**THE COMMISSIONER:** Just pausing there. Mr Winchester, do you have any other information on that. It is a very new provision. I suspect it has not been tested or commented on by the courts at all.

**MR WINCHESTER:** That is my understanding, sir. It has not been the subject of direct judicial comment and the same applies to section 108AA. I can advise on whether the statutory wording potentially enlarges what was the previous position under case law. There is an argument that it may do in terms of the linkage between compensation and the effects. That is possibly a less direct relationship than may have existed under case law, but that is yet to be considered by the courts.

**THE COMMISSIONER:** Okay, I think that will suffice for the moment. Thank you. Sorry for the interruption.

**MR ALLEN:** That is okay. That is all good. The outline plan, again the Commissioner is aware of section 176A and the outline plan process. In this case the details of the project are incorporated into the designation through the drawing set, the proposed conditions and a fulsome suite of management plans. That is to a greater extent than is usual. As I mentioned, over on paragraph 81, for that reason, in terms of the detail and the ability to request a waiver, a waiver is requested except for in paragraph 80, the tunnel control building and emergency water supply tanks, two bridges, and the car park arrangements.

**THE COMMISSIONER:** Is that a change of approach since the original evidence, the fact that your outline plan --

**MR ALLEN:** Yes, so the change is paragraph 80. It was picked up in the updated section 42A report as well. The inclusion of the tunnel, the two bridges, and the car-parking for the outline plan was a change from the initial.

**THE COMMISSIONER:** So if the designation is approved there will be subsequent outline plan procedures for those specific --

**MR ALLEN:** That is correct. Should the Commissioner accept our position of waiving the requirements.

**THE COMMISSIONER:** Waiving the 176A. All right, thank you.

**MR ALLEN:** That is a decision for the Commissioner.

**THE COMMISSIONER:** Yes.

**MR ALLEN:** Then there is brief commentary here, and this has come up in the latest officer's report as well in terms of redundant parts of the existing designation and revocation. In terms of the existing designation, once the new alignment is built there will be an assessment of what parts of both the new and the existing -- well, become one designation. What parts of the designation are still required. Those that are no longer required will be revoked through the normal statutory process.

In terms of revocation, the Transport Agency, and this was picked up in the updated section 42A report, has initiated a process of discussions with the Council. There is some ongoing discussion in the officer's report about the role of revocation; in particular, a condition requiring consultation. This is going off the script because this was written before that was received. But in terms of that, the Agency has already committed to land access for existing owners and there is a

separate statutory process to be followed through revocation such that it is submitted that the detail around that or a condition on that is not necessary. The Land Transport Management Act, section 103, sets out a statutory process for revocation.

**THE COMMISSIONER:** So Ms McBeth has suggested there should be some type of compensation condition --

**MR ALLEN:** Has suggested some type of condition and, as I said, we got that 5.30 on Monday night. Our position at present is that that is not necessary. The LTMA requires consultation, albeit with a smaller group than what the condition is proposing. In this case, with the separate statutory process to be gone through, placing additional limits on that statutory process is submitted to be unnecessary.

**THE COMMISSIONER:** Okay, thank you.

**MR ALLEN:** Then in terms of the resource consents at paragraph 86, I will not go through the list of the various types of consents that are being sought.

Bundling and activity status. The activities have been bundled with an overall discretionary activity status.

**THE COMMISSIONER:** That is all agreed, is it not, by the planners?

**MR ALLEN:** As far as I am aware, there is no argument over activity status.

Then the section 104 assessment, again I will not go through any of that in detail, as with 105 and 107. The Commissioner is all familiar with those.

Provisions, and again at page 21, paragraph 95, part 2, we will address that at the end of these submissions. The Commissioner is well familiar with part 2 of the Resource Management Act.

**MR RYAN:** So, Commissioner, just turning to part (d) now, the effects on the environment. Mr Allen has taken you through the new additions to sections 104 and 171. If you are comfortable, just taking you into the effects of the project.

**THE COMMISSIONER:** Certainly.

**MR RYAN:** First of all the positive effects. I have already highlighted the positive effects in terms of traffic and transport, economic effects and social effects. Importantly, these positive effects are largely unchallenged. Just flagging the comment in the District Council, section 42A report, where Ms McBeth acknowledges and attributes significant waiting to those positive effects. Again, highlighting the large number of submissions in support of this project reflect that.

In terms of traffic and transport, again Mr McCombs sets out those significant positive effects in detail. Just briefly, fundamental improvements in road geometry and an increase in safety from two-star to three-star rating, which is a significantly safer roading environment. Improved resilience in terms of susceptibility to closures arising from breakdowns and crashes, as well as natural hazards. In particular, Mr Symmans provides evidence on the way that the project alone avoids the major landslide feature that is crossed by the current road.

Journey time reliability for users of the highway will greatly improve, noting in particular again the lack of convenient and suitable alternative routes, if there is any



issue with the current road. Again, average journey times will also be reduced.

Finally, just noting that this is a rural environment and there are not a large number of pedestrians and cyclists but the conditions will be improved in terms of safety and quality for those users.

Those traffic and transport effects will drive significant economic and social benefits; so in terms of economic benefits Mr Copeland addresses those in his evidence. He explains State Highway 3's critical role in supporting the Taranaki economy and enabling its growth. The project will deliver direct travel time, cost and reliability savings to local businesses and industry and individual road users.

More broadly, the project will improve the competitiveness of the region's businesses and the attractiveness of the district and the region for businesses, residents and visitors. As such, the project is likely to generate economic growth.

During construction there will be 74 new jobs generated, \$5.5 million in wages and salaries per year, and \$33 million per year in additional expenditure with Taranaki businesses. Those

figures are direct. They are spending by and on the project itself. There will also be indirect economic activity that will be additional to those direct benefits.

Social benefits are dealt with by Ms Turvey. Her opinion is that the project will bring significant social benefits at both the regional and local level, State Highway 3 being central to the daily lives of local residents.

We just wanted to highlight the District Council section 42A report, which focuses in particular on the social benefits of the project for those who need to access essential facilities in the Waikato, particularly Waikato Hospital. In our view, that is a good example of the social benefits of the project and kind of encapsulates those benefits.

There are other positive effects in terms of ecology, visual and scenic values, which are addressed later in the specific sections.

Turning to cultural effects. So the Transport Agency, again understood the potential for the project to have significant cultural effects at an early stage, hence the sustained and intense engagement with Ngāti Tama through the

Rūnanga. The Rūnanga is complimentary about the level of engagement, so its submission states:

"There is no issue with the level and nature of consultation with the Transport Agency in relation to this project."

Of course, it is for the tangata whenua to set out what the effects of the project on their cultural values will be. I note the CIA from Ngāti Tama, as well as the evidence of Greg White, in that respect.

The Transport Agency has been working closely with Ngāti Tama through the Rūnanga over the last two years to avoid, minimise, mitigate and otherwise manage the cultural effects of the project, and to seek the benefit of Ngāti Tama's intimate knowledge of the project area. The key steps in that regard are listed. I will not take you through in detail, but just at a higher level; Ngāti Tama played a direct role in the MCA process. Ngāti Tama's comment was sought on the ecological restoration package and the ELMP, bearing in mind their kaitiaki status. Ngāti Tama's input was sought into the design of the project to date, and importantly, through to the construction and post-construction period. So in that respect, I just note the processes in the LEDF, to that end, as well as the proposed

kaitiaki forum group. Mr Roan talks about those in his evidence.

Over the page at 120. Mr Dreaver explains in his evidence that negotiations between the Rūnanga and the Transport Agency over a potential mitigation and compensation package have been ongoing since 2016. They overlap with but they do extend beyond the project design and development matters flagged above.

In December 2017, the Agency and the Rūnanga confirmed an ongoing commitment to reaching a final agreement involving all the matters listed there.

**THE COMMISSIONER:** Just on that, Mr Ryan. Your position, or the Agency's position, is that some of the issues raised through the consultation with Ngāti Tama have been dealt with in project design and the restoration package?

**MR RYAN:** That is right.

**THE COMMISSIONER:** But on top of that there are some further matters, which will be dealt with by agreement on a property agreement basis?

**MR RYAN:** Yes, broadly speaking, that is correct, Commissioner. So obviously it is important to recognise that part of the package being negotiated with Ngāti Tama recognises that this project requires Ngāti Tama's land, more specifically land returned through a treaty settlement process. So the agreement framework provides for that.

A lot of these measures are already incorporated into the LEDF kaitiaki forum group. But importantly, again, given Ngāti Tama's role and the fact that the project requires their land, until Ngāti Tama are happy that all these issues have been properly dealt with and sign an agreement allowing for the transfer of the Ngāti Tama land, the project will not go ahead.

**THE COMMISSIONER:** Thinking about that in section 6E terms, so I am just ... Some of those obligations would be covered by some of the project design and restoration package, which Ngāti Tama have been aware of from building those up.

**MR RYAN:** That is right.

**THE COMMISSIONER:** But some of those would also be dealt with by the Agency agreeing not to compulsorily acquire the land.

**MR RYAN:** That is right.

**THE COMMISSIONER:** Ultimately through a property agreement, which would see the ability to actually access that land and all the project. That is the three -- I do not want to put words in your mouth. Is that the way that 6E is being advanced?

**MR RYAN:** That is right. Noting the overlap between those three things, of course. Again, the list of matters at paragraph 120 in terms of what will go into the agreement, obviously a lot of that overlaps with things already being thought about through the LEDF and other means.

At 121, just recording there Mr Dreaver's evidence, is that agreements in principle have been reached in respect of most components of this package. In our submission, there are therefore potential positive cultural benefits for Ngāti Tama, should the RMA authorisations be granted. Of course, tied in with that a final agreement reached between Ngāti Tama and the Transport Agency, in effect, should the project go ahead.

Again, as we have just discussed, the Transport Agency has consistently stated it will not seek to acquire Ngāti Tama's land by compulsion.

I think Mr White's evidence in this respect is important, Commissioner. So he notes that this is a momentous agreement and he then says:

"This allows us to maintain our mana intact while exploring what should be put in place to mitigate the cultural effects in accordance with the RMA and the Treaty."

Mr White then sets out in his evidence that:

"The Rūnanga has resolved it can support the grant of the RMA approvals, subject to it still being able to seek conditions and other matters with the Transport Agency, and the Rūnanga retains its ability to say no under the PWA, Public Works Act."

In simple terms, Mr White's evidence makes it clear that the Rūnanga is now in support of the authorisations being granted and confirmed.

Back to your point, Commissioner. At 127, in our submission, the safeguard in terms of the acquisition of the Ngāti Tama land and Mr White's comments about the implications of that safeguard should give the Commissioner considerable comfort in respect of the cultural effects of the project. It is a powerful recognition of the relationships of Ngāti Tama with their ancestral lands.

Just pausing to note the supplementary regional council 42A report records the change in Ngāti Tama's formal position to supporting the project in RMA terms. In essence, the regional council says that goes a long way to addressing their - sorry, just to get the words right - largely addresses their concerns in terms of cultural issues.

To adopt Mr White's words:

"The Transport Agency and the Rūnanga will continue to work through the outstanding matters until Ngāti Tama, through the Rūnanga, is comfortable that the necessary land can be transferred to the Transport Agency."

Moving to Te Korowai and mandate issues. Again, the Transport Agency has been clear its engagement with Ngāti Tama has primarily been through the Rūnanga. The Rūnanga is a statutory mandated representative body for Ngāti Tama under the Treaty settlement legislation and the RMA.

At 130, mandate is obviously not usually a matter for RMA decision makers. I will just flag though the courts accept that it is appropriate for engagement with iwi to focus on mandated or formally recognised iwi authorities.



The Te Korowai submission seeks to cast doubt on the ability of the Rūnanga to address cultural matters on behalf of Ngāti Tama. Importantly, the Transport Agency recognises that the members of Te Korowai, as members of Ngāti Tama, are tangata whenua. Te Korowai and its individual members are of course entitled to provide their own views in terms of cultural effects.

Te Korowai's submission, and more importantly the evidence of Mr Carlyon on behalf of Te Korowai, criticises the level of engagement between the Transport Agency and Te Korowai. Mr Dreaver's evidence responds to that, particularly his rebuttal evidence.

We would just like to note, Commissioner, that Te Korowai did not exist as a formal entity until February of this year. So in our submission, it is difficult to criticise the Transport Agency for not engaging directly with an entity that did not exist up until just before submissions on the project closed.

Again, the fact that Ngāti Tama must agree before the project can proceed should, in our view, provide significant comfort to the Commissioner. In mechanical terms, the decision as to whether the project can proceed and the land be

transferred will be made by the Rūnanga, which is the properly mandated entity and, through a custodian trustee company, as the legal owner of the land.

As recorded in the District Council section 42A report, Te Korowai members include three currently suspended trustees of the Rūnanga. Any dispute in that respect is of course well beyond the scope of this hearing. No matter the outcome of that dispute though, the Rūnanga can be expected to ascertain the views of Ngāti Tama members before determining that land can be transferred to the Transport Agency to allow the project to proceed.

On Poutama - just briefly on Poutama - Mr Dreaver explains in his evidence:

"The Transport Agency does not take a view on the status of Poutama as an entity."

Clearly, that is not the Transport Agency's role. The Transport Agency has engaged in good faith with Poutama and, as the Commissioner is well aware, Poutama are due to present a cultural impact assessment during the second week of the hearing.

**THE COMMISSIONER:** Clearly, while the Agency does not have a view on the status, the Agency has taken the position of talking with submitters who have wanted to be -- or parties or submitters that have wanted to take a view?

**MR RYAN:** Of course, yes. So the Transport Agency has always been consistent that it will discuss the project with all submitters, listen to all submitters' concerns, particularly in terms of cultural impacts. With that in mind, the Transport Agency offered to support Poutama's production of a cultural impact assessment, which they are due to present to the hearing.

**THE COMMISSIONER:** But the funding of that work and the support of that work in no way changes the Agency view that the key mandated authority is Ngāti Tama?

**MR RYAN:** Correct.

**THE COMMISSIONER:** And the control of the land, as the landowner, is the primary cultural party?

**MR RYAN:** Yes. As I have said, there is no -- the Transport Agency has been clear that in terms of engaging with Ngāti Tama, as an entity or as a collection of iwi members, that has been

primarily through the Rūnanga. But Poutama have asserted they hold mana whenua status. It is not the Transport Agency's role to take a position on that but in order to -- the Transport Agency is open to hearing what members of Poutama consider to be the cultural effects of the project and to that end have offered to assist with funding for the provision of the cultural impact assessment.

**THE COMMISSIONER:** Right, thank you.

**MR ALLEN:** Turning now, Commissioner, to ecological values. I just want to check, we have got an hour left on our time slot but whether the Commissioner is happy for us just to forge on and use that hour --

**THE COMMISSIONER:** Yes.

**MR ALLEN:** -- or whether you want a break? Perfect.

**THE COMMISSIONER:** Yes, please.

**MR ALLEN:** So moving now to ecological values and effects. As has already been mentioned, a key issue for the project is its potential adverse effects on ecological values. The Transport

Agent has been aware of that from the start of the project. It is for that reason that the restoration package has been integral to the project's development and design. Equally, as the Commissioner has pointed out, there have been two adjournments to allow for ongoing discussions between the agency and, in particular, the Department of Conservation.

In terms of potential adverse ecological effects, they have been avoided. Degrees of effects have been avoided through the assessment of alternatives. In particular, the avoidance of Parininihi and the Waipingao Valley. That is the area that the Commissioner will have seen in the helicopter to the west.

The project alignment is a structures rather than earthworks option. The Commissioner will be aware from the MCA process that alternatives were looked at of structures versus earthworks, and as a result of that there is the bridge over the tributary to the Mimi wetland and the tunnel. Then through the MCA shortlist process, the project option that was ultimately selected was shifted uphill further away from the Mimi wetland, so it was shifted to the west.

A key factor in the ecological considerations for the Commissioner is that the mitigation offset compensation must

relate to the effects of the project. The Transport Agency is not required to provide additional benefits beyond those effects of the project, although in this case it is the Transport Agency's ecological witness's opinion that that will be the effect of the restoration package.

As I have already mentioned, these submissions do not refer or go into detail the original section 42A reports because they have been largely superseded through the adjournment periods. Equally, although they have been updated - they were provided on Monday night - and the ecology team will be reviewing those this afternoon so that the witnesses can respond to any questions the Commissioner may have. But in terms of these submissions, any legal comment will be tied within closing submissions beyond the comments we are making as we are going.

**THE COMMISSIONER:** Just on the contest, just for the witnesses when they do appear, I will be wanting to ask questions about the recent comments or the evidence as it stands now, including the latest section 42A report. They will have read those.

**MR ALLEN:** They will all be ready.

**THE COMMISSIONER:** There are some differences of opinion there clearly.

**MR ALLEN:** That is a key point, is it is differences in opinion. It comes down to the experts' opinions on the various matters.

Just turning briefly to the existing environment, the projects within the North Taranaki ecological district. That is an area of 250,000 hectares, 51 per cent indigenous forest, which again from the helicopter the Commissioner will have got a good overview of that area and the extent of indigenous forest.

The wider project area of some 4,500 hectares straddles an ecological boundary. As I have mentioned, includes the Parininihi area owned by Ngāti Tama. Following pest management in that area by Ngāti Tama, and earlier the Department of Conservation, that has particularly high ecological value and the Commissioner, from reading the evidence, will be aware of the recent release of kōkako within Parininihi.

Also the wider project area includes the Eastern Ngāti Tama forest block, which includes land owned by Ngāti Tama, DOC, which actually owns the majority of that land, and some private landowners. Pest management in those areas have been sporadic,

if at all. In particular, the Upper Mangapēpeke Valley has been affected by long-term grazing, fire, logging, such that while the forest retains its indigenous plant and animal communities of high ecological value, the full ecological potential has been significantly diminished. Again, that is a matter of contest as well between the latest Council section 42A reports and the experts of the Transport Agency.

From the site visit and the helicopter and from the road, I am not sure if the Commissioner is familiar with what it is like down in those valleys. There are photos in the various technical reports that will aid the Commissioner. Also photos attached to the evidence-in-chief of Mr Singers. All the project team ecologists comment, from their perspective, about the degradation. But the Commissioner will have to decide on that. Then the Mimi wetland, which has already been mentioned.

The project footprint of 36 hectares also straddles an ecological boundary, is dominated to the south by the Mimi catchment and the Mangapēpeke Stream to the north, the various vegetation types are set out there. Those areas have not had the benefits of pest control.



In terms of the potential for adverse ecological effects, those arise from the removal or damage to approximately 32 hectares of predominantly indigenous vegetation, removal of up to 17 significant trees, loss or alteration of 3.7 kilometres of stream, increased fragmentation, risk of injury or mortality.

The restoration package, and we have already touched on this as an overall umbrella term. I have mentioned how the project has attempted to avoid effects in terms of the assessment of alternatives and the selection of the route, and the use of the tunnel and the use of the bridge. Further refinement, as I have mentioned, shifting the road uphill, positioning the road through the Mangapēpeke Valley to the valley sides. That largely avoids the stream in the valley floor area. And avoiding areas of kahikatea forest and in the Mangapēpeke Valley and several significant trees.

We have already alluded in the evidence of Mr McEwan to the removal of fill 10 and the 25-metre bridge, and the removal of disposal area 3, and therefore culvert 19. That has removed two culverts from the project and therefore benefited fish passage.

Paragraph 144, in addition to those avoidance measures, there are mitigation measures, including: various construction

techniques; the location of lay down spoil areas; as I have mentioned, the trunking of the alternatives works area to 5 metres at certain locations; the implementation of the vegetation removal protocols, again, they are a matter in dispute still; sediment management practices protocol, again they are in dispute as well; managing construction and operational lighting; requiring suitably qualified ecologists to be onsite and actively involved in various processes such as vegetation removal for plants, peripatus, bats, lizards; and the construction stages, for example, kiwi monitoring, kiwi dog tracking.

Various other requirements relating to kiwi including: nest protection fences; use of culverts for underpasses; recognising that the tunnel and the bridge provide for significant continuity, especially along the ridgeline; extensive erosion and sediment control measures and their monitoring, is also a matter in dispute; avoidance of mulch entering streams; restrictions on water-take flows and measures to reduce effects of stream diversions; refining culvert design to provide wider culverts; more embedded culverts in lower gradients to further enhance fish passage; the use of stormwater swales and stormwater treatment wetlands; and the proposed use of large wood to enhance stream habitat.

Then in terms of the offset and compensation measures, the key measure there is the intensive pest management in perpetuity for rats, mustelids, possums, feral cats, goats and pigs, as well as the exclusion of all farm livestock over an area of 3,650 hectares. Six hectares of kahikatea swamp forest planting --

**THE COMMISSIONER:** Mr Allen, sorry to interrupt. The "in perpetuity" commitment, that is based around a land use -- how is that actually going to be conditioned in terms of --

**MR ALLEN:** So the condition requires that pest management and the targets within it to be in perpetuity forever. There was initially, as the Commissioner is aware, the New Zealand Government has a 2050 aspirational goal of pest-free New Zealand, and there has been a lot of recent discussion about that. But in terms of this, the mechanism is that the conditions on the designation will require it. Those conditions will be ongoing and the agency, in terms of funding, has a pot that will pay for that over the years into the future. It is conditioned around it. So it is a novel and very seldom-used mechanism and it reflects the values that have been affected and compromises and approaches from the Agency.

In terms of the Agency, it is very seldom used, if ever, the full in perpetuity, especially across 3,650 hectares which, as we will come to, makes up one of the largest mainland pest-free or pest-managed areas in New Zealand.

**THE COMMISSIONER:** So in your submissions, that is quite a major commitment.

**MR ALLEN:** It is a major commitment that is very seldom provided and, as far as I am aware, certainly at this scale, it has never been provided. But even at smaller scales, normally it is, for example, when you come to it, riparian planting will have canopy closure-type in the conditions sets too. Normally it is at that canopy closure or some measure whereby pest management may be reduced or stopped. In this case, it will carry on in perpetuity.

**THE COMMISSIONER:** Thank you.

**MR RYAN:** Sorry, Commissioner, just briefly to add to that. Mr Allen referred to the pest-free goal. I guess the only rider on the in perpetuity is if we do get to the point in this country

where we do not need to carry out pest control any longer. The condition reflects that possibility.

**MR ALLEN:** That is a variation matter that could happen should -- and at the moment there is a lot of discussion about whether that is overly aspirational, but should that ever happen then obviously this can be varied as at that time. The key thing is that the benefits, should that happen, of the pest management will continue into the future. So there will already be, in Dr McLennan's opinion, the additional 1,200 kiwi, et cetera. As they radiate out, those kiwi will keep multiplying across in terms of as long as there is habitat for them.

In perpetuity for the PMA: 6 hectares of kahikatea swap forest planting; 9 hectares of mitigation planting; the application of the SEV model; 200 seedlings; establishment of a minimum 1-hectare predator-free lizard enclosure. So again that is another novel mechanism that, as far as I am aware, has not been used before. In this case, and we will come to it later, I will flag the importance of that. And establishment of a pest management review panel, that should actually be updated. It has now been changed to the ecological review panel, as per the rebuttal evidence of Mr MacGibbon.

All of those matters that I have just listed are in dispute between all the various ecological witnesses, apart from the predator-free lizard enclosure. I think there is agreement on that subject to the details, which Mr Chapman in his rebuttal evidence has responded to, and I will come back to that.

In terms of fresh water, as I have mentioned Mr Hamill describes the fresh water environment. In terms of the Mangapepeke Stream the valley floor is mainly pasture with good to fair MCI, while the catchment in valley sides is mainly indigenous forest with typically excellent MCIs. In the Mimi River, it is the same type of approach; areas within bush typically high MCI. When you hit farm drains the MCI is poor.

The substrate reflects the soft papa mudstone geology of the area with fine sediment present in substrate at all sites. As the Commissioner will be aware there is a lot of discussion in the erosion and sediment control area and in ecology about the natural sedimentation levels. The rebuttal evidence of Mr Ridley sets out the latest measurements in terms of the high sediment loads in the area. That is obviously all in dispute.

Mr Hamill identifies the potential effects of the project on fresh water ecology, the key issues being sedimentation,

restricting fish passage and the loss of stream habitat. In relation to sedimentation I have mentioned the papa mudstone geology. The area most sensitive to sedimentation is the Mimi wetland but it is naturally buffered from the project works by Arapo swamp. Mr Hamill's opinion is that the proposed erosion and sediment control measures and ecological and sediment deposition sampling will be appropriate to assess and manage the effects of sedimentation. In his supplementary evidence he explains the additional monitoring sites added and remains of the opinion that the monitoring is appropriate to detect and manage the effects. He reiterates that opinion in his rebuttal evidence.

In relation to fish passage, Mr Hamill's supplementary evidence explains the refinements in light of the fish passage guidelines from April this year. In general this process involved making the culverts wider, gradients less steep and the culverts more embedded. It also resulted, as I have mentioned, in the removal of two culverts with one of them replaced by a bridge.

Both Mr Hamill and Dr Neale considered that these interventions reduce the effects of the project compared to that assessed in Mr Hamill's EIC. There remain three culverts

without fish passage. These culverts are located within road cuts with vertical cut slopes, are all ephemeral, and the effect will be small. Mr Hamill responds to the evidence on behalf of DOC on fish passage in his rebuttal, reiterating his views from his evidence-in-chief.

Finally, in relation to stream loss and modification, Mr Hamill applied the stream ecological valuation method. He refined that in his supplementary evidence and that resulted in some very minor adjustments, as a result of which, as already mentioned, the stream affected is 3.7 km and the restoration is 8.45 km.

Dr Neale reviewed Mr Hamill's approach; his comments were assessed by Mr Hamill and that resulted in the reassessments. In his rebuttal evidence Mr Hamill includes a point-by-point response to the various issues raised on behalf of the Department of Conservation on the application of the SEV to the project and he remains of the view that it is appropriate. As per the footnote there, Dr Neale supports Mr Hamill's position that the SEV model is appropriate in his rebuttal evidence.

So, overall Mr Hamill assesses the effects of the project after mitigation and offset as low or less, considers that most



potential effects can be appropriately minimised apart from stream loss which is offset via the SEV method, and both Mr Hamill and Dr Neale consider the refinements to the project design have further reduced fresh water effects. Dr Neale also emphasises that due to the location of the offset areas benefits are far more certain to accrue than with many restoration projects. He adds the benefits of the restoration are not fully captured in the SEV framework and considers that additional benefits are likely such as confidence that the fresh water offset package should provide a net improvement in ecological function in the medium to long-term.

In terms of vegetation, the technical reports in the evidence of Mr Singers assesses the vegetation, existing environment, and that is set out there in terms of area of forest, tree land and secondary scrub, and as --

**THE COMMISSIONER:** Sorry to interrupt. I am just -- Dr Neale, he did not produce evidence-in-chief, did he?

**MR ALLEN:** That is correct. His evidence came through with the rebuttal package in response to evidence on behalf of the Department of Conservation.

**THE COMMISSIONER:** So is he a new advisor for the agency?

**MR ALLEN:** Yes.

**THE COMMISSIONER:** So he has come in --

**MR ALLEN:** He has come in, peer reviewed the work undertaken by Mr Hamill and provided evidence and then rebuttal evidence.

**THE COMMISSIONER:** So he has looked at both Dr Drinan and Mr Hamill's evidence and provided his review as another expert view?

**MR ALLEN:** That is correct.

**THE COMMISSIONER:** Thank you.

**MR ALLEN:** As already mentioned, back to vegetation, in terms of the Mangapepeke Valley, the vegetation is of comparatively lower quality due to the effects of clearance and livestock and pests. There is an example there within the larger stand of Kahikatea where the understory and ground cover tiers have been heavily browsed. Vegetation in those tiers is mostly less than 30 cm

consisting predominantly of African club moss which is an invasive weed.

Mr Singers concludes in his evidence-in-chief, which at that time related to a smaller pest management area, that the project will provide medium to long-term benefits to vegetation and overall the benefits on vegetation are acceptable. In his supplementary evidence he concludes -- now, Mr Singers talks about a "core area" and it might be -- has the Commissioner understood that "core area" concept versus the entire pest management area?

I can briefly go through. Using the New Zealand Biodiversity Guidelines of 2014, Mr Singers came up with an area of 230 hectares. So if you were to use the New Zealand Government model that is where you would start. The issue with the 230 hectares is predator and pest invasion into that area therefore keeping your target pest levels at a manageable rate with your pest management. Therefore, Mr Singers, with the assistance of Mr MacGibbon, added what was a buffer area around that 230 metre core. That became the 560 hectare pest management area that is in the assessment of environmental effects.

There were then ongoing discussions with the Department of Conservation and the Wildlands crew, and as a result of that in the evidence-in-chief it was 1085 hectares for the pest management area. Then there were the adjournment and further discussions so that in the supplementary evidence there is the 3650 hectare pest management area and within that 3650 the managed core will be 903.5 hectares.

**THE COMMISSIONER:** Thank you.

**MR ALLEN:** Hopefully that provides some clarity around that and how that has evolved because there has been, at each step of the process, different figures presented to the Commissioner.

**THE COMMISSIONER:** Yes.

**MR ALLEN:** In terms of that core in Mr Singers' notes it is just under four times the size of the total offset area, determined by the New Zealand Government biodiversity model, to be necessary to achieve no net loss by year ten, that using the biodiversity model the net present benefit at year ten is plus 39.36, which is greater than the entire modelled core of 230 hectares would deliver in 35 years and it is over 28 times the area of habitat loss to the project. Equally, too, the

restoration package will result in significant positive benefits for vegetation and flora in the wider Mount Messenger Parininihi area.

So, DOC has not presented evidence on vegetation effects. The council, in its updated section 42A reports, does have some comments on that; that can be addressed by Mr Singers in his evidence.

**THE COMMISSIONER:** So your understanding is that DOC are reasonably content with this vegetation offsetting a compensation (Overspeaking)

**MR ALLEN:** No, definitely not with the latter.

**THE COMMISSIONER:** All right.

**MR ALLEN:** But in terms of vegetation effects, as far as I am aware, they have not presented evidence on vegetation and vegetation effects in response to Mr Singers' evidence. Certainly though, they take issue with the adequacy, not the approach but the adequacy of the pest management area.

**THE COMMISSIONER:** Even though it has expanded from 1,000 hectares to 3,000 or so?

**MR ALLEN:** That is correct and we will go through the reasons for that soon. I am just conscious of time.

**THE COMMISSIONER:** All right. Time. All right, carry on.

**MR ALLEN:** In terms of invertebrates, Dr Watts goes through the various invertebrate mitigation measures such as the peripatus management plan, the range of pest plans and mitigations including wasps though, again, in the later section 42A report wasps may still be an issue, and biosecurity controls, for example Argentinean ants, biosecurity management plan, restoration package. She concludes:

"Any effects of the project on invertebrates are likely to be negligible and may be positive in the medium term."

with her opinion that the benefits have increased with the now enlarged PMA.

Mr Edwards, who is a science advisor at DOC, considers the PMA now proposed would, if targets were met, adequately compensate for the effects on invertebrates. He also comments

on biosecurity matters, which Mr MacGibbon has accepted in his rebuttal evidence. So in terms of invertebrates, as I understand it, issues between the agency and the Department of Conservation have been resolved but issues remain between the agency and the council.

**THE COMMISSIONER:** Thank you.

**MR ALLEN:** Turning to avifauna, the evidence of Dr McLennan explains the bird environment comprises a mix of native and introduced species typical of those in northern Taranaki and the lower North Island in places where pest control is sporadic or non-existent. Of particular interest though, as already mentioned, are the North Island Brown Kiwi, and not mentioned, the North Island Robin. Dr McLennan sets out the measures to avoid and mitigate potential effects and I have already summarised some of those in relation to Kiwi.

In his supplementary evidence in relation to the expanded pest management area, Dr McLennan states that it is in the top 20 per cent by areas of sanctuaries in the North Island in one of the largest pest-free areas with the management being unusual in that it involves both aerial and ground-based controls. With no reduction in pest management the new PMA makes the attainment

of key threshold pest densities much more certain. A shift from a high outcome to a very high certainty outcome will benefit three times as many forest birds as the PMA reviewed in his evidence-in-chief and profoundly increases the extent to which avifauna will be enhanced by the project. It will provide a net benefit of the project for Kiwi of approximately 1,200 adults over 30 years. That is a gain of 55 Kiwi for every theoretical Kiwi loss. No Kiwi will be lost if it is done on the loss of the habitat area of 36 hectares.

As he notes, because that is in perpetuity, that benefit will not be eroded over time. He concludes that the net benefit ratio for Kiwi of 55 to 1 is high and, with limited opportunities for comparison, is possibly unprecedented. There is no doubt, in his opinion, the project will have a net benefit for avifauna and the enlarged PMA will substantially increase that benefit.

Dr Burns, who is a technical advisor at DOC, considers the PMA sufficient to compensate for effects generally with the possible exceptions of Kiwi and Bittern. Dr Burns notes in his evidence that presently the Kiwi population in Taranaki has substantially contracted since the 1980s. In his rebuttal evidence Dr McLennan explains his reasons for rejecting



Dr Burns' view that he has overestimated the potential benefits for Kiwi and remains of the opinion that his benefit loss ratio of 55 to 1 is correct. In relation to Bittern, Mr McLennan states, as per his evidence-in-chief, that the use of song detectors will help clarify the presence, if any, of Bittern in the project area.

Moving then to herpetofauna, as already summarised with the 1 hectare proposal for a lizard sanctuary, again this is a novel approach. The position discussed by Mr Chapman, with his compatriot at the Department of Conservation, Ms Adams, is that that will result in the long-term sustainable management of the lizard population and Ms Adams supports the use of a 1 hectare predator free area for lizards. As mentioned in the rebuttal evidence of Mr MacGibbon, there are discussions with landowners who are presently supportive of having such a sanctuary on their land but those discussions are ongoing.

In the updated section 42A report received on Monday night there may still be some dispute between the agency and the council on vegetation removal protocols in relation to lizards but that can be addressed by the experts. So, apart from that potential issue, my understanding is the effects on herpetofauna are not in issue. So it is just that vegetation removal

protocol outstanding and that is between the council and the agency.

Moving to bats, the Commissioner will have read a lot of evidence on bats. Mr Chapman has given evidence on behalf of the agency and he concludes, in his evidence-in-chief, that at that time the PMA and the mitigation measures, the effects of the project on bats will be appropriate and that the project will result in no net loss and possible net benefit. In his supplementary evidence, Mr Chapman comments on the expanded PMA, stating that it exceeds the upper area shown to successfully recover long-tailed bat populations, goes substantially beyond mitigating and offsetting compensating the effects of the project and will deliver a fantastic sustainable long-term outcome for north Taranaki's long-tailed bat population.

Mr Chapman also explains that without the project the likely current decline of the north Taranaki long-tailed bat population will continue and that is not a matter that has been disputed by Mr O'Donnell, and that the revised vegetation removal protocol will make a valuable contribution towards minimising mitigating the direct effects. Dr O'Donnell, who is a principal science advisor at DOC, raises a number of issues in relation to bats, primary concern one of certainty. He accepts

that bat populations in New Zealand are declining. He also does not dispute that the PMA is of an area likely to reduce the adverse effects of the project on bats but only, in his opinion, if certain additional conditions are met.

Just in summary, those conditions are radio tracking to locate roosting areas to confirm the presence and numbers and ensure the benefits. As these matters have not, in his opinion, occurred, certainly the presence of bats within the PMA is known. So we do know there are bats there but the roosting tree locations have not been identified. So Dr O'Donnell considers 5,000 hectares to be required, however he does not present any science to justify that, rather he considers it a pragmatic minimum when breeding trees have not been identified. Mr Chapman, in his rebuttal evidence, notes that it can take years of study to provide a degree of certainty and even then such certainty as sought by Mr O'Donnell may never be achieved.

In terms of, briefly, the use of the buffer, I do not propose to go through this in detail but Dr O'Donnell appears to have added a buffer on to a buffer. I have mentioned the role of the buffer in the core, he is now potentially requesting that there be not just the core and a buffer area but an additional buffer area. In terms of the vegetation removal protocols,

Dr O'Donnell considers that they are a matter of last resort and in the mitigation hierarchy come after compensation because they do not guarantee the survival of the Mount Messenger bat population. He goes on to say that those protocols attempt to minimise harm to bats but do not guarantee this as some bats will always remain undetected. In response, the mitigation, as applied under the Resource Management Act, relates to minimising harm at the location in which the effects occur. So it is submitted it is mitigation and that is what the VRPs do and guarantees as to outcomes are not required under the RMA.

Now, Dr O'Donnell does not agree that the VRPs should apply only to trees greater than 80 cm DBH he recommends trees between 15 - 80. In his rebuttal evidence, Mr Chapman says 50 - 80 DBH be included at the discretion of the supervising bat ecologist. Dr O'Donnell's position is trees between 15 and 80 DBH be included at the discretion of the supervising bat ecologist. Again, the vegetation removal protocols are in dispute with the council and the key rationale for -- it is like with the lizards. With the increase in the PMA and, in the agency's point of view, the greater certainty that provides to the benefits for bats, the effort in terms of the need for the long-term sustainability and survival of the population through VRPs is decreased such that you can be more specific and focused in

your VRPs because you are getting in perpetuity benefits for the population as a whole. Mr Chapman will explain that further in his evidence.

In terms of some of the wording changes to the ELMP, Mr Chapman accepts some of them but not in relation to the felling of high-risk trees during summer months only. He agrees for winter months but given outside winter months with the revised VRPs he does not consider it necessary. In terms of lighting Mr Chapman notes that the project ecologist is involved in lighting design.

Irrespective of all the above, Dr O'Donnell accepts that the intended PMA may sustain the local long-tailed bat population but only if implemented with long-term certainty, which is the in perpetuity proposed by the agency, and alongside local pest control efforts such as that in the adjacent Parininihi block. In terms of the adjacent Parininihi block Mr Chapman comments on the additional benefits that will provide and will be provided in terms of that block. Having considered Dr O'Donnell's evidence and made some changes, Mr Chapman concludes that his opinion remains that the project goes substantially beyond mitigating and offsetting compensating the

effects and will secure the long-term future of bats in north Taranaki, the population of which is presently likely declining.

Moving now to the restoration package, and conscious of time, but this is the fulsome approach and we do have Friday afternoon so we may have to juggle a few of our witnesses. The restoration package and the pest management programme is explained in the evidence of Mr MacGibbon. In terms of the approach to the effects management hierarchy, which the Commissioner will be well aware of, of avoid, remedy, mitigate, offset, compensate. The offsetting compensation kicks in only when there are significant, which are more than minor, residual effects. So the New Zealand Government guidance is not all residual effects it is significant, which that guidance sets out as being more than minor.

In relation to the pest management programme, Mr MacGibbon explains the methodologies, the performance monitoring and the performance targets and concludes that a no net loss is likely to be achieved in ten years and net benefit in fifteen. In his supplementary evidence with the larger PMA, he notes that it is bigger than three of the six DOC mainland island sites where pests are intensively managed for multiple biodiversity benefits. He concludes that the PMA can be expected to create

substantial biodiversity gains by year 15 well in excess of the effects caused.

Dr Barea, a technical advisor for DOC, provides evidence on the restoration package. While he purports to comply with the code of conduct he does not support the issuing of the resource consent for the application. That seeks to address the ultimate question before the Commissioner and is well outside his area of expertise. Given the importance of the independence of expert evidence, Dr Barea's evidence should be given little, if any, weight. Irrespective of that, Mr MacGibbon responds to all of Dr Barea's comments, many of which focus on terminology rather than ecological outcomes. In his rebuttal evidence he notes:

"Most of this package may more accurately be termed compensation but the objective ecological benefit remains the same."

In relation to the extended PMA Dr Barea states:

"On an area basis alone effective management of pests will result in biodiversity gain significantly greater than previously proposed."

While Dr Barea seems to accept there is a gain he has concerns over ungulate control in the buffers and that has been mentioned already, the buffer on a buffer. Mr MacGibbon explains the

intended increased pest management at the edges of the PMA and how pest management and pest management densities will be managed within those buffer areas. Finally, Dr Barea comments on some refinements which Mr MacGibbon responds to in his rebuttal. He agrees that there should be an ecological review panel that was inadvertently dropped through changes and he sets out the provisions for that and Mr Roan has picked that up in his rebuttal evidence. He also responds to steps taken in identifying riparian planting with all but 2.3 km agreed with landowners and discussions continuing with landowners on the remainder.

Then on behalf of Ngāti Tama Dr Shapiro raises a number of technical matters in relation to the pest management. Mr MacGibbon again responds to those, in particular recognising the importance of Ngāti Tama's local experience and expertise in pest management. Mr MacGibbon is open to the inclusion of Parininihi being added into the pest management area, obviously then some of the Department of Conservation land would be removed should DOC, as in its evidence has indicated may be the case, stop or reduce its support for pest management in the Parininihi area.



So presently, as the Commissioner is aware with offsetting the additionality concept, there is pest management in Parininihi. The department's witnesses have questioned the ongoing nature of that pest management, despite the Kōkako being released, should DOC stop its involvement there or a change then the additionality issue would fall away and the agency could substitute that land in.

So, at paragraph 183, and I do not propose to read it because it summarises what I have spent the last 20 minutes talking about, is a summary of the conclusion on ecological effects and the key point at the end of that summary is at sub-paragraph (g):

"Overall the PMA can be expected to create substantial biodiversity gains at year 15 well in excess of the effects caused by the project."

Now, I have gone through that quite quickly and I would be happy, after lunch if that helped, realising we are nearly at 1.00, to carry on but after lunch can answer any questions that may arise to the Commissioner over that adjournment.

**THE COMMISSIONER:** Thank you.

**MR RYAN:** So, some of the remaining effects, Commissioner, I think we can take you through more quickly, particularly the ones where there is less or no dispute. So, the project will have adverse landscape visual and natural character effects. Mr Lister, in his evidence, explains the methodology for assessing those effects and the efforts that have been put into avoiding minimising and mitigating the effects. He considers:

"The effects will be localised in nature and addressed through measures, including the choice of route, the location of the project, noting there are only a small number of local residents, the alignment of the route and use of a tunnel, so that the route keeps low in the landscape, the mitigation and other measures set out in the LEDF."

which are listed there. At 187 Mr Lister's conclusion is:

"With these measures in place, the adverse landscape and visual effects of the project will be moderate to low and the adverse natural character effects will be moderate."

He also notes there will be some positive landscape effects associated with the project, primarily in terms of traveller experience.

So, importantly, Mr Bain, on behalf of the District Council, agrees with Mr Lister that landscape and visual effects have been appropriately addressed through the measures described

above. He is also supportive of the LEDF. Just noting that the latest supplementary District Council section 42A report confirms or my understanding is it confirms that there are no remaining landscape issues, including in terms of conditions and the LEDF.

Social effects, so we have taken you through the significant social benefits of the project at a local and regional level. Ms Turvey explains:

"There will be adverse social effects on the small number of people who live in the immediate vicinity of the project, especially during construction. They will be appropriately addressed through the CEMP, particularly in terms of ensuring good communication between local residents and the constructors."

The District Council section 42A report focuses, as do a number of submitters, on the social effects of the project on Mr and Mrs Pascoe, who are quite clearly the most directly affected local residents. Ms Turvey and the Transport Agency accept that there will be social effects on the Pascoes during construction, in particular.

I would just note it is important to bear in mind that PWA includes a comprehensive compensation regime through the acquisition processes and Mr and Mrs Pascoe will, at least, be

re-housed by and at the cost of the Transport Agency during the construction period.

**THE COMMISSIONER:** It is Mr Napier that has been dealing with most of those issues.

**MR RYAN:** That is right. Again, until very recently, Mr Napier was responsible for engagement with all landowners, including the Pascoes and had a long series of meetings and discussions with the Pascoes; he would be the best person to ask about those issues.

**THE COMMISSIONER:** Sure, thank you.

**MR RYAN:** In terms of recreation effects, the direct effects relate primarily to the existing Mount Messenger and Kiwi Road Tracks. During parts of the construction period there may be some minor impact on the use of the Kiwi Road Track, as the project route crosses the track. But the Transport Agency is committed to maintaining access to the tracks, as far as practicable during construction.

Following construction access to both tracks will be significantly improved, given the provision of a dedicated

parking area. In response to submissions and the 42A reports, the Transport Agency has confirmed it will also consider providing walking and cycling trails in the vicinity of the alignment and a rest area along the project route. Heritage effects, Dr Clough's key conclusions:

"Construction of the project may affect the remains of part of a historic pack track. No known archaeological sites associated with Māori settlement will be affected by the project and the potential to encounter such unknown sites is low, given the nature of the environment."

Dr Clough considers:

"The pack track and section of early erode alignment would ideally be avoided by construction."

If that is not possible, then my understanding is it is not yet clear whether or not that is possible. Effects can be appropriately mitigated through archaeological recording under the provisions of the Heritage New Zealand Act.

As recommended by Dr Clough:

"Designation conditions are proposed to address any accidental discovery of heritage remains or ko iwi tangata. The Transport Agency has applied for a project-wide archaeological authority."

Again, there is a District Council peer review effectively concludes there are no major issues in terms of heritage effects. Construction Water, the Transport Agency recognises the importance of addressing and managing erosion and sedimentation risks. Of course the Transport Agency is particularly experienced in doing that. Mr Ridley explains that while earthworks will be carried out over a 36 hectare area, that is in fact a relatively small-scale earthworks project in State Highway terms and the earthworks are also relatively small scale in the context of the size of the two receding environments, the Mimi and Tongaporutu catchments.

The Transport Agency guideline on erosion and sediment control has been adopted and that represents industry best practice. A detailed Construction Water Management Plan has been developed to set out the overall approach and guidance for Construction Water management. This will be a live document alone for continuous improvement.

Specific Construction Water Management Plans will be developed to provide more detail in respect of each area of work and three of those specific plans have already been developed and are ready to be approved through this hearing process. Monitoring during construction is also important. There is a

detailed Construction Water discharge monitoring programme that is being developed.

Mr Ridley has consistently reiterated through his three statements of evidence that with the CWMP and CWDMP framework in place, the erosion and sedimentation effects of the project will be negligible. In his rebuttal evidence Mr Ridley reiterates the conclusions he reached previously. He states he considers Mr Duirs, on behalf of DOC, is overstating the erosion and sedimentation risks of the project, that risks associated with the project had been clearly recognised and accounted for and that the erosion and sedimentation effects of the project will be negligible.

Just in respect of the updated Regional Council supplementary report, which focuses primarily on these issues, our understanding is the remaining concern from the Regional Council relates to baseline monitoring for sediment discharges and there are specific comments on conditions to that end.

That, in turn, means the Regional Council has residual issues with the Construction Water discharge monitoring programme. As far as we understand, the Regional Council does not have issues with the Construction Water Management Plan

itself, bearing in mind that the monitoring programme is an appendix to that plan.

Construction traffic, there will be temporary adverse effects on State Highway 3 users during construction, relatively minor in the context of a major highway project, bearing in mind this is an offline development. Construction traffic and interaction will be managed through the Construction Traffic Management Plan and the District Council section 42A report notes that:

"The Transport Agency are, of course, experts in managing interruptions to the State Highway."

In terms of noise and vibration, again, there are only a small number of residents that are potentially susceptible to noise and vibration effects during construction and once the highway is operational. In his evidence, Mr Ellerton identifies that construction noise levels will generally comply with the relevant criteria, two possible exceptions being at 2397 Mokau Road, which is the Gordon property and that is because it is in close proximity to a spoil disposal site.

Potentially, also, where night works occur in close proximity to dwellings, traffic noise levels will comply with



the relevant standard and, in simple terms, there is no issue with construction or operational vibration. It has also been assumed again, as reflected above, that the Pascoes house will be vacant during the construction period.

A Construction Noise Management Plan is being prepared to manage potential construction noise effects, particularly on those two exceptions noted above. The proposed conditions require compliance with construction noise standards, subject to exceptions specified in the management plan.

Air quality and dust, potential effects in that respect are again limited to the small number of residents in the immediate project area. The Regional Council agrees that dust effects will be minor. A Construction Dust Management Plan has been prepared and will be implemented.

Again, just referring to the supplementary Regional Council 42A report, again, we understand that overall reader rates the Regional Council is comfortable with, the one comment being that further detail is sought in terms of liaison with the three sensitive dust receptors during construction and the Transport Agency will consider that and Mr Roan can address that in his evidence later on in this hearing.

Lighting, there will be temporary lighting during construction. Any potential amenity effects will be managed in accordance with the CEMP. Once the project is operational, lighting will be provided in the tunnel and at the tunnel approaches. The current intention is also to provide lighting with the interactions with the bypass section of State Highway 3, effectively at those intersections.

There is a potential -- well, the District Council has flagged a concern about that and the Transport Agency has responded that it will re-evaluate that intention at the final design stage. It is important to reiterate that in terms of operational lighting, State Highway safety will be our main priority, perhaps the main priority in that re-evaluation.

I am conscious of time, Commissioner, but I have probably only got three or four minutes to go on this section, if you are happy for me to finish.

**THE COMMISSIONER:** Yes, I think we should finish that and then we will take a break. Yes.

**MR RYAN:** Sure. Natural hazards, so we have talked about the benefits of the project in terms of the resilience of the new route, as opposed to the current situation. The District Council records the current highway is prone to natural hazards, whereas Mr Symmans states that the project can be constructed to provide a resilient section of State Highway.

The supplementary District Council section 42A report appears to confirm the District Council's agreement with that position. Several submitters raised concerns about possible fog, black ice and flooding in the Mangapepeke Valley. Mr Boam has quite a comprehensive response to those points in his evidence. Just quickly, the District Council does not appear to raise any issues in that respect and, again, noting these are operational issues for the Transport Agency to manage.

Soil contamination and hazardous substances, so the Transport Agency has, as per to any soil, and noting the Transport Agency is seeking a consent under that national environmental standard, carried out preliminary and detailed site investigations in respect of ground contamination along the alignment and no major issues had been identified.

A Contaminated Land Management Plan has been prepared and will be adhered to. That management plan is now, effectively, complete and can be approved through this hearing process without the need for delegation. Just flagging again there the supplementary District Council report is seeking what I think it is fair to categorise as minor changes to the detailed site investigation, which was carried out after the main 42A report was written, to the CEMP and to the CLMP in terms of contaminated land. Again, that is being considered by the Transport Agency team and will be addressed during this hearing process.

**THE COMMISSIONER:** Will that be addressed before Ms McBeth does her ...

**MR RYAN:** Yes, so Mr Roan is due on once today but then again on Friday dealing with conditions and management plans, so I think --

**THE COMMISSIONER:** Yes, he will deal with that.

**MR RYAN:** -- he can address that issue on Friday.

**THE COMMISSIONER:** He will address the comments from the District Council then. Yes, thank you.

**MR RYAN:** Finally, land acquisition and property access, the Crown, of course, intends to purchase and provide compensation for land required for the project in accordance with the Public Works Act. Noting the Public Works Act provides for compensation also to be paid to landowners who have part of their land acquired and also suffer injurious affection, i.e. depreciation in value to any retained land. Importantly, potential effects on property values are not a relevant matter for consideration under the Resource Management Act.

The Transport Agency will ensure that all property owners, including those few landowners who rely on the section of State Highway 3 being bypassed, retain reasonable access to the State Highway following construction. This will be a key consideration in the relocation process discussed above and which you have discussed with Mr Allen previously.

**MR ALLEN:** The next section that gets interesting again and we are back to planning, so we can maybe look forward to that after the lunch break.

**THE COMMISSIONER:** Yes, I am sure everyone will be riveted by that, Mr Allen.

**MR ALLEN:** Thank you, sir.

**THE COMMISSIONER:** We will adjourn the hearing until 1.45 pm and start again. Just in terms of your programme, we will be here for the full three days, Mr Allen.

**MR ALLEN:** Yes.

**THE COMMISSIONER:** Our guesstimate is hopefully by about lunchtime Friday but I presume you will liaise with Mr McKay any witness moving-around to deal with that.

**MR ALLEN:** That is right and the key timings for today are 4.00 pm for the Skype call with Mr Napier and 4.30 pm with the Skype call with Mr Boam.

**THE COMMISSIONER:** Great, thank you.

**MR ALLEN:** Around those we are entirely flexible and in the Commissioner's hands.

**THE COMMISSIONER:** Thank you very much. Thank you, everyone, we will see you at 1.45 pm.

(A short adjournment)

**THE COMMISSIONER:** Thank you. Mr Allen, are we back with you, I think?

**MR ALLEN:** Thank you, Commissioner. We are at part E on page 54 of the opening and, as I alluded to, this section covers regulations, policy and planning documents and other matters. Now, I am going to go through this quite quickly. The various planning provisions are set out in the AEE and appendix A provides a review and statutory assessment of all the relevant objectives and policies. Equally, the evidence of Mr Dixon goes through the various planning provisions and the Council section 42A reports do as well.

**THE COMMISSIONER:** Do we need to go to this at all? I think I have read that and I have read the Council's position. I do not think there is any contention.

**MR WINCHESTER:** No, I agree, your Honour. Maybe if --

**THE COMMISSIONER:** Highlight any points you would like to.

**MR ALLEN:** Your Honour, there we are.

**THE COMMISSIONER:** I missed that.

**MR ALLEN:** Thanks, Mr Winchester. Yes, thanks, Commissioner. Maybe then if we could just turn to page 58 briefly because it is covered in the evidence of -- I am on page 56, paragraph 227(e), there is brief mention there and I will just highlight it for the Commissioner's reference on tangata whenua values and cultural heritage and footnote reference there to various planning provisions.

Just highlighting that because Mr Carlyon does pick up on some of those provisions in his evidence and can answer any questions at any time through the hearing on the particular wording. Equally, because Mr Inger picks up on it in his evidence, paragraph (f) on biodiversity and water quality. Noting there many of the objectives and policies relate to maintaining and enhancing. There is also, one could say, another theme as far as practicable and that is highlighted through footnote 250 in some of the references there. For example:



"Only plans have these types of provisions but in the RPS bio-policy 2 requires adverse effects on indigenous biodiversity to be avoided, remedied or mitigated, as far as is practicable."

Policy 7 requires the maintenance and enhancement of indigenous biodiversity. Consideration will be given to the social and economic benefits of appropriate use and development, et cetera. Just briefly pick out those points in the planning provisions and at 228, as you say, and then through the 229, those provisions, I think, in terms of the relevant provisions with the Council's, there is alignment and then briefly other matters as well, which I will not refer to; the Commissioner has already read them, in which case we turn to part F.

**MR RYAN:** Commissioner, part F is about, effectively, sections 171(1)(b) and (c), obviously relevant to your consideration of the notice of requirement:

"(b) Requires a Commissioner to have particular regard to whether adequate consideration has been given by the Transport Agency's requiring authority to alternative sites, routes or methods or of undertaking the work."

There is an "if" there but the Transport Agency accepts that this requirement does apply. Then under section 171(1)(c):

"The Commissioner is required to have particular regard to whether the work and alteration to the designation are reasonably necessary for achieving the objectives of the required authority for which the designation is sought."

In terms of alternatives, Commissioner's role is to inquire into the process followed by the Transport Agency in considering alternatives. I just note the High Court comment there:

"It is essentially an examination of the processes and consideration adopted by the requiring authority and the exercise of a judgment by the territorial authority or court as to whether that consideration has been, in its view, adequate."

What constitutes adequate consideration is a broad issue involving questions largely of fact, rather than law. More recent High Court case law has established that what is required to demonstrate adequate consideration will be very much circumstances dependent, in particular the extent of effects the proposal will have on the environment and the effects on private property are key factors.

But it is important to note that adequate consideration does not require the Transport Agency to demonstrate it has considered all possible alternatives or that it has selected the best of the available alternatives. The choice of site route or method remains the Transport Agency's to make. That decision is

not itself subject to challenge under the RMA. The Transport Agency was required to have particular regard to the information obtained through its alternative assessment but was not obliged to choose the best option.

In this case the Agency's process of considering alternative options has been meticulous and thorough and that is a proper reflection of the significant effects the project will have on the environment and the relatively large area of private land, noting in particular the Treaty settlement land that is required for construction of the project. The alternatives process was centred on a two-stage MCA process carried out in 2017 and led by Mr Roan. I have listed there the key features of that process, which I will not take you through.

Following the shortlist MCA process, i.e. the second of the two stages in the MCA, further refinement of the shortlisted options was considered and cost estimates were prepared. The Transport Agency then received and considered all of this information and determined that it would take forward what was termed shortlist option E as the project option. The Transport Agency's position is its consideration of alternatives was robust and certainly adequate and that the choice of option E was reasonable.

The District Council section 42A report records that Ms McBeth was satisfied with respect to what section 171(1)(b) requires, having correctly noted:

"It is not the Council's role to state whether we agree with the option selected, rather to consider whether adequate consideration has been given to alternatives."

I will just pause to note, Commissioner, that that conclusion has, effectively, been restated in the supplementary District Council report and there is a footnote in the submissions to that effect.

**THE COMMISSIONER:** Yes, I just observe in that latest report from Ms McBeth the two AECOM engineers, Mr Doherty and Mr Allison, are still -- I will use the word niggling away at the Z option --

**MR RYAN:** Yes.

**THE COMMISSIONER:** -- wanting some more clarification on some particular points, which I will put to probably Mr Roan and the other witnesses this afternoon because there is still some residual issues they have in their mind. But I think Ms

McBeth's position was that she got to the point that the selection of E was appropriate.

**MR RYAN:** Yes, I think that is a fair summation, Commissioner. I will just add one point that the reference in the supplementary report to the idea that two experts might arrive at different conclusions in terms of how they would assess options, that is, of course, not a flaw in the process. In fact the process is designed to rely on expert assessment, so the Transport Agency would reject any assertion that that demonstrates a flaw in the process, that other experts might reach a different conclusion as to relative merits of different routes.

**THE COMMISSIONER:** That is a merits-based position, rather than a process issue.

**MR RYAN:** Exactly, exactly.

**THE COMMISSIONER:** Yes.

**MR RYAN:** In terms of reasonable necessity for achieving the project objectives, that requires an assessment of whether the project and alteration to the designation are reasonably

necessary for achieving the Transport Agency's objectives, which I have taken you through, the term reasonably necessary has often been applied as falling between expedient or desirable on the one hand and essential on the other. But section 171(1)(c) does not require or allow for an assessment of whether the selected form of the project is the best way of achieving the objectives.

I will not take you through that High Court passage there. But at 251 we just emphasise that this is not an opportunity to re-examine the analysis of alternative options for the project. The inquiries under 171(1)(b) and (c) are separate. To that end, the Environment Court fairly recently was critical of an opponent of an NOR who sought to enlarge upon the examination of alternatives through the vehicle of section 171(1)(c).

In our submission, the original section 42A report from the District Council appears to conflate the two provisions. In any event though, it seems the issue flagged in terms of the online route option has been resolved, at least between Ms McBeth and the Transport Agency. Following the lodgement of the Transport Agency's evidence-in-chief, as Mr Roan records in his supplementary evidence:

"Ms McBeth confirmed she accepts the basis for the Transport Agency's selection of option E."

Again, the conclusion is now formally recorded in the supplementary District Council report. Again, there is a footnote to that effect there.

**THE COMMISSIONER:** Yes, I have some questions for Mr Roan about that.

**MR RYAN:** Sure.

**THE COMMISSIONER:** But there is some new information now, so I will still have that discussion but ...

**MR RYAN:** Okay.

**THE COMMISSIONER:** Thank you for that.

**MR RYAN:** Sure. Then just this is a pretty simple run-through of why in fact the proposed works are reasonably necessary to meet the objectives and it is, effectively, to deliver those key benefits that the objectives talk to, so I will not run you through those again. But to put it simply, it would be very difficult to deliver these benefits and achieve the project

objectives without this project to upgrade. By this project I mean, of course, the project to upgrade this section of State Highway 3.

Then that last section there, it just briefly explains why the use of the designation tool itself is reasonably necessary. I will not take you through that, Commissioner. But in simple terms I think it is reasonably well acknowledged that designations in these circumstances are preferable to land-use resource consents.

**MR ALLEN:** Turning now to part G and conditions, so we will move straight to 259, the Transport Agency has proposed a robust set of conditions for the altered designation and the consents and that is addressed in the evidence of Mr Roan. This touches on a comment from the Commissioner this morning.

Central to the Transport Agency's proposed set of conditions is the detailed suite of management plans, most of which have been developed for the full consideration of the Commissioner through the hearing process. As normal, these conditions will be refined through the hearing and, ultimately, at closing submissions. In terms of general principles, we have



already addressed section 108A (a), which is set out at paragraph 260.

Moving to management plans, management plans commonly form part of the conditions framework, as they provide a means for appropriately managing construction effects through the subsequent construction operational phases of the project. A standard approach is often management plans are quite skeletal and developed in advance of the hearing in a skeletal manner, with conditions then being imposed that require the detail, set out the objectives, et cetera, through the condition set.

When management plans are utilised conditions are important to ensure the management plan regime operates properly. Conditions should contain quantifiable standards and performance criteria. Do note there the Supreme Court, not the main King Salmon case but one of the side King Salmon cases, did accept qualitative objectives as well. It is against those criteria which the proposed management plans can be assessed and subsequent operation of the management plans can be measured.

That touches on the comment the Commissioner made this morning as to how the Agency is proposing the management plans and the conditions fit together. Very much of the mind the

conditions lock in the key parameters. The management plans set out how those parameters will be met and achieved.

In this case the management plan process has been advanced well beyond normal. A large amount of that has come from the alliance model with the construction team being involved. This is a benefit as it provides submitters, the Councils and the Commissioner with greater certainty as to principles, methodologies, procedures and the project to achieve the environmental outcomes and performance standards required by the proposed conditions.

Taken from Mr Roan's evidence-in-chief and, sorry, I forgot to reference that but from memory it is page 39, is the designation and resource consent conditions and the management plan framework. Just going through it, as per the words I have just used, the conditions sit at the top, they lock in the framework. Below the conditions is the Construction and Environmental Management Plan and that is a behemoth that consists of a multitude of other management planning documents.

The Commissioner will be familiar with this type of regime, it is a standard regime for larger projects. There is the ELMP, the Ecological and Landscape Management Plan, Construction Water

Management Plan and, as Mr Roan has already mentioned, fitting under that are the likes of the Construction Water Monitoring Plan; it has got a different name. Luckily, Mr Ridley is not here to hear me not get it right. Construction Dust Management Plan, Contaminated Land Management Plan, Accidental Discovery Protocol, the Construction Traffic Management Plan and the Construction Noise Management Plan.

Just there was a question from the Commissioner this morning and just touching on it, in terms of the ELMP, the Commissioner will have a copy from the supplementary evidence of Mr Roan. Just by way of brief summary in light of those comments, beyond the sort of introductory blurb, the ELMP has an ecological and landscape mitigation strategy and framework at section 3. At section 4 it goes through the Landscape and Vegetation Management Plan, so, in effect, it is a conglomeration of a number of plans.

At section 5 it has the well-worded Bat Management Plan. Then at 6 is the Avifauna Management Plan, 7 the Herpetofauna Management Plan, 8 is the Freshwater Ecology Management Plan, 9 is the Pest Management Plan, 10 is the Peripatus Management Plan, 11 is the Biosecurity Management Plan and then at the end there is roles and responsibilities, which is very important in

terms of who is doing what and training and that is section 12. Section 13 sets out the review process.

Each of those management plans themselves are comprehensive internally and picking one at random, seeing I am on the page, the Peripatus Management Plan, for example, sets out scope and objectives, which touches on the Commissioner's comments of objectives. Survey overview, statutory context, ecological impacts on peripatus, peripatus ecology, peripatus management within project footprint through avoidance minimisation mitigation, pre-construction habitat assessment and the peripatus translocation plan, which is a separate plan sitting in under the Peripatus Management Plan, which sits in the ELMP; reporting, permitting requirements and references.

Each one of those plans has a similar structure. The key being, of course, with them of being very clear as to the expected outcomes or purpose of each of the plans or objective. That is just a brief summary of the ELMP.

Then moving on at 266, as has already been mentioned, the management plans, except for some of the -- I call them shrimps but that is not -- SCWMPs, which are the Specific Construction Water Management Plans, have been prepared and the Transport

Agency seeks through the Commissioner's decision that they be confirmed. Therefore, for those plans approved by the Commissioner, the Councils do not have a certifier role. There was some discussion with the District Council in terms of certifier, however, this appeared to be more related to the detail of the plans at the time. From the updated report of 30 July this concern is no longer held, is our understanding.

In terms of updated conditions, at 267, as I mentioned earlier, on the third line here in the second sentence I have said, "Ms Roan's rebuttal"; it should be Mr Roan's supplementary. I apologise for that. The latest version of the conditions are as per Mr Roan's supplementary evidence and, like with the management plans, the conditions will be revised during the hearing and final sets will be developed. Mr Roan's evidence explains how the conditions have been developed and modified over time. His evidence also goes through the structure of the conditions. If it would assist the Commissioner, I am happy to go through the actual conditions themselves but given timing and the fact that Mr Roan will be as a witness before you, it might be easier that we leave that.

But the general theme is general conditions upfront and then specific conditions going through for the designation and

for the resource consents a general set of conditions and then relevant subsets of conditions for the various consents.

**THE COMMISSIONER:** Yes. Look, I think Mr Roan is your last witness on Friday, because we have got that extra time in the afternoon I really would appreciate some more detailed discussion on those conditions when Mr Roan --

**MR ALLEN:** It is very important, obviously, for the Transport Agency because that is where all of this restoration package --

**THE COMMISSIONER:** That is right.

**MR ALLEN:** -- and all of the various matters, all actually the rubber hits the road.

**THE COMMISSIONER:** Yes, certainly.

**MR ALLEN:** A more blow-by-blow step through with you we would very much favour.

**THE COMMISSIONER:** Yes. Just signalling to the other parties, like while administering the conditions, obviously they only get to surface if we are recommending confirmation of the

requirement and the consents. But it is quite important too that I fully understand those. I will have a full discussion with Mr Roan on those on Friday.

**MR ALLEN:** On Friday, thank you, Commissioner. Just checking that last part, I think that there is a few technical issues in 273 but I think in light of the recent nature of the Council's updated section 42A reports again, I will leave that to Mr Roan to discuss on Friday.

Turning then to lapse in term, the term sought for the Regional Council consents is 35 years. Given the extensive steps to avoid remedy, mitigate, offset, compensate and the significant positive effects of the project, it is submitted a full 35-year term is appropriate. As far as counsel is ready, no party seeks a different term.

As noted in the TRC section 42A report, regional land use consents can be granted in perpetuity and the Agency considers that would be appropriate. In relation to lapse period, TRC considers the default lapse period of five years to be appropriate. The Agency sought ten. It is submitted that, given the scale of this project, its cost and its significance

to the region, utilising the standard five-year lapse period fails to achieve sustainable management.

While it is intended to get on and construct the project, the funding for the project could be delayed, given, obviously, the various demands on the Land Transport Fund. It makes sense also, given the project's significance, that when the funding stars align that the project is ready to be constructed and that should be not Council, as in the Council, but counsel. Further, as far as counsel is aware, no submitters sought a shorter lapse period.

In terms of the ten-year lapse for the alteration to the existing designation, that was sought in the AEE. Mr Roan mentions in his evidence-in-chief that legal submissions would address this point. As the notice of requirement is to vary in existing designation, there is no ability to impose a lapse period. That makes sense, given the designation is actually already in existence and no lapse period can be imposed.

Turning then to part 2 assessment, there is some commentary there on the traditional post-King Salmon case law approach. I propose, if it suits the Commissioner, to go straight to paragraph 286, unless there is particular King Salmon, Davidson,



Basin Bridge questions that the Commissioner would like to discuss. I do note, as per the footnote and as the Commissioner will be aware, Davidson decision is presently awaited from the Court of Appeal.

**THE COMMISSIONER:** Sure.

**MR ALLEN:** In terms of 286, that sets out the current legal position for the assessment of the Commissioner. The Commissioner is required to apply the traditional overall broad-judgment approach in respect of the NOR, following the Basin High Court decision and the Commissioner should only refer back to part 2 if there is invalidity, incomplete coverage or uncertainty of meaning in the planning documents in respect of the resource consents, following the Davidson High Court decision.

However, in paragraph 287, given the nature of the project, the assessment of the NOR will, in practice, be very similar to the assessment of the resource consents. The Commissioner will, in our submission, need to carry out a weighting of relevant factors with proper regard to any directive policies and nuances for the resource consents. However, the project is consistent with the relevant objectives and policies and the relevant

planning documents. Therefore, it is submitted the outcome of the two processes, whichever way it goes, are that the NOR can be confirmed and the consents can be granted. Obviously, the NOR is a recommendation to be confirmed.

Turning to section 6 and, again, this starts to become repetitive of what we have covered earlier. What I am minded to do is just to go some of the key provisions in sections 6, 7.

**THE COMMISSIONER:** Thank you.

**MR ALLEN:** I will do section 6(a) because actually there is some issues with Mr Inger on that one; preservation of the natural character of the coastal environment. The project appropriately reflects that and that is relying on the evidence of Mr Ridley, Hamill, Dr Neale and Mr MacGibbon. The project has been designed to avoid Parininihi, the Mimi wetland and through the Mangapepeke Valley; the effects on natural character of the stream have been reduced by it being shifted to the roadsides. Mitigation measures include the fish passage, et cetera.

Mr Lister's evidence is that the adverse natural character effects will be moderate. Mr Dixon's opinion that the project mitigates these effects on natural character, residual effects

are unavoidable. It is submitted and addressed in TRC's section 42A report that offsets compensation through the restoration package will appropriately address that.

Mr Inger's evidence appears to be that because the project will have unavoidable effects, preservation will not be possible. However, the requirement is not absolute and Dr Neale's evidence is clear as to the suitability of the riparian planting offsets and their additional benefits. Further, it is to be assessed against the values being protected and the appropriateness of the project against those values, such that it is submitted that with the mitigations and restoration package proposed, the project recognises and provides for this provision.

Section 6(c) I will briefly mention again because of issues with DOC. Sections 6(a) and 6(c) are the only two sections Mr Inger's evidence addresses. As set out in the ecology effects section above, the project area contains high-quality indigenous biodiversity. As we have discussed, the project seeks to avoid and mitigate those effects. Again, Mr Inger's position appears to be unavoidable effects, preservation will not be possible, although he fails to mention that there is the declining state

of indigenous biodiversity in the project area, especially in relation to kiwi and bats.

Again, the requirement is not absolute. There are, in terms of the environment and the values, as we have already mentioned, the effects of clearance, farming and pests and there are no SNAs affected and that includes in the proposed plan that -- well, draft plan that is currently being developed. There is also extensive restoration and mitigation and it is a core part of the project and the Agency's experts consider the effects of being appropriately mitigated.

Turning to 6(e), which the Commissioner has raised with my colleague, Mr Ryan, there are the methods that the Commissioner has already set out in terms of the LEDF, the Kaitiaki Forum Group and then the property-related agreements beyond the RMA. Again, here this provision is covered in detail above through the engagement and the cultural impact assessment that has been provided by Ngāti Tama. The relationships with section 6(e) are well understood.

Significant effort has been put in to avoiding mitigating and compensating adverse cultural effects. Mr Carlyon raises issues on behalf of Te Korowai in relation to this provision.

In this case the Transport Agency's position that it will not use the PWA to attempt to compulsorily acquire Ngāti Tama's land is specific recognition of protection of section 6(e) values and that is outlined, as already addressed, in Mr White's evidence.

Turning to section 7 of those matters, again, I do not propose to address, unless there are particular ones there that the Commissioner has issues on or maybe in terms of the effects of climate change. Down at 7(i) there are comments in various section 42A reports about the project decreasing CO2 emissions. The project will result in a decrease of CO2 emissions but my understanding is section 7(i) relates to the effects of climate change actually on what the project is. The project is being developed, as you have heard, to be resilient, et cetera, to the effects of climate change.

**THE COMMISSIONER:** Can I take you back to 7(a), Mr Allen?

**MR ALLEN:** Yes.

**THE COMMISSIONER:** Are you familiar with the recent court decision on Rotokawa and --

**MR ALLEN:** The Tuwharita Māori Trust Board decision.

**THE COMMISSIONER:** Yes.

**MR ALLEN:** Yes.

**THE COMMISSIONER:** There was a contest about who was mana whenua, I suppose, and they arrived at the position that kaitiaki conditions did not have to be just based around one party, there could be more than one party involved in those. Have you reflected on that in relation to the various parties involved here?

**MR ALLEN:** Yes, and that is a matter in terms of the evidence that we need to hear through this hearing. There is going to be evidence from Ngāti Tama, Poutama and Te Korowai. As a result of that evidence come closing submissions, et cetera, we will be able to review and reflect on how the conditions should be drafted.

**THE COMMISSIONER:** Sure.

**MR ALLEN:** As Mr Ryan said, the key approach of the Agency is to listen to the cultural issues raised and then we can respond to them.

**THE COMMISSIONER:** At the moment you have got an open mind about what comes out of the CIA and that discussion and --

**MR ALLEN:** Presently have an open mind, we need to first receive and then review and consider Poutama's CIA. We need to listen to the evidence Te Korowai will present.

**THE COMMISSIONER:** Okay, thank you.

**MR ALLEN:** Just moving then to section 8 matters, the Transport Agency has carefully taken Treaty principles into account. They have been at the forefront of the project with Ngāti Tama involved in a robust and meaningful way, as partners from the start.

The Transport Agency commitment, again, not to attempt to use the PWA, means that Ngāti Tama has the ultimate say as to whether the project and its effects, both positive and negative, align with its tikanga of mana whenua, kaitiaki and Treaty principles. Again, the evidence of Mr White is that retaining the ability to say no recognises and gives supremacy to its tikanga and on that basis Te Rūnanga has resolved to support the RMA approvals being granted.

Then turning to section 5, again, this is slightly a summary, these paragraphs. You have heard before about the significant benefits of the project in terms of the improvements to State Highway 3. The project will sustain the potential natural and physical resources. It will ensure recognition of and provision of the tikanga mana whenua and cultural values of Ngāti Tama. The project will, with the proposed conditions, management plans, restoration package, safeguard and, in many cases, enhance the life-supported capacity of air, water, soil and ecosystems and, inevitably, there will be residual adverse effects.

The Agency has gone to significant lengths to ensure that adverse effects are avoided, remedied, mitigated, offset or compensated to an acceptable level. In a number of cases, for example, biodiversity, to achieve net benefit after 15 years and benefits well in excess of the project's effects. The scale and degree of such effects do not outweigh the significant benefits identified.

Mr Inger, in considering part 2, is of the opinion consent should be declined, unless a larger PMA is provided. However, he gives scant regard to the positive effects and provides no



assessment of the relevant positive objectives and policies, nor a full overall statutory assessment. He only assesses selected parts of section 5. It is submitted that his approach to cherry-picking provisions and failing to assess all relevant matters is inconsistent with the code of conduct and his evidence should be given little, if any, weight.

Mr Carlyon adopts a similar approach, focusing solely on cultural matters, not mentioning or considering the positive effects and not undertaking a full planning or statutory provisions assessment. Again, it is submitted that fails to comply with the code and should be given little or any weight. The District Council --

**THE COMMISSIONER:** Sorry, Mr Allen, just to interrupt you there, so your position is that, as expert planners, having signed the code of conduct, these planners should have looked at the whole planning and statutory background in forming their opinion in their evidence; that is essentially what you are saying.

**MR ALLEN:** That is exactly what I am saying the code of conduct requires. It requires a full assessment, not a cherry-picking assessment. To rely on only certain policies or objectives or only certain provisions of part 2 and ignore or at least within

your evidence not fail to assess the benefits, for example, is a clear example of cherry-picking and then coming to an overall part-2 decision that ignores core components of part 2.

**THE COMMISSIONER:** I have certainly been in some court hearings where those sorts of issues have been raised by judges. Is there any case law around ...

**MR ALLEN:** There is a lot of case law around it. I have tried to keep it succinct here but certainly in closings --

**THE COMMISSIONER:** But this is certainly quite a serious allegation --

**MR ALLEN:** Yes.

**THE COMMISSIONER:** -- in terms of parties' experts and their evidence. I think --

**MR ALLEN:** I can provide an update of the case law ...

**THE COMMISSIONER:** I think that would be appreciated, thank you.

**MR ALLEN:** Thank you. We can provide that before Wednesday next week --

**THE COMMISSIONER:** Yes.

**MR ALLEN:** -- such that other parties can respond to it as they wish.

**THE COMMISSIONER:** You also made a comment about Dr Barea as an expert --

**MR ALLEN:** The same and then I can add them to the list.

**THE COMMISSIONER:** -- and slightly different, it was about him making a judgment. But, as I say, I think those are quite serious positions you are taking and just having that supported with the appropriate case law --

**MR ALLEN:** With all of them we have backed it up that that is our position but, irrespective, we have addressed their concerns, et cetera. For example, the cultural effects had been considered through the relevant objectives and policies and we have considered the relevant cultural parts within part 2. The full assessment has been done, irrespective of where the

Commissioner may or may not find how much weight is to be given to their evidence.

**THE COMMISSIONER:** But, essentially, on evidential matters I am required, when there is a contest, to look at ...

**MR ALLEN:** That is why we have raised it, is there are contests on these matters and, therefore, it is important that weight is appropriately accorded to independence and experts.

**THE COMMISSIONER:** Thank you.

**MR ALLEN:** Thank you. Just turning at 313 to the District Council's section 42A report, that concludes that if the Transport Agency can satisfactorily address the key areas of concern, then the NOR and the contaminated land consent can be granted, recognising, of course, that assumes that all the Council's areas of concern are addressed before those consents can be granted, then the TRC section 42A report adopts a similar outcome.

Ultimately, the project presents an opportunity to address the longstanding problem of the transport route through the Mount Messenger section of State Highway 3. As was mentioned

earlier, consideration has been given to this since the 1970s. The project, as presented, addresses that problem in a responsible manner from an environmental, cultural, social and economic perspective. The Transport Agency's efforts to avoid remedy, mitigate, offset and compensate for the project's effects have been extensive and unprecedented.

The Transport Agency's experts are all of the opinion that the project's effects have been appropriately addressed and the project is consistent with the relevant objectives and policies. The project will achieve the sustainable management purpose of the Act and for that reason it is submitted that the notices of requirement should be confirmed and the resource consent applications granted.

**THE COMMISSIONER:** Thank you very much.

**MR ALLEN:** Thank you. Hopefully, Commissioner, you have got the appendix, which is a separate document with the witness batting list.

**THE COMMISSIONER:** Yes.

**MR ALLEN:** Apart from questions then, the one thing I would mention is due to other commitments, the Agency will start with Mr Dreaver, who is number 3 on that list and then we will go to Mr Roan.

**THE COMMISSIONER:** Thank you.

**MR ALLEN:** Just with legal submissions taking slightly longer than anticipated but open for any questions that you may have, sir. Equally, any questions during the hearing, we can take notes of and respond to.

**THE COMMISSIONER:** I came with my questions on the way through, so I think we should just move to the witnesses now. Thank you.

**MR ALLEN:** Yes, brilliant. On that basis then we have got the summaries for the witnesses for today and we will hand those out.

**MR RYAN:** We will just do that one at a time, Commissioner.

**THE COMMISSIONER:** Yes, thank you. Mr Dreaver, I think you have produced evidence-in-chief, supplementary evidence and rebuttal evidence.

**MR DREAVAR:** That is correct, yes.

**THE COMMISSIONER:** I think if you could just take us through your summary, it would be good, thank you.

**MR DREAVAR:** Okay, sir. If you do not mind I might just start with a brief mihi.

**THE COMMISSIONER:** Yes, sure, certainly.

**MR DREAVAR:** (Māori spoken) Sir, I will just run through, as suggested, my summary of evidence. My first involvement with Ngāti Tama was back in the late 1990s when I was the manager at the Office of Treaty Settlements, responsible for negotiating the historical treaty settlement with Ngāti Tama, along with other members of what was called at that time the Northern Taranaki Alliance. I worked to complete the treaty settlement with Ngāti Tama and a number of other iwi in Taranaki.

I have maintained contact with Ngāti Tama since that time over the last 15 to 20 years. The Transport Agency asked me to provide them with assistance, ready to play three different roles; first to advise on the overall strategy for engaging with

Māori and iwi interests for this project, secondly to facilitate that engagement where necessary, and thirdly to lead negotiations with Te Rūnanga o Ngāti Tama on a compensation and mitigation package. I have been engaged in those functions, really, for the last two years.

The Ngāti Tama treaty settlement, which did not come into force until 2003 but was pretty well negotiated by 2000, was a long-negotiated treaty settlement. It included a very significant transfer of what was then Department of Conservation administered land around Mount Messenger, and as the manager in the Crown at that time I well recall how significant that piece of land that significant transfer was to Ngāti Tama. It was the largest transfer of conservation land at that stage in any treaty settlement, and it was pretty critical. I think it was critical to Ngāti Tama agreeing to settle their historical treaty claim. It has always been a very important part of their whenua, and there was a lot of expectation when that land was returned to them that it would help restore their mana.

At the same time as the settlement was agreed the Crown agreed to the establishment of an entity on behalf of Ngāti Tama members called Te Rūnanga o Ngāti Tama. It went through a vigorous process of review, and the Minister of Māori Affairs and



Minister of Treaty Negotiations at the time both endorsed that entity, that Rūnanga is the appropriate entity, and the treaty settlement legislation transferred all the rights and obligations of settlement to Te Rūnanga o Ngāti Tama.

Te Rūnanga has continued to play roles not just with respect to that treaty settlement but in other aspects of working with Crown agencies on behalf of Ngāti Tama, whether it is radio stations or Taranaki Mouna negotiations. They are well recognised across Taranaki and by Crown agencies as the key point of contact for Ngāti Tama.

When I was first asked to advise on this project and the impact on iwi interests it was clear from the outset this was something that was unique in terms of modern day public work projects, because it required the acquisition of land that was treaty settlement land, returned in a treaty settlement. To make matters worse, it was land that had been originally confiscated by the Crown, so it was very clear from the start that we needed to build a strong relationship with Ngāti Tama and think very carefully about how to manage those interests.

Ngāti Tama from the first meeting were very clear that they were not prepared to tolerate compulsory acquisition of their

land for this project. The Transport Agency agreed to a comprehensive structure of engagement with Te Rūnanga on behalf of Ngāti Tama, ranging from regular governance meetings between Te Rūnanga trustees and the senior members of the Transport Agency, and then the alliance when that was established to undertake the project.

Involving Te Rūnanga trustees in the multi-criteria analysis to identify the best, or the least bad, option for the route, the negotiation of compensation and mitigation, which I was primarily responsible for, meetings on environmental assessment, site meetings, walking the land with Te Rūnanga members, meetings to establish a cultural monitoring framework, and that is still underway as the negotiations over compensation and mitigation, and the Transport Agency and the alliance also attended a number of hui called by Te Rūnanga to brief its members on the project primarily at Pukearuhe Marae, the primary and sole Ngāti Tama marae here in Taranaki. More recently there has been a Rūnanga member detailed to work on the design and construction issues around the route. There has been a pretty, I think, comprehensive set of engagement with Te Rūnanga, and I think Te Rūnanga's own evidence from Mr White acknowledges that comprehensive nature of engagement.

Critically, as I said earlier, the first thing that I advised the Transport Agency was that we were not going to secure a compulsory acquisition of land from Ngāti Tama for this project, and that was well recognised by the Agency from the start. A couple of months ago at a hui at Pukearuhe Marae the then project manager Rob Napier, who is going to be beamed in from South Africa shortly, presented the chair of Te Rūnanga with a letter from the Agency confirming that there will be no compulsory acquisition of Ngāti Tama land, that the project simply cannot proceed without Ngāti Tama's voluntary sale, relinquishment, of that land.

As I said, I've been primarily engaged in negotiating a compensation and mitigation package with nominees from Te Rūnanga. Now, that process is still ongoing. We are very close, I think, to having an agreement, but it is very multifaceted, and as comprehensive as any that I am aware of that have been entered into in the past with iwi or Māori groups around infrastructure projects.

It has a number of different elements. It has an acknowledgement of the cultural association of Ngāti Tama with the land. It has a proposal for a land exchange. There are about 22 hectares of Ngāti Tama land that would be required for

permanent acquisition, as well as some other impositions in terms of land to be leased and strata title to be taken. In exchange for that the proposal is to transfer to Ngāti Tama a 120-hectare farm at Gilbert Road, which is adjacent to the Ngāti Tama marae at Pukearuhe.

We are negotiating and have not reached a landing yet on a cash payment, which the agency will make to Ngāti Tama. The idea is that that would be held on trust for Ngāti Tama cultural purposes. As I say, we have not landed on the amount of that at this stage. There has been a lot of work with Ngāti Tama on the environmental mitigation package, which Mr Roan will be, I think, talking about, and in particular a focus -- given the very strong, great success that Ngāti Tama's own people have had with restoring the Parininihi block, which was returned to them in treaty settlement in very poor condition. They have now got it to the stage where the kōkako are being trans-located to Parininihi. They are regarded as one of the top performers in terms of pest mitigation, so we are working closely with them on the extent to which they could actually undertake as much as possible of any pest-mitigation package agreed as part of the project conditions.

There were questions from Ngāti Tama at the outset of our discussions with them about their relationship with the Department of Conservation, which they felt had actually deteriorated rather than being improved through their treaty settlement. The Transport Agency has to be careful not to stick its beak into the relationship with another Crown agency, but it has facilitated meetings with Te Rūnanga with the Department of Conservation at a senior level, and we are hopeful, and Te Rūnanga is hopeful, that that is going to lead to positive steps to address the quality of that relationship.

The work on procurement and job and training opportunities -- we have been working very closely with the Alliance Manager Hugh Milliken, who will be giving evidence later on exactly what range of job opportunities, but also contract opportunities, there might be for Ngāti Tama individuals or associated companies or entities. We are developing what I think is one of the more sophisticated processes for enhancing the opportunity for Ngāti Tama to benefit in that way from this project, if it proceeds.

As I said, there is ongoing involvement by Ngāti Tama in the design elements, design interpretation signage around the proposed route, and those discussions are well underway,

although no final commitments have been made to particular elements of that design framework. Finally, Ngāti Tama is going to be invited, should the project proceed, to play an active role in cultural monitoring of the project, which is as it should be and is the CG standard, of course, in these types of projects.

**THE COMMISSIONER:** Mr Dreaver, in your view this list of 7A to H, this agreement has not been concluded. Do any of these matters need to be included in the specific consent conditions for the requirement, or can they all sit comfortably outside of the resource consent conditions we have been considering? I am looking particularly maybe at 7D. Has there been some input from Ngāti Tama on some of those, and approval or otherwise to the conditions as they now stand?

**MR DREAVER:** There have been discussions with Ngāti Tama about the conditions. We have not yet reached an agreement on the conditions, and I understand that Te Rūnanga is keen to continue discussing those over the next few days with the Transport Agency. Certainly some elements of these, the bits that do not relate to property rights but around things like the environmental monitoring, and the design, and the cultural

monitoring, are all included in the draft conditions, and we need to obviously make sure that they align.

**THE COMMISSIONER:** Right. That is as I understood. Thank you for that.

**MR DREAVER:** In summary, my view of the process has been it has been very considered, it has been very thoughtful and proactive from the Agency, and there has been a lot of effort made by the officials from the Agency, many of whom have been working with Māori and iwi for the first time, or have not had a lot of experience in that to understand the issues and work closely with the Rūnanga and other Ngāti Tama in a respectful way.

There has also been engagement, of course, with other groups in the Taranaki area, and I note those in my evidence. First of all Ngāti Mutunga, whose northern boundary of their rohe is outside the project area. But the Mimi Stream, which is a key taonga for Ngāti Tama, its headwaters come through the project area. At an early stage the Transport Agency approached Ngāti Mutunga, talked to them about the project, and the agreement at that stage was Ngāti Mutunga said, "Keep us informed on a regular basis as to how the project is proceeding, but we, Ngāti Mutunga, are happy to defer to Ngāti Tama and to

Te Rūnanga o Ngāti Tama to represent any cultural interests that we may have in the project".

Those meetings have continued. There has probably been three or four of those, and most recently, about a month ago, two members of the Transport Agency and myself met with the chair of the Ngāti Mutunga iwi authority, who confirmed again his support for the engagement process that has been entered into and his willingness to defer to the views of Te Rūnanga on the project and its cultural impacts.

Ngāti Maniapoto potentially are more difficult, could have been a more difficult discussion, because while Ngāti Mutunga and Ngāti Tama have very clearly agreed boundaries between them, Ngāti Maniapoto's southern boundary in their estimation is the Wahanui line, which is south of the raupatu boundary. It is well within the Ngāti Tama rohe and would encompass the entire project area. There are discussions in another forum, the treaty settlement forum, where Ngāti Maniapoto are negotiating their treaty settlement; discussions between them and Ngāti Tama over whether there is an overlap in interests, where the line should be.



Very much to their credit, I think, Ngāti Maniapoto have said that they are happy to leave those discussions to the treaty settlement context, and then when it comes to this project they were again, like Ngāti Mutunga, happy to defer to Ngāti Tama and said Ngāti Tama will look after Ngāti Maniapoto's interest. Again, that has been confirmed in a letter of the last month or two, which I think might be attached to the evidence of Mr White. I am not 100 per cent sure of that, but certainly I can confirm that Ngāti Maniapoto have said they are happy for Ngāti Tama to be, and for Te Rūnanga to be, the key point of contact for the agency on this project.

**THE COMMISSIONER:** Mr Allen, is that in evidence, that letter?

**MR ALLEN:** Not as far as I am aware. Certainly from memory it is not attached to Mr White's evidence, but if Mr White has that then we can talk with Ngāti Tama about it.

**THE COMMISSIONER:** That would be good to see that, because it has been deposed as evidence. The fact that it exists --

**MR ALLEN:** The other key point is they did not make a submission  
(Overspeaking)

**THE COMMISSIONER:** That is right. I have that. Yes. Thank you, Mr Dreaver.

**MR DREAVAR:** Two further groupings; quite different sorts of groupings in my view. The first is Poutama. Poutama is a group that has asserted, and Mr Allen, I think, referred to them earlier -- a group that identifies as a separate group sitting between Ngāti Tama and Ngāti Maniapoto. There is no evidence that any other iwi in Taranaki or elsewhere recognises a separate Poutama grouping.

Both Ngāti Maniapoto and Ngāti Tama assert that the Poutama can whakapapa to them. In fact Poutama is an old ancestral name for Ngāti Tama. Notwithstanding these views, and again this was touched on earlier, the view of the Agency on my advice, as well as other's advice, was that it is not for the Agency to decide who is an iwi and who is not an iwi. But there were some Māori with an interest in the project area who said that Poutama represented their interests.

From late 2016 the Transport Agency held a series of meetings with Poutama to brief them on the project, but did so very clearly stating that Ngāti Tama were considered to be by dint of being the landowners and the recognised iwi, that there

was a separate process already established with Te Rūnanga and that we intended to continue in that process. Poutama at a relatively late stage in proceedings said they wanted to prepare a cultural impact statement, which the Transport Agency said it would fund. That has not been received yet, but I understand it is going to be delivered on about the 9th, next week some time, and that the Transport Agency will have the opportunity to respond to that. We await that.

At this stage there has been a walk over of some of the site with some of the Poutama representatives, and there have been assertions of interest from some of those members. But we are yet to see the cultural impact assessment, and the primary iwi group that I would still advise as the key group for the Transport Agency to engage with is Ngāti Tama.

The Te Korowai situation is different. Te Korowai is a recently formed group that is a group of Ngāti Tama members. This is not like Poutama arguing that they are a separate group altogether. They were recently incorporated. I note in my evidence that three of the key members of Te Korowai are also trustees of Te Rūnanga o Ngāti Tama, but there has been a governance dispute within Te Rūnanga and those three trustees

were suspended about seven months into our discussions with Te Rūnanga.

Until that stage those three trustees were able to participate, and two who lived in Taranaki did participate actively in the meetings at the governance level between the Agency and Te Rūnanga. Once that suspension happened the Agency was assured by Te Rūnanga that they would keep those three suspended trustees informed of the progress of negotiations, and we have been given emails and copies of emails showing consistent information being passed on by the chair of Te Rūnanga o Ngāti Tama to those trustees.

The trustees were also invited to participate, or able to participate, received invitations to participate, in Hui-ā-Iwi that Te Rūnanga held and hosted. I have been at one, possibly two, of those Hui-ā-Iwi, and I think one at which Te Korowai members themselves attended. The Agency and I are confident that Te Rūnanga has kept its membership informed through Hui-ā-Iwi and including those who are now involved in the Te Korowai grouping.

As I say, Te Korowai was formed only in late February, and so there has not been a lot of time for engagement, certainly no

time to engage with them before the closure of submissions. But there has been ongoing interaction between NZTA and Te Korowai, initially through their lawyer and more recently a face-to-face meeting in New Plymouth last week. Well, last week or the week before; within the last fortnight, anyway.

That was the first meeting with Te Korowai, was a without-prejudice meeting, which again the Transport Agency was clear that they were not recognising any separate entity but were engaging with Te Korowai because those were Ngāti Tama members who wanted to know about the project. We have an open mind about any further meetings with that group, but we provided information to them and their lawyers on the project.

Turning to the last page of my summary of evidence, I note in paragraph 14 that Te Rūnanga has moved from a neutral submission to a position of support for the grant of the RMA authorisations. That does not mean that Te Rūnanga has agreed to make their land available. That is still work in progress.

Paragraph 15 I note that a submission from Ms Bailey stated there was not sufficient or no engagement with Ngāti Mutunga or Poutama. I can clearly state there has been an effective

engagement with both of those groups over the course of the project.

In conclusion, probably four or five points: number one, I would submit that the Transport Agency has engaged with the right groups across the course of this project. They have engaged respectfully in a way that has been respectful with all of those groups. They made appropriate commitments, for instance, relating to the taking of land, that they will not seek to take any land compulsorily from Ngāti Tama.

That the Agency is working on a comprehensive cultural mitigation package with a large number of novel elements, as well as some standard elements, and that Te Rūnanga, from my observation, has engaged with its members over the course of our work with Te Rūnanga and has kept members informed appropriately on the progress of its engagement with the Agency.

**THE COMMISSIONER:** Thank you, Mr Dreaver. In terms of questions, I have marked up each of your statements of evidence, which have been taken over one by one in terms of progress, but I will just quickly work through on my screen here any supplementary questions I have.

Just in relation to your rebuttal evidence, and you have covered this here about Te Korowai setting up an incorporated society. In your view does that provide any mandate or anything in your view over and above -- anyone can set up an incorporated society any time for any purpose, so has that legal mechanism got any status or standing?

**MR DREAVER:** My view would be that it does not, which is not to be disrespectful of the Ngāti Tama members who support Te Korowai. I am not a lawyer, but I would not think that it provides any particular standing, certainly in terms of engagement with the Agency. If Te Korowai had not incorporated the Agency, I think, would have been willing to meet with those individuals separately anyway.

**THE COMMISSIONER:** All right. Thank you. Just on your rebuttal evidence towards the end you talk about this meeting on the 24th of July, and like you said, it was without prejudice, so that is perhaps as far as you can go. Were there any outcomes that were sought at that meeting, or if it was without prejudice and you would rather not say, I am happy for you to tell me that.

**MR DREAVER:** The outcomes were that the Transport Agency agreed to consider meeting again. It was without prejudice, so there

are some parts that -- essentially it was an opportunity to present again to Te Korowai the justification for the project, the impact of the project, and the mitigation package. We were pretty open about all of those elements and mitigation that I have relayed in my evidence today. We have since provided a copy of the presentation and I have a video of the fly-through as well to give to Te Korowai's lawyer today.

**THE COMMISSIONER:** Thank you. I will just have a quick look at the other evidence I have marked up previously. No, I think you have covered everything I need, so thank you, Mr Dreaver.

**MR DREAVAR:** Kia ora, thank you.

**MR ALLEN:** Commissioner, the next witness is Mr Roan talking about alternatives. There is a break soon but very happy to at least make a start and hopefully get a good way through the summary, but if the commissioner would prefer to bring that break forward, whatever works for the commissioner.

**THE COMMISSIONER:** I think we should carry on. I think the key thing is to hit your appointments you have with overseas people.

**MR ALLEN:** Exactly.



**THE COMMISSIONER:** Just remind what --

**MR ALLEN:** 4.00 pm.

**THE COMMISSIONER:** 4.00 pm and then 4.30 pm, is that right?

**MR ALLEN:** That is correct, yes.

**THE COMMISSIONER:** All right. I think we should just carry on, perhaps take a break at 3.30 pm.

**MR ALLEN:** Yes, I am very happy with that.

**THE COMMISSIONER:** So, welcome, Mr Roan.

**MR ROAN:** Thank you, sir.

**THE COMMISSIONER:** You have two statements of evidence and you are talking at this time about the alternatives assessment, and on that topic you have just provided evidence-in-chief, I think.

**MR ROAN:** I have, sir, that's correct, yes. Perhaps before I get under way, sir, I am just going to -- Mr Dreaver set a very

high bar with his introductions and his mihi. I am just going to gently lower the bar and offer my respects to Ngāti Tama and proceed with my statement.

Sir, perhaps before I do that, I would just observe that Mr Allen in his openings referred to drawings and that the updated drawing set would be provided to you at some point in time. The drawings that you have there, sir, are the drawings that were filed with the application. I believe they probably have a December date on them.

**THE COMMISSIONER:** Yes, they have.

**MR ROAN:** We do have an update available and I am quite happy just to walk that up to you now so that you have that available to you for the rest of the proceedings.

**THE COMMISSIONER:** That would be appreciated. Thank you, Mr Roan.

**MR ALLEN:** Yes, sorry, commissioner, this morning we were talking on different planning. I assumed you had the latest version.

**THE COMMISSIONER:** I do in the electronic version but I just have not gone to print them out.

**MR ALLEN:** They take a long time to print. Well, they did on our printer.

**THE COMMISSIONER:** Great, thank you.

**MR ROAN:** Sir, I am happy to talk you through those if you need that but they do contain the changes in terms of the new bridge and the change of the spoil disposal site that is referred to and those changes are right through the evidence -- through the drawing set, rather.

**THE COMMISSIONER:** Sure.

**MR ROAN:** So if you are happy for me, sir, I will just start with my highlights package and work my way briefly through that.

**THE COMMISSIONER:** Thank you.

**MR ROAN:** I've been involved in the Mount Messenger project since early 2017. The role that I have had in the project has involved co-ordinating and leading the route selection and

alternatives assessment process. In summary, that has involved assisting with the development of options, developing the multi-criteria analysis, the MCA assessment methodology, facilitating the two expert assessment MCA workshops and assessment processes, reviewing the outcomes from that process, applying weightings and providing recommendations through to the Transport Agency.

The two-stage MCA process was undertaken to consider and evaluate options for the project comprising a long list stage with some 24 options, which were reduced down to a shortlist of some 5 options. The methodology was applied consistently across both assessment stages and generally comprised the following steps, so generation of the long list options, the development of the assessment methodology and the assessment criteria by which the corridor options would be evaluated in both the long list and the shortlist stages. The criteria was selected taking into consideration relevant statutory matters, the Transport Agency's project objectives, the likely effects of the project and, of course, my experience from other projects, the application of a consistent scoring system by which all criteria would be assessed, providing for both positive and negative scores, specialist briefings on the options and the scoring methodology, workshops to assess and evaluate the options

against the scoring criteria, analysis of the options using the weightings, including sensitivity testing, short-listing of the options from the long list stage and then repeating the above process through the shortlist stage, and finally reporting on the outcomes of the MCA process at both the long list and the shortlist stage, and those documents are provided or were provided, rather, with the application material. They are referenced as volumes 4A and 4B.

The process was used, as I say, to evaluate 24 options and then identify a short list of 5 options. The process was designed to be repeatable through the two-step evaluation process and enable transparency and scoring and analysis. Now, given the large number of possible route options for the project and the complex considerations involved, it was my opinion that MCA provided a useful and robust tool to aid in distinguishing between alternative options. MCA is essentially a decision support tool which enables options to be scored in a transparent and independent fashion against predetermined criteria. The process assists in assessing the relative merits of options, making explicit the key considerations and the values attributed to them. The process generates a score for an option relative to others and from which it is possible to rank options in

relation to each other and then test the analysis using weightings.

Now, ultimately, it is the Transport Agency as requiring authority that is responsible for selecting the preferred option. That decision should take into account the results of the MCA in conjunction with any other considerations the Transport Agency considers to be relevant and which in this case included the costs of the options.

**THE COMMISSIONER:** Mr Roan, that is a very important point. Some MCAs do incorporate cost components as criteria. You made a specific decision not to include cost.

**MR ROAN:** Yes, we did.

**THE COMMISSIONER:** So you are looking at values and objectives in terms of MCA?

**MR ROAN:** Correct, yes, indeed, sir.

**THE COMMISSIONER:** It was your position that the cost aspect between the high-performing shortlisted options could then be looked at by the agency, who had the ultimate decision to take a

project through to this process. So do you agree that that was the right process?

**MR ROAN:** That is a very good summary of my position, sir, and that is exactly how things occurred.

**THE COMMISSIONER:** If cost had been included in the MCA, would you think you would still get to the project E recommendation?

**MR ROAN:** Sir, that is not a matter that I have considered. We, on my recommendation, excluded cost from the analysis. The reason for doing that was in my experience it can be difficult to deal with cost in an MCA. It is an absolute. Then applying a weighting to it becomes problematic. Particularly when I consider the way that my weightings were developed I am not sure how I would have weighted cost in that process. I have been involved in MCAs where cost has just simply sat as part of the wider analysis and costs have simply been ranked. In this case, and you can see in the analysis, to some degree that has occurred, sitting off to the side, and that that consideration has been for the Transport Agency to make.

**THE COMMISSIONER:** Sure, yes.

**MR ROAN:** But I don't actually have an answer to your question because I didn't do that analysis.

**THE COMMISSIONER:** No, that is all right. Carry on.

**MR ROAN:** I think I am at six. With that overall decision-making process in mind, the MCA and my reporting on the MCA did not necessarily seek to identify the single best performing option. Even if it did, the Transport Agency as requiring authority was not required to choose the best performing option through the MCA.

At the end of the MCA1 process, the 24 long-listed options were reduced down to 5 options. The shortlisted options were -- the shortlisted options provided a representative selection of the better performing options from the long list process. The shortlisted options also provided a reasonable geographic spread across the landscape while omitting some of the poorer performing options in the long list stage.

So, at the shortlist stage, the options that were taken forward were option A, which was the western-most option located to the west of State Highway 3 in the Parininihi land and well down the Waipingau Valley; option E, which was the eastern-most



option, located to the east of State Highway 3; options F and P, both located in the Parininihi land but closer to the head of the Waipingau Valley; and option Z, which is termed the online option. So, the other four options were offline and option Z was the online option located largely within the Transport Agency's State Highway 3 landholding.

Sir, you will be aware having looked at the plans that the Transport Agency has a landholding particularly on the southern side of the approach to Messenger, which is quite a wide corridor, so that provided some opportunity to consider online solutions within that corridor, a much narrower corridor down the northern side of Messenger which much more closely aligns with the road corridor boundaries itself.

So, in my opinion at the end of the long list assessment process, the long list options have been examined in a robust manner and the shortlisted options represented an appropriate range of options to be taken forward for further assessment in the shortlist stage. I note that in mid-June of 2017, last year, a public consultation round was undertaken to gain input from the local communities and key stakeholders on those five shortlisted options.

The shortlisted options were subject to the same assessment methodology applied to the long list process with some refinements made to two of the criteria, those being in the ecology space, which was in effect divided into two separate criteria, terrestrial and water, and some refinements also within the community criteria.

My role again through MCA2 was similar. I facilitated the MCA workshops and then following the workshop tallied the scores and applied weightings and tested sensitivity to establish an overall weighting and scores there. The tallied scores for four of the five options, options E, P, F and Z, were relatively close with three of the five options, being E, P and Z, receiving the equal best raw scores. This is perhaps not surprising given that we had been through a long list process which had filtered out the more inappropriate options. Option A was the worst-performing option of the shortlisted options.

In the conclusion of MCA2 and as reported in the shortlist report, I recorded the following recommendations. Option A should not be progressed as the preferred option given that it was fairly clearly the worst performing of the options through the MCA process. Option F should not be progressed given it was very similar to option P but performed worse on important

terrestrial and landscape criteria. The other three options, Z, P and E, should all be considered when determining a preferred option. All scored equally in terms of raw scores, which reflects that each of the options had different strengths and weaknesses through the MCA process, and I noted that option Z received the highest tallied score across two of the three weighting systems, being the overall RMA weighting and the environment and natural environment weighting.

I did not identify a recommended option for the Transport Agency to progress. Following the MCA2 process, further design refinement work and costing was carried out by the design team. For options A and P, route refinements were considered north of the tunnels through the northern ridge. However, this did not address the matters that were driving their scoring through the MCA process associated with crossing the more sensitive Waipingau Valley.

The northern end of option Z runs adjacent to and through a large landslide feature. Significant ground engineering works, some 1.5 kilometres of retaining wall, were incorporated into the design for option Z to isolate that alignment from the landslide and to achieve the Transport Agency's design requirements. The ground engineering meant that that option

carried the highest cost of the five shortlisted options. Refinements to this alignment were considered. However, no refinement was identified that would either avoid the landslide or meet the Transport Agency's engineering standards.

**THE COMMISSIONER:** Can I ask you two questions around option Z? We might as well do it now. The option Z that was advanced through the shortlist process, that had a reasonable resilience figure. I think it had a one and option E had a one as well, so equivalent. That option Z would have had the landslide retaining wall mitigation option built into it as a feature of that option.

**MR ROAN:** That is absolutely correct.

**THE COMMISSIONER:** Therefore, it dealt with that resilience issue through design plus extra cost, so that is correct?

**MR ROAN:** That is absolutely correct, sir. The design basis for all of the options was that they -- from a starting place the desire was to meet the agency's design standards.

**THE COMMISSIONER:** Yes. As I said before, for the New Plymouth District Council I think Mr Doherty and Mr Ellerton are asking

lots of questions about option Z and why that perhaps could not be done differently or moved to deal with that. I think your last point is that you did look at some refinements to that. They have asked again in the latest report were there options looked at which could take it further east, I think, so your evidence is that, yes, those matters were assessed and no better option Z defined through your refinement process?

**MR ROAN:** Yes, that's correct, sir. I believe Mr Symmans is also going to speak on this matter as well.

**THE COMMISSIONER:** That is a Mr Symmans question, really.

**MR ROAN:** Certainly, though, I know that refinements to the alignment north of the Messenger tunnel were not possible given the terrain that would achieve the geometric requirements that the agency was seeking and avoid the landslide.

**THE COMMISSIONER:** Thank you. I will let you carry on.

**MR ROAN:** I have just turned on to my last page. Refinement was also made to option E, and that was down the northern section of the Mangapepeke Valley. That involved shifting the alignment from the western part of the valley floor to the eastern valley

flanks, and that meant that the poorer soil conditions in the valley floor were avoided.

The next paragraph deals with the cost estimate, sir, so we might be able to come back to some of the questions that you raised. The cost estimates for the refined short list were prepared. Option E was the lowest cost option and option Z was the highest cost option.

I have a correction that I need to make here, sir. You will see in front of you that it refers to a figure of \$112 million. If I refer you, in fact, to attachment 5 in my evidence-in-chief, which is the table of the cost of those five options, you will see there, in fact, that the difference between option E and option Z is, in fact, \$183 million. So that is the number that should be there. The \$112 million you will hear from Mr Symmans is the estimate for the retaining wall structure that's incorporated into the option Z design.

**THE COMMISSIONER:** Okay, so the \$112 million appears a few times in evidence, certainly what I had in mind, so the difference, the overall cost estimate is \$183 million?

**MR ROAN:** The difference between option E and option Z is \$183 million, and you will see that in the table in attachment 5.

**THE COMMISSIONER:** So is it Mr Boam I should be asking questions about the cost estimate process and whether it was thoroughly checked and reviewed and peer reviewed? Is he the one that would have put the estimate together?

**MR ROAN:** Sir, I am a planner, as you know. Mr Boam was the lead designer for the project through that phase. Mr Boam and others developed the cost estimates. Mr Milliken might be able to assist with that as well, but it did involve a team of estimators that were involved in costing those options.

**THE COMMISSIONER:** I will ask Mr Boam about that, but that is a change to your evidence. That is good, thank you.

**MR ROAN:** So I considered at the end of the alternatives assessment process the corridor options had been thoroughly examined. Following the analysis of the results from MCA2 and the subsequent refinement work and having regard to the cost estimates, the Transport Agency then determined that option E would be taken forward as the project option.

As I noted earlier, MCA is a tool to support decision making. Ultimately, the Transport Agency as requiring authority is responsible for selecting the preferred option. Based on the outcomes from MCA2 and the recommendations made there it would have been reasonable for the Transport Agency to choose any of options Z, P or E. The Transport Agency's decision needed to take into account the results of the alternatives assessment process in conjunction with other matters the Transport Agency considered relevant.

The District Council's 42A report --

**THE COMMISSIONER:** Perhaps before we get on to that, I will test you again as a planner. Given the way the RMA is structured and talks about efficiency in matters like that, in RMA terms do you think it is reasonable that if you have options that are reasonably close on values and objectives-based assessments and one of the options is substantially more expensive, it is reasonable to take cost into account and make a decision using that as one of the criteria? That is a reasonable thing for a requiring authority to do?

**MR ROAN:** Sir, that decision was the Transport Agency's, but from my experience and with my planner's hat on considering



those matters, sir, I would agree it would be a reasonable thing to do.

**THE COMMISSIONER:** Thank you. I think you were at paragraph 19.

**MR ROAN:** Yes, thank you. The 42A report questions why the Transport Agency did not select the online option. Mr Symmans describes the landslide feature and the results of the geotechnical monitoring and the ground engineering required for option Z. I understand that with the benefits of the additional geotechnical material that has been provided to council on the landslide feature council's reporting officer is now generally satisfied with the conclusion that option Z would not meet the Transport Agency's resilience criteria without significant cost. I understand that Ms McBeth now accepts the basis for the Transport Agency's selection of option E as its preferred option.

Overall, on the matter of section 171(1)(b) and whether adequate consideration has been given to alternatives, it is my opinion that the assessment process that I have led meets this test. The assessment process considered a wide range of realistic and feasible options. It was robust and consistently applied between the long list and the shortlist stages. It is

transparent in the scores that were given to options and the reasons for scoring and was and is repeatable. I will come back to that in a second, sir, but I will conclude that it has involved subject matter experts relevant to the effects of the project, including the scoring of cultural matters by Ngāti Tama representatives, and the process has, of course, informed the Transport Agency's decision making.

Sir, I will just come back to that matter of repeatability as it is raised as a question of me in the officer's update report. When I use the phrase "repeatability" I mean exactly that, that the assessment could be repeated, it is repeatable. The methodology that was developed was developed in such a way that the criteria were transparent, the scoring methods applied by each of the respective experts were well documented, the methodology was captured in a two-volume report and that the methodology, in fact, was repeated between each stage.

That the council's independent advisor has looked at the scores given by the transport expert and the constructability experts and come to a different conclusion or his own conclusion on them would indicate to me, in fact, that it was repeatable. He has repeated that process. Repeatability does not mean that

different experts are going to come to the same conclusion using the same process, so that is the clarification that I present.

**THE COMMISSIONER:** So what you are saying is that there is an element of judgment and professional judgment applied so one expert in a field may have a slightly different judgment to another?

**MR ROAN:** Yes, indeed. I think perhaps the other thing that I would add there is that one of the benefits of MCA and particularly in the way that it was applied here was the workshopping process where experts presented their scores to a room not unlike this one. They were subject to challenge. I led that process myself and where challenge was required I made sure that challenge was applied. Some of the scores that the experts gave, in fact, changed through the process of discussion within the room.

**THE COMMISSIONER:** I was going to ask you that because that was not clear from the reporting. Yes, okay. I had another question really about the fatal flaw part of your process. I have read somewhere - I cannot recall exactly - that Ngāti Tama had scored all of the options with a fatal flaw. That is

certainly not what is on the table. The table gives all the options and minus four, not a fatal flaw.

**MR ROAN:** Yes.

**THE COMMISSIONER:** So they are all equally as bad in Ngāti Tama's view. So what would have happened if there was a fatal flaw, that option just would not have got through?

**MR ROAN:** Correct. Through the long list process, there were a number of options that a number of the experts scored with an F, ecology Fs, landscape Fs and cultural scores that were given an F at that stage, and those options all dropped out. There will be an opportunity when Mr White presents his evidence and submissions from Mr Hovell to perhaps explore that with Ngāti Tama and their scoring directly. But if I refer to the culture scoring report, which is included in the shortlist report, you will see there that Ngāti Tama have evaluated in a very robust fashion how they have considered their scoring and how their overall scoring has been generated.

They have used a number of sub-criteria, including land take and a number of others. Those scores, and particularly the land take sub-criteria, were scored with a 4/F, so as I

understand it, they came very close to receiving an F score. That was applied across all of the options equally, regardless of the extent of Ngāti Tama land take, because all options involved a take of Ngāti Tama land.

**THE COMMISSIONER:** Okay. So where there was perhaps a suggestion that there was a fatal flaw with those, it was minus 4/F?

**MR ROAN:** That is correct, sir.

**THE COMMISSIONER:** But through that process, you can assure me that Ngāti Tama got to a minus four, not an F, on each of these proposals and that is what has been recorded and they signed it off?

**MR ROAN:** Yes, I can give you that assurance. In fact, I can refer to the attachment or the appendix of the shortlist report that records exactly that. You will see as they work through their sub-criteria, they provide an overall score for each option and all options received that minus four score.

**THE COMMISSIONER:** All right. Look, I have just had a look at my notes and I think you have covered everything I had as

questions, so thank you very much. Just be aware that we might need to spend quite a bit more time on the conditions side of things on Friday.

**MR ROAN:** Yes, aware that I perhaps provide the end to the discussions and very happy to spend the time with you there.

**THE COMMISSIONER:** Great, I really appreciate that. Thank you very much.

**MR ALLEN:** Thank you. Commissioner, just seeing that we have got Mr Napier to set up in terms of Skype et cetera, there is 20 minutes now before Mr Napier. If we are going to take the afternoon tea adjournment, perhaps it is just slightly longer, we get it all set up so when you come back in we will have Rob up on the screen.

**THE COMMISSIONER:** Thank you very much. We will adjourn to 4.00 pm.

**MR ALLEN:** 4.00 pm. Thank you, sir.

**THE COMMISSIONER:** So I will be back just before then.

**MR ALLEN:** Thank you.

**THE COMMISSIONER:** Thank you very much.

(Adjourned until 4.00 pm)

**MR ALLEN:** Good morning, Rob. In terms of your evidence, could you please read your summary and then answer any questions from Mr Daysh?

**MR NAPIER:** Yes, I will do that. Thank you, David. I will start with that right now. Yes, Mr Commissioner, if it is appropriate to start now?

**THE COMMISSIONER:** Do I have a copy of that summary? Has that been circulated?

**MR ALLEN:** You should do.

**THE COMMISSIONER:** Thank you. I have it here now, thank you.

**MR NAPIER:** Very good, thank you. All right, I will just start at the top really and just confirm that I was the Mount Messenger project manager and the Awakino Gorge to Mount

Messenger programme manager at the Transport Agency up until the end of June of this year. I have stayed in contact with the project team and I am up-to-date with the key developments in respect of the project and also just confirm that I am still authorised to provide evidence on behalf of the Transport Agency.

I have just got a few points here with respect to the existing State Highway 3 and the Mount Messenger section. State Highway 3 is a strategically important route and it is at a regional and at a national level. We know that it connects the Taranaki region through to the Waikato region and then on to the key economic and transportation hubs in Hamilton, Tauranga and Auckland. That means that the route is essential to enabling people and the communities of Taranaki to provide for their social, economic and cultural wellbeing. I know that those points will be picked up in evidence by Mr Peter McCombs, Mr Mike Copeland and Ms Wendy Turvey later on.

Just moving on to the next point, the Transport Agency has what they call a One Network Road Classification, and within that, State Highway 3 through to Taranaki is classified as a regional road. That is because it makes a significant contribution to the social and economic wellbeing of the region



and it is a major connector between those regions, especially as a critical alternative to State Highway 1 and State Highway 4.

In addition, the Transport Agency has a statutory duty as a lifeline utility provider to maintain its network to function at the fullest possible extent during and after an emergency, and so when those emergencies occur between Taranaki and Waikato, then State Highway 3 is critical for that, especially because of the poor quality of the alternative options when State Highway 3 is closed.

However, the problem is that the current standard of State Highway 3 over Mount Messenger and more broadly the Awakino Gorge to the Mount Messenger section of State Highway 3 is not in keeping with the strategic importance that has been recognised. The highway has significant constraints and deficiencies as others will note, especially Mr McCombs that affect its safety, reliability and resilience.

Just moving on to item 6 there in my summary, Mr Daysh, is that just a few points in respect to the project and the context within the Awakino Gorge to Mount Messenger programme.

So in early 2016, the Minister of Transport announced the project would be funded by the Crown and the intention is that the project will address the current issues within the Mount Messenger section of State Highway 3 in order to provide an appropriate level of service for this national and regional piece of infrastructure.

The project is part of a wider and broader programme which is called the Awakino Gorge to Mount Messenger Programme, abbreviated there as "AG to MM", and that programme will provide for a safe and fit for purpose transport link between the Taranaki region and the north.

So further to the north, the Transport Agency has already lodged resource consent applications and lodged a notice of requirement for an alteration to the existing designation for the Awakino Gorge project. Then in between the Mount Messenger project and the Awakino Gorge project there are a number of additional safety improvements going to be undertaken. In fact, those are already underway and scheduled to in a large part be complete during August of this year.

**THE COMMISSIONER:** Thank you for that. Just on your paragraph 9, Mr Napier, I think we can probably take that as read.

**MR NAPIER:** Yes.

**THE COMMISSIONER:** I have read those objectives a few times so that is all good. So maybe go to your paragraph 10.

**MR NAPIER:** Yes, so those objectives are obviously well stated and well considered by the Agency at a high level. The first three projects as you would appreciate relate to the identified issues within the existing section of Mount Messenger along State Highway 3 and then the fourth objective reflects the Transport Agency's focus on managing the potential environmental effects of the project. So a bit of a balance. But at a high level then, there is about five or six points there which reflect how the projects specifically responds to the objectives.

So item (a) is that the project does provide a modern and a fit-for-purpose highway design and so that does significantly improve the safety environment of this section of State Highway 3. Linked to that is that it will provide for greater reliability for the section of State Highway 3 because there will be fewer closures from slips and crashes and there is also an additional benefit of having reduced maintenance

requirements. All of that together provides for greater journey time reliability for people and freight. Part of the project being modern and fit-for-design is that it will improve that connectivity between the regions.

Item (d) in my evidence talks about the savings in journey times which is just over 4 minutes for light vehicles and 6 minutes 28 for heavy vehicles and then when you consider that in conjunction with the other improvements along the highway, that will provide for significantly reduced journey times for over-dimension loads by enabling those loads to move along State Highway 3 and they can be saving up to 3 hours 45 minutes when the alternatives via Wanganui is to be used.

Paragraph 10 and item (e), we are talking there about the improved connectivity and the reduced journey times which will contribute to the enhanced local and regional economic growth and productivity for the people and freight. Finally, I guess, this is the item where we talk about realising all of the benefits but also the need to appropriately manage the potentially adverse environmental effects of the project.

That, for me, has been a key focus throughout the project and of course for the Transport Agency and for the Alliance team

when it was commissioned. I will just state that we have really made extensive efforts there to consider alternatives for the project, the design efforts and the development of the mitigation and offsetting measures to address the environmental effects of the project.

Within my main evidence, paragraph 18(b) I talk there about a motto and a bit of a philosophy that the project has adopted through the design, through the option selection process and through the construction. That motto and that philosophy simply reads, "To tread lightly on the land". Mr Boam, who follows me in this process, will I guess refer to that a bit more but that philosophy of treading lightly on the land has been underpinning the approach towards managing the environmental effects of the project.

**THE COMMISSIONER:** Mr Napier, can I ask you a question on the way through around the consideration of alternatives? So we have heard from Mr Roan that the MCA delivered up three short-list options that were pretty similar in terms of overall scoring. I think Option V, Option Z, and was it P the other one? So that came to you I understand at the Agency as reasonably on an objectives and a values basis, reasonably very close scoring options. I understand that the NZTA, including

you, took that and then made an ultimate decision to proceed with Option E.

So can you just explain to me the process you took to take the three down to one and what were the key factors for choosing this option over the other two that scored well, as well?

**MR NAPIER:** Yes, thank you, sir. I will do that. Part of the process that I followed was that I reported to the Project Alliance Board. So it is a board set up specifically to govern, to lead the Alliance mechanism. So part of the process was for us, as the Alliance team, to present to the Alliance Board what those options were all about. That included the benefits, the effects and, ultimately the costs.

I also in my role as an interface manager consulted with the project governance team, I guess you might say, which is within the NZTA. There is a project sponsor and a sponsor director who operates within the team of NZTA. That team looks at the strategy of a project, it looks at again the extent to which it can be implemented, the practicality, the risks, the legal aspects, the environmental aspects.

So those considerations within that team almost replicate or compliment what we would have reported on at a project level and they really became a sounding board for the recommendation that we had made to our Alliance Board. Once the preferred option was identified, it then went through a business case process. To be clear, the business case project within the Agency was completed which had some additional assessments especially around the extent to which the options delivered on the project objectives which were already defined at that point.

So in summary, an internal project Alliance process reporting to our board and then within the Agency reporting to senior managers who have oversight over those key aspects of the Agency's operation.

**THE COMMISSIONER:** That is fine in terms of the process but what were the key points that led the Agency to make this decision for this particular route over the other two that were scoring reasonably the same?

**MR NAPIER:** I think the key thing in that is this is a long-term investment for the Agency and to have a project which addresses the project objectives adequately but without any residual risks, especially around the alignment and resilience, was

fundamental. If the project objectives were not being met then the options that we were putting forward, then none of them would have progressed.

If you think of cost, cost is an important consideration but it is not the most critical. As I said, the longer-term investment and not having any residual risks around the alignment and resilience is the most important. That was the focus of the recommendation.

**THE COMMISSIONER:** Thank you. I will let you carry on.

**MR NAPIER:** So I will not say too much more about the consideration of alternatives, my paragraph 11, they are in my evidence. It has been well covered by Mr Roan before me.

Since it began in 2018, we have been constantly engaging with the key stakeholders and we have followed public engagement processes. The focus really has been on the Ngāti Tama given their special role as the landowners and mana whenua. As you will be aware, the project does traverse Ngāti Tama rohe and it runs through the land returned to Ngāti Tama as cultural redress in its Treaty of Waitangi settlement.



As project manager, I understood from a very early stage that it would not be appropriate for the Agency to seek their land compulsorily and this had been returned to them as cultural redress for historic breaches of the Treaty. So I knew that the project would not be able to proceed without their support and without their blessing and so the approach we have taken to engage with Ngāti Tama has been one of very active collaboration.

As you will be aware, in addition to Ngāti Tama there are eight additional landowners who are directly affected by the project and in that sense it means that obviously the Agency will need to acquire some of their land in order to construct the project.

I believe that we have had really appropriate and very respectful engagement with these landowners, including those who might have been directly affected by the other route options that we were considering through the alternatives consideration process. It has been a top priority for me to make myself accessible and available to those landowners and to those directly affected stakeholders, and to say the processes with respect to the public work acts that we have been following are still on-going with some of those affected landowners. However,

we have reached land acquisition agreements with four of the eight landowners.

**THE COMMISSIONER:** So that was your position in your evidence-in-chief, I think Mr Napier, there has been no further progress on that with any of the other landowners since then?

**MR NAPIER:** That is correct, other than to say those processes are ongoing.

I have also highlighted that DOC, the Department of Conservation, is a key stakeholder obviously because of its general conservation role and their ongoing involvement with respect to Ngāti Tama land.

Then, of course, the public is a key component and their feedback we received throughout the process has highlighted the importance of safety and travel time and resilience for them. They did also identify that we should be addressing the environmental effects and we consider that perhaps a bit more of a secondary item of their feedback but nevertheless it came through that the consideration of environmental effects was important.

So in my view, as I have stated in my evidence, the project responds very well to those issues and they all align very neatly with the project objectives.

Overall, just with respect to the engagement and consultation, I consider that the work the team has done in engaging with the stakeholders and the wider public within RMA terms translates to substantial consultation with potentially affected parties and certainly with the wider community.

I will just move on quickly there to the section on submissions and Section 42A reports, our paragraph 19. I was extremely pleased to read about the very positive acknowledgement in both the Section 42A reports. Those were positive acknowledgements of the Transport Agency's consultation and engagement processes.

Paragraph 21 of course, we received over 1,171 submissions including late submissions that were in support of the project and that reflected the general support for the project that we have encountered throughout our meetings and engagements, whether they be one-on-one or in public forums. It clearly reflects the overriding theme of the public feedback, which is

that the Transport Agency should simply get on and build this very much needed improvement to State Highway 3.

I will skip on then to my very last paragraph which is item 23, which is that since that evidence-in-chief was filed, of course the Department of Conservation and the Transport Agency jointly sought the deferral of the hearing in order to allow further discussions in respect of ecological effects. Those have continued and the aim remains to resolve or at least narrow down the issues that we had in play at the time.

In addition to discussions with DOC, we also continued our engagement with the other key stakeholders and a number of the updates to the project were made including an on-going design refinement. We have significantly increased the proposed pest management area to over 3,650 hectares and we have made some upgrades to our designs for our freshwater structures.

Those are the key updates to my evidence since it was filed. So that is my evidence, but if I could spend just one minute summarising the key points.

As you read and as I have said, State Highway 3 is really a strategically important route connecting the regions. However,

the deficiencies along that route mean that the social, economic and safety benefits are not realised currently.

Secondly, just reflecting on the project objectives, the Agency is firmly of the view the project options put forward delivers on the project objectives as we have captured and articulated in terms of safety, resilience, journey time reliability and then, of course, the wider one which is contributing to the local and regional economic growth and productivity of the region.

Thirdly, through the consultation and engagement process we believe and are really firmly of the view the alternatives that we have considered and presented to our stakeholders and to the public has been well presented and that we have conducted very thorough engagement with key stakeholders and the public in order to obtain that feedback on those options and, in fact, on the preferred option.

Lastly, I will just say again that we are very encouraged, the Agency is very encouraged, by the very high level of submissions that we have received in support of the project and in support of this option in order to deliver on the benefits that the ACC seeks to invest in.

That is the end of my evidence, Mr Commissioner.

**THE COMMISSIONER:** Thank you, Mr Napier. Do you have your evidence-in-chief in front of you, Mr Napier?

**MR NAPIER:** I do. Yes, I do.

**THE COMMISSIONER:** Could you have a look at paragraph 76 of that evidence, on page 19?

**MR NAPIER:** Yes, I have section 76.

**THE COMMISSIONER:** Yes and my question is that you state there:

"That by letter of 17 August DOC confirmed in writing that they preferred the eastern alignment option [which is I presume is the option you have sought to designate] compared to all other options."

**MR NAPIER:** That is correct, yes.

**THE COMMISSIONER:** Did that include the online option?

**MR NAPIER:** It did include the online option. At the time -- my memory is a little bit vague, I might have to go back and

consult my records, but of the bypass options, certainly the eastern alignment option was the preferred. I would have to, as I said, just go back through my records to determine whether or not that was preferred when considered against the online option.

**THE COMMISSIONER:** Perhaps that is something you can provide me or through Mr Allen.

**MR NAPIER:** Yes, will do so.

**THE COMMISSIONER:** And I note again in your evidence in terms of the Pascoes who are directly affected. You visited them over 20 times, so a big effort there for you personally. Are those discussions with the Pascoes continuing? That is, one of the four landowners that has not come to a resolution in terms of agreement. Is that correct?

**MR NAPIER:** Yes, that is correct. My replacement is Mr Andrew Gard on the project and I believe that he, as well as the Crown-appointed property agent is continuing discussions with Mr and Mrs Pascoe as well as the four landowners with whom we still have to reach agreement.

**THE COMMISSIONER:** So they are really a work in progress, those discussions?

**MR NAPIER:** That is correct. The outstanding issues are of a very minor nature with respect to the other landowners. We have exchanged valuations and documentation and contracts and those are being worked through but they are of a really minor nature. However, Mr Pascoe is obviously of a slightly different nature and you will hear a bit more on that from some of my colleagues.

**THE COMMISSIONER:** All right, thank you. I think that is all the questions I have for you, Mr Napier. Thank you very much for dialling in. Whereabouts are you? You are in Sweden, someone mentioned, perhaps.

**MR NAPIER:** That is correct. I am in Sweden with my family on a holiday.

**THE COMMISSIONER:** For those that cannot see Mr Napier, he looks like he is in a reasonably sunny spot at the moment, so enjoy the rest of your time in Sweden and thank you very much, Mr Napier.



**MR NAPIER:** Not at all. Thank you for your time.

**MR MCKAY:** Thank you, Rob. Thank you, sir, and thank you very much to the council staff for that connection. Fingers crossed the next connection with Mr Boam in Cyprus will work as well. So sir if you could just wait with us while we try to get Mr Boam on the line.

**MR BOAM:** Good afternoon.

**FEMALE SPEAKER:** Yes, we can hear you loud and clear. We have not got your mug on the screen but we have definitely got your volume so I will leave it to the Commissioner to speak to you next.

**THE COMMISSIONER:** Mr Boam, it is Stephen Daysh here. Can you hear me okay?

**MR BOAM:** Yes, that is fine, Mr Daysh.

**THE COMMISSIONER:** Yes, so what is happening here in the hearing room is that I can see you but the other can just hear you but you are coming through pretty loud and clear so you should just

carry on and I will ask some questions as we go along and maybe some at the end. So thank you for making yourself available.

**MR BOAM:** Not at all. I should point out that when we tested this yesterday there was a big lag between the audio and the video.

**THE COMMISSIONER:** It is not too bad, so we are doing better today. So you just take us through your summary statement and we will ask some questions on the way through.

**MR BOAM:** That is fine. So I was the Alliance design manager for the project from the time the Alliance was appointed to progress the project in March 2017 through to March 2018. In March 2018, Mr Bruce Symmans took over the design manager role with responsibility to developing the detailed design.

During my time as design manager, I had overall day-to-day responsibility for the design of the route options - both offline and online - that were subject of multi-criteria analyses at two workshops; that was MCA1 and MCA3. The development of the selective project option for lodgement and the development project for pricing and to provide the basis of the detailed design process were also my responsibility.

In terms of the alternatives development and assessment process, I note that all offline options were developed to similar design standards with safe operating speeds of 100 kph. Topographical and boundary constraints meant that one of the two online options assessed the MCA1 at a safe operating speed of 70 kph while the other had a safe operating speed of 100 kph. The online-option appraised the MCA2 had a safe operating speed of 70 kph.

A key tool that we developed to assist the design of the project is Humphrey, which is a computer-generated three dimensional visualisation tool that provides a realistic appreciation of route options. Humphrey was used by the design teams to develop both options by the experts that undertook multi criteria assessments. As a dynamic tool, it has provided invaluable assistance to the design project especially as it involved difficult terrain which less advanced tools are limited in catering for.

A flyover of the project route via Humphrey is being shown at the hearing and if I understand correctly you have seen that, Mr Daysh?

**THE COMMISSIONER:** That is right. That came through this morning, thank you.

**MR BOAM:** I note that while the images generated by Humphrey are valuable in that they accurately represent the extents and impacts of alignments on the landscape, they do not represent the finished appearance of the project in the way that a photo-montage does. For example, the indigenous vegetation in Humphrey is represented by a mottled green render draped over the topographic model while embankments are coloured green and two shades of brown respectively. In practice, the engineer's surface of projects will encourage to re-vegetate and as is required by the LEDF.

The design philosophy and approach. The project design philosophy is to provide an outstanding scenic highway that is safe, efficient and resilient and that minimises its cultural, social and environmental impact. Project objectives have driven the design of the project. For each objective there are specific design solutions that respond to it.

Where possible, each design solution has avoided, remedied and/or mitigated the environmental, social and cultural impacts of the project. The project alignment reflects a carefully

considered route that treads lightly on the landscape in accordance with the design philosophy.

To avoid adverse effects, the particular avoidance measures adopted in the design of the environment are avoiding significant cuts to the key ridge line adjacent to Mount Messenger by incorporating the tunnel and avoiding a cut and fill approach approaching on the sensitive environment across a tributary of the Mimi River by incorporating the bridge.

We avoid significant trees where feasible by modifying the alignment of the road corridor or through physical works. We avoid adverse effects on ecology by the use of MSE, that is mechanically stabilised earth embankments, to provide steeper batter slopes and we mitigate the design of cuttings in various landscape treatments to facilitate nature re-vegetation.

A range of mitigation measures have been included in the design of the project to address environmental effects that could be avoided. The ecology and landscape measures set out in the ELMP and LEDF are fundamental to the design project particularly in terms of avoiding them and mitigating adverse environmental effects.

So the description of the design. The bypass is approximately 6 km long with tie-ins to the existing State Highway 3 at either end. Compared to the existing route, design achieves ridge gradients, increased lane widths or visibility, wider shoulders, a lower summit and a total clearance in its envelope which will allow over-dimension loads to use the route. The design enables a safe 100 kph operating speed and includes resilience measures designed to minimise the potential for rock fall debris encroaching on the carriageway. It also enables shorter journey times for all road users.

My evidence includes an end-to-end description of the property's alignment which is followed by a more detailed summary of the key design elements of the project. These include the road cross-section and proposed side barriers, traffic services, pavements and surfacing, network utilities, the bridge and the tunnel including portals and the tunnel control building, cut slopes and fill embankments and alteration of stop water entrance to produce permanent stream directions.

As explained in my evidence, the project design is and will continue to be in the final detail design stage based on the relevant design standards.

I have some responses to submissions and the New Plymouth District Council Section 42A report. In simple terms, I considered the design-related issues raised in the submissions to be addressed appropriately in our design of the project. I note in particular that we received advice from Dr Mike Revell who is Principal Scientist, Meteorology, with NIWA in respect of potential ice and fog issues in the Upper Becker Valley. I first discussed these issues with Dr Revell in July 2017.

My evidence on stability, minor design issues raised in the New Plymouth District Council Section 42A report, as explained in my evidence those issues will be reviewed and finalised in the detailed design process. I have a few clarifications and, firstly, deep road cuttings.

My evidence refers both the cuttings being designed to avoid rock fall encroaching on the carriageway, and to minimise rock fall debris encroaching on the carriageway. The cross section of cuttings with catch ditches at the base of cut slopes - this is shown in figure 16 of my evidence-in-chief - and steel mesh rock drapes on the faces of cuttings greater than 20 metres deep is designed to maximise the resilience of the route. However, it is possible that small pieces or slabs of rock may detach from cut faces and, whilst it is unlikely that debris

will encroach on the carriageway, it is not impossible there will be minimal rock and debris finding its way on the carriageway.

Referring to Mr Symmans's evidence, I note that during detailed design some fine-tuning of each rock cut is likely to achieve the optimal balance of resilience to the carriageway as well as achieving the landscape principles set out in the LEDF.

In terms of assessment of alternatives, in paragraph 49 of my evidence I refer to 11 offline corridors and one online corridor. As stated, each of the offline corridors had a structural and earthworks option but, to clarify, two structural options were considered in the online corridor, hence 24 options were considered in total.

Paragraph 52(a) states that the number of bridges in option Z7 was reduced to two or three. Both numbers of bridges were considered, the difference in bridge numbers being whether access was provided under the bypass to the Ngāti Tama block and the Mount Messenger track west of the bypass.

And now one correction, in paragraph 51 I refer to option Z2 twice. The second reference is an error and should read



"Z4", ie an option with safe operating speed of 100 kph. My apologies for that.

**THE COMMISSIONER:** Thank you, Mr Boam. I think that worked reasonably well. Have you been provided the copy of the supplementary report from New Plymouth District Council which included a letter from I think it is Mr Doherty, from AECOM?

**MR BOAM:** Yes. Yes, I have.

**THE COMMISSIONER:** His letter is dated 30 July. Do you have a copy of that with you?

**MR BOAM:** I do.

**THE COMMISSIONER:** There is a number of points of clarification he was hoping you might be able to help us with and as this is the only opportunity, I had better ask you on behalf of the council.

The first one was around the operating speed chosen for 100 kph, that is point 28. Did you consider a lesser operating speed?

**MR BOAM:** Yes, so we did. Just to go back to why 100 kph. We wanted a road that was in context with the adjacent sections of State Highway 3 which apart from a few curves which advisory speeds can be driven safely at 100 kph. So we did not want drivers to be caught out by a road with a lower design standard.

In terms of considering lower design speeds, yes, we looked at that very carefully for the offline options and what we found is that the alignment of the route is not really governed by geometric design parameters, it is governed by the topography. For example, if we take the option which has been submitted for consent, there is one fill location for the tunnel. We needed to keep off the valley floors where possible. We need to avoid touching the Mimi wetlands and, if you like, once you start to join up all of those dots, you end up with alignments which can be driven at 100 kph and you would not achieve anything like for large design speed.

This is perhaps best illustrated if you go to paragraph 37 of my evidence-in-chief. You will see figure 4 there actually demonstrates that diagrammatically and you can see it is really the landscape which is dictating where the road goes and not the geometry.

**THE COMMISSIONER:** He also asks would there be an overall cost saving if you did move to a lower speed environment. So is that a reasonable question to follow on?

**MR BOAM:** It is, but for the reasons I have just given the answer is no. We looked at this at all the offline options, not just the one that is now being submitted and the same considerations applied. It is the topography not the geometric criteria which dictated the alignment of the road.

**THE COMMISSIONER:** All right, thank you. He is also confused about an Option Z7 that you talk about. He cannot find any reference to that in volume 4A. So Option Z7, can you explain what that bit is about?

**MR BOAM:** Yes, so at MCA1, we considered two online options, Z2 and Z4. For MCA2, we had a single online option which was called Z7 and that was a hybrid of Z2 and Z4 but modified to include the two or three bridges that I talked about earlier. We realigned the route south of Mount Messenger to include constructability and incorporated the retaining wall across the landslide to improve resilience. That had a 70 kph operating speed and that was dictated by the curve radii needed at the north end of the project to match the length of road on rock

spurs. It also gave a better vertical alignment for the tunnel so we keep the portals at approximately the same level of the existing road.

**THE COMMISSIONER:** So option Z7 is effectively the option that you looked at for the MCA2 process. Is that correct?

**MR BOAM:** That is correct.

**THE COMMISSIONER:** I think that clarifies that. Now, the last key question he has is about the shoulder width within the tunnel of 1.2 metres. He seems to be quite concerned about that from a cycling and pedestrian safety point of view. Can you please comment on that from a safety perspective?

**MR BOAM:** Yes. So perhaps to go through the process that led to that 1.2 metres. The starting point, the Austroads Guide to Road Tunnels which recommend shoulder widths of 1 metre or less or 2 metres or more, and that is to avoid confusion in the minds of motorists as to where the road is. But we also have to provide emergency egress from the tunnel and that requires a 1.2 metre width to meet building code requirements.

We are not concerned that 1.2 metres would create confusion in drivers' minds because we have illuminated LED road studs illuminating what is carriageway and what is shoulder. I guess the key point is that pedestrians and cyclists are not commonly seen on this section of State Highway 3 but we recognise that might not always be the case and the tunnel design does provide safety measures for cyclists. So there will be detection loops that activate LED signs to warn motorists of cyclists in the tunnel and restore tunnel lighting to full brightness.

There will be variable message signs at 300 metres from each portal which can display messages advising motorists there are cyclists in the tunnel and there will be lane control signs at each portal of the tunnel applying compulsory speed limits.

That was the design as I left it. As I understand now consideration is being given to the signs being 200 metres in advance of the tunnel, also being able to provide a compulsory speed limit. So I think we have good measures to warn people there are cyclists in the tunnel.

Where we ended up with the 1.2 metre width was, because the Austroads guide does not actually consider cyclists in tunnels, we looked at the MBIE design guide for cycle trails and,

although State Highway 3 is not part of the national trail, it might be and the MBIE guide states that shoulder widths are between 1 metre and 2 metres. And that is 5,000 vehicles per day, which is twice the traffic on State Highway 3.

So, in summary, I think we recognise that cyclists might be in the tunnel. We are constrained in terms of the effects on the environment and the cost of that tunnel and the 1.2 metres is considered appropriate.

I note Mr Doherty refers to an independent safety audit. I think I should point out there has been an independent safety audit of the design submitted to the hearing. The safety audit team commented on the tunnel cross section, noting the shoulders were 1.2 metres wide and this provided less clearance to cyclists than 1.5 metres elsewhere on the bypass but it did not highlight a safety risk per se. The team went on to say if we took the egress passage out of the tunnel and built a purpose-built wall then you have 1.5 metre shoulders in the tunnel. This has been considered but has been ruled out on the basis of environmental considerations and the impact on cost and what we have is appropriate. It is worth perhaps pointing out that the safety audit team were not aware of the safety measures which we have now incorporated in the tunnel to warn motorists of

cyclists. It is also noted that there will be a further independent safety audit of the detailed design as part of the project development.

**THE COMMISSIONER:** Mr Boam, can I just ask you about the safety audit?

**MR BOAM:** Yes.

**THE COMMISSIONER:** Is that in evidence in front of me? Do I have a copy of that? Has that been done by an independent agency or an independent expert?

**MR BOAM:** It was done by Stantec, as independent consulting engineers, in September last year but I do not believe that is included in evidence.

**THE COMMISSIONER:** So has that been given to Mr Doherty, do you know?

**MR BOAM:** I do not believe so.

**THE COMMISSIONER:** Because he has requested it and I think if we could get a copy of that, looking at NZTA's counsel, and provide

that to Beth for her team, I think that would be useful. Thank you.

I only have a couple of other questions. I am looking at your evidence-in-chief Mr Boam. Your paragraph 14 about the tunnel option being a significant avoidance measure. I presume with the type of country you have here you could have done a big cut and it would have stood up okay? Or would the cut have been just too high in that area?

**MR BOAM:** No, anything is possible in engineering terms. We did look at that and, in fact, if you turn to figure 3 in paragraph 23 of my evidence, it does actually show that cutting through the ridgeline. That was assessed at one of the NZTA processes and it was not seen favourably in terms of the environmental impact. It also severs the access to Mr Beard's property and we were really struggling to find an alternative way of getting to Mr Beard with that. But fundamentally it was the environmental impact of that earthworks solution that ruled it out.

**THE COMMISSIONER:** Would it have been comparative cost-wise with the tunnel or would a tunnel be more expensive?



**MR BOAM:** I cannot answer that off the top of my head. I do not know at this -- I would have to go back to the detail to resolve that one.

**THE COMMISSIONER:** Another question I have about the shortlisted options and the costings. We have heard this today from Mr Roan that the online option, which is called Option Z in the shortlisted process originally, there was a \$112 million but he has gone back to some tables that I think you helped prepare and it was actually \$183 million more expensive than the chosen option. He has pointed to me some tables in his report. You and your team undertook those costing exercises, I take it?

**MR BOAM:** We did that in conjunction with estimators. So our role fundamentally has been to produce designs, give the estimators earthworks quantities, details, structures for example and an estimate. Then we put the whole lot together in the report. It has really been a joint effort and I do not have those numbers in front of me and I cannot comment on those today.

**THE COMMISSIONER:** No, it is not really specific numbers I am interested in. It is just the robustness of the costing efforts. So I had presumed that with the Alliance having

construction engineers and estimators, there would have been a reasonable amount of thought put into that costing and peer reviews and a range of inputs. So do you think those costs were prepared to a good level of detail for the purpose?

**MR BOAM:** Absolutely, bearing in mind it was only a concept design that was being costed and because of that we considered the financial risks involved in that design and we actually worked independently to assess the effects of those risks. So design team did their own assessment and ran a full Monte Carlo assessment using at-risk software. It comes up with the costings and the estimators used their own approaches to come up with costings and I know for example for the option now before you, our numbers were very similar. So I am quite satisfied that there has been a lot of effort and costings are robust.

**THE COMMISSIONER:** All right. So you are at what you call a developed concept design stage. Is that right?

**MR BOAM:** Yes. Well, it was when I finished as design manager but since then Mr Symmans will have been developing the detailed design.

**THE COMMISSIONER:** Yes, and I think you note that the most significant change to any costings would be in the geotechnical area and Mr Symmans I think I will be talking to a bit later so I can talk to him about that. I am just going through your evidence just looking for any other questions so if you can just bear with me for the moment. I certainly appreciated the diagrams in your evidence. They were very helpful to me, so thank you for that. I have asked you about the tunnel, that is all okay.

I just had question about barriers, the W section barriers. What are they? Are they the ones that you see often on the side of the roads, a metal structure?

**MR BOAM:** Yes, a metal W section if you like sometimes referred to as an Armco barrier.

**THE COMMISSIONER:** An Armco, all right. That is great, I understand what that is. I think just looking through here I did not have any other details questions for you, Mr Boam.

I was interested in one comment about, and maybe Mr Lister, the landscape person, will talk about that but the cultural expression opportunity around the tunnel portals. What was

that? Do you understand that there was a cultural expression opportunity detailed in the LEDF? Is that something you were aware of?

**MR BOAM:** Yes, so the intention is that we would provide within the design means of cultural expression for iwi. One example of that would be the bridge barriers and the other is the tunnel portals where it is intended to incorporate some sort of design actually within the concrete of the portals.

**THE COMMISSIONER:** All right, I understand that. My final question is that I did a helicopter visit last week looking at the area and some people call it "tiger country". So in terms of scale of earthworks and complexity for this project in the New Zealand scene, is it a very complex project in comparison with other projects you have worked on?

**MR BOAM:** In terms of design it has been challenging hence the need to have Humphrey otherwise it would have been a real struggle for us. The Humphrey has seen us through that. I think perhaps in terms of construction you are perhaps better asking Mr Milligan that question.

**THE COMMISSIONER:** So your evidence is that it is certainly well designed, it is achievable and has been designed to the required necessary design standards?

**MR BOAM:** Yes, absolutely.

**THE COMMISSIONER:** All right. I think that is us. It is dead on 5 o'clock so we have had our half an hour. So thank you very much, Mr Boam, and appreciate you calling in from Cyprus. I think that is where you are?

**MR BOAM:** It is, yes. The sun is shining.

**THE COMMISSIONER:** The sun is shining. I can see it through the window behind you. So thank you very much.

**MR BOAM:** All right. You are welcome. Thank you.

**THE COMMISSIONER:** Bye.

**MR MCKAY:** Thank you, sir, and thank you again to the council for setting up those links. That is greatly appreciated. Sir, just before we close for the day further, at the adjournment I spoke with Mr Carlyon and he is not purporting to provide a full

planning assessment on this matter, nor a full statutory assessment in terms of part 2. He has been retained on a limited scope and that is solely to cultural issues.

So beyond those he has, and this is my understanding, he will present evidence to you, beyond the cultural matters he has no comments on the benefits of the project nor comments as to other relevant matters for your decision.

So with that being clear, do not have any issue with Mr Carlyon in terms of those confined parameters. How you as the commissioner are going to give weight to them and factor them into your decision will be a matter for you to decide.

**THE COMMISSIONER:** I will wait to hear from Mr Carlyon. Thank you. So Mr Allen, we did have one other witness we have not got to today.

**MR ALLEN:** Very happy to carry on if you would like to.

**THE COMMISSIONER:** I think we had a late start so just to keep the meeting going I am happy to hear one more witness.

**MR ALLEN:** That would be great.

**THE COMMISSIONER:** It will be Mr Symmans, thank you. Good afternoon, Mr Symmans. I take you are happy to get through tonight.

**MR SYMMANS:** A bit unexpected but I am prepared so it is okay. Thank you. So just starting off going through my summary of evidence. I joined the project full-time in February this year to lead the detailed design. I was previously involved just before the MCA assessment just in a geotechnical review role. So since coming on board I have led all the geotechnical investigations and the assessment of the project in preparation for the detailed design which is ongoing at the moment.

Just in terms of a very brief summary of the geotechnical conditions and the approach, the predominant geology or the geomorphologic features of the project area consists of hill country which is narrow ridges with steeply sloping valley sides which has eroded into soft rocks. The soft rocks are sandstone and siltstone of the Mount Messenger formation.

Below the steep slopes, the valley floors are filled in or the inside valleys have been filled with up to 30 metres depth of uniform soft to firm alluvial silts. I stress that the

consistency of these conditions are extremely consistent so if you look at all of the boreholes and CPTs and the silts, for example, you cannot tell them apart. They are incredibly consistent. In terms of geotechnical risk and unforeseen ground conditions, this particular project at risk is definitely lower than most environments around New Zealand.

I have reviewed the geotechnical inputs provided to the MCA of options MCA1 and 2 and I consider these inputs provide a good reflection of the geotechnical risks as were known at the time of the assessments. I have specifically reviewed and undertaken my own analysis of the existing landslide that affects the existing State Highway 3 as well as previously considered online route option Z.

Some sections of this very large landslide are currently actively displacing and given the section 42 comments on this, I will explain more about that landslide and the retaining wall in a little bit. Basically without significant works to stabilise this landslide feature, any route options crossing the feature could be subject to ongoing defamiation and potentially large displacements, particularly if subjected to earthquake shaking. Without stabilisation, any routes crossing this feature would



not meet the NZTA transport agency's design requirements for new highways.

The proposed retaining wall solution to address this landslide feature and the associated cost estimate developed during or post the MCA process is a fair representation of what would be required to provide a resilient route. That would also meet the design requirements as set out in the transport agency's bridge manual. Such work would require significant expenditure priced at \$112 million which I can go into a little bit more later. The project alignment is a feasible route from a geotechnical perspective.

I consider that the proposed project can be constructed to provide a resilient section of highway. Some of the key geotechnical issues affecting the route include the stability of cut and fill slopes, embankments on compressible ground and tunnel excavation and support. These issues are not unusual for highway construction in New Zealand and can be appropriately managed throughout through appropriate detailed design and construction. Going to your question of the last witness, pretty much every road through the central North Island has been built to a very similar terrain with the steep sandstone slopes so it is certainly not unusual.

In response to the first New Plymouth District Council section 42(a) report, we provided additional copies of a liquefaction assessment report that was done after the AEE. We provided a monitoring report where we went back to the inclinometers that had been installed within the main State Highway 3 landslip. A summary of those reports was that liquefaction for the route E was considered to be low and I understand that during the original MCA assessment, liquefaction of the route E was a concern and may have affected the scoring.

The information we now have is that that liquefaction risk is low and can be managed quite easily through engineering design. The landslip feature in the six months since the previous recording, two of the instruments had sheared off completely - so this is a State Highway 3 landslip - and the other instruments had shown between 10 and 40 millimetres of displacement. What that means is that the landslip is moving. It is creeping.

On 11 June, myself and other members of the design team met with Mr Allison. At that meeting, we walked through the project and answered a number of questions. It was a very good discussion. Mr Allison advised me at that meeting, confirmed by

email, that he was satisfied with the discussion and the information that we provided to him and he did not require any further information or clarification.

A response to submitter evidence is covered in my rebuttal evidence. Mr Duirs's evidence infers that erosion sediment control devices constructed in the terrain of this project present an increased risk of failure. From an engineering perspective in my professional opinion, I consider this to be incorrect. All temporary earthworks for the project including erosion and sediment control devices will be designed or reviewed by a geotechnical engineer. The purpose of this is to ensure they are fit for purpose, safe and robust.

Erosion and sediment control devices will be geotechnically designed to address the likely ground conditions, the flood levels and the terrain of the site. I think that what that means is that when you analyse the design, you are accounting for those and you still are aiming for the same factor of safety or the likelihood of failure.

The risk is the same, be it a flat site or a steep site. You end up with more engineering and foundation works to get to that same level of risk. Bearing in mind the risk of these

failures of these engineered devices is extremely low in my opinion. Overall, in my opinion, the proposed erosion and sediment control measures are practical from a stability and engineering perspective.

There are a whole lot of questions that are probably relevant to my field raised in the latest section 42 report.

**THE COMMISSIONER:** I am looking at that report now. There are two attachments; one from Mr Allison which is dated 18 June. Do you have that one there in the report?

**MR SYMMANS:** I do

**THE COMMISSIONER:** Have you covered those in your supplementary or rebuttal evidence already, those questions? Had you seen that letter previously?

**MR SYMMANS:** Yes. My understanding of the way that Mr Allison has presented these things is there is a sequence of letters. One asks the questions. The next thing, we had an, I guess, core meeting and then the final one of the 18th summarises that. It is my understanding if you look purely at 18 June report that, effectively, there are not any discrepancies between my

opinion and Mr Allison's between those. That is my understanding including a brief discussion with Mr Allison.

**THE COMMISSIONER:** That is my understanding as well. In terms of 18 June letter, I think you are reasonably in tune.

**MR SYMMANS:** Yes.

**THE COMMISSIONER:** There is a subsequent letter from Mr Doherty dated 30 June which is appendix B of that latest report from the council and he does have some clarification questions under your name. Have you seen those?

**MR SYMMANS:** Yes.

**THE COMMISSIONER:** Perhaps we could tick through those because that is new information since you have done your rebuttal evidence I think.

**MR SYMMANS:** Yes. Can I suggest I use the whiteboard because it is all wrapped up in my mind around can we optimise route Z?

**THE COMMISSIONER:** I am very happy for you to do that, if that helps, yes.

**MR SYMMANS:** This is quite complicated, if we could play around with it, so what I am talking about here is the landslip. If you look at it on the plan, you have got this landslide picture of quite an active thing come through the road, comes down and hits the valley floor and that then, like this, so if you look at that as a multi-terrain great(?) floor, we have the bridge and the road climbs up and goes through there.

There have been lots of questions of, "Can we optimise this design by moving it this way or up and down and would that affect costs?" What that retaining wall is effectively is a surface landslide, as we know, this bit is active, probably formed during an earthquake. Analysis of the type of any earthquake, be it even a medium, will move up to rough numbers of potentially up to 6 metres. To get a resilient route across this that can particularly stay open in an earthquake or post earthquake with minimal repairs, we need to deal with that.

A number of options were looked at. The option that relates to what the design team thought was the most efficient at the time effectively was building a retaining wall for 1.5 kilometres across that part and move below it and the road stays in place.

The first question is could we take this route around the side and follow the contours of the edge? The problem with that is that we are coming higher on the terrain. That is coming through there and dropping, you are trying to chase around the top of the landslip so you are getting higher and then you run out of ridge and you end up with effectively a 50-metre drop and it is just impossible to tie the roads together. That is why there are not many potential options.

**THE COMMISSIONER:** That is one of Mr Doherty's questions. Could you take it up the ridge?

**MR SYMMANS:** Yes, so that is one of the reasons. You cannot do it with the geometry. The second, if you just look at the small movements and if we draw our landslip surface, it is a very, very large landslip. Effectively, we have the existing road sitting where I am here. This is, in places, up to 30 metres but we say it is effectively 20 metres deep in terms of the zone that is moving. If we say that the ground is increasing varied up to much steeper, because this is a flat 5° and this is around 15°, the minute you move up slope, you are just looking at trying to of optimise it this way. If you move it 10 metres, every 10 metres you go that way, this retained height gets 1.8

metres deeper. To try and move it just a little bit to the east, suddenly the retaining wall goes up, your costs go up, so it is a real fine balance. That is why it is difficult to move. You do not really get any benefit, just added costs.

Just the scale of this project at 112 million, if you need a retaining wall which is 1 metre high and increase it to 2 metres, the forces go up exponentially, so the force on a 1 metre high wall, if you go to a 2 metre high wall, the forces involved just go up exponentially so that is why, because they are trying to retain so much soil and it is why the scale of this wall is so big.

To stabilise it so it does not displace in an earthquake is not so much talking about can you do more above ground a retaining wall and less below ground and what are the cost difference? I can tell you the cost effect will be \$209 per square metre. It is very slightly cheaper to construct all above ground or below ground. Fundamentally, what we are trying to do here is not retain the road. What we are trying to do is stop the land slip movement. All the work is done by piling through the base sheer bit of this and putting in anchors all the way back here in the 60-odd metres and tying them to the stable ground.



When we are talking about where all the costs sit, it is all in the work that has been done stabilising it is in here and here and it just costs a lot of money to get to that depth. What I have done is I have taken a cost estimate that was prepared by the estimators just summarising the design, design equates to some quantities of materials and the length and length of piles. The estimators, the construction side, apply to that a rate, the dollar rate for every metre or kilometre, and that is the full cost.

In trying to answer some of Mr Doherty's queries, I have been looking at, if we play around with this element, what does it change here, keeping the same construction rates, and not changing those, these are the rates that we have used for the costings, and what effect has that had in dollars. Using that, so what I am doing is changing the design of things and seeing what effect it has in dollars.

Breaking this down into components, the portion of this 112, 14 per cent of that is the cost of the above-ground wall so it is really only a tiny bit. By changing the geometry up or down, it is really only having a very small effect. But if we

put more curvature in the road to try and achieve that height, it really has very little effect on that.

**THE COMMISSIONER:** All right, thank you. That is the landslide issue. Is there anything you would like to add or there were some other questions I think he had about bridges and embankments?

**MR SYMMANS:** The subs have covered that.

**THE COMMISSIONER:** I think you have explained that.

**MR SYMMANS:** If you go to my appendix 2, there is a drawing that shows the route Z.

**THE COMMISSIONER:** I will just find that. Just a moment. It is in your evidence-in-chief?

**MR SYMMANS:** Yes.

**THE COMMISSIONER:** Your appendix 2.

**MR SYMMANS:** Mr Doherty points out that, on that figure, there is a bridge and a fill at the southern end that is different from shown on the route Z options at the time of MCA.

**THE COMMISSIONER:** Yes.

**MR SYMMANS:** What this drawing is showing is the route Z alignment but it is showing a slightly later version of the design so the design, after the decision about route E being a preferred option, the design of route Z continued until mid-August. As I understand it, two options were still progressed. That is the reason this drawing is different is it is showing a slightly different development of option Z.

**THE COMMISSIONER:** It includes a bridge near the southern portal of the tunnel.

**MR SYMMANS:** Yes, so the southern portal of the tunnel, my drawing is showing a fill. Whereas, the MCA drawings show a bridge.

**THE COMMISSIONER:** At this location.

**MR SYMMANS:** The other way around and then down at the far southern end, this drawing is showing a bridge, whereas it is showing a fill in the other option.

**THE COMMISSIONER:** All right, so those are the two questions from Mr Doherty on 3 July.

**MR SYMMANS:** Yes.

**THE COMMISSIONER:** I think the question then expands to, "Is there any cost differences between the two?" My understanding of the reason that those two are different, if we start with the bridge, is that when you actually start getting into the detail of how you would build a fill, it encroaches over the existing state highway and so you cannot easily do that. Then you start pushing into you either need a bridge or a vertical retaining wall. The cost of those, we did not do the exact numbers, but they are comparable. Definitely more expensive than a fill covering the exiting road but there is that practicality creeping into it.

Very similar with the fill just at the tunnel portal. It is incredibly hard to build a tunnel without any working room at the portal and, therefore, this option was progressed to try and

deal with the practicalities. Again, there would be very little cost difference.

**THE COMMISSIONER:** All right, I think you have answered those questions. I will just have a look myself at my questions I had written on your document. I will just go to your document.

**MR SYMMANS:** There is just one more question Mr Doherty raised which probably relates to design rather than construction for Mr Milliken. There was a question that there was a bridge and before that bridge just at the southern portal of the tunnel, the scheme drawing showed a pole in the middle of the existing State Highway 3 and the question was, "Could that move?" The answer is "Very definitely" so the answer is yes to that question. Mr Milliken will talk about the practicalities of building that.

**THE COMMISSIONER:** This is on the online option we are talking about still?

**MR SYMMANS:** Yes.

**THE COMMISSIONER:** Yes.

**MR SYMMANS:** Also in the section 42 report, there are just a few questions around geotechnical risk, I guess, and uncertainty. Just an update on the investigations that are ongoing. I think Ken mentioned we are running a risk analysis for running probabilities and things. The ground conditions are better than for route E probably than are assumed so the cost number started off at geotechnical risks around the 15 per cent and I understand its current modelling has it less than 5. It means the ground conditions are better for route E than we expected.

**THE COMMISSIONER:** All right, so I suppose just for clarification - and you may or may not know this - the \$112 million that is talked about in all the evidence, that is the cost of remediating that landslide on route Z.

**MR SYMMANS:** That is the physical cost of building the retaining wall.

**THE COMMISSIONER:** Yes, the cost difference between Z and E is \$183 million, of which only part of it is 112, but there are other additional costs for doing the online option that make up that 70 million or so additional costs over and above the cost of E.

**MR SYMMANS:** That is right.

**THE COMMISSIONER:** That is right. I am just flicking through your evidence and I do not think I saw any particular other questions about what you have covered but just let me get to the end.

The use of rock drapes. I was not exactly clear whether you were going to be doing your cut designs to avoid these rock drapes or whether actually they were a feature and this comes to, I suppose, a landscape question.

**MR SYMMANS:** We are being told that, from the landscape point of view, that they would prefer not to have rock drapes and so what we are trying to do is manage that rock fall risk as best we can using other means. We have completed some rock fall trials. We are currently running that through our models. It is currently looking like we are not going to be able to eliminate rock drapes everywhere so it is probably likely it still will be required but only on the higher slopes. We need more analysis as to whether that slope is over 30 metres or if it is somewhere in that order.

**THE COMMISSIONER:** It is because there has been a change I think between your evidence-in-chief to your supplementary evidence where you say that I think. I did have a question about the liquefaction assessment that you had done at the request of New Plymouth District Council. I think you have commented on that already that Mr Allison was going to be comfortable with that that has been provided.

**MR SYMMANS:** Yes.

**THE COMMISSIONER:** Yes. I did have a question about winter work. I know some councils have concerns with working in winter time. Is that going to be a particular issue for this project or are there any restrictions or anything you think are necessary in terms of the materials you are dealing with?

**MR SYMMANS:** As far as from an engineering perspective, there are two issues. Can you compact the fill because you need a certain density and, therefore strength? That is monitored so at some point, it will get to where you cannot dry the fill enough and, therefore, you would have to stop.

**THE COMMISSIONER:** You stop anyway.



**MR SYMMANS:** Yes, so you just cannot and if you placed it, you would have to place it again and the other one is that, at some point, if you are running traffic over surfaces, if it gets too wet, it starts churning with the tyres and things like that. Again, you get to a point that you start doing damage to your roads and you have to stop.

**THE COMMISSIONER:** In your opinion, you do not think there is any necessity to have conditions about not working between particular periods?

**MR SYMMANS:** No, if it is wet, the works will have to stop.

**THE COMMISSIONER:** Yes.

**MR SYMMANS:** That might be in summer; it might in spring; it might be at anytime.

**THE COMMISSIONER:** Did you do some rebuttal evidence?

**MR SYMMANS:** I did.

**THE COMMISSIONER:** You did three sets. I think you have commented on it in the rebuttal evidence in Mr Duirs's evidence. Is he an expert on behalf of the party?

**MR SYMMANS:** He is for DOC.

**THE COMMISSIONER:** He is one of the DOC team, is he? Is he an engineer in your field of expertise?

**MR SYMMANS:** I understand he is a planner.

**THE COMMISSIONER:** You have dealt with his queries in your evidence so I just do not have any particular queries about your responses but you are not aware of Mr Duirs as a geotechnical expert in your field?

**MR SYMMANS:** He is definitely not.

**THE COMMISSIONER:** No, I will be talking to him later about his expertise but thank you for that. That is all the questions I have. Thank you very much. Mr Allen, I think that is the end of today.

**MR ALLEN:** Thank you, sir, and thank you for the extra time as well.

**THE COMMISSIONER:** I thought we might as well just try and keep on track with the late start.

(Adjourned until Thursday 2 August 2018 at 9.00 am)