

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2013 AKL 000174

IN THE MATTER OF An appeal pursuant to s 87 of RMA

BETWEEN WAIHEKE MARINAS LTD

Appellant

AND AUCKLAND COUNCIL

Respondent

**AND DIRECTION MATIATIA INCORPORATED
NGĀTI PAOA IWI TRUST
AUCKLAND TRANSPORT
THOMAS GREVE AND KRISTIN LEWIS**

Other s274 Parties

Hearing Commenced: 06 October 2014

Court: Judge L Newhook
 Commissioner A Leijnen
 Commissioner R Howie

Appearances: Mr's R and J Brabant for the Appellant
 Mr M Allan and Ms S Schlaepfer for the Respondent
 Mr's M Casey and K Littlejohn for Direction Matiatia Inc
 Mr R Enright for Ngāti Paoa Iwi Trust
 Ms N McIndoe for Auckland Transport
 Ms B Parkinson for Mr T Greve and Ms K Lewis

NOTES OF EVIDENCE TAKEN BEFORE THE ENVIRONMENT COURT

THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL – HOUSEKEEPING

MR R BRABANT ADDRESSES THE COURT – APPEARING WITNESSES

THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL – SITE VISIT AND COPIES OF DOCUMENTS

THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL – DRAFT CONDITIONS AND CONSENT

MR R BRABANT READS OPENING SUBMISSIONS

“Granting consent to.... Of Environmental Effects,” and I pause there to say, Sir, my co-counsel has done extensive footnoting all the way through. I won’t go to any footnote, Sir, unless I felt I wished to, but I am as always, Sir, very happy for an interruption in my submission if someone wishes to pause and look at something or ask me about something.

THE COURT: JUDGE NEWHOOK

Thank you.

MR R BRABANT CONTINUES READING OPENING SUBMISSIONS

And that, Sir, that section, “includes a table... the MMA areas.”

And so now I refer you to, because this is a good example in the very bay, if you can turn up the folio of figures Sir, figure 36.

THE COURT: JUDGE NEWHOOK

The 2013 bundle or 2014?

MR R BRABANT:

Yes Sir, that’s the original one. And this is, I haven’t got the detail for elsewhere but I’ve recounted that Sir and the Harbourmaster has spoken of it

but if you just look at what's been carefully tracked in Matiatia itself, you'll see there, and this has been done for another purpose as well but you'll see there the dotted out line of the existing mooring management areas and then the plotted – it's the October 2013 version, figure 36. And you can see the situation that's effectively developed over time for whatever reason.

MR R BRABANT CONTINUES READING OPENING SUBMISSIONS

“The evidence in ... areas are shown.” And obviously Sir, again I've excluded the bottom end so we're focussing on the ones that are in and around the area of where the focus of residential and population is.

“The PAUP mooring...” And I won't go into that Sir but there are some changes that, one of the notables is that for some reason these zones have got more linear sides to them and I don't understand why.

“The 2 MMA... location at Waiheke.” Now that could be an initial surprise because some of the areas look larger but then, of course, when you go into those areas and you read Mr Dunn's description you have issues like access to roads, very shallow water and other problems which mean that you might have a large area but a lot of it may not actually be suitable so what we do know is that Matiatia has the most in one location.

“The Harbourmaster's office... mooring in Matiatia.” And given the total in both mooring areas it numbers 96, that is a very significant number in my submission.

“This bay is... end of the island.” And I, of course, refer to overall shelter, it's not shelter today but in a range of conditions it's regarded as the best signified by the demand for people to moor there.

“The northern inner...potential marina site.” So Sir that means that these other locations that are on that map that I’ve had you open, they’ve been addressed in the AEE.

“This alternative site...limited and shallow.” And if you just flip back to 36 again you will see my point and if you go out there, if you observe boats you will recognise the point, people are pretty much crowded down into that.

“This means the...distance from shore.” And when you visit Sir you may see some boats that anchor, you will distinguish of course between them, you will be able to and if there are any there you will see how far out they are.

“In addition the...Oneroa commercial area.” So in contrast Sir, the opportunities for recreational anchor.

1040

“The replacement of... to this submission.” And it was only completed yesterday, Sir, because we were trying to – now, would the Court like me to a pause, Sir, and just have a read of it? It’s not very long, or do you look at it later? I don’t mind.

THE COURT: JUDGE NEWHOOK

Is it necessary for us to have it at this stage do you think?

MR R BRABANT:

You don’t need to have read it at this stage, Sir, it gives you an up-to-date picture. The response rate in the time available is not everyone or anywhere near it, but Mr Wardale has given you some information. It’s the best information we can give you on a review and you could read it later, Sir.

THE COURT: JUDGE NEWHOOK

Yes. Why don’t you talk with the other counsel about this at the morning break and see if it’s something that we should have. I rather would have

expected that it would have come with Mr Wardale's evidence-in-chief rather than today. You've had a couple of years to put it together.

MR R BRABANT:

Yes, but the purpose, Sir, rightly or wrongly that I perceived was that we should do one immediately before the hearing. And Mr Wardale has prepared this, and in my next sentence I say, Sir, if necessary Mr Wardale can confirm the details having taken responsibility for the review. So –

THE COURT: JUDGE NEWHOOK

Right, well you talk to the other counsel. I'm not requiring you to talk to all the other parties, but by the time you've talked to the other counsel you will have covered off the majority and see what their attitude is to our receiving that document.

MR R BRABANT:

And if need be, Sir, if it need be I'll seek –

THE COURT: JUDGE NEWHOOK

It may be that it's not a matter of controversy, I don't know.

MR R BRABANT:

If need be I'll seek leave to introduce it to Mr Wardale when he gives evidence.

THE COURT: JUDGE NEWHOOK

Well, it may not be a matter of controversy or it may be, I don't know, so you talk to the other counsel.

MR R BRABANT CONTINUES READING OPENING SUBMISSIONS

"Registrations of interest... the ferry terminal," to go to Te Wharau or Cable Bay to do other things that the island has to offer in the way of recreation and tourism. "In the Auckland... discretionary resource consent."

You may remember, Sir, in times gone by we did have those zones indicated. I remember one up on the inside near Algies Bay or Snells, and there were other locations, and at one stage the Akoranga location I think was identified, so there was like a future urban zone equivalent, but they got dropped. And I might say, Sir, in Northland, having just done an application up there, Sir, for the Opuia Marina Extension, there's a plan change recently approved by the Minister that recognises the provision for marinas in mooring management zones. So here we have that problem, and it's been around for some time now.

THE COURT: JUDGE NEWHOOK

Is the Minister in charge of plan changes nationally now and not just in Christchurch? How did that come about, just as an academic interest?

MR R BRABANT:

Well Sir, remember, the Minister of Conservation had to sign it off with being a coastal plan plan change.

THE COURT: JUDGE NEWHOOK

Oh, after it had been through management process?

MR R BRABANT:

Yes, exactly Sir, exactly. Nothing like that. And it only sat there for a year, Sir, but we managed to get it completed. But I'm just contrasting that Northland has moved with a mooring problem to create an opportunity, and we don't have that in Auckland. So you know, Sandspit is the most recent example.

As a result, as I say, "it is necessary to... the approved location." Mr Dunn, Sir, has anticipated that potential by putting a submission into the entry plan, so we could just get the procedure done faster if the Court was minded to grant consent.

THE COURT: JUDGE NEWHOOK

Just a question about this sort of thing, thinking about the Tairua Marina, that started, the proposal for that in RM terms started by way of an application, a private application for plan change, which was one of the earlier cases I did when I came on the Court, and a small area was established, smaller than ultimately the applicants wished to have, so there was a series of cases about that afterwards. But had your client contemplated maybe a two-stage process of a plan change followed by an application? You see it elsewhere, of course, for other infrastructure like the inland port in the Waikato, and plenty of other instances.

MR R BRABANT:

Well, there's two answers to that question, Sir, the first is you need to ask Mr Dunn. He's been responsible –

THE COURT: JUDGE NEWHOOK

Pass the buck, Mr Dunn.

MR R BRABANT:

No, no, well, I'd be guessing, Sir, because I mean I wasn't instructed –

THE COURT: JUDGE NEWHOOK

All right, if you're guessing that's fine, don't dwell on it any more –

MR R BRABANT:

Remember, there was one application that we withdrew and then reissued.

THE COURT: JUDGE NEWHOOK

We'll ask Mr Dunn, so he's got fair warning of this now.

MR R BRABANT:

Yes. The other thing, Sir, is that aside from that being the method that is being adopted in Auckland, and I can quote more than one example that you'll probably be familiar with anyway –

THE COURT: JUDGE NEWHOOK

Oh, there will be plenty.

MR R BRABANT

The fact of the matter is, Sir, and I've seen what happened at Tairua, I'm not sure that it's actually helpful given that marines are such an unusual circumstance. You know, they're a rare beast anywhere in the country, and putting a full application like this forward with all the detail enables the applicant and the community and the counsel to deal with the whole detailed package. I know it was done differently at Tairua but, Sir, the legislation does not state a preference for one method or the other –

THE COURT: JUDGE NEWHOOK

But then of course you get the likes of King Salmon where I think they were run together. There's another technique.

MR R BRABANT:

Yes but I think there were some particular legislative requirements that mandated that as well, Sir, so I don't think it's quite as simple.

THE COURT: JUDGE NEWHOOK

That's why I don't know about that. Anyway, let's carry on.

MR R BRABANT:

Yes so, "and then in due course... type of marina construction." So there's nothing new here, there's no effectively new science, the marina layout, the methodology follows a well-versed and known pattern. "Notable –

**THE COURT: JUDGE NEWHOOK ADDRESSES MR BRABANT –
READING OF SUBMISSIONS**

MR R BRABANT CONTINUES READING OPENING SUBMISSIONS

“Notable in this...within the reclamation.” And if I can just take you Sir to 34, in the same volume that I’ve had you looking at Sir. So, you can see right in the middle there’s a large gap and you can actually add the two pieces together and arrive at more or less a year but the total period span is longer. “Construction of a...Road in particular.” And this is an interpolation Sir but the previous application, which isn’t before you, had the rock coming from the quarry on the island. “Where materials must... a clean marina.” And we’ve given you, Sir, the website that you could look at if you wish, the Court could. “The Marina will... lit ferry terminal.” And I just take the opportunity Sir to take you to 67 and you’ll see the top photo there. “And the light... in the Crown.” And I’ve provided Sir, in that appendix, a copy of the relevant sections. The point is Sir it will be public land.

“In order for...storm water discharge permit.” That is, that’s in two parts, again, for the construction and then post-construction its use is required, and I’m referring now to its use. “To enable the...dedicated carpark.” I mean for the Coast Guard person.

“I particularly draw... non-complying activity.” The marina itself. That’s, of course, subject to submissions.

1100

“Section 88A of... accordance s 87B(1)(a).” And I should have said in it and as well rule 13.7.1 above.

“Bundling and overall... discretionary activity consent.”

1110

THE COURT: JUDGE NEWHOOK

Mr Brabant, I want to ask you about (a), "The dredging activity on the construction of reclamation overlap or interconnect to the extent that non-complying consent is required for both." If you take the reclamation out of the equation and replace it with a deck, you're still left with non-complying activity status needed for the dredging activity.

MR R BRABANT:

No Sir, but of course the dredging happens anyway. The dredging isn't non-complying of itself and neither is the deck. The dredging, I've overlapped the reclamation as a non-complying onto the dredging and lifted or worsened, whichever way you want to put it, the status.

THE COURT: JUDGE NEWHOOK

What's the activity status of the dredging?

MR R BRABANT:

Discretionary.

THE COURT: JUDGE NEWHOOK

Discretionary?

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

All right.

MR R BRABANT:

And so that becomes non-complying if you make the connection.

THE COURT: JUDGE NEWHOOK

Have you got a rule reference for us? Or can we ask your learned junior to find that?

MR R BRABANT:

Yes, it is in the evidence and the section 87 report.

THE COURT: JUDGE NEWHOOK

I'm sure it is.

MR R BRABANT:

We'll find it, Sir.

THE COURT: COMMISSIONER LEIJNEN

If there isn't any connection between the reclamation and the activity, how does the reclamation justify it, what's the purpose of the reclamation, why would you be reclaiming it?

MR R BRABANT:

To provide parking. But we're not –

THE COURT: COMMISSIONER LEIJNEN

But you wouldn't be providing parking if there's no connection.

MR R BRABANT:

Yes but we're talking with respect about an effects connection. So when you, because a reclamation ceased to be a reclamation once it's done, so it's only a construction activity that you're consenting. And it's non-complying, I accept that, but when it's finished it's a piece of land and then it has different consent requirements. But the dredgings are – when it's on land, and it is land, it provides parking. The fact the parking is going to be used with a marina doesn't then impose a non-complying status on the marina itself given that the reclamation non-complying status is an interim one during construction. So if it ceases to be non-complying once it's no longer being built, how can you possibly then in fairness or in logic say that because the cars parking on it,

you know, they are people who use the marina, so we're now talking about the activity, so we'll make it non-complying. That's the point.

THE COURT: JUDGE NEWHOOK

Look, I'll think we'll leave it there for the moment. I think this one has some legs and I think we're probably likely to hear from other counsel about it. There's quite a bit of law in here. I would be minded to pursue it as well for the moment, but now I think we'll just sort of let it sit. We'll hear from others. You have the ultimately right of play anyway. So I think we'll deal with it a step at a time in that way.

MR R BRABANT:

May I just say I realise that this is quite something to absorb because there has been an acceptance in lots of hearing situations, including in this Court, where people never say anything about it. But I have and I've done it before, and I recognise that's something you might want to go back to.

THE COURT: JUDGE NEWHOOK

Yes, well the *Bailey* and other cases line of jurisprudence was interesting in itself and I'm not surprised it's cropped up here, I anticipated it would after I saw the two options specified of a reclamation on the one hand or a parking deck on the other, even though the parking deck is going to cost \$3 million more.

MR R BRABANT:

I'll talk about that in a minute, Sir.

THE COURT: JUDGE NEWHOOK

Yes. So I anticipated that we would have this and we will be interested to hear everybody who is interested in this legal point in due course, and we'll just take it a step at a time during the hearing.

MR R BRABANT:

Thank you, yes. But I'm happy to take any questions at any time.

THE COURT: JUDGE NEWHOOK

Absolutely, and you have. Let's move on.

MR R BRABANT:

15.5.10 is the rule reference, Sir, the Auckland Regional Plan Coastal.

THE COURT: JUDGE NEWHOOK

Thank you.

MR R BRABANT:

Now, Sir, now we've moved to "Berthing and the control of boat activities," which is another significant issue.

"While no party... remains good law." If you will permit an interpolation, I had a look, Sir, at the Tairua decisions and I had a look at Sandspit, and they've got conditions about this inserted, but it looks to me that no one paid any attention to this issue and produced this case, which is High Court authority.

"The part of... *Hauraki District Counsel*," you'll remember there was a bit of a series at that time that your former firm I think were involved in, "in which the Court –

THE COURT: JUDGE NEWHOOK

Mr Dorn and his floating home.

MR R BRABANT:

And there was Milton I think having a go as well.

THE COURT: JUDGE NEWHOOK

Yes that's right, yes.

MR R BRABANT:

“In which the Court had said... by the marina.” And we’ve sought those consents here Sir.

“So to treat...within the Marina.”

1120

THE COURT: JUDGE NEWHOOK

Well on the legal point I suppose we’ll hear in due course from Allan to the Council’s position at law on this.

MR R BRABANT:

Mmm, you will but Sir the Council’s draft conditions include a whole lot relating to contaminant discharges from boats under the guise of a section 12 consent.

MR R BRABANT CONTINUES READING OPENING SUBMISSIONS

“At the heart...of a ship.” And I haven’t Sir listed all of them, there’s other stuff in there too.

“In the latter...referred to above.” And I should’ve added Sir, and what about the existing replaced boats that are to be replaced in the mooring management area? The permitted baseline if you like of contaminant discharge.

“The counsel’s witness...the bio security issue.” And I did note Sir that Mr Poynter did phrase this in his brief.

“This latter concern...at the least.” And that Sir might be a convenient point if I may.

THE COURT: JUDGE NEWHOOK

Yes, now I will just float with you in sync with your responses but again I imagine that we’ll hear from other parties about it. Leaving aside the

statements by the Full Court or the High Court in Christchurch in 1999 which perhaps Mr Allan and Ms Schlaepfer will address but coming to your point, your point, your subsidiary point that it's impossible for a Marina owner to control the type of antifoul paints used on boats and to police it. It just occurs to me that each and every Marina I've had anything to do with has a comprehensive set of rules that berth holders are required to sign up and abide by and one imagines that this marina would be no exception because would be all sorts of other things that the marina owner would want to regulate in terms adhering to resource consents. An example that comes to mind is to require yacht owners to tie back their halyards so they don't slap on the mast all night and keep the local residents awake, things like that.

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

Which hardy perennials around marinas.

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

Now, what happens underwater it seems to me is a practical matter, is actually not very different from what happens up the mast and the marina operator can make rules and require boats to adhere to those rules and there are usually penalties contained in those rules for non-adherence. Eviction being the ultimate. So, as I sit here, I don't see that this is an insurmountable problem in the practical sense and again I stress I'm leaving aside the High Court decision which may bind us to stay right away from there, it will be interesting what others have to say about this.

1130

MR R BRABANT:

Well Sir, in reply I just say at this point that yes there will be marina rules and there are particular issues that have been identified including halyard slap, which actually is so easily remedied.

THE COURT: JUDGE NEWHOOK

Yes, mentioned in evidence.

MR R BRABANT:

And marina management has a part to play there but we're promoting that we don't have any wind generators whining and howling away at marinas because they've all got shore power. So there are things like that Sir but whilst the marina operator, in my submission, can encourage good practice in terms of antifouling and using the right product. To deal with a circumstance where a berth can be legitimately used by more than one boat with the permission of the owner, who can ring up and say so and so's coming down, I've mentioned Sir the opportunity in this destination for temporary berthing. People can be advised and the Clean Marina website, Sir, is a useful one to look at. The Opua Marina, as you'll see on the website, has got stage 3 certification, they go around with seals and plastic ties and shut-off valves so that there can't be any pumping out. They're not responsible whether someone pumps out but they're doing the right thing and trying to make the marina good for the environment and everyone else. The question is, Sir, where this all sits, and in my submission it does not sit in imposing responsibilities through conditions on marina operators. There are other ways, and I accept your point Sir, it's a question of the way the conditions are worded. But telling a marina operator whether you do it by saying you've got to put rules in or otherwise, you have got to make people use the right antifouling paint and then how do they know? There's no haul-out area here Sir.

THE COURT: JUDGE NEWHOOK

Some people would probably claim that they can recognise a particular antifouling paint from another just by visual inspection of the hull.

MR R BRABANT:

Well, the hull's below. Well, you're asking a bit Sir to know –

THE COURT: JUDGE NEWHOOK

I'm not claiming to be an expert but some people do.

MR R BRABANT:

We're talking about which chemicals are inside the paint, that's a tall ask Sir, I mean are we going to ask for the paint tin? I mean this is the problem with whether this is done on a national basis or whether it's done –

THE COURT: JUDGE NEWHOOK

I'm not going to get into an argument with you on the point right now Mr Brabant, it's going to be one of those iterative topics because there is interest in the topic on the part of the Council and some parties. It will be interesting to hear what they have to say in particular about the High Court decision. That's the starting point I think. And it may be that if the Council is forced, and other parties are forced to say, well this Court is, the Environment Court is bound by a definitive decision of the High Court and on this occasion were unable to distinguish it then the matter may wither on the vine and some people will be disappointed about that, if consent to the marina is forthcoming. So we'll just have to see where we go. You and I aren't going to resolve the issue with a further question and answer session right now on the topic.

COURT ADJOURNS: 11.33 AM

COURT RESUMES: 11.58 AM

THE COURT: JUDGE NEWHOOK

Quickly before we resume, Mr Brabant, it occurs to us that Mr Thiebaut and Mr Treloar might need to be involved with the questions that we put, the three questions that we put that we thought that Mr Lemman might be needed for.

MR R BRABANT:

Might or might not, Sir?

THE COURT: JUDGE NEWHOOK

Might, yes might. But you're going to have to help to work that out. What we don't want is a situation where Mr Lemman turns up and those issues are put to him by us, and then he says Mr Thiebaut or Mr Treloar is the person to deal with those.

MR R BRABANT:

Yes, we can deal with that, Sir, we're going to meet with him tonight and we can see whether he's in a position –

MR R BRABANT:

But anyway, we're going to call him tomorrow, so if it's an issue we'll get the others over.

THE COURT: JUDGE NEWHOOK

Yes, but you might if you conference with them explore those issues and you might find that two out of the three or one out of the three is the person to deal with it so, you know, be cost-effective about it. But just be aware that if we find that somebody's trying to help us and then says, "Oh but actually no, Mr Treloar needs to deal with that," okay? Have to leave it to you really.

MR R BRABANT:

Thank you Sir, and the other thing I'll just mention, progress is being made on the buoys front, perhaps we update you on that at the end of this submission but there are arrangements being made

THE COURT: JUDGE NEWHOOK

Good.

MR R BRABANT:

Thank you Sir. Including the harbourmaster, Sir, which I think is the way it should be.

THE COURT: JUDGE NEWHOOK

Well logically if something's (inaudible 11:59:59).

MR R BRABANT CONTINUES READING SUBMISSIONS

I'm up to paragraph 53, Sir. "Some witnesses addressing cultural matters," and I should have added maybe "landscape issues" as well to that, "have addressed potential... *and Rodney Council*," and could I take that paragraph as read, Sir?

THE COURT: JUDGE NEWHOOK

Just pause for a moment while I re-familiarise myself with that.

MR R BRABANT:

It's not new, It's got *Darroch* in there.

THE COURT: JUDGE NEWHOOK

We probably bump into it all the time. Yes.

MR R BRABANT:

So there's two sep – *Darroch* deals with, and I think it's a very nice neat statement, Sir, of the principles in terms of another structural activity, and the second one, the decision of Planning Judge Turner, Sir, in *South British*,

which I think followed, there was a meadow mushrooms case about it even earlier, deals with the question of prejudice to parties in terms of needing re-notification.

THE COURT: JUDGE NEWHOOK

I think *Zakara* was one of mine and I had to review all those decisions.

MR R BRABANT:

Zakara, Sir?

THE COURT: JUDGE NEWHOOK

Yes.

MR R BRABANT:

I thought Judge Whiting did that –

THE COURT: JUDGE NEWHOOK

No, was it somebody else?

MR R BRABANT:

– because that was my case.

THE COURT: JUDGE NEWHOOK

Oh okay, I had one of those in the north but, anyway, it doesn't matter, it doesn't matter who it was.

MR R BRABANT CONTINUES READING SUBMISSIONS

I know, and I think you did, Sir, but I can't remember the name of it right now. But that was a wharf down in Kawau. "More recently the... position as follows," and this is from Judge Jackson's decision, or his panels, "I hold that... possibly apply."

And Sir, so that you weren't left hanging wondering what the last bit meant, I go on to say, "In this instance the... re: Meridian Energy." And I have put that in and it's on the website so anyone can see it.

"And in particular...into technical areas."

THE COURT: JUDGE NEWHOOK

And Mr Brabant just for clarity because you haven't actually said anything more about it, did the Environment Court in the Meridian decision exclude that material from the record?

MR R BRABANT:

No.

THE COURT: JUDGE NEWHOOK

Or did it record that it would simply apply the appropriate weight of the material which –

MR R BRABANT:

Right.

THE COURT: JUDGE NEWHOOK

– one imagine would be significantly less than if the material was being offered by the expert in Court able to be questioned –

MR R BRABANT:

Sir, just dial back to the previous one. The – Judge Dwyer's decision is called *Rangitikeii Guardians Society Limited v Manawatu-Wanganui Regional Council*. The previous paragraph 65 refers to it being a question of weight but goes on to say, "Many of them were arguably inadmissible in a strict sense because they were simply expressions of a particular perspective for example newspapers articles, the factual sources of which it was certainly able to be challenged."

THE COURT: JUDGE NEWHOOK

Yes but you see in a – that phrase says quite a lot doesn't it? "In a strict sense," the Judge is clearly referring back to the Evidence Act which governs the operation of the Civil Courts but as you've properly pointed out section 276 allows us a discretion to go beyond that and perennially this Court, I've done it on plenty of occasions, has held that we can receive other materials but that it will go to weight and I've regularly held that we can ascribe significantly less weight to newspaper articles but also quotes from technical reports and the like by lay people or by counsel sometimes if the makers of those reports and other items are not presented as a witness who can be cross-examined and questioned by the Court. It just goes to wait.

MR R BRABANT:

Yes, well Sir, well if I'm –

THE COURT: JUDGE NEWHOOK

Unless there's something other that's offensive about the material where an application is made for exclusion.

1210

MR R BRABANT:

Sir, I haven't yet read out the paragraph from Judge Dwyer's decision and if I may –

THE COURT: JUDGE NEWHOOK

Well see what it says and then I'll see whether I agree with him or not.

MR R BRABANT:

It does a little more Sir.

THE COURT: JUDGE NEWHOOK

Read it out.

MR R BRABANT:

All I'm doing at this stage is signalling there is material of that kind and providing, hopefully for everyone's assistance, some advice from decisions. But if I read Judge Dwyer's relevant paragraph is, "The evidence of lay witnesses identifying those aspects of the environment which are appreciated by them, the reasons for that appreciation and expressing their views as to how their appreciation might be reduced by a particular proposal are legitimate subjects of lay evidence where had due regard to such evidence." That means taken into account. "That consideration does not extend," Judge Dwyer said, which seems to me to put a different perspective on it, "To information sourced from the Internet that went into areas such as technical noise issues and health effects." Now Sir, if I may say, I think the reason that the Judge has drawn that out there and it will depend in each case and I accept is that if something is presented off the Internet that takes a contrary position in the article, or whatever it might be or the report, to expert evidence of a witness. The problem is the person who wrote that report isn't available.

THE COURT: JUDGE NEWHOOK

Well that's exactly what I have just said Mr Brabant. Now look, you're still not quite fronting up and answering the question. You've read that decision recently, I probably skimmed it at some time in the past. But we deal with it all the time, it's nothing new. The question is, and the people at the back of the room, as you rightly pointed out, have a right to know what your stance is on it. And in particular as to whether you're actually confronting us with an application for the exclusion of that material or not. My interpretation of what you've just read out is no different from what I enunciated before you told me I needed to listen to one more paragraph, and it is this; that material that is brought by such witnesses or such parties will be accorded varying levels of weight and at the end of the day stuff off the Internet, even if it might be quite learned, technical material from respected engineers or other people, will be generally received by the Court unless there's some other good reason for it to be excluded. But it would be likely to be accorded precious little weight. I stress 'precious little weight' it's right at the bottom of the feeding chain in

terms of the usefulness of material that is brought to us. So are you making an application for exclusion of material?

MR R BRABANT:

No I'm not Sir. I don't think, Sir, with respect that I intended what I said in actually quite a brief passage.

THE COURT: JUDGE NEWHOOK

I wasn't sure from your paragraph what you intended.

MR R BRABANT:

My passage was just to alert that we had these circumstances here and to make a submission that these issues arise where this material is produced.

THE COURT: JUDGE NEWHOOK

Let's not make a big thing of it, I think I understand where you're coming from now, I think you know what my view of the law is.

MR R BRABANT:

I do.

THE COURT: JUDGE NEWHOOK

I don't think it's any different from Judge Dwyer's expression of it there and it's something that we deal with all the time. All right –

MR R BRABANT:

But I thought it was appropriate just to signal this point in my opening Sir because everyone knows in advance. To addressing matters in the round is the next topic Sir.

MR BRABANT CONTINUES READING OPENING SUBMISSIONS

"Both in relation...in paragraph 46." And just Sir, for everyone's information, you may have guessed already Sir, these are the two decisions of Justice

Fogarty relating to that litigious bit of industrial zoned land near the airport in Queenstown. So that's what Judge Smith's decision, his panels decision is about and he looks at Court of Appeal authority and provides, I think Sir, some useful advice bringing all that together.

THE COURT: JUDGE NEWHOOK

And what's the citation of the Court of Appeal authority?

MR R BRABANT:

I have to turn up the decision and the answer is...

THE COURT: JUDGE NEWHOOK

I'm just a bit concerned that your citation here is an Environment Court authority that says that it's bound by a Court of Appeal decision and that one should ignore a couple of High Court decisions but you actually haven't given us the Court of Appeal decision. Usually we want the highest and the best authority on a point and that will usually suffice, never mind that my colleagues and I might have been asked to consider it at some point and written about it.

MR R BRABANT:

So the two, I'm just looking at a copy of the decision here Sir, the two decisions at that time that were recent were *Foodstuffs South Island Ltd v Cross Roads Properties* and Court of Appeal decisions.

THE COURT: JUDGE NEWHOOK

The High Court ones were all about the Pak'nSave and the Mitre 10.

MR R BRABANT:

Sorry?

THE COURT: JUDGE NEWHOOK

I'm just observing while you're looking at the – the High Court decisions were all about the Pak'nSave and the Mitre 10 north of the airport from memory. But the Court of Appeal decision that you're referring to?

MR R BRABANT:

I'm just trying to find it, Sir.

MR CASEY:

(inaudible 12:18:22).

MR R BRABANT:

Thank you Mr Casey.

MR ALLAN:

I think Dye may have been referred to in those proceedings as well.

MR R BRABANT:

Oh yes sorry.

THE COURT: JUDGE NEWHOOK

Which one Mr Allan?

MR ALLAN:

Dye. D-Y-E.

MR R BRABANT:

I just, there may be a glitch as to whether that's meant to be in our case list, but if it isn't I'll get it in there.

THE COURT: JUDGE NEWHOOK

I suspect it needs to be there.

MR R BRABANT:

Yes, I intended it to be Sir.

MR BRABANT CONTINUES READING OPENING SUBMISSIONS

“The Court concluded... in paragraph 48.” And I better read that out and get my copy back. So this does deal with the threshold test in terms of timing as well Sir. The threshold test could be undertaken either before or after the substantive test under section 104(1) ‘If the decision was to refuse a grant under the general assessment under section 104 then the application need not be considered against the other thresholds.’ And if you read this decision Sir, the Court is saying and also referring I think to *Baker Boys* (inaudible 12:20:09), that the logical process is do your 104 assessment first and for the reasons just mentioned.

1220

Then, “Moreover,” is the next paragraph, “the question of... under section 104.”

THE COURT: JUDGE NEWHOOK

Sounds to me as though it might come perilously close to the discussion of the broad overall judgment of the Supreme Court decision in *King Salmon* or EDS. So we might actually be driving higher than the Court of Appeal in terms of our consideration of these issues as to whether holistic or not, Mr Brabant.

MR R BRABANT:

So you’re referring now to the *Save our Sounds* –

THE COURT: JUDGE NEWHOOK

No, I’m referring to the *EDS* decision I think.

MR R BRABANT:

But that was a plan change.

THE COURT: JUDGE NEWHOOK

Well it must be the *Save our Sounds*. This is the broad, the discussion of broad overall judgment, don't ask me to remember or to recite in my sleep everything that's in those two Supreme Court decisions.

MR R BRABANT:

No, no, but there was a plan change one my friend, Mr Littlejohn, was involved in which was entitled "Save our Sounds," unless he corrects me I think that's right, and then the plan change one that Mr Enright was involved in was entitled with the name of the salmon farming company. EDS, sorry –

THE COURT: JUDGE NEWHOOK

Anyway, I'm simply signalling that I'm interested to know whether either of the Supreme Court decision impacts on this area in the thinking of any counsel, even if only by analogy. Because the point that you're making appears to be of some importance in situations where you have a range of effects across a dozen viewpoints, as is the case here.

MR R BRABANT:

Sorry Sir, I'm up to 65. "In relation to... of those boats." So it's not only any lawful discharges that they might make, I wouldn't suggest you should take any account of unlawful discharges of sewage for example,, but it's also the comings and goings of those boats and people to and from them are all part of that picture.

"On the land... Pryor into account." So that becomes part of the future environment and therefore the environment which, to be fair, and of course I try to be careful about this before, means that my heading should have said "The permitted baseline and the environment."

THE COURT: JUDGE NEWHOOK

That's my next question.

MR R BRABANT:

Yes Sir, because far be it from me to not notice, I'm Sorry. Of course they are two separate things, and I have put them both together in that paragraph. So just for the sake of reference if you could just include that I intended to address that as well.

"Evidential Matters. Reclamation... (b) are satisfied." Now, I don't know whether you feel you want this in front of you, Sir, while you look at it?

THE COURT: JUDGE NEWHOOK

Just in a nutshell, policy 10 was which one?

MR R BRABANT:

The one that directly refers to reclamation. So this is in the regional – sorry, in the regional –

THE COURT: JUDGE NEWHOOK

NZCPS, yes, 2010, yes.

MR R BRABANT:

So (a) and (b), (a), "Land outside the coastal marine areas not available for the proposed activity," can't find parking elsewhere and, (b), "The activity which requires reclamation can only occur in or adjacent to the coastal marine area," so you've got a marina reclamation next to it. "

"In relation to (c)... policies in 2." Which start with the words, "Where a reclamation is considered to be a suitable use of a coastal marine area," and then it deals with foreman designs Sir. So you are starting to look at it in a different way.

"In my submission...can be achieved." Policy 3 is again different Sir in considering proposed reclamations but not with the premise where a reclamation is considered to be a suitable use. So just in considering proposed reclamations at particular regard to the extent to which the

reclamation and its intended purpose would provide for the efficient operation of, and marinas are included in the list. So in that regard I say that policy:

“Supports the grant... to policy 13.4.1(a). Now, do you want...

1235

THE COURT: JUDGE NEWHOOK

Just give us the subject matter in a nutshell?

MR R BRABANT:

Yes, I'm just trying to find it in my... If we start with 13.4.1(a), “Reclamation,” and I'll get to this later, “Reclamation and drainage in the coastal marina shall generally be considered inappropriate unless they are for either the operational needs of,” and the list is, “a port and a port management area, intensification of existing or approved marinas, or for port purposes within Davenport defence management area.”

So what I say, Sir, about that is, “It is clear... an existing marina.” In fact, Sir, even if you made a plan change, that policy wouldn't be applicable because it talks about intensification.

“But it is not... to both alternatives.” That's obviously, Sir, because if it only applied to the second one it would be superfluous, because a land-based site is obviously about MHWS, therefore the words in brackets must apply to method as well as land-based site.

“The evidence of... a reclamation proposal,” and they then deal with efficient use and minimum area, positive – the reclamation will have either positive or minor adverse effects on a range of values, a policy about finished appearance, being compatible with the environment, avoiding as far as practicable adverse cumulative effects on the coastal environment, so those become matters of determination based on the findings you make on the evidence. And my submission is they can all be met.

When you then go to the other policies, and there's .23 to .9, I don't know whether you want to take me through those, Sir, but Mr Dunn has addressed them all. And in an opening submission that is long enough already –

THE COURT: JUDGE NEWHOOK

I think that we've got Mr Dunn's rebuttal in answer to the evidence of Mr Sargent, and we'll pick up the detail there.

MR R BRABANT:

Yes, thank you Sir. So then that was the first point I wanted to bring up specifically about that particular evidence of Mr Sargent.

Then I refer to chapter 23 marinas which contains, "objectives and policies... this is practicable." So that is as I've already foreshadowed, the type of policy that says we want intensification in marina management areas where that is practicable.

"This option is not... around Waiheke Island." So just if I may, Sir, it says this, and this is an explanation under the objectives and policies, "New marina development may result in significant modification to the coastal environment. However, while modifying the environment, it can concentrate the effects of vessel storage and associated activities into a defined area rather than proliferate vessel storage throughout the coastal marine area. And to do that on Waiheke Port means substantial expansion of existing mooring management areas. This can have the overall effect of reducing the adverse effects on the coastal environment and improving safety by providing sheltered and convenient access to and from vessels."

And it goes on in the next paragraph to refer to vessel storage being a significant issue in the Auckland region given the number of vessels and the popularity of boating as a recreational pursuit.

“In his evidence... of the Coastal Marine Area,” as you can see from the joint witness statement and Mr Sargent’s evidence he does, “to only that... the plan provisions.” So this is his question as to how we’re getting a net gain in Matiatia Bay.

“It is clear... explanation in 24.7.1,” which says, “There are a large number of moored vessels throughout the Auckland coastal marine area, while moorings need to be provided for, the effects of this activity including the efficient use of space need to be appropriately managed. This plan achieves this by defining mooring management areas and encouraging the proliferation of moorings within these areas rather than a proliferation of individual mooring.” So it’s talking in the plural if you like, talking in the broader context.

1245

“And the earlier objective... of individual moorings.” So it’s talking in the plural, if you like, talking in the broader context. “And the earlier...”, and there’s evidence here about how much bigger it is. “And with this...requiring it to happen.” And I refer there Sir to the explanation I’ve already mentioned and underlined the overall effect reference. Now, another topic. There are a few.

THE COURT: JUDGE NEWHOOK ADDRESSES MR R BRABANT – HOUSEKEEPING

MR R BRABANT:

So I’m turning now, Sir, to transportation issues.

MR R BRABANT CONTINUES READING OPENING SUBMISSIONS

“In my submission...mooring owners parks”, and you’ll remember those Sir, I could, if I need to there are six there Sir. “And the ramp...”, that’s the boat ramp beside the floating pontoon, “To offload or... these trips available.” And just the footnote Sir but they would have been captured in the survey work that Mr Apeldoorn did. “But they will...southern side too.”

1250

And I say that Sir for the common sense reason that on the southern side, if you went out directly the road's not handy. If you've got your inflatable on top and nor if you've got a floating pontoon that you can get in and out of.

"I also note...the parking proposal." It's a small number in that category and I say Sir there is no mention in the evidence, that is of any witnesses, lay witnesses or other witnesses of any issue with these existing mooring related vehicle movements.

"Todd Langwell postulated...operations trip generation." You'll remember Sir, there's a haul out area there used, and the carpark is used for that. "The response from...window of operation." And would you just note I meant he did that as an hourly exercise, so he did an hour at the predicted peak. Otherwise that might read a little bit more extensive. So he ran 56 in an hour through. "In my submission... periods is small."

THE COURT: JUDGE NEWHOOK

Well we'll see what the witnesses have to say with that question Mr Brabant because we're not going to put you in the box and ask you.

MR R BRABANT:

No, no, this is a particular matter I'm putting before the Court as a matter that deserves consideration. I've seen so many cases where the Environment Court has looked at that discretionary trip issue.

MR R BRABANT CONTINUES READING OPENING SUBMISSIONS

"Over and above... from Mr Apeldoorn." I just mention if I may Sir I'm seeking leave obviously, it's gone in but I'm seeking there and I note my friends Sir are also producing some evidence as well.

THE COURT: JUDGE NEWHOOK

I rather imagine that everybody will want to have the ability to call evidence about this issue.

1300

MR R BRABANT:

I understand that. I submit, Sir, being first on the block about all this, that the Court can rely on Mr Apeldoorn's advice in relation to this matter, and you have yet to read it I'm sure.

THE COURT: JUDGE NEWHOOK

Let me just find out from other counsel, is there any opposition to this leave being sought for that evidence of Mr Apeldoorn and/or is it the intention of other parties to seek the same leave anyway? Now Mr Casey, you first?

MR CASEY:

No Your Honour, although of course my expert will need to look at that and provide some evidence perhaps in response at some stage.

THE COURT: JUDGE NEWHOOK

Yes, all right. Mr Allan?

MR ALLAN:

Sir, a supplementary statement by Mr Shumane was actually filed on Friday for the Council, so I would also seek leave, and no objection naturally enough.

THE COURT: JUDGE NEWHOOK

Yes, so you're seeking the same leave, of course. Ms McIndoe?

MS MCINDOE:

No objection, Sir, and similarly supplementary evidence for Auckland Transport was filed this morning and leave is sought –

THE COURT: JUDGE NEWHOOK

I'm not surprised to hear that either. So you're all seeking leave for those statements.

MS MCINDOE:

Thank you Sir.

THE COURT: JUDGE NEWHOOK

Does anybody oppose anybody else? No? Granted. That deals with that one.

MR R BRABANT:

Thank you Sir, so everyone is having a say about something that's only been – well in fact I understood –

THE COURT: JUDGE NEWHOOK

It's very new.

MR R BRABANT:

Well it's actually –

THE COURT: JUDGE NEWHOOK

And we might as well factor it in.

MR R BRABANT:

Yes, I agree, we're not challenging that, it's actually stopped at the moment for some reason or other.

THE COURT: JUDGE NEWHOOK

Mechanical breakdown according to the *Herald*.

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

Carry on, press on.

MR R BRABANT:

“Cultural issues,” Sir, I’m trying to be succinct, “I make the following points... in the landscape.” And those, Sir, are found...

THE COURT: JUDGE NEWHOOK

This is in the 2014 booklet?

MR R BRABANT:

They are, Sir, at the end. At the very end, Sir, there’s a figure 1 of Max Dunn showing the existing reclamation, and then there are three, there’s three sheets in there and they’re about three pages in from the back.

THE COURT: JUDGE NEWHOOK

Yes.

MR R BRABANT:

So there’s the site plan and then there’s some perspectives which are Mr Scott’s work, and then, Sir, the last one is the annexure 12 with the Buildmedia insertion of that into that landscape, including the marina.

THE COURT: JUDGE NEWHOOK

Thank you.

MR R BRABANT:

“I’m summary I... to rely on.” And I finish, Sir, by referring to some positive outcomes which I submit are these, “It responds,” the marina, “responds to an... boat storage available,” an issue I repeat, Sir, is not in dispute on the evidence, “utilising a Mooring Management Area... of the wharf.”

THE COURT: JUDGE NEWHOOK

Thank you Mr Brabant, I have no further questions for you at this juncture, having bothered you few times during the course of your delivery.

MR R BRABANT:

No need to apologise.

THE COURT: JUDGE NEWHOOK

No need to apologise. Commissioners, any further questions for Mr Brabant at this stage?

THE COURT: COMMISSIONER HOWIE

No thank you, Sir.

THE COURT: JUDGE NEWHOOK

All right.

MR R BRABANT:

I do, if you wanted Sir, have a chart that you're welcome to use if you're heading off, but only if you want to.

THE COURT: JUDGE NEWHOOK

No, it won't surprise you to know that I've got plenty of those. And we have all the other maps and visual materials that are part of the case, and the charts of course are in the public domain so that's fine, now we're fully equipped in that regard. Now, Mr J Brabant?

MR J BRABANT ADDRESSES THE COURT – RE SITE VISIT

THE COURT: JUDGE NEWHOOK ADDRESSES MR GREVE – SECOND SET OF MARKERS

THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL – PARAMETERS OF SITE VISIT

COURT ADJOURNS: 1.22 PM

COURT RESUMES ON TUESDAY, 7 OCTOBER 2014 AT 9.30 AM**THE COURT: JUDGE NEWHOOK**

Right, I'll just quickly report on our site inspection yesterday. We proceeded there on one of the small catamarans, fairly windy conditions, and landed and had a look around the immediate surrounds, the wharf and the immediate surrounds in the area of the marina proposed. The harbourmaster had laid a number of buoys and we were able to view those from the upper deck of the ferry as we came in and from various parts of the wharf and the northern bay shoreline. I think the outer marine corner 1 probably went drifting in the wind, it seemed to be coming at us as we stood at the end of the wharf. But we'll have the buoys re-laid when we do a site inspection in less frenetic conditions next week. And then we just had a general look around the flatter parts of Matiatia, we've left walking tracks and other view points for very much later, like next week

Right, Mr Brabant?

MR R BRABANT:

We understand through the registrar that an enquiry has been made, Sir, about the statement of agreed facts.

THE COURT: JUDGE NEWHOOK

And issues, yes, those two, yes it has, I initiated that late last night.

MR R BRABANT:

Yes, so we understand Sir.

MR J BRABANT:

Well Sir, I guess what I can say at this point, the statement of planning provisions –

THE COURT: JUDGE NEWHOOK

You're going to say you've been busy.

MR J BRABANT:

Well yes Sir, basically I was overwhelmed last week is the short answer. But we're fairly close on the statement of facts, the statement of planning provisions is essentially sorted, the issues we'll need to have some more discussion about but we can obviously get into progressing that and get it to you hopefully reasonably shortly.

THE COURT: JUDGE NEWHOOK

Yes, it's actually the statement of issues that I'm keen to get my hands on because the way in which I work is to use that as my touchstone for driving the hearing, and drafting bits of the decision to go along. So that provides me with the structure. Also for driving the hearing, so sooner rather than later. Sorry that you're overwhelmed but it's one of those cases.

MR J BRABANT:

Yes that's fine, so what I can say, Sir, I'll look to start moving that forward as quickly as I can with the other parties.

THE COURT: JUDGE NEWHOOK

Yes, well I urge everybody to co-operate with the production of the statement of issues, please, because it's my touchstone, thank you.

MR J BRABANT:

And sorry, Sir, just around that, you might recall there has been discussion at various points about whether we're just dealing with the main parties with respect to the statement of issues or the other –

THE COURT: JUDGE NEWHOOK

Yes, on the statement of issues that's right, and then it's going to be published on the internet, on the web page, and they can look at it, and if somebody thinks that there's some glaring omission or something is incorrectly stated,

they can comment, but I'm looking to experienced counsel who after all are variously in support of/in opposition to/partly in opposition to but partly neutral, et cetera, so we've got a range of viewpoints feeding in through experienced counsel, that's what I want to start with, and then others can comment after that.

MR J BRABANT:

Thank you Sir, two other –

THE COURT: JUDGE NEWHOOK

Statement of facts, as we said in the conference last week.

MR J BRABANT:

Yes, thank you Sir. Two other small matters, on the Court website there was a statement of recommended conditions of consent for ecology as at, from memory, 9 September. I omitted to include that in the bundle along with the joint witness statements, it's a separate document. I've had a brief chat with some of my friends about that this morning. The registrar has four physical copies, thank you to Brookfields for that. I'm not sure whether my friend is necessarily going to address those in cross-examination, any of my friends are or not, but I'll just make you aware Sir that there are four copies available for the Court in hard copy and that will be loaded up to your iPads at some point, I believe later in the day, however your system works. I don't know whether it's going to be relevant or not.

THE COURT: JUDGE NEWHOOK

Yes, well that particular document is one that has caused our electronic system for this case to struggle somewhat. Just the sheer size of it. And we are debating amongst ourselves as to whether we might abandon trying to upload all those documents into the iPads and simply proceed on the basis of hard copies in the traditional way. I'm developing a feeling that large graphics like these and the statutory instruments where there are voluminous are possibly still best dealt with in the traditional way.

MR J BRABANT:

All right thank you Sir, and the final thing if I may, as I understand it the Court perhaps has now had an opportunity to finish reading all of the evidence. There remain a selection of witnesses who the indications were from the parties that they did not wish to cross-examine them and there's a question about where the Court stands on that. We don't necessarily have to deal with it immediately but for example I've just received a text from Mr Fitzblack who deals with lighting asking if he's still going to be required. So it's just a question of when we can come to that question.

THE COURT: JUDGE NEWHOOK

Yes, all right, at the morning break would you talk to the registrar with that list. Mark up the witnesses that it is confirmed no party wishes to question and provide that to her and she'll bring it to us and we'll put our heads together on it and hopefully you get a response either after the morning break or certainly by the end of lunch time.

MR R BRABANT CALLS

PHILIP HARRY WARDALE (SWORN)

Q. Is your full name Philip Harry Wardale, are you a consultant working in the marina industry and do you reside at Auckland?

A. That is correct.

Q. For this hearing have you completed two statements of evidence which you have before you Mr Wardale, an evidence-in-chief dated the 29th of April of this year and a statement of rebuttal dated the 23rd of September this year?

A. That is correct.

Q. Do you need to make any amendments to either of those statements?

A. No I do not.

Q. Can you confirm to the Court please that to the best of your knowledge and belief the contents of both statements of evidence are true and correct?

A. I believe that they're true and correct.

MR ALLAN:

I just note that there's also the matter of the caucusing statement, I'm not sure whether my friend addressed that in terms of the witness' confirmation?

THE COURT: JUDGE NEWHOOK

No he didn't. Perhaps, could just cover that up.

MR R BRABANT:

Do you want that to be done every time?

THE COURT: JUDGE NEWHOOK

Yes, yes, we may as well just have it all complete. It's all part of the record.

0945

EXAMINATION CONTINUES: MR R BRABANT

- Q. So Mr Wardale, if you can find in the folder – have you got it there?
- A. Mhm.
- Q. You were involved in the joint expert witness statement relating to landscape, natural character, amenity, recreation and open space?
- A. I was.
- Q. And you have that in front of you?
- A. I do.
- Q. And you confirm that's your signature on that document?
- A. It is.

CROSS-EXAMINATION: MR ALLAN

- Q. Good morning Mr Wardale.
- A. Good morning.
- Q. So obviously you'll have contractual arrangements with berth holders, terms of use, that sort of thing?
- A. That's correct, yes.
- Q. And those will enable the marina operator to influence things like how the carpark is used, behaviour in the carpark, that sort of thing?
- A. Yes.
- Q. How noise is controlled in the marina?
- A. Yes.
- Q. Halyard slap, that sort of thing also? If the Court decides that the conditions addressing antifouling effects are appropriate, so a hypothetical, and if effects are identified as a consequence of monitoring, presumably you'd agree that that's something that could equally be addressed through the contractual arrangements with berth holders if need be?
- A. Well, I think Mr Brabant has in his opening address covered some of what the industry is faced with currently. There are marinas underway around the country that are addressing the bio, failing bio-security issue, and it may help the Court to understand that the Clean Marinas programme is being amended to address such issues as bio-security

and best management practice for addressing those. As yet it may help the Court that no marina has attempted to influence boat owner selection in terms of antifoul or a means of addressing the type of product they're suing. I am familiar with marinas that have addressed the question of fouling of a vessel and boat owners are being asked to relocate their vessel to a cleaning facility to assist with the transfer of biofoul but not the question of antifouling.

Q. Just to answer the question, if the Court decided that conditions addressing antifouling effects are appropriate, that's something that could be addressed in the contractual arrangements with berth holders though, you'd agree with that?

A. It could be.

CROSS-EXAMINATION: MS MCINDOE – NIL

CROSS-EXAMINATION: MR CASEY

Q. Mr Wardale, you tell us that you now have a financial interest in the applicant company?

A. That is correct, in December of 2013 I chose to become financially involved in this marina application. Prior to, prior to. It may help the Court to understand that my role as a consultant for this project commenced in August 2011, and for those two and a bit years I undertook consultancy for the marina without intentional knowledge of the decisions I made in December last year.

Q. So for all intents and purposes we can treat you as the applicant?

A. No, the applicant is Waiheke Marinas and I'm not a director of that entity. However I have undertaken to provide financial support to Waiheke Marinas for the purposes of funding, essentially, the resource consent application.

Q. We're not hearing from anybody else on behalf of Waiheke Marinas, are we?

A. Just the other consultants.

Q. But nobody with an active or financial involvement in the applicant company.

- A. No, that's correct.
- Q. You say you became involved in August 2011. By that stage there had already been a significant amount of planning for this marina?
- A. For a marina slightly different in application there was a resource consent that had been filed at that stage for a slightly adjusted marina, yes.
- Q. In the same location though?
- A. Absolutely yes, in the same location.
- Q. And you talk in your evidence about registrations of interest. Have they all been received prior to your involvement or afterwards?
- A. A mix of both. There have been a number of registrations over the years, something which Waiheke Marinas has been collecting voluntarily from potential interested parties. My involvement with that list has been more recent as indicated in Mr Brabant's opening submission, where we look to reaffirm those parties' interests.
- Q. So you weren't involved in soliciting expressions of interest or registrations of interest prior to the recent involvement that Mr Brabant described?
- A. That's correct, my involvement has never been over soliciting interest, my involvement has only been checking people's current status or interested nature.
- Q. You mentioned before that your financial involvement is in seeing through the resource consent, will you have an involvement if consent is granted?
- A. Yes. The intention is for me, myself, to become the operator of the facility and indeed prior to that obviously in managing the construction and development of the marina.
- Q. If consent is granted and the marina is constructed, will the ownership structure still be that it will be run by a private company like Waiheke Marinas Limited?
- A. Yes.
- Q. And the interests of the berth holders will simply be as licensees?
- A. Yes, as is common in New Zealand.

- Q. I'm assuming, Mr Wardale, that financial projections have been prepared for the marina?
- A. Yes, whilst a slightly moving target with the unknowingness of this process and obviously the alternate construction options that exist in the application.
- Q. And there is some assessment of the likely cost to a prospective berth holder of acquiring a licence?
- A. The focus hasn't been on the split between the various berth sizes, the focus has been on solely the financial feasibility of the construction and what we feel will be appropriate for the market to manage. The final split of an apportionment of berth for berth sizes in my opinion will come once the registrations of interests have firmed up their length and beam requirements, and the berth layout is confirmed.
- Q. So the people who have registered their interest have not had any idea as to what the cost of a berth will be.
- A. That is correct.
- Q. Do you know what the cost currently is of a swing mooring in Matiatia Bay?
- A. My understanding, the variety of prices will vary based upon the equipment, because swing moorings are priced upon the hardware in use in the bay. I would imagine that the top end would be approximately \$4000 and the lower end would be in the order of \$2000.
- Q. Is that an annual fee?
- A. No, that's the purchase of the berth that you're requesting I believe.
- Q. And what about is there an annual cost associated with it as well?
- A. Yes, the Auckland Council imposes an annual fee which I believe is in the order of \$270.
- Q. Can I suggest to you that the costs or the likely cost of a berth in the marina will be significantly greater than the cost of the current mooring arrangements?
- A. Yes, it will be.
- Q. Some orders of magnitude higher?
- A. Of course it will be, yes.

Q. In the opening information that was provided it was said that a review process has recently commenced, that is of registrations of interest, that's the review that you've been undertaking?

0955

A. That is correct. We thought it may assist the Court to review the list because of the number of years since the list had been commenced.

Q. And presumably that review has involved contacting all of those who have registered an interest?

A. Yes.

Q. And you've had responses from 113 of those?

A. Correct.

Q. Of whom 80 have reconfirmed their interest.

A. The number continues to grow since Mr Brabant's opening submission but as they trickle in, yes, those numbers were taken from the statement in the opening submission.

Q. So 80 in total of the 240 original expressions of interest?

A. Yes.

Q. How many of those 80 are people who currently have moorings in the Matiatia Bay area or in Matiatia Bay?

A. Forgive me, Richard could you provide me that?

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Q. What that information tells us Mr Wardale is that 51% of those who have responded have a mooring at the island, it doesn't tell us whether that's 51% of those who are maintaining their interest, can we assume that it is?

A. Yes.

Q. But it doesn't say whether their mooring is at Matiatia does it?

A. No, that analysis wasn't placed into the submission but naturally it is available from the data. We could revisit the data if the Court, if it would assist the Court.

Q. Can we assume that of that 51% which of the 80 is about 40, some of them at least have their moorings elsewhere?

- A. Oh absolutely, yes, that is correct. The largest percentage are at Matiatia as indicated in the original AEE we are aware of those within the northern mooring management area that have indicated a desire to acquire a marina berth.
- Q. Yes but Mr Wardale, my question is we want to update that information to know how many of those that are shown on the material that was provided with the AEE are still interested based on your recent survey.
- A. Right, I don't have that information at hand but if it would assist the Court we could collate it.

THE COURT: JUDGE NEWHOOK

- Q. By when do you think you could have that information available Mr Wardale?
- A. The moment that I can attend a computer screen and process it, yes.
- Q. If you could perhaps attend to that over the morning break when we take it.

MR CASEY:

I don't mind when Your Honour.

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. And also, if possible Mr Wardale, a break down between the north and the south areas of Matiatia Bay. And how many, are you able to tell us, of that 80 are people on the waiting list for moorings in Matiatia Bay?
- A. The question that was posed was for those that had a mooring and a mooring number. A question was not asked of those that are on the wait list, excuse me that are on the registered interest list, were they one that was waiting for a mooring from the Harbourmaster.
- Q. The proposed marina will displace, I think all of the swing moorings in the northern MMA correct?
- A. Correct.
- Q. And those people who decide after all they don't want a berth in the marina, they'll still be entitled to have their mooring there won't they?

- A. Discussions with the Harbourmaster's office have indicated a desire by the Harbourmaster to relocate all moorings from the northern mooring management area regardless of the marina's footprint. So, those that do not wish for a marina berth and currently have a mooring in the northern site have several options. The first is that they can have their mooring relocated to the southern bay to a location vacated by a southern mooring holder moving into the marina. The second is to take up a pile berth mooring on the perimeter of the marina. And thirdly, as other moorings around the island are vacated by those acquiring a marina berth can have their mooring relocated to that mooring field outside of Matiatia.
- Q. Sorry, are you telling us that it's the intention of the Harbourmaster to take away all of the moorings regardless of whether a marina is consented?
- A. Yes, as indicated in the Andrew Stewart plans it indicated that the footprint of the marina did not cover every mooring. I believe it allowed for three or four moorings in the northern part of the bay but for a variety of reasons the recommendation was that those three or four moorings would be removed as with the others.
- Q. Perhaps you could listen to my question. My question was, are you telling us that the Harbourmaster will be removing or perhaps I should say, relocating all of the moorings in the northern part of Matiatia Bay regardless of whether consent is granted to the marina?
- A. Oh no, I'm sorry, no of course not. Sorry.
- Q. And if there are mooring, if I can call them mooring owners or mooring holders, who don't want to be relocated, whether it's to the southern area or to somewhere else on Waiheke, and don't want a marina berth are you saying it's just bad luck for them?
- A. The AEE explained that all mooring holders had been in contact, we have made contact with every mooring holding in the northern part of the bay. Four of those did not respond or were unable to give guidance but all of the others accepted that their licensing arrangement for a mooring provided for the Harbourmaster to relocate them to the south

part of the bay if they wished and other than that they accepted that they would be taking up a marina berth or a pile mooring.

Q. But that was back then, we're now talking about now. You can't speak to what those mooring holders think now can you?

A. Back then for that question was only, it was just over a year ago when the application was re-filed.

Q. And we're told that there are 80 people on the waiting list for a mooring at Matiatia. If the southern area is taken up with the displacement from the northern area and the northern area is taken up with the marina, then those 80 people are going to miss out aren't they?

A. No, the current indications from the southern occupiers are that 14 of them will move, are interested in a marina berth so of the 80, 14 could immediately be accommodated in the southern mooring field.

Q. Mr Wardale, let's be clear about this, you can't tell me as at today how many of the southern mooring owners are still interested.

A. I can tell you as of April last year when contact was made with them over their desire at the time that the application was filed.

Q. That they were interested in a marina berth?

A. Correct.

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Q. Without having any idea of the likely cost?

A. Correct. If I may help the Court that I do believe that one or two of those that are interested in a marina berth are not solely for acquiring a licence to occupy, there are those that do hope to secure a long-term rental of a marina berth. And through a variety of means they could be alternatives for both short and long-term licences in the marina.

Q. You're talking about short or long-term licences of berths in the marina.

A. Correct.

Q. And you also talk in your evidence about temporary berthage at the marina for visiting boats.

A. Yes.

Q. Is that telling us that there will be a number of marina berths kept either for short-term rental or for casual visitors?

- A. It is definitely my personal intention as an operator of a marina in this location to do what I can to retain some marina berths that are solely owned by the marina operator for those purposes.
- Q. Is that because you can get more money for them?
- A. No, it's my opinion that in this location the opportunity to have access for those uses that you've described will be beneficial for the operation and for the island as a whole.
- Q. Beneficial for the operation in a financial way?
- A. No, not always as might help the Court, that if the berth is owned by a third party, it is a case that the traditional mechanism around the country is that the rent is received, a 15% commission is held by the operator, with the balance of the funds passed to that licence holder that owns the berth. Accordingly, whether the daily rate was 30, 40 or \$50, a 15% commission from that is not a large reward for the task.
- Q. So you're talking about berths that will actually have been purchased and owned by a berth holder, if I can call it that?
- A. In that example yes.
- Q. And it's up to the berth holder whether he or she chooses to participate in the sub-licensing or casual vacancy arrangement?
- A. That is correct, yes, I'm familiar with a variety of facilities in and around the country that undertake both short and short and long-term rental of berths that are currently vacant by the licence holder. Tutukaka comes to mind where, as an interim point on the coast, people stop. The marina undertakes short-term rental of those berths on behalf of the owner on a regular basis, working closely with the owner of the berth to understand their schedule and plans for that period away from their berth.
- Q. Paragraph 26 of your evidence, do you have that with you?
- A. I do.
- Q. We're told that you will develop marina rules and procedures to manage all aspects of the operation of the marina. Is there any reason why you've not been able to develop those rules and procedures before today?

- A. No there is not. However as you have indicated already, there are a number of rules and regulations that may be specific to the site, may be specific to the design, the final completed design for the facility, and of course any that reference particular consent conditions. So it would be traditional to complete those in reference to the completed facility.
- Q. We know for example that there are concerns about the use of the parking that's proposed. We don't see any rules and procedures that have been developed to address that, do we?
- A. As I noted in my rebuttal evidence, the use of the carpark is something that is familiar to me after operating the Bayswater Marina, which allegations was adjacent to a ferry terminal, where members of the berth owners chose to push the boundaries in terms of their ability to use the berth owner carpark as a ferry commuter carpark. So I'm familiar with the use as noted in my rebuttal evidence of technology to track and monitor those particular users, including such features of anti pass-back that requires visitation to the marina before they exit, as well as advanced reporting. So those types of things are familiar to me and will become second nature to include in the rules and regulations.
- Q. We don't see a set of rules or regulations with those spelled out, do we?
- A. Well as indicated in my rebuttal, it's expectation that they would form an important part of the rules for this particular facility.
- Q. And it's important because you accept that it's important to prevent the abuse of the car parking facility by berth owners who use the car parking for effectively commuter parking?
- A. Absolutely, it's important for a number of reasons, one is that the boater that is wishing to use a carpark and go boating needs access to a carpark and does not need his fellow boater who is a commuter monopolising those carpark spaces, as well as the important aspects of this project considering the traffic and transport implications on this particular site.
- Q. I understand that what you are proposing is that there will be an electronic key card entry to the marina carpark?

- A. Yes, as is noted in my evidence, a proximity card is usually the best way, personalised, which will lift a barrier arm for the entry and lift the same barrier arm for the exit – an additional barrier arm for the exit I should say.
- Q. And that same card will open the gate to the pier of the particular berth holder's marina berth?
- A. That is correct.
- Q. And so what you'll have is an electronic system that logs entry to the carpark, exit from the carpark, and entry to the berth?
- A. That is correct.
- Q. Or entry to the pier.
- A. And exit from the pier is traditional, yes.
- Q. So somebody wanting to use – a berth holder I should say wanting to use the carpark for commuter purposes can do all that and then just wonder off to the ferry, can't he?
- A. He could park there. As I've mentioned earlier I'm familiar with the anti pass-back technology which requires a sequence of events to eventually exit, which I've previously used at the Bayswater Marina, where you first would swipe the barrier arm. If you chose to try and exit the carpark without first visiting a pier, you would not, the system would not. It is a technique that I would suggest could be in use at this facility.
- Q. Could be but there's no plan to do it at the moment, is there?
- A. Well as I've suggested and as I've indicated that will be the likely operator, it is my intention for all of those reasons I've just mentioned, because berth owners do need access to carpark, so aside from the rules, using techniques such as technology, I believe will be imperative on this site.
- Q. But coming back to the point, Mr Wardale, that a berth holder can easily circumvent by coming into the carpark, opening the gate to his pier and wandering off to the ferry, coming back after he gets back perhaps at the end of the week, going to his pier, opening the gate again and then exiting the carpark, correct?

- A. That is correct, and that is why as I mentioned earlier the requirement to use reporting is important. But in addition with staff on site it will become very apparent very quickly, as we used at Bayswater, to recognise familiar vehicles in the carpark which when seen on multiple days, multiple occasions will trigger the staff member producing the reports to understand if indeed that person is doing this regularly before identifying if they are a commuter. CCTV is also a technique which I'm familiar with where we were able to view whether or not a berth owner was pushing the boundaries of such an event.
- Q. It only becomes of concern to the marina management if that person is taking up space at the expense of other people wishing to use the marina for –

OBJECTION: MR R BRABANT: (10:16:09)

Sorry Sir, I am going to interrupt this line of cross-examination because it's postulated now it's only going to become of concern operationally but we produced some draft conditions Sir and condition 34 actually prevents this happening so it isn't just a matter of the way Mr Casey's putting it Sir, there's an offered condition.

THE COURT: JUDGE NEWHOOK

Mr Brabant, I don't think your intervention is all that helpful. You have a right of reply of course and you also have a right of re-examination if you can do it in the proper way. The issue of the potential for carparks at the marina to be used by berth holders when they are commuting on the ferry to Auckland is in issue fair and square right through to the rebuttal evidence and it's an issue that Mr Casey is entitled to explore the practicalities of. So, my perception is that he is exploring the abilities of the Council to monitor and enforce a condition of consent.

MR R BRABANT:

Well I understood Sir he's been –

THE COURT: JUDGE NEWHOOK

You say there's a condition there, that's fine. We can explore that in other ways when your turn comes for that.

MR R BRABANT:

The only reason I stood to that question Sir was that the way it was put didn't acknowledge that there is an offered condition. Otherwise I wouldn't have risen to raise it.

THE COURT: JUDGE NEWHOOK

Again, I think your intervention is improper, putting it bluntly. Mr Casey is entitled to ask questions that might test the witness' knowledge of the existence or otherwise of conditions of consent or other factors that might impinge and it's not proper for counsel to purport to signal to the witness where the answer to the question might lie.

MR R BRABANT:

Yes Sir but, I won't take it any further Sir, it was the nature of the question.

THE COURT: JUDGE NEWHOOK

I'm ruling out your intervention.

MR R BRABANT:

I understand that.

THE COURT: JUDGE NEWHOOK

And I'm not very happy about it.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. So Mr Wardale, I was putting to you that the marina management is only likely to be concerned about commuter parking on the parking area when it displaces legitimate marina parking. That is when marina users

find that they can't access the carpark because it's full of commuter carparks – sorry, full of commuter's cars.

A. In my experience at Bayswater Marina where we had a carpark that was several hundred carparks, we took a particular interest in this issue, not because there were not carparks available for those other boaties, but because this was a particular member abusing something that was not provided for. It was not because the pressure was placed on us to investigate the matter.

Q. Are you telling us –

A. As it –

Q. I'm sorry.

A. As has been indicated, we have discussed agreeing or proposing to conditions of consent that allow Auckland Transport and the consenting authority to maintain an interest in this area, volunteering those records from the barrier arms that we have indicated and as have been suggested by the two traffic experts working for Waiheke Marinas Limited.

Q. So you're volunteering the records to the consent authority so it can trawl through them and identify occasions on which a marina berth holder has checked in and checked out.

A. The primary purpose of offering the records was initially to assist Auckland Transport with their concerns relating to congestion and the number of vehicles, but it goes to show that if there are regular occurrences of people of the same number, card, registration coming and going that that data will be available.

Q. But it won't be specifically reported, it will just be within the data that's provided.

A. The consent condition does provide a requirement for the marina to report under certain circumstances.

Q. You may not, I'm assuming you know the answer to this Mr Wardale, Westhaven, for example, berth holders have, as I understand it, two permits per berth for parking?

- A. Yes I'm familiar with Westhaven after being the manager there for a 10 month period in 2011. The permit system operates with each berth owner being given two window cards for two vehicles, yes.
- Q. How many permits per berth holder are proposed at Matiatia?
- A. It's proposed at Matiatia, just one.
- Q. And is that going to be tied to a particular vehicle?
- A. No. The card is to a particular person. They can choose to bring whichever vehicle they choose.
- Q. And will there, like at Westhaven, be provision for the issuing of temporary permits for, for example, visiting boats while they occupy a marina berth?
- A. Absolutely. The one card is intended for the vessel that is on the site at the time. Whether it's a visiting vessel owner or a berth holder.
- Q. Again, coming back to Westhaven, my understanding is that the marina office will issue temporary parking permits so that a berth holder can have their guests park on the carpark as well.
- A. Correct, the temporary passes that you refer to are termed a guest pass at Westhaven. It is to facilitate the guest being able to park within the non-berth owner exclusive area, the white parks at Westhaven, which allows that particular guest to circumvent the published P 180s that have recently been introduced under my care at Westhaven to assist with the relocation of commuters monopolising the carparks at Westhaven.
- Q. And will there be that sort of guest permit at Matiatia?
- A. No. At Matiatia we are fortunate that there are other areas outside, as at Westhaven, for the public to park.
- Q. In your rebuttal evidence you talk about car parking alternatives, and you say that in late 2012 you had a discussion with Mr Lindberg from Auckland Council Property Limited to investigate if there were general parking options on their mixed-use property, that's correct?
- A. That is correct.

THE COURT: JUDGE NEWHOOK

Just give us the paragraph reference?

MR CASEY:

That's paragraph 13 of the rebuttal, Your Honour. And paragraph 14 I was going to ask about as well.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. And in 2013 you say you spoke with the owner of – sorry, Swordfish Holdings Limited, the owner of adjacent privately owned property to make similar investigations. Now, is Swordfish the holder or the owner of the property that currently is used for car parking?

A. Appendix A of my rebuttal evidence shows the Swordfish Holding the triangular-shaped property opposite Auckland Council's property. They have a barrier arm that limits access to their site for a number of contracted garaging and open car parking arrangements with the public.

Q. And do I take it that your approaches to both of these property owners was with a view to whether the marina car parking requirements could be met on those properties?

A. That is correct.

Q. And those properties are suitable to provide car parking for the marina?

A. They are suitable that they are currently marked out as carparks. However in both instances both property owners have different aspirations or intentions for their sites.

Q. But locationally they're suitable, correct?

A. Correct.

Q. And they're accessible from the road?

A. If I could say to the last question, they are carparks. In my professional opinion I don't think they're ideal for the marina because of the distance to either of the carparks if I might add. And I – the question again, sorry?

Q. Because there's a walk to the marina from the carpark?

A. That is correct.

- Q. It's not significantly more distant than the walk from those carparks to the ferry terminal, is it?
- A. For some of the carparks, no.
- Q. And those are the two parties that you have approached to see if you can provide alternative car parking to the proposal that is before the Court?
- A. Correct.
- Q. Can I ask you just a couple of questions about the proposal to reclaim for the carpark. And I might have missed it, Mr Wardale, and I apologise if I did, the volume of dredging for the marina itself versus the volume of those dredgings that's proposed to be used in the carpark reclamation, I might have missed that and I'm sorry, can you just tell me what the relationship is?
- A. The entire volume of dredgings is accommodated within the construction methodology of the reclamation.
- Q. And you tell us that if you weren't to undertake that reclamation, those dredging would have to be disposed of elsewhere?
- A. That is correct.
- Q. And some permit would be required to dispose of them elsewhere?
- A. For the disposal itself or the dredging?
- Q. For the disposal.
- A. No, not always. In Auckland currently the Ports of Auckland is accepting dredging material. I'm undertaking a project currently in the Westhaven Marina where the dredgings there are being accepted by the Ports of Auckland as part of their terminal expansion. I am aware of others that potentially will accept material. It will be a decision made at the time.
- Q. Can I take it that there is a significant additional cost in having to transport the dredgings to wherever they have to go to rather than disposing of them on the reclamation?
- A. There is a financial difference. It's not significant because in my example of the Ports of Auckland they do charge to receive the material

and process the material to the standard that they require. It is more the convenience and the speed of turn-around.

Q. So the main cost or the additional cost I guess I should say of the alternative is in the construction cost of a deck as against a reclamation?

A. That is correct. Financial and it's usability both during construction and post construction.

Q. And you say that it has the potential to significantly increase the overall cost that would inflate the final cost of berths at the marina?

A. That is correct.

Q. Can I just understand that the difference in cost that you set out in paragraph 54 of your evidence-in-chief of \$3 million, that's a difference in cost between a reclamation and a deck, but there would be a cost of the reclamation before even you added the \$3 million for the additional cost of the deck.

A. I think I'm understanding you correctly that this is, the \$3 million is the number that a parking structure would be more than the reclamation and yes, there is a construction cost for the reclamation.

Q. And have you investigated the cost of acquiring land relative to the cost that you're talking about there?

A. Yes, those statements within my rebuttal in reference to the Swordfish property and the Auckland Council property were in those regards as well.

Q. So it would have been more economical, if I can use that term, to acquire land if you could have, than to incur the cost of the car parking alternative.

A. In my discussion with the officers of the Swordfish company, that appeared not to be the case.

Q. So it was going to be more expensive to acquire their land if they were prepared to sell it?

A. I would suggest is the opportune nature of the particular landholding, yes.

- Q. Now back to your rebuttal evidence, Mr Wardale, and you talk about the marina, this is at paragraph 22 and 23, I've already asked you about short-term or casual berthage. And at paragraph 22 you discuss what we discussed earlier about a berth holder electing to make their berth available. In the next paragraph you talk about Matiatia becoming New Zealand's first destination marina. But as I understand it, you're not proposing to hold back a significant number of berths, that is not lease those berths or licence them to berth holders for this purpose, you're just relying on berth holders being prepared to make their berths available while they're not using it.
- A. Yes, as I indicated earlier it is my intention where possible to retain berths under the ownership and control of the manager, however if that is not achievable it will rely upon others making their berths available and it will rely on the manager having that relationship as is the case at Tutukaka to see and view and know his berth owners as to what their activity may be to allow him or her access to use the berths on a short-term basis.
- Q. I understand that second point but dealing with the first point where you say that it's your ambition to hold back a number of berths, this is a private company we're talking about which we can assume is interested in making sure it gets a return on the cost in the investment in the marina?
- A. Several aspects to the private company's aspiration is for the long-term management of the marina is the income associated with managing a facility like that. That income is derived from several means, not least the day-to-day management but for undertaking such circumstances as the short-term rental of berths as you suggest.
- Q. But it will choose the option that will give it the best return in terms of whether it chooses to lease to berth holders or to retain for casual use, will it not?
- A. As I've suggested and with my investment in mind, it is my intention to invest in this facility for the long-term so the short-term gain, if any, is not always my motivator.

Q. Now, you talk about the popularity of Waiheke as a tourist and visitor destination.

A. Yes.

Q. And we've heard from your counsel in opening that boats often go there for casual visits, that is boats presumably from elsewhere in the Auckland region or perhaps even further afield.

A. Yes.

Q. And they do that now without a marina, correct?

A. There are boats that do that now, yes.

Q. And some of them actually even go into Matiatia Bay for that purpose?

A. Yes.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

THE COURT: JUDGE NEWHOOK

Now, my usual approach is for the Court next to ask questions of the witness and then finally re-examination. I think that's the fair way to do it.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

Q. Good morning Mr Wardale, just one that puzzled me is the number of berths you're planning for, 160, and whether you could explain the origin of that please.

A. Prior to my involvement in the project the concept layout had been derived which included 160 berths. At the time of my introduction to the project the opportunity arose for us to reconsider the layout and the size and shape. Whilst it's not always my area of expertise I am often asked to conceive conceptual design for marinas in various locations. In this particular location that review did not mean that I amended the shape, I consider the southern boundary was bounded by the need to retain access to the old wharf and the small headland that is at the point of where the break waters exist appeared to me to be a logical confine for a marina. Therefore the number of 160 was retained. Prior to that and to get to that number the previous designer and engineer had undertaken some market assessment in Auckland as to the most

appropriate berth sizes for a marina in Auckland and devised the layout that is as you see today. Mixing the berth mix between the smaller berths at 10 and a half metres, through to the larger, at 20, with the various beam measurements created in the zone that I've suggested created the 160. Compared then to the ever increasing number of interested parties it appeared small, as every marina developer would enjoy a larger facility but no doubt in the confines, as I've suggested, this was the number, the maximum number in that area.

- Q. So it's really based on your physical constraints?
- A. A bit of both. You could obviously increase the number of berths in that physical constraint by making the entire marina 10 and a half metre berths, but the market in Auckland commands some berths of a variety of sizes from that 10 and a half to the 20 metres that we've shown, and after laying those out into the area this site produced 160.
- Q. Yet in terms of layout for 160, I presume you could've made the area narrower and longer, if I could put it that way, perhaps to avoid the ferry channel more clearly. Would that have been an option?
- A. From my personal experience, and you may end up posing the same question to Mr Leman after myself, but from my perspective as I've just mentioned, that headland appeared to be the logical place. The decision to have the piles and the break water extend to the position it does in the current marked ferry channel was one that understood the physical confines was considerate of the protection of the marina berths and the nature of it protecting the old wharf and the associated boat ramp. Of course the discussion was had with the harbourmaster's office in terms of that locality and, as has been shown to you with the joint witness statement on navigation, the width of the channel is considered large, generous, well in excess of the standards, and therefore the opportunity arose to retain that alignment with that small headland, provide sufficient space for the old wharf to operate properly, and accommodate that berth mix.

- Q. And just coming back to the 160 number again, is that an economical number? If you had 100 it wouldn't be building, but if you had 200 it wouldn't fit, is that the sort of –
- A. We haven't undertaken full sensitivity, but from my personal experience, and as you've seen in the evidence, this will be at the smallest – smaller end of marinas in Auckland, the most recent, Orakei, at 171 berth in the central location. It is no doubt you would enjoy the ability of spreading the costs, the significant costs of the breakwaters amongst more berths. This will still be an expensive marina based upon what I consider a smaller number at 160 berths, yes.
- Q. Yes, and that just touches on a question that Mr Casey asked you about the cost of the berths, and I think the moorings were two to 4000 plus a few hundred per annum, and he asked you would the price of the berth be orders of magnitude greater? Now, I just want you to clarify for me the orders of magnitude. To my thinking an order of magnitude is 10 times, and a plural of that is perhaps 100 times, and you answered yes to that question; whether you'd like to reconsider your answer?
- A. Yes, I think I understand. I've supported the notion that providing an idea of price is difficult in these projects because of the very nature of the final detailed design. I would suggest that, you know, prices that have been seen at similar facilities with detailed construction like Sandspit Marina is probably a relative indication of what the prices may result in after the final detail of parking, deck or reclamation or otherwise. But yes, if the mooring is \$2000, this is not a \$20,000 berth by any means, it is for the smaller closer to 100,000 and then on unfortunately. The protection, the benefit of the deep water in this location is very limited dredging in terms of a marina development, but adds cost, length of piles, deeper more rock in the breakwaters, so there are pros and cons.
- Q. So Mr Casey's use of the word "orders" plural "of magnitude" is correct?
- A. Yes.
- Q. And just finally, in the visual simulations of October 2014 from Andrew Stewart, do you happen to have a copy of that folder?

- A. Yes.
- Q. October 2014.
- A. I'm sorry which number?
- Q. It's the October 2014 –
- A. Oh yes, yes.
- Q. – visual simulations.
- A. Yes.

WITNESS REFERRED TO DOCUMENT

- Q. On figure 8?
- A. VP8?
- Q. Well it just says “figure 8”. No, not VP8, it's figure 8 which relates to Kennedy Point.
- A. Right. How far through?
- Q. Ten percent?

THE COURT: JUDGE NEWHOOK ADDRESSES THE WITNESS – REFERENCE

QUESTIONS FROM THE COURT CONTINUES: COMMISSIONER HOWIE

- Q. And I appreciate that's an indicative drawing, but the interesting thing about it is the shape of the land reclamation and the breakwaters. And then I go over a few pages to view point 02 at high tide?
- A. Mhm, yes.
- Q. And there the proposal is shown as straight breakwaters and detached from the shore. I'm tempted to ask some of the landscape people about straight and curved, but I thought I should ask you whether you had any reservations about the curve versus the straight alignments of the structures?
- A. I believe that the desire in this site was to minimise the footprint, if I can call it that, and so whilst there is no doubt that breakwater could have a convex curve in it, but it would be taking more footprint potentially into the bay. In terms of what we term the “secondary breakwater”, discussions with the Department of Conservation had requested that

that structure not make a landfall, was their request. And accordingly that's why it sits from the shore.

Q. I see. Do you know the reason for their request?

A. I don't and I wasn't involved personally with that discussion, but I understood that it was about access, that if it was away from the shore it didn't have an access connection to their site.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

Q. Just a couple of questions in relation to the casual use of these facilities, is there any intention to allow somewhere in the facility just the casual tying up without charge of a visiting vessel?

A. It hadn't been considered at this facility because the existing old wharf was there for that sole purpose, with both sides of the old wharf are used for that purpose currently. One obviously has fuel added to it, but the other is for tying up without charge.

Q. And the other thing is in terms of the management and the water space within the marina, do you propose, would kayaks be able to paddle around in the marina, can casual visiting craft wander around and have a look, is that sort of thing –

1055

A. Well I'm very familiar with a number of consented marinas and how it operates and Bayswater was one of the first RMA facilities that had explicit conditions over the variety of exclusive areas and non-exclusive areas and we've been careful with the plans to show the areas that would be exclusive, being solely the berths, and therefore allowing the balance of the order areas, the common fairways, to be open as they are in most facilities in New Zealand. In my rebuttal I just answered one or two of those 274 parties I believe that indicated a question over the access of kayaks leaving the kayak hire and traversing to the nor'eastern point of the beach and I indicated that I'm very familiar with modern gangways that allow paddlers or even small boats to navigate under them. In a project in Rose Bay that I've been involved in that became a mandatory requirement of that particular location so I

imagine, as I saw at Bayswater, many kayakers traversing through the marina. As the navigation joint witness statement suggests, not always best practice to mix small paddling vessels with bigger vessels but it occurs and as yet I'm not aware of an accident of any significance.

- Q. At the marina, management doesn't have control over that water space. Would the Harbourmaster be able to impose a constraint?
- A. It's usual in my understanding that whilst there's not exclusive use of the area of that water space, that it does become part of the marina's management area which they would control for such issues, is someone was silly enough to anchor or undertake another event in that area so it would be part of their management care but not exclusive area that the public was excluded from.
- Q. And that would, I assume also, you'll put up a speed limit and that sort of thing?
- A. That's correct, usually "no wake zones" is how most marina's manage those areas.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- Q. Mr Wardale, picking up on one of Commissioner Howie's questions to you and looking at Viewpoint 2 by Buildmedia in the 2014 bundle.
- A. Yes.
- Q. He asked you your opinion on the possible consequences of reshaping the break waters to make them less linear, as I would term it. And you indicated that it could be done. Did I take it by implication that your answer carried with it that to do that might come at the expense of some numbers of berths?
- A. Well I hope not Your Honour but it depends of course which way the curve goes. The convex shapes that are shown in the Kennedy Point example, whilst I'm no expert in wave dissipation or mitigation, would appear to spread the wave rather than concentrate it with a concave shape but there are multitudes of options. I'm familiar with marinas in Dubai and other places where they take it to an extreme in terms of the shaping. There is no reason why either of these break waters could not

be shaped and where possible to maintain the berth mix that we discussed.

Q. Just let's get it clear what's convex and what's concave because it depends on which side of the break water you're viewing it.

A. Of course.

Q. If you applied the term "convex" to figure 8, the schematic for Kennedy Point, is that what you're calling convex?

A. Yes, looking from the, where the waves or the ferry wake's coming from it would be my assumption that the wave would be better dissipated than if it was concaved in.

Q. But we will have the opportunity to ask one or maybe two other witnesses who are shortly to follow, about that aspect of it won't we?

A. Sure.

Q. Forgive this question Mr Wardale, but if it were, after we had explored this aspect with a number of witnesses, the thinking of the Court that rather than having these linear slabs of break water in the middle of the bay it would be better to have curved ones, convex perhaps, subject to answers I think from many witnesses including the landscape and even ecological as I perceive it, and if the answers that we were getting from all of those witnesses were to have an impact on berth numbers, just being quite frank about this, is the project price sensitive at around the 160 berths?

A. As I've –

Q. Counsel will understand where I'm coming from in terms of part 2 of the Act.

A. Any reduction in berths will naturally push the price for the remaining berths to pick up those –

Q. That's understandable.

A. I think that any sensitivity can only be tested on the actual boaties that, and the potential purchasers and also the opportunity where possible to skew the larger berths differently than flat lining them. It is difficult for me to answer it. Any additional cost will be sensitive on those people no doubt.

- Q. That's probably about as far as you can take that issue, from your experience as a marina operator I thought it was appropriate to put that to you. Now if you go back to the other booklet of exhibits please, the 2013 one. And right near the front, figure 2, on the Marina Concept Plan gives us the intended layout of the marina berths and the pile moorings. I want to ask you a question about swing moorings versus pile moorings versus marina berths. And I want to focus on densities of occupation of water space of those three. It's my understanding, and this is only a general understanding, because I've never looked at the detail but perhaps you have, that pile moorings will provide for greater density of occupation of water space than swing moorings. It's almost trite I think isn't it?
- A. Yes.
- Q. Do you know by what factor that might be?
- A. I believe that Captain Jim Dilley in his evidence attempted to quantify the swing mooring radius based upon the various chain links which is the starting point. In terms of –
- Q. Yes, and he may be a more appropriate witness to ask, but just in case you've got some knowledge from your experience I thought it fair to put it to you.
- A. We often suggest that it's in the order of 10 to 20 times the water space for a swing mooring over a marina berth and as you've suggested the marina berth and the pile berth aren't too dissimilar.
- Q. Yes you've started to anticipate my next question perhaps. Can you give us a handle, from your experience, of relative densities of occupation of water space as between pile moorings and marina berths. Is it roughly equivalent?
- A. It is roughly equivalent without the ease of access. I'm undertaking a project for Auckland Council at the Westhaven Marina currently where Westhaven has in the order of 330 pile berths. I'm seeking, I have brought approval to remove two rows of those and accommodate them with rows of marina berths. And as it happens the number is within two or three. However I might add that we are able with marina berths to be

slightly more efficient because of the pile berths seem to have more allowance for leeway with the wind being attached to the pile, whereas the marina berth is more of a fixed structure and therefore we are with modern design able to improve things in terms of efficiency, and give the benefit of a walking finger alongside.

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Q. Indeed, but the fact or the difference between the two is a relatively small number, isn't it?

A. That is correct, yes.

Q. Yes, I'd often wondered that while boating in Westhaven Marina and that was an impression that I had. Would you look, please, at your rebuttal evidence, paragraph 17?

A. Yes.

Q. In the middle of that paragraph, having commented on the waiting list for swing moorings in Matiatia Bay, you say that you are reinforcing your opinion that Matiatia Bay is a favourite location for boaties on Waiheke Island as compared to the alternative MMA sites around the island. Now, you may or may not know the answer to this question, but if you turn to figure 11 in the 2013 bundle, I have the impression from personal knowledge of boats in the Auckland area that there are numbers of boat names, particularly the northern part of the bay but I think also the southern, where the boats are in fact Auckland boats that are moored in marinas in town, which tells me that the moorings are likely to be occupied only occasionally. Do you have any knowledge about that practice and the extent of it in Matiatia?

A. I don't have knowledge of the practice in Matiatia, but as part of updating that expressions of interest list that we discussed earlier, it was apparent that people do have an option between a mooring and a marina berth in the city, Yes.

Q. And it is the case, isn't it, and again I'm asking a question from an impression that I have that you may or may not be able to comment on, but a lot of those moorings are vacant a lot of the time in Matiatia Bay?

- A. Matiatia Bay seems to be less vacant than some moorings, and I think one of the 274 parties indicated his bay seemed vacant a lot of the time, but it does indicate the variety of aerial photos that we've had on the facility here has shown differing levels of use, that's for sure.
- Q. Earlier in your evidence you offered to interrogate your database to dig out a question concerning the recent confirmations. Can you add to that the question of the extent which confirmed or current indications of intention to a marina berth are by Auckland addresses.
- A. Yes.
- Q. As opposed to Waiheke Island addresses?
- A. Yes, in that Appendix A –
- Q. You've got it already have you?
- A. Yes, to Mr Brabants, at the time of completing that submission on Sunday evening all of the 113 that had responded at that cut-off had provided their Waiheke address.
- Q. No, that doesn't entirely answer the question, does it? That's a question about whether they currently have their vessel on a marina berth in Auckland, my question is more the residential address of the person indicating interest.
- A. No Sir, that was my answer was every one of the 113 had provided his Waiheke Island street address.
- Q. Okay, well that's probably as far as we can take that, because that may or may not be the prime residential address, but your database probably isn't going to help with that is it? As to whether it's a holiday address or a prime address on Waiheke?
- A. We limited our questions to them so that we did get speedier responses, but it didn't ask for everything unfortunately.
- Q. Your rebuttal evidence on page 13, and in particular paragraph 57 talks about Kennedy Point not having waiting taxis or hire companies that are well established and available at Matiatia. From your knowledge of Waiheke Island it is the case, isn't it, that taxis can be called, say by cellphone and asked to come to Kennedy Point, that there is at least one car hire company, I think it's based in Ostend actually, which will

deliver rental cars wherever they're required on the island, so that can be called up by cellphone?

A. Yes.

RE-EXAMINATION: MR R BRABANT

Q. Mr Wardale, going back to the beginning and working through the questions you were asked, you were asked a question by Mr Allan about the marina control or management in relation to bio-security and antifouling. I just think in relation to dealing with the bio-security issue, is there a particular marina in New Zealand that would be useful to advise the Court about that focuses on that issue and how do they manage a situation with an arriving boat that may have a problem, so what's involved?

A. The northland area of New Zealand has been one of the first to identify that they are without some of the species of biofoul. The marina at Opuia is the one that receives approximately 500 of the 600 visiting recreational cruising craft each year, so they've taken a particular interest in assisting the Ministry of Primary Industries and of Customs to accept vessels into the country. They've taken the opportunity to assist with the questionnaire and hull inspections as the vessels have arrived, which is part of Ministry of Primary Industries' request.

Q. In terms of being able to do that though, do they have some facilities to enable them to do that that this marina won't have?

A. Yes of course, they have a haulout yard which allows the vessel to be extracted from the water for inspection.

Q. If you don't know say so, but do they have some special obligations in terms of the removal and treatment systems and everything to deal with that, or is it just an ordinary haul out and sort of clean-off?

A. No, like many Customs facilities they are undertaking a quarantine zone where they have particular Ministry of Primary Industries receptacles to assist with the material that is removed.

Q. Mr Casey asked you some questions about comparative cost between swing moorings and berths, and there was another question about that

as well. To choose two examples where – which people will be familiar with, would Bayswater and Orakei or Oakahu Bay be examples where you've got adjoining swing moorings areas in the marina as well?

A. Yes.

Q. Are you familiar, can you – does that help, does that – would you go to give the Court some comparative differences if you know the current berth cost in Bayswater or Orakei and if we take the standard mooring cost, does that – can you give the Court some idea I mean obviously the cost –

OBJECTION: MR CASEY (11:15:44)

I'm just not sure about that question, I didn't ask anything about Bayswater and –

THE COURT: JUDGE NEWHOOK

No you didn't ask about specific marinas but Commissioner Howie did ask a general question as did you about the sort of relative costs of moorings versus marina berths.

MR CASEY:

(Inaudible 11:16:05).

THE COURT: JUDGE NEWHOOK

Well I think Commissioner Howie's question was a bit more general from the confronted Matiatia.

MR CASEY:

I'm not sure if it was but that's –

THE COURT:

I'm – is it a particularly important concern that you have Mr Casey?

MR CASEY:

Well it's just I don't know where it's leading to Sir and I'm not sure that it's such a leading question in any event but if Your Honour is happy to hear from it (inaudible 11:16:34) –

THE COURT:

Yes well I was – yes I was a bit trouble the preceding question being fairly leading but –

MR R BRABANT:

Well it's the order of magnitude Sir and some examples may help.

THE COURT: JUDGE NEWHOOK

Q. Yes I think, look, I think Commissioner Howie's question was broadened out to you, it was more general and I think counsel is entitled to explore that.

A. As I indicated the cost to buy a mooring is based upon the hardware there is no Council allowance to fear to sell your mooring it is just for the hardware so the order of magnitude that actually exists right across the country for marinas is significant between moorings at any location in the country let alone Auckland where some of the most expensive marinas are.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. The question was specific then Mr Wardale, do you know the berth costs in – well the newest one is at Orakei.

A. At Orakei.

Q. So just to give some kind of example.

A. Sure, a 14 metre marina at Orakei is transferring between owners at the moment in the order of \$150,000 versus a mooring that will be outside that in that range that I gave you based upon the size of the mooring between 2000 and \$4000.

Q. Okay, that's the only point of it, thank you. Yes just as – you were asked some questions about how the available space for parking on land and you referred to something in your – an attachment to your

evidence but I just, if you could turn up the 2013 figures and go to figure 24.

A. Twenty four?

Q. Yes. This might be a little more helpful. So when you had the discussion, because that's got the actual areas on an aerial, so can you identify the area you were talking to Auckland Property about off that aerial and the area of the swordfish parking so that's on the record.

A. Yes, the area that Auckland Council Properties owns and manages on behalf of Council is both areas B, C and E. However, I understood that the area B was the area in question with them, well was the area where – was the area. The area F is the swordfish.

Q. Thank you, now you asked about the location and people needing to walk and I believe Mr Casey might've referred to commuters having to walk. As a marina operator if consent was granted, if it was establish, would you have different types of parking within the marina for different purposes? Park carpark that is?

A. Yes all carparks have a variety of uses that many have loading zones and parking spaces.

Q. Yes, what's your intention at Matiatia with that carpark?

A. To have a variety of timed stay within the carpark.

Q. What specifically is it your intention to have a short-term parking area where people can drop off equipment and people.

A. Yes.

THE COURT: JUDGE NEWHOOK

Can I ask a subsidiary question to that Mr Brabant and you can ask further questions in your right of re-examination of course.

MR R BRABANT:

Yes for sure Sir.

THE COURT: JUDGE NEWHOOK

Q. Mr Wardale, based on your experience as a marina operator how many carpark space would you want to provide with this Matiatia marina for

the dropping off of equipment and/or people as opposed to parking while somebody goes out fishing?

A. For this size it is minimized to two or three, you know, as maximum.

Q. Yes, alright.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. Now there was a question about volumes of drenching and reclamation and how they map, can you go to figure 19 in the same bundle please? Has that got some numbers in the legion?

A. It does.

Q. Thank you. You were asked by Commissioner Howie, this is a new topic Mr Wardale about the dimensions of the ferry channel and the question of how the marina dimensions could possibly impinge on that and you referred to having taught or consulted with a Harbourmaster, did you not consult with anyone else about that issue?

A. Yes of course. The – both Captain Varney and myself had met with the primary ferry operators at Matiatia being Fullers because naturally the desire for a narrowing of the fairway was important to discuss with them. Consequently and since my evidence I can confirm I've met and discussed the very same matter with Explore due to their recent launch of their ferry service.

Q. Now the Court's aware that Fullers ferries have put a letter of supporting when the revised the application was lodged were they – Mr Wardale did you supply them with all the plans that IMC drew including all those dimensions before that letter went in?

A. Yes the relationship was frequent and often over the 12 or 13 months as we looked or I looked to find ways to mitigate their original concern with the previous design of the marina which would have had impact upon their service so plans were often shared with them to explain to them their design.

THE COURT: JUDGE NEWHOOK

Mr Brabant can you just remind us where in our materials we find the Fullers letter? There was a mention of it yesterday it's cropped up again –

MR R BRABANT:

I was hoping you wouldn't ask me that.

MR J BRABANT:

If I may help Sir, CB28 so that is in the common bundle Sir volume 2.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. Now you were asked some questions by Commissioner Leijnen about kayaking in that small boat yes if you like. Just again, can you, and I just want for confirmation go to figure 33 in the first main bundle and that shows the exclusive areas doesn't it?

A. It does.

Q. And that you referred to going through under the gangway and that would be in that strip between the reclamation and the main pier?

A. That's correct.

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Q. I'm just confirming all these things Sir. And apart from moving, potentially, around the bay and inside the pile moorings, do you know enough about, have you been enough there to look to see whether kayakers could also go around the outside, that is on the shore side of those pile moorings, would that be a difficulty?

A. Conveniently that plan you refer to shows the depths and it would be very convenient to go around there.

Q. Just while we've got that open, the Judge asked you some questions about essentially putting pile moorings in there instead of a marina. It would be possible to get maybe Mr Leman to do an actual overlay of this marina showing pile moorings. You're familiar with the conventional layout?

A. Yes.

Q. You've not had any discussion, I presume, with Mr Leman about that option and whether the break waters and the access pier would remain?

A. Well of course from my opinion the pile moorings, whilst it may, they may allow boats to be in a comparable position to this layout, will still require dinghy access and the less convenience that that offers as

compared to a marina but it would be my opinion that knowing the costs or the likely costs of the two break waters that the project would no longer be feasible or potentially not feasible because the price paid for a pile mooring is probably closer. Whilst there are few piles that sell in this country, so I can't be sure, the pile berth cost would, in my opinion, be closer to the cost of a mooring than it would be to a marina berth so it would make the project feasibility less likely.

THE COURT: JUDGE NEWHOOK

Q. Mr Wardale, I understand your answer in the general sense that accords with general knowledge that I think I have. Can you tell us what the cost of those two break waters is likely to be in the current estimates?

A. High level estimates are, without contingency and without a lot of further design is in the order of \$2.5 million for the larger and in the order of \$700,000 for the smaller. Grossed up with project management and design fees, it may be in that sort of three to four.

Q. You'll get to four million by the sound of it. Okay, I think I understand that too. Thank you for that indulgence Mr Brabant, and you can ask questions in re-examination on that of course.

MR R BRABANT:

No Sir, and I have no further questions.

MR ALLAN:

Sir, sorry I know this is unusual, just a matter arising and it's something that's literally just come to my attention now while we've got figure 33 up and it flows from questions from Commissioner Leijnen as public access and Mr Wardale might be an appropriate witness to put this to. Obviously my friend may wish to ask follow-up questions.

THE COURT: JUDGE NEWHOOK

You object to this Mr Brabant?

MR R BRABANT:

Well I don't know what it's about yet Sir.

MR ALLAN:

Obviously you'll need to hear the substance of the point but I think it's purely an error but the way the plan is shown with exclusive occupation, it appears to suggest that the walkway out to the primary break water is exclusive whereas I think the intention is that that had 24 hour access and I wondered –

THE COURT: JUDGE NEWHOOK

Which I think is actually mapped on other illustrations.

WITNESS:

Mmm.

MR ALLAN:

But it might be just worth picking that up in relation to this plan early on in the hearing.

MR R BRABANT:

Well the answer to that Sir is that I know that it's laid over the top of the marinas but the occupation is of the water Sir, not the marina on top of it, so I think that's the answer. And for my friend's assistance, if I may Sir, the reason it extends to the water space on the southern side is to prevent boats mooring up against it but remember Sir that we put, it's actually water, you've got to imagine the water underneath.

THE COURT: JUDGE NEWHOOK

All right, it might be preferable Mr Allan to, putting Mr Brabant in the witness box and swearing him in and having answers from him, for counsel to confer about a comparisons drawing with others that I know I've seen where I think a green colour was employed to show public access along –

MR ALLAN:

Yes I accept his explanation but it wasn't immediately clear from the plan that it related solely to the water so I felt it was something worth.

THE COURT: JUDGE NEWHOOK

I suspect we've got clarification but we can confer in the morning break.

MR R BRABANT:

31 Sir.

THE COURT: JUDGE NEWHOOK

That's the one, that's it, that's what I've seen.

COURT ADJOURNS: 11.30 AM

COURT RESUMES: 11.50 AM

MR J BRABANT:

So those are the witnesses that no counsel wish to question.

THE COURT: JUDGE NEWHOOK

Yes, we've already signalled that we wish to see Treloar and Thiebaut.

MR J BRABANT:

So just so I'm clear on that, Sir, I remember that was a question mark as I had recorded, so at this stage your view remains you would like to see them?

THE COURT: JUDGE NEWHOOK

Well, we're going to hear from Mr Lemman but we believe that we may need to hear from these two as well. One of them was coming from Australia?

MR J BRABANT:

That's correct Sir, Mr Treloar.

THE COURT: JUDGE NEWHOOK

So what, we will see him later in the week? That might be a subject that (inaudible 11:51:43) Mr Lemman can help.

MR J BRABANT:

Yes Sir, I was going to say potentially it might be something you might consider after you've heard Mr Lemman. In that case if we put Mr Treloar to one side –

THE COURT: JUDGE NEWHOOK

All right, after we've heard from Mr Lemman we'll come back to those two, but at the moment we think maybe. Smith on marina management.

MR J BRABANT:

He's from Whitianga, Sir, the Whitianga manager.

THE COURT: JUDGE NEWHOOK

Yes, the Whitianga person, yes. We're not sure that we can help us a great deal more than Mr Wardale has been able to, that's the current thinking. So the answer is probably no we don't need to hear from any on that list other possibly from Treloar and Thiebaut after Mr Leman has given evidence. I actually have one more question for Mr Wardale if you don't mind.

MR J BRABANT:

Sir, we'll need to contact them until you remove the proceeding word "probably".

THE COURT: JUDGE NEWHOOK

Yes, but we should be able to do that in an hour or two when we've heard from Mr Leman.

MR R BRABANT:

Yes, okay, I'll just sit on talking to –

THE COURT: JUDGE NEWHOOK

And hopefully that's not too discombobulating for you the Messrs Brabant?

MR R BRABANT:

No that's fine, Sir, I just won't contact any of them until –

MR J BRABANT:

(inaudible 11:53:08) to that point and I'll do it in one hit, thank you.

UNKNOWN MALE (11:53:14) ADDRESSES THE COURT – WITNESS SEATING

PHILIP HARRY WARDALE (ON FORMER OATH)**QUESTIONS FROM THE COURT: JUDGE NEWHOOK**

- Q. I gained an impression while reading a great deal of evidence, forgive me if I haven't got this particular aspect fastened in my mind at this moment, gained the impression that the supply of freshwater to the marina is an issue, that there are two bores up the hill, that they're fairly fully committed for what's there in Matiatia already, that you've had to go to the lengths of arranging to collect rainwater off the roof of the marina office to supply the needs of the people occupying the marina office. What about wash-down water from salty boats, what happens there?
- A. The position from my opinion is we've taken a conservative approach to the delivery of water based upon what is included in the various evidence mainly from Mr –
- Q. We understand the bore bits (inaudible 11:54:40), this is an island we're dealing with.
- A. Yes, the bore in question with Auckland Council properties actually has lots of capacity. It's just that they are protecting their interest and their capacity needs should they develop the Waitemata infrastructure land that they acquired further.
- Q. Of course.
- A. However at this stage –
- Q. Yes and I do recall picking that out of the evidence.
- A. So we have agreement for that four cubic metre per day volume. So to answer your question, it would be my intention that whilst not initially commencing with freshwater supply to the berths, that we later investigate a bore of our own if possible to improve that situation, but as it stands today –
- Q. As it stands today boat owners actually can't wash their boats down with fresh water.
- A. Correct, unless they're roof-harvesting or another arrangements are made, absolutely.
- Q. Fire fighting?

A. Fire fighting has been addressed by Riley's also, is traditional in most facilities that I'm familiar with the fire service turn up with their own pumps, including the island that has the pump, which they put over. In this instance because of our slight remoteness, the Waiheke Marina remoteness, they would like many facilities that are slightly distant away from their service or have a volunteer service, you have your own fire fighting pumps that are all of network at any rate they use saltwater. So very much the case –

Q. So reliance on salt water for putting out fires on boats.

A. And it doesn't need to be reticulated, it draws from the bay.

RE-EXAMINATION: MR R BRABANT

Q. Mr Wardale, you won't be washing your boat down, but if you need fresh water...

THE COURT: JUDGE NEWHOOK

Commissioner Leijnen has one too if you don't mind, Mr Brabant, and then you can follow up on both if you wish, both topics. Commissioner Leijnen?

CROSS-EXAMINATION CONTINUES: COMMISSIONER LEIJNEN

Q. Just in terms of the location of the pump out for the boats, where is that intended –

A. Yes, so –

Q. Sewage, sorry.

A. The sewage pump has been positioned on the floating pontoon which is on the north side of the old wharf. So –

Q. That's where I thought it was, that's fine (inaudible 11:57:23).

A. So on that facility will be your, if I can suggest, this sort of one-stop re-provisioning. And maybe it helps to answer the Judge's question a little bit more that at that facility there will therefore be sewage, fuel and fresh water, and that is where someone would procure – not procure, have available fresh water at that location, which is currently available to all the boaties now.

Q. The Council's providing that fresh water?

A. Yes.

Q. Thank you.

MR R BRABANT:

Well that's covered – that's exactly it, the water issue that you'd raised, Sir, didn't cover the supply of water for people's tanks and that's been done now.

WITNESS EXCUSED

MR R BRABANT CALLS**JOHN MICHAEL LEMAN (SWORN)**

Q. Your full name is John Michael Leman, you reside in Brisbane and you're a consulting engineer with the qualifications and the experience in marina developments listed in the first three paragraphs of your evidence?

A. That's correct, yes.

Q. And I refer you now to your statement of evidence dated 30 April 2014, are there any corrections you need to make to that, please?

A. No.

Q. So can you advise the Court to the best of your knowledge and belief that the contents of that statement of evidence are true and correct?

A. Yes they are.

Q. And I think that you had a conference at a distance with the other people involved in coastal engineering, and you should have in front of you there the joint witness statement that's dated the 29th of August 2014, do you have that?

WITNESS REFERRED TO STATEMENT

A. Yes I do, yes.

Q. And is that your signature on that?

A. Yes it is.

CROSS-EXAMINATION: ALL COUNSEL – NIL

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QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

Q. I understand that you've reviewed the coastal engineering design aspects of the proposal, is my understanding right?

A. A review of the previous work that was done from the 2011 proposal, also the wave studies by Lawson Treloar, sorry Cardno Doug Treloar and also the metaoceans information that we used for the wave, the ferry wake waves.

- Q. And my understanding is that originally there was a floating break water concept which was replaced with the fixed break water, the rock.
- A. Yes.
- Q. Break water. Because of the wave length penetration into the marina, is my understanding correct?
- A. Yes that's correct, also concern, not just for the wave length for the ferries but also because the bay's exposed to a predominant strong wind direction. So to ensure it has adequate wave protection for, not just for the extreme event but also general comfort of the marina and satisfaction of the occupants.
- Q. The two parts to that, one is the long wave length, waves from the ferry which got under the floating break water unless it's wide enough.
- A. Yes.
- Q. And are you saying that the wind waves would penetrate a floating breakwater as well?
- A. Not as much due to wavelength though it wouldn't penetrate as much as the ferry waves.
- Q. Yes.
- A. But it still – there is still some penetration.
- Q. Okay.
- A. Because it's an attenuator it's not a full breakwater.
- Q. Okay. And you've presumably heard some questions about the shape of the breakwater in plan form, do you have any views about the preferred shape of one of these breakwaters from a hydraulic point of view. Does a straight one or a curved one make any difference?
- A. As Mr Wardale eluded to, if we have a breakwater that is convex as in from the shore, the middle is sticking out so it's a shape like that it will obviously – the waves will diverge rather than concentrate so yes, there is a preference for a concave rather than – sorry, sloping convex, sloping out towards, there'd be preference to that to a straight breakwater or a concave.
- Q. Yes. Does that apply also to the floating arm?

- A. Yes I does. Well a floating arm in that location, the floating arm on the southern side, the waves are pretty much rolling along it.
- Q. And does it make any difference between the breakwaters in other words, do each of the breakwaters have to have the same form?
- A. No, no they don't.
- Q. In terms of the height of the breakwaters, working off one of the Riley diagrams given to us a section 92 related figures, the little thin volume, in drawing 21, just taking the heights from that profile it seemed to me that the top of the breakwater was 4.2 metres above the low water am I correct?
- A. Yes Sir we're looking at, so that's drawing number 21 vision 2?
- Q. Correct.
- A. Yes.
- Q. And that it's 1.7 metres above the high water?
- A. Yes that's correct.
- Q. Yes. And are those – is that height essential?
- A. It's not essential. It's recommended. You could lower the breakwater and allow over topping of the breakwater but it's been modelled as to give us a complete cut off of the wave energy coming in so the recommendation is the 4.5. It could lower it but you'd lower the standard of the wave protection in an extreme event if it starts to get over topped.
- Q. So what extreme event is that being designed for?
- A. That's being designed for a 50 year + even so we're looking at the MHWS at 2.8 and we're looking at a sea level rise of 0.4 and a surge of 0.5 and then we've got a maximum wave height from the (inaudible 12:07:00) report, the significant wave height was 1. – sorry, 0.76 maximum wave height as seen indicated his report of 1.84 times that so we're looking at a wave height of around about 1.4 with a bit of run up so we'll probably get up to close to the 4.5.
- Q. And is there a factor of safety in there?
- A. Not, I think probably the more the factor of safety would be in the fact that we're allowing 0.4 of sea level rise.
- Q. So your surge is your storm surge allowance?

- A. Yes.
- Q. And sea level rise is 0.4 so it's 0.9 and then your wave, maximum wave height of 1.4 so it'll over top then?
- A. No, well that's on still water level so you've got 0.7 down and 0.7 up but you have got some run up on the breakwater itself so it'll be, it'll be very close to over topping at that.
- Q. If you've got a high water level of 2.8 and a surge of 0.5 and a wave height of 1.4 that's another 4.8 that's over the top already without sea level rise is it?
- A. Well you've got, well 2.8 and then you've got your 0.9 so at 3.9.
- Q. What's the 0.9?
- A. That's the 0.4 of sea level rise.
- Q. Yes and the 0.5?
- A. Plus the 0.5 of surge.
- Q. Yes.
- A. So you're at 3.7.
- Q. Yes.
- A. And then you put, so you half your wave height onto that.
- Q. Yes of course 0.7. Okay. And just finally is that the formula that's normally used for marina breakwaters in your experience?
- A. It depends on the exact amount of runner on a breakwater, it is dependent on your wave period versus the wave height so it is adjustable how much run up you actually get on the breakwater. Obviously the very detailed design of the breakwater itself with the rock size (inaudible 12:10:15) how much run-up we would have, we would work out that at the detail design stage to ensure that we get it to the optimised value, but 4.5 seems to be the reasonable estimation of where it should be.

1210

- Q. Thank you.
- A. Just on that, we could possibly lower the secondary break water, not so important for overtopping there. So that could – although we're talking

about the main breakwater here, the secondary breakwater could possibly...

Q. The secondary breakwater design at the moment is the same height, is it?

A. Yes. But bearing in mind it's not designed as an overtopping breakwater because we've only got it two metres wide at the time. If we did lower it to have it overtopping we'd probably have to make it a bit wider so we didn't lose rock off the top as it overtops.

Q. Would you have to armour the (inaudible 12:11:20) side rather more?

A. Yes, yes, which is going to expand the width to be able to do that.

Q. Sure.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

Q. Mr Leman, why have you chosen 0.4 for sea level rise, what's the period?

A. There was a number of – it's a little bit of a subjective subject. We did it in consultation with Doug Treloar from Cardno's in various projects that he'd been involved with in New Zealand, and there's some as low as .1, there's some as high as .8. And that was the advice that Doug Treloar gave us, he felt he was most comfortable with a point – reasonably conservative .4.

Q. It's a requirement for us to consider climate change and there is some study that's ongoing in terms of the Ministry for the environment, and the sorts of figures that we have been quoted for this entry are from .8 to one metre seems to be the more relevant figure that seems to be being adopted, do you have any knowledge of that?

A. Yes and I'm aware in other parts of the world also .8 is not an uncommon figure. When we're looking at habitable buildings it's fairly important that we keep them dry, and I think it would be reasonable to say that in the colleagues that I work with that they believe that's a fairly conservative figure to go as high as .8, but authorities tend to err on the side of being a bit conservative with the unknowns, particularly if you're looking at a reclamation level, a floor level for example where it could

have significant consequences if it does turn out to be that high, whereas breakwater is a little bit less sensitive and risk to that in the fact that you can even probably do a little bit of topping up if those sorts of things start to happen in 50 or 100 years' time.

Q. So you could actually increase the height of it, right. In terms of you mentioned that you could perhaps lower that inner breakwater, what sort of order of figure were you thinking of that it might come down?

A. Probably off the top of my head maybe half a metre, I'd probably need to get Doug Treloar to do some further modelling to see how sensitive it was to a little bit of extra energy coming through there, but my feeling is that half a metre wouldn't be that significant. Might be able to get a bit more, but we're not talking huge amounts.

Q. Is the shape of the seaward side of the breakwater important and could you alter the shape that it might have a different way of reaction when it hits?

A. You can, yes, you can alter the shape so that you get more of a breaking wave so it doesn't run up as much to the extent that sometimes we actually have beaches like at Gulf Harbour when I designed that, it's actually got a beach, because you come in and then turn in, and that's actually a way of spending beach to break all the energy so it doesn't bounce back, because you're coming in through a long channel. I think I did a similar thing for Pine Harbour as well. So yes you can, but I don't know that it'd significantly alter the height, the overall height. But you could certainly flatten it out, it just means you've got a lot more material to bring to site to construct it, because the base is much wider.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Mr Leman, just picking up on the questions from my colleagues before I come to my own, if sea level rise were to prove to be .8 rather than .4 over a century, what might be the effect on boats in the marina of an additional .4 or half a metre of wave arriving over the top of the main breakwater?

- A. We would get more wave energy, more wave height within the marina, so that would basically be the effect of if it was overtopping.
- Q. Can you estimate the likely size of such waves?
- A. Not off the top of my head, no, it's a bit of a complex – I would need to get Mr Treloar to do the modelling of that because we've got wave energy coming around the ends as well as over the top, it's not just a straightforward over the top scenario, we've also got it breaking up from the floating structures and boats into the marina and how much that would effect that as well would be broken up a fair bit from the front.
- Q. Yes, I imagine it's a totally different situation from the fact that it failed the Littleton Marina in 1999, marina that broke up, each had a floating break on the outside of it, are you familiar with that?
- A. I'm well aware of that, I was asked to give an opinion on it.
- Q. But I imagine it's not an example that is worth our inquiring into because it was a floating breakwater as opposed to a rock breakwater?
- A. It hasn't got any relevance to the case here.

THE COURT: JUDGE NEWHOOK

I'm presently of the mind, subject to discussion with my colleagues, to ask Mr Treloar to help with the answer to the question that I just put to Mr Leman and which he indicated that Mr Treloar was better placed and might do some modelling. For the reason that if we consider on the available facts and expert opinion in this case that we should take account of a greater level of sea level rise over coming decades than the .4 that has been put in the current modelling, and if therefore as a consequence we might form the view that the rock breakwater should be higher than it has been designed, then that might have consequences in other terms, visual, ecological, who knows. So I'm just signalling to you that this is something that we might require Mr Treloar to look at.

MR R BRABANT:

Yes Sir, I understand the point and I realise that's aside from the question of being able to add some height that this witness has said, but what – I mean

we can obviously get him over, Sir. It would seem to me with respect that you are only going to get useful information from him if he does some actual work on it first, Mr Leman's been saying, "Well, just in order of it off the top of my head."

THE COURT: JUDGE NEWHOOK

And that really is my next question as to what's involved and how long would it take in order that Mr Treloar could be useful to us.

MR R BRABANT:

Well if you specified a dimension Sir, I imagine, if you want to choose, for example point 8, I mean I'm only saying that because that's the number that Commissioner Leijnen just raised, but I imagine, and Mr Leman's better than me to be sure about this, but if we asked him a specific final finished height and put it to him then he could run the model but you should ask this witness Sir. But we would need that because otherwise if we bring him over and he starts guessing again and that's not what you want.

THE COURT: JUDGE NEWHOOK

Yes that's right, that's the point of my enquiry. Thinking ahead I'm also of mind that if the marina were consented as designed and then in 50 years time it was felt necessary to extend the height of the break water, we should probably have taken account of the visual and/or ecological effects of that possibly occurring in the future.

MR R BRABANT:

But I think Sir, the relativity stays the same doesn't it?

THE COURT: JUDGE NEWHOOK

Does it?

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

We'll talk about this behind the scenes at lunch time.

MR R BRABANT:

I think that's right because the water's gone up so you may need it to stop effects inside the marina but it isn't going to look any bigger. I think Commissioner Howie agrees. So Sir a specific question and I'd just like Mr Leman to confirm, because he should know, he works with Doug all the time, can we feed another number in? Over the next few days could some more data be produced?

QUESTIONS FROM THE COURT CONTINUES: JUDGE NEWHOOK

Q. What do you say to that?

A. Yes, certainly it's, the model is set up already so he's got that database there, it's quite a quick turnaround. As long as they can do that and they're not all on holiday, which I'm sure they're not.

THE COURT: JUDGE NEWHOOK

You can enquire with Mr Treloar Mr Brabant.

MR R BRABANT:

The other one will but –

THE COURT: JUDGE NEWHOOK

Or the other one will.

MR R BRABANT:

Well we're just trying to pass something about the works Sir, so those sort of things he's in touch with him already about coming over. So provided to, you can give us a specific thing you want us to ask him to do then we'll find out whether he can do it and the timeframe and we'll come back to you Sir.

THE COURT: JUDGE NEWHOOK

We'll confer more about it ourselves, it may be that in view of the advice that I received a moment ago from Commissioner Howie that we might not need to pursue it all but we'll talk about that at lunch time.

MR R BRABANT:

Thank you Sir.

THE COURT: JUDGE NEWHOOK

Mr Allan?

MR ALLAN:

Sir, I'll just indicate I'm happy to offer Mr Reinen-Hamill's involvement in those discussions, should the Court consider that to be desirable.

QUESTIONS FROM THE COURT CONTINUES: JUDGE NEWHOOK

- Q. Thank you for that offer. I want to pick up for now on an answer given to Commissioner Howie, if only by way of clarification. You were answering questions to him about potential shapes for the break waters. Whether convex, concave, which depends on which side you're viewing them from I guess, or straight. And I thought I heard you express a preference in terms of your knowledge and skill for a convex break water, that is as viewed from outside, from the outer part of the bay. Is a preference over a straight break water or a preference over a concave break water viewed from outside the bay?
- A. It would be both. Obviously the concave starts to concentrate waves a lot more so the order of preference, all things being equal.
- Q. So one might be inclined to fairly quickly discount that idea. If we were looking to reshape the break water for some purpose and you've confirmed that you in fact would prefer, from the point of view from your knowledge, that a convex shaped break water would be preferable to the straight ones that have been drawn.
- A. Purely looking at it from a wave energy dissipation point of view. That's not considering all the other factors that might come into it, aesthetics,

minimising the footprint of the marina, which is the reason why it's straight is to minimise if we've got a lot of room we can do a lot of playing with the shape obviously.

- Q. Yes, we gained the impression, the same impression about that from Mr Wardale.

RE-EXAMINATION: MR R BRABANT

- Q. Just one point, and you were asked some questions about it being lowered and you've given some answers. Is the presence of a footpath for public access relevant to that consideration?

- A. I did, well, yes it is, I did say in my answer that I recommend keeping it at 4.5. To elaborate on that, yes because there's a footpath there, we don't want overtopping and getting too wet although we wouldn't expect people to be walking along there in a 50 year return period storm but stranger things have happened. Also if we start to get overtopping we've got a footpath on there, if we get any erosion there's a lot more works to do as far as making sure we don't get any erosion effects and stabilising the footpath there with waves that can break over the top of it. And I guess the third part of that is also that because, and you would have seen the wind blowing yesterday, that we don't want to have the wind just whistling through the marina too much. Even when we don't have those extreme events the higher the break water the better it is behind for the climate for the boats behind that screaming south westerly.

THE COURT: JUDGE NEWHOOK

- Q. There was a suggestion or perhaps a recommendation from one of the ecologists that it might be useful to cover the break waters with a shell or shell and stone substance that might be favoured by birds. Have you any comment to offer about that? First as to whether it would be an appropriate thing to do in terms of your knowledge to the break water and secondly as to whether such material would be likely to have a reasonable chance of remaining there in the wave climate.

A. If we get any wave overtopping at all it would be difficult to keep a small granular material, it'll just sink and get washed down into or across and over the structure. So that would be an issue.

Q. Any advantages or disadvantages for the structure itself of doing this in terms of your discipline?

A. In terms of my discipline, no.

DISCUSSION – POSSIBLE RECALLING OF WITNESSES

WITNESS EXCUSED

1230

MR R BRABANT CALLS**MARK RAYMOND POYNTER (AFFIRMED)**

Q. Your full name is Mark Raymond Poynter. You reside at Tutukaka and you have the qualifications and experience relevant to this matter set out in paragraphs one through five inclusive.

A. Yes I do.

Q. And as also recorded in paragraph six you have an involvement in boating and in fact have a marina berth at Tutukaka.

A. Yes I do.

Q. Now you have a statement of primary evidence dated the 29th of April 2014. Just dealing with that first maybe are there any amendments or changes, corrections?

A. No there's not.

Q. Thank you. And the other one, further evidence in rebuttal of the 19th of September 2014 do you have any corrections needed there?

A. No I don't.

Q. Excellent. And can you please advise the Court that to the best of your knowledge and belief the contents of both those statements of evidence are true and correct?

A. That's true, correct.

Q. And then we'll refer you to the joint witness statement, there's one Mr Poynter of the 27th of August 2014.

A. Which file, where do I find that?

Q. It should be underneath there, there's a joint witness statement folder behind you.

A. Sorry.

Q. And it's under, can you see it there on the right perhaps. And under tab 3.

WITNESS REFERRED TO WITNESS STATEMENT FOLDER

A. Yes?

Q. And that's dated the 27th of August 2014, can you confirm your signature to that document?

A. Yes I can.

Q. Now sir there's just one other matter I'll just ask your guidance about, there was an agreed recommended statement of conditions of consent as at the 9th of September which was not in the folder –

THE COURT: JUDGE NEWHOOK

We don't have that (inaudible 12:32:32).

MR R BRABANT:

No, and –

THE COURT: JUDGE NEWHOOK

Is there something that you can read out to the witness if you want comment. What's your – need to refer to that?

MR R BRABANT:

Well I'll just try to be otherwise Mr Allan would like to remind me if I've missed something out but the thing is it is one of the documents but it's not in her at the moment Sir.

MR ALLAN:

I will shortly be able to remedy that as I will be putting that document to the witness so I have a copy I understand there are – I've got a spare here.

MR R BRABANT:

Well I'll leave Mr Allan because it will get in one way or the other.

THE COURT: JUDGE NEWHOOK

Yes, good.

EXAMINATION CONTINUES: MR R BRABANT

Q. Right, now want to keep answering questions please.

A. Certainly.

MR ALLAN:

Sir I wonder if this can be provided as well to Mr Poynter it's the second joint witness statement it wasn't signed as such but it was an agreed document flowed into Court.

THE COURT: JUDGE NEWHOOK

Yes, while we've been talking about this, one of my colleagues has looked in the iPad and we actually don't have a second witness statement from these witnesses so let's give him the hard copy now and we'll deal with the electronic aspect later.

CROSS-EXAMINATION: MR ALLAN

Q. Good afternoon Mr Poynter.

A. Good afternoon.

Q. So you can confirm that that document flowed from your caucusing with the other witnesses with the exception of Mr Waters I think.

A. Correct.

Q. And that the contents of that are true and correct to the best of your knowledge.

A. Yes.

Q. Thank you. Do you also have before you the coastal permit conditions that were tended by counsel for the applicant yesterday?

A. I have them in a personal folder if I can refer to those.

Q. That's fine if you've got a copy of your own there. And if we just have the two side by side my questions are really just about the conditions as at 9 September and the conditions as we see them now.

A. Can I just make sure that I'm looking at the same document. On the bottom it's "Draft conditions 5/10/14 final?"

Q. That's the same on mine yes seems you've got the right set and we're starting at condition 15 within the coastal permit where it's talking about penguins and then side by side you will see on this first page in item A Little Blue Penguins in the 9 September document?

A. Yes.

- Q. So we've got those side by side. Now you see that first bullet point has been taken in as condition 15. That's your understanding?
- A. Yes.
- Q. Now condition 16 appears to deal with the second bullet point or it's intended to pick that up?
- A. Yes.
- Q. Now condition 16 as worded requires a plan to be approved but doesn't actually deal with implementation does it? If you just read that through.
- A. That's correct.
- Q. Whereas if we look at the agreed condition in the 9 September document it has a sentence at the end prior to completion of the breakwater the (inaudible 12:37:00) boxes, artificial burrows shall be deployed and should be monitored for two years, two nesting seasons following the final construction of the breakwater. Now it may have just been an omission but would you agree that that needs to go into the condition to make sense of it to make sure that it's implemented?
- A. Yes, if the joint witness statement recommendations were to follow through that would be the case.
- Q. I'm advised that it may in fact be in position 29 and separated from its – if you could have a quick look at condition 29 we see the construction there, that doesn't require monitoring does it?
- A. Not explicitly but it says, "And maintained thereafter."
- Q. Yes, would you on the basis of the position reached at caucusing would you agree that there should be a monitoring component as agreed?
- A. That could be done the reality is if you are maintaining them implicit and that is that you are going to be at those nest boxes and presumably measuring and monitoring the performance of the –

THE COURT: JUDGE NEWHOOK

Where could we be (inaudible 12:38:24) could we Mr Poynter.

CROSS-EXAMINATION CONTINUES: MR ALLAN

- Q. The joint witness statement just refers to the design of "the" breakwater and then when we see the condition now in condition 16 and the other

one several pages on, it's talking about the secondary breakwater only. Was your understanding that this would encompass potentially the primary breakwater also? Is it required deployment there?

A. No, no, it was always my understanding it was just the secondary breakwater. The reason for that being that it is isolated from land and was the most secure from potential predators or interference or.

Q. Okay I understand that point, I just wondered there might be some ecological benefit in also deploying boxes on the primary breakwaters to give penguins more choice of habitat?

A. There might be but it wasn't part of our discussions or recommendations or my recommendation.

Q. Just one follow up question on that, could perhaps the decision about where to place the boxes, whether on the secondary and perhaps also on the primary breakwaters be addressed as part of the plan to be discussed and approved by DoC and also in consultation with the Council?

A. It could be.

1240

Q. And then in the 9 September document, the next point we're moving onto is (b) Bio-security, the first bullet point I think is covered by condition 17.

A. Would you like me to read that?

Q. No, that's your understanding? If you just do a quick comparison?

A. That appears to be the case.

Q. Thank you, and the second bullet point is now over the page in condition 18, but seems to have been significantly amended from the agreed wording on 9 September, and I'd just like to briefly work through that with you. So the agreed version requires the plan to be approved prior to installation of any structure, do you see that?

A. Sorry, I just got –

Q. I know it's difficult going back and forth between the two, but if you're looking at (b) and the second bullet point, "The consent holder shall

lodge a bio-security management plan with the team leader at Coastal for approval prior to the installation of any structure.”

A. Correct.

Q. Whereas condition 18 says “prior to permanent occupation of the marina by berth holders.” I think that’s probably unintentional, isn’t it?

MR R BRABANT:

No.

MR ALLAN:

Well let’s look at – a good example is (b) –

THE COURT: JUDGE NEWHOOK

Mr Brabant, do you want to be sworn in?

MR R BRABANT:

Well the problem is, Sir, I wrote these conditions so Mr Allan’s asking Mr Poynter about something he didn’t have any part in.

MR ALLAN:

Well perhaps some of Mr Brabant’s failings in drafting the conditions will soon become apparent.

THE COURT: JUDGE NEWHOOK

The question is being directed to the expert witness, Mr Brabant, and I’d prefer that he dealt with it. If there’s a matter of drafting that you need to tell us about later, by all means to so, but at the moment Mr Allan is cross-examining Mr Poynter.

CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. So returning to my question, if we look at 18(b), to avoid the introduction of any unwanted or bio-security risk species through the construction activities, it doesn’t make any sense, does it, to approve the plan prior to

permanent occupation of the marina by berth holders when you're also concerned with construction activities?

A. No, construction activities are important in making sure the vessels or whatever – structure or activity doesn't introduce a bio-security risk.

Q. Exactly, so the position you agreed with the other witnesses is actually the correct one in terms of timing.

A. Yes, that was our view.

Q. There are also a number of other missing items from the bullet point when you look at condition 18, item 2 for instance. Now, I assume that may have been dropped for reasons relating to the jurisdictional issue, but you'll see they include details regarding the management of cleaning and defouling of marina structures in advice to boat owners on the cleaning and inspection of vessels. Notwithstanding the jurisdictional issue, that seems like a sensible thing to include, it's focusing on marina structures in the first part, not boats?

A. Yes that's correct.

Q. And it's talking then about advice to boat owners, so that needn't be terribly controversial?

A. True.

Q. That could also be included?

A. True.

Q. I don't expect many of these things will be controversial given you've agreed them all right. Now again, 4 and 5 haven't made it over into the new version. They look sensible to me, just to cut to the chase, you'd agree that they can also go into the condition from your perspective?

A. That's true, they're pretty obvious statements.

Q. And likewise the remaining bullet points on page 3, bio-security management plan being reviewed every five years, not onerous, that could be included?

A. Yes.

Q. And the obligation to have marina rules about those various things listed in the next bullet point down and then also to provide that section of the marina rules to the Council for approval also is sensible?

- A. Yes that's true, and I wonder whether some of that might not be covered in 37.
- Q. It may well be, I've been struggling last night to work out where conditions have gone in the latest edit, so it's there as a generic topic, "Bio-security", and thank you for pointing that out, but it doesn't go into the same degree of detail and I don't think it requires that section of the rules necessary to be provided. It just says, "The consent holder shall include and maintain in its marina rules the following," there's no obligation there to share that information with the Council.
- A. No.
- Q. But from your perspective no particular reason why the Council shouldn't be made aware of that?
- A. No.
- Q. Now, the next item in the 9 September document was (c) "Pest management". I did manage to locate that one, I think that's now condition 36, so we can move on from that one to the hot topic of water quality and sediment quality monitoring and antifouling.
- A. Yes.
- Q. And that's (d) on page 3, and then over the page.
- A. Yes.
- Q. I'd like to focus first on where you and the other experts got to in caucusing with the exception of Mr Waters, and in answering these initial questions can you just put the legal issue as to jurisdiction to one side for a moment. So in a nutshell, the experts agreed at caucusing that after approximately five to 10 years the adverse effects on biota and the sediment within the marina may become more than minor and may exceed various agreed thresholds, that's sort of where you got to in a nutshell. I can take you to the original joint witness statement if that's –
- A. That would be useful.
- Q. It's actually the one that you completed a little bit earlier and it's paragraph 10(q) on page 7. It's dated 27 August, it's headed, "Joint expert witness statement coastal ecology and antifouling."

A. Yes, so 10(q) simply – well I won't paraphrase it, yes, after 10 years there's a possibility that it will –

Q. After approximately five to 10 years.

A. Yes.

Q. And I think, Mr Poynter, you just confirmed that generally that encapsulated the thrust of where you got to within five to 10 years a more than minor effect potentially on biota, and it goes on to say, "resulting in some shift in community composition."

A. Correct.

Q. So looking back at the 9 September document again, we've got quite a long range of conditions, and I suppose as a general observation that probably needed a bit of tidying up, but that obviously captured the main points that you agreed at caucusing. One thing I see that you agree is that, "In the event of guidelines of thresholds being breached," we're at page 4(vi), "a section 128 review process could be initiated in relation to water and sediment quality conditions."

A. Yes.

1250

Q. That's one thing you agreed. To get to the heart of the matter though, that area of disagreement relates to, beyond that, beyond say the section 128 review, whether or not some specific management response should actually be articulated in the conditions?

A. Correct.

Q. So if we look at page 5 of the 9 September document, about half way down, it says that Mr Cameron, Mr White and Dr Sovaguru they expressed the view that unless management action is an explicit requirement, if guidelines are breached, then there is a risk that no management action will be taken and therefore no certainty that effects can be kept to a no more than minor level. See that?

A. Yes I do.

Q. And then we next have your suggestion at (f) which is a response that options for reducing water and water column and sediment contaminant levels should be investigated, including promoting the use of alternative

low impact or low copper release antifouling products and including provision of information and advice to berth holders on the use and availability of low impact antifouling paints. In terms of the concern expressed by the other witnesses, they're probably right, aren't they, that this wording won't necessarily result in a strong and effective response. It's useful but...

A. You're referring to my wording?

Q. Your wording.

A. I think my wording reflects a difference of view and that I believe that in terms of the ecological aspect of this, the water quality aspect, you've already established that you've crossed a threshold and you have reported that with a range of qualifying material and options back to the Auckland Council it's a educational, it's an advisory function. Beyond that I saw problems in terms of how you would actually manifest a specific response in terms of preparing this so called contaminant management plan. But I accept that those are alternatives.

Q. If you look at it, it doesn't actually take that next step does it into your wording –

A. No it doesn't.

Q. In terms of actually requiring the options that are investigated to be implemented in some way. I mean it's useful, the educational aspect, I accept that. But it doesn't go that next step does it?

A. No it doesn't.

Q. And the examples that you've given in brackets there, they have a certain flavour don't they? They're about disseminating information. It's kind of a more carrot rather than the stick approach.

A. Yes, that's correct. It's not as prescriptive.

Q. And the examples that are provided there in brackets could well influence the nature of the options that are investigated as part of that exercise?

A. Yes.

Q. So if we turn briefly to the three alternatives that the other witnesses have put forward. The other witnesses with the exception of

Mr Wardale's of course. They raised a concern about the third item about differential fees. So we'll just focus on the first two options. The first one is a requirement to provide a contaminant management plan, outlining how contaminant loading to the marina will be reduced to get back within the relevant guidelines. That approach has more certainty attached to it, doesn't it? The plan is approved and presumably then implemented.

- A. Well it does at a superficial level but I was trying to apply my mind's eye to what that might mean in terms of what actions might actually be involved in reducing a contaminant loading when there are multiple sources for that contaminant picture. The marina is one of them. You've got a boat grid area, you've got a commercial activity nearby, the things that are affecting water quality are quite diverse. And I wasn't quite sure what you might actually do in a practical sense to put some teeth into that.
- Q. Just in terms of these other potential influences, I think you're all agreed though that you are just focussing on water sediment within the marina area. Not so much what was going on outside it.
- A. Sediment and water within the water column in the marina.
- Q. Within the marina area.
- A. Well I think the agreement is that beyond that footprint there are no issues.
- Q. Well in terms of steps, obviously Mr Cameron's second option is an example of that which is to require the use of low impact antifouling paints. And this is obviously only in a situation where the thresholds have been exceeded and I think exceeded by 20%.
- A. Correct.
- Q. So by a margin, that would be on the table as a management response. That's got certainty attached to it in terms of the ultimate environmental outcome hasn't it?
- A. If you could enforce it, yes.
- Q. Now just bringing the jurisdictional issue into play I suppose, even if the Court agrees with the jurisdictional argument raised by counsel for the

applicant and doesn't require action to be taken to address contaminants from boats, the monitoring provisions you've agreed with the other witnesses don't necessarily apply solely to deposits or contaminants from boats do they?

A. Not solely but the predominant influence on water in the water column and sediment within that footprint, if a marina were created, would be from the marina. As a sort of a global facility you know, it's...

Q. Yes, and the marina as a global facility is not just the boats, it's the structures, the timber, the car parking area with storm water coming into the marina, it's the sewerage pump-out facility, all those aspects to it.

A. That's true, but I think we have given some consideration to those other things, well storm water I haven't been dealing with because that has been dealt with by other consultants, other specialists and I understand is dealt with by way of proprietary devices which have a higher level of performance. So, I think we can just focus, we can exclude some of those things. Certainly the structure themselves, if they happen to be treated timber I have presented some evidence which supports my view that that isn't a significant source of contamination within this environment so we can probably discount that, well at least I can in my own view, and so it does come back to the predominating effect of boats and antifouling rather than other, other potential sources of contaminants.

Q. Well we've got amongst the indicators in there at the moment, there's monitoring of hydrocarbons which obviously could be from boats.

A. Yes.

Q. But also could be from the storm water discharges from the carpark, I know you've referred to the proprietary devices et cetera but in terms of making sure that those are functioning and doing their job, monitoring of hydrocarbons from the carpark area is a useful thing to do.

A. It is but you wouldn't use an indirect approach to monitor hydrocarbons from the carpark, you'd go and monitor the discharges from the carpark, you wouldn't do it incidental to some monitoring in the marina waters. For example you would monitor that in relation to rainfall events when

there was a storm water discharge and get a worse case, or at least get a picture of what was happening from the carparks. You wouldn't throw it to chance and hope that you might see some sort of signature in the marina waters incidental to some other monitoring programme which had a completely different objective.

Q. Now what about the, there's also monitoring I see from microbial indicators that bacteriological and viral indicators of human health.

A. Correct.

Q. Partly tied to boats obviously but also we've got the sewerage holding tank elements, the proposal that provides an opportunity to monitor for any effect stemming from that part of the, the overall marina development as you referred to it.

A. Yes, and of course those samples for microbiological analysis would also to some extent reflect or may well reflect what's happening on the southern side of the bay in the swing mooring community as well. Waters that may be picking up contaminants passing through a marina and incidentally sampled, so you know, you have to keep some perspective in terms of the monitoring and the monitoring result and relating cause and effect. It's gaining a picture of water quality, taking it the next step and linking it to a specific source is not always that easy.

Q. So again we're in this hypothetical situation of the Court agreeing with the jurisdictional issue and call me an optimist but might an added benefit of requiring monitoring even in that situation be that berth holders and the marina operator would then be aware of the effects from the marina so they can decide whether they want to take some voluntary action regardless of whether that might be legally required by any conditions of consent?

A. Well I think that probably encapsulated my approach back in (f) because I believe that you could probably convey all the relevant information to a marina berth holder or an occupant and if it was provided in enough detail within a sort of a policy framework that the marina is a clean accord marina and is trying to encourage the correct practices, one

would hope a proportion, if not most, of the berth holders would take heed of that and do what they can to do the best thing environmentally.

Q. So as an ecologist you'd probably be loathe to see a recognised environmental effect circumnavigated because of a jurisdictional issue if there's a way of still requiring the monitoring and having this education aspect, as it were, that would be your preference as an ecologist.

A. Well as an ecologist I just look at it if we want to understand a change in a particular feature of water chemistry or sediment chemistry, measurements are required and these are the types of measurements that would be useful.

Q. We were informed yesterday that the marina is seeking certification as a clean marina.

A. Yes.

Q. And I understand that the programme is designed to encourage industry environmental management best practices.

A. Yes.

Q. So requiring ongoing monitoring of contaminants within the marina would be consistent with best practice?

A. Yes.

Q. And coming full circle, requiring or at the very least encouraging some action to be taken if relevant thresholds are exceeded, is also consistent with best practice?

A. Yes, some feedback loop from the actual result to management of the marina is a sensible loop.

COURT ADJOURNS: 1.02 PM

COURT RESUMES: 2.20 PM

THE COURT: JUDGE NEWHOOK

Now, just before we resume the questioning of Mr Poynter, Mr Brabant, we don't feel the need to have Mr Treloar brought or for him to run models.

MR R BRABANT:

Thank you, and the other witness Sir?

THE COURT: JUDGE NEWHOOK

No need for Mr Thiebaut either.

MR R BRABANT:

Thank you Sir, and when you can give an indication of the rest of the list as well (inaudible 14:21:03).

THE COURT: JUDGE NEWHOOK

I've already indicated to you that we don't need them, we don't need Mr Smith, don't need the other. So I take it that counsel are agreed that that list of witnesses that you're not wanting to cross-examine, we take their evidence as read.

CROSS-EXAMINATION: MS MCINDOE – NIL

CROSS-EXAMINATION: MS PARKINSON

Q. Now, if I can take you first to the site inspections that you did during 2010, which are described in your statement of evidence, paragraph 15. And can you just confirm was this primarily a visual inspection of the shoreline and the intertidal area.

A. Yes.

Q. And when you're describing in paragraph 16 the intertidal biota that you observed during that site inspection, can you explain what you mean by "significant" (inaudible 14:11:48)?

- A. I would be looking for significance in terms of edible shellfish or shellfish species which are edible, and after that of an edible size, a range of invertebrates that would be common on intertidal areas that I've experienced over the years, so "significance" in that context isn't a numerical indicator, it's more of a descriptor, a narrative.
- Q. So would you accept that shellfish which is below edible size is still part of the ecosystem and an important part of that ecosystem?
- A. Yes.
- Q. Would you agree that the inspection that you have described in paragraphs 15 and 16 would largely be a subjective assessment?
- A. I would call it more semi-quantitative than entire subjective. The intertidal shores are quite straightforward to assess at Matiatia. Certainly the intertidal areas that are rocky are not extensive within the reclamation footprint area. They can easily be traversed in a minute or two and their key environmental features are obvious, and a visual inspection can cover a significant proportion of that habitat in terms of the species that are present and the indicators of relative abundance, which is a subjective thing in terms of not laying down quadrates and measuring specific densities per metre squared or whatever. But in this instance I believe it was, and still do very strongly, that it is a reasonable way to approach a very simple sampling exercise.
- Q. Did you undertake any further investigations of the intertidal biota after June 2010?
- A. No I didn't.
- Q. At paragraph 45 of your statement you describe how you surveyed the sediments and biota in three locations, and one of those locations was within the dredging area. Do you consider that one location is fairly representative of the biota in the dredging area?
- A. So there's no confusion, the location that I'm referring to there refers to the approximately footprint rather as I understood it at the time of the dredging area within which I collected three separate samples. And I regard that as adequate sampling given the small size of the dredging area, and also the obvious homogeneity of the sediments within that

zone, it doesn't require in my view more sampling than that to get a good measure of the diversity and relative abundance of the species. Those three samples generated I think from memory 45 different species. And there were probably six or 700 animals counted in those there samples, from which the relative abundance of the different taxa groups was obvious and in my view more than adequate.

Q. At the beginning of your evidence you state that you were contracted to undertake the ecological and water quality assessment for the marina. And on your field trip in June 2010 did you undertake any testing of water quality or take any samples?

A. No.

Q. The NIWA report which is attached to your evidence states that there is no water quality information for Matiatia Bay or for Waiheke, is that still the situation as you understand it?

A. Yes.

Q. And would you agree that that type of baseline information would have been useful for the NIWA modelling to fully assess water quality effects?

A. It may have been useful if NIWA had thought that there was a significant limitation on their ability to apply this model to this location because of an absence of representative data to put into the model, then presumably they would have said that and we would then have made a decision whether to go and get some information. The difficulty in collecting water quality data from a site visit is its adequacy in terms of representativeness. Normally water quality information would need to be collected over a range of conditions that reflected the environment, the hydrology, the hydraulics, and I think in the case of the Matiatia model, NIWA modelling, they had access to a number of other concentrations or data inputs that they regarded was adequate for the purpose.

Q. In your rebuttal statement talking about further quantitative assessment, you refer to the cost of undertaking that assessment, this is in paragraph 28 of your rebuttal statement. Would the cost of water quality testing

have been a factor in deciding not to undertake that water quality testing?

A. No it wasn't a factor in terms of my assessment of it.

Q. Now, you've had the joint witness statement with the recommended conditions put to you this morning.

A. Yes.

1430

Q. And turning to (d) "Water quality and sediment quality monitoring" on page 3, and over the page to (iii) there is a requirement there for preconstruction and annual post-construction water column monitoring.

A. Sorry can you, just so that I'm not lost here.

Q. So over on page 4.

A. Yes.

Q. Roman numerals (iii).

A. This is the joint witness statement, did you refer?

Q. Joint witness statement on agreed –

A. Conditions?

Q. Recommended conditions.

A. Oh right. Just let me find that I've seemed to have lost it.

Q. So turning to page 4, (iii), and that is an agreed condition requiring pre-construction and post-construction water column monitoring and there's a range of toxins that are monitored. Would you agree that undertaking that type of monitoring as part of your assessment would've provided a suitable baseline for the (inaudible 14:32:09) model?

A. No I don't think it was required. Auckland Council raised an issue around prediction of antifouling concentrations. I approached (inadequate 14:32:30) on behalf of the client for advice on that because it was a specialist area of theirs not mine. They carried out that modelling as they saw fit with the data input that they determined were appropriate and produced a report which was subsequently provided to Auckland Council who didn't appear to have a problem with any limitation in the information that had been used to run the model.

- Q. Now in paragraph 14 of your statement you conclude that the sediments to be dredged and not polluted with heavy metals or other contaminants, just to clarify –
- A. This is my evidence-in-chief?
- Q. This is your evidence-in-chief and I'm referring to your summary of conclusions bay on page 5. Is that statement based on the sampling of sediments which is described in paragraph 17 of your evidence-in-chief?
- A. No, the paragraph 17 I think refers to the sampling I undertook around the boat grid which was clearly, clearly showed elevations of particular heavy metals. That isn't within the dredging footprint. Paragraph, the other paragraph you referred to which was (j) related to the sampling results for the balance of the samples which was from the dredging area and also the wider bay which did not show significant elevations in contaminants.
- Q. How many samples were taken from the dredging area?
- A. Three.
- Q. In paragraph 17 you referred to a composite sample. Would you agree with Mr White that composite samples tend to under estimate the concentrations of contaminants within the constituent samples?
- A. They can do but not necessarily. The samples in any event are broadly indicative because they represent surficial conditions. I sampled surface sediments which represent surficial conditions and are only a small, a component of the total dredging volume. I also sampled sub-surface conditions to get a comparative set of figures for what might be regarded as the bulk sediment chemistry so yes, while compositing a sample or set of samples may obscure a bit of individual variation, they also reflect well on the bulk of the material, the condition of the bulk of the material that is to be dredged.
- Q. Just turning again back to the joint witness statement recommended conditions page 4 (iv).
- A. Yes.
- Q. And this is an agreed condition for pre-construction and post-construction sediment monitoring which monitors a range of toxins.

Would a wider sampling regime better quantify the existing sediment contamination if you (inaudible 14:37:02) that type of sample?

- A. The nature of the exercise wasn't to do a state of the environment sort of test on sediments in the wider Matiatia Bay or generally, it was to look at the specific area that was to be dredged that can be set aside as a particular case because that material is going to be disturbed and also the balance of the area which falls within the marina footprint but won't be dredged and to get an indication on the levels in that area and any sort of gradient that might exist off the shore so I think that the sediment monitoring I did was representative of those components and I don't think any further monitoring was required in order to predict the range of effects that needed to be considered for the specifics of the proposal.
- Q. And the few toxins that were tested were copper and lead in those settlements?
- A. I'd have to check the results. I think there was a wider range than that but copper and lead were the ones that – the contaminants that are a particular interest in a boating environment, copper, lead and zinc but there was a suite of contaminants I'd think tested for.
- Q. Would you accept that the Court's exercise is to assess the effects of the marina on the environment which would include the existing levels of contaminants in the sediment?
- A. Yes the existing levels of contaminants in the sediment are relevant to future predictions.
- Q. Now in your rebuttal in paragraph 27, you express the view that the sample sizes were appropriate to the particular features of the locality. Can you explain what the features of the locality are that justified that sample size?
- A. Sorry in my rebuttal which paragraph?
- Q. Paragraph 27.
- A. Oh I thought you said seven sorry, 27. Sorry can you repeat your question?
- Q. The question was, what are the particular features of the locality that justified the sample size, three samples within the dredging area?

A. Well the primary characteristic is that it is a very, in dredging terms, it is a small area. And the samples that I collect I regarded as representative of that small near shore area and the analyses that those samples were subjected to, I think it's entirely adequate to describe not only the biology but also the contaminant status.

1440

Q. If I could take you back to your evidence-in-chief paragraphs 50 and 51. And in those paragraphs you were describing the effects of the dredging on the benthic communities, which you describe as, "Minor and temporary with rapid recolonisation of the remaining sediments." Do you accept it as the first stage in that assessment there will be a complete destruction of the existing benthic communities within the dredged area?

A. Of course, yes.

Q. But in your assessment that's a temporary effect because there will be recolonisation of that dredged area?

A. That's correct.

Q. And do you have any supporting data from other marinas before and after data to show that rapid recolonisation by benthic communities within a dredged area?

A. I haven't looked at other marina environments specifically, but there's a wealth of literature, maybe I should have quoted it Your Honour, on recolonisation of disturbed marine habitats. One can deal with this virtually at a first principles level, if you don't mind me saying so, there's going to be a small area of sediment between .3 and one metres, I think, depth removed. You're not creating a basin per se. Over time it's inevitable that that substrate will age in terms of ecologically age and physically age and there's a continual supply of plankton with animals in that plankton that are looking for real estate to set up in and they will settle out of that plankton and recolonise those areas. I mean to suggest that there might be another process would be unusual.

Q. Mr White has recorded that research shows that the species that recolonise a dredged area tend to be what he's called "opportunistic species", would you agree with that statement?

A. That's normally what happens initially. Clearly it's a bit like clearing an area of land. The first species that come in are the ones that are capable of dealing with and modifying that initial vacant habitat. Subsequently to that there is processes and ecological linkages which are set up and the complexity increases and lots of other things happen but the down track, if you like, the community complexity increases, the abundance increases, that's not to suggest that you will have the same community but if the grain size is similar, the community type in broad terms will or should be similar as well. In due course.

Q. So in due course Mr White suggests two years plus, would you agree with that timeframe?

A. Yes, that's a reasonable timeframe.

Q. In your evidence-in-chief at paragraph 48 you describe the results of the benthic survey and the proposed dredging in the marina zone recording 65 (inaudible 14:44:43) in total, would you expect the same diversity to re-establish in the dredged area?

A. It's hard to predict. It's possible, I couldn't say whether it's probable. The reality is that if I went back and sampled that area now, I would get a different number of taxa. Marine environments are quite variable not only in space but in time, and what you find is often very much what is there at that time, and I guess it's sampling over a period of time you get a range of values, whether it would be 65 taxa or 55 or 85, I couldn't predict, but it should be in that order in time.

1445

Q. And would it be fair to say that it's likely to be less diverse and less complex than the existing benthic communities?

A. Initially and maybe over the period of reestablishment. It's a bit of a balance, like most communities there's a biomass element and it may be that you have a preponderance of certain species which are there in high numbers but less diversity, in due course you might have an

averaging out or an evening out of the numerical dominance of particular species but an increase in the diversity. So there'll be more species there at a lower abundance.

Q. If you could turn to your paragraph 37 of your evidence-in-chief? And just the last sentence at the bottom of that page starting, "The intertidal," and over the page which is expressing the view that the intertidal community on the new rock surfaces might be more limited in diversity than occurs on the natural substrates. And you've in the last sentence given two possible reasons for that and it may be the quantities of substrate or water quality. Would those same factors be important, water quality and substrate, for the diversity of the benthic community that would re-establish in the dredged area?

A. Yes.

Q. Mr white has suggested that if there is insufficient soft sediments remaining after the dredging, then the greywacke which underlies that soft sediment wouldn't be a suitable environment for the reestablishment of the benthic communities, would you agree with that statement?

A. If it was all skimmed down to a greywacke substrate, that would change the type of community definitely. I would be surprised at that location, or it's certainly something that I didn't see in the engineering information that that was going to be the case. I understood that the, if you like, the post-dredging substrate would not be dissimilar in terms of broad grain size characteristics to what's there now, and/or it would age in any event because there would be deposition of material which would provide fine sands and fine silts which would be suitable for the species that are there now. It may be a mixture.

Q. So assuming that there's suitable sediment, what impact would water quality have on the reestablishment of the benthic communities?

A. Well, it's a nearshore zone, there's a lot of water quality elements. There would be salinity which would change in the nearshore at times, there will be turbidity, suspended sediment, sediment deposition, and there may well also be some chemical constituents, dissolved

contaminants in the water column post-dredging that would have a bearing on mortality or survival or the types of species that will ultimately inhabit that or represent that community in that nearshore zone.

Q. And the joint witness statement has accepted that there will be an increase in the level of copper and other toxins in the sediment over time, five to 10 years is the period that's used, now, if there's those increases in toxins, will that also inhibit the reestablishment of the benthic communities?

A. I think I've stated in the evidence, I won't try and find where, but there's an acknowledgment that post-marina construction there will be a change in sediment and water column chemistry. There'll be some measurable change and that may well have a bearing on the communities both in the water column and on the sediments, and result in a shift in community structure. That's a prediction. Whether it proves to be the case is another matter.

Q. If you could turn to 114 in your evidence-in-chief, paragraph 114.

A. Yes.

Q. And in that paragraph you're referring to Dr Sivaguru's paragraph 53, where there will be an increase in dissolved and total copper within the marina, and that filter feeding shellfish beyond the immediate marina may bio-accumulate copper.

A. That's correct.

Q. Now, would you accept that bivalves that are re-establishing within the dredged area may also bio-accumulate copper?

A. I would expect the numbers of bivalves in the dredged area to be low, I don't recall finding any in the sampling that we did. We certainly got them in the intertidal zone but I wouldn't regard that as a significant habitat area for bivalve species.

Q. You've mentioned earlier that water hydrology can also affect salinity and temperature, is that another factor that would inhibit the reestablishment of the benthic communities?

A. Is there a paragraph that you're referring to there?

- Q. (inaudible 14:52:44) mentioning salinity and temperature (inaudible 14:52:46).
- A. Yes.
- Q. That could impact on (inaudible 14:52:50).
- A. Yes, of course, those are two important variables that have an impact on a wide range of marine processes, including what species occur where with respect to their particular tolerances at different stages in their life history.
- Q. And if there are changes in the water hydrology as a result of the marine, is that likely to impact on the diversity of communities (inaudible 14:53:19)?
- A. Yes it could do, I think I've acknowledged as well that it's, well it's obvious if you're going to put a marina at a location. One of the objectives of putting a marina there is to reduce the energy in the environment so that boats can be moored within that zone. So you will have a more quiescent environment, therefore there is less physical disturbance of certain habitats. That in fact might have an effect of making it more habitable, not less for a range of species or particular species. So you could have a response of greater abundance or increased diversity in relation to that aspect. Having said that, the marina structure has been designed to be quite porous, so there should still be a reasonable flow of water through, around and under the structures. Notwithstanding that it will be a more sheltered environment.
- Q. So taking into account the sediment contamination, the reduced water quality within the marina, is there a risk that those benthic communities will not re-establish in the dredged area?
- A. No I don't think so. I think – if you look at the predictions that have been made as to the order of change, order of significance of change in terms of water quality, we are still talking about small shifts that may affect the most sensitive species but is unlikely or are unlikely to affect the majority of species. Take water quality for example, I think the threshold which we have talked about as a joint witness group has been that if the water quality were to not enable the 95% protection to be maintained in

the water, in terms of insect, that's fairly high threshold, that's a highly protective threshold it just means that five % of the species may be affected so even if there was a slight reduction in that value in other words if you exceeded it and you were not able to guarantee a 95% protection level, you might achieve a 90% which means that potentially 10% of the species that are sensitive would struggle or may not be there in the right or in certain densities or in the abundance that they might otherwise have occurred at.

1455

Q. And (inaudible 14:56:22) communities will also be impacted by the contamination and the settlement?

A. Yes, that's correct. There will be a shift in communities, there may well be a shift in community structure.

Q. Now the NIWA model has predicted increases in copper and sorry I'll just take you to, this is attached to the back of your evidence-in-chief, page 19 of the NIWA report.

A. Oh sorry.

MR R BRABANT:

Sir, have you got the copy which has got the sort of consecutive numbering at the top of it?

THE COURT:

I don't think so.

MR R BRABANT:

I mean the Court copy, no? Oh it's only the hard copy.

THE COURT:

I don't think it's come through in the electronic.

WITNESS:

The NIWA report that I've got has got numbering at the top nothing on the bottom Sir. Is that the NIWA model you're referring to?

CROSS-EXAMINATION CONTINUES: MS PARKINSON

- Q. Yes that's correct.
- A. Right, is there a number at the top on the page that you're referring to?
- Q. Not on my copy, no. I'm looking at section 6.
- A. Yes.
- Q. Predicted emissions for *Matiatia marina*.
- A. Yes.
- Q. You been able to locate that section?
- A. Yes I have.
- Q. And in table 8, the annual emissions are predicted at 342 kilograms per year of copper?
- A. That's correct.
- Q. Would you accept that that's an impressionable affect so it's a noticeable effect on accumulation of toxins including copper?
- A. I must confess that I'm not that au fait with dealing with a value expressed as kilograms per year in terms of assessing an ecological significance. I tend to be working with concentrations either in the sediments or water column but it is what it is 342 kilograms per year of annual emission.
- Q. And NIWA goes on to predict those levels within the sediments over a period of time and also within the water column don't they?
- A. Correct.
- Q. And you state in your evidence-in-chief again in your summary section paragraph 14(l) that those elevated concentrations will affect or limit sensitive species. What are the sensitive species that you are referring to in that conclusion?
- A. It's not a specific list of species, it's just an acknowledgment that in the marine biota there is a full range of species from tolerant to sensitive and there will be a percentage of the biological community which is sensitive and particularly at early life history stages and that they would be the most likely to affected by the change in concentration.
- Q. Now it's accepted that the NIWA model under predicts future concentrations –

- A. Of sediments are you referring to?
- Q. Of sediments.
- A. Yes.
- Q. Yes. Is it also likely that the effects on the events at communities within the marina footprint has been similarly underestimated?
- A. The NIWA model acknowledges that it's not a reliable predictor of sediment concentrations. It's all we've got so we take it with that in mind. One won't know in terms of what the actual values are without looking at it 10 or 20 years out. One point I would make is that while the NIWA model is acknowledged as by NIWA to not be a reliable predictor, the model's also quite conservative in that it doesn't, in some respects, because it doesn't factor in wind driven mixing and flushing, so it assumes a much more static environment. That location is made – might've been evidence the other day, can be exposed to quite significant winds from the fetch that it is orientated towards to there will be continual mixing and exchange within the marina and therefore the model I think while it provides a sort of a, a bit of a window into the future it'd have to be a little bit wary about making very precise predictions based on what the model has to say it is only a model and a relatively simple one.
- Q. Just taking that point a bit further and paragraph 127 of your evidence-in-chief you –
- A. Yes.
- Q. Third sentence in you're taking into account the background sediment concentrations and you observed that the average and the maximum predicted sediment concentrations could breach the amber threshold beyond 10 years. What would be the impact of that on the Benthic Communities within the marina footprint?
- A. Well as the concentration goes up the – so does the effect potentially so if the concentration got within the amber level, bearing in mind that that's the level where impacts are possible, below that 19 milligrams per kilogram effects are unlikely. In that range, 19 to 34 they're possible so

that says it really. In that range, if that's where the concentrations end up, well then there are possible impacts on the Benthic Community.

Q. So beyond 10 years we could see a significant reduction in the Benthic diversity?

A. Well the model only predicts 10 years out and there is an acknowledgment I think that it could go up but there are also a lot of processes happening which probably mediate that and I did provide an example in my evidence of Orakei where concentrations increased after the marina in the sediments for a period, and then they didn't keep going up they've levelled off. It's earlier on in that monitoring programme and it may well be that they stabilise or they increase a bit more but I wouldn't expect the concentrations just to keep going up that's not normally what happens.

1505

Q. Your evidence-in-chief, paragraph 122, you were referring to the Gadd and Cameron study. Gadd and Cameron have recognised that within existing marinas a lower level of protection of marine life is appropriate. Now in this case the marina, there's a proposed marina, Matiatia Bay is not a highly modified environment at this point. When assessing the effects on the marine life is a higher level of protection appropriate?

A. Well I understood what Gadd and Cameron had said was that it may be appropriate for marinas to accept a lower level of protection because by implication we expect those areas to be subjected to a higher concentration of contaminants and it may simply be unrealistic to expect to retain a high level of protection so in Matiatia's case I think it is a valid point that it isn't at the moment a highly modified environment in terms of that aspect and there will be some effect associated with putting a marina there. We've tried through our evidence and the work we've done to give some idea of what the scale of that effect might be.

Q. Now just in terms of effects beyond the marina.

A. Yes.

- Q. You've made statements that there will be no effects on water quality beyond the marina footprint. However in the NIWA study there's reference to volume exchange from the marina out into the wider bay.
- A. Yes.
- Q. And there's a prediction of 170 kg of copper leaving the marina per year. Will that have any effect on water quality outside the marina?
- A. The studies that Cameron and Gadd did of, it's an around about way of answering your question but I think it's appropriate. The studies of the Auckland marinas that were undertaken as part of the antifoulant work showed that beyond the marina footprints concentrations very quickly got back to the ambient level. Now that's not to suggest that there isn't an export of copper out of the marina but in terms of a concentration that might be of some significance to biota or sediments. I understand that effects beyond the marina are not of much concern, if any, that's not to say that at the immediate entrance to a marina that one couldn't detect some sort of gradient effect but much beyond it, just the flushing and dilution and the rates of exchange of waters relative to the export of copper in a dissolved form in the water column is such that there isn't a concern about that in terms of the biota.
- Q. One possible effect that Dr Sivaguru considers is that the filter feeding shellfish in the bay will bio accumulate copper, would you agree that that's a potential effect?
- A. That is a potential effect. And that's not unexpected. I mean I could illustrate, I don't think it's particularly important and I could illustrate why. I had a recent hearing Your Honour, in relation to Opuia, the stage 2 marina at Opuia. The stage 1 marina at Opuia gets a heavy settlement of Pacific Oysters on the structures and those oysters bio accumulate copper to reasonable levels. That area is a conditionally approved area for commercial harvest, that is the marina is, and every so often a commercial grower comes in and removes those oysters, takes them up the Waikare Inlet for 28 days and depurates them and then they're available for human consumption. So yes, I guess getting back to Matiatia, there may be some potential for bio-accumulation in the

bivalve shellfish community, but I don't see it as a particularly significant issue in terms of the health of the community. Or for people for that matter.

1510

Q. Now, in your evidence you've got a conclusion in paragraph 14 which works through each of the impacts of the marina and provides an assessment for each of those impacts. Have you undertaken the exercise of gathering all of those impacts together and saying what the overall effect is on ecology?

A. It's perhaps a bit like your concern about (inaudible 15:11:05) samples. You tend if you do that to obscure some of the issues. What I've tried to do I think is deal with the different components of the ecological environment and I think they can be dealt with separately and provide some conclusions about those different elements. Overall if I was asked to provide a sort of a conclusion about that, I think all I could restate was what I think I've already said in the evidence, that there will be some changes in sediment chemistry and water column chemistry, and the physical environment within the marina that will have some implications for the biota that is currently there.

CROSS-EXAMINATION: MR ENRIGHT – NIL

CROSS-EXAMINATION: MR LITTLEJOHN

Q. Now, I want to, and I have to say I acknowledge straight away that my friend, Ms Parkinson's questioning has cut short a couple of aspects that I was going to explore, so hopefully we won't be as long as I had originally anticipated. So Mr Poynter, just I want to take you back, if I can, to your original assessment. Because as I see it the process here of refinement means that the written work that you produce eventually gets more refined and more summarised to the point that we're at now. Now as I understand it, the original report you prepared is Appendix P, and if Mr Brabant Junior's Norman Kutcher is correct, it should be in CB4.

A. I have that.

- Q. Very good. And that's volume 1 of the common bundle.
- A. Yes.
- Q. Now, this was an assessment undertaken in March 2013, is that correct?
- A. Reported in March 2013, the assessments were taken earlier.
- Q. And isn't it the case that in terms of the survey work that you did, after the 2010 survey findings you did actually produce another report and that report was submitted in support of the first iteration of this proposal, is that right?
- A. Yes that's correct.
- Q. So if we look at the sequence of events, you were initially engaged and undertook a survey in June 2010?
- A. Yes, for they had the floating (inaudible 15:14:15).
- Q. Yes, and you've got a picture of that in the back of the report?
- A. Correct.
- Q. That proposal was abandoned, if I'm trying to use a neutral term.
- A. Yes, correct.
- Q. There were some submissions however that were made in respect of it before that happened, is that correct?
- A. You would have to refresh my memory.
- Q. Well I only make the point because you do in one section of your 2013 report –
- A. Oh, from Mr Moshem & Co?
- Q. Pardon?
- A. From Mr Moshem?
- Q. Yes and in a number of other locations you do reference submissions, so I'm assuming they were submissions that were made on the earlier proposal before it was brought. Because you if I read this report correctly go to address some of the issues or refer to some of the information that was gleaned from those submissions.
- A. Yes.
- Q. That information is in there and then subsequently you do further work in 2012?

A. Correct.

1515

Q. And then that work informs, as with the earlier work, this report that we have here which then forms part of the application?

A. Yes.

Q. In the report you provide some useful general comments about the existing environment at Matiatia. And that information hasn't been reproduced to any great extent in the evidence that you eventually prepared has it?

A. Possibly not.

Q. So just for the purpose of the record, your assessment of the existing environment is at page 4 of that report?

A. Yes.

Q. And you've got a series of bullet points there and you get to, over the page, some brief conclusions about the nature of the bay. And I want to just talk to you briefly about a couple of those. You do say in that paragraph, and I quote, "It has previously been estimated that about one third of the volume of Matiatia Bay is exchanged during each diurnal tide cycle and I think that's a Becca Carter report of '91.

A. That's correct.

Q. And the question I have is, are you aware of any more recent information or analysis which conflicts with that general proposition?

A. No I'm not.

Q. So we've got a harbour which is regularly flushed on the tidal cycle.

A. Yes.

Q. And that's essentially one of the factors that you've taken into account in your work.

A. Yes.

Q. And it goes on to talk about the strong tidal currents pass the entrance to the bay and generate both clockwise and anticlockwise at ease within the bay itself and we can assume that that situation is still occurring?

A. I would imagine so.

- Q. You make the last comment in that paragraph, “The rather open aspect of the site and it’s outer gulf location are important natural aspects in,” and then there’s an “of” there and I’m not sure which is the correct one you’ve used, in or of, “Maintaining a healthier ecology and ensuring that a typically good water quality is achieved at this location.” So your starting premise in making that comment do you accept is that this is a relatively unmodified and open coastal location in the Hauraki Gulf?
- A. Yes.
- Q. And it has typically good water quality?
- A. That’s assumed, yes.
- Q. And you go on to say that that was one of the reasons that you didn’t actually undertake any water quality sampling?
- A. Correct.
- Q. Yes, because it was assumed given the nature of the activities there and the inputs from the catchment that there weren’t going to be too many influences that would lead to a conclusion that the water quality was degraded here.
- A. Yes and it wasn’t just my assessment there, I think I had covered it elsewhere but in brief. It’s not identified within what was there in the Auckland Regional, Auckland Coastal Plan as an area with degraded water quality –
- Q. No.
- A. – or subject to sources of degradation. It has an overriding, I think general performance standard applicable to it in terms of water quality which has this sort of default targets in terms of no conspicuous foams and suspended plumes and that type of thing so yes, good water quality.
- Q. In the last bullet point of your description of the environment you’ve used the phrase, “A largely developed catchment.”
- A. Yes.
- Q. Can you just explain that to me?
- A. It’s not busy. You know, most of the catchment looking up from Matiatia Bay is in grass –

- Q. Mhm.
- A. – that's been developed at some stage.
- Q. So, to be clear you're saying that the grassland is development?
- A. From an ecological perspective.
- Q. Mhm, okay.
- A. All right.
- Q. But let's be very clear we're not talking about for example the catchment that feeds into the Tamaki Estuary for example, that's –
- A. No we're not.
- Q. No.
- A. But we are dealing with a catchment which has significant carparks and roads and a commercial wharf and a catchment with houses and bush that's been removed presumably and settlement that's run off at some historical point and is probably still sitting in the bay.
- Q. But would you accept that there is not significant inputs though of contaminants from the catchment into Matiatia Bay?
- A. Yes.
- Q. And that's because over time would you accept, the cover, the vegetation cover of the catchment has moved from very open and bare pasture to continual re-vegetation and scrub and now maturing bush cover?
- A. Yes.
- Q. And we all know the effect of that type of land use change don't we? It reduces the inputs of sediments and contaminants into the coastal environment doesn't it?
- A. It does.
- Q. In terms of the hard stand and road areas that might collect run off that flow into Matiatia Bay, are you aware of any of the storm water protection devices that are installed within the catchment?
- A. No I'm not, storm water has really been outside the brief and has been dealt with by engineers and other people.
- Q. You mentioned in questioning from my friend Mr Allan when he was asking you about the necessity for the monitoring of water in the marina

for hydrocarbons, you mentioned an assumption that proprietary devices would be installed in the new hard stand area to deal with contaminants in storm water, is that your understanding?

A. It is – well it is my understanding that some device that treat storm water will be included in that hard stand, yes.

Q. Is it safe to assume that in the event of any additional impermeable development within the catchment that might result in the collection and eventual discharge of storm water that similar types of devices might be used to ensure that the storm water that discharges into the bay is clean?

A. Well all I could say to that is that you know current practice is as I understand it within the Auckland Region is to utilise those devices where it's possible to and certainly in new consenting situations and presumably there's some sort of desire to retrofit old discharge scenarios in the same way.

Q. But so you would agree with me then that if we're painting a picture, a forward picture of the quality of water in Matiatia Bay, we're more like than not to find a maintenance or in fact an improvement of existing water quality, would you accept that?

A. In a general sense yes but I'm not aware of what the current water quality is in relation to the discharges from those hard stand areas at the moment or whether that is a problem or what devices there might be but as a general tenant, yes I would expect water quality, in fact I'd be disappointed if water quality from those hard areas was to decline in the future.

Q. I'm sure many others would share that disappointment Mr Poynter. Now you have identified though in your assessment some localised sediment contamination.

A. Correct.

Q. And that's principally around is that the Northern boat ramp or was it the Northern and the Southern or was it both?

A. No it wasn't the boat ramps it's around the existing – oh, or two elements. It is certainly contamination of the inter-tidal near the boat grid.

Q. Yes.

A. And there was – sorry?

Q. When you refer to the boat grid you're referring to the one between the old wharf –

A. Yes.

Q. – and the proposed reclamation area?

A. No, no, in fact –

1525

THE COURT: JUDGE NEWHOOK

Over near the red wool shed?

WITNESS:

Correct Your Honour.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

Q. Okay, over near the wool shed, very good.

A. There is a photograph of it in my evidence, I think you can see it – ah, not my evidence, in my original report. The photographs 11 and 12?

Q. Oh yes, I see. And was that the only location you did sediment sampling specifically for this purpose?

A. That was the area I focused my intertidal sampling, the subtidal sampling was separate.

Q. So excuse a silly question from a non-mariner, but do we assume that the elevated copper and zinc concentrations at that location are a consequence of boat haul out and cleaning activities?

A. That's a reasonable logic, yes.

Q. Did it occur to you that such sampling might also be worthwhile – well, appropriate in respect of the other two locations where boats can be launched and hauled out adjacent to the ferry wharfs?

- A. No, I didn't. I wasn't aware they could be hauled out and maintained there.
- Q. Okay so what we have over by the old wool shed is an area that is available for boaties from time to time to pull out their boats and give them a clean-off.
- A. Subject to separate consent and presumably that's exactly what they do, yes.
- Q. And that is giving rise to localised sediment contamination principally of copper and zinc, and again excuse my ignorance, presumably these are the chemicals that arise from the application of antifouling paints on boats?
- A. Copper is, zinc to a lesser extent as far as I'm aware. I'm not an expert on paint applications but they – copper and zinc and to a lesser extent lead are typically associated with boat maintenance activities.
- Q. Now just finishing off this topic of characterising what we've got at present, we know that there are, I imagine it fluctuates between 90 and 100 boats that are able to be moored in Matiatia Bay, this is the mooring management area limits, you're aware of that?
- A. Yes I am.
- Q. I think we've got something like 52 in the north and 46 in the south or something around that order?
- A. That's correct, although again just to cite a – recently I travelled to Matiatia actually to taste some wine, and counted the number of boats on the northern side as I went in on the ferry, and there was 28.
- Q. I'm glad you qualified that as it was on your way in rather than on your way out. Presumably though that doesn't mean that there's only 28 moorings –
- A. No, there was –
- Q. – there were only 28 moorings that day, or 28 boats that day.
- A. That's correct
- Q. But there is a capacity as I think as is not in contention of about 52 boats (inaudible 15:29:17). So in terms of what we've got in the bay

at present, we've got the ferry wharf and the commings and goings of the ferries?

A. Yes.

Q. We've also got evidence of recreational boats coming and going, more or less at different times of the year, you've read the evidence from local people from the island?

A. Yes.

Q. And then we've got the existing moored boats. So we've got a picture of essentially activities within the bay that might be having an effect on water quality. Would you agree that we can use those as a marker, so to speak, of water quality in the bay?

A. They will be reflected in the ambient concentrations of different metals and other parameters if you were to do a water quality survey in that bay, as would the sediments.

Q. But there's no evidence of any detectable effects from current boating activity within the bay, is there?

A. That's a hard question to answer because there's no obvious effects, I'll put it that way. I mean there may be subtle effects which – the bay was different at some stage presumably before moorings were proliferated in the bay and what the situation was like at that stage I don't know. But there's nothing obvious that I can see that'd suggest that boats are having a significant effect.

Q. Apart from, granted –

A. Yeah, apart from the –

Q. – the little grid area where they pull them out and hose them off or whatever boaties do. Just one last question on that topic, in terms of the current governance regime for boating activities within the bay, and I guess I'm talking here about the regional coastal plan and its limits on moorings, we can expect at least for the foreseeable future until Judge Kirkpatrick changes it, with the (inaudible 15:31:54) of the Council no doubt, that we're going to have a steady state of boats coming and going and moored in Matiatia Bay?

A. I suspect so, yes.

Q. And you're not aware of any likely changes in the inputs into the bay from activities within the catchment (inaudible 15:32:21) contaminants?

A. That's correct.

Q. And I think your evidence was that you would expect it to certainly stay the same, and I think you aspired to it potentially getting better, is that a good way of categorising it?

A. Yes.

COURT ADJOURNS: 3.32 PM

COURT RESUMES: 3.51 PM**CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN**

- Q. I now want to talk to you about just the essential elements of what the Court has been asked to consider here and obviously no surprises it's dealing with the new marina proposal. You've described it as a relatively small marina. When you use that comparative, "relatively small" are you comparing it to other marinas in the Auckland region or to something else?
- A. Other marinas in the Auckland region.
- Q. Because 160 berths is at the low end of the scale of marinas in the Auckland region wouldn't it have been?
- A. Correct.
- Q. So it's only relatively small by comparison to other marinas. Would you accept though that it's not to an aerial extent relatively small in the context of Matiatia Bay?
- A. True.
- Q. I mean one only has to look at the graphics, I know I haven't done the measurements but it's not a small confined collection of berths in one corner or even adjacent to the existing facilities, it's – I don't want to use the word, it's quite large isn't it in comparison with the size of the bay as a whole?
- A. Well I think I presented in my evidence a figure calculated by Mr Houghley it was about 39 hectares for the area of sub-tidal in the bay.
- Q. Yes.
- A. And if you look at the marina which is three and a half hectares or thereabouts from memory?
- Q. I'm not going to correct you.
- A. No, well you can work the percentages out.
- Q. Yes. Now this marina is created not like for example Orakei where there was the effectively the digging of a bathtub into the estuarine flats,

as I understand that this – most of the floor of this marina is already at sufficient depth isn't it?

A. Correct.

Q. And I think it's a figure, figure 19 – have you got the bundle there?

THE COURT:

There should be two bundles.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

Q. Yes Sir, it's the March bundle 2013.

A. Yes. And which figure sorry?

Q. Nineteen, "Plan of dredging reclamation filling undercut areas." So as I understand it, to create the depths for all of these berths, all that needs to happen is effectively a slice taken out of the seafloor at the shallowest part adjacent to the beach so that you'll end up with a slight battered slope underwater and then that enables the depth of the marina to be consistent, or I suppose, it gets deeper as you get further out to sea but certainly it's only a small amount to bring the whole thing to proper depth is that right?

A. That's my understanding.

Q. And it is that feature of this proposal which NIWA in their modelling found some difficulty in terms of creating boundary parameters for modelling wasn't it?

A. I recollect that, yes.

Q. And that's because for example in a basin type marina you've got a relatively confined area, sometimes for example even pine harbour there's a slim channel that even gets exposed at low tide with a channel of water into the basin. So unlike that scenario here we've got an area of boats that will – boat mooring that effectively is porous I think is the word you used.

A. Yes.

Q. It's open to the tide and the currents on a regular basis.

A. Yes.

- Q. So the ability for the physical structure of the marina basin to contain contaminants that might come off the boats and fall in through the water column into the sediment, it's not as good as other examples where you do have a basin is it?
- A. If I understand what you're saying correctly, they are more likely to be subjected to their wind and wave induced re-suspension and be exported out of the system or to at least be to – subject to a more turbulent environment than they would be in a basin.
- Q. And we know that that's not a hard conclusion to reach because we've got the data for example on the other marinas around Auckland and the only other one that is of a similar porous style Bayswater.
- A. Yes.
- Q. Recorded the lowers sediment concentrations for copper and other contaminants within the marina area isn't that right?
- A. That's correct, in relation to the NIWA studies?
- Q. Yes.
- A. Yes.
- Q. So we can assume from that that it's not the case that the boats at Bayswater are leaching more contaminants, it's just that because of the nature of the marina, those contaminants aren't collecting within the basin itself.
- A. Yes.
- Q. And I think if I recall the NIWA model assumed in the context of their growth assessment per annum copper and diuron, those were the two they modelled, that 50% was effectively going to distribute through the currents or the bay and 50% would potentially end up in sediments in a localised area. Some of these questions were dealt with by my friend so I don't have to ask them. Now in your letter back to Andrew Stewart Limited of the 16th of October 2013 which if Mr Brabant juniors assessment is correct is in CB37, I don't know if you want to pull that up it was your letter of the 16th of October 2013 in which you provided the NIWA report to Mr Dunn of Stewart Limited?
- A. Yes.

- Q. Have you got that there?
- A. The letter? Just let me think.
- Q. Well actually you probably don't need to go to the bundle I did that just so that the Court knew where it was.
- A. Oh yes.
- Q. But I think you've attached it to your evidence.
- A. Yes I have I think. To my evidence-in-chief it should be.
- Q. Evidence-in-chief that's right.
- A. Yes I've got that.
- Q. And it's there that you've summarised on the second page unfortunately I don't have it numbered it's the second page.
- A. Yes.
- Q. The total emission based on 100% occupancy.
- A. Yes.
- 1600
- Q. And you tell Mr Dunn that the NIWA, the author of the NIWA report presents what is described as a ballpark estimate of biocide exported from the marina based on an assumed 50% is exported giving an exported emission prediction of 171 kilograms per year and 10 kilograms per year for copper and diuron respectively.
- A. Yes.
- Q. Now, you then, what I assume is meant to be a qualification, you then qualify that by saying, "It's noted though that the vessels ultimately in the marina would still be exporting this biocide into the wider ecosystem if they weren't moored at the marina as indeed are the 50 plus vessels currently on swing and pile moorings." Now, am I correct in assuming that is intended as a qualification?
- A. It could be taken as a qualification, it's as much just a, I wouldn't really call it 'note to self' but something that needs to be brought in mind that wherever the boats are they are leaching these compounds into the water.

- Q. But it's not the case that on a day-to-day, 24/7, 24 hour seven days a week basis that a hundred, well as I read the numbers, another 177 boats are going to be doing that very thing at Matiatia Bay is it?
- A. That another 177 boats?
- Q. I've probably confused you. Well I've confused myself more than likely, which doesn't help. We've got, as I do the math or the arithmetic, depending on whether you're a teacher or not, 52 in the north, 46 in the south. 52 go. 177 come in to the north.
- A. Yes.
- Q. So we end up with 177 boats, plus the 46 in the south, so as my numbers, is about 237 boats end up –
- A. In Matiatia.
- Q. In Matiatia. The point of the question though is that your comment that those boats may be exporting the biocide into the wider ecosystem, it's a very general statement isn't it, because it's not the case that that number of boats can currently do that at Matiatia.
- A. That's correct.
- Q. So, it doesn't undermine the conclusion from the NIWA report though does it?
- A. No.
- Q. As to the total contaminant exporting of copper and diuron as a consequence of the marina.
- A. No that stands on its merits.
- Q. So in terms of contaminants that we can expect, we've definitely modelled the copper and the diuron from the number of boats proposed and NIWA have produced us some numbers around the total quantities and concentrations that might be experienced within the water quality of the bay.
- A. Yes.
- Q. We've got that. Would it be a stretch of the imagination to assume that some of these boats also might want to take advantage of the boat grid facility for cleaning out?
- A. I don't think that would be a stretch, that's a possibility.

- Q. So, whereas at the moment we have perhaps 100 boats in the bay from time to time using that facility, with the marina there the potential pool of boaties who might want to clean down their boats extends out to some 200 boats.
- A. Well the numbers are arbitrary, I don't know what usage it currently has and what its capacity is but there's certainly in principle a potential for more usage of that facility.
- Q. And would you accept there's a similar potential increase for other discharges from boats such as bilge water and grey water?
- A. If there are boats in that location, inevitably. Yes.
- Q. And in terms of cleaning down boats within the marina, we've heard that for at least a period of time there's not going to be water supply to the fingers of the marina so can we assume that boaties who may wish to clean their boats down would do so with big long bristle brushes and detergents and stuff within the marina?
- A. That's probably getting out there a little bit in terms of speculation on my part I think. What sort of brooms they might use and whether they use a detergent is, I mean, I haven't used one on my boat, put it that way.

THE COURT: JUDGE NEWHOOK

Are they going to use concentrated detergent with no fresh water Mr Littlejohn? You don't have to be a boatie to understand that.

MR LITTLEJOHN:

As I said, I came in here wanting to learn as much as I could.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

- Q. How do you clean your boat?
- A. I have access to water.
- Q. And how do you clean it?
- A. In terms of routine cleaning?
- Q. Yes.
- A. Just give it a wash down after a sail and a bit of a brush, it depends on how many shags have been sitting on it. With respect.

- Q. And where does the water go from the washing down?
- A. Over the side, through the scuppers.
- Q. Now of course, the physical platform that the pontoons within a marina gives an owner of a boat, make it much easier to clean it down than for example if it was on a mooring doesn't it?
- A. Easier and safer, correct.
- Q. So, we can expect the incidents of boat cleaning within Matiatia Bay to increase as a consequence of this proposal can't we?
- A. If we're talking about the incidents of cleaning of top sides of boats and maybe even a light rub around the bit above the antifoul. That's quite possible given the behaviours of boat owners that I know.
- Q. Overall, and certainly I read your evidence to this effect, we can accept, do you accept that the marina and the boats that will potentially be tied up there will result in some compromise to the quality, the current quality of the water at Matiatia?
- A. Yes.
- Q. And your focus, if I understand answers to my friend, has been on the effects on biota within the bay.
- A. Correct.
- Q. And that's where the focus is very much on reference to the ANZECC guidelines, because those are guidelines which are intended to protect species, biota.
- A. In terms of water?
- Q. Yes.
- A. Yes, correct.
- Q. It's true, isn't it, that the flushing of the bay and the dilution of contaminants, as I think are the words you used, are the effective mechanisms that enable you to conclude that the guidelines, the 95 or the 90% for biota will not be exceeded.
- A. I think that's probably the most important mechanism, that will maintain water quality within the marina. The fact that the tidal waters are exchanged. You don't get an opportunity for sort of incremental

increases that go unchecked in concentration because each day there's clean water coming in and other water going out.

1610

- Q. But it's not the case that the contaminants that will go into the bay simply disappear, they just get spread out throughout the harbour.
- A. Indeed. One point I would make though in relation to the ANZECC 95% guideline which, while it's not arbitrary it is in a sense in that it's designed to protect from sustained exposure, from chronic effects, which implies that there will be a level to which the biota is sustained continuously at that concentration. That's probably most unlikely to happen because there'll be periods when there's not many boats, there's excellent tidal flushing and the concentrations will waiver up and down around some midpoint and might only really get to that point of the 95% threshold or 90% or whatever. It is a variable.
- Q. Okay, now I want to talk to you about penguins. I've had an interesting year with birds, I started out with fairy terns and dotterels. I think you and I then, Mr Poynter, had some interaction with some kiwis, and now I'm onto the Little Blue Penguins, I've had a year I've gone to the birds some would say. Now, the Little Blue Penguins, when you did your initial inspections in June 2010, did you look for any evidence of penguin use or nesting use in the bay?
- A. I didn't explore specifically nesting use in the bay. I did look for areas that I thought could be used as burrows, that could be used by penguins that would have fallen primarily within the reclamation area, and to a lesser extent in areas that were beyond the reclamation area but in the general vicinity. And I didn't see anything at that time that I regarded as suitable nesting or burrow habitat for penguins. Subsequent to that I've been proven wrong in one respect, that there is one site which is actually shown and I wouldn't mind referring you to it or referring the Court to it. In my photo – it should actually read "photo 3", it reads "photo 4", and this was in my original report, Your Honour. That photo which just shows the dinghy racks and the boat ramp, and there's a what is a created habitat.

**THE COURT: JUDGE NEWHOOK ADDRESSES THE REGISTRAR –
COPY FOR THE COURT**

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

A. So I understand that rubble area which is below the dinghy racks and is part of presumably a small reclamation of sorts –

Q. Yes.

A. – is an area where a penguin was located by Ms Fitchet I think.

Q. Yes, and Ms Fitchet and her volunteers have identified quite an extensive area of frequent penguin activity –

A. Correct.

Q. – and her evidence was discussed at the caucusing of experts, wasn't it?

A. But all of her sites except for that one fall outside the reclamation –

Q. Outside the reclamation, that's correct, I'm not going to argue with you about that. But what we do have now though is as a consequence of that information a little bit more of a focus coming on about the penguin population at Matiatia and what the effect of the construction and operation of the marina might be on them.

A. Yes.

Q. Now, you didn't mention anything about this in your rebuttal evidence, so do I assume that your comments about penguins are those as recorded in the joint witness statement?

A. Correct.

Q. And as I read that statement it was accepted that in terms of categorisation, the Little Blue Penguin is now an at risk indigenous species?

A. Yes.

Q. And that consequently under the New Zealand policy statement there is a requirement as I saw it to avoid effects on them, is that right? Let me just see what the wording was. "Requires the avoidance of adverse effects of activities on indigenous taxa that are listed as at risk." So we

have a standard to that extent under the policy statement that we have to keep in view when we're talking about what the potential effects on the Little Blue Penguin may be as a consequence of this proposal.

A. Yes.

Q. How much do you know about Little Blue Penguins?

A. Not a lot.

Q. So in terms of the proposals for their relocation during construction to artificial nesting boxes and what the likely prospects of that occurring successfully are, you've really got little experience in that matter, is that true?

A. That's correct and I have deferred really to Dr Sivaguru and her contacts through Auckland Council as to whether the mitigation that has been offered is real and useful, and I gather that it is.

Q. Well, you gather from them that it is.

A. Correct.

Q. You don't have any experience in translocating penguins, do you?

A. No, no.

Q. You may not know the answer to this but I'll see how far I get, do you accept that penguins are very difficult to observe at sea?

A. No, I would say once you've observed them they're very difficult to keep observing because they tend to dart off and all, so they are very commonly seen at sea.

Q. But in terms of their primary means of getting around, would you accept that they generally swim slower than boats?

A. No I wouldn't accept that at all.

Q. Do you accept that they're generally quite low in the water and can get obscured by the wake of waves?

A. Yes, they're generally very low in the water, Your Honour.

Q. And they will usually swim between one to two metres at the top surface of the water?

A. Well –

Q. If you don't know, don't –

A. No, I can give you some experience through my recreational diving and my other diving over the years, I have had them swim past me in 60 feet of water. So you know they are burst swimmers and they are very capable in the water, but I can't say that I've had the benefit of studying their swimming behaviour at length, only incidental to my activities.

Q. But we do know that at present from the investigations of local volunteers that there is a population of penguins that frequent Matiatia Bay for nesting, we know that don't we?

A. That's the evidence of Ms Fitchet.

Q. And I think Ms Pemberton also talks about it.

A. Yes, yes.

Q. And so they are coming and going to and through and along Matiatia Bay on an annual basis, aren't they?

A. Well, if one accepts that evidence, and I have, at face value, that would be the case.

Q. There's pictures of them, Mr Poynter, did you not see the pictures? You did see the pictures.

A. No, I've seen the pictures, yes.

1620

Q. So would you accept that were they a greater incidents or a great number of boats at Matiatia put there to more in the marina – to berth the marina, that the risk of incidents and by that I mean clashes between boats and penguins is going to increase proportionally as well?

A. No I wouldn't accept that at all.

Q. Why not?

A. Well I have a, as it has been made clear, a boat in the marina. I have an office that's 100 metres from a marina and I frequently walk around that marina for my midday – to get my sanity back and very frequently I've observed no movement in that marina whatsoever. So the movement of boats in and out of a marina is very interesting but it's also very – it happens in pulses. Boats go out, they come back, they usually run a pretty specified track and the – not to suggest that that wouldn't create some increase in the risk that a penguin crossing the path of a

boat at that time might not be damaged or run into it inadvertently for whatever reason, but I wouldn't say you could just make a relationship that more boats, more risk.

Q. Mhm.

A. In some sort of simple fashion.

Q. The penguins are there, as I understand it, for their breeding and molting which occurs over –

A. September through to April.

Q. September through to April. In terms of the annual calendar for boating activity you'd accept that that's also the period of peak boating use isn't it?

A. It includes that, correct.

Q. It includes that.

A. I would add that the penguins are negotiating to their burrows at the moment under a wharf primarily where there's a significant commercial vessel moving in at speed and the wake and the – there'll be noise, there'll be a raft of potential influences which the penguins currently appear to accommodate otherwise they wouldn't be there.

Q. Mhm.

A. So they already occur and these are artificial substrates that they currently nest in Your Honour because all of that area beneath the wharf and I think most of the areas that the – Mrs Fitchet and Pemberton have seen them are areas that have been created at some stage in terms of reclamation or whatever so it's rock boulders and they have voids between them and the penguins have found those and exploit them now as nesting and resting sites.

THE COURT:

And just from a observation by us to the site inspection, the environment of boats at the wharf include the jet raider sitting there throwing out its great wash for the whole time as it was tied to the wharf. I just say that for the record because that's what we observed and I've seen a whole lot of

occasions with the jet raider although I read in the newspaper the jet raider's about to be (inaudible 16:23:40) and that might be no bad thing.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

Q. So it caused that (inaudible 16:23:45) bank on the south side itself just by that propulsion. One last matter I just wanted to – one last question Mr Poynter, my friend Mr Allan asked you a number of questions about the conditions that you and the other ecological experts drafted –

A. Yes.

Q. – amongst you and he put to you various propositions about some of those conditions and compared those with conditions that the applicant offered in its opening case yesterday. Did you have any input into those conditions that the applicant opened with in its case yesterday?

A. I received those last night, I was circulated with them last night.

Q. Last night and that was the first time you'd seen them?

A. No, no, there was a draft that had come through from Mr Dunn prior to that and there was some subsequent changes to that but I had no input into them as such in terms of providing a commentary. As far as I was concerned, and am concerned, the joint witness statement reflects my view on conditions, whether those ultimately appear in any form, I guess the Court will decide.

THE COURT: JUDGE NEWHOOK

All right, now does any self-represented party wish to ask questions of Mr Poynter? No, we'll see if the Court does, Commissioner Leijnen?

THE COURT: COMMISSIONER LEIJNEN

I think most of my questions have been covered. Just one, no, I think they've all been covered, thank you Sir.

THE COURT: JUDGE NEWHOOK

Commissioner Howie?

THE COURT: COMMISSIONER HOWIE

Q. Yes, I had one issue I'd like to ask, and that is, as I understand it the RMA is not a no effect objective, so I sort of feel I need to understand a bit more the degree of effect we might be talking about here and one of the terms that used, I think, is no more than a minor effect and I've got no idea what that means, but reference is also made to the ANZECC guidelines.

A. Yes.

Q. And to a 95% or a 90% compliance to avoid chronic effects but reference is also made to things like the threshold effect level, the TEL, and the predicted no effect concentration.

A. Yes.

Q. The PNEC, can you give us an idea of how we should look at all that?

A. Well the ANZECC guideline where you refer to the 95% level, that relates to water, water column, water column chemistry and a particular target that is considered to protect 95% of the species, so that's a water column threshold.

Q. Just, could I interrupt just there, you said protect 95%, what do you mean by protect?

A. It is stated in ANZECC that the 95% level is intended to, it is just that, to protect 95% of the species in moderately to disturbed ecosystems, so it's not designed to protect from any effect, it's designed to protect to a particular threshold. So implied in that is that there will be some compromise or some effect. If you have concentrations above that threshold, you can expect some level of effect. So that deals with that. In terms of the TEL and PEL and all those other threshold effects levels and probable effects levels, those relate primarily to sediments and they are a different set of parameters and they really specify, for example, the TEL or threshold effect level is a point on a continuum below which you would not expect any effects, toxicological effects on biota. Above that you start to carry a risk, a greater risk of effects on some of the biota and then once you get above a PEL or a probable effects level, it's much more likely, in fact, that you would have an effect. So they all

need to be given context and it is important to read the context for them because they are guidelines, you know, we use them as standards but, in reality, they are points on a continuum that we have decided above that we look at things in a different way and below it we look at it in another way. So there is a context to those, they are not if you like immutable and are cast in the stone tablets, they are definitely tools that we can use to manage our environmental effects

Q. So going back to the RMA requirements that really allow acceptable effects, if I could put it that way, how does the concept of “acceptable effect” fit within that regime?

A. Well it is, again if you are going to talk about acceptable or minor or whatever, you have to have prior to that given a bit of a narrative about what it actually means, and to me “acceptable” is a better term than not more than minor or less than minor or whatever because it does imply that there’s a level of effect which we believe is sustainable environmentally and that’s what the RMA is about. So, just to step back, if one looks at the general performance standards that apply to waters in the Hauraki Gulf and I think Matiatia Bay is classified as waters that are governed by general performance standards. The requirement there is no significant adverse effect. It’s not a test of no more than minor. The no more than minor thing is sort of an artefact really of the fact that there’s this non-complying status or there’s a sort of a demilitarised zone that no one wants to go into. So there is another way of looking at these things ecologically. I always feel I’m in a bit of a vortex getting sucked into the planners debates when I’d rather deal with it ecologically. I’m not sure whether that helps.

1630

Q. I know the feeling. Now, just extending that a little. I think I’ve heard other cases that when you’re dealing with measuring effects on ecological things, critters or things like this, that you’ve probably got to affect the population by a significant amount, say 20%, to be able to actually measure the change.

A. Yes.

- Q. Do you agree with that?
- A. That's very much the case is that if one is looking at biological communities they're inherently variable and even as I tried to point out during the course of this evidence, if one was looking at the same location in different months or between years or whatever you would expect quite a bit of variability at a given location. So in order to get a perspective on what's "normal" you need to collect quite a large body of information over a reasonable special area and a reasonable period of time. I'll try and not use that word 'significant' in order to get some resolution into what's anomalous and what's not and that is why in the joint witness statement there is a statement there that says to the effect that rather than go down that track and look at the biological communities, we will use a proxy for measuring effects and the proxies are water column chemistry and sediment chemistry. We will use those because they're more definable, they're easier to sample for, they're less costly to sample for and more precision around the values that you get and we will interpret the significance or otherwise of effects in relation to those values.
- Q. Just coming back to measuring a meaningful change in your ecological condition, the figure I had heard, well that you needed change of something of the order of 20% to be able to measure the actual change in background to whatever the new scenario is. Is that what you're telling me?
- A. Pretty much. I mean the actual percentage, at the beginning of a programme of investigation one would probably say well we want to have this level of precision, whether it's 10%, 15% or 30% or whatever. And then you design your sampling programme around that in order to gain that level of precision but as a sort of a rule of thumb, 20%, yeah. Changes inside 20% could easily be due to factors which have absolutely nothing to do with the source of the effect that you're interested in, if it's a an anthropogenic one because it just might be background noise, what we call, you know, ecological variability. So you need that sort of probably that level of change in order to say well

this isn't due to natural processes, this is due to something that we've introduced into the system.

Q. Do you think that any of the activity that's proposed in this proposal would lead to that sort of ecological effect?

A. And I think the conditions, at least the joint witnesses came up with, provide a mechanism to actually measure the likely effect with reasonable confidence.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR R BRABANT

Q. Mr Poynter, you were asked some questions about the input into the latest version. It is correct, isn't it, that the question of whether some conditions about control of boat discharges was fully canvassed with you by phone and by email about the issue.

A. Yes, that's correct.

Q. You understood about that?

A. Yes I did.

Q. I'd just like to look at, Mr Allan took you through the two sets of conditions and I take it you've got both of them there. That is the joint conditions and then the new ones, just looking at the permits for structures and occupation, drenching and reclamation, and you've got both of those there?

A. Just bear with me.

DISCUSSION – SOURCING DOCUMENTS

WITNESS REFERRED TO DOCUMENTS

Q. Can you turn up to page 2, and this is about Mr Littlejohn's topic of Blue Penguins. And I'm wanting to ask you what the discussion was to arrive at these –

THE COURT: JUDGE NEWHOOK

Sorry, page 2 of which document? The 9th of September one?

MR R BRABANT:

Page 2 of the joint, the 9th of September and yes, that's right.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. It's got two bullet points and one deals with what's going to happen before construction, the first bullet point.

A. No.

Q. I'm sorry, in (a) at the top.

A. Yes.

Q. This is the recommended conditions.

A. Yes.

Q. (a) first bullet point starts, "At least three months prior to construction work being undertaken."

A. Mine doesn't have a bullet point.

Q. Do you have the one with a front sheet on it that's got dated "09 September"?

A. Yes I do, you gave it to me earlier.

Q. And if you turn the next page which has got a number 2 at the bottom of it and at the top, "The following conditions of consent are recommended for consideration."

A. Yes, it's just number (a) there's no bullet –

Q. (a) Little Blue Penguins.

A. Oh yours has got bullet points, mine doesn't. It's a printing error. Sorry.

Q. So we've got a first paragraph that deals with some things to be done before construction. And then there's a second paragraph and this is about putting penguin boxes out isn't it?

A. Yes it is.

Q. And the last sentence says, "Prior to completion of the break water the nest boxes are to be put out there." Doesn't it?

A. Yes.

Q. Now if you go to clause 29 of the WML one it says, which seemed sensible at the time I thought, but anyway, "At completion of construction of the secondary break water, the boxes shall be put out."

A. Yes.

Q. Now can you just help the Court, why did you experts all decide that you should get those boxes out there while they were still working on the break water?

A. Well if we did, I can't imagine why we would've, maybe it was the stress and strains of trying to get through quite a lot of information in a limited period of time, but clearly you wouldn't want to put them out until the end of the construction.

Q. I'm only asking because when I looked at it and I thought, that doesn't sound right so I changed it and I'm asking you now, when you're all there together, which I wasn't, maybe there's some reason to put them out there while the people are still working. So, for you personally, do you accept that it makes sense to change the timing?

A. Yes I do.

1640

Q. So then can we have a look at biosecurity which is under the next heading on the same page.

A. Yes.

Q. And so you've got two parts haven't we Mr Poynter, the biosecurity one. One is making sure that we don't introduce unwanted organisms during the construction phase.

A. Correct.

Q. Right. And you're familiar with in terms of other marinas you've worked with?

A. Yes.

Q. And the vessels are inspected and certified –

A. And certified –

Q. – and cleaned off.

A. Yes.

Q. And that's the first part this one's got. Have you got bullet point Sir on yours? Anyway, the first section is that part isn't it?

A. Yes.

Q. That's the sort of biosecurity construction programme?

A. Yes.

- Q. And the second part in here is what happens after in terms of when the boats are there would that be right? Is that how you all discussed it?
- A. Yes.
- Q. Now is there any reason why those two parts of biosecurity can't be separated? Did you talk about that?
- A. No, I don't recollect us discussing that.
- Q. All right. So if you go to the applicant's one.
- A. Yes.
- Q. And turn to 17, do you have that?
- A. Yes.
- Q. That's got a heading on it, is that a fair description of what's happening at that stage of the biosecurity process? "Biosecurity inspection of construction equipment and vessels."
- A. Yes.
- Q. Yes?
- A. Yes.
- Q. As one of the three, because – you've repeated again which is why I'm asking that you're happy with these conditions so I'm asking you. As one of the three, are you happy with that being separated out into a separate conditions?
- A. Yes I am.
- Q. And then if you go to the next page which is 18, it's the second, if you look at that isn't it with a plan for biosecurity measures during the operation of the marina?
- A. Yes.
- Q. Do you – the wording starts, "Prior to permanent occupation of the marina by berth holders you have to get an approval of the plan."
- A. Yes.
- Q. The three of you had prior to approval of installation of any structure, do you – can you tell me whether there was a particular discussion about the timing there as to why it should be before you even start building it? There may have been a reason sir.

A. I think it might be an interpretation of those words prior to the installation of any structure, it should've perhaps, or I would've understood that to probably been more accurately stated to be at the time of installation of any structure in other words, the structure itself has to be free of biosecurity risk. Obviously you wouldn't do a biosecurity, have a biosecurity concern before the structure was even there because that's the thing that carries the risk.

Q. But our previous one for construction says you have to make sure that not only the gear, the barges but also all the structures they bring in to install you –

A. So that's already covered.

Q. Yes.

A. Yes.

MR ALLAN:

Sir I'm just concerned sorry that my friend isn't putting the distinction between the two conditions accurately to the witness and that condition 18 does actually deal on its face with construction as worded by my friend and he hasn't made that clear in his questions so I just draw that to your attention Sir.

MR R BRABANT:

I don't understand what you're saying.

MR ALLAN:

Condition 18(b), "To avoid the introduction of any unwanted or biosecurity risk species through the construction activities," that's in condition 18. You've described condition 18 as dealing solely with operational aspects and that's not the case.

THE COURT: JUDGE NEWHOOK

I think Mr Allan is right about this Mr Pemberton.

MR R BRABANT:

Yes I understand now.

THE COURT: JUDGE NEWHOOK

And indeed he raised that with the witness during cross-examination.

MR R BRABANT:

But actually at the moment I'm just talking about the timing. There may be some other criticism Sir I'm just asking him about the timing.

THE COURT: JUDGE NEWHOOK

Well keep going.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. I'm trying to just deal with things that – anyway. So for you personally and looking at a condition which is meant to and maybe it isn't right yet but it's meant to look after biosecurity matters once the marina is operational.

A. Yes.

Q. Do you have any concern about that plan being approved before the vessels arrive?

A. No.

Q. Now in – if we just stick with the agreed version.

A. Yes.

Q. And in that list of things to be doing, include – the plan is meant to include details as (ii) and –

A. So you're talking about the joint witness statement agreed version –

Q. The joint witness statement, yes. Include details regarding the management of cleaning and defouling of marina structures. Now, I read that as meaning cleaning and defouling after the marina had been built and during its operational life. Have I misunderstood that?

A. Well I think it could be both.

Q. Oh okay. All right. So again some advice. When you all talked about it.

A. Mhm.

Q. I understand about making sure they're clean.

A. Mhm.

- Q. Before they go in. Are you – have you had experience of working with marinas in terms of cleaning them after the marina's been there for 10 years or 15 years?
- A. No but I'm mindful of the fact that there is surveillance of not all marinas but certainly a range of marinas in the country as part of MBI biosecurity sort of issues or monitoring. If one was defined on a marina, a species which is of biosecurity risk what do you do about it? I mean if you're five years or 10 years down the track you need to manage that in some way, or someone does, take the responsibility for cleaning and defouling and managing that infestation. So that's what I thought that was.
- Q. Well I'm asking because you all had this discussion.
- A. Yes.
- Q. And the thing about it I thought was, we've got the vector problem with boats of moving unwanted one to another but if for example at Oakura, have they got fanworm up there?
- A. Uh –
- Q. Well anyway I'm just choosing an example.
- A. Yes they've got a fanworm plan.
- Q. No, if there's none in the region.
- A. Yes.
- Q. But we've got it here.
- A. Yes.
- Q. If you did regular dives, say –
- A. Yes.
- Q. And you found it, it would've arrived behind the boats wouldn't it
- A. True.
- Q. So you've got it then.
- A. Yes.
- Q. So I'm just wanting to understand what exactly the three of you were intending because I understand about cleaning everything before you build and put them in clean, but I would've thought Mr Poynter that if you did a regular six month dive underneath your pontoons and you found

some fanworm that you didn't think you had in Northland, it's come there on boats and you've already got it then haven't you?

A. That's true –

Q. Would you recommend cleaning it?

A. Well not necessarily. I would recommend someone has to give some thought to that –

Q. Okay.

A. – to decide whether it's practicable or useful to clean it or whether you accept that it is now part of our –

Q. So you would recommend the inspection for that purpose to discover?

A. Yes.

Q. Right. And defouling at that point?

A. Well again and I can see that maybe there's an issue there but the defouling I think has to be a decision made in light of what species it is, how it propagates, whether it's been recorded once elsewhere in the Auckland region or 50 times, in other words, is there any sort of real scope for mediating its spread. So I still think the –

Q. Okay, no that's fine. So if we can go now to the area of disagreement if you'd like and like before leaving aside whether these conditions are valid.

A. Yes.

Q. And you've seen the submissions and you understand the point?

A. Yes I do.

Q. So we've got some proposals here as to how to go about things and I wanted to take you to page 6.

A. In the joint witness statement, yes.

Q. Yes. So the three people setting out under subsection (f).

A. Yes.

Q. Some proposals.

A. Yes.

Q. Now the first thing is, a contaminant management plan must be provided to the team leader coastal outlining how contaminant loading

to the marina will be reduced. In the discussion was a discussion about the marina doing something about reducing the loading presumably.

A. Yes.

1650

Q. And can we go next, low impact antifouling paints and there's an example given of a paint I seem to recall that might've been around a while I don't know, Pettit Vivid low copper formula. Now, this implies a paint that isn't as effective to prevent fouling on boats, is that your understanding or are the others talking to you about something else? In other words the paint would work just as well but it hasn't got copper in it, or are they suggesting that a solution might be to put less of the chemicals in it that make the paint effective, do you know what was being suggested?

A. Look, I struggled with this and clearly these are the three options which I shied away from, these weren't my preference, and I did also take the position I didn't think any specific paint name should be indicated. I don't know enough about paints to be able to specify what constitutes a low-impact paint.

Q. I just want to understand whether there had been some information as to know what it was so I'll put this question to you now, if this is suggesting that a way to reduce contaminants, copper, in the water column is by putting less effective antifouling paint on boats to gain that benefit, I put it to you is there not a tension then between that objective and the bio-security issues we've been just talking about?

A. Yes there is but I wouldn't read into the words "low impact antifouling paints" as synonymous with low copper antifouling paints. That may prove to be the case, but technology being what it is and the paint companies tend to keep that fairly close to their chests, they may come up with formulations which have the same amount of copper or less copper, but it doesn't end up in the environment or is in a more acceptable form.

Q. I only saw there a name, a trade name with the words "low copper" after it.

- A. Yes, well those weren't my words, those were –
- Q. Yes, okay.
- A. Yes.
- Q. Would you support, Mr Poynter, as an expert potentially reducing the war on bio-security problems by requiring people to have a less effective paint on their boat to reduce copper concentrations in the water column?
- A. No I don't think so. I mean it's clear we need to attack both issues, bio-security and environmental consequences of antifoulants as separate issues rather than trading one off against the other.

**THE COURT: JUDGE NEWHOOK ADDRESSES MR R BRABANT –
LEADING QUESTION**

RE-EXAMINATION CONTINUES: MR R BRABANT

- Q. Can I move to another topic, please. You were asked some questions about the opportunity for flow of water through the bay.
- A. Yes.
- Q. And the porous nature of the marina in that respect and the tidal movement. In terms of things that can happen, contaminants that can be caused by boats, hydrocarbons were mentioned?
- A. Yes.
- Q. Sewage spills, and then we have the antifouling thing as well, in terms of monitoring what's going on, and I notice the monitoring suggestion were some samples inside and outside the marina itself, given the amount of boating activity including what one of the witnesses has described to the second busiest ferry terminal in the country, how difficult will it be to draw any conclusions about responsibility in that environment?
- A. It may prove difficult. I think we tried to deal with that to some extent in being quite specific about where those samples needed to be taken. There was sampling to be taken within the confines of the marina, there was samples to be taken or a sample to be taken on the southern shore

within the existing mooring area, because that reflects an intermediate, if you like, but a background position for that part of Matiatia Bay, and then there was another sample to be collected away from those influences. So it may well prove difficult to actually assign a particular value the causes of it to the marina itself. But I think that's all one can do if one is to try and get a measure on changes in the water. The reality is you have to work with what is there and draw your conclusions appropriately. And I guess that is one of the concerns I had about taking values from a water quality programme and being too prescriptive about the subsequent actions that might be obligated to a marina manager, because it sort of goes beyond the ecological, it goes into more of the political.

THE COURT: JUDGE NEWHOOK

Can I have an indication of what witnesses we might be lucky to get through tomorrow?

MR R BRABANT:

You'll have seen my two traffic engineers sitting patiently, we kept them here this afternoon, and so we're going to start with them tomorrow. We have Mr Dilley come out from Christchurch because he's come up from his work in the harbourmaster's office in Canterbury. And so we're hopeful at least to get through them, Sir, but cross-examination is in someone else's territory.

THE COURT: JUDGE NEWHOOK

Yes, all right.

MS MCINDOE:

Sir, if I could just advise, my fellow counsel have kindly allowed or agreed to not call the traffic witnesses on Thursday when I have a funeral to go to. So I'm hoping that we'll get through both the traffic witnesses tomorrow in order that that – if it's necessary to finish them off on Thursday morning then I'm sure I could accommodate that.

THE COURT: JUDGE NEWHOOK

All right, well thanks for that indication and thank you to all counsel for assisting Ms McIndoe in those circumstances.

MR R BRABANT:

So Sir, as to time, you'll need to ask my friends.

THE COURT: JUDGE NEWHOOK

No, we'll just plug on tomorrow. We have their indications from Mr Littlejohn's carefully constructed spreadsheet and we'll put to them who they're best to do their best to (inaudible 16:57:53) more or less to that. Right, we'll adjourn to 9.30 in the morning.

COURT ADJOURNS: 4.58 PM

COURT RESUMES ON WEDNESDAY 8 OCTOBER 2014 AT 9.33 AM

MR J BRABANT CALLS

DAVID FORRESTER MITCHELL (SWORN)

Q. Mr Mitchell is your full name David Forrester Mitchell?

A. Yes it is.

Q. And have you prepared an evidence-in-chief dated 29 April, a brief in reply dated 25 September and then also taken part and agreed with a joint witness statement of traffic experts dated 28 August?

A. Yes I have.

Q. And with reference to your statement-in-chief do you have the qualifications and experience set out in paragraphs 1 to 3 of that statement?

A. Yes I do.

Q. Just one matter, Mr Mitchell, before I go through that and ask you if you confirm that those are true and correct to the best of your belief. In paragraph 3 of your evidence-in-chief there is a reference there to being instructed by Waiheke Marinas in December 2013 to provide evidence. Can you just advise the Court whether, however you have been involved with this project for longer than that and if so approximately when you were engaged?

A. Yes, dates in item 3 related solely to the provision of the evidence. My involvement with the project actually started in late 2009.

Q. And can you confirm please that those statements of evidence you prepared are true and correct to the best of your knowledge and belief?

A. Yes, that's correct.

CROSS-EXAMINATION: MR ALLAN

Q. Good morning Mitchell, my questions relate entirely to conditions. Do you have a set of the land use conditions there?

A. Yes I do.

WITNESS REFERRED TO DOCUMENT

- Q. If we can start with condition 7.6(c) on page 3. We're in the construction traffic management section of the CMP there. So I understand the applicant will be endeavouring to bring in most materials to the site during construction by barge, is that right?
- A. That's my understanding, yes.
- Q. So (c) there refers, in brackets, to truck and trailer units and clearly there's a concern about those sorts of units in terms of getting them in and out of the keyhole and there's an added level of difficulty potentially associated with those sort of larger trucks.
- A. Yes there would be.
- Q. And the keyhole's physically constrained in terms of manoeuvring room.
- A. Yes it is.
- Q. Given those constraints and the fact that barges are going to be used wherever possible, do you think that in fact truck and trailer units should be actively discouraged in the conditions?
- A. It depends very much on the construction methodology and that can come down to the contractor at the time. I'm sure that given the physical constraints of the keyhole they won't want to be using truck and trailer units unless they have to.
- Q. So with most material coming in by barge do you think it's entirely feasible that, to the extent that some land transport's required, that could be dealt with by standard eight metre single unit trucks if need be?
- A. I think most of the materials that might have to come in by road, things like concrete trucks and things like that will be single unit vehicles. It might be if they're having to bring in piles by road for instance, you'd need to get a longer vehicle.

0940

- Q. The next condition I had a question about, really just a point of clarification, was 8(b) over the page, which is a new condition as of Monday and is obviously taking into account recent changes, or forthcoming changes with the new ferry service. I just wanted to check with you the significance of the date and (b) there of 1 September. Now

I've assumed that this was chosen as a date prior to the announcement of the Explorer Ferry Service, is that your understanding?

A. No, that's not my understanding, that date was actually inserted before we knew about changes to the Explore Service, it was simply a date to set relative to our ferry timetable that we knew at that stage.

Q. Okay, so the conditions just intended to capture any further changes after the Explore Service is in operation, that may be introduced, say, by the addition of, and I think the affidavit from Mr Blom alludes to this, the possibility of yet another ferry operator coming on the scene?

A. Yes, effectively, yeah.

Q. And so condition (a) above, that would be by reference to both the Fullers Service and the Explore Service?

A. Yes, it would be.

Q. Okay, thanks. My next questions relate to condition 29, which is the provision of parking spaces for marina users. The Council's equivalent conditions, which for the transcript are 62 and 63 – you don't need to turn to those necessarily – required two spaces to be reserved for disabled persons, do you recall that?

A. Yes.

Q. Now I couldn't spot the similar provision in the applicant's conditions, and it's possible, because I missed one or two yesterday, it's possible I missed it. Is there a condition specifically dealing with that?

A. No, I don't think there is, it was just talking about the total number of spaces.

Q. Okay, and if we have a look at figure 20 in the March 2013 folio, it's the A3 folio with figures, March 2013, and it's figure 20.

A. Yes.

Q. I don't think that, I couldn't see them anyway, disabled spaces aren't shown on that plan, are they?

A. Not on that plan, no, but...

Q. Is there another plan, were there?

- A. I'm trying to think, I have certainly seen a plan with the disabled spaces shown essentially in the middle of the parking aisle nearest the marina where there's the gap shown in the middle.
- Q. Well, your evidence is, it's at the second to last page in your evidence-in-chief, you don't need to turn that up, but just for the transcript, that –

THE COURT: JUDGE NEWHOOK

Just on the point, if you'd like to turn to figure 73, I think you'll find two disabled spaces in the short-term area.

CROSS-EXAMINATION CONTINUES: MR ALLAN

- Q. They are shown.
- A. Yes, that's the figure.
- Q. Can we just skip, the condition that we have here, condition 29 refers to condition 6 for the details of the plan that's going to be complied with. I'm not making a big deal about this but we just need to make sure that things are covered off and at condition 6(c), we're referring to a proposed parking layout drawing and that 4208104 origin D, so that's figure 20. Now that plan doesn't seem to, I think you'll see why I'm posing the question, that plan doesn't seem to show the disabled spaces. There's no dispute as to the need for those to be provided, is there –
- A. No, there's not.
- Q. – and they ought to be depicted on a plan referred to in that condition to make sure they're captured?
- A. Yes, they should be, yes.
- Q. And in fact the Council's proposal of just having some words in there just requiring two disabled spaces to be provided, no great drama there?
- A. No.
- Q. No, okay, thank you. Condition 32 was the next one I just wanted to ask you about and that's about the marina carpark permit system. Now do you see that just refers to the details of the carpark permit system being

provided to the Council and Auckland Transport almost for their information, do you see that?

- A. Yes, I see the condition, yes.
- Q. Given that marina traffic will be passing through the vehicle restricted area, which is restricted to access and parking of busses, coaches, taxis, and shuttles, along with access of goods and services vehicles and I think in your evidence you might have mentioned the odd transgressor, it's not unreasonable for the Council and AT to have some say as to the detail of that system, is it?
- A. I think that the management of the parking permit system is really to be tied into some of the other conditions and particularly things like condition 34 and 35 and 38 as well in terms of the underlying requirements of that. There certainly needs to be a parking permit system and it's really up to the operator, I think, to have some flexibility in terms of how that system is implemented.
- Q. Well, you talk about tying it in with other conditions, but really this is the standalone condition dealing with the permit system and I'll put it to you again that, given the unique attributes of the area you're passing through, it's a vehicle access restricted area, it makes sense, doesn't it, that Auckland Council and AT have the ability to review that before it's finalised and, in fact, approve it?
- A. No, I don't think that that does necessarily follow. They certainly need to be aware of what's going on and they have the ability if they're more fundamental conditions, things like relating to the basic number of vehicles that can enter and exit the marina prior to there being any significant effect at that stage. There is certainly, as I say, the need for a permit system but it's going to be up to the marina management at the end of the day to operate that permit system such that it achieves the, I suppose the more fundamental requirements of some of the other conditions.
- Q. Okay, well let's assume a situation in the future where access restrictions are introduced by AT to the keyhole area, and perhaps taxis and shuttle busses are removed and only busses are getting in there, at

that stage, then there will be a need to review the marina access arrangements, do you agree with that?

A. Yes, that's possible, yep.

Q. And in that regard there really needs to be, and I'll come back to this, but there really needs to be an ongoing ability for the Council and AT to review the traffic and access arrangements for the marina in the future if changes are introduced, do you accept that?

A. Yes, there's certainly a need for the Council and the marina to work together if there are changes in the future, yes.

Q. And that needs to be reasonably flexible so I think the existing broader section 128 review condition we've got at the moment has intervals at, I think it's six months, one year, two year, three years, and then perhaps five year intervals after that. Would you accept that, you know, to make sure the Council and AT are able to respond to any changes, there needs to be, there should be the ability to review these conditions more regularly?

A. That's probably something I can't really answer.

Q. Okay, all right, the next condition is condition 33, CCTV, which is talking about the installation of a CCTV camera system, recordings will be kept for at least three months.

A. Yes.

Q. Now there's no reference there to that being made available to the Council and Auckland Transport, shouldn't it go on to say something like, "And made available to Auckland Council and Auckland Transport on request"?

A. There's certainly no reason why it couldn't be.

0950

Q. And I suppose actually in terms of technology, there's no reason why live data streams couldn't be provided to the Council and Auckland Transport from those cameras?

A. Yes as you say, from a technology perspective no, I guess there's not.

- Q. Now, the Council and Auckland Transport might wish to see the CCTV footage when considering the report required by condition 38, over the page?
- A. Yes.
- Q. If we turn over there, "Vehicle access review." I think the cross-reference in brackets there, "required by condition 40." I think that should be condition 37 should it?
- A. Yes I think so, yes.
- Q. And obviously the CCTV footage when you review that condition, it's obviously a fairly important part of the whole vehicle access review process, isn't it?
- A. Yes it is.
- Q. And having access to the CCTV footage would also enable the Council and Auckland Transport to monitor compliance with for instance condition 34 potentially? That's the one about marina carpark not to be used for casual parking? Might help in terms of if they want to carry out some spot checks?
- A. The CCTV I doubt would, it depends if it covers the carparks or not. At the end of the day that's the condition that the consent holder would have to comply with and –
- Q. You don't think it would potentially help in terms of monitoring compliance with that aspect?
- A. It could potentially help but it would be one of a number of different ways that you could manage the use of the park area by permit holders, and Mr Wardale outlined some of the other techniques that he's used at other marinas yesterday.
- Q. I just want to discuss briefly the need for a carpark management plan. In the joint witness statement, I don't think we need to bring it up, but there was agreement that conditions should require a parking management plan including methods to optimise use of the on-site marina parking area and to manage on-site loading and servicing activities, do you recall that?
- A. Can you just refer me to the –

Q. It's in the joint witness statement at paragraph 10(b).

WITNESS REFERRED TO JOINT WITNESS STATEMENT

Q. The joint expert witness statement, "Traffic and Transport," 28 August.

A. Yes.

Q. 10(b), do you see that there?

A. Yes I do.

Q. The experts agree that the proposed marina management plan should "include methods to optimise use of the on-site marina parking area," and then 11(a) second sentence, "The experts agree that the proposed marina management plan should include methods to manage on-site loading and servicing activities."

A. Yes, they refer to the need for a plan, not necessarily a need for a condition relating to a plan.

Q. We'll come to that. And in your rebuttal evidence you refer that to the parking being managed through a parking management plan, don't you, you agree with that?

A. Yes.

Q. So you were just saying that doesn't necessarily need to be managed through a condition and there's no condition in the land use consent, is there, dealing with that despite the apparent agreed position?

A. No there's not.

Q. If the Court disagrees with you as to the need for a specific condition and decides that in fact it is a very sensible idea, it might be helpful to consider some of the things which it could address. Do you agree that it might describe the overall carpark and access management philosophy for the marina carpark area, including advice to berth holders on appropriate access times?

A. Yes it could.

Q. Do you agree that it could outline methods to actively discourage marina traffic during peak public – passenger ferry arrival periods?

A. Yes it could.

- Q. It could outline measures to ensure the marina carpark is used for marina activities only, including measures to review and restrict access in situations of non-compliance with these measures?
- A. Yes it could.
- Q. And that would dovetail with the sort of things that Mr Wardale's talked about in terms of the contractual arrangements with individual berth holders, the expectations in terms of how they use the carpark.
- A. That would be one of the techniques and that's partially why, as you've been going through with things like condition 34 and 35 that relate to the items like the use of the carpark, the management plan would cover some of those but it would no doubt cover a lot of other activities in terms of the overall operation of the marina.
- Q. And it could also describe controls to be established within the electronic carpark access and barrier system that enable restriction control of access into and out of the marina carpark.
- A. Yes, it could do.
- Q. And finally in keeping with the joint witness statement it could deal with manage on-site loading and servicing activities.
- A. Yes, definitely.
- Q. Now, we touched just briefly before, I don't want to spend long on this part about the potential for future changes, and I think there was agreement at caucusing that the existing configuration is not ideal and the experts all agreed that in the future the configuration of land-based transport at Matiatia is likely to need improvement with or without the marina.
- A. Yes.
- Q. And that could include future reconfiguration of the keyhole?
- A. That's one option, yes.
- Q. And another option might be for instance realignment of Ocean View Road as part of that future mixed use development?
- A. That potential is certainly there, yes.
- Q. Yes, various things that could happen. So I think you agreed earlier that given the possibility of those future changes, it might be sensible to

have some ability, whether it's a review condition or something else, within the consent to make sure that access arrangement dovetail well with those future changes. I don't think you could disagree with that in principle?

A. In principle no I wouldn't.

CROSS-EXAMINATION: MS MCINDOE

Q. To help with my questions, if you could make sure you have with you your evidence in reply and your evidence-in-chief?

A. Yes.

Q. The conditions which you've obviously got with you because Mr Allan has been taking you through them, and the joint witness statement, and then finally have some questions about your report which was appended to the AEE. And for the Court's reference that's in common bundle 3.

A. Was that the report dated 12th of March, was it, 2013?

Q. Yes. It's Appendix H to the AEE.

WITNESS REFERRED TO DOCUMENT

Q. The folders behind you are numbered in the way which Mr Brabant has provided us details of, they're within common bundle 3. And I think that starts with Appendix H.

THE COURT: MR NEWHOOK ADDRESSES MR BRABANT – ASSISTING IN FINDING REFERENCE

1000

CROSS-EXAMINATION CONTINUES: MS MCINDOE

Q. I'm not going to take you straight to that but we will get to it so it was worth finding. First I would like to ask you some questions which begin at the joint witness statement so if you could pull that up.

A. Yes.

Q. On paragraph 14 subparagraph – so I guess, taking paragraph 14 as a whole, it seems to me that the experts weren't able to agree on the impact of the marina on public transport. There's some agreement but

there's some areas where for example Auckland Transports view is expressed differently from the other experts view is that fair?

A. Yes that's fair.

Q. And in your assessment that you carried out you didn't carry out a separate assessment for public transport did you?

A. Not specifically dealing with public transport, no.

Q. Your evidence is more of a general traffic assessment, traffic and transportation assessment.

A. Yes that's correct.

Q. But you do agree that provision for public transport in the keyhole area, in the ferry terminal area is paramount don't you?

A. Yes I do.

Q. And that's recorded in the joint witness statement?

A. It is.

Q. In your evidence in reply, your rebuttal evidence, at paragraph 28 you discussed safety and you say, "There is clearly a lot of movement around the keyhole that is done very safely at low speeds and without incidents worthy of reporting to the police."

A. Yes.

Q. Do you see that statement?

A. Yes.

Q. Yes. And you didn't specifically study the safety aspects of the marina or the impacts of the marina on safety at the keyhole did you?

A. We looked at the existing safety records around the keyhole in the marina area which is standard practice.

Q. But you didn't evaluate for example the impacts of the marina traffic on pedestrian desire lines in that area?

A. No because I wouldn't expect the marina to have any effect on pedestrian desire lines in the keyhole at all.

Q. Maybe I phrased that wrong. If I could take you to Mr Karndacharuk's evidence in reply, he's got a handy plan. Sorry it's evidence-in-chief.

A. Yes.

Q. And the plan that I'm looking at is on the third to last page.

- A. That's the plan with all the dimensions of – yes.
- Q. If you were a pedestrian coming out of the ferry terminal and you were moving to a bus or a shuttle on the far side of the keyhole.
- A. Mhm.
- Q. Would you agree that the pedestrian desire line would be to simply cross the road?
- A. Yes, yes it is.
- Q. You wouldn't walk all the way around the keyhole would you?
- A. No, and people don't.
- Q. Now you referred to before about looking at the crash record. Would you agree that most non-injury collisions go unreported?
- A. Yes it would.
- Q. Now the following sentence in your evidence reply you say, "The introduction of additional traffic will increase the potential number of crashes based on simple statistical occurrence. Now do I understand that correctly, are you saying there if you have twice the many cars, twice as many cars you might end up with twice as many crashes? Simply because there's simply is a function of having more vehicles –
- A. Yes, it's, it's, yes so it's simply a function of more vehicles.
- Q. Can I take you to your report this is the one that we spent the time finding in the folder.
- A. Yes.
- Q. And in particular to page 21. And in table 61, there's a series of tables 61 to 63. Am I correct in understanding that these are, we're at the time you surveyed them, the existing traffic flows on Ocean View Road in the turnaround area and then entering and turning in the cul-de-sac is that –
- A. Yes that's correct.
- Q. And these were the traffic flows when you surveyed them in 2012 is that correct?
- A. Yes end of 2011 start of 2012, yes.
- Q. Now I want to make sure I'm looking at the right number, so I thought well I'll look at the weekday traffic counts and if I look at the traffic turning in the cul-de-sac so the bottom row of the first table.

A. Yes.

Q. At the survey peak hourly volume was 38 is that correct? Am I reading that right?

A. Yes.

Q. Thirty eight an hour, do you agree that that would be the right part of the table to look at if we want to look at how many vehicles are going to be tangled up is probably the right – the wrong, slightly too emotive, where the marina traffic is going to be joining the keyhole traffic would that be the right part of the table to look at?

A. Yes it would be.

Q. So 38 an hour through that area of the cul-de-sac or the keyhole as we've been talking about it. Now if I go to the joint witness statement, paragraph 7, there the experts all agree that the peak marina demand would be 56 trips per hour, correct?

A. Yes that's correct.

THE COURT ADDRESSES WITNESS – ADJOURNMENT

CROSS-EXAMINATION CONTINUES: MS MCINDOE

Q. So we were at paragraph 7.

A. Yes.

Q. A1 and we had 56 trips per peak hour the witnesses all agreeing.

A. Yes.

Q. So if we add 56 trips to 38 existing –

WITNESS FAINTS, PUT INTO RECOVERY POSITION AND NOW PERFORMING CPR

COURT ADJOURNS: 10.15 AM

COURT RESUMES: 11.06 AM

THE COURT: JUDGE NEWHOOK

We, in chambers, with counsel we have devised a way forward at this point. We are going to move to hear the evidence of Mr Apeldoorn and the approach is going to be taken there is that Mr Apeldoorn will be questioned about matters within the purview of his evidence and counsel will endeavour to place before Mr Apeldoorn matters that they were going to place before Mr Mitchell, who has been taken to hospital, and on the understanding that it may not be so wise in health terms for Mr Mitchell to be required to return to resume with questioning, an attempt will be made to have Mr Apeldoorn answer Mr Mitchell's matters so far as he can and to the extent that he can't, we will probably release him to go away and consider those matters further and then possibly return for further questioning, my guess is next week, rather than this week. So we are going to try and work it through on that basis and we will just have to be conscious of needing to alter that approach if circumstances require it.

WITNESS INTERPOSED

MR J BRABANT CALLS

MARK JOHN APELDOORN (SWORN)

Q. Mr Apeldoorn, is your full name Mark John Apeldoorn?

A. Yes.

Q. Have you prepared a statement of evidence-in-chief dated 28 April, a statement in reply dated 23 September 2014 and then a supplementary statement dated 3 October 2014?

A. Yes.

Q. Do you have the qualifications and experience set out in paragraphs 1 to 3 and Appendix A of your statement-in-chief?

A. I do.

Q. And just before I ask you to confirm that they're true and correct to the best of your belief, I have circulated to the Court an amendment to

pages 18, 19 and 24 of your reply brief. And so those changes are the only ones, are they, to your evidence that's been exchanged?

A. Yes.

Q. And can you please confirm that those statements of evidence are true and correct to the best of your knowledge and belief?

A. Yes they are.

CROSS-EXAMINATION: MR ALLAN – NIL

CROSS-EXAMINATION: MS MCINDOE

Q. Good morning Mr Apeldoorn, if you could have before you the conditions, the land use conditions.

A. Yes.

Q. Also the joint witness statement that you took part in, that conferencing, your evidence-in-chief in reply and also I will want to take you at one stage to Mr Karndacharuk's evidence-in-chief.

WITNESS REFERRED TO DOCUMENTS

Q. So do you have a copy of that?

A. Yes I have those.

Q. If we can start with the joint witness statement, in paragraph 8(e) it records that the experts were unable to agree on the extent to which the simulation, and this is a reference to the marina traffic generation simulation, would that be a right way to – where you put the extra cars through, that simulation. To which the simulation represents what will happen in practice. So that's the starting point for my questions. Now my first point where I try to understand this simulation is that the calculated peak demand was 56 vehicles per hour. That's right, isn't it? So that's in paragraph 7(a)(i) of the joint witness statement, correct? So when you're trying to work out what the effects were, first you worked out what would be the peak demand for the marina?

A. That's right, yes.

Q. And that peak demand was 56 trips per hour?

A. Yes.

- Q. And then paragraph 8(d) refers to peak ferry arrival times. Now how long were the peak ferry arrival times that you used in the simulation?
- A. I just can't exactly recall that period but from memory it was a period of about 10 minutes prior to the ferry arrival through until about 10 minutes following that ferry arrival. It actually also involved the period prior to the ferry departures, so that the ferry arrival and the ferry departure period kind of join up, so all up it would have been in the order of 20 to 30 minutes, it would have been that period for the peak period assessment.
- Q. In paragraph 8(d)(ii) it refers to the off-peak ferry times. Can we assume that that's the rest of the hour if you like?
- A. Yes.
- Q. So that the off-peak and the peak combined equal one hour?
- A. Yes.
- Q. And during the off-peak, paragraph 8(d)(ii) it says, "The simulated rates were trebled to represent operation where access may only be permitted within a 20 minute window of operation." So that suggests to me that the off-peak was 20 minutes, is that right?

1115

- Q. No, no, that's not right. I made the assessment to treble the arrival rates and surveyed those during the off-peak period for the ferry because a condition had been recommended by, and I just can't recall if it was Auckland Council or Auckland Transport, that access to the marina should only be permitted within a 20 minute window. So the off-peak ferry time didn't equate to the 20 minute window. I'm just trying to understand paragraph 8(d)(2) during the off-peak ferry times at Matiatia, the simulated rates were trebled to represent operation where access may only be permitted within a 20 minute window of operation. That suggests to me that the off-peak period where rates were trebled was 20 minutes.
- A. Yes I just can't recall exactly how that was done your honour, whether it was 20 or 30 minutes but there was some alignment of those times.

THE COURT: JUDGE NEWHOOK

- Q. Can you just explain for us, sorry Ms McIndoe, the words I'm having trouble with in here Mr Apeldoorn are the words, "The simulated rates were trebled," to represent operation. What does that involve?
- A. So the survey that was prepared sought to replicate the peak marina arrival rates that would occur coincident with the peak arrival rates, arrival periods for the ferries, that was the first part of the survey. The second part –
- Q. But the simulated rates that got trebled were vehicles related to the marina operation is that it?
- A. Yes that's right and that was trebled because if you only have a 20 minute window within which to allow access to and from, it's three times.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

- Q. So the second part of the study assumed that all of the traffic going to the marina was going to be confined to this 20 minute window?
- A. Yes it was, yes. And so, just for clarity, it was that rate of arrival that was – that I surveyed during what I defined as the off-peak period.
- Q. So how many cars did you put through your simulated survey during the 20 minute window?
- A. Well during a 20 minute window they were arriving and departing one vehicle every 39 seconds.
- Q. So how many vehicles does that equate to? Sorry my maths is not that good.
- A. It's roughly of the order of 100 vehicles I think.
- Q. A hundred coming and going?
- A. Twenty minutes, oh roughly in the order of 30 to 40 vehicles.
- Q. During the 20 minutes?
- A. So one vehicle every 39 seconds, let's just say two vehicles a minute, a little bit less than two vehicles a minimum on average so that equates to over a 20 minute period about 40 vehicles so, it was in the 30 to 35 vehicles would've passed through during that 20 minute period.

- Q. Wouldn't you have put through 54 if that was the, the estimated peak demand?

THE COURT: JUDGE NEWHOOK

Commissioner Howie thinks it's 56.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

- Q. Or 56, sorry. Wouldn't you have put that number through?
- A. No.
- Q. Whatever that number is.
- A. Yes I see what you are describing. The 56 trips that occur in the peak hour, that's vehicles arriving and 28 departing over an hour and that is equivalent to one vehicle arriving or one departing every one minute and 57 seconds so that was the rate applied there three times the rate of arrival of that is one vehicle arriving every 39 seconds and so it was that rate that I applied to that period.
- Q. Are you saying that you only looked at arrival, you didn't look at departure?
- A. No, not at all. Both arrival and departure movements were surveyed at exactly the same rates during those, during the same peak and off-peak times.

1120

- Q. I'm still not sure I follow you. shouldn't it just be the case that you take 56, the estimated number of vehicle trips, and you run that through 20 minutes, isn't it as simple as that?
- A. The maths would suggest it is as simple as that, yes.
- Q. But that's not what you did?
- A. Well I'm just testing my maths. Look, I think the maths all adds up and, you know, that would have been the case, I expect that would have been the case, that 56 would have gone through in that period.
- Q. We look then at the traffic that you put through in the simulation during the peak ferry arrival times. Do you know how many arrivals and departures you put through during those times?

A. Well, I don't know those figures off the cuff, but they went through at that peak rate of arrival.

Q. And departure?

A. And departure, yes.

Q. Now, this simulation, it didn't specifically look at the effects of those additional cars on public transport, did it?

A. There were no specific measurements of the performance of public transport operating times, so in that context no. But what it did survey was the rate of movement and the time, the duration of travel through those periods. So any vehicle travelling through that keyhole area at that time would have been operating in the same environment so would be subject to the same speed change between peak and off-peak periods. And so effectively the measure was a measure of a delay that occurred within that system with which marina traffic, tourism vehicles and public transport would all be similarly subject to.

Q. You didn't look at whether those delays coincided with bus arrival times or departure times, did you?

A. Well, the identification of the peak period times and the off-peak times coincides with the arrival, the principal demand arrival periods for public transport and tourism vehicles, so to that extent those factors were taken into account.

Q. You didn't measure whether the time it took for a bus was extended specifically, did you?

A. No measurements were specifically taken of bus movements.

Q. Now, can I ask you to pull up your evidence-in-chief.

WITNESS REFERRED TO EVIDENCE-IN-CHIEF

Q. Go to table 2, which is on page 16. I'm a bit nervous about taking witnesses to tables now. It's at table 2, 25 January, "Change in travel time seconds between peak and off-peak periods." It's possible that when it hit the screens it might have re-paginated. Now, this table, I want to try and understand it. If we use the word "off-peak" and "peak", those are the same peak and off-peak periods we were talking about

before, weren't we, when we were referring to the joint witness statement?

A. Yes they are. They coincide with the survey peak and survey off-peak periods.

Q. And the heading row of the table has the words "Public" and "Permit". Am I right in thinking that the public area is the first turn-around, if you like, within the ferry terminal area, is that correct?

A. Yes, that's correct, so that is outside the keyhole area.

Q. That's right, and the permit area, that permit refers to the keyhole area?

A. Yes it does.

Q. And here you've shown the off-peak and then the peak, and then you've got a row which is "Change". And that's the difference between the off-peak and the peak, isn't it?

A. That is the difference between the travel time duration it took for a vehicle to pass through those areas, yes.

Q. Between the off-peak and the peak?

A. That's correct, so maybe taking that first column, the off-peak period for travel towards the marina through the public area involved 12 seconds of travel on average, and during the peak time that increased to 13 seconds on average.

Q. But when you compare the off-peak and the peak, aren't you comparing two surveys which are independent of each other in that you put through all of the vehicles through the off-peak and then you put through more vehicles through the peak. So the off-peak and the peak actually equals more totals to more vehicles than we're predicting here, doesn't it?

A. Yes, well, taken over the course of a full hour, a lot more traffic was put through that environment than just the marina. What I was testing was the rates of arrival and the intensity of traffic that would be expected during those coincident peak or off-peak times. So as a consequence and taken over the full course of the survey, a lot more traffic went through than the marina itself would actually generate. Just I suppose to try and clarify that, with the peak demand of 56 or seven vehicles occurring over the course of a full hour, that's the peak demand rate

projected for the marina. By trebling the arrival rate during the off-peak period of the survey you can see that a lot more traffic was passed through. But it is appropriate to consider those peak and off-peak periods separately.

- Q. It's not really surprising, at least to me, that the peak and the off-peak travel times are similar because you've added three times as much traffic to the off-peak, haven't you? The traffic that you've added to the off-peak is three times the amount and that's perhaps one reason why the travel times are similar between off-peak and peak?
- A. Well, the values might indicate that. In practice though, on the ground, the off-peak period, the only traffic practically travelling on those stretches of road were the marina vehicles that I had scheduled for the survey. So in effect the off-peak period was setting a useful baseline of what is the unrestricted travel time through that section of road.
- Q. But this table doesn't show us what the travel times were without the marina-generated traffic, does it, it only shows with the marina-generated traffic?
- A. Yes that's right, and in part the reason for that is that it's not possible to survey no traffic during the off-peak period. We actually need to establish a baseline of some operation. Whether it was a marina-generated vehicle or some other vehicle operating during that off-peak period is somewhat irrelevant. But the relevant point is that during that off-peak period it was a free flow traffic movement condition.

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- Q. But your evidence doesn't help us understand a before and after does it? Because it doesn't tell us what the travel times were before.
- A. No that is correct and that is something that would be extremely difficult to determine. In essence it would necessary to survey the same environments at the same time with and without marina traffic which cannot be done because every subsequent day, subsequent environment presents a different environment in that space.

- Q. So in paragraph 49 where you say that the results show a similarly small change in effect, just to be clear you're talking about the change between peak and off-peak aren't you?
- A. Yes, that's correct.
- Q. You're not talking about the change before and after the marina, if you like. Or with and without.
- A. That's correct.
- Q. Now you've given us the travel time in seconds in this table, are you able to say what speed that might equate to? Sorry, I'm really testing your maths today.
- A. Well yes I am able to say what speed that equates to, because what's relevant is that speed is a measure of distance divided by time. And for each of these segments the distance has always remained the same so the only variable is the time element and so that calculation could be done.
- Q. Without being precise, would you agree with me if I told you it was about 17 or 18 kilometres an hour? Does that sound about right? You don't have to agree if you'd rather do the calculation.
- A. Well I did foresee a question arising out of this Your Honour and I have made some calculations but not on the table 2, on the preceding table 1 and the range of speeds that I identified were between about 15 and 26 kilometres per hour. So that would put figures in the same range as Ms McIndoe has put to me.
- Q. And we are able to say, aren't we, that the speeds are fairly similar, with one exception which I'll come to, fairly similar between the off-peak and the peak. The speeds of the vehicle are pretty similar.
- A. Well they're similar but collectively the speeds do reduce in the peak periods from the speeds that were recorded during the off-peak periods in the same way that the travel time in seconds actually increases during those peak periods compared with the off-peak periods.
- Q. It seems to me there's one anomaly in this table and I'm hoping you might be able to help me understand. I'm back on table 2. In the "pm" period there's the travel towards the marina in the off-peak was

24 seconds and during the peak was 12. Are you able to explain why there would be such a big difference in that one case?

A. Yes, in that particular case what that means is that vehicles moved through the peak period more efficiently than they did during the off-peak period. Bearing in mind that these figures are averages and you can see from the graphs that I have in my Appendix B that there are some significant spikes, there are particular events that were recorded that had additional time attributed to them and there was one of those spikes during that particular period that has actually skewed the mean calculation of travel time over that period.

Q. Now most of the road cases I have done, and people seem to think that faster speeds are better, but in this environment a fast speed is not necessarily to be encouraged is it?

A. No it's not.

Q. And in fact if you were a pedestrian or a cyclist or someone getting on a bus you might prefer slow speeds.

A. Yes.

Q. If you were a bus or a shuttle driver and you were trying to park you might also prefer a slow speed environment, is that right?

A. Well I think you would prefer a slow speed environment, the mere action of that parking and un-parking would result, would generate itself a slower speed environment.

Q. And that's because this keyhole is, area is not a typical road is it? It's got a lot more going on than your average road.

A. Yes and no. I understand in general that it's not a typical piece of road. It is, however, still Ocean View Road and there are many other urban situations where public transport terminals involve bus loading and unloading on both sides of the road with normal traffic passing through.

Q. The witnesses all agreed, didn't they, that in this location public transport should be paramount didn't they?

A. Yes.

- Q. In your view, is it best practice from a traffic engineering perspective, to combine traffic with different purposes, so for example through traffic with a low speed, eye friction, side friction environment, in one location?
- A. Well, combinations of those different vehicle types occur everywhere on our roads. Is it better to try and separate vehicles, larger vehicles from smaller vehicles? Yes there is merit in doing that. It's a matter of degree.
- Q. And that's why we have motorways don't we? With no pedestrians and cyclists on them and primarily focussed for through traffic, that's that theory carried through isn't it?
- A. That's one example.

THE COURT: JUDGE NEWHOOK

I'm not sure that we need to explore the operation of motorways today, Ms McIndoe.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

- Q. If we go back to your traffic simulation surveys, you said earlier that buses would be subject to the same constraints or delays that the general traffic would be, is that right?
- A. Yes.
- Q. But isn't it true that buses would require more room to manoeuvre than normal traffic, than private vehicles?
- A. Yes.
- Q. So they might get affected in a different way by congestion?
- A. Possibly. I think there are overs and unders. In this environment when a bus is manoeuvring from the lane into the kerbside parking situation, during that manoeuvre it's occupying both fully the lane and the kerbside area so any vehicle that's following it, for example, would have to wait until the carriageway area had been made clear.
- Q. I'll move onto a different topic and I've got your rebuttal and I'm going to take you to paragraph 24. There you agree with Mr Karndacharuk that if the parking officer was to stop carrying out their role at keyhole it would quickly become chaotic. You go on to say that there's no proposal to do

that. And on that basis do you not think the Court should take it into account?

- A. Well I think Sir the Court should take into account that there is no proposal to remove the warden from that area. I think its valid to take into consideration the possibility that a warden could be removed from that area at some point in the future at the discretion of Auckland Council or Auckland Transport and the consequence of that is likely to be quite significant not only for marina traffic but more particularly for the public transport and tourism operations in that space.

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- Q. I need to ask you some questions about the conditions. I had anticipated asking Mr Mitchell these questions so bear with me, you took part in the conferencing didn't you?

A. Yes I did.

- Q. And you've been involved in the preparation of conditions?

A. I've been involved in discussion and preparation of conditions. I think Mr Brabant indicated yesterday that he was actually the author of the current set of conditions that the Court has before it.

- Q. I'm going to try and summarize the difference of views between you and Mr Karndacharuk about the conditions. Would you agree that Mr Karndacharuk conditions the marina traffic should be restricted from the beginning with the potential for restrictions in the future whereas your view is that they should not be restricted from the beginning but allow for restrictions for later if they're necessary? Would that be a fair description of the difference in views?

A. Yes.

- Q. Can I take you to condition 5(d), condition 5 is the review condition and I think there's a typo there, 5(d), "On receipt of a report under condition 41, I think can probably all agree that should be 38 because there is no condition 41.

A. That's correct, yes.

- Q. Now that condition allows for a review, "For the purpose of determining whether any restrictions need to be imposed by way of amended or

additional conditions on marina traffic movements including whether any particular management methods or marina parking related signage is required or needs to be installed.” Are you able to assist the Court with what types of management methods or signage might be appropriate if a review was to find that the marina traffic was adversely affecting public transport movements?

- A. Yes, there are quite a wide range of measures that could be undertaken and they range from the management operation of the marina implementing particular changes or controls on the arriving traffic and that may be by way of notice or communication or contractual obligation through to measures that could be introduced in the road environment and in order for those to be effective, something more than a standard non-changing sign would be necessary so the witnesses have discussed a range of options around that and, so options, genuinely options are available that might involve measuring the rates of arrival at the gate at the barrier entry to the marina and at a certain level putting up signage further up the road that prevents the arrival of traffic into that marina space so that will involved a communication between the barrier arm and a variable message sign of some sort further up the road.
- Q. So those options all involve preventing access to the marina by vehicles don't they?
- A. Yes they do and from what I understand from the question, the question that was put to me was related to the situation where marina traffic was resulting in an adverse situation in that keyhole space. The opposite could also apply and its effectively what I've demonstrated by or found by way of the traffic surveys is that that traffic can be accommodated there with some surplus operating capacity in that environment, it is for that reason that I don't recommend a need for those precautionary conditions in advance. It's actually been demonstrated that that traffic can pass through like that environment.
- Q. So you don't consider conditions are required to control access now that's just what you said isn't it?
- A. Yes.

Q. Now if you look at condition 38 because condition 5 links to condition 38.

THE COURT: JUDGE NEWHOOK

Mine says 41 in condition 5 but it should be 38.

MR R BRABANT:

Sorry that's an error Sir, my friend's right it should be 38.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

Q. The review, this doesn't just happen automatically does it? There's a series of preconditions which would need to occur before a review takes place is that right? They contain – I could go through them – they're within condition 38.

A. Yes I'm just pausing, you're referring to the review in condition 38 opposed to the review on condition 5?

Q. Yes I'm referring to the review in condition 38. So it says, "Where the surveyed marina carpark demands in the vehicular access review data period required by condition 40 exceed 30 minutes in total." So that's the first pre-condition, it has to exceed 30 minutes in totally is that right?

THE COURT: JUDGE NEWHOOK

Thirty movements, you said minutes.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

Q. Sorry, 30 movements in total. That's the first pre-condition?

A. Well that pre-condition is related to the next part of that sentence.

Q. Yes, which is that they have to occur within 30 minutes?

A. Yes.

Q. And that 30 minute period is very specifically defined isn't it, starts 10 minutes prior to advertised or normal scheduled public, passenger ferry arrival time. That's the 30 minute period.

A. Yes.

Q. And then the exceeding 30 movements during the 30 minutes, that has to happen on three consecutive periods, what does the word “periods” mean, does that mean hours?

A. No, that’s three consecutive 30 minute periods.

Q. So they don’t have to follow immediately after each other, or they do? They’re consecutive?

A. Yes.

Q. What if the next 30 minute period can’t begin because the ferry isn’t arriving?

A. Yes well I think there would be value in that condition being related to peak ferry arrival times.

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THE COURT: JUDGE NEWHOOK

We just need a clarification, Ms McIndoe, in the second line, 38, and Mr Brabant might help with this too, it reads, “required by condition 40,” that numbering has gone out too, what should that figure 40 –

MS MCINDOE:

I understand it should be 37, but I’m happy for (inaudible 11:50:19).

THE COURT: JUDGE NEWHOOK

Thirty-seven. I wondered about that but I just wanted to clarify that.

MR ALLAN:

Sir, to pick up another cross-reference in here at the same time I see 37(c), I think that reference to 41 should be to 36.

THE COURT: JUDGE NEWHOOK

Is that right, Mr Brabant?

MR ALLAN:

I think.

THE COURT: JUDGE NEWHOOK

It's certainly not 41, 41 is about (inaudible 11:50:40).

MR R BRABANT:

Sorry Sir, I'll just come back to you on that in a second, let me just read through it.

THE COURT: JUDGE NEWHOOK

Yes, all right Mr Allan, we'll park that one so that we can let the questioning go forward concerning condition 38, now that we've tidied the cross-referencing up there.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

Q. I'm trying to understand why this threshold of 30 movements was chosen, was that chosen because it roughly equates to half of a peak hourly traffic movement of 56?

A. Yes, well in the course of conferencing it was my initial suggestion that that constraint be 22 vehicles in a 20 minute period, because in my view that is the more appropriate period that relates to the ferry arrival and departure activities. Mr Shumane had then put forward a suggestion about 30 vehicles in 30 minutes, which is a slightly lesser rate of arrival demand, arrival and departure demand, and so there's been discussion and acceptance of that. Now that rate is an equivalent half hour rate of the 57 peak-hour, peak demand rate for the marina over the course of the full hour. So when you concertina or take shorter smaller slices of the hour, you would expect the rate to be slightly higher in some of those smaller time periods.

Q. So effectively this prerequisite or this trigger for the review to happen requires peak vehicle movements to the marina, doesn't it?

A. Yes it does, it sets a threshold at the assessed peak demand rate for the marina and also the demand rate that was surveyed and assessed.

- Q. And it requires that to happen three times consecutively, and I for myself am not clear whether that's three hours consecutively or three 20 minute periods within an hour, but it's three times isn't it?
- A. Yes it is, and it's being a little complicated I suppose by the introduction of the second ferry service, which consideration of that may not have found its way yet into this condition I would suggest. In my submission the condition really only has relevance and application in the period proceeding a ferry arrival and the departure period, that peak period of activity at the marina. So in the situation where there is only a single ferry operating every hour, my submission this condition would be three consecutive peak periods, so it would miss out the half hour intervals between those peaks.
- Q. And these peak periods have to occur during the vehicular access review data period, which is in the first line of the condition. Now am I right that that is the period discussed in – well we've just had this discussion with His Honour – in condition 37? So that would be between –
- A. Yes that's correct.
- Q. – 24 December and 10 February during particular times, yes?
- A. Yes.
- Q. And if excess of 30 movements happened outside of 24 December to 10 February, that wouldn't need to be assessed, would it?
- A. Well no, it's not needed to be assessed – well it's not required to be assessed by that condition.
- Q. And condition 37 requires this information to be provided to the Council after one year of operation of the marina, and then gives them a discretion for two more years doesn't it, so it's only going to happen once or maybe three times, is that right?
- A. Yes, this condition is written that way. The condition 5(d) is the recourse otherwise from condition 37.
- Q. But condition 5(d) only applies where there is a report received under condition 38, doesn't it?
- A. Perhaps I should have referenced condition 5(c).

- Q. And if we go back to condition 38, it's only if all of those prerequisites are met that you get to do the review, and the purpose of the review is to determine whether and to what extent marina traffic contributed to increased travel times for public transport. There's no requirement to look at safety, is there?
- A. Well, I'm receiving two questions at the moment, just to deal with the first as I sense it, the condition 38 imposes on the marina operation an obligation to effectively continually measure its arrival and departure rates, and where it identifies a breach to then prepare a report and notify that to the Council who will copy it to Auckland Transport.
- Q. But that doesn't require continual measurement, it only requires that to occur during 24 December and 10 February, doesn't it?
- A. During that period, that is correct yes. In the matter of safety, I don't think there is a specific condition relating to assessment of safety. What I would say in relation to that is that in the last five years the work that Mr Mitchell has done, he looked at the road safety records for the previous five year period, there were no reported incidents within the keyhole area. There was I think one reported incident in the round about area outside the keyhole, and that was a minor injury incident. So I think there is some evidence here that while it's a busy traffic environment, it's not necessarily unsafe or perhaps dangerous. Because people react, they reduce their speeds, they become more aware of their environment, that reduces a driver's reaction time in that situation. So I think there's not an evidential requirement or obligation that would suggest that road safety or safety in that environment should be specifically assessed by way of condition.
- Q. So if there is a safety concern that occurs during the lifetime of the marina, condition 5(c) would be the appropriate condition to review the consent, wouldn't it?
- A. Yes it would.
- Q. And if there are delays on public transport which occur before this review takes place, because it only takes place after one year of

operation, the conditions don't provide a means to readdress that do they? To fix that problem.

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- A. Sorry, I just missed the first part of the question, if you could put that to me again.
- Q. If there's a public transport problem which arises during the first year of operation of the marina, the conditions don't provide a means to address that do they?
- A. Well I think condition 5(c) would provide that, that opportunity.

CROSS-EXAMINATION: MR ENRIGHT – NIL

CROSS-EXAMINATION: MR CASEY

- Q. Mr Apeldoorn, while on the subject of conditions, can I just please take you back to condition 38, that even before the Explore timetable and proposal there was a suggestion that extra ferries are put on at the busy times by the Fullers operator, are you aware of that?
- A. Yes.
- Q. Now your paragraph 38, or sorry, the proposed condition 38, at a busy period in the summer peak period that we're talking about, you could easily have two ferries scheduled to arrive within the space of an hour, correct?
- A. Yes.
- Q. And therefore three ferries arriving within the space of an hour and a half.
- A. Yes I imagine that's a possibility, yes.
- Q. So if that happens, and we have, in order to trigger this review, you would have to have 90 movements within the space of a one and a half hour period, correct?
- A. Yes.
- Q. And that is 45 vehicles into the carpark, the marina carpark, and 45 vehicles out or some combination that totals 90.
- A. Yes.

- Q. So it could be 85 in and five out. Or five in and 85 out.
- A. It's more likely to be, well yes it could be of that order, it could be of a range of orders, yes.
- Q. We're told there's only 55 carpark spaces in the marina so if it got to be more than 55 going one way or the other they wouldn't be able to have found a park would they?
- A. No, but there is an expectation that some vehicles will arrive at the marina to make a drop-off type activity, drop off passengers, maybe drop off goods that need to be carted to the boats, that sort of activity and then depart that area.
- Q. We were told about that to a degree by an earlier witness and I'd like to come back to that, perhaps I can deal with that now. We're told that there will be provision in the marina carpark for just what you've described, that as a drop off or a pick up and so we assume that it's someone who will come into the marina, not park, not take up a parking space. Drop off passengers or gear and drive straight out.
- A. Well they may take up a parking space or for a short-term activity if that parking area was full, it's not unreasonable, in my assessment, for that drop-off activity to occur within the aisle space. That doesn't create any blockage of circulation within the marina or any effects back outside the barrier arm so there's two options there.
- Q. I'm going to come back to the other point which is that under 38 you agree that if there is to be a review it would probably mean there would have to have been 90 vehicle movements associated with the marina in the space of a one and a half hour period.
- A. Yes, that's correct.
- Q. Now my learned friend, Ms McIndoe, put to you that these review provisions, by and large, take place within or after the first year of operation of the marina. With provision at least in the case of condition 37 for the Council at its discretion to require two further similar annual reviews within the first three years, correct?
- A. Yes, condition for 37 provides for up to three years of assessment within those first three years. That's correct.

Q. Well it provides for the first year but it permits the Council to request another two years.

A. Yes.

Q. So it doesn't deal, on its face at least, with the possibility that the marina in its first year of operation will not be operating at full capacity does it?

A. No it does not specifically.

Q. You don't know, I take it, what the likelihood is that there will be an immediate take up of all of the berths and it will be operating at full capacity from the get go do you?

A. No I don't.

Q. You may not be in a position to answer these questions Mr Apeldoorn, because I want to ask you some questions about Mr Mitchell's evidence and I take it you're familiar with Mr Mitchell's evidence?

A. Yes.

Q. So if you are in difficulty answering the questions, as you've heard before, you have some time to consider and engage and come back if necessary.

THE COURT: JUDGE NEWHOOK

Just in case it helps us in this unusual situation, I have noted from paragraph 57 of this witness' evidence-in-chief that he peer reviewed assessments and he then goes on to make observations in relation to it so I'm hopeful that he might be in a position to help the Court.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. It would be fair to say Mr Apeldoorn that your role has gone further than a peer review of Mr Mitchell's work hasn't it?

A. Yes it has.

Q. Do you have Mr Mitchell's rebuttal evidence with you?

A. Yes.

WITNESS REFERRED TO REBUTTAL EVIDENCE OF MR MITCHELL

A. Yes, I think that's dated 25 September.

Q. That's the one. If I can ask you please to go to paragraph 9. And he's talking there about access management and in particular Mr Langwell's

evidence and a search that Mr Langwell advanced to proposition that commuter use of the marina space is by berth holders is not controllable or avoidable. And he goes on to refer to Mr Wardale's evidence and he says, "The purchase or rental of a marina berth is subject to contractual obligations which can and will include terms and conditions applying to the use of the carpark." Is that your understanding as well?

A. Yes it is.

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Q. And where's that understanding coming from?

A. Well the understand – my understanding relation to the desire not to have commuter parking within the marina parking area is that that then disenfranchises if you like other marina operators who have also an equal right to access and use that area for parking for those marina activities. So in some sense there is an element there that says, well, it disenfranchises, it's unhelpful I think to the operation of the marina. It would also in my assessment be out of kilter with a consent granted because that parking area would then be used for a purpose not related to the activity for which it had been granted.

Q. No, the question I was asking you about specifically was that its, the purchase or rental will include terms and conditions applying to the use of a carpark and you said that was your understanding, and I asked you where did that understanding come from?

A. Yes, that contractual side of consideration I have been advised by Mr Wardale.

Q. You have been advised by Mr Wardale that that's how it will be managed?

A. Yes.

Q. Do you accept that there's nothing in the conditions of consent that address the terms and conditions applying to the use of the carpark or the contractual arrangements with berth holders?

A. Yes.

Q. And you were here when Mr Mitchell said in his evidence that the issuing of permits to access the marina carpark will be under the control

of the marina management. Were you here when that answer was given?

- A. Well I was here when Mr Mitchell gave that answer yes.
- Q. And he resisted any suggestion that that should – that the Auckland Council or the Auckland Transport should have any role to play in the issuing of those permits?
- A. Yes, my view is that there is some role for Auckland Transport to have in the issuing of those permits. I think it concerned with the rise should Auckland Transport seek to impose some other type of constraint that wasn't aligned with that which consent might've been granted on.
- Q. Well Mr Apeldoorn, we have to assume that the issuing by the marina management of a permit to use the marina must of necessity also include a permit to access that carpark through what we call the keyhole, correct?
- A. Yes.
- Q. And the suggestion is that the issuing by the marina of a permit to use the carpark should be treated by Auckland Transport or Auckland Council as the equivalent of a permit to pass through the keyhole, correct?
- A. Well there are effectively two permit situations here. One is to be able to have access to the marina carpark area as a berth holder; the other is to get into, pass through that keyhole permit area –
- Q. So –
- A. In my mind, it's not unreasonable that those two situations could in fact be dealt with by way of a single permit.
- Q. But do you accept that there needs to be control on marina related vehicles entering the keyhole?
- A. Well I've agreed, accepted that proposition in the joint witness statement and that is on the basis of the arrival demands that have been specified there so in that context, yes.
- Q. So would it be your position that unless and until the situation that is contemplated by condition 38 is triggered there doesn't need to be any control on marina related vehicles entering the keyhole?

A. Well from a capacity and safety perspective, no, there's no need in my view to place any other control by way of condition on that operation. I do accept that Auckland Transport currently controls access to that keyhole area by way of permit and a permit would need to be sought from Auckland Transport for that purpose.

Q. When you mean for that purpose, you mean for marina access purposes?

A. For the purpose of passing through the keyhole area in order to access the marina carpark.

Q. At the moment there's nothing in the conditions that require that is there?

A. The only reference from my memory is advice note 2 at the end of the conditions which says, "The consent holder is advised that prior to any vehicles accessing the marina, it will need to seek from Auckland Transport Traffic Control Committee all the necessary approvals and permits."

Q. The condition 32 if I can just take you to there says that, "The consent holder shall require all marinas to clearly display their parking permits on their vehicles at all times when passing through the ferry terminal area," do you see that?

A. Yes.

Q. Now that's referring to the parking permits that are issued by the marina operator not by Council or Auckland Transport, correct?

A. Yes I believe it is. As I said just previously, whether that incorporates the same permit a mission to pass through the keyhole area is not clearly described in that condition.

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Q. Now, there's been evidence that the purpose of having a barrier arm at the entry to the marina carpark is to ensure that only vehicles with an entry card, that is presumably vehicles whose driver or owner has got a parking permit or a berth, can get into the marina carpark, right?

A. Yes.

- Q. And it's been suggested that by I think it's called a "proximity card", have I got that right, an electronic proximity card?
- A. I was here for that conversation yesterday, sir.
- Q. That a record can be kept of the vehicles entering the carpark?
- A. Yes it can.
- Q. The purpose that's been given for having a barrier arm at the exit lane to the carpark is to prevent cars circumventing the entry barrier and coming in by different routes. In your experience that has been quite commonplace in private carparks around the city?
- A. Well it's good practice to have a barrier on the entry and also the exit to the same facility.
- Q. And in most of those facilities the exit barrier is operated electronically or magnetically, it doesn't need a swipe card to activate the exit barrier arm, does it?
- A. No I don't necessarily agree with that. I mean some carparks do but just about all the public carparks where you have to pay, you are required to put your ticket into the barrier in order to have it raise, certify that you have paid and you can exit.
- Q. Sure but those are public carparks not private. When I say "public carparks" I mean one is that the public would use on a paying basis.
- A. It's more frequent for private carparks to have the barrier automatically activated by way of, the exit barrier automatically activated by way of a car passing through a beam of light.
- Q. So there wouldn't be a requirement for marina operating purposes to have a card-activated exit barrier arm, correct?
- A. There's not a requirement for the marina to have that. I would suggest it would be in their advantage to have that so that they have knowledge of movements coming and going to the carpark. I would think that would be information that they would want to have in order to enable them to properly manage that carpark. Because one thing that the sum of the entries and exit movements gives you is the occupancy of the parking space.

- Q. But in the carpark of 55 spaces, a quick look over the carpark will tell you whether it's fully occupied or whether there's spare spaces, won't it?
- A. Yes.
- Q. I'm sorry, just before I move on, there's nothing in the conditions of consent as currently drafted that require any electronic entry or exit system, correct?
- A. Well, there's nothing specific that says a barrier shall be installed on the entry and exit. However the conditions that refer to the plans do contain plans that show the location of barrier arms, or at least they did when they were referenced in the joint witness statement in the revision D plan that Mr Mitchell produced at that time.
- Q. Well let's go to the condition 29 which states that 55 parking spaces will be provided and it says "as generally detailed on the parking plan listed in condition 6," correct?
- A. That's what that says, yes.
- Q. And we go to condition 6 and the parking plan at that reference is at 6(c), right?
- A. Yes.
- Q. And that's drawing revision D, and that's at figure 20 of the bundle which is the March 2013 bundle. Do you have that?
- A. Yes.
- Q. Now that doesn't show any entry or exit barrier, does it?
- A. Yes it does, you can see on the entry and the exit arrows depicting direction of travel, there are little boxes, square boxes in the central median with arms or line projecting each side from those. Those in fact are the barrier arm positions for the carpark.
- Q. So those are not just limit lines on the tarmac?
- A. No they're not.
- Q. But that doesn't indicate how the barriers are to be operated, does it?
- A. No.
- Q. We are told that some of the car parking will be for short-term use and some for long-term use.
- A. Yes, Mr Mitchell describes that in his assessment.

- Q. But revision D doesn't show any of that, does it?
- A. No, revision D doesn't, but the transportation assessment report prepared by Mr Mitchell does contain a diagram that shows where those spaces and the relative time limit constraints that he intended to have over those spaces, which spaces are controlled by which time limit.
- Q. Are you referring there perhaps to fib 73 in that same bundle?
- A. Well there's a slightly different diagram in Mr Mitchell's transportation assessment, but it looks to reference the similar carparks as they're shown on this diagram.
- Q. This diagram is not of course referred to in the conditions, is it?
- A. I don't know that off hand, I'm willing to accept that if that's the case.
- Q. And it doesn't tell us what is meant by short-term, medium term or long-term, does it?
- A. The diagram doesn't but the definitions for those spaces are described in the transportation assessment prepared by Mr Mitchell.
- Q. I wondered if you could assist by taking us there if you're familiar enough with it, Mr Apeldoorn, to where abouts in that assessment we'll find it?

THE COURT: JUDGE NEWHOOK

It's this Appendix H of the AEE again.

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. Yes, it's Appendix H of the AEE.
- A. So the relevant figure is figure 5-5, proposed parking layout on page 18 of the transportation assessment, or traffic and parking assessment report.
- Q. And that tells us –
- 1230

THE COURT: JUDGE NEWHOOK

Four hours.

WITNESS:

The corresponding table is on page 19, figure, table 5.3.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. So the short-term is four hours. Medium-term is 12 hours and long-term is 48 hours, correct?

A. Yes.

Q. Just, I guess for the sake of completeness, what's shown on figure 5-5 is different to what's shown in figure 7.3 revision (c), do you accept that?

A. Could you explain to me in what way?

Q. Well for example, where figure 5 shows long-term spaces, revision (c) shows medium-term spaces. And where figure 5 shows overhang, revision (c) shows long-term spaces. Do you see that?

A. Yes.

Q. So there's some lack of consistency about what the on site parking provision will be and where, correct?

A. Yes there would appear to be so, yes.

Q. And there's nothing proposed in the conditions that limit the parking periods to whatever might be shown on figure 5 or on revision (c), correct?

A. Yes, that's correct, yes.

Q. So at paragraph 11 of Mr Mitchell's rebuttal where he says, "The precise detail of the management procedures has yet to be defined." Would it be correct to say that any detail of the management procedures has yet to be defined?

A. No, I don't agree with that absolute statement. I mean I think the conditions that have been prepared that are before the Court themselves place some constraint on the operation of the parking facility.

Q. Which Mr Mitchell's evidence says will be addressed by management procedures.

A. Well I think far more detailed management procedures would need to be prepared at some point down the track in order to operate that facility in the way that it intends and in the way that it needs to, that is

management needs to communicate those requirements to persons who will be accessing that space.

Q. And those will be done, presumably, once consent has been granted because there doesn't seem to be any proposal to do them during this hearing or before the decision is taken.

A. Well I'm not part and I wouldn't expect to be part of the preparation of any of those documents sir.

Q. At 14 of Mr Mitchell's rebuttal evidence he talks about effects of marina traffic on the operation of the keyhole being minor and short term. Is that your opinion as well?

A. No my opinion is that they will be less than minor. It's a moot point but the intention is to try and communicate where the level of effects can be expected on the spectrum, the broader spectrum of effects.

Q. Mr Mitchell states that the applicant proposes to have clear intervention thresholds and escalation procedures to assess any regular safety or operational issues created by marina traffic to address, and he says, these concerns, presumably are the concerns raised by Mr Langwell and by the Auckland Transport witnesses, correct? That's what he says.

A. It is what he says, yes.

Q. And are those the intervention thresholds and escalation procedures that are described in the conditions that we've been discussing?

A. Yes.

Q. I don't need to take you through the questions that were asked by my learned friend, Ms McIndoe, about the fact that the intervention thresholds are not clear and that they do not address safety issues but I think you answered those questions by agreeing that they don't address safety issues?

A. Well no, I didn't answer it in that way, I think I answered that there were no specific safety written conditions, and in my view there is no evidence or warrant to require such a condition.

- Q. You know that there is a concern that marina berth holders, that is those with a permit to access the marina carpark, will use that access right or that permit to provide access or providing parking or access to the ferry, that is for commuter purposes rather than for marina purposes, do you understand that is a concern?
- A. Yes.
- Q. And do you understand it's a real concern?
- A. Yes.
- Q. And do you accept that it's a legitimate concern?
- A. Yes.
- Q. Now, you've described to us that the expectation is that some of the permitted, if I can call it that, marina berth holder traffic will go into the marina to drop off or pick up and come straight out again.
- A. Yes.
- Q. And if I was a berth holder living on Waiheke with a vehicle and I wanted to take my boat out for the day, I might get a friend or my spouse to drop me off there and pick me up later.
- A. Yes.
- Q. Or I might be taking out a group of people or letting them take out my boat and dropping them off and then coming back and picking them up later.
- A. Yes indeed.
- Q. Or I might be dropping off some gear for someone to take to my boat or to their boat, so I wouldn't be parking would I?
- A. Not necessarily, no.
- Q. And I wouldn't be going to my boat either in those scenarios, would I?
- A. No.
- Q. And there'd be nothing to show whether the person that I dropped off or was picking up was instead of going onto a boat in the marina was going to catch a ferry or coming back from having caught a ferry, correct?
- A. Correct.

- Q. So there's nothing in anything that we have seen or heard to date that would prevent the marina carpark being used by permit holders for dropping off or picking up ferry passengers?
- A. That's correct.
- Q. And the only thing that would prevent a permit holder from using the carpark to park there while he or she themselves went and caught a ferry is the marina management.
- A. Yes.
- Q. Now, we have from I think it's from Mr Mitchell some projections as to the likely peak parking demand in the marina carpark.
- A. Yes.
- Q. And I think the experts have agreed in the joint witness statement as to those likely peak parking demand figures.
- A. Yes they have.
- Q. As I read Mr Mitchell's evidence, and you may be able to assist or may not, the purpose of his projections if I can call it that, based on other marinas and other information was to demonstrate that the carpark would accommodate the anticipated peak demand for parking without placing demands on the public car parking when the public car parking would be at a premium.
- A. I'm just not quite sure if it was his assessment that way around, ie whether the carpark came before the calculation of parking space. But certainly there has been an assessment of peak parking space demand, and if I recall the expectation is that that may result in an overflow of one vehicle into the public area. So I think from memory his calculation was for 56 parking spaces, of which 55 are provided for on that reclamation area.
- Q. But as I read his evidence, and again you may or may not be able to answer this, his calculations or his assessment of parking demand at the marina was I think you might use the word "conservative", that is he was careful not to underestimate the parking demand so as to show robustly that the number of carparks provided would be sufficient

without imposing too much – well, without affecting significantly the public parking in that location.

A. Yes.

Q. And that's the basis upon which as I read the joint witness statement the experts have also agreed to demonstrate that the marina won't impose any significant adverse effects on the parking demand of the public parking areas in that location.

A. Yes.

1245

Q. Can I suggest to you Mr Apeldoorn, and again you might defer to Mr Mitchell that given the basis of his assessment and given that it is for week day peak demand there will be a lot of occasions when the parking area in the marina will not be at capacity.

A. I'm just not quite sure I understood the question correctly.

Q. Okay, well I'll rephrase that, that given the basis upon which I've suggested to you, and I think you've accepted that the week day peak demand was calculated, that is on a conservative basis so as not to underestimate for the purpose of assessing whether it imposes an effect elsewhere, and given that it is a week day peak demand, that for much of the time the actual occupancy of the marina carpark will be less than the capacity of that carpark.

A. You keep referring to his calculation of the week day peak demand and I'm just not certain that that was the basis on which he calculated the peak parking but it's certainly true that for much of the week day periods that parking area will be largely vacant.

Q. And on those occasions the marina management will be indifferent as to whether the parking is being used for marina purposes or for other purposes. There would be no pressure on the marina management from people wanting a marina related carpark because there would be enough car parking for them, correct?

A. Well, there'll be no parking capacity pressure. Of course use of the carpark by non-marina related vehicles results in I guess wear and tear or consumption of the life of the equipment and the pavements and

other things that are used by those vehicles, so there may be maintenance and replacement obligations that are brought forward by increased use of the marina for those non-marina uses.

Q. You mean increased use of the carpark for non-marina users rather than of the marina.

A. Yes.

Q. And the cost of maintaining the carpark is a cost that will be met by the berth holders?

A. I don't understand what the mechanisms are and how they're reimbursed but if the money is from that source then it's a reasonable expectation that some of that contributes to the maintenance and operations of that facility.

Q. Now, you were asked some questions about the role of the Auckland Transport parking officer and I take it you've been there often enough to observe that parking officer going about his usual tasks?

A. Yes.

Q. My understanding is that even though he's described as a parking officer, what effectively he does is to control vehicles entering the keyhole.

A. Yes.

1250

Q. But his jurisdiction, if I can call it that, is only to manage or control who parks in the parking spaces that are in the keyhole.

A. Yes, I understand that is the case.

Q. So he doesn't have the legal authority to stop vehicles entering the keyhole?

A. No he doesn't. There's a difference in law and the control of moving vehicle violations, it sits within the realm of the police.

Q. I think in one of your surveys and it's referred to in your evidence-in-chief at I think paragraph 49, you observed a situation in January this year where a non-permitted vehicle was prevented from entering the permit area and had to make a three point turn. That's correct?

- A. That's correct, yes.
- Q. And did that result in a 90 second delay for traffic wanting to enter the keyhole, have I got that right?
- A. Well I make the reference there that that event is shown on slides, I think, 14 and 15 in Appendix B of my evidence if I can just turn to those. Yes that would appear to be the case, yes.
- Q. And in your surveys in appendix – did you say Appendix B?
- A. Yes.
- Q. A number of other events on that day that you describe in your appendix where there are delays, some of them on account of the person that you describe as the warden engaging with people seeking to enter the keyhole, and another occasion because of what's occurring in the keyhole or at the entrance to the keyhole.
- A. Yes.
- Q. If the keyhole is now to be opened up to an additional flow of traffic, that is permitted traffic, permitted by the marina operator, then the warden will have to deal with that as well won't he, or she?
- A. Yes.
- Q. And we're told that at the peak times that might be up to 56 vehicles at a peak hour?
- A. That's right, 28 or so or a proportion of those arriving and a proportion of those departing.
- Q. At one end of the day they might all be arriving, at the end of the day they might be all departing, or the majority of them?
- A. That's right, yes.
- Q. Now it's suggested I think in Mr Mitchell's evidence or might be in the conditions of consent that the permitted marina traffic should display their parking permit on their vehicles.
- A. Well if that's a question could you refer me to the conditions?
- Q. It's paragraph – it's condition 32.
- A. Yes.

- Q. So in addition to the magnetic proximity card, the berth holder will have to have a permit of some sort that he can, he or she can display on his car or her car?
- A. Yes.
- Q. And if he or she doesn't have that permit on display they will be turned around or turned away?
- A. Well at the moment that's at the discretion of the warden.
- Q. So the warden will have to engage with a person who's coming into or wanting to get into the keyhole to ascertain whether they are a permit holder?
- A. Well no the warden will be able to see on the approaching vehicle whether they have that permit or not. Where vehicles try to enter that area and they don't have a permit then yes the warden does engage with them. What I observed is that on most occasions he would be able to redirect those vehicles without them stopping and have them circulate around the roundabout area back away from the permit area but on occasion, there were instances where vehicles end up parked up across that speed hump on the entry to the keyhole area and he talks with them and determines the course of action.
- Q. At the moment of course it's easier for the parking officer to administer the permit system because those vehicles that are allowed into the area for the most part are buses; that is passenger transport vehicles such as taxis, scheduled buses and as I understand it, tour buses with seating of more than eight passengers. Have I got that right?
- A. I'm not – I'm just not sure about the threshold of seating of eight passengers. I think I've recollected other vehicles of smaller capacity but otherwise, yes, I accept that.
- Q. And so if it's a private car, the parking officer knows that person can't come in.
- A. Well at the moment there are private cars that are permitted to access and enter that area and they do so to go through particularly to the dinghy locker area to access that ramp and use the parking that is in that area beyond the keyhole area.

- Q. I understand that there are five parks available for that sort of use?
- A. Oh that order, five or seven parks.
- Q. And how often are you able to tell me are private vehicles accessing the keyhole for the purpose of parking there or otherwise for access to the dinghy lockers?
- A. A good proportion of the time that I observed traffic activity on the island, there were vehicles, private vehicles parked in those spaces and there was periods of time where there were no vehicles parked there but from my recollection about half the time there were vehicles parked all those spaces were fully parked.
- Q. That's not quite the question I asked, did you observe in your surveys or at other times vehicles, private vehicles accessing through the keyhole, those carparks or the dinghy locker – the dinghy area?
- A. Yes.
- Q. And how many and over what period?
- A. Well I haven't got the specific numbers, I didn't separately record within my surveys whether a vehicle was a private vehicle or a tourist vehicle or a bus.
- Q. And on those occasions do you recall whether the parking officer engaged with that vehicle to ascertain that it was coming through legitimately?
- A. I can't say that I made specific assessment of whether the warden was engaging with those vehicles as opposed to some other private vehicle.

COURT ADJOURNS: 1.01 PM

COURT RESUMES: 2.19 PM

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. Mr Apeldoorn, as I read condition 38 the purpose of the proposed review or the potential review is to determine whether and to what extent marina traffic has contributed to an increased travel time or an increased travel times for public transport. I take it by that you're really referring to the increase in time to go through the keyhole. Would that be fair?
- A. No, the purpose of the review, the purpose of the condition is firstly to establish whether there's been a breach in the threshold of 30 vehicles in 30 minutes that has been set as this condition and then subsequent to that the condition describes a series of steps to investigate whether marina traffic have contributed to those, well to adverse effects on public transport and within the keyhole.
- Q. But the adverse effect that is referred to is increased travel time for public transport and I'm assuming by that you mean travel time within the keyhole?
- A. Yes.
- Q. And your evidence, and for example at paragraph 46 of your evidence-in-chief, 46 to 49, that you were asked questions about by my learned friend Ms McIndoe, talks about travel time through the keyhole, correct?
- A. Yes it does.
- Q. And as I understand your evidence it is that in terms of travel times through the keyhole there is ample capacity to accommodate the marina traffic.
- A. Yes. And the experts agreed on that in the expert joint witness statement.
- Q. You appreciate, Mr Apeldoorn, that the issue here and the concern is not about travel time through the keyhole, it's about congestion within the keyhole. Do you accept that's the concern?

- A. No, I think the primary concern for the experts was a question about impacts on the scheduled operating times for public transport, and that's quite different to a question of congestion.
- Q. Have you done an analysis yourself of the capacity of the keyhole to accommodate traffic?
- A. Yes.
- Q. And if I understand your reply evidence, you say that the keyhole as capacity to accommodate the marina traffic.
- A. I say, I think I say something significantly more than that. I say that there is of the order of two to three times the capacity of the keyhole to accommodate marina traffic.
- Q. So, the keyhole by your evidence could accommodate a lot more traffic than it currently does?
- A. It could accommodate a lot more traffic passing through it from end to end in the way that the marina traffic does, yes.
- Q. In both directions?
- A. In both directions, yes.
- Q. And it could therefore accommodate a lot more traffic going through it, turning and going back out?
- A. It could, well that turning element would have to occur off site from the keyhole area. If that turning element occurred within the marina carpark for example then the answer's yes.
- Q. But the turning circle in the keyhole is big enough to accommodate most private vehicles?
- A. Yes it is.
- Q. So it could accommodate a lot more private vehicles going in, turning and coming out in the keyhole?
- A. Yes it could.
- Q. By your evidence?
- A. Yes.
- Q. Do you have, can you access Mr Karndacharuk's evidence?
Appendix B.

WITNESS REFERRED TO EVIDENCE OF MR KARNDACHARUK

1425

A. Yes.

Q. And do you accept that that is a diagram showing the current state of the keyhole and of the part of Ocean View Road leading to the keyhole?

A. Well, Appendix B is the Auckland Transport –

Q. Sorry, the last page of Appendix B is what I mean, I'm sorry.

A. Yes, about the third to last page there is a diagram there showing –

Q. That's the one.

A. – controls within the keyhole.

Q. And it shows the road layout as it currently exists?

A. Yes.

Q. Do you know when the road layout was changed to provide a turning area before entering the keyhole from one that did not have a turning area before entering the keyhole?

A. No.

Q. Can we assume that that was done deliberately so as to keep private vehicles out of the keyhole and give them somewhere to turn ahead of the keyhole?

A. Well, I wasn't part of that decision so I don't know what the reason was.

THE COURT: JUDGE NEWHOOK

You were asked to make an assumption, Mr Apeldoorn, I want you to listen to the questions as they come to you.

WITNESS:

That would be one reason why a turning head could be provided in that area.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. And as well as that we heard that there is a parking officer or Auckland Transport person who actively prevents private cars entering the keyhole.

A. Yes.

- Q. Private cars which you say – many of which I should say could enter the keyhole and turn and exit the keyhole without a problem.
- A. Yes.
- Q. So somebody somewhere must have thought that there was a problem, the solution to which was to prevent those cars entering, turning and exiting the keyhole, correct?
- A. Well as I indicated in one of the earlier questions, these things are a matter of degree and I did say that in a question about separating public transport from private transport vehicles that you would achieve a better outcome. So there's no question that by taking the approach that has been taking it does achieve a better outcome for public transport.
- Q. The better outcome is achieved by preventing private vehicles entering and using the keyhole to turn around.
- A. Yes.
- Q. Now Mr Apeldoorn, you don't refer in your reply evidence to the evidence of Ms Gisby, do you?
- A. No.
- Q. I'm taking it that you have got no challenge or no issue with her evidence?
- A. I just can't recall that evidence off-hand.
- Q. Hers is the evidence of daily observations of the congestion at the keyhole and in that vicinity. She describes it as heavily congested and almost gridlocked. You don't remember that evidence?
- A. Well I don't remember it specifically but I accept that.
- Q. And she talks about operators such as her having now to turn up sometimes 20 minutes earlier than they used to, 20 minutes before the ferry arrives to get somewhere to park waiting for passengers from the ferry.
- A. Well, in my mind that is primarily a consequence of the number of permits that have been issued to enable vehicles into that space. So there are more permits issued than spaces available, so there will be some competition I expect in relation to seeking to park in the keyhole.

- Q. Now, I take it you're aware of the voluntary steps taken by bus operators and taxi operators to avoid congestion in the keyhole?
- A. Not specifically, no.
- Q. Are you aware for example that in peak times, usually over the summer, a number of the busses will wait at the top of Ocean View Road rather than come down Ocean View Road and add to the congestion when there is not enough space in the keyhole.
- A. Yes, I'm aware of that action. I haven't engaged specifically in communication with the bus operators as to whether they're communicating amongst themselves to address that. But certainly the survey work that I undertook did identify that at times parking space within the keyhole was fully occupied.
- Q. And at those times the busses through co-operation with one another will wait at the other end of Ocean View Road until there is space available, you're aware of that?
- A. Yes.
- Q. And that they will communicate with one another I understand by radio, telephone or some other method?
- A. Yes.
- Q. And also with taxis, that when the taxi area within the keyhole is fully parked they will co-operate amongst each other and communicate?
- A. I'm not aware of that community, sir.
- Q. Now let's talk about what happens within the keyhole. You accept as I understand that busses and taxis that enter the keyhole are not there to pass through the keyhole, they're there for another purpose?
- A. Yes.
- Q. And the busses arriving ahead of the ferry arrival are to drop off passengers?
- A. Yes.
- Q. And to pick up passengers coming off the ferry?
- A. Yes.
- Q. And then to go on their way.
- A. Yes.

- Q. And likewise taxis arriving would normally be to drop off people catching a ferry?
- A. Yes.
- Q. And we've heard that those people will cross the keyhole rather than go around?
- A. Yes.
- Q. And in fact there's not an adequate footpath to go around, is there?
- A. There's not a footpath that fully circulates around that keyhole, no.
- Q. And if taxis arrived to drop off passengers and the taxi parking area is already full, they will double-park to let their passengers (inaudible 14:33:12)?
- A. I may have observed that on one or two occasions, sir.
- Q. We've got busses and taxis and other tourist operators within the keyhole dropping off their passengers or waiting for passengers from the ferry to arrive?
- A. Yes.
- Q. And we've got pedestrians who may from a taxi or may be from a tour operator crossing the keyhole road as well?
- A. I'm not sure what you mean by crossing the keyhole road.
- Q. Well they're crossing the road that's part of the keyhole.
- A. Well those sorts of vehicles are turning outside the keyhole around the roundabout as well as some of those vehicles entering within the keyhole area and doing the same.
- Q. I'm talking in particular, Mr Apeldoorn, about the taxis and tour vehicles that have come into the keyhole to let their passengers off.
- A. Yes.
- Q. And passengers coming from the ferry for those operators will similarly be crossing the keyhole but in the other direction?
- A. Yes.
- Q. And the provision for storing cycles, commuter cycles at the far end of the keyhole or thereabouts?
- A. Yes.
- Q. So cyclists will be going through as well?

A. Yes.

A. And sometimes we'll have delivery vehicles using the keyhole as access for deliveries?

1435

A. Yes.

Q. So we've got a number of traffic modes using the keyhole at these peak times?

A. Yes, potentially.

Q. And because of the presence of the parking officer there are few, if any, private vehicles using the keyhole at that time?

A. Well there are some, there are a few. If I had to estimate the number that went through the keyhole it would be in the order of three to 10 vehicles per hour perhaps.

Q. Three to 10 private vehicles per hour?

A. Yes.

Q. Is that an estimate that you've been thinking about over lunch?

A. Yes it is.

Q. And those are the vehicles that are going to park in the mooring carpark, correct?

A. Yes.

Q. Of which there are five.

A. Yes.

Q. And what the marina will do, according to the evidence we've heard and the joint witness statement, is add potentially a further 56 vehicles at that peak hour.

A. Yes.

Q. And they'll all be private vehicles?

A. No, some of those vehicles may well be loading, service, courier delivery type vehicles associated with the marina activity.

Q. Some of them may be. Most of them will be private.

A. Yes.

Q. According to the way the numbers have been assessed?

A. Yes.

- Q. Now as well as the congestion within the keyhole we also have an issue with congestion at the turn around point before the keyhole. Do you accept that?
- A. Well I haven't accepted that there is congestion per se within the keyhole, I think some care is needed in the use of that terminology.
- Q. Well you haven't challenged Ms Gisby's evidence and she's been there for, I think, the last 10 years and she talks about it so we'll move on. We're talking now, I'm wanting to ask you questions about the situation at the entrance to the keyhole and the other turnaround area that's shown on the map that I referred you to or the plan that I referred you to. Again, from your observation are you telling us that you don't observe any congestion in that location?
- A. No I think in that turnaround area outside the keyhole there are periods of congestion.
- Q. And those periods are reasonably coincident with the peak periods for ferry arrival and departure?
- A. Yes they are.
- Q. And that congestion is people dropping passengers off or picking passengers up from the ferries?
- A. Yes.
- Q. And when at peak time some of the tour operators are not allowed into the key hole it will be tour operators dropping off customers or waiting for other customers from the ferry?
- A. Yes that does occur.
- Q. And you've already spoken in your own evidence of times when the congestion there is caused or contributed to by private vehicles being denied entry to the keyhole.
- A. Yes.
- Q. And there may be times when the voluntary system between the bus operators is not fully functioning so there may be buses waiting to get into the keyhole?
- A. I never observed that sir but there's always the potential for that.

- Q. And taxis and other tour operators if there's not enough parking in the keyhole maybe having to wait outside.
- A. Yes I think potentially the difference between those that are permitted that can't get in and general public that can is that the permitted ones are a lot more familiar with the operation. The warden stands in the lane on the speed hump so in order to access the keyhole area you would have to pass over him or her. So it's a physical –
- Q. Deterrent.
- A. – deterrent to access that area and so those people that are familiar with that operation will, they'll make the turn before they get to the point where they have to turn and reverse and carry on as the public may do.
- Q. Your answer, Mr Apeldoorn, forces me to ask the question, what do they call those speed humps in England?
- A. Speed humps have a number of different names.
- Q. One of them is a "sleeping policeman" isn't it?
- A. Yes it is.
- Q. In the joint expert witness statement all of the traffic experts are agreed, and this is at 14(a) that they agree that in the keyhole area the provisions for public transport are paramount.
- A. Yes.
- Q. And that's your view too I expect?
- A. Yes it is.
- Q. And when we're talking about public transport we're not just talking about the buses are we?
- A. Yes, we are.
- Q. What about the ferry? Isn't the –
- A. Well the ferry is not in the keyhole.
- Q. No but the traffic using the keyhole is there because of the ferry and the ferry is part of the public transport.
- A. Well condition 14(a) talks about in the keyhole. I do accept that the ferry is part of the public transport.

Q. And you accept that the whole area of the keyhole and in fact that part of Ocean View Road leading to the keyhole is a critical part of the public transport provision for Waiheke Island?

A. Well, I would accept that it's a very important part of the public transport network.

Q. But you don't think it's critical given the location of the ferry and the geographical constraints?

A. Well I don't know what definitions you put around the word "critical" in the way that you've put the question to me.

Q. You accept that at the moment there's no other significant way of getting, of public transport I should say, to and from Waiheke Island than through Matiatia.

A. No. It is possible to take passenger ferry movements to Kennedy Point.

Q. And is that where most passenger ferries go?

A. Most passenger ferries come to Matiatia.

Q. And Matiatia, as we know through the planning documents, has explicit recognition as the gateway to Waiheke Island.

A. Yes.

Q. And what is meant by that is that it is where the public transport ferries enter and leave Waiheke Island.

A. Yes.

Q. And I think you refer in your evidence to some of the objectives and policies or some of the provisions of the relevant planning documents?

A. Yes.

Q. And you're familiar with those?

A. Well I haven't committed them to memory but I'm familiar with them.

Q. In part 10(a) of the District Plan dealing with the Matiatia gateway area and I'll just read it to you so that you'll recall. There is an objective, 10(a) 18.3.1 which reads, "To develop a safe and efficient transport network while maintaining the landscape character of Matiatia." You're familiar with that?

A. Yes.

- Q. And it's policy number 1 supporting that objective says, "By identifying," this is policy 1, "By identifying a specific area for the safe and efficient operation of wharf-associated activities and passenger transport so that these activities have priority over single occupancy vehicles."
- A. Yes so this policy or objective is part of the Matiatia land unit area section of the district plan rules as I understand it.
- Q. Yes.
- A. So it's in that context that that is described, yes.
- Q. And when it says, "Having priority over single occupancy vehicles," we can treat that as having priority over private cars?
- A. Yes.
- Q. And the transport section of the same district plan has as objective 13.3.6, heading, "Objective passengers transport, to recognise and provide for passengers transport to, from and around the islands," you'll be familiar with that?
- A. Yes.
- Q. And policy number 3, "To support that objective by giving priority to public passengers transport where appropriate." Do you recall that?
- A. Yes.
- Q. Can I take it that you agree with me that the area that we're talking about, that is the Matiatia area, is a place where it is appropriate to give priority to public passengers transport?
- A. Yes.
- Q. According to your evidence there is no need to give priority to passengers transport entering or leaving the keyhole because there is enough capacity for marina traffic to enter and leave the keyhole without affecting the public transport, is that right?
- A. No, no. I believe that passengers transport will still have priority. They won't have exclusivity and passengers transport does not have exclusivity of priority if you like at the current point in time. But the extent to which marina traffic will impact on public transport movements is so low that priority will remain for those vehicles.

- Q. Well let's be clear about this, you're suggesting that anybody with a parking permit to use the marina carpark should be allowed access to the keyhole?
- A. Yes.
- Q. Whether there's a bus also waiting or in the keyhole, so there's no priority being given to a bus, they're being given equal priority, correct?
- A. Yes.
- Q. So there's nothing about your proposal that gives priority to passengers transport?
- A. There's nothing about the proposal that gives a greater priority to public transport. It's fair to say that there will be a small deterioration if you like, or small change, incremental change in the operation of public transport in the keyhole.
- Q. And you cover that in your reply evidence where you say that there might be between seven and 8% of the time public transport has the potential to be interrupted.
- A. Yes that's right.

THE COURT: JUDGE NEWHOOK

Paragraph number, Mr Casey?

MR CASEY:

That's paragraph 15 of the rebuttal evidence.

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. And you say that seven to 8% is a less than minor effect?
- A. Yes.
- Q. What would it need to be for it to be a minor effect?
- A. Two elements that contribute to my assessment there, one is the frequency of the interruption, the other is the extent or the magnitude of that, the delay. I think I describe the magnitude of the delay to those delayed has about six seconds, because there will be occasions when vehicles, marina vehicles pass through there and there is no delay. So

in answering the question, if the frequency was of the order of 15 to 20 interruption, maybe 10 to 20% interruption and the magnitude of delay was of the order of six to 12 seconds based on the analyses that I've done, I think that would be a threshold for "minor" in my view.

Q. Let's just work with the delay that you've calculated. What you're telling us is that if there is a marina car, if I can call it that, in the road of a bus, then the bus has to wait for the marina car?

A. Yes.

Q. So there's no priority being given to the bus in that situation, is there?

A. No.

Q. Now, it's not clear from your evidence, and I think you make the point that there's no plan at the moment as to what future development may occur to accommodate increased public transport use of Matiatia in terms of any redevelopment of the keyhole or for that matter relocation of Ocean View Road.

A. There are sketches of some age but there's no current plan or firm plan as I understand it.

Q. It's reasonable and I think it's accepted that the public transport patronage is increasing?

A. Yes.

Q. And is likely to continue to increase?

A. Yes.

Q. And so the situation that some people describe as being congested or gridlocked is likely to get worse?

A. That's an interesting question. People on the island will be familiar with the area of operation, particularly that they're able to have access to outside the keyhole. In terms of increasing congestion in that space, I think there would be, if we look at future growth I think the larger proportion of that growth will just simply avoid that area by virtue of its operation. Some traffic, the smaller proportion, will continue to try to get as close as they can to that area. So to that extent yes, there will be some increased deterioration if you like or increased congestion in the turn-around area outside the keyhole. In my view the greater proportion

of the growth would make more effective utilisation of the public car parking area.

Q. As I understand it, Mr Apeldoorn, and you may be able to correct me, it's suggested that the response to that may be to require drop-off and turn-around in the area that's now part of the public carpark?

A. Yeah there have been suggestions of that nature that I'm aware of.

Q. And that even some of the tour operators will be required to vacate the area that they now use both within and outside the keyhole?

1455

A. Well I think that's one possible outcome. When you're planning for moving people on public transport it makes some sense to try and get the highest volume of vehicles – highest volume of carrying capacity vehicles as close to the receiving point as possible and so one option could be to relocate tourism vehicles out of the keyhole and substitute those for additional buses.

Q. And through all of those changes the marina traffic will be able, according to you at least, to have uncontrolled access to the marina, correct?

A. Well, uncontrolled to the extent that the condition that's been proposed is set at about the level of peak arrival demand that's been calculated for the marina.

Q. And you may not agree with what Mr Mitchell says, but I'd like to ask you a question anyway. You're familiar with his rebuttal evidence at paragraph 43? If I could ask you to go there please. At the top of page 12 of his rebuttal he says, "The marina, and its related traffic would be part of the existing environment when or if AT redevelops the Matiatia transport area." Do you see that?

A. Sorry, paragraph number?

Q. Paragraph 43, top of page 12.

MR R BRABANT ADDRESSES THE COURT – PAGE NUMBERING

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. I'm sorry, have you got that phrase that I read to you?

- A. Yes I have.
- Q. And is that your position as well that the marina and its related traffic will be part of the existing environment when or if AT redevelops the Matiatia transport area?
- A. To the extent that that traffic will be present in that environment, yes.
- Q. So it will have to be taken into account because it will be an established part and as Mr Mitchell says, "Of the existing environment."
- A. Yes.
- Q. So would it be your position that it could not be excluded from any redevelopment of the Matiatia transport area. That is, access to the marina for marina traffic could not be excluded.
- A. Well it could be excluded by way of a different alignment to Ocean View Road for example. It could be excluded if the future development proposal was to separate the marina traffic from the public transport operating area.
- Q. So what are you saying, there'd be a different way of accessing the marina?
- A. Well there are a number of different proposals that have been afoot including relocation of the public transport area further up Ocean View Road to the new commercial development area.
- Q. Do you see a situation where the marina carpark could be used for public transport?
- A. Yes.
- Q. To the exclusion of marina traffic?
- A. Well that is one possible outcome, yes.
- Q. So you would anticipate that's a possible outcome of a redevelopment at Matiatia?
- A. It's a possible outcome that public transport could be relocated to the public parking area to the exclusion of other vehicles.
- Q. And if I ask you to look at Mr Mitchell's paragraph 108 of his evidence-in-chief. Do you have that there?
- A. Yes.
- Q. Just read through it to yourself.

- A. Yes.
- Q. In the last part of his paragraph there he says, "A reclamation in particular offers additional land area that could in fact create other options not previously considered." Is he there referring, and don't answer this question if you don't know, is he there referring to the possibility that this reclamation could become part of the public transport solution at Matiatia?
- A. Yes he is and the reason, as I understand for that, relates to how the land moves into ownership once it's created. It becomes, as I understand it, land owned by Auckland Council.
- Q. We were told by counsel for the applicant that it's actually land owned by the Crown for which the developer is entitled to seek a lease or licence or what we call a lesser interest. But so is any network utility operator entitled to seek a lease or licence or lesser interest. So Auckland Transport as a network utility operator could be in that category.
- A. Yes.
- Q. Have either you or Mr Mitchell done any analysis of the use of the proposed reclamation for public transport purposes rather than for private parking associated with the marina?
- A. Only to the extent that public transport could be accommodated and could move within the space and turn and circulate within that space that is created by the reclamation.
- Q. Would you agree that the use of the reclamation for public transport would be consistent with the policies that I referred you to about giving priority to public transport where appropriate?
- A. Well I think it comes down to the way in which that area is ultimately designed. There is the possibility that a design could be developed in a way that did achieve that outcome. The land that is closest within the public carpark area is similarly separate, as the reclamation is, from the ferry terminal. So there are competing alternatives that would, I think would need to be considered to determine whether better priority was achieved via one or other options.

1505

Q. But you will agree that the use for private parking for the marina is not giving priority to public transport in that location?

A. Yes.

Q. Now Mr Apeldoorn, if I can come back to your evidence and I'm sorry to bounce backwards and forwards like this, in your evidence-in-chief at paragraph 86 – on page 26 Sir, I'm not sure whether it's 25 or 27 in your version – you have that?

WITNESS REFERRED TO DOCUMENT

A. Yes.

Q. You say at the end of that clause or that paragraph, "The marina effects will be for the most part self-contained and will result in a net public parking gain." And you say that that's what you've described and concluded, and I wasn't quite sure how you had described and concluded a net public parking gain.

A. Yes. sir, that arises as a result of the removal of the swing moorings from the area that will be covered by the marina. Parking for those swing moorings I have calculated is involving or requiring a demand for five spaces, and those spaces if they are taken up in the public parking area, will no longer be required because they will be replaced by the marina and the parking demand that it provides for itself.

Q. Mr Apeldoorn, there are currently five parking places or spaces provided for the moorings, you know that?

A. I'm not aware that they are exclusively available for mooring users.

Q. But isn't it necessary to have a permit to use those car parking spaces? I thought we'd discussed that before.

A. I'm just not 100% certain whether a permit is actually necessary to use those spaces. I'm aware that some residents use those spaces to park there and then walk around the bay for example. Whether they have a permit or not I'm not sure.

Q. Mr Mitchell in his table which you'll find at figure 24 in the March 2013 volume, do you have that?

WITNESS REFERRED TO DOCUMENT

Q. You'll see that it refers to area H, and then in the legend it refers to area H as having five parks for mooring holders only.

A. Yes.

Q. You're aware of that?

A. I'm aware of that now.

Q. And are you also aware that the proposal is to retain four parks for existing mooring holders more or less where those five are now situated?

A. Yes.

Q. So I put it to you that it will not result in a net public parking gain.

A. In that situation no.

Q. Unless of course what you really meant was that the ability for marina berth holders to park in the marina carpark for non marina-related purposes would result in a net public parking gain, which of course it would, wouldn't it?

A. I just missed that question, sorry.

Q. Well, if marina berth holders were to use the marina carpark for non marina-purposes and therefore not park in the public carpark for those purposes, such as for commuter purposes, that would result in a net parking gain, wouldn't it?

A. Yes.

Q. Is that what you really meant in your paragraph 86?

A. Well, in effect moorings were substantially removed from that area, I accept that some remain, so the corresponding parking demand in this area on this side of the wharf that relates to, that is most conveniently located in relation to those moorings won't have the same demand on it as it has at present.

1510

Q. But I'm here talking about a possibility that was raised which you've only covered in rebuttal, not in your evidence-in-chief, that the car parking at the marina would in fact be used for commuter parking by marina berth holders. I'm suggesting that results in a net gain and that's what you were referring to in your evidence.

- A. No.
- Q. I just want to refer, Mr Apeldoorn, if I may to your supplementary evidence which has only recently been prepared in response to information about a new ferry service which I think we understand is to be run by a company called Explore. Now, we don't know much information about this ferry service and I think you'd have to agree that whatever anyone says about it now is pretty much speculation based on only half the information that we would like to have. Would that be a fair comment?
- A. I'm not aware of the authorised status of that ferry service sir.
- Q. Well I think we've now been told that the authorisation to operate or to land and things at the wharf has been granted. The Matiatia wharf I'm talking about. I think that information has come through.
- A. I accept that.
- Q. And we know, well we have a published timetable which I think you've done a comparative schedule for?
- A. Yes I have.
- Q. And it's your view that it won't result in any increase in passenger numbers because you say there's no suppressed demand.
- A. I'm not sure I say it in those absolute terms but that is the, I guess the implication of what I say.
- Q. And I think it's, I'm not sure whether it's Mr Shumane or one of the other witnesses who disputes on that and says that there actually is suppressed demand and therefore there will be a picking up of additional passenger numbers as a result of the new service.
- A. Well, a suppressed demand trip is a trip that is not made currently but would be made with the introduction of some other service that, or reorganisation of the current service, that removed the obstacle to that person for not – their reason for not making that trip. That is what a suppressed demand trip is. So maybe I'll just expand on that. In the peak times in the current situation we've heard that the ferries may put on additional services to take those that are left behind on the wharf that exceed the first ferry capacity. Those people that carry over from that

service, they're not part of the suppressed demand, they're already a demand in the system. So there's some subtle differences between the different types of trips that would and could occur.

Q. Well you're speculating there Mr Apeldoorn and it may be speculation for me to suggest to you as well that the provision of an intermediate timetable, that is the timing of the ferries between the existing ferries would give considerably more flexibility to the travel choices that people might make if they wished to travel between Waiheke and Auckland.

A. Yes it does.

Q. And we don't know but there may be some people who, because of the lengthy wait, that is an hour long wait from one ferry to the next and whether it's child care arrangements on the island or work obligations in the city, would take advantage of the increased number of sailings at different times.

A. Well, the suppressed demands are to a large extent discretionary trips ie; the traveller doesn't have to be at the end destination, for example they don't have an obligation to be at work by a particular given time otherwise they would be forced to take some other ferry service.

Q. Well they may have chosen not to take a job because the times of the ferry sailings don't suit and with more ferry sailings they take up a job because they've got more flexibility.

A. That is one possibility, yes.

Q. Are you aware of the ticketing arrangements for the current ferry operator, Fullers?

A. No, not particularly.

Q. My understanding and if you're not sure about it you can tell us, that Fullers offer a monthly pass which is unlimited as to the number of trips.

A. I'm not really familiar with these arrangements sir.

Q. If that were so and I'm hoping you'll accept that it is and it's not a hypothetical question because that would be a common ferry transport arrangement around Auckland, then a Fullers customer with a monthly pass would not be inclined to take an Explore Ferry and have to pay, correct?

- A. And have to pay additional for that trip.
- Q. Yes.
- A. I accept that, yes.
- Q. And at the moment we don't have any bus service timed to coincide with the arrival or departure of an Explore Ferry because the bus services, the public bus services I should say, are run by Fullers as I understand it.
- A. Yes, well the bus services are run by Waiheke Buses Limited or something that is owned by Fullers as I understand it, yes.
- Q. And the law of the jungle says that Fullers won't willingly provide a bus service to assist its competitor, would you agree with that?
- A. Yes.
- Q. So for Explore to make any inroads into the Fullers passenger numbers it would have to rely at the moment at least on casual customers not regular commuters that would have a monthly pass.
- A. Yes.
- Q. And would have to more or less rely on people who use private transport or taxis to get to and from their ferries.
- A. Or walking or cycling.
- Q. So we just don't know what the impact of that will be do we?
- A. Well, we know with a high degree of confidence that the bulk of new passengers on the new ferry service are likely to arise as a consequence of redistribution from the current ferry service. So what does that do in terms of traffic? It means there's more traffic at the half hour periods when the new service arrives but not as much as the peaks that currently exists and it removes traffic from the current peaks that are being experienced there.
- Q. But it only removes that traffic if it's actually resulting in a displacement of Fullers passengers to Explore.
- A. Yes, yes, that's right. The worst case, there are two worst case scenarios that I describe and one is no passengers shift, if you like, to the new service. The other is, all passengers shift to the new service.

- Q. And anything in between.
- A. Well, anything in between has a reducing effect on the peak demands that we currently see.
- Q. I suggest to you that it's unlikely to have a significant effect in reducing the number of busses at the Fullers ferries because they have to service particular routes.
- A. Yes, I describe that the correlation between passengers and busses, it's not a direct correlation because busses have a capacity to be taken up and used, so it may be that the same number of busses need to run, although for the new service they may if they eventuate would run more on the half hour, so they would half hour off-set.
- Q. And opportunist transport providers like taxis and tourist operators would probably wish to be there for both lots of ferries arriving and may need to be there for both lots of ferries departing? Would that be fair?
- A. Yes.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

- Q. I've only got two questions, Mr Apeldoorn, one is just a test –

THE COURT: JUDGE NEWHOOK

Oh, did a hand go up? I didn't see anybody. Would you come near a microphone please? You are Mr King-Turner I understand?

MR KING-TURNER:

That's correct.

THE COURT: JUDGE NEWHOOK

And you wish to question Mr Apeldoorn?

MR KING-TURNER:

Yes.

THE COURT: JUDGE NEWHOOK

Did you attend the pre-hearing conference that I conducted in the (inaudible 15:22:19) last week, Mr King-Turner?

MR KING-TURNER:

No I didn't, no, I didn't get notice of it.

THE COURT: JUDGE NEWHOOK

Well that's a shame. I offered some thoughts to people who attend and asked for messages to be passed around the grapevine because obviously not everybody was able to attend, but perhaps you haven't heard, I am allowing self-represented people, of whom I understand you are one, to cross-examine witnesses, and I know that in your statement of evidence you deal with matters of the subject of this witness' evidence. I did give a bit of free advice to those who came to the conference last week. Just think carefully before launching into asking questions of technical witnesses, and this advice is meant with the best intentions, try to be constructive, that we have seen situations emerge in these cases where very good cross-examination is undertaken of technical witnesses and then subsequently a lay witness asks questions and can undo the good work done. So just maybe bear that in mind. Also I did issue a direction that I don't want lay witnesses questioning the technical witnesses that repeats material already asked by experienced counsel. So the first is a piece of free advice, the second is more directorial, and I invite you to work with the first and am telling you to work with the second, all right?

MR KING-TURNER:

Thank you.

THE COURT: JUDGE NEWHOOK

How long do you think you'll be questioning this witness?

MR KING-TURNER:

About five minutes maximum.

THE COURT: JUDGE NEWHOOK

Okay well off you go.

CROSS-EXAMINATION: MR KING-TURNER

- Q. Mr Apeldoorn, in paragraph 74 of your original evidence you state, "My evaluative assessment leads me to conclude that the current levels of service within the permit parking area in relation to the public transport operations are maintained and assured. Based on the survey findings there are no adverse transport effects as a result." I guess I'm concerned that there is no attempt, or certainly not within your evidence to say that you talked with any of the people that spend most of their working days down there, and I'm just wanting to know why you didn't do a survey of the public transport and tourism shuttle drivers and the bus drivers to accurately assess the reality of the degree of congestion that is already within both cul-de-sacs adjacent to the ferry terminal. So yeah, could you tell me why you didn't actually create a survey of all the people that work down there and try and get a bit much better handle on what's happening down there?
- A. My objective in undertaking the survey that I did was to try and introduce some factual and measurable evidence around the operation in that area. And it's not normal for me in the course of my work to widely engage views of others unless there's a particular outcome to be had from that. So no, I haven't undertaken a survey of those users and their views about congestion and operations within that area. I don't feel there is the need to do that to quantify that.
- Q. Could I suggest to you, Mr Apeldoorn, that there is a need to do that. those people work down there five days a week throughout the year, and if you spoke to them you would find that the reality is quite different to your survey. Would you accept that?

- A. No I would not, I would not accept that. What I have done with the surveys are identify the most adverse or most highly congested period of activity for the whole year and applied the absolute peak on the one day of the year that the marina is expected to generate through that same, and try to assess the effect of the coincidence of those two events occurring.
- Q. What day was that?
- A. That was the 2nd of January. I undertook a further survey on the 25th of January in the possibility that that could represent the highest day. But in fact 2nd of January was in order of about 15 to 20% from memory higher than the 25th of January day. That was also higher than the corresponding Auckland Anniversary weekend day on the preceding year, which is the period when the sculpture show was on at Waiheke Island.
- Q. Is there any reason why you didn't use a more statistically valid method, for example overhead cameras throughout several months to actually get an accurate picture of what's happening down there?
- A. Well, I'm not sure that using overhead cameras would have produced a more statistically valid outcome. It would certainly be a lot more expensive and I was engaged on this project only in November I think, or it might have been December 2013. So time did not permit at that time to undertake extended video surveys.
- Q. So you're saying it's money that stopped the possibility of this sort of activity or?
- A. Money may well have been one issue, I didn't canvas that with the client. The focus of the survey more so was to establish some factual evidence, and I believe that that has reasonably and representatively been done.
- Q. I think the best factual evidence you could've got was from the people there. Some of them are right here and write really good evidence. I'm really surprised that –

THE COURT: JUDGE NEWHOOK

No, no Mr King-Turner, this is question time, not speech time.

CROSS-EXAMINATION CONTINUES: MR KING-TURNER

Q. Yes, fair enough. Both yourself and Mr Mitchell base evidence on your surveys from other marinas around the country. One big thing that was missing from those marinas was a very busy public ferry service. That sort of raises a few questions. How can you validate the information you got from those surveys in Whitianga and I forgotten where the other one was, and try and tie them in to what we've got at Matiatia?

A. Well the presence or otherwise of a public ferry service doesn't materially impact on the forecasts that I would be making for marina traffic generated activity. I will leave it there.

Q. Sorry can you say that again, my hearings not great so I didn't get that.

A. Just the last piece?

Q. The whole thing you said.

A. The whole thing? The presence of a public transport ferry service is not something that would materially impact on the traffic generation forecasting that I would make for a marina activity.

Q. So doesn't that make Matiatia a bit different?

A. Well it makes Matiatia different in that the environment that we undertook the survey on did include the ferry activities and other related bus and public transport and tourism activities so the specific operating environment at Matiatia has been captured.

Q. One other thing, just one other thing, why did you not take into account the future of Matiatia including the, you know, the growth into the future in terms of more boats, more ferry's, more people? Why is there no mention of potential future growth and the impacts that will have on congestion down there?

A. Well I think there has been some mention of it; I think Mr Mitchell has primarily dealt with that assessment. There is an acknowledgment amongst the experts that growth is expected to continue on the island and the surveys that I'd undertaken did at times capture periods where

the public transport operating area was already at 100% of its capacity so there wouldn't be any more utilisation within for example the keyhole area that would result from additional growth. The vehicles that would be needed to cater for that would have to be located elsewhere.

COURT ADJOURNS: 3.34 PM

COURT RESUMES: 3.52 PM

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

Q. Hello Mr Apeldoorn.

A. Good afternoon.

Q. Just one question in fact, that was to do with the public road reserve. Is there a map or a plan or anything that shows it – like we know where the physical road goes because we went and had a look and you've got pictures of it but where are the legal boundaries of this road?

A. I believe there's a map attached to Mr Dunn's evidence that does show that.

Q. Okay.

A. The legal road boundary extends to about seven or eight metres from the barrier arms that are shown on the plans.

Q. That's of the keyhole going west?

A. Yes.

Q. What about the Ocean Beach Road approaching the roundabout and the keyhole that – you know there's a lot of bush and land and stuff around there that are not yet part of the physical road but is it a road reserve?

A. If someone could show me a map I might be able to assist you a bit more.

THE COURT: JUDGE NEWHOOK

It may be that another witness is better placed to help us.

MR R BRABANT:

Yes I think Sir Mr Dunn, I mean I can find them but Mr Dunn will be able to, I think, to do that. Alternatively if you want to make some practical progress I can just agree with Mr Dunn as to which figure to refer to.

THE COURT: JUDGE NEWHOOK

How about doing that while others of us ask questions to Mr Apeldoorn just in case Commissioner Howie has subsidiary questions he wishes to ask once he's seen that plan.

MR R BRABANT:

Seven Sir, seven in the main booklet.

THE COURT: JUDGE NEWHOOK

2013 booklet figure 7?

MR R BRABANT:

2013 one. Seven and then 72. One shows the very end and the other's got a wider view. I suggest six as well.

MR ALLAN:

Sir, figure 32 seems to show an area of Ocean View Road described as a legal road. I'm not sure whether that might also assist by comparison with other plans. It doesn't overlay it unfortunately with an aerial or anything, any other information but it shows the title boundary of the legal road as it were –

THE COURT: JUDGE NEWHOOK

We'll just commence from the figure 6, 7 and 72 I think is more helpful because we can see the geography as well as the (inaudible 15:56:04) information.

MR R BRABANT:

Mr Dunn is telling me that 6 is the best one in his opinion.

THE COURT: JUDGE NEWHOOK

Well Commissioner you might want to work with any of those three.

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER HOWIE

Q. Just looking at figure 72, have you got it there 72?

- A. Yes.
- Q. The – I presume that light white line running just below the figure 7 diagonally across the page would be the legal boundary of Ocean View Road is it?
- A. Yes.
- Q. Is that rising ground from the road up to that white line?
- A. Well certainly adjacent to the keyhole it's, yes, it's pretty steep up through there.
- Q. Yes.
- A. It also does rise adjacent to the turnaround area as well. It's all elevated to the right of the road reserve through there.
- Q. Yes okay thank you for that.

CROSS-EXAMINATION: JUDGE NEWHOOK

Yes for myself I think figure 6 gives us the topographical take on what Mr Apeldoorn has been describing from the aerial photograph in figure 72.

QUESTIONS FROM THE COURT CONTINUES: COMMISSIONER HOWIE

- Q. I take it then from that that a major upgrade of that road to cope with activity would be limited by that topography to some extent around the keyhole?
- A. Certainly within that space you're very limited yes.
- Q. And around the roundabout?
- A. There's a little bit of space there but similarly limited really.
- Q. Yes, but I'll then broaden out when you get to the corner of the road there.
- A. Yes, from there further east along Ocean View Road there would be more opportunity, certainly there's a lot more opportunity to the south including through the public carpark area for example.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. Just various questions, just the first one in relation to the control of the parking associated with the marina and the hours ascribed to the

different car parking spaces. I noted that the long-term was regarded as 48 hours.

A. Can we just check that. I've just got a figure of 72 in my mind.

MR R BRABANT:

Seventy three.

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER LEIJNEN

Q. Seventy three?

A. 72.

Q. Is the diagram I think you're talking about. Figures 73 but it's in Mr Mitchell's evidence.

A. Oh figure 73.

Q. I think the correct number were in Mr Mitchell's evidence, you were referred to that diagram.

A. Figure 5.5 I think.

Q. 5.5. yes.

A. Figure 73 doesn't have the hours.

Q. No, 5.5, I wrote down "medium was 12 hours".

A. Yes, no, that is correct, yes.

THE COURT: JUDGE NEWHOOK

Short-term was four hours, medium was 12 and long-term was 48 hours.

WITNESS:

Was 48 hours, yes.

MR J BRABANT:

That's correct Sir, it's actually, apologies, it was table 53 in the assessment of T2, Appendix H to the AEE was that...

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER LEIJNEN

Q. The nature of some of these boats are fairly large, the capability of the berths. In terms of a long-term park of 48 hours, I would imagine that

the boats might go out for a little longer than that. The sort of things that you go away on for a week or... What would, how do you feel about that as a long-term carpark and if so where would those cars go? What would be the demand?

A. Yes, this is work that has occurred prior to my involvement and this is Mr – the work that has come about as a result of Mr Mitchell's assessment. My own personal view would be that there would be merit in retaining some parking of a longer duration on that site. The objection there being to minimise the potential for off site effects as a result of longer term parking.

Q. Now the other thing, looking at the map and our short visit the other day, is that there's a boat ramp at the end of the keyhole. Are you familiar with how that's used?

A. Well I've had the use of that described to me by others, yes.

Q. And have you taken the use of that into account in your assessment?

A. Yes.

Q. So the sort of thing that I'm wondering about is the space that's allocated to the use of the ramp, for instance I'm familiar with launching boats and retrieving boats, you generally have one, you quite often will have somebody waiting with a trailer while somebody's putting a boat in or retrieving it, so there's a requirement for waiting space. There's a requirement for a place to, once you've pulled your boat out to pull over to tie the boat on to the trailer and that sort of thing. And then there's a requirement for car and trailer parking somewhere as well. How is that requirement built into the design concept here?

A. Well the principal boat ramp that is used by the public is, of course, off the roundabout area the other side of the marina terminal.

Q. How do you know that?

A. It's the other side of the ferry terminal to the east –

Q. I know where it is, but how do you know that's the principal one, what makes that the principal one?

A. Well I've observed that use myself. It also, if you look carefully at how those two ramps are constructed, that ramp by the terminal, at the entry

to the marina carpark area is very steep and quite relatively narrow. I understand it's primary use relates to dinghy launching, kayaks and things come in there from time to time. I also understand that on occasion there may be boats that are pulled out of there but relatively rare occasions. So how does that work in relation to the operation of access to the marina? Well there will be marked edge lines that define the thoroughfare area from the edge of the keyhole area through into the marina carpark barriers and areas outside of that will continue to be available as they are now. Now some extra space is being created in this area by the marina proposal and that is as a result of relocation of the dinghy lockers themselves.

- Q. And there's an additional carpark, I think, going in on the, there seems to be a little bit of –
- A. Yes.
- Q. Where there's the "5" there's an additional carpark going in there, is that correct as well?
- A. Well I'm looking at figure 73 and there's six spaces shown there.
- Q. I think it's shown in the additional (inaudible 16:05:05) So you don't see any potential for conflict relating to that activity inserted into the general bundle of activities that would be going on in that area?
- A. Well, the potential for conflict is very low in my opinion and the consequence of a conflict in my view is that there is ample space for vehicles to manoeuvre around a vehicle with a boat trailer on it if it were parked in that area partially blocking the access to the marina carpark.
- Q. So that manoeuvring space would be up into those carparks, would it? Because there seems to be a bike parking area on the left as you enter, just before you get to the ramp – I'm looking at figure 73? And then there's parking spaces on the right.
- A. Well that constraint, the dimension between those carparks and the boat ramp is fixed, it's the same as is existing now.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Mr Apeldoorn, you told us in your evidence-in-chief that you have some familiarity with marinas and in particular of course the parking traffic arrangements, and you've attached as Appendix A a list of the projects that you've been involved with around marinas, so you've got a reasonable working knowledge it would seem about those aspects of marina activity in the North Island at least.

A. Yes.

Q. Working from that knowledge, is it the case that, with some exceptions like Half Moon Bay, many marinas are essentially stand-alone in terms of their parking requirements, that is there aren't other activities nearby where there is provision of other parking. I mention Half Moon Bay because there's a small shopping centre there adjacent to the marina. Bayswater might be another with some limited retail at the moment.

A. Yes, there is quite a mix. Some of them, a lot of the marinas have other marine-related business that operate within them. A number of other marinas operate yacht clubs and the activities that go with that, which are quite different.

Q. The Bucklands Beach Yacht Club marina of course is different again.

A. Yes.

Q. The yacht club (inaudible 16:08:07) a little bit physically separated from the Half Moon Bay arrangements too.

A. Yes and they, often I think the marina areas seek to barrier off or cordon off or protect in some way or define in some way separately the parking that's allocated for those other uses compared to the parking for marinas.

Q. Nevertheless acknowledging that there are those examples, would I be right in my thinking that Matiatia is at one end of the spectrum in terms of it being the proposal for a marina here adjoining very significant public parking for existing activities like the public ferry terminal?

A. Yes.

Q. It's really at one end of the spectrum, isn't it?

A. Yes.

Q. Now looking at your evidence-in-chief, in paragraph 57 as I observed before in the last sentence you say you peer reviewed assessments by Mr Mitchells and make some observations, and this is under the heading "Parking supply including public parking supply." Have you got that there? Your paragraph 57.

A. Paragraph 57 starts, "Practical."

Q. No, this is your evidence-in-chief I'm looking at.

A. Oh sorry.

Q. It's on page 19.

1610

A. I got there Sir, yes.

Q. We've got a lot of material haven't we? Page 19, there's a heading "Parking supply including public parking supply" and this is your evidence-in-chief, at the end of that paragraph you say you've peer reviewed Mr Mitchell's assessments and you make some observations.

A. Yes.

Q. So you obviously made yourself sufficiently familiar with his researchers and surveys and the like and felt able to make some comments. But I noted that in paragraph 65 on the next page, the bottom of that page you say, "Mr Mitchell has further attempted to quantify the maximum extent of peak parking demand that might occur on one occasion per year. He quantifies this as involving 11 spaces in excess of the 55 proposed to be provided. He also identifies this as being readily accommodated within the surplus (55 to 60) public parking supply, on the busiest day recorded, at figure 5-4 holiday parking availability, in the Transportation Assessment". I think that takes us back to Appendix H again of AEE. "And to this extent, the parking effects generated by the marina activity are expected to be readily accommodated within the Matiatia parking environment at all times of the year, with a surplus of 40 to 45 public parking spaces, ensuring continued efficient Waiheke Island gateway accessibility." Now, do you remain comfortable with your assessment that there is some come and go available in the supply

of public parking spaces in Matiatia into which any surplus from the marina parking area up to 55 spaces might be accommodated?

A. Up to 55 spaces?

Q. Yes.

A. Accommodated within the public parking area?

Q. Yes, I ask that because you said 55 to 60 (inaudible 16:12:23) at the top of page 21.

A. Oh that's the –

Q. That's where I plucked that figure.

A. That's the available parking surplus within the public parking area.

Q. Yes.

A. So yes I'm comfortable with that. Mr Mitchell accompanied me on the traffic surveys of the 2nd and 25th of January and during those periods we made periodic observations and counts of the public parking availability. In fact it seems, I think, there is greater public parking availability over those public holiday periods than there is during the week and I think –

Q. On a working week day?

A. On a working week day yes. And it's on those values, those 55 to 60, is the surplus, the minimum surplus, if you like, during those week days.

Q. And I think without driving into the detailed figures my impression from his evidence and yours is that it's the weekends that are more likely to drive numbers of marina parkers than in the week day so there's a happy coincidence of high and low –

A. That's my interpretation, yes Sir.

Q. Now, leaving the general and looking more at some specifics, I asked Mr Wardale about some particular needs for parking and specifically carparks for loading and unloading vessels where people might be carrying heavy equipment, tools, small outboard motors, whatever, and I'll expand a little on the question for you in circumstances for instance where they might be the only person in the car, the driver the only person in the car and needing to stop the car in the marina carpark and then do several barrow loads of equipment down to the boat. So their

car would need to remain there for more than a few moments. And I think Mr Wardale understood my question although I wasn't quite that detailed, he thought that two to three car parking spaces might be sufficient to service this marina with loading spaces, if there was ever a need to dedicate loading spaces?

A. Well I think –

Q. Would you have a view of that from your knowledge of marina parking?

A. If there's a demand for that which you know I think there is, I think that's – it would be in that order two to three, possibly up to five.

Q. Right.

A. I would tend to support a slightly different approach from defining specific parking areas or at least accounting for all of the carparks within the marina parking area with defined hours. I think, what you tend to find is under utilisation when you do that because of the constraints that apply to those and so if you do have a range of carparks that are avail for, for example a marina, a management organisation to manage and run and operate in ways that best benefit how demands are on the day, it can produce a better outcome.

Q. So you'd have a little less artificiality around for instance loading spaces is your recommendation?

A. Yes.

Q. But there might be at least two exceptions to that mightn't there, disabled persons car parking spaces as shown on figure 73, you'd be required to dedicate those wouldn't you?

A. Well they're required under the building code.

Q. Yes, and two were shown on plan 73.

A. Yes.

Q. So we'd need to have those identified, and then there were two other spaces in plan 73 that I imagined that you would expressly separate out and mark, can you grab 73? December 2013.

A. Yes those are the coast guard and the manager's space.

Q. That's it, and you'd continue to recommend that they'd be separately identified, marked and reserved.

- A. Yes.
- Q. For those two activities.
- A. Yes I would.
- Q. So leaving aside the question of whether one would expressly identify loading spaces or not, there might be five of those if we did, there'd be two disabled persons spaces, there would be a manager and the coastguard as separately identified and marked.
- A. Yes.
- Q. (inaudible 16:17:35) whether you do it with loading spaces but those are the numbers.
- A. Yes.
- Q. Okay. All right thank you for that.

RE-EXAMINATION: MR J BRABANT

- Q. Mr Apeldoorn, I go back to some questions you were asked by my friend Ms McIndoe and there was some questioning about the survey work you undertook and the number of movements during that simulated survey that took place over a 20 minute period I understand was the period of time.
- A. I think I said I couldn't recall specifically those, how we – how I allocated those periods. Having given that some further consideration I've recollected that the way that I constructed the survey was to plot firstly the ferry arrival and departure times and to identify the periods either side of those that were the peak and then to take the other periods as the non-peak so it's not – the ferry timetables are not all exactly on the hour, they do vary. So this is why I was trying to explain that it's not so much the total, whether I put 56 vehicles through in that given period or not because that period may not have been exactly 20 minutes. What was important was to measure the rate of arrival and departure that was to be expected during those periods and that's what was done.
- Q. And just so I'm clear on that then the – some of the periods may have been 20 minutes, others are you saying were of a differing length is that correct?

A. Yes.

Q. But the rates that you used, you were questioned about I think every 39 seconds, you were asked that was the rate at which we had movements occurring.

A. Yes it was.

1620

Q. My friend Mr Casey asked you some questions and put a hypothetical number of movements to you which I've recorded as 90 movements over an hour and a half when he was asking you about what would need to occur to trigger one of the conditions. Can you just briefly indicate in your opinion your views on the likelihood of 90 movements over that period based on the work that you've done?

A. I think there is a reasonable probability that that will occur at some point during the year. The peak demand on the peak day that we've assessed is 57 movements in that hour so around about 60. And to add another half an hour onto that gets you into that realm of sort of 85 to 90 movements. So I think there's a reasonable expectation that at least on occasion the peak demands for the marina will reach that. If we factor in other variables. I think it's unlikely that that would be breached, but I think we've set that level low enough so that it doesn't provide any unquantified effects if you like, effects that we haven't assessed beyond what we surveyed to occur.

Q. You were asked some questions by my friend Mr Casey about how entry and exit barriers might operate and whether the exit barrier in particular would require a proximity card to trigger it or whether it would be an automatic pressure pad system or something of the like. And my friend went on to ask you some questions relating to that about whether the conditions required a proximity card to activate that exit barrier. Given for example condition 37(a) of the applicant's conditions refers to daily records of entries and exits being provided, how would you in your opinion go about providing that information?

A. In my opinion it requires some collation because in my experience the output from the barrier systems is just a list of numbers and times, it

requires a little bit of summary if you like to put into a form that relates to the defined half hour periods or hour periods, whatever the range of conditions are that are established. So in my view that data would be collated and put into a report that would be supplied to the Authority.

Q. You were asked some questions about the role and powers of the Auckland Transport parking officer on the site. As a traffic expert and having seen what occurs within the keyhole, would you recommend that any authority controlling that keyhole area withdraw any form of control over what occurs there?

A. No.

THE COURT: JUDGE NEWHOOK

I see you asked a leading question. You've got to –

MR J BRABANT:

I did Sir, I apologise.

THE COURT: JUDGE NEWHOOK

– know the answer. It'll be no this time. We can't place a lot of weight on the answers to leading questions Mr Brabant.

MR J BRABANT:

No I accept that Sir it should've been better worded, I accept that.

RE-EXAMINATION CONTINUES: MR J BRABANT

Q. My friend asked you some questions about your reference to a nett public parking gain and what you intended by that and in terms of the notes I have taken it was left a little bit unclear as to the end position you in your answers. Are you able to provide any additional comments with respect to that taking into account for example your comments in paragraph 64 in your evidence-in-chief?

A. In my paragraph 64 I described that the marina will displace 23 existing moorings. The marina will then provide for all barr one of its parking spaces and so the nett change in public parking supply if you like is

firstly a gain of five spaces by the removal of the 23 moorings and then a loss of one space due to that overflow effect and that is how I've assessed the nett gain of four spaces to the public parking supply.

Q. My friend asked you or referred you to paragraph 15 of your rebuttal and asked you some questions which included reference to a figure you had in there of in effect of seven to eight percent in terms of a probability of occurrence of a parking effect or un-parking effect as you've described it. Are you able to clarify with respect to that percentage what rate you are using in terms of vehicle movements that give rise to that percentage figure?

A. Yes the rate that I have applied in that situation is one vehicle and one departing every one minute 57 seconds on average which is, the equivalent of that is the 56 or 57 trips that are expected on the peak day of the year generated by the marina.

1630

QUESTIONS ARISING – NIL

THE COURT: JUDGE NEWHOOK

Now, we were hoping to hear from Mr Dilley this afternoon?

MR J BRABANT:

Yes, we I was, he's from Christchurch, we'll have to stay but perhaps it's sensible, Sir, with I mean events that I haven't been present when they occurred, this maybe being a little bit of delay in how things might have worked, although there's still the question of Mr Mitchell to be resolved. But I'd like to move on –

THE COURT: JUDGE NEWHOOK

Let's just touch on that and then we'll talk about Mr Dilley. And I'm not necessarily looking for answers from the parties immediately but I will hazard a thought for myself and then perhaps invite counsel to reflect overnight and to confer perhaps that I gained the impression I think this afternoon that where

Mr Apeldoorn was being asked to deal with information on which Mr Mitchell would probably have been cross-examined for preference, he didn't appear discombobulated. He appeared knowledgeable about it, it appeared I think from his answers that they had collaborated. Indeed he'd peer reviewed part of Mr Mitchell's work, and that he seemed quite prepared to answer the questions that possibly would have been put to Mr Mitchell. So for myself I would say that I don't feel the need to ask Mr Apeldoorn to go away and do some further work in Mr Mitchell's area, but counsel might well have a different view (inaudible 16:32:26) a different course of action. So I just put that out there and you might not feel able to respond immediately but perhaps we could hear from you in the morning.

MR J BRABANT:

Yes Sir, there have been some exchanges by text with Mr Mitchell in terms of his condition and he's not in the hospital or anything like that, Sir. He's indicated – I'm not going to – I can tell you later or my friend can but he's indicated not today but tomorrow, but I just want to say Sir that I believe that we do need to talk to Mr Mitchell. He is the witness and I know that you feel that Mr Apeldoorn might have managed but I wanted to find out from Mr Mitchell whether he felt he wanted to come back and give evidence, and I thought that was the first priority.

THE COURT: JUDGE NEWHOOK

That's a very valid approach, I am picking up a little bit on the measure of tentative agreement in the conference behind the scenes after he collapsed, to the effect that if it were possible to avoid bringing him back and putting him under more pressure that we might try and do that just from the human point of view. But look, think about it overnight, talk to Mr Mitchell of course, and the other counsel and Mr King-Turner if he's still with us should reflect on whether they might have some questions that they would still want to put to Mr Mitchell if he was up to coming back in a day or two. Or three or four.

MR J BRABANT:

Yes, well he's saying he is, but regardless of that I did feel that I have a responsibility to him to ascertain whether he feels he'd like to finish what he started.

THE COURT: JUDGE NEWHOOK

He might even want medical advice about that. I've heard him described as a bit of a still water, a bit of a soldier, and perhaps likely step beyond the call of duty. Anyway, shall I just leave that with all of you overnight?

MR J BRABANT:

Yes, if you would be so kind Sir as to let us talk to Mr Mitchell about how he feels as a witness who has had his cross-examination interrupted and come back to you, Sir.

THE COURT: JUDGE NEWHOOK

On the basis that you obviously wouldn't be talking to him about the substance of the questions, I would rely on counsel of course –

MR J BRABANT:

No, it's about how he feels, Sir, about whether he is sort of not allowed to come back as it were.

THE COURT: JUDGE NEWHOOK

I'm sure the other counsel won't have a problem with you having that conversation with him.

MR J BRABANT:

That's the only thing. So if you're happy, Sir, I'd like to make a start with Mr Dilley. Because I think we keep things moving.

WITNESS EXCUSED

1635

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL -
HOUSEKEEPING**

MR R BRABANT CALLS

JAMES VEERE DILLEY (SWORN)

Q. Is your full name James Veere Dilley, do you reside in Christchurch and do you have the qualifications and experience and are you presently employed as described in paragraphs 1 through to 7, which includes your advising how you took over this role from Captain Barney on his retirement?

A. Yes, that's correct.

Q. Now for the Court's assistance you've prepared a statement of evidence dated the 29th of April 2014?

A. That is correct.

Q. And to the best of your knowledge and belief are the contents of that true and correct?

A. Yes.

Q. And then you participated in a meeting of the relevant experts described as, in the joint witness statement, for navigation safety dated the 21st of August 2014?

A. Yes.

Q. And confirm your signature to that document?

A. Yes, that's my signature.

Q. There are no amendments you needed to make to your statement of evidence?

A. No.

CROSS-EXAMINATION: MR LITTLEJOHN

Q. Good afternoon Mr Dilley.

A. Good afternoon.

Q. I really just want to focus on the joint witness statement that you and Mr Moss and Mr Drake prepared so if you can have that open that would be useful.

A. Certainly.

WITNESS REFERRED TO JOINT WITNESS STATEMENT

Q. Now so I'm just going to go through that in the order that you and your colleagues have addressed matters, so that we cannot jump around too much. The first topic you all spoke about was the context of the area, and you've noted at sub point (e), a reference to the navigation safety bylaw of 2008.

A. Yes.

Q. Were you aware that as at the date of your conferencing that that bylaw had been superseded?

A. I'm aware the bylaw had been reviewed, however the new bylaw had not become active.

Q. All right, so that is correct, it was reviewed as at the 31st of July 2014 and has essentially been replaced. Now just so that there's no surprises coming, you will be pleased to know that it hasn't altered the prohibited anchorage area that applies to Matiatia Bay, so I just wanted to bring that to the Court's attention, that the bylaw has been superseded but, for all intents and purposes, it doesn't change the situation in terms of the prohibited activity area and the prohibited activity area itself, I understood that, from your evidence-in-chief that you were responsible for the development of the 2008 bylaw.

1640

A. I was, correct.

Q. And when you undertook that review, did that cause any change to be made to the prohibited activity area at Matiatia?

A. No.

Q. So as far as we're all aware that prohibited anchorage area has been in place for a decade, two decades, how long do you think?

A. At least since the previous bylaw for 2008.

- Q. Now, in section 2 you make mention of the mooring management areas that are identified in the regional coastal plan you've identified that there are some existing moorings that are outside the marina management areas, that's correct isn't it?
- A. Is that marina management areas or mooring –
- Q. Mooring, sorry. There's no marina management areas there much to the applicant's chagrin but there is a mooring management area so if I just use MMA, that's what I'm talking about if I can abbreviate it as you have. So there are some moorings outside the MMA at the moment.
- A. That is correct, there are some moorings outside of the mooring management area which are considered permitted activities under the Coastal Plan.
- Q. But do you accept that of those moorings there are none within the prohibited anchorage area?
- A. No there are moorings within the prohibited anchorage area is my understanding.
- Q. By reference to the folio 2013 figures. Have you got those there Mr Dilley?
- A. I have.
- Q. If we look at figure 36, have you got that there?
- A. I have.
- Q. Are you able to, by your knowledge of the lay of the northern and southern extents of the prohibited anchorage area, provide an estimate of how many moorings are currently located within that PAA, as I'll abbreviate it.
- A. If I can make reference to the joint witness statement and the maps attached to those. There is, map 4. If you look at map 4, the mooring management area in the north of the bay has a black line drawn across it, that is rather thick but is indicative of the bylaw prohibited anchorage area northern boundary. Within that and just outside of to the west of the proposed marina breakwater you will see the southern side of one small vessel sticking out. So that vessel, as it swings around its mooring, at least that individual vessel, is outside of the – or actually

inside of the prohibited anchorage area. Also on that map what you do not see is the moorings that are not occupied at that time.

Q. That is why I went reference to figure 36 which is an indicative picture of the moorings issued rather than whether there are boats in them or not.

A. Yes.

Q. But would it be fair to say that the number of boats that are presently moored within the PAA you could count on one hand?

A. I would suggest that's indicative, yes.

Q. Now, in terms of your figures, you've helpfully in your, sorry your map 2, you've helpfully depicted the new MMA areas under this wonderful thing we call PAUP in Auckland.

A. Yes, that is correct.

Q. It sounds horrible but that's what we call it. You haven't depicted on there the lines of the prohibited anchorage area have you?

A. No.

1645

Q. Would it be fair to say by comparison with map 1 above that one of the changes that has been made to the MMA areas is that they have been moved, or their southern and northern boundaries respectively have been moved further north and south respectively to align better with the prohibited anchorage area?

A. The northern boundary has certainly been moved further to the north. The southern boundary does appear as well to have been moved slightly further to the north.

Q. Southern boundary to the north or the south?

A. Southern boundary to the north. The current mooring management area shown on map –

Q. So we're talking about the northern MMA?

A. Yes, the northern mooring management area, the southern boundary –

Q. Yes, its southern boundary has been moved to the north?

A. The southern boundary of that has been moved to the north.

Q. Okay, and in terms of the southern MMA its northern boundary has been moved to the south hasn't it?

- A. Yes, I would agree with that, yes.
- Q. So would you accept that what we are seeing here is an acknowledgement within the coastal plan that its MMA provision should align with the bylaw as it relates to Matiatia Bay?
- A. I could not confirm whether its amended to confirm with the bylaw or whether its amended to confirm – to comply with the existing moorings within those mooring management areas. I haven't been a party to those discussions so I couldn't give an opinion on that.
- Q. But you've agreed that regardless of the reason what we have seen, or what we may see if this port, it becomes operative, are MMAs in Matiatia Bay that are more closely – that more closely recognise the limits of the prohibited activity – prohibited anchorage area, is that correct?
- A. Yes, I would agree with that statement, more closely, yes.
- Q. Back to the, thank you for that Mr Dilley, back to the joint witness statement, "Ferry manoeuvring at the wharf," topic 3, now did you read the statement of evidence by Mr Peter Brough?
- A. Yes, I did.
- Q. And you accept that he's a very experienced ferry skipper in respect of this location?
- A. He has been a long-serving master with Fullers, I am aware of that.
- Q. And would you accept that in terms of a mariner who has skippered ferries into Matiatia Bay he's probably got the most experience about that in respect of these proceedings?
- A. I couldn't confirm whether he has the most experience, he may have done it a significant number of times, I'm unaware of the experience he has compared to other masters with Fullers or any other masters on ferries travelling to or from that bay.
- Q. But he's the only ferry master who's given evidence in these proceedings isn't he?
- A. To the best of my knowledge that's correct.

Q. And there are no other people giving evidence here who can suggest that they have skippered ferries into Matiatia Bay more than Mr Brough, are there?

A. I am unsure of that, I don't know.

Q. And having read his statement did you find any of his comments as to issues faced by manoeuvring ferries around the wharf at Matiatia surprising?

A. His statement makes reference to severe weather events using the words, "Storm events," rather than "severe weather", and the difficulty of manoeuvring ferries. In those conditions I don't find those statements are untoward. The worse the weather often the more difficult it becomes to manoeuvre a vessel.

Q. And notwithstanding Mr Brough's observation though you and Mr Moss and Mr Drake have agreed that there would still be sufficient manoeuvring area at the wharf to be able to deal with these sorts of severe weather events for ferries?

1650

A. That is correct.

Q. Mr Brough talks in his evidence of situations where there is, there are a number of ferries coming and going and occasionally a, I think, you may use the word a queue of ferries waiting to discharge their passengers. Now in those circumstances, is it the case that the current layout of the boats that are moored at Matiatia allows that type of waiting and coming and going to operate quiet effectively?

A. Okay, do you have a reference for that please and I'll just have a read, the context of that comment.

Q. If you just bear with me as I dig out the bundle. Mr Brough is in volume 4 and the reference is in his paragraph 15.

A. Thank you.

Q. I've led you astray, he's talking there about boats queuing to wait to get to the fuel wharf.

A. Yes, I see no reference to ferries in that clause.

- Q. So the question is at the moment, there's sufficient space within the PAA for one or two ferries to wait or to queue, to let their passengers off, even in – well is there sufficient room?
- A. The fairway into the wharf and the area off of the wharf comply in excess of the requirements of the Permanent International Association of Navigational Congresses recommended guidelines for manoeuvring space well in excess of those. If a vessel was entering into the area and was aware there was a vessel on the wharf either waiting to depart or a vessel manoeuvring onto the wharf, a prudent mariner would actually wait well outside Matiatia Bay until that vessel had completed its manoeuvres, that would allow it clear sea room to make any manoeuvre it needed to keep out of the way in clear water. It would not enter into the bay and wait within the bay.
- Q. And as I understand your evidence, or certainly the joint witness statement is that that position does not change with the narrowing of the fairway by the construction of the marina breakwaters?
- A. That is correct, the anchoring – the prohibited anchorage area is already restricted by the moorings.
- Q. Yes.
- A. The marina restricts it slightly further. However, the measurements of the space within there for the manoeuvring of the vessels and the width of the fairway are still in excess of the recommendations for vessels of those sizes within the guidelines of PIANC.
- Q. Thank you Mr Dilley that's very helpful. Topic 4, "Congestion to the seaward side of the proposed marina breakwater." Now do you accept the possibility of boats exiting the marina and going to and then from the north wharf where there are fuel, water and pump out facilities?
- A. Yes, that is correct. Some vessels may manoeuvre from the marina and move to the fuelling berth.
- Q. We are told that this is not going to be at least at this stage a marina that has a pump out and water supply facilities reticulated to each pier so that the only location for those conveniences will be at the north wharf. So I put it to you that we can expect a proportionately

greater use of those facilities by vessels from the marina. Do you accept that?

A. I cannot confirm or am unaware of whether the berth will be fitted with fresh water supplies or sewage pump out, that's not part of navigational safety. But I do accept the vessels will manoeuvre from the marina and onto the fuel berth.

Q. And would you accept that each of those manoeuvres will require those vessels to enter into and transit through the prohibited anchorage area?

A. Yes, that is correct.

Q. And in those instances there is always going to be a prospect of conflict between ferries who are coming in or departing and those boats isn't there?

A. If those manoeuvres take place at the times that the ferries are manoeuvring onto the wharf or departing from the wharf then there may be a chance of conflict.

Q. The joint witness statement advises us that that's not a significant navigational issue though. Is that because we presume compliance with the normal give way rules of the sea as between boats?

A. The quantity of traffic manoeuvring to and from the fuel wharf in the opinion of the experts would not be a large quantity. There are operating procedures in place for the ferry companies that already deal with vessels in that area and those may or may not be reviewed with the construction of the marina and they impose very clear guidelines and requirements on when a vessel can enter in and manoeuvre in those spaces. In addition to that, manoeuvring from the marina into the north wharf would require the vessel to keep on the northern side of that fairway. The ferries are mainly manoeuvring to the southern side of that fairway.

1700

Q. So in normal operating conditions, everyone looking out for everyone there shouldn't be any problems, is that your evidence?

A. It is my opinion that there is insignificant issue with the vessels manoeuvring in that space, yes.

- Q. Heading 5 “effects on kayak use”. Now, your map 5 which you’ve referred to in sub para (e) of that topic is entitled “area where navigation safety issues may exist”. Can you confirm that that area you’ve identified there is not just an area where navigation safety issues may exist for kayaks but for all vessels operating in this area?
- A. No, it’s a combination of those two, so some of the area is areas where we would see issue with kayaks and it includes areas where we would see or may see issues with other craft, the term used is also “may”.
- Q. But you will accept though that a consequence of the construction of the marina breakwater or breakwaters and main access pier is that the amount of navigable water space within this part of Matiatia Bay is significantly reduced, isn’t it?
- A. The marina does present barriers through which you are unable to navigate, physically placing a sea wall in that location or a pontoon. It does mean that you cannot go through it, that you must go around it. So in that context, yes.
- Q. So, what we have is a situation where this proposal would compress, make smaller the available area of navigable space in the bay while at the same time increasing the number of boats within it, is that correct?
- A. Well I would say that depends, in the context of the term. If a vessel was to enter into the bay and navigate freely with no purpose ie; to travel around in circles and do what it wished, then yes I believe that would be correct. However in the bay, vessels are normally there for a purpose, whether that purpose is travelling to the wharf, to their mooring, or as in the case of a small kayak, perhaps travelling around the outside of the bay enjoying the scenery. And in those contexts, no, I don’t believe it does.
- Q. But back to my question, you accept that physically the outcome of this proposal is to reduce the extent of available navigable water space and to put more boats there.
- A. In the context of it, it will take away surface, water surface area and intensify the number of vessels, then yes.

- Q. Now, in terms of kayaks you've all agreed that their use within the marina is not best practice.
- A. Yes.
- Q. It reminds me of a joke but I can tell you later. An old ferry skipper I met used to call kayaks the judder bars of the ocean but there you go. Much like the sleeping policeman. Anyway, moving right along. When Mr Wardale was questioned yesterday, and I appreciate you weren't here, he told us that effectively boating activity within the marina would come under marina control, is that something you've given him advice on?
- A. That's not something I've given Phil advice on but the vessels navigating to and from a marina berth would be subject to any marina controls that were put in place on them as part of their contract.
- Q. And what about kayaks? What about members of the public?
- A. Members of the public, unless they were attached to the marina and had agreement with them or there was a bylaw in place, there would be no control over those vessels. Outside of the normal regulations.
- Q. So that's why, putting aside whether they can or can't though, it's not best practice, it's what you've all agreed isn't it?
- A. That is correct, yes.
- Q. In your evidence-in-chief at paragraph 13, one of your recommendations is that if approved a full safety and risk assessment must be done.
- A. Yes, that is correct.
- Q. Would that assessment look at managing the use of non-propelled ie; kayaks within the marina?
- A. A risk assessment is undertaken under the Port and Harbour Safety Code which is a central government document which outlines best practice and the standard layout of the law for the management of harbours and water spaces. It's been adopted by the Auckland Council and they have said that they will comply with the requirements of that. Risk assessment under that would include every single operation that may take place on the surface of the water so that would include kayaks

in those areas. What that assessment would turn out in risks would remain to be seen.

Q. Is there any prospect, from your experience though, that an outcome of that assessment would be that kayaks would not be allowed to paddle within the marina?

A. No. There are some examples already within Auckland, both at Bayswater Marina and at Westhaven Marina where small non-powered or paddle craft are used amongst the marina and there are very few issues in those areas. The issue of it being not best practice is that it just mixes two different types of vessels. In this instance the paddle craft may well be coming from the higher operation on the southern side of Matiatia. The competence and courtesy of the people hiring those vessels may be unpredictable. We don't know whether they've been on a kayak before, whether they understand that they should keep out of the way of a vessel manoeuvring and the interaction between themselves and other vessels. So that all adds to the interesting part of the mix. If you can separate those two user groups then that risk doesn't actually eventuate.

Q. But we hear that in this case there is no proposal to separate those two groups is there?

A. No.

1705

Q. Moving to effects of the marina footprint on access to the ferry wharves, now you've all identified helpfully for the Court that the fairway with, becomes reduced adjacent to the main breakwater to 75 metres?

A. Approximately, yes.

Q. Yep, (b), 6(b), approximately and that's a reduction in current operating width of about 30 metres.

A. That is correct.

Q. Okay, and it's the evidence of the navigation experts, however, that that is still sufficient width for two boats, two ferry boats, I presume, to pass in normal conditions?

- A. That's been assessed with the existing ferries, which are very wide beam ferries for their length, being a multi-hull vessel and that allows two vessels to navigate in opposite directions. The actual space there is in excess of those requirements.
- Q. In non-normal conditions, do the P and C, well I'll just call it the PANZ guidelines, do they dictate different operating protocols that would have to be followed?
- A. There's a number of factors that can be brought into play when estimating or establishing the size of a channel needed for a vessel. One of those is the type of manoeuvrability of the vessel. One of those is the draft of the vessel in windage. One is the area you're travelling into, whether it's becoming larger or smaller. One of those is the weather. In this case, the weather won't have too much effect on that width; the vessels are extremely manoeuvrable.
- Q. I understand from Mr Drake that most operators have their own operating protocols that they design to ensure compliance with all of the various maritime regulations, is that your understanding?
- A. That is correct. Part of the port and harbour safety code, which is put in place by the Harbourmasters Office, will require these operators to have standing operator procedures.
- Q. Yep.
- A. Which will dictate how they navigate into, how they manoeuvre the vessel in these areas.
- Q. Mmm, and could we expect that in the situation of multiple operators that there would be an overriding agency that ensures consistency and requires communication between operators?
- A. That is correct. Already the ferry operators, when I was serving as Deputy Harbourmaster, had a very good working relationship, and we use those operators who had an agreement between themselves at the ferry basin in the downtown terminal, for the manner they arrived and navigated around that area. We helped them take that and put it into an operating procedure, which is now in place as the downtown ferry terminal operation procedure and that does exactly what you're

describing, which is manage the movement of those vessels by agreement with all of the operators and then carries the weight of the Harbourmaster as a piece of legislation, as a direction.

Q. Okay, well that's comforting because as, I'm not sure whether you've heard, the late breaking news, we've got other competition happening out at Matiatia?

A. I have heard of that, yes.

Q. Very good. Now at 6(h), you refer to Mr – this is in the joint witness statement – Mr Drake's evidence that he supplied of recreational vessel movements.

A. Yes, that's correct.

Q. And you accept that, for the purposes of these proceedings, that information is some of the best data we have as to the extent of recreational boat usage in Matiatia Bay?

A. Based on my experience in my eight years in Auckland as Deputy Harbourmaster, I believe value is indicative of the amount of traffic, recreational-wise, in that area, yes.

Q. Okay, at paragraph 6(i), you, or the three of you; that's the royal you, I don't mean to single you out, agree that the operation of berthing and departing vessels at the old ferry wharf does not of itself create significant navigational issues. Now I puzzled over the use of those words for some time and the only meaning I can put to them is that what you're saying is that in theory it shouldn't be an issue is that right? Is that one way of reading it?

1710

A. What we're saying there is that that individual operation by itself doesn't create a navigational safety issue.

Q. Okay.

A. If you have one vessel on the water with no objects around and in a mile deep water, there are no navigational safety issues. You put two boats in there and there now are –

Q. You double it.

- A. It's just a matter of degree. If they navigate correctly they'll miss each other and it's not a problem.
- Q. Yes.
- A. If they're turkeys and they hit each other then there is a problem. So purely a matter of degree.
- Q. The record, the witness described turkey's sailing boats.
- A. It's a technical term.
- Q. Technical term, very good. Now would you accept that not all mariners are prudent people?
- A. There's a varying degree of competence and courtesy of vessel operators on the water and that applies both to commercial vessels but mainly for recreational vessels.
- Q. So again best practice, theoretical world, we don't have these sailing turkeys, we just have prudent people but you'll admit of the possibility that from time to time you'll see in temperate behaviour people rushing in and all of those sorts of things.
- A. In general if a company is competent then they have courtesy and that will also help them. Those people that are incompetent but have courtesy will generally stay out of trouble. The issue arrives when you get somebody who is not courteous and is incompetent, they don't know their level of skills and they're not prepared to wait then yes you will have issues.
- Q. I don't think that phenomenon applies to boaties alone.
- A. No.
- Q. The 6(l), I've got two more questions for you Mr Dilley, you've been very patient thank you, 6(l) you talk about larger vessels waiting to the west of the old and new ferry wharf into the south of the new marina breakwater and in doing so being in the prohibited anchorage area. Now there's nothing illegal about waiting in the prohibited anchoring area is there?
- A. No that's correct.
- Q. But for all intents and purposes that's also the ferry channel as well isn't it?

- A. That also is a fairway, correct.
- Q. That's right. And would you accept that because of the existence of the breakwater and the fact that the boats will be keeping an eye on what's going down at, what's happening at the north wharf some distance away that there is a likelihood that they will wait directly in the fairway to await their turn to enter into the area adjacent to the north wharf?
- A. That will depend on the type of vessel.
- Q. Yes.
- A. The vessels up to about nine or 10 metres in my opinion would wait to the north of the wharf. There is adequate room, far more than there is at the moment with the mooring swinging in that direction and that is a beautiful area for them to manoeuvre and wait in clear view of the floating pontoon. Larger vessels, and an example of that is in Mr Drake's evidence where there is a picture of a 20 metre launch alongside the wharf, they would be likely to wait further out. A prudent mariner would wait to seaward of the marina as theirs is lost of space there for that vessel to manoeuvre or external to Matiatia if the vessel was larger than that, but I'm unaware of larger vessels going to that area.
- Q. Finally, heading 7 "Effects on anchorage." Now look at map 4, turn that up in the joint witness statement, looking at the northern side of Matiatia Bay, do you accept that it is that northern part of the bay that provides some of the best shelter?
- A. The bay itself, the northern part of Matiatia Bay provides shelter from a northerly wind.
- Q. Yes.
- A. I wouldn't say it's an anchorage by definition of that. I would state that it does provide shelter.
- Q. Okay. A consequence of the location of the breakwaters at the marina though is that on that northern side, the area of anchorage is significantly reduced isn't it?
- A. I'm not sure I'd use the word significantly.
- Q. Okay.

- A. I believe there is some area under the footprint of the western most breakwater that somebody may anchor in at the moment.
- Q. Yes.
- A. The inner breakwater is already within the mooring management area and it would be very inadvisable to anchor within a mooring management area where there are obstructions i.e. the weights of the mooring and the chain on the seabed.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. Just following on from the last few questions you were asked Mr Dilley, that and really in relation to what we have been told is that that northern wharf platform, where the fuel berth is will also contain the supply because that won't be supplied by the marina and will also be the place for discharging sewage because that won't be provided at the marina. And so I'm wondering at the confinement of the spaces, there's no give with a structure there whereas there might be now we can perhaps poke in between a moored boat. There's no give with a solid structure. I'm just concerned about the quantum of boats that could be vying for their turn and how they would wait for their turn and one of the suggestions you gave was that they could wait outside the breakwater. I'm wondering if they could even see over the breakwater to see when they – when it was their turn and whether somebody might hop in before them and it's a dead end so when they get there they have to turn around and manoeuvre out.
- A. My reference to waiting outside of the breakwaters was for the larger vessels who would be unable to manoeuvre in that area for free for a longer period.
- Q. Mhm.
- A. And the larger vessels as pictured in Mr Drake's evidence with a 20 metre launch are generally with greater elevation s they would actually be able to see over the breakwater. The smaller vessels and the local type of vessels which are launches, small yachts, six, seven or eight metres, maybe up to 12 metres or a little bit more would quite

comfortably be able to manoeuvre off that northern wharf within that space. I see no reason or no issue for those vessels manoeuvring in that area. It's quite easy with most vessels to put the stern of a vessel, back of the vessel into the wind and use smaller stern manoeuvres and that would just hold the vessel stern into the wind, the bow blows downwind, it's a very simple, a very safe and a very effective method of managing your vessel. If you see people trying to keep the bow of their into the wind while waiting for someone, it's very difficult because there's nothing to hold it there it just blows off. The propeller being at the back which is to hold your stern up and it's often a sign of the competence of the person driving the boat.

Q. So I'm envisaging there's more than one boat there. Is there any advantage or one of the things we were told with the occupation licence on that, I forgot, is it pontoon or –

A. The wave attenuator.

Q. Yes the wave attenuator would be that the occupation licence would extend to the outside of that to prevent boats tying up to it and I'm just wondering whether there's any benefit in actually having the abilities of those to tie up to?

A. I would agree with both of those statements. A consent condition that allows exclusive occupation of that area allows the marina to control the berthing of that vessel, vessels along there. For example, if somebody brought in a large vessel, placed it there without permission and it actually caused an issue for other vessels they would have the ability to remove the vessel, have it removed but also if it becomes apparent that once the marina is in place that, as people were saying, there's actually plenty of space to manoeuvre, then it may be that vessels could actually tie to that wharf for the short period while they're waiting to go onto the fuel for the water and sewage pontoon so yes I do agree with you it would be a sensible addition.

Q. There's also –

THE COURT: JUDGE NEWHOOK

For the record Mr Wardale seems to be nodding.

UNKNOWN MALE VOICE: (17:19:55)

It's already been discussed Sir, yes.

THE COURT: JUDGE NEWHOOK

Well that wasn't apparent to us until now.

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER LEIJNEN

Q. There's a ramp, a boat ramp sitting at the end of that area, what's your thoughts on the use of that added into the mix?

1720

A. Okay, the boat ramp, in my experience, generally launches, small vessels which are going out to the moored vessels, so small rowing boats going backwards and forwards, I've seen one person trying to launch a six metre light-weight tinnie in that location and the angle of the ramp is very steep, very difficult to back down, it is not ideal in any circumstances for that. That's further compounded with the way it's coming into the bay, as you've seen it can become quite exciting there at times and there is far more sheltered, far more suitable ramps around Waiheke and even in Matiatia for the launching of vessels. Once the moorings or if the moorings are removed, and the dinghies are taken onto the floating pontoon, that provides a far safer place for those dinghies to go from there to the PAUP moorings. The proposal I believe also includes removing the dinghy rack so that vessels in the southern mooring management area will actually launch from the southern side. That prohibits them, or that stops them from going across the ferry area, which also reduces the risk of issues there. So, whilst there is a ramp there, its use is generally at the moment, in my opinion, for very, very small boats and I see no issues with that ramp being there, being used in that same format for people who launch very small boats.

Q. And my last question, the pontoon which is currently the fuel wharf, we were told that that's used sometimes for casual berthing, short-term I

assume, but charter boats and the sort. Would that sort of, is that permitted at the moment, I suppose is the first question, but we were told in evidence it was, and what is the consequence of that in the mix?

- A. Okay, the bylaw, or the Auckland Council bylaw provides that any vessel that is moored or tied alongside must be made secure. Provided it's secure then it's okay under the bylaw. Whether the Auckland Council allows people to tie there for a period under its facilities bylaws, I'm unsure of. If they do then realistically it's a matter for themselves if they've allowed people to tie there for extended periods. If those people have permission, I see no issue. The effect of that is that it stops other people using the facility, however that would be an Auckland Council management decision as to who uses their facility and for what period of time. I don't see if affecting navigational safety.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- Q. I've got one for you Mr Dilley. Were you here when I asked Mr Wardale some questions?
- A. No.
- Q. All right, so I'll just place them in front of you in the same amount of detail. I asked Mr Wardale for his impression as an experienced marine operator of the relevant densities of occupation of water space as between swing moorings on the one hand, pile moorings on the next, and marina berthing on the third and his advice to the Court seemed to line up with, the feeling I had from my knowledge of these things, which is that the swing moorings are inclined to occupy the greatest amount of water, for obvious reasons.
- A. Yes.
- Q. To do with the equipment, that pile moorings allow, of a greater density of mooring, so (inaudible 17:23:54) established at any given time and, thirdly, that there is a close commonality of density eventually as

between pile moorings and marina berths. A small difference but he thought not great. What would be your thoughts about this?

A. Yes, I would agree with that. I made some calculations of mooring space within my initial, my chief witness, my statement in chief, sorry.

Q. Yes.

A. And they are large areas, purely because the vessel is fixed at one point, there is a requirement for a length of chain to hold it to the seabed.

Q. Yes.

A. When you take that in a circle –

Q. They swing, they swing around large areas.

A. They swing in a very large area whereas when a vessel is contained within pile moorings or within a marina, it effectively takes up the beam and length of its vessel, plus a tiny little amount extra for that space and that is the area it takes up, it doesn't move, it's secured at each end.

Q. Yes.

A. It's sideways and the lateral movement is small.

1725

Q. As between a pile mooring on the one hand and a marina berth on the other, is similar density potentially achievable?

A. Yes.

Q. (inaudible 17:25:14) space?

A. Yes, most definitely. The only difference is, I see between a marina and a pile mooring lie in, if a pile mooring has a fixed point for mooring rather than a floating point. If the pile has a ring fixed at one height in it then the lines must be long enough to allow the vessel to travel up and down therefore you need –

Q. To rise and fall.

A. – them slightly further apart. Whereas if you have a floater which goes up and down with the tide, they're a single fixed length, that issue disappears.

Q. And they can be quite short.

- A. That would be quite short in those locations. With the marina, of course, you have the space occupied by the floating pontoons, the access to and from.
- Q. Thank you for that assistance, one other question, if, and this is harking back perhaps to your knowledge of mooring areas around Auckland from your time as Deputy Harbourmaster, and perhaps knowledge of pressure on mooring space, I'm thinking particularly of Matiatia of course, if there weren't to be a consent for a marina at Matiatia would you see a case for establishment of more pile moorings to satisfy what we're told is an 80 boat waiting list?
- A. There is an increase in boats, my time at, the harbourmaster saw a slight fluctuation but the general trend was an upward trend on the number of boats wishing to have moorings around Waiheke. The establishment of pile moorings in any location would require a safe shelter such as the marina breakwater to be established. If you tried to put in pile moorings in Matiatia without the establishment of a breakwater then in the conditions that you saw on your visit, there would be damage to those vessels and damage to the piles. One goes in hand with the other. The pile moorings in Auckland at the moment are in such locations as the Tamaki River, the upper Tamaki River and up at the Te Atatu Boat Club and a few in the Upper Harbour, they're all very sheltered, very quiet locations, and that's the sort of area that suits, those are the sort of conditions that suit pile moorings, sheltered, quiet areas. Around Waiheke there are very few of those areas to actually put them in, in fact I can't actually think of any where you would be able to put them in without building protective breakwaters around the area.

RE-EXAMINATION: MR R BRABANT

- Q. Can you just turn up the plan 33, because you can see it, you can see what I'm just going to ask you to recollect probably from previous days, 33. You were asked about vessels wanting to come into the old wharf and actually tie up to take on people, potentially conflicting with people

fuelling and taking on water. If you look on that wharf you may reflect or remember the number of pontoons that there are?

A. That is correct, yes, there is an inner pontoon in that area. And also I would suggest that vessels wishing to drop off and pick up people, and I note in Mr Judd's evidence he discusses waiting 20 to 15, 15 to 30 minutes for vessels to rotate around, maybe two or three vessels waiting. If you are operating a vessel where you needed to pick up people, such as customers, for a commercial vessel, you would tend to look at the marina where you could have a secure pick up point, a secure pick up time that is guaranteed availability to you. Rather than risk the turning up and waiting for the possible availability of the berth unless somebody had left a boat tied up to it and gone away into town.

Q. now the other thing, some questions about kayaks in the risk profile and how that would be looked at in terms of the marina and the changes that the marina brings about for kayak use. Are you aware of whether there is an existing risk profile for what's going on in Matiatia Bay right now for that kayak use?

A. There is a risk assessment for Matiatia Bay which was first undertaken in approximately 2006 and that is reviewed every single year. The harbourmaster undertakes that review. Small craft is one of the areas that is mentioned and that looks at everything from small dinghies rowing to moorings to people on kayaks.

Q. Could you give the Court a summary of the sort of key areas of risk now in Matiatia for people like kayaks and small boat users?

A. In general, that's in the centre of the bay. Where those vessels keep to the outsides of the bay, the risk is minimal, absolutely minimal as if to not exist, so a vessel paddling around the shoreline, which is generally where they wish to be, because that's where the scenery is and that's where the coastline is to look at, they're very, very safe. Should they move into an area where the ferries wish to manoeuvre or there's vessels coming in and out, that's where they're at greatest risk. They may or may not be used to manoeuvring with vessels of that nature and, again, it's, if you separate those user types, the risk does not exist; they

are just purely, it's just pedestrians and cars on the road. If you take away the pedestrians, the cars can't hit them.

Q. So for the kayaks on the southern side, given that risk assessment, what's the riskiest trip for them to make within the bay?

A. The riskiest trip for a kayak would be to come from the southern beach, out past the end of the ferry wharf, and then go straight north. The marina actually increases safety in some aspects there because it removes that option for people. They would actually be better off going further along the bay and then crossing towards the mouth of the bay. The marina with the barrier there stops them going in that area, so they will tend to then go along the southern mooring management area until they're clear of the marina and then travel to the north. The kayak operator, who rents kayaks there, could actually put that in as part of their operating procedure in the instructions that they give to their clients which would be part of their beach trading licence from Auckland Council.

WITNESS EXCUSED

COURT ADJOURNS: 5.32 PM

COURT RESUMES ON THURSDAY 9 OCTOBER AT 9.33 AM

THE COURT: JUDGE NEWHOOK

Before we get underway, can I ask a boring question. These are statement of issues and statement of facts on day 4 and we don't know where we're going.

MR J BRABANT:

So I can say about that, Sir, I have made some progress on that since we last spoke about it.

THE COURT: JUDGE NEWHOOK

I know you've been busy, Mr Brabant, but...

MR J BRABANT:

Yes, I anticipated you might ask about it this morning, Sir. All I can say is that last night we were at work till just before 11 finishing some submissions for the High Court. What I am going to shortly do is leave here and go down to the office and press on with those and other than that, Sir, all I can do is apologise, I'm sorry.

THE COURT: JUDGE NEWHOOK

I do appreciate the life in the RM world in Auckland at the moment is building up and getting frantic and I'm keeping a close eye on that and if necessary I'm going to be talking to the new Minister about how the pressures may be lessened if possible and if necessary. I don't know how far I'll get. And I do appreciate that you've got a lot on. So I'm not going to jump down your throat but we do find that these statements of issues when they're well done, they're not always well done, but when they're well done can really help guide a case and give focus to the questioning, the submissions, the participation by the Court. It's a technique that I strongly favour so –

MR J BRABANT:

Oh absolutely, Sir. And all I would say is you will shortly see me leave. I've helped bring all the gear up and I'm going to (inaudible 09:34:25) back to the office soon.

THE COURT: JUDGE NEWHOOK

Okay, I've said enough.

MR R BRABANT:

And we have ended up of course responsible for everything, the documentation, the whole works, which has added to some extra difficulties

for us. Everything that has to be supplied has had to come through us so that hasn't helped.

THE COURT: JUDGE NEWHOOK

Oh well is that right. I thought Mr Allan was getting involved in things.

MR R BRABANT:

Oh he's been very helpful. Oh yes. But now the ball's back in our Court to finish it all. Just so you know, Sir, I –

THE COURT: JUDGE NEWHOOK

And I don't think the DMI counsel have been entirely bone lazy from my perception either Mr Brabant, so let's move on.

MR R BRABANT:

No, no. Absolutely not. Just so you know, Sir, I haven't been in touch with Mr Mitchell yet. I will contact him during the day and I will report back.

MR R BRABANT CALLS

DONALD CHARLES PRINCE (AFFIRMED)

Q. Is your full name Donald Charles Prince? Do you reside in Takapuna and are you an archaeologist with the qualifications and experience set out in paragraphs 2, 3 and 4 of your primary evidence?

A. Yes.

Q. Now for this matter, Mr Prince, have you completed a primary statement of evidence or sometimes called evidence-in-chief that's dated the 29th of April 2014?

A. Yes.

- Q. And then you also have completed a rebuttal statement of evidence that's dated the 23rd of September 2014?
- A. Yes.
- Q. Now we'll deal with those first before the joint witness statement. Now are there corrections that you would like to make to either of those statements of evidence?
- A. Yes.
- Q. So let's just make the, go to the correction area first and then you can maybe explain it.
- A. It's basically –
- Q. Which paragraph or detail?
- A. Oh okay.
- Q. We'll just get the correction recorded and I'll get you to confirm the statement and then you can explain to the Court, which I think he'll need to do, Sir, why the correction's being made.
- A. It's statement, it's paragraph 15.

THE COURT: JUDGE NEWHOOK

- Q. Of the first statement of the –
- A. My first statement, yes. Evidence-in-chief. And it reads, "Archaeological site R11/191 (inaudible 9:37:34) exposed by erosion at the southern end of the beach is the nearest recorded archaeological site to works associated with the marina proposal." At the time –
- Q. Just tell me what change are we going to make to that and then you can give an explanation?
- A. Okay, it's now, it's actually site R11/1650 and it's to do with where the walkway terminus –
- Q. Sorry, are there any more – so do we cross out "R11/191"?
- A. Yes, sorry, yes. Cross out and replace it with –
- Q. Are there any other changes that you'd like to make to the words?
- A. No.
- Q. Okay, that's fine. Is there anywhere else, is that the only change that you're needing to make?

- A. Yes.
- Q. I mean in terms, it's obviously a reference to a site. Does it show up on a map that we should also correct as well?
- A. It shows up in Ms Plowman's –
- Q. No, what about your maps I mean? Have you got that one shown on –
- A. It's appendix 1 and I have grouped – now unfortunately the map that's been produced it's thrown everything around. I don't know why the printing went wrong.

THE COURT: JUDGE NEWHOOK

I worked that out. What's happened is that where any given site has four digits after the slash, the computer's thrown the fourth digit onto a new line but I found that when I picked up that I could get onto the right sites.

EXAMINATION CONTINUES: MR R BRABANT

- Q. Yes absolutely, so actually if you go to the one on your –
- A. Yes.
- Q. – map there it's there, isn't it?
- A. Yes.
- Q. It's R11/19 and the "1's" dropped down below?
- A. Mhm.
- Q. So should we cross that out and put the –
- A. No, no. Site R11/191 is there but it is inaccurate to say that that is the closest, the nearest site, recorded site to the works to do with the marina.
- Q. So are we adding another site?
- A. No.
- Q. Or should we just refer to – no, go on.
- A. Yeah, just refer to R11/1650. At the time I – do you want me to explain?
- Q. No. Sorry, I just want to make any corrections to the map.
- A. Yep.
- Q. Does the map need altering?

- A. Well the arrow, I've grouped R11/1493 and R11/1650 together. They're actually two sites in very close proximity to each other.

THE COURT: JUDGE NEWHOOK

- Q. You seem to have three together. There's also R11/1653.
- A. That should be –
- Q. And it's on the same arrow.
- A. That shouldn't be, not in –
- Q. In the Appendix 1 that I've got here, there are three grouped together there in the north-east corner of the Bay near the wharf shed?
- A. The copy that I've sent through –
- Q. Mr Brabant could you just go and see what the witness is holding up we all need to be on the same page. Hang on in think I've worked it can I just ask you, if I'm right in after conversation with Commissioner Leijnen. The arrow above the one that I was looking at.
- A. Yes.
- Q. Which points in much further east.
- A. Yes.
- Q. Has been bundled R11/1493 AND R11/1650 and the lower arrow simply has the one site R11/1653.
- A. That's correct and the arrow on your copy.
- Q. Yes.
- A. Should go to those Pohutukawa trees you can see on that, looking at land between the two beaches.
- Q. Yes. Which is – it helps us to understand your correction – telling us what's the closest site to the proposed marina.

UNKNOWN MALE VOICE: (09:41:56)

- Q. Mr Prince if we got this map copied to replace this one would that solve the problem?
- A. Yes, it would.

THE COURT: JUDGE NEWHOOK

Can I just have a look at the one you're holding Mr Brabant? Yes that is organised much more clearly.

EXAMINATION CONTINUES: MR R BRABANT

- Q. So then on the back of that there's a list of sites.
- A. A table.
- Q. Does that need to be amended as well by some change like you've made to your evidence?
- A. Only in the comments. If you go to R11/1650, in the comments I've got, "Not relocated group coordinates place it in close proximity to the urupa 1493."
- Q. Yes, so does –
- A. Which is –
- Q. – that need to be changed?
- A. That needs to be changed.
- Q. Give me the new words.
- A. R11/1943 is located, it's in the foreshore bench, the coastal bench on the east side of the small stream –
- Q. Well this is a descriptor for R11/1650 –
- A. 50, yes.
- Q. What words is it no longer in close proximity to R11/1493.
- A. Oh it is.
- Q. So what do you want to write in there instead of what's there?
- A. Well I want to say that it's located and it's –
- Q. Oh it is located?
- A. Yes.
- Q. And so remove "not re"?
- A. Yes.
- Q. Located, and located what?
- A. Located in the coast – eroding out of the coastal bench on the east side of the small stream on the first beach –
- Q. So do we cross out the reference to close proximity to the other one?
- A. Yes.

Q. We do?

THE COURT: JUDGE NEWHOOK

We're just going to sit here quietly you go over to the witness box Mr Brabant and work quietly with the witness to get us a bunch of words to go in the right-hand column alongside 1650 and you come back and you tell us what those words are going to be.

EXAMINATION CONTINUES: MR R BRABANT

Q. So with – on the right that little explanation now reads, “Eroding out located, eroding out of coastal bench immediately east of small stream west of wharf.”

THE COURT: JUDGE NEWHOOK

Is it north of the wharf?

EXAMINATION CONTINUES: MR R BRABANT

Q. North-west of wharf. So Mr Prince just to make sure we've got this right, the words are changed to read, “Located, eroding out of coastal bench immediately east of small stream north-west of wharf.” Are there any other changes we need to make?

A. No.

Q. But that issue doesn't arise in your rebuttal?

A. No.

Q. Okay, so with that alteration, can you confirm to the Court that to the best of your knowledge and belief the contents of your two statements of evidence are true and correct?

A. Yes.

Q. Now the joint witness statement if you could – do you have that volume there please? So under tab 2, turn that up.

WITNESS REFERRED TO JOINT WITNESS STATEMENT

Q. So do you recognise this joint witness statement system for archaeology dated 20 August 2014?

A. Yes.

- Q. And if you turn to the last page can you confirm your signature on that?
- A. Yes.
- Q. Right, now, so now we're ready to go and so what I would like to do, I need to do is, I need you to tell the Court how this change about this midden has been necessary, in other words what's something in new information that has arisen that you may have or someone may have given you to lead to that amendment?
- A. We, this could be long. I go into the field with site record forms that have been filled out and come off our database which is New Zealand Archaeological Site Association's database and often these are 30 to 40 years old so the information aides the relocation, correct coordinates are often to found to be in variance to what the actual fact is. At the time of my initial visit and my fieldwork, I was the belief that site R11/191 was all encompassing of that from the Pohutukawa trees just to the very first stream to the north west. So I included that, 1650, as part, well the remains of 1650 is part of 191. On now having reviewed the information available I now believe that actually they are two different sites.

THE COURT: JUDGE NEWHOOK

I can say Mr Prince that many of us over the years have worked with these AA records and the older ones particularly are pretty rough and often quite difficult to comprehend even when you're standing in the field and looking at things. The diagrams are often rudimentary at best and the typed information was often precursory and pretty rough, so for myself I can kind of understand.

EXAMINATION CONTINUES: MR R BRABANT

- Q. One more question before you answer questions from others, to assist, has this issue also been addressed in the evidence of the Council archaeologist, Ms Plowman?
- A. Yes.
- Q. And can you give us a paragraph number or reference to where she has already, has she already made the correction as it were?
- A. In her evidence-in-chief...

Q. So would it be on page 9?

A. It is. Yes, she gives a site description of, but...

Q. You've identified the paragraphs, I just ask, do you have any divergence from her description in there?

A. No.

THE COURT: JUDGE NEWHOOK

Mr Allan?

MR ALLAN:

Thank you Sir, just a handful.

THE COURT: JUDGE NEWHOOK

And they're probably more in the nature of questions-in-chief rather than...

MR ALLAN:

Yes, they're directed at bringing perhaps a bit of clarity to the issue that we've just been discussing, to help the Court.

THE COURT: JUDGE NEWHOOK

Yes, well as I say questions-in-chief rather than cross-examination as such.

MR ALLAN:

Well there will be, I suppose, questions in cross-examination in relation to conditions. Let me know if I'm overstepping the mark at any point Sir.

CROSS-EXAMINATION: MR ALLAN

Q. Good morning Mr Prince, just to assist the Court with where things are, do you have a copy of Ms Plowman's rebuttal evidence there?

A. Yes.

Q. And if you could turn to figure 3 which is a plan illustrating the location and recorded extent of archaeological and historic heritage sites. That

was obviously produced by Ms Plowman after your caucusing. Are you happy with what that shows? You've previously reviewed that?

A. Yes.

Q. And that shows the relationship between some of the various sites that we've just been talking about, R11/1650, R11/1493, R11/191, are you happy with the way those are shown on that plan?

A. Yes.

Q. And just again, because it's something that arose out of Ms Plowman's rebuttal, do you recall in her rebuttal evidence she talks about finding, on the CHI, a record that wasn't revealed by the NZAA, an inland urupa?

A. Yes.

Q. Are you content with her description, paragraph 11 of the rebuttal, as to how she rediscovered that item and how she's plotted it?

A. Yes.

Q. Now just very briefly in relation to conditions, if you could turn to Ms Plowman's evidence-in-chief, paragraph 73. It's actually the bit over the page from paragraph 73, page 17 that I'm going to take you to. Do you have that there?

A. Yes.

Q. Do you see how Ms Plowman's tracked in some amendments to the version of the conditions that was attached to Ms Bremner's original section 87(f) report.

A. Yes.

Q. Now, those two tracked and changes I've located in the applicant's set of conditions, the first two, 41.1 and 41.2 I haven't been able to locate. I may have missed them but I couldn't see them. But let's just assume they're missing, would you agree that both of those are sensible from an archaeological perspective as a belt and braces measure?

A. Yes.

CROSS-EXAMINATION: MR ENRIGHT

Q. Good morning Mr Prince, just so you're aware, my questions with you focus on the indigenous archaeological sites so I appreciate there are European archaeological sites but I'm only asking you about indigenous sites. And just a terminology issue, in terms of your new map, appendix 1, I will be referring to the area on the bay from the wharf all the way to the Mokemoke Pa site as the northern part of the bay, I think that generally seems to be consistent with how other witnesses are describing it, just so you appreciate that. Most of my questions will be about that area from the wharf itself north through to Mokemoke Pa site. Now I just want to clarify a couple of points that have arisen out of the change in your evidence you've just indicated to the Court and the first question is about which site is closest to the proposed marina development. Now the evidence you've just given is that you say it's now R11/1650?

A. Yes.

Q. But when my friend for the Council asked you about Ms Plowman's plan you also indicated an agreement with her plan which was figure, annexure C, figure 1, and I'd just like to take you please to Ms Plowman's annexure C, figure 1. Figure 3, sorry.

THE COURT: JUDGE NEWHOOK

On her rebuttal.

MR ENRIGHT:

Sorry Sir I was looking at her primary.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

Q. Well just to summarise the question Mr Prince, the question relates to how close together or how approximate sites 1650 and 1493 are. It seems as if you've previously treated them as being essentially adjacent to each other, is that correct?

A. Yes.

Q. So would it be fair to say then that both site 1650 and 1493 are the closest to the proposed marina development?

- A. No.
- Q. So you would maintain the 1650 is closer?
- A. Yes.
- Q. But you'd accept, in effect, 1493 is also or perhaps second closest if you like?
- A. No I can't state that because 1493 is a reinterred burial that from the available information that we have I don't know its exact location.
- Q. But you don't deny that 1650 and 1493 are in close proximity.
- A. Yes.
- Q. You accept that, yes. Now just when you amended paragraph 15 of your primary evidence, I just wanted to check with you, the only change you made to that was you changed the site reference so it now reads R11/1650 but you didn't change – it reads on "at the southern end of the beach" and I presume that's just an oversight, would you agree? Obviously it's at the northern or you might say north-western end?

1000

- A. No, my understanding of the geographic location, it's at the southern end of the beach which is towards the wharf. South-eastern probably more correct.
- Q. All right, but in any event you've depicted it, you say accurately, on the new appendix 1 which you've handed up so we know exactly where it's located.

THE COURT: JUDGE NEWHOOK

Mr Enright, I'm just wondering if we can cut through something here. I'll preface my suggestion with this comment. I'm not sure how much turns on which of these sites might be seen to be the closest to the proposed marina development, maybe that will emerge as questions are asked of this witness, but if something turns on it then it might be useful for the witness and others of us to have open in front of us Ms Plowman's appendix 3, the aerial photograph, I think it's appendix 3.

MR ENRIGHT:

Appendix 3, Sir, yes.

THE COURT: JUDGE NEWHOOK

Which has the sites, plural, shown in a bright pink, pegged outline and at the same time from the March 2013 book of illustrations, figure 2. Mr Brabant, can you help the witness find figure 2 in the 2013 book, and just put them side by side.

MR R BRABANT:

Is it in her rebuttal or her...?

THE COURT: JUDGE NEWHOOK

Yes, her rebuttal. Have you got that, it's an aerial photograph on which the various sites are shown with a bright pink, dashed outline? Mr Prince, just hold up what you believe to be her appendix 3 on her rebuttal so that I can make sure it looks like – has it got bright pink, dashed outlines around each of the sites?

MR R BRABANT:

I've just given him the set, better quality, Sir.

THE COURT: JUDGE NEWHOOK

Q. Thank you, and have you got figure 2 in the 2013 book in front of you?

A. Yes.

Q. So, when you compare those two aerial photographs, each with its own separate information marked up on it, might it not be the case that all of the sites starting with 1650 and running down through 1651, 1493 and 191 could be said to be almost equidistant from the proposed marina development?

A. Because Pier A of the marina appears to run almost parallel to the shoreline, leaving aside that there's a slight curve in the shoreline.

Q. See what I mean?

A. Yes.

- Q. So they're all roughly the same distance from that part of the marina?
- A. Yes.
- Q. Then again when we look at the carpark that's drawn on figure 2 and the boardwalk track to the beach, perhaps 191 is closest to the proposed development after all?
- A. No.
- Q. No? Okay, fine, we'll leave it there. I don't know even know what the importance of it is, but I wanted you to have those two figures in your mind.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

- Q. It was more just a clarification point, it's not a key point at all. So I just, Mr Prince, would like to just take you through please the archaeological sites that are located from the wharf leading around north through to the Mokemoke Pa site. So that's your appendix 2 to your primary evidence, and the first question is just the number of sites, by my count I think there's approximately 10 sites that are recorded, but you should check that?
- A. No.
- Q. The number you would have is, please?
- A. I think it's 19.
- Q. Nineteen, thank you. And does that include the sites identified at the Mokemoke Pa itself?
- A. Yes.
- Q. Now in terms of the number of recorded burial sites we have R11/1493?
- A. Yes.
- Q. And R11/1653?
- A. Yes.
- Q. Now Ms Plowman, in her rebuttal evidence, indicates a potential discrepancy. She says there's a third burial site that she describes as R11/1378.
- A. Yes.

- Q. And I note you haven't commented on that in your rebuttal, so do you accept that there's potentially a third recorded burial site 1378?
- A. No. If I may explain?
- Q. Yes.
- A. My understanding is that 1378 is recorded on the Auckland Council's cultural heritage inventory, but is not within the New Zealand Archaeological Association's data file and my understanding is that 1378, there was no physical remains identified there, and subsequent to the human remains eroding out at 1653 and re-interred twice, the two sites have been amalgamated into one and the location is at 1653.
- Q. So you haven't personally investigated 1378, but that's your –
- A. No.
- Q. Now in terms of your appendix 2, R11/1653, you've got there as your description shell midden?
- A. Yes.
- Q. Would it be fair though to add to that "and urupa", because that is, as you agree, it is a burial site?
- A. It is a burial site, but whether you can term a single burial as an urupa, that is something beyond the scope of what I do. It's a cultural –

THE COURT: JUDGE NEWHOOK

- Q. Would you be comfortable in it being called "burial"?
- A. Yes.
- Q. Like Ms Plowman has labelled 1493?
- A. Yes.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

- Q. Now it's likely, isn't it, that that there are other undiscovered burial sites, for indigenous archaeology we're talking about here, in both the southern and northern parts of Matiatia Bay?
- A. Yes.
- Q. And I think quite fairly you say that in fact in your primary evidence at your paragraph 16, where you say, third sentence, "It is not

unreasonable to expect that urupa are present within the bay and kōhiwi exposed periodically along the foreshore.”

1010

A. Yes.

Q. And again, although you say “the bay” you accept that we’re talking about both the northern and southern parts of Matiatia Bay to one and the other end of the wharf?

A. Yes.

Q. Now just turning to the Mokemoke Pa site. Now that’s been described in the evidence of Morehu Wilson as – do you have Mr Wilson’s or could you please grab Mr Wilson’s evidence, Morehu Wilson. Sir, there is a numbered version of his brief which I’m going to be relying on. There was earlier an unnumbered version. I’m just checking if the Court has the numbered version.

THE COURT: JUDGE NEWHOOK

Yes, we’ve had that replaced in our records. Mr Wilson, Morehu Wilson sent in a new version of his evidence with paragraph numbers put in and I think that’s come through.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

Q. Paragraph 29 is the specific paragraph.

A. Paragraph 29?

Q. Yes, thank you. And you’ll see that refers to Mokemoke Pa situated northern entrance, a powerful conspicuous remnant of Ngāti Paoa’s history and he describes it in the last sentence as “A sacred sentinel that watches over the bay and its environment.” Now from an archaeological perspective you would accept, and I think you do in your written evidence, it is obviously a pa site and the modified landscape confirms that?

A. Yes.

Q. And in terms of visual overlook there are lines of sight between the R11/1493 and the pa site itself?

A. Yes.

- Q. And you'd accept, wouldn't you, that generally the function of a pa site was to ensure visual connectivity with areas that might be occupied by settlement, villages, such forth for strategic protective reasons?
- A. No. Not necessarily.
- Q. So what do you see is the role of a pa site in that case, in a coastal context?
- A. In a coastal context my understanding, my interpretation is a fortified site. So there has to be physical, there has to be physical remains of the fortifications and my understanding is that the pa was a place that operated as somewhere in times of stress and also times of celebration, along the lines of the current meeting house and marae.
- Q. In this context, in terms of Matiatia Bay, you would expect, or sorry, you would accept, wouldn't you, that the pa site would have played a defensive role for any settlement within the bay itself?
- A. Yes.
- Q. And your evidence you do accept, don't you, that this Matiatia Bay has been the subject of settlement both pre-colonial and post-colonial by indigenous peoples?
- A. Yes.
- Q. And in terms of, just again focusing on the area to the north of the wharf itself through to the pa site, Mokemoke Pa site that is, do you accept that that would have been used for settlement purposes by Māori for the use of kainga for settlement purposes potentially for crops and other purposes?
- A. I have no evidence of that.
- Q. You have no physical evidence. Is that what you mean by that answer?
- A. Yes.
- Q. Do you accept it's likely, however, to be used for that purpose?
- A. Are you asking me whether there's a likelihood that that is –
- Q. Yes.
- A. Yes.
- Q. So it is likely?

- A. I believe that the physical remains that we have identified that have been identified that there is that, it could well have been a kainga. However, there has been so, we haven't – the only way we can determine these things is through excavation and analysis. I have no evidence of any such mitigation that's occurred within Matiatia.
- Q. You say, and this seems to be a point of difference between yourself and Dr Bader, only rely on physical evidence but you can also rely on visual clues, can't you? For example, the obvious one being the pa site in terms of landscape alterations.
- A. In relation to the bay and Mokemoke Pa, there is, there was in my view more evidence of settlement running inland from Mokemoke Pa up through what today is Matiatia Estate with, where the monumental architecture that now exists there appears to have removed significant parts of that occupation. We've got, I have no evidence of any mitigation and any – so it would only be speculation as to the temporal and chronological occupation of Matiatia.
- Q. But just drilling down, the question was about whether you accept, and you did earlier accept there was settlement, indigenous settlement on the northern part of Matiatia Bay both pre-colonisation and post-colonisation?
- A. Yes.
- Q. And if I could just take you to Ms Plowman's evidence.
- A. In chief?
- Q. Yes, correct. Her primary. And I just want to take you to the photographs she produces at the annexure C to that and if we start with figure 3 referring to site R11/191. Now that's, if you like, physical evidence of occupation settlement, indigenous settlement?
- A. No.
- 1020
- Q. Sorry I just need a bit more information on why you say no?
- A. All right, well if you look it's a shell midden which is evidence of collection, processing and consumption of shellfish but it's not evidence of any permanent settlement.

- Q. Well if you look – perhaps let's go to the most obvious example would be figure 15 referring to a visible stone lined over associated with R11/1650. That's fairly compelling evidence isn't it of settlement?
- A. Not necessarily, no.
- Q. And what's, if we turn to figure 16 over the page referring to a cultural occupation layer overlaid and intermixed with shell midden again that would be good evidence or strong evidence, likely evidence of settlement and occupation?
- A. No it's evidence of occupation and abandonment and re-occupation, well re-use sorry rather than occupation. There has been, but once again without doing radiocarbon dating or excavation and analysis of the results of excavation. We're just working off visible evidence so having a stratigraphic layer in the foreshore indicates that there has been use and then a period of time when it hasn't been used then re-used.
- Q. Just though reminding you of your evidence you gave in your primary brief paragraph 10, you referred there to Matiatia Bay as surrounded by a complex archaeological landscape representing pre-European Māori occupation and then you gave some examples of that. You're not stepping up away from that evidence are you, you confirm that remains correct?
- A. No, that evidence is there.
- Q. Now you also accept don't you that artifactual material which may include kōhiwi will be found from time to time in the tidal zone?
- A. No? Oh, artifactual material, kōhiwi, no? More likely to be found on the beaches they erode out of that foreshore if there is degradation of the foreshore.
- Q. So you say more likely but there remains that possibility in terms of kōhiwi?
- A. Anything's a possibility.
- Q. But I'm asking from your perspective as an expert obviously.
- A. No I can't say that.
- Q. But you do accept artifactual material itself may be found in the tidal zones and I think you do say that in your written evidence.

- A. The inter-tidal zone as far as up to the mean high water zone, yes.
- Q. Just a point of clarification in terms of your Appendix 4 to your primary evidence, Appendix 4 which is the circle R11/1654.
- A. Yes.
- Q. Do you agree the circled area would include the two burial sites? The two recorded burial sites?
- A. Which two are you referring – are you referring to R11/1654?
- Q. Yes. And 1493 –
- A. 1493?
- Q. Yes.
- A. No.
- Q. Would you accept that covers the 1493 site?
- A. No.
- Q. That may perhaps be a matter where we need to deal with the scaling of perhaps this plan versus other scales would you agree with that, it might be a scaling issue.
- A. These circles are from the Auckland council unitary plan?
- Q. Yes that's right.
- A. They're mana whenua sites and my understanding is that they are taken from a central point and there is a 100 metre or 200 metre diameter or 100?
- Q. One hundred.
- A. One hundred metre diameter circle radiated out from that centre point which is the grid coordinate recorded within the NZAA database and Auckland Council's CHI.

THE COURT: JUDGE NEWHOOK

Mr Brabant, did hear you suggest, a phrase to the witness just then? Did I hear you say 100?

MR R BRABANT:

He said both numbers Sir.

THE COURT: JUDGE NEWHOOK

And did I hear you speak to him?

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

Do you wish to apologise for that?

MR R BRABANT:

I do.

THE COURT: JUDGE NEWHOOK

It is quite improper for Council to assist a witness giving evidence under cross-examination.

MR R BRABANT:

I agree Sir.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

Q. Just a final question and you may or may not be able to assist with this Mr Prince but Ken Morehu Wilson refers to having reinterred kōhiwi into a rocky outcrop. His paragraph 25 and if I could just ask you, he refers to that in the second sentence, kōhiwi skeletal remains were located in the immediate vicinity of the proposed access and reinterred. Kōhiwi wedged in the rocks are sacred as they have been in a process of cleaning prior to placement indicate the person was of rank or from an important family within a tribe and the question for you is in your experience as an archaeologist, have you encountered or come across kōhiwi lodged within rock areas in the manner described?

A. No.

CROSS-EXAMINATION: MR LITTLEJOHN

Q. Good morning Mr Prince.

A. Good morning.

Q. In your evidence-in-chief paragraph 8, you say that the marina as designed requires little modification to the landscape of Matiatia Bay. When you use the phrase landscape there, are you confining that up to those portions of the geography that are above MHWS?

A. Yes.

Q. So you're not making any claim there about the modification or otherwise of the marina to the seascape?

A. No I'm not.

Q. Because you accept that the marina structures will be present in the seascape won't they?

A. Yes.

Q. Are you familiar with the Māori view of the world that it is not possible to differentiate between the land and the sea in the appreciation of landscape?

A. I don't wish to comment on cultural value.

Q. That's fine and that's what I'd presumed you would say because you've been very clear in your evidence that you're not entering into the domain of cultural matters at all are you?

A. No.

Q. Your role has been to look at the physical evidence and that includes reports, NZAA reports of other archaeologists and identify what has been identified in this landscape?

A. Yes.

Q. And you make no comments whatsoever about what those features may or may not mean to Tangata whenua.

1030

A. No, I do not.

Q. Now Dr Bader produced with his evidence a compiled archaeological geomagnetic report. Have you reviewed that document?

A. Very briefly.

Q. Have you ever undertaken such a geomagnetic archaeological survey?

- A. I have been on a, an excavation where we used geomagnetic and ground resistivity. We attempted to use it.
- Q. Attempted to use it?
- A. Yes.
- Q. So would you accept that it is a technique of archaeological investigation that is not uncommon?
- A. No, I can't accept that.
- Q. But would you accept that it is a technique of archaeological investigation?
- A. Yes.
- Q. And I take it from your evidence that you would ascribe to the view that the most robust archaeological evidence comes from excavation?
- A. Yes.
- Q. And I think you mentioned carbon dating?
- A. That is one aspect of it.
- Q. But do you accept that that technique of archaeological investigation by its very method disrupts potential archaeological sites?
- A. Yes.
- Q. And so would you accept then that methods of archaeological investigation that do not disrupt such sites has as a general objective, is a useful technique?
- A. In what context?
- Q. In that you may be able to investigate without disruption?
- A. Only if we were looking for certain structures.
- Q. Have you had any experience in reviewing either in a peer capacity or any other capacity any geomagnetic survey reports?
- A. No.
- Q. In the joint witness statement, you and your colleagues, Ms Plowman and Dr Bader, all agreed that there is a reported historic settlement in Matiatia Bay?
- A. Yes.
- Q. In reaching that agreement, was the evidence identified by Dr Bader's geomagnetic report taken into account?

- A. Not at caucusing, no.
- Q. So the agreement in the joint witness statement as to this historic settlement was derived from the existing archaeological record presumably?
- A. No, it was more from the historic record.
- Q. And by that are you referring to for example the publications of Paul Monin
- A. Yes.
- Q. In the preparation for caucusing did you review any of the briefs of evidence or will say statements for Ngāti Paoa or the Piritahi Marae?
- A. Yes.
- Q. And did any of the discussion in those briefs of evidence inform the discussion as to the historic settlement at Matiatia Bay?
- A. No, not on archaeological grounds.
- Q. At any time with your involvement for this project have you had any discussions with any members of Piritahi Marae or Ngāti Paoa?
- A. No.
- Q. Have you had any discussions with local people who have any historic knowledge of the landscape there?
- A. No.
- Q. You've confined yourself very much to the historic archaeological record, is that right?
- A. To the archaeological record, yes.
- Q. In your rebuttal evidence you comment on Dr Bader's introduction of the concept of phenomenology and you make the comment that it is a post-processual approach/technique and you say that it has provoked criticism within the archaeological profession. Now without wanting to get into a big debate about what the criticisms or otherwise may be, do I take it from your rebuttal evidence that you have never practised this approach?
- A. Yes. Until more recently I had no, I had never come across the term "phenomenology". I had no understanding of it. Since being introduced with the term in, with Dr Bader's evidence in July I believe, I've done

some reading and I have had brief discussions with academics from Auckland, an academic from Auckland University.

Q. But I think you've accepted it's not an approach you've practised yourself, is it?

A. Not knowingly, no.

Q. One of Dr Bader's concerns is that the location, the physical location of the marina structures would potentially frustrate the use of that technique in the future. You understand that part of his evidence?

A. Yes.

Q. And you comment that in your rebuttal evidence that he ought not to be concerned because people will still be able to paddle through the marina to experience the seascape and landscape. That's what you say in your rebuttal, isn't it?

A. I seem to have lost my rebuttal.

Q. Paragraph 6 in your rebuttal.

A. Paragraph 6. I state that you could still circumnavigate.

Q. All you are saying in your evidence there is that a self-propelled craft could still paddle around the marina. That's all you're saying there, isn't it?

A. That would be my interpretation of "circumnavigation".

Q. You're not saying that that would be acceptable for the practise of a phenomenological approach to the investigation of this place, are you?

1040

A. Could you repeat that, I kind of lost it.

Q. You're not saying that that would be sufficient to undertake a phenomenological assessment of this landscape and seascape?

A. Well because of my very limited understanding of phenomenology, I could not comment.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR R BRABANT

Q. Can we go back to some questions about R11/1378. Now you were asked some questions about – have you got Mr Plowman's evidence there?

A. Yes, in the rebuttal. 9, it's paragraph 9.

Q. Can you go to paragraph 9. Have you had that?

A. Yes.

Q. That's referring to the same site, isn't it?

A. 1378, yes. As referring to the same site –

Q. You described how the site had been admitted and why?

A. Yes.

Q. And her evidence addresses the same thing?

A. Yes.

Q. Now you were asked some questions about first of all Mokemoke Pa and then the question of potential settlement on the northern side of Matiatia Bay looking at the features and you responded to that about what evidence there was or wasn't. Can I take you to paragraph 10 of your evidence-in-chief, which was a paragraph that my friend Mr Enright took you to. So there you say in the second sentence, "Archaeological landscapes adjacent to the bay's coastline include pa fortified sites." Then you refer occupation terraces, crop storage and other pits. Now these are areas that you or others have discovered?

A. Yes.

Q. And they would be, would they be associated with occupation? Mr Enright didn't specifically put those to you.

A. No. They can be. The terracing can be for horticulture, for gardening or purely as defensive measures. But once again, without doing invasive investigation we are left to assuming or presuming or supposition.

Q. So to help the Court, in relation to Matiatia Bay and the question about potential settlement areas can you identify for the Court, and you could use a map if that would help, where those features that you've referred to are occupation terraces, crop storage and other pits? If you can find a –

A. In relation to Mokemoke Pa?

Q. No, in relation to – well the paragraph starts off about Matiatia Bay.

A. Yeah, okay.

Q. So you've referred to those things as shell middens and burial sites, Matiatia Bay, occupation terraces, crop storage, other pits. Can you identify them in the wider Matiatia Bay that you refer to?

A. Site R11/1859.

Q. Can you tell us which plan or anything –

A. Oh sorry, this is on appendix 1.

THE COURT: JUDGE NEWHOOK

Q. Are we going to use this one that you handed up this morning?

A. Yes.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. So give us that number again.

A. R11/1859.

Q. And for the record –

THE COURT: JUDGE NEWHOOK

While we're on this page, I think we should have it produced as an exhibit.

EXHIBIT 1 PRODUCED – MAP

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. For the record can you just describe its location?

A. It's on the headland above the, above and to north of the wharf. Now this site appears to have been modified by the residential development of that property. Currently there's, there seems to be more terracing there than was originally recorded and they're currently used to grow olive trees on. It appears to me that the land owner has benched to create his olive plantation. R11/190, which is on the southern point of, or the right-hand point as you come into the bay, this site is described as a pit and terrace. Its actual function and origin is up for conjecture at the moment. That's a terrace site. 205, R11/205 which is the slope

running down to Mokemoke Pa, there is a number of terraces on that site that once again some of which appear to have been modified by the residential development.

THE COURT: COMMISSIONER LEIJNEN

Q. Sorry, can you just give that number again.

A. R11/205, immediately inland of Mokemoke. And site R11/206, which is the, just immediately to the north-west of Mokemoke Pa which is an inland facing slope with terracing and shell midden over – which is for an archaeologist appears to be a very interesting site. That's it.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. Is that it?

A. There is one other. 16 – 1651, which is the exact location of that is on private property and when I endeavoured to relocate there were numerous signs telling me I wasn't welcome. So I didn't, being a conscientious citizen.

Q. Have we done the list now?

A. That's it.

Q. Now you were asked some questions about Dr Bader's geomagnetic report and the work he did and what could be loosely described as the carpark area on the southern side?

A. Yes.

Q. And is it the case, Mr Prince, that prior to evidence being prepared and attending the joint meeting you had seen a report that had assessed that work and, or if you like, reconsidered it that was done by another agency?

A. Yes.

Q. And do you remember who did that work?

A. Yes.

Q. Well you'll need to –

A. Oh sorry.

Q. – be a bit more forthcoming. Can you tell us?

A. It was Dr Simon Bickler and Sarah McCreedy and they did a Desktop assessment of the ground resistivity, oh the magnetometer work that Dr Bader did and they did that on behalf of Clough & Associates and that was commissioned –

Q. And do you know who they were –

A. That was commissioned by Auckland Council.

Q. And did the content of that report influence your view about Dr Bader's work, in terms of attending the statement –

A. Yes. Yes, but it... I could go on. Well –

Q. Don't ever –

1050

THE COURT: JUDGE NEWHOOK

Q. That might save your situation from having asked a leading question, Mr Brabant, so yes do go on, Mr Prince?

A. No, it more reinforced my impression of my understanding of using a geophysical investigation, in that it cast up a number of anomalies and the only way to interpret these anomalies is actually to ground test them, which hasn't been undertaken.

MR R BRABANT:

No further questions, thank you.

THE COURT: JUDGE NEWHOOK

Thank you for your evidence, Mr Prince. You may be excused if you wish to leave.

MR PRINCE:

Can I go?

THE COURT: JUDGE NEWHOOK

Was that your first time in the witness box, or have you done some of this before?

MR PRINCE:

Never in an Environment Court, no, not been in public so much.

THE COURT: JUDGE NEWHOOK

Welcome to the Environment Court, I hope it wasn't too terrifying an experience.

MR PRINCE:

No, no, I was thinking at 3 o'clock this morning that I should really interpret this as being a wonderful experience and one that I should embrace, so I thank you for your tolerance.

THE COURT: JUDGE NEWHOOK

Good on you.

MR PRINCE:

It's not something I ever envisaged I'd have to do, 20 years ago when I started this I would've gone no.

THE COURT: JUDGE NEWHOOK

Thank you for your help, Mr Prince, we appreciated hearing from you. Sometimes, counsel, I welcome being told when a first time witness is with us, so we can manage the occasion slightly, but not so as to cut across the cross-examination opportunities, but just a human touch. Anyway, the witness acquitted himself very well. Thank you, Mr Prince.

WITNESS EXCUSED

MR R BRABANT CALLS**ROBERT JAMES PRYOR (SWORN)**

Q. Is your full name Robert James Pryor, are you a director of LA4 Landscape Architects, Auckland and do you have the qualifications and experience that are set out in paragraphs 2 through 7 inclusive?

A. Yes I do.

Q. For this hearing have you completed a primary statement of evidence dated the 29th of April 2014?

A. Yes I have.

Q. Is there a correction you'd like to make to that?

A. Yes there is, and that relates to my paragraph 13 when I'm referring to the breakwaters, and I said there, "At mean low water springs between 4.2 metres and 5.1 metres will be visible." That should actually read, "a maximum of 4.2 metres will be visible."

Q. We'll give the explanation once we've got through these, a bit like last time, if we may. Are there any other corrections to that?

A. No there aren't.

Q. And if we now, can we move to also you completed a rebuttal statement of evidence dated the 23rd of September 2014?

A. Yes I did.

Q. And are there corrections necessary to that?

A. No there aren't.

Q. And with the correction made, to the best of your knowledge and belief are the contents of both statements of evidence true and correct?

A. Yes they are.

Q. You attended a joint witness caucusing with others?

A. Yes.

Q. In relation to landscape natural character, amenity, recreation and open space, Mr Pryor?

A. That's correct.

Q. And the statement that came out of that is dated the 22nd of August 2014?

- A. Yes that's correct.
- Q. And your signature is to be found at the end of that document?
- A. Yes.
- Q. Now, can we move back then to paragraph 13 and can you explain the circumstances that led to making that correction?
- A. Yes that figure between 4.2 and 5.1 was actually a carryover from my original assessment and since that assessment was done I was advised by the relevant experts in terms of high water levels that 4.2 was the maximum, so I'd originally undertaken my assessment based on at mean high, sorry, mean low water springs, that it could be between 4.2 and 5.1, and then I was then corrected that 4.2 was the maximum.
- Q. And had there been a section 92 request from the Council about that?
- A. Yes there had, and I forwarded a letter to Mr Max Dunn on the 16th of September 2013 just clarifying that figure.
- Q. At the figure that you've now put in?
- A. At 4.2 maximum, yes.

CROSS-EXAMINATION: MR ALLAN – NIL

THE COURT: JUDGE NEWHOOK

Mr Enright?

MR ENRIGHT:

Sir, I did confer with counsel for DMI and we agreed I would just follow Mr Casey for this.

THE COURT: JUDGE NEWHOOK

Yes that's fine, yes. Mr Casey.

CROSS-EXAMINATION: MR CASEY

- Q. In your evidence-in-chief you refer at paragraph 11 to, I'm sorry, at paragraph 3 to your experience in a wide variety of major projects with a range of landscape settings and you refer there to your involvement in aquaculture farms. Can you tell us where those farms were located?

A. Over my years, and particularly before the moratorium was put on aquaculture farms, I've been involved in marine farms in Bluff Harbour, the Marlborough Sounds and the Coromandel, Firth of Thames.

Q. And that was before the moratorium of the 1990, is that right?

A. The majority of the work was done before then.

Q. And the rest of your work is all involving terrestrial projects as you set out in your statement there?

A. In terms of those ones set out there, yes, largely terrestrial.

THE COURT: JUDGE NEWHOOK

Mr Casey, I'm just not sure how much turns on this, but the moratorium I don't think was as far back as the 1990s, I think it cropped up in the 2000s.

MR CASEY:

No, you're probably right.

THE COURT: JUDGE NEWHOOK

Mr Brabant, you might know about that. Just in case it impacts on the length of memory, but witnesses have this...

MR CASEY:

Your Honour, I do stand corrected. I'm just trying to recall, I had a case that fortunately was resolved as a result of the moratorium, I'm trying to remember, I think it was in late 1999 or thereabouts.

THE COURT: JUDGE NEWHOOK

Well, my recollection is that having been appointed to the Bench in 2001 I actually dealt with a few cases before the moratorium, including the Coromandel one, before the moratorium was imposed. That was between 2001 and probably about 2004, so I think the moratorium was probably about 2004. Just in case it impacts on the time during which witnesses are trying to remember things.

MR PRYOR:

May I assist the Court.

THE COURT: JUDGE NEWHOOK

Yes.

MR PRYOR:

My most recent ones were undertaking an assessment of extensions to marine farms in the Coromandel last year.

MR ALLAN:

If *Wikipedia* is to be believed it was introduced in 2002, but I don't know whether we trust that as a source of legal information.

THE COURT: JUDGE NEWHOOK

Thanks, Mr Allan, but I'm never quite sure whether to believe *Wikipedia* either. You never know who has been in there and done what.

1100

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. It's fair to say Mr Pryor that most of your experience has been terrestrial and very little of it has been coastal and marine type landscape assessments?

A. The majority of it has, however the methodology, whether it be land based or coastal based is similar.

Q. Now you're a party, as we know, to the joint expert witness statement.

A. Yes.

Q. And paragraph 12 of that statement records an agreement among the experts that the ferry experience offers the most important visual experience of the bay and that presumably is your position as well?

- A. Certainly entering into the bay, views from the ferry form quite an important visual experience. What I would say there though and particularly the number of times that I've been entering the bay on the ferry and particularly also after we'd come up with this agreed statement, that the views from the ferry itself are actually quite restricted unless you're on the top upper deck. Particularly so as you're approaching into the bay where a lot of people are getting ready to leave the ferry itself but they are very important views.
- Q. And that's an experience for ferry passengers of approaching the entrance to the bay?
- A. As they enter into the bay, yes.
- Q. And if I can call it the headlands on either side that open up into the bay as one passes through them?
- A. Yes, that's correct.
- Q. And there is a clearly defined embayment that one enters into?
- A. As one enters into the bay the rocky headland is a very dominant feature of that landscape.
- Q. And once past the rocky headland on both sides there are clearly defined embayment's.
- A. Yes there are and there's an increasing sense of enclosure as one approaches the eastern end of the bay.
- Q. And that's both in respect of the water surface, the interface between the water surface and the foreshore, you agree?
- A. Yes, that's very much a component of that coastal landscape.
- Q. And behind the foreshore it's the slopes of the, I guess you'd call them hills that lead up to the ridges?
- A. Yes, there's a very defined inter-tidal zone going up to the rocky foreshore and then particularly on the northern side, the Pohutukawa clad cliffs and then there's the human intervention of the assisted regeneration within which the large lot residential dwellings sit.
- Q. And you'll have read the evidence of those who say that for them and for visitors that is an important experience.

A. The combination of that whole arrival, as the ferry comes in is an important experience, yes.

Q. In the viewpoints that you have chosen to base your assessment on, you have only one viewpoint that might reflect part of that experience and that's your Viewpoint 1, correct?

A. Yes, that's correct.

Q. And at paragraph 51 of your evidence you describe Viewpoint 1 as taken from the ferry entering into Matiatia Bay looking in an easterly direction towards the site.

A. Yes.

1105

Q. Do you have Viewpoint 1, a picture of Viewpoint 1 available to you?

A. Yes I do.

Q. For the benefit of the Court it's in the March 2013 bundle at figure 48. Now might I suggest to you Mr Pryor that this is not a view taken from a ferry entering into Matiatia Bay.

A. No it's actually the ferry leaving Matiatia Bay which when Bill Media took the photographs it was deemed more appropriate to be able to get a clearer view as the ferry was leaving but it's similar to a view apart from the wake that it's coming from behind the boat that one would get entering into the bay.

Q. But do you agree that the more important view, the one that is described as the most important, it would be the one that you receive entering into the bay because if nothing else, for a number of people that would be their first experience.

A. Yes, but the view would be very similar to what is shown here.

Q. And the view in the perspectives change as one progresses through the heads and along towards the ferry terminal do you agree?

A. Yes there is a greater sense of enclosure as the bay narrows and also what becomes more prominent there is the ferry terminal and the associated infrastructure.

Q. Now that ferry terminal and associated infrastructure are positioned below and in front of a natural headland at that point of the bay, correct?

- A. I wouldn't actually refer to it as a headland per se, it's the head of the bay.
- Q. But it's a high area of land steeply rising behind that infrastructure.
- A. Yes.
- Q. And that may be contrasted with other parts of the bay which are more open and gently sloped?
- A. Extending back from the head of the bay are the alluvial terraces. The slopes to the north and the south of the bay are certainly steeper than the slope extending back from the ferry terminal.
- Q. Now when you talk about the visual effects in paragraph 57, you're talking about the landscape and visual effects of the marina by reference to Viewpoint 1, correct?
- A. Yes I am.
- Q. Now if we can go to Viewpoint 2 and 3. Now you observe in your paragraph 60 that from these close locations the marina will introduce a modified and ordered structure into the bay and then you assessed the effects of that as being moderate.
- A. Yes I have.
- Q. And part of the basis for your assessment is the statement at the top of page 15 in paragraph 60 that, "Marina's are an integral component of coastal environments where ferry terminals are located." And I'm assuming that's a consideration that you've taken into account in your assessment as moderate.
- A. In the assessment it affects, obviously consideration is taken of the existing environment as it stands and also the future environment so the presence of the existing ferry terminal and wharfs, the transport hub and also future use enabled by the district plan in terms of the mixed use areas, all of those factors are taken into consideration.
- Q. But I'm asking you specifically about the statement that, "Marina's are an integral component of coastal environments where ferry terminals are located." You've put that in your evidence and I'm assuming you've done so because that's a consideration that you regard as relevant to the assessment. Am I correct in that assumption?

- A. Equally it could be said that –
- Q. Well no can you answer the question please?
- A. Yes I've sited some examples where there are other ferry terminals. There are many other examples where marinas are not in coastal environments where there are ferry terminals but in the case of Matiatia there is a ferry terminal.
- Q. In paragraph 95 of your evidence where you talk about the viewpoint from the New Zealand Trust Residence. You also state that marinas are an integral component of coastal seascapes. I take it that's a consideration that you've taken into account in your assessment of the effect of this proposed marina?
- A. Yes I'm saying that marinas are a coastal activity.
- Q. Well now you're saying they're an integral component of coastal seascapes, isn't that what you're saying?
- A. Yes that's correct.

THE COURT: JUDGE NEWHOOK

Just pause please, beginning of Viewpoint (e), can we just be reminded of the viewpoint map there, that show it's not on figure 47 it's the numbered ones.

MR CASEY:

Figure 66 in that March 2013 bundle.

THE COURT: JUDGE NEWHOOK

Thank you.

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. And when you're talking about amenity affects and aesthetic coherence, you again state marinas are an integral component of coastal environments where marina related activity is present and you give some examples.
- A. That's paragraph 105?
- Q. 105, yes.
- A. Yes. That's correct.

Q. So can I My Pryor from that take it that in you are assessment of the effects, landscape effects of this marina it's your view that it is an integral component as you have described in your evidence of coastal environments where ferry terminals are located, of coastal seascapes, and of coastal environments where marine related activity is present?

A. Yes that's correct.

1115

Q. Now can I put to you a definition of the word "integral" and you can tell me whether you agree or not. The dictionary definition that I have found from Oxford is "Necessary to make a whole complete", "whole" spelt W-H-O-L-E, "or essential, fundamental". And another definition, "Essential to completeness." Would those be fair definitions of the word "integral"?

A. Not in the manner that I was referring to it.

Q. You use it three times as I've identified at least. Do you use it in some other context or some other meaning?

A. What I'm saying in my evidence is that marinas are a physical component of the coastal environment and of marine associated activities.

Q. Well let's go to your first one. You say, "Coastal environments where ferry terminals are located," and you give four examples. Can I suggest to you that there are ferry terminals, many more ferry terminals are located without a marina as an integral component of their coastal environment?

A. Yes, that's correct. I was just citing four or five instances where marinas have been developed in association with ferry terminals.

Q. For a number of the marinas where there are ferry terminals, the marina got there first and the ferry terminal was established later. Do you accept that?

A. I wouldn't have the knowledge of those particular ones, no.

Q. So one might rather put it that the ferry terminal became part of the marina rather than that the marina became part of the ferry terminal?

A. As I said, I'm not aware of those circumstances.

- Q. And in 95 when you refer to marinas being an integral component of coastal seascapes, we've got coastal seascapes all over the region that don't have marinas in them. Do you agree?
- A. Yes I do.
- Q. And where you say that they're an integral component of coastal environments where marine related activity is present and you give some examples, do you agree that there are many, many, many more examples where marine related activity is present but we do not have marinas?
- A. That's correct. However, a marina is a maritime activity which occurs in a marine environment.
- Q. In some marine environments but not as an integral component of marine environments, correct?
- A. Correct.
- Q. So what you're really telling us is that marinas are in the water?
- A. In the water in a coastal environment.
- Q. You're aware I take it that some marinas actually establish inland, are you?
- A. I'm not, no I'm not aware of land based marinas.
- Q. Although perhaps not a marina as such, the Pauanui Waterways would be an example of a marina-type activity being established in an area which was dug out for that purpose?
- A. To me I wouldn't refer to a waterways as being a traditional marina.
- Q. But a marina could be established inland, correct?
- A. A marina could be established inland in excavated, in an excavated area with – obviously it would have to be in very close proximity to the coast and be open to the waters of the coast.
- Q. Now the expert joint witness statement, if I can take you back to that please. The party, sorry the experts, this is paragraph 1, have agreed that the following landscape elements need to be taken into account and that includes the sea surface?
- A. Yes.

- Q. And the sea surface involves quite a complex consideration of the patterns and the changes, the colours. It's not just having a look at the surface and saying, "Well that's interesting." You take into account what is happening with the surface, don't you?
- A. That's correct. The sea surfaces are very dynamic component and it is constantly changing, as well as the interface with the land depending on the tidal movements, the time of the year, the climatic conditions. It certainly ever changing.
- Q. But the experts also talk about the vegetation including heritage trees and Pohutukawa.
- A. That's correct.
- Q. And the rocky foreshore?
- A. Yes.
- Q. Now in your evidence, Mr Pryor, you, or to your evidence I should say you've attached a number of photographs and if I can take you to paragraph 18 of your evidence-in-chief. So these are in addition to the billed media locations, Viewpoints I should say.
- A. Yes.
- Q. And you talk in paragraph 18 about photograph 1 and in paragraph 24 about photograph 3, but I haven't found anything in your evidence that talks about photograph 2.
- A. Paragraph 20, second line. "Photograph 2" illustrates the coastal edge."
- Q. I beg your pardon. It just wasn't highlighted. So that illustrates the coastal region in vicinity of the site?
- A. Yes it does.
- Q. And that shows the bay being characterised by steep slopes, rocky cliffs and rocky shoreline interspersed with small beaches?
- A. That is part of the bay, yes.
- Q. And it shows the rocky foreshore, this is photograph 2, and shows the heritage trees, the Pohutukawa.
- A. Yes it does.

THE COURT: JUDGE NEWHOOK

Just pause there please. Are we to look for photographs attached to this evidence do you think, or might that more conveniently be found in one of the bundles?

MR CASEY:

I don't think this photograph is in the bundle, Sir. That's why I've taken the witness to it.

THE COURT: JUDGE NEWHOOK

Q. Mr Pryor, can you help us. These photos that we're talking about, 1, 2 and 3, I think they're attached to your evidence. I'm just wondering if I can save myself darting backwards and forwards between printed material and your evidence and attachments at the end, do you happen to know whether we've got them in these, one of these two big bundles, photos 1, 2 and 3?

A. They don't appear to be, Sir.

Q. That's all right, we'll jump.

1125

EXAMINATION CONTINUES: MR CASEY

Q. Do you have photograph 2 with you, Mr Pryor?

A. Yes I do.

Q. And I suggest to you that that photograph does show natural character features of the bay.

A. It illustrates some of the natural character features, yes.

Q. And I suggest to you that it illustrates some of the higher natural character features of the bay.

A. I wouldn't refer to them as being the highest natural character features of the bay.

Q. I am not suggesting they are the highest, the word I used was "higher".

A. Certainly the rocky foreshore does have higher natural character values.

Q. And the Pohutukawa trees in the foreground?

- A. They all add to the natural character values, yes.
- Q. So at paragraph 2 of the witness statement when the experts agree that there are elements that have higher natural character values and they refer to the rocky headlands and shoals, the mature pohutukawa and the land in centre face, those are all shown in that photograph, aren't they? Oh sorry, not the headlands but the rocky shoals?
- A. The photograph shows some of those areas that have higher natural character, however in paragraph 2 above, there was reference to the experts agreeing that the natural characters of the bay in its entirety are not high or outstanding.
- Q. I understand that, Mr Pryor, but I was asking you about paragraph 3, not about paragraph 2, and do I have it that your answer is you agree that photograph 2, what it shows there, the rocky foreshore, the land and the interface, land and sea interface, and the pohutukawa trees are what are being referred to as elements that have higher natural character?
- A. That photograph illustrates some of those areas, yes.

COURT ADJOURNS: 11.29 PM

COURT RESUMES: 11.49 AM

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Mr Pryor, still with your evidence-in-chief, can I take you back to your paragraph 49. And you there quote from the *New Zealand Institute of Landscape Architect* best practice note 2010.

A. Yes I do.

Q. And what you set out in paragraph 49, is that taken from the best practice note?

A. The descriptions are not taken from the best practice note. The effects in terms of very low, very high, low, very low are within the NZILA best practice note.

Q. So the words that are in italics are they not quotes from the best practice note?

A. No they are not.

Q. Are those words that you've added to the categories that are in the best practice note?

A. The words describing those are how we have, or this is the rating scale that we utilise which is generally in accordance with the best practice note.

Q. And is that the rating scale that you use on your matrix analysis?

A. Yes it is. The NZILA best practice note gives guidance to the level of effect but what you tend to find is that individual landscape architects have slightly different descriptions for those effects but they're effectively the same level of effect.

Q. I just want to be sure that the Court isn't misled into thinking that you've quoted from the best practice note in the parts of your evidence that italicised and I think you've confirmed that those are not quotes from the practice note.

A. That's correct.

THE COURT: JUDGE NEWHOOK

We've got some knowledge of that practice note, I think in fact we catalysed it, that and the visual guidelines, the guidelines for the visual work, the graphic work and my understanding is that the witness is right in the concession that he has just offered. I wish these people would come off the same page and it might have been helpful if the guide had actually gone into the detail of these but anyway, we've got what we've got. I've commented quite critically on this in the *Britomart* decision recently and at least one other. Everybody coming off different pages and talking past each other is not helpful. Sorry, that's my little sermon.

MR CASEY:

I can respond to that point Sir but that's a matter for submission rather than for response at this time.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Mr Pryor, I'd like to ask you some questions about your Viewpoint 4 and Viewpoint 5. And Viewpoint 5 is in that same March 2013 bundle at figures 51 and 52 and Viewpoint 4 is at figures 55 and 56. Now, you acknowledge in your evidence that from these, what you describe as closer viewing locations the piers would, and this is your paragraph 64, "The piers would introduce more modified characteristics to the coastal landscape." "The vessels moored side by side would somewhat lessen the more sporadic character of the existing boats on the swing moorings." And you say that, "The breakwaters are largely screened from view by the moored vessels." Can I suggest to you that that is somewhat to diminish the outer breakwater which is clearly apparent in Viewpoint 5?

A. There will be a loss of views to the outer bay.

1155

Q. And I put to you that the marina will significantly alter the views from Viewpoint 4 and from Viewpoint 5.

A. There will be a change in that outlook.

- Q. That there will be a significant alteration of perception in that will lead the viewer to a hemmed in feeling because of the concentration of boats and of the structures that make up the marina.
- A. I don't consider that hemmed in is the correct word there. There will definitely be a change in the visual outlook and as I have stated in my evidence from Viewpoint 5 the change in view will be more than minor.
- Q. But you don't have a viewpoint of ferry passengers inside the bay but I suggest to you that the view currently of the northern embayment and the foreshore and the water that's currently enjoyed would also be significantly altered by the presence of the marina.
- A. The view will change however the overall character of the wider bay will not be significantly or adversely affected. There will be and as outlined in the evidence, there will be more than minor effects for some of those proximate viewers but taken in the whole, the complexity of the bay, overall the effects will be acceptable.
- Q. In contrast to the view and perception one gets at the moment coming in by ferry of that area there will be a much reduced view of the water that will be occupied by the marina and it's boats, correct?
- A. Yes, the marina does occupy an area of that inner bay.
- Q. I just wonder Mr Pryor if you can answer my questions with an answer that relates to the question and I asked you whether the marina would block views of the water from the viewpoint which is of passengers on the ferries coming into the bay and the view of that area of water and the bay behind it.

**THE COURT: JUDGE NEWHOOK ADDRESSES MR CASEY –
CONFIRMATION OF FIGURE**

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. While that is a view from up high, I am asking you about a view from down at water level Mr Pryor.
- A. From water level there will be an area of currently open water albeit with 52 swing moorings that are there at the moment, yes that view will alter.

Q. But the 52 swing moorings we're told, the experts agree, are visually permeable and one gets a good perception at the moment of the sea surface and of the bay behind it, do you agree?

A. Yes I do.

Q. And that will be lost?

A. It will be changed.

1200

Q. At paragraph 101 and 102 of your evidence you say that the main natural elements which you then describe as the landform coastal cliffs and vegetated slopes will not be affected by the proposed marina, that's at the start of your paragraph 101, and then at the end you say, "That overall the marina will have low adverse effects on the natural character values of the Matiatia Bay environment." I've got that right, haven't I?

A. That's correct.

Q. I haven't read everything in between but you've got it all there.

A. Yes.

Q. And you say, for example, in paragraph 101, "The key natural elements present in the area will not be diminished"?

A. That's correct.

Q. Well, can I put to you that one of the key natural elements which has been identified as the sea surface will be diminished in the area of the marina and between the marina and the shore?

A. There will be a reduction, yes.

Q. But you've not included that as one of your main natural elements in your paragraph 101, have you?

A. Paragraph 101 is referring to the bay in its entirety, so in consideration of those natural elements within the overall bay I stand by that statement.

Q. So, at 101 when you say, "The main elements of the", and you've qualified that, "of the bay in its entirety," are you saying that those main elements do not include the sea surface?

A. I haven't specifically outlined sea surface in that paragraph.

Q. Nor have you mentioned the rocky foreshore, have you?

- A. No I haven't. I do, however, outline those elements.
- Q. And I put it to you that part of the rocky foreshore that we discussed before will be significantly affected by the marina because the land that's shown in your photograph 2 shows the very land that is to be reclaimed, or over which there is to be a reclamation, correct?
- A. Yes that's correct.
- Q. Now, in your evidence-in-chief you talk about the objectives and policies of the Matiatia Gateway provisions of the district plan and that's from paragraph 143 onwards?
- A. Yes.
- Q. Were you aware until receiving the evidence of Mr Scott of the origins of those provisions?
- A. I had some basic understanding but I wasn't fully aware of that background information.
- Q. But even without that you'd accept that a district plan is intended to be treated as the community's expression of values and aspirations in a planning sense?
- A. In a planning sense, yes.
- Q. And one thing that's clearly omitted from the district plan is any provision for a marina in the Matiatia Gateway area, correct?
- A. That's my understanding, yes.
- Q. And the provisions of the district plan are replete with references to the landscape character of Matiatia, correct?
- A. The objectives refer to maintaining that character, they also refer to developing a safe and efficient transport network and a safe and attractive mixed use development.
- Q. But all the time while maintaining the landscape character?
- A. Yes, correct.
- Q. Or avoiding adverse effects on the landscape, correct?
- A. That's relating to 10A.18.3.3?
- Q. And elsewhere through the provisions?
- A. Correct.
- Q. And about the desire for the Matiatia Gateway to be attractive?

A. That's in the plan, yes.

THE COURT: JUDGE NEWHOOK

Just give us a reference to that one, Mr Casey?

MR CASEY:

Well, I can give you several references. Did you want a reference to where the plan is, Your Honour, or to, oh the provisions?

THE COURT: JUDGE NEWHOOK

No, no, no, the provisions.

MR CASEY:

10A.18.2(7) is one of the issues, "How to ensure that Matiatia is developed as a truly effective and attractive gateway." In fact in the previous paragraph 10A.18.1, the last paragraph, "In order to create a truly effective and attractive gateway."

THE COURT: JUDGE NEWHOOK

Thank you, those are examples, that'll be fine, thank you.

MR CASEY:

Yes, those are examples.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. And in relation to the provision of buildings the assessment criteria refer to the requirement, sorry, to the provision that – and this is at 10A.18.8.2.

MR R BRABANT:

Can I just check the witness has got all this, Sir. Have you got a copy?

MR PRYOR:

I have, yes.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Are matters for discretion including landscaping, the building form and materials designed to maintain the landscape character and amenity of Matiatia. Do you accept that these are all important, do you?

A. Yes those are matters of discretion, yes.

Q. And over in (b) the building location to achieve an integrated and cohesive form of development, particularly when viewed by those arriving on the ferry and to screen parking and other transport infrastructure so that it's not highly visible to those arriving at Matiatia by boat. So again there's emphasis on the importance of the landscape to what you experts have agreed is the most important visual experience of the bay, agree with that?

A. There are certainly criteria there to address the visual effects.

Q. So, while the plan itself doesn't address a marina at the bay, it does give a clear steer as to the community's view about the importance of landscape values and the functioning or the place of Matiatia as a gateway, correct?

1210

A. Certainly within the district plan for that mixed use and transport area, there is certainly the emphasis for undertaking development with a number of criteria to minimise any adverse effects of it.

Q. So in answering that question you mean that it's narrowly confined just to the area that it talks about and can't be taken as any idea or any representation of what the community might feel about the rest of Matiatia?

A. Those objectives specifically relate to the Matiatia gateway land unit, yes.

Q. But they provide a clear statement, do they not, of a public wish for the Matiatia gateway experience not to be adversely affected in terms of landscape and amenity?

- A. In terms of the public expectations I'm unaware of the extent of public input that went into the district plan.
- Q. We also know from evidence and from the history of development at Matiatia that there has been an active programme of replanting the hillsides and the slopes around the bay?
- A. Yes, as part of the large lot residential development.
- Q. It's a rural residential development, isn't it?
- A. Yes it is, coastal residential development.
- Q. And you'll be aware that the, if I can call it the trade-off for the development rights was the requirement to covenant and plant substantial areas of the bays surrounds?
- A. That was the trade-off to enable the residential development to occur on the previously pastured slopes, yes.
- Q. One might describe it as a trade-off the other way, that in order to achieve the community's aspirations for the re-vegetation, the re-planting of the bay, they were prepared to allow some additional residential development?
- A. I'm unaware of the history to that.
- Q. And you'll have read the evidence of people who have taken an active, indeed one might say passionate interest in re-vegetating the bay and improving its natural appearance?
- A. Yes I have.
- Q. And would you accept that that is a strong community view on Waiheke?
- A. There is certainly a strong community view for re-vegetation of previously degraded slopes, yes.
- Q. Particularly around Matiatia, which is the gateway?
- A. That hole western coastline has been subject to a number of re-vegetation programmes.
- Q. Yes, but in relation to Matiatia we have both the planning provisions, that is the current one and the one that promoted the covenanting and re-vegetation of the surrounding land, and the active involvement of the

community in seeking to achieve the re-planting and landscaping of those areas.

A. I'm unaware of the full community input into the re-vegetation of those slopes.

Q. And do you agree that the public or a large part of the community regards the experience for themselves and the visitors of entering the Matiatia gateway as significant to them in their amenity?

A. From the evidence and submissions that I've read yes, that's correct.

1215

Q. And would you agree that they're entitled to regard the common marina area as a public asset that can contribute to their enjoyment and to their amenity?

A. I would consider that that is an expectation.

Q. And that they would perceive the marina as giving over a large area of that common marina area to private interests?

A. The actual scale of the marina in comparison to the overall bay it's my understanding it's around about 10% of the bay area.

Q. And by that you mean the area that's proposed to be for the exclusive occupation of the marina?

A. It's my understanding that that area figure is the footprint, I'm unaware of the extent of occupation.

Q. The footprint of the marina structures and of the areas between the piers for which the company, the applicant is seeking exclusive occupation. Do you know what we're talking about there?

A. No I don't.

Q. But again let's come back to the public's perception. The perception is that it takes over all of that area of the bay, correct?

A. The public's perception that it takes over that area of the –

Q. So would it be a reasonable public perception that it takes over all of that area of the bay?

A. Physically it takes up a portion of the bay. The public still have access onto it and can still circumnavigate it in kayaks, watercraft. So it's not exclusive, it's not prohibiting people from that part of the bay.

- Q. And that's your answer?
- A. Yes.
- Q. So in terms of perception, the landscape and amenity values that the public may have that they are addressed by the fact that they can still circumnavigate in that area?
- A. As I said that's not prohibiting them from that area of the water.
- Q. I want to move on to your rebuttal evidence if I may. And at paragraph 6 you agree with Ms Gilbert that it's necessary to commence with a clear understanding of the landscape and visual values of the existing environment, and I suggested to you that that is in this case particularly relevant to the shared and recognised values of those who are the main viewing audience, would you agree with that?
- A. Yes I would.
- Q. Now, in your paragraph 8 you challenge Ms Gilbert's assertion that you haven't referred to the evolution of the zonings by stating that you have acknowledged that there is densely vegetated and maturing landscape. Have you got that right?
- A. Could you repeat that question please?
- Q. In your paragraph 8 you respond to Ms Gilbert's challenge that you have omitted to refer to the evolution of the zonings and the vision of the area over the last 25 years by stating that in your evidence-in-chief you have referred to the large lot residential development and the densely vegetated and maturing landscape, is that your answer to her criticisms?
- A. What I'm saying in that paragraph is that the physical and visual landscape that we see now is a result of those past zonings.
- Q. But you don't acknowledge that that zoning came about for particular reasons which anticipated the densely vegetated and maturing landscape, do you?
- A. Over the last 25 years I've certainly been aware of how those zonings have been implemented, but I'm not completely authority fait with the historical background to them.

Q. Now in paragraph 9 you speak about the dwellings having been selected to gain elevated views across the bay and out towards the panoramic wider outer gulf and islands, and I think you refer to those views elsewhere in your evidence, that is the views out towards the panoramic wider outer gulf and islands as not being affected by the marina. I'm right there, aren't I?

A. That's correct, yes.

Q. And so if a dwelling or the owner occupier of the dwelling does not want to have their view disturbed or affected by marina, they can plant our their view of the marina, can't they?

A. Yes they could.

Q. And you say that it's unlikely that the owners would allow vegetation to block the high value views, you're talking about the panoramic wider outer gulf and island views, aren't you?

A. The views from those slopes and particularly the surrounding slopes to the bay as I have – perhaps if I could draw you to some of the panoramas that I have included in my rebuttal evidence?

MR CASEY:

They are attachments to the rebuttal evidence, I'm not sure they're in the bundle Your Honour.

THE COURT: JUDGE NEWHOOK

We'll work with the evidence itself then.

MR CASEY:

Sorry Mr Pryor, carry on.

THE COURT: JUDGE NEWHOOK

There's a small pile of annexures to the (inaudible 12:23:45).

MR CASEY:

Thank you, yes.

MR R BRABANT:

Can I just mention, Sir, there are really good quality A3s that have been attached to the written version.

THE COURT: JUDGE NEWHOOK

We don't have that up here with us at the moment, are you wanting us to have that –

MR R BRABANT:

Oh no, I'm just trying to be helpful, Sir, I don't know whether we can get these to you but when you've – I mean you can view them on an iPad but I don't know which ones he's going to refer to.

WITNESS:

Probably starting at annexure 5.

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

The quality of reproduction on the iPad is not bad.

MR R BRABANT:

Yes, it's just the size I guess, Sir, I was really referring to but...

THE COURT: JUDGE NEWHOOK

Yes. Well, we'll bear that in mind as we're going through and call for hardcopies if we think we might have something better available.

CROSS-EXAMINATION CONTINUES: MR CASEY

A. So perhaps by reference to annexure 5, which is actually taken from the Dalemore Drive viewing location, so it's not from a residential house per

se but it's indicative of a number of those views. And we can see that from there the views are extensive and very wide-ranging. Some of the ones from the southern slopes, in particular the coastal walkway and also on the northern slopes, some of those views extend in excess of 270 degrees. So the focus of views is not down into the head of the bay where the marina is proposed, it's the wider views in my value are the ones that are being, the high value views that I refer to.

1225

Q. Now these are panoramic shots are they Mr Pryor?

A. Yes they are.

Q. We don't have the detail of the lens or the camera?

A. These were taken with a 50 mm lens.

Q. On panorama?

A. Taken going around like that, yes, sequentially.

Q. Panorama features on your phones these days I found out the other day. I'm curious about your panorama shots and do you have available to you the evidence of Mr Greenaway?

A. Yes.

Q. And attachment two of his evidence.

THE COURT JUDGE NEWHOOK ADDRESSES MR CASEY – WHICH BUNDLE

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Just for the benefit of the Court if you don't mind Mr Pryor, I'm just going to draw the Courts attention to attachment 2 in passing – does the Court have that? Mr Pryor, your annexure 4 is also taken from that sculpture isn't it?

A. That's correct. That photograph is taken looking out the so called window of the store so that's representative of the view from, the main viewing platform I suppose you can call it at the store.

Q. What your annexure 4 panorama doesn't show is the near ground vegetation does it?

A. Sorry the which vegetation?

- Q. The near vegetation.
- A. In reference to?
- Q. In reference to your annexure 4 panorama?
- A. When you're referring to the near vegetation –
- Q. The near vegetation that's showing on Mr Greenaway's photo from that same location.
- A. Well I'm not exactly sure where Mr Greenaway has taken it from, my guess would be that he stood to the right of the store and photograph looking down to the head of the bay given the nature of that photograph.
- Q. And your photograph at annexure 4 also cuts off part of the bay doesn't it?
- A. It drops off some of the bottom, yes that was the extent of the photographic lens.
- Q. And likewise your annexure 5 which is taken from the Delamore Drive viewing location, when it's compared to Mr Greenaway's photograph on the right-hand side omits the vegetation or a large part of the vegetation that Mr Greenaway's photograph shows.
- A. At the bottom of the photo there is extensive vegetation of those slopes as is viewed in Mr Greenaway's. Very little of the bay as you can see from that vegetation, the flax flowers coming up.
- Q. What I suggest to you Mr Pryor is that you've chosen to take a long distance panorama rather than the nearer view that a person at that location would be taking in which would include the near ground vegetation.
- A. I consider I'm taking a realistic representation of the view rather than focusing in on a narrow portion of that view.
- Q. So you've taken in the wider view of the gulf and distant islands, correct?
- A. I've taken in the wider view of the view experienced by someone looking from that location rather than focusing in on the head of the bay which is accepted practice. I am also unaware of the reasoning behind Mr Greenaway's use of two different photograph lenses.

Q. I suggest to you Mr Pryor that to the viewing audience, their attention is more likely to be drawn to the near view of the bay than it is to the distant view of the gulf and islands.

A. No I wouldn't agree with that.

Q. Because the bay has many more features in it that are visible to that viewer and do the wider views of the distant islanders.

A. No I do not agree it's that wide panoramic view that is impressive, presumably that's why that particular viewing location has become popular for some of the tourist buses. It's not the view of the bay that in my opinion, the reason why the tourists go up there it's the extensive panoramic views, Rangitoto, the Auckland Sky line, the outer gulf. Matiatia Bay is just one small component of that impressive view.

1235

Q. You say it's a small component of that impressive view from Delamore Drive. And do you say the same about your annexure 4, the view from the Rocky Bay Store sculpture?

A. Yes I do.

Q. Now, in your paragraph 9 of your evidence-in-chief you say that it's unlikely that the owners would allow vegetation to block the high value views. Of course, some of the vegetation, in fact a lot of the vegetation that is on those slopes is the subject of covenants, you're aware of that, aren't you?

A. This is in my rebuttal?

Q. Yes, paragraph 9 of your rebuttal where we were before?

A. Yes, that vegetation is covenanted, that's my understanding.

Q. So the ability of those properties to prevent vegetation blocking their views may be limited by the covenant requirements?

A. I'm unaware of the exact wording of the covenants, however in terms of the planting my understanding is that a reasonable area of curtilage was allowed for around the dwellings which in my understanding is to protect some of those views so that you're not getting vegetation growing right up against the dwelling.

- Q. So to protect some of those wider panoramic outer Gulf views, I think you're talking about there, isn't it?
- A. I'm referring to views per se, that could be closer range ones.
- Q. You accept that as the vegetation continues to grow and mature it will assist in screening some of the aspects of the residential properties around the bay?
- A. It will assist in screening them over time, yes, they would still be highly visible though.
- Q. Now, in paragraph 12 of your rebuttal evidence you respond to Ms Gilbert's criticism that you did not mention memorability of the Matiatia Bay landscape. Do you agree that memorability is a relevant factor in a landscape assessment?
- A. Yes it is.
- Q. And do you agree that you don't refer to memorability?
- A. As I outlined at paragraph 12, while I specifically didn't use the word "memorability" it is part and parcel of that landscape that is evident in Matiatia.
- Q. Do you accept her criticism that you do not evaluate memorability either in your evidence-in-chief or in your rebuttal?
- A. No I don't.
- Q. You say you do?
- A. I consider that I have in my assessment of effects taken into account the memorability of the area.
- Q. And is that to be found as you identify there in paragraph 34 of your evidence-in-chief?
- A. I make mention of the components there, I haven't outlined fully all the memorability aspects.
- Q. You say you do or you don't outline fully?
- A. I haven't fully outlined, I've explained some of the components that make up that landscape, and of which memorability is part of that existing landscape.
- Q. You now say that memorability is part of that existing landscape, but you didn't say it in your evidence, did you, in your evidence-in-chief I mean?

- A. I didn't specifically mention it in the evidence-in-chief, no. Memorability is always taken into consideration when undertaking a landscape assessment.
- Q. And would refer to it if it was an important element in the assessment, correct?
- A. I consider that I have covered it off in my assessment.
- Q. Now, can I take you back to the joint witness statement please, do you have that with you?
- A. I have, yes.
- Q. Paragraph 10 says that the experts agree that the key elements which assist the visual absorption capacity, that is the ability of the landscape to visually absorb or integrate new development, include under (a) enclosed and contained configuration and nature of the bay, meaning effects within the bay are easily contained. Now, you refer to that in your paragraph 20 of your rebuttal statement, don't you?
- A. Yes I do.
- Q. But you don't refer to the next phrase which I'm told was an important qualification to the first part of that clause, which reads, "Although the scale of the bay reduces its visual absorption capacity." You see that?
- A. Yes I do.
- Q. And you don't refer to that in your paragraph 20, do you?
- A. No I don't.
- Q. And what is meant by the enclosed and contained configuration and nature of the bay, meaning that effects within the bay are easily contained. That means that they are contained to within the bay, they don't have effects beyond the bay, correct?
- A. That's correct, yes.
- Q. But the next part of it says that the scale, meaning the smallness of the bay, reduces that visual absorption capacity?
- A. In terms of size, yes. However, that small nature of the bay and the containment of it and the diverse characteristics of those surrounding slopes increases the visual absorption capacity of the bay.

Q. And then you go on to say that the future development, I'm sorry I'm back at paragraph 19, this is you earlier say that future development will result in – no, look I'll come back to that later, I'm sorry I was looking at something else. So, over the page at 22 of the rebuttal, I'm with the rebuttal, Sir, unless I say. It's your opinion, this is at the end of the paragraph, that while the marina will introduce an appreciable change to the character of the outlook, the visual amenity values of the wider views will not be diminished. And you're there talking about the wider views we discussed before, aren't you?

A. What I'm referring to there, while there will be a change to the character of the eastern end of the bay the amenity values of the overall bay won't be diminished.

1245

Q. But it's the wider views you talk about there, and as I understood it what you were telling me before about the wider views are the views of the outer gulf and islands? And we had that discussion at some length.

A. That paragraph 22 is referring to, it all comes under the visual absorption capacity of it. Sorry, I've just read the sentence in front of it. Yeah, so there I'm talking about those elevated locations, yes.

Q. And at paragraph 24 you say that in your opinion the natural character elements that you refer to there will not be adversely affected by the proposed marina being located in a highly modified inner bay?

A. That's correct.

Q. Now again I take you to your photograph 2. I'm not sure that we need to go back to that photograph but I think you agreed that the natural character elements that are evident in that photograph will not only be adversely affected, much of it will be lost completely?

A. There will be some site specific adverse effects on natural character, but in the overall sense of the bay I consider that they are acceptable.

Q. And the other natural character elements that will be adversely affected within the inner bay include those that have not been highly modified. Do you agree?

A. You're specifically referring to?

- Q. To the sea surface, to the sense of embayment and to the interface between the water and the foreshore?
- A. They will be affected and altered but I do not consider that it will be to an adverse extent.
- Q. Now in paragraph 23 you are replying to or rebutting Ms Gilbert's evidence at her paragraph 70. Can I just be clear that when you are referring to her evidence that the marina is likely to be read as an urban and regimented form, that's not a complete summary of what she says in her paragraph 70, is it?
- A. Just refer to her evidence.
- Q. Her evidence at paragraph 70 qualifies the extent of her agreement with you and Mr Brown over the marina forming an interesting and attractive part of the coastal environment for some viewing audiences?
- A. She has further descriptions, yes.
- Q. Including that it effectively, sorry that it's overtly private in character. You don't challenge that, do you?
- A. I don't consider it's overtly private in character, no.
- Q. In your rebuttal evidence you don't challenge that part of her evidence in paragraph 70, do you?
- A. No I don't.
- Q. And nor do you challenge her statement that it effectively comprises a carpark on the water, albeit for boats rather than cars? You don't challenge that, do you?
- A. I haven't specifically rebutted it, but I do not agree with it.
- Q. That it reads as "Discordant with the relatively low key, charming and informal character of much of the bay." You don't challenge that, do you?
- A. Not in writing but I don't agree with it.
- Q. Now at your paragraph 29 you say that you agree that the views from the Rocky Bay Store sculpture itself do not include views of the ferry terminal, the wharf and associated infrastructure but you say that as the viewer moves a short distance away, they become increasingly visible?
- A. Yes they do.

- Q. Do you accept the possibility that the location of that sculpture and the aspect that it gives has been chosen so that it does not have a view of the wharf, terminal and so on?
- A. I'm unaware of its exact placement but I would find it difficult to believe that people would just look out the window and not move beyond the confines of that sculpture.
- Q. But the sculpture has been designed in such a way as to give a framed outlook, a framed view. It frames the view, doesn't it?
- A. It depends where you're looking from.
- Q. And in your case, if you're moving a short distance away and looking from there you'll be seeing the wharf and the infrastructure and things?
- A. If you move away from the confines of the sculpture or the sculpture window.
- Q. Do you accept that from that window, from the view, sorry, the view from the sculpture will have the marina well within it?
- A. The marina will be visible from that sculpture, yes, as will the wider panoramic views.
- Q. Now you've provided a fair bit of evidence in your rebuttal about the development that may occur if what is contemplated by the Matiatia land unit rules or provisions of the plan come into effect. Am I right there?
- A. Are you referring specifically to some paragraphs?
- Q. Paragraphs in your evidence, rebuttal evidence.
- A. 41 to 43?
- Q. 41 to 45 perhaps?
- A. Yes I do.

THE COURT: JUDGE NEWHOOK ADDRESSES MR CASEY

COURT ADJOURNS: 12.56 PM

COURT RESUMES: 2.18 PM

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Mr Pryor, I'm still with your rebuttal statement of evidence. At paragraph 19 you express the view that the proposal is consistent with the established character and use of the area and that the marina will integrate into the coastal setting. Now I've asked you about those questions but then you move onto the question of future development enabled by the new District Plan provisions, "Will result in significant changes and modifications to the surrounding land." Are you there talking about the Matiatia Gateway provisions of the District Plan?

A. Yes I am and specifically the mixed use design.

Q. Now, you know of course that the mixed use zone does not surround the marina does it?

A. No it doesn't.

Q. And it doesn't surround Matiatia Bay either does it?

A. It's at the head of the bay.

Q. It doesn't surround the bay does it?

A. No it doesn't surround the bay.

Q. So when you say "surrounding land" what are you talking about?

A. I'm referring there to the entire bay and the coastal flats extending up from behind of which 5.7 hectares is zoned for mixed use development which in the future will become part of that Matiatia, Matiatia Bay environment.

Q. I'm not sure I understand your answer, are you telling me that you're just referring to the Matiatia land the five, or whatever it is, hectares?

A. The surrounding land I'm referring to Matiatia per se.

THE COURT: JUDGE NEWHOOK

Can we have a look at a planning map Mr Casey.

MR CASEY:

Yes I was going to take you there Sir.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. If you go to the land unit Matiatia Gateway provisions in the District Plan, actually that map might show somewhere else. It's map 10(a).1. 77 of the March 2013 bundle.

MR CASEY:

Actually it's more likely 79 Sir is the figure that is actually in the District Plan provision.

THE COURT: JUDGE NEWHOOK

Yes, 77, 78 are from the then proposed plan. Which one are you recommending Mr Casey?

MR CASEY:

Well the one I was wanting to ask the witness about was 77, sorry 79.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Do you have that Mr Pryor?

THE COURT: JUDGE NEWHOOK

It doesn't give us so much of an overview Mr Casey.

MR CASEY:

Well hang on Sir, I'll come on to that in a minute, I just want the witness to identify that this is the plan that's in the District Plan.

WITNESS:

I haven't got that bundle but I do have figure 10a.1.

WITNESS REFERRED TO DOCUMENT AND NUMBERING

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. You recognise the plan at figure 79 as being the plan that's in the District Plan provision we're talking about?

- A. Yes it is.
- Q. And the area that you're talking about is the area shaded grey called "Mixed Use 5.69 Hectares".
- A. That's the one.
- Q. And if you go back two pages to figure 77 you'll see a wider map, again from the Auckland District Plan and that shows the zoning pattern of the surrounding land doesn't it?
- A. It's the zoning for all of the land surrounding Matiatia Bay, yes.
- Q. And that includes the land that will surround the proposed marina site, correct?
- A. Yes it does.
- Q. And you agree there is nothing in the plan that will result in significant changes in modifications to that land, that is the land that is not Matiatia Gateway land?
- A. We can't isolate the Matiatia Gateway land from the rest of the Matiatia environment.
- Q. I don't think I need to pick up every time the witness doesn't answer the question Sir, I could but it's (inaudible 14:24:04). Now coming back to the Matiatia Gateway land, the mixed use area, you refer to that in paragraph 41 of your evidence, this is your rebuttal evidence, 41 to 43.
- A. Yes.
- Q. And you are critical of Ms Gilbert for not referring to it.
- A. There was very little mention in Ms Gilbert's evidence about the future environment.
- Q. She does refer to the policy context for the Matiatia Gateway land unit in her evidence doesn't she?
- A. She does make reference to it, yes.
- Q. And her particular reference is the mention of the need to maintain landscape character values at Matiatia and to avoid adverse effects on natural features. She mentions those, doesn't she?
- A. She does, but that is also part and parcel of allowing for mixed use development.

- Q. Well let's go to what is allowed by the district plan, and that's 10A.18. It's bundle, volume 4, planning provisions, section 1 –
- A. Up to page 83?
- Q. – Hauraki Gulf Islands plan, then CB54, part 10A. If I can take you to 10A.18.5.2, which is part of the rules for activities, Mr Pryor. Do you have that?
- A. Yes, I've got that.
- Q. And you'll see, Mr Pryor, that the construction of any new building is a restricted discretionary activity?
- A. Yes, I see that.
- Q. And so requires consent, and for that matter so is the alteration or addition to the exterior of any existing building?
- A. Yes.
- Q. So any development of the nature that you're talking about will require resource consent, won't it?
- A. Yes, that's correct.
- Q. And we also know that, and if you can go on a few pages, that the matters for the exercise of the discretion are set out at page 79, rule 10A.18.8?
- A. Yes.
- Q. And they include matters of location and landscaping?
- A. Yes they do.
- Q. This is what they include; an assessment criteria include the design of the building to maintain the landscape, character and amenity?
- A. Yes.
- Q. And that subrule 4, the scale massing and height of buildings being appropriate to, among other things, important views and vistas?
- A. Yes.
- Q. And over the page under (b), the extent to which the building or buildings achieve a cohesive form and development when viewed by those arriving on the ferry?
- A. Yes.

- Q. And also the screening of car parking and other infrastructure so that it's not highly visible, yes?
- A. Yes, I see all those.
- Q. To those arriving at Matiatia by boat. Now you agreed with me earlier that those are the particularly important viewing audiences for landscape values at this location, correct?
- A. They are, yes.
- Q. And under (c) there's got to be landscaping which has to be put in place concurrently with the proposed buildings and has got to mitigate adverse effects on the landscape character of Matiatia.
- A. Yes.
- Q. See that?
- A. I see that.
- Q. And would you as a landscape architect agree that those are appropriate matters to take into account?
- A. Yes I would.
- Q. Now you have attached to your rebuttal evidence as annexures 10 and 11 plans that do not appear in the district plan but which were obtained from Mr Scott, Dennis Scott?
- A. Yes, they were the winning design for the vision for Matiatia.
- Q. And do I understand it that you've then translocated or had someone translocate the building components of those plans onto a visual simulation taken from, I would imagine, the walkway?
- A. That's correct, Buildmedia –
- Q. And that's your annexure 12?
- A. – did that, prepared those.
- Q. But you have not for example translocated the landscape elements of Mr Scott's plans, have you?
- A. There appears to be a number of them included.
- Q. There isn't the line of trees along the esplanade reserve waterfront, is there?
- A. No, but there are some existing trees there.

- Q. And the viewpoint that you've chosen is not the viewpoint that is particularly referred to in the district plan, is it? That is the view for incoming boat passengers and ferry passengers.
- A. No, this one was taken from the coastal walkway.
- Q. So it gives no idea as to what the appearance even based on that plan might be for the most important viewing audience that the landscape experts have agreed on, does it?
- A. It puts into context the changing environment that is likely to occur once the mixed use development proposals get implemented.
- Q. It puts into context I suggest to you, Mr Pryor, how the built elements may look depending upon what consent is granted, do you agree?
- A. They are indicative of the D J Scott design.
- Q. And it views them from probably the one perspective that is the worst of all to view them from?
- A. It is a perspective.
- Q. Chosen to be the one that shows them in worst light?
- A. I wouldn't refer to them as the "worst light". It's an indicative view from the coastal walkway.
- Q. Now the notation to your annexure 12 says, "The potential development scenario enabled by the district plan," do you mean permitted by the district plan?
- A. That annexure assumes that the winning design is generally in compliance with the mixed use rules and criteria.
- Q. You've not carried out any assessment yourself as to how that lines up with the objectives policies and criteria of the district plan, have you?
- A. I haven't measured floor areas and heights. Through lack of information it's impossible to work out whether that is exactly as envisaged in the mixed use zone.
- Q. It's not just those elements. It's the elements about landscape, protecting the landscape, those elements that I referred you to before. You haven't done an assessment of those, have you? I mean in relation to the, your annexure 12.

A. In relation to the Scott plans, one of the requirements for that mixed use zone is to have 35% landscape area. Again, without having measured the plan but my best indication would be that that is actually quite realistic of what's provided for within the district plan.

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Q. Well for example Mr Pryor you have not considered or assessed that the landscaping has to be put in place concurrently with the proposed buildings have you?

A. No I haven't.

Q. And you haven't done an assessment of what's shown there, relative to the criterion that adverse effect on the landscape character of Matiatia particularly the coastal landscape should be mitigated have you?

A. My assessment has been based on the design, on the winning design that had, to my understanding, had a significant amount of public input into what vision was wanted at Matiatia.

Q. So come back, all you've done is translocate your interpretation of the built form without any other assessment of the criteria that the district plan provides?

A. I haven't undertaken a detailed assessment through lack of available information on the concept plan.

Q. I put to you, you haven't undertaken any assessment of what you show there against any of these criteria? Am I right or wrong?

A. My understanding of the criteria is that that design is probably quite comparable to what could be enabled by the district plan mixed use zone.

Q. So that's answer?

A. Yes it is.

Q. Thank you. Now the other thing that's probably quite obvious to anybody looking at your annexure 12 is that it has a fundamental error in it, do you agree?

A. If you can point me to it.

- Q. Well it says, "It's a potential development scenario enabled by the district plan and it shows a marina." Am I right? Is that a mistake or is that what you intended to show?
- A. What I'm referring to there is the land development obviously we had to super impose that into the view.
- Q. The view as you expect it will be when consent is granted.
- A. The purpose of the preparation of that viewpoint was to illustrate the significant change that could potentially happen under the mixed use zoning.
- Q. From "a" perspective, one perspective only?
- A. From a very highly utilized coastal walkway perspective.
- Q. When you say highly utilized, do you have numbers of people who use that walkway I haven't seen that in the evidence.
- A. In terms of actual numbers, no I haven't seen numbers. Mr Greenaway's evidence stresses the importance of that coastal walkway, it's part of the sculptural trail. My own experience whenever I've been walking it is there are a significant number of people that use it and certainly some of the submissions also mention the same.
- Q. And for that reason you would expect that the assessment criteria that seeks to take into account important views and vista's would be applied to ensure that this was not likely to adversely affect the view from that walkway, this development I mean.
- A. You're referring to the development that we are depicting in the view?
- Q. Yes. What I'm suggesting to you is that if you're right in saying that the coastal walkway is a popular one and the view from that is important, then that comes into the criteria for the exercise of the Council's discretion in terms of location of the buildings, the form, materials, location, landscaping and the like.
- A. The assessment criteria have been written to ensure a favourable outcome.
- Q. To ensure what? A favourable outcome?
- A. A favourable outcome in vision terms –
- Q. Yes, favourable to the landscape?

- A. Yes.
- Q. Now I just want to ask you about two more things and I'm sorry if I've kept you so long and I appreciate your patience. You have divided up the bay, Matiatia Bay into an inner bay and an outer bay. Correct?
- A. Yes I have.
- Q. And you say that they are differentiated by the degree of development in the inner bay versus the less developed outer bay?
- A. There is quite a distinction between the outer bay and the inner bay, I wouldn't go so far as to say but a line could be drawn but there is certainly a different character towards that outer bay.
- Q. You say it's got a different character than the inner bay?
- A. Yes it has.
- Q. Is there any difference in character between the northern and the southern parts of the bay?
- A. There, you're referring to the entire bay the north and the south?
- Q. Well whichever way you want to carve it up Mr Pryor, we could have the northern part of the inner bay and the northern part of the outer bay versus the southern part of the inner bay and the southern part of the outer bay. I'm not sure how you would want to consider that.
- A. The northern part of the bay has got the mature coastal Pohutukawa's clinging to the cliffs, there's not such a defined differentiation if we were just looking at the coastline itself. My inner and outer bay also relates to the scale of the landscape and as we come in towards the inner bay it narrows down, it becomes more enclosed.
- Q. On plan at least the inner bay becomes broader because the northern embayment eats into the land.
- A. However it's becoming more enclosed with the slopes coming down towards the water's edge.
- Q. I put it to you that the bay's really too small to sensibly differentiate an inner bay and an outer bay.
- A. No I do not agree with that and I also note that Council's landscape architect considers that the bay is made of two halves.

Q. Well I'm asking you questions Mr Pryor I want you to answer from your own perspective not from someone else's.

A. No I consider that there are two distinct parts to the bay.

Q. Now the next and hopefully last issue I wanted to ask you about was what you describe as mitigation and this is paragraphs 16 and 17 of your rebuttal evidence.

A. Yes.

Q. Now you there assert that mitigation of potential adverse effects is primarily based on appropriate design and citing.

A. Yes I do.

Q. So are you suggesting that by citing this marina where it's to be cited, that mitigates the adverse landscape effects?

A. What I'm saying there is I consider the chosen location is appropriate for a development such as this.

Q. But even you have identified that it has adverse landscape effects.

A. From a small number of areas the effects will be more than minor, yes I agree with that.

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Q. And those effects are not mitigated by where the marina is located, they are the result of it being located where it is, do you agree with that?

A. For those proximate locations, yes.

Q. And I put it to you there's nothing about the design of this marina that mitigates any of its adverse landscape effects.

A. I consider that the small scale nature of the marina goes a long way to mitigate those effects.

Q. I'm not sure I understand the answer there Mr Pryor, are you saying that we could have been landed with a much much bigger marina and because we're not then that's a mitigation of some landscape effects that haven't been considered?

A. No, I'm saying I consider the size of it as appropriate in location.

Q. But you agree that the size of it doesn't mitigate such effects as it causes?

A. I consider that the location of the marina is appropriate.

- Q. You also talk in your evidence about the proposal to plant trees on the car parking area?
- A. Yes I do.
- Q. And there's a plan of that proposal in your evidence but also at figure 28 of that bundle. Have that with you?
- A. Yes I do.
- Q. And do you see that planting as mitigating adverse landscape effects of the marina?
- A. As I've said in my paragraph 16, the mitigation is primarily based on the design and the siting.
- Q. So do you accept then that the proposed planting on the carpark is not by way of mitigation of adverse effects on landscape?
- A. Again if I refer you back to 16 referred to, traditional mitigation in the form of screen planting is not really achievable for structures such as marinas. And it comes down to the design and the siting, the scale of it.
- Q. That's what I'm trying to get from you, are you or are you not contending that the tree planting on the proposed carpark is by way of mitigation of landscape effects?
- A. The tree planting on the proposed carpark is primarily proposed to soften the carpark, green it up.
- Q. If you have a look at that plan, there are as I see it six trees proposed?
- A. That's correct.
- Q. Three of which are alongside the bank that will be behind the carpark?
- A. Yes.
- Q. So they'll help to screen the bank correct?
- A. They will help provide a vegetated setting for the carpark.
- Q. And there's one tree to the north of those three in the corner there?
- A. Yes there is.
- Q. And that will help to screen the existing pohutukawa trees/
- A. It will add to the vegetated framework.
- Q. And then we have the timber walkway to the reserve. You don't refer to that as a matter of mitigation, do you?

- A. The timber walkway is just one component of the marina design that will allow unimpeded access to the reserve as well as the timber viewing deck and the access along the southern pontoon. So they can all be referred to as design elements that will enhance the public use of the area.
- Q. Are you putting forward that the walkway will mitigate the adverse landscape effects of the proposal?
- A. No, I'm saying that the design and location of it and of which components of the marina design, although slightly separate, are the timber walkway and the southern pontoon. Which all need to be viewed in conjunction with the overall marina design.
- Q. And we have a pictorial representation of that timber walkway which is at figure 22, do you see that?
- A. Yes.
- Q. And that shows I think at 42.6 metres in length.
- A. That's correct.
- Q. And although not shown clearly it goes across right in front of the two existing pohutukawa trees that you've shown for example in your attachment photograph 2 to your evidence-in-chief, which you can go back to, I'm assuming your familiar with the location.
- A. Yes, yes, it's the location of it. It swings around the front of that pohutukawa.
- Q. And as it's shown there do you agree that it's a particularly linear utilitarian structure?
- A. I would consider that it's fairly typical of boardwalks, jetties within that coastal environment.
- Q. I put to you that there's nothing about the design or location of that feature that mitigates any of the adverse visual or landscape effects of the marina.
- A. It's not mitigating the effects as I've previously said, I consider that the location is appropriate for a marina. The walkway is another element as part of the marina development which will enhance public use of the area.

- Q. Do you accept that it does not mitigate the potential adverse landscape or visual effects of the marina?
- A. I haven't referred to it as mitigating the effects.
- Q. So can I take that as a yes, it does not mitigate?
- A. The walkway in itself does not, no.

CROSS-EXAMINATION: MR ENRIGHT

- Q. Mr Pryor, I just want to dwell on one issue and it's the practical implications for that category of proximate viewers you've identified who will have a more than minor adverse effect from the marina. Now, perhaps if we go to figure 47 in the 2013 folio I'm using, and that's just an aerial shot that shows all the viewpoint camera locations.
- A. Yes.
- Q. Now, in answer to questions from my friend Mr Casey, you indicated that there will be a more than minor adverse effect from the marina for proximate viewers from those two locations, Viewpoints 4 and 5, but I think those effects although they're more than minor they're acceptable, that's correct isn't it?
- A. I didn't consider Viewpoint 4 to be more than minor.
- Q. So you were restricting your comment to Viewpoint 5.
- A. That's correct, yes.
- Q. So you're saying it's only from the viewpoint 5 area that the effects on proximate viewers are more than minor, adverse effects?
- A. I had Viewpoints 2, 3, 5 and private Viewpoint C as being more than minor.
- Q. Now of course 2, 3 and 5 are viewpoints from the DoC reserve land area, aren't they, and the adjoining beach?
- A. And the coastal walkway.

1455

- Q. So, I just want to explore with you what you mean by "approximate viewers". Now, in your primary evidence you refer to recreational users of the beach, northern beach area and DoC reserve and that's kind of how you describe the recreational users.

A. Yes.

Q. Would you accept that, within that general category of recreational use would also fall under mana whenua or tangata whenua undertaking cultural practices in the locations you've identified, Viewpoints 2, 3 and 5?

A. Yes I would.

Q. And the types of cultural practice that might be included are, reintering kōhiwi exposed by coastal processes?

A. I'm not familiar with those practices.

Q. If you accept that the evidence from the archaeologists is there is a likelihood of kōhiwi being exposed by coastal processes and reliance on that.

A. I have read that evidence, yes.

Q. Perhaps you can comment on this, visiting ancestral sites and both land and water, aerial places in kōhiwi.

A. I've not specifically addressed the values to tangata whenua as I consider that's beyond the realm of a landscape architect.

Q. Yes that's fair and you've said that in your rebuttal I think haven't you, you haven't done a cultural assessment but I'm just asking you here about, in practical terms what does that mean for mana whenua or tangata whenua who are in these locations in terms of visual impact?

A. Yes they will be part of that proximate audience.

Q. And also site lines to and from Mokemoke Pa. Perhaps most particularly from Viewpoint 5.

A. Yes, there could be potential effects.

Q. And sight lines to te whetumatarau so from the beach area in Viewpoint 5 to that point.

A. There could be potential effects, yes.

Q. And all the examples I've given you, they're all effects that are more than minor and adverse in terms of visual effects arising from the marina.

- A. From those viewpoints I have considered that the effects will be more than minor but I do not consider that they are adverse in the context of the surrounding environment.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

- Q. I've just taken a note down that you've said that Viewpoint 2, 3 and 5 and C have effects that are more than minor and I'm just wondering about that being the appropriate test. More than minor seems to me to relate to non-complying activity and not to the assessment under section 104 that we've got to do. Do you have anything to say about that?
- A. In terms of the more than minor, of the 12 viewpoints that we have assessed, four of them rated from our scale as more than minor. And as we've sort of heard extensively, those are largely from two or three, certainly three of the most proximate areas to the marina at the northern end of the bay. However when taken in consideration of the entire bay, overall I consider that the effects will be no more than minor.
- Q. Well, when I read your evidence at paragraph 49 you gave us a listing of graduated effects from very low to very high. And I take it that's a standard sort of a landscape measure?
- A. Yes.
- Q. And I take it that when you apply that measure you consider all of the various landscape aspects like memorability and visual and historical and all the other things that –
- A. Yes.
- Q. So you roll all that into an assessment of an effect, is that right?
- A. Yes, to get the overall effect rating.
- Q. And have you applied those values to each of the viewpoints?
- A. Yes I have.
- Q. Can you point us to the result? I would like to know how you evaluate each viewpoint before and after, in terms of that scale.
- A. In terms of that scale and I haven't actually – basically the way we do it is that we use a, I referred in my Appendix P2 to the visual affects matrix, that is actually accompanied effectively by a check list of all of

those elements of which we go through and then we come up with the final rating at the end of that.

Q. If I go to, say, Viewpoint 5, and I'm looking at the one that's in the October 2014 bundle.

A. Figure 51?

Q. It's Viewpoint 5, high tide. 2014 bundle. October 2014 and it's Viewpoint 5 at high tide.

A. Yes I've got that one.

Q. And you've got the top photograph is as it is now and the bottom one as it would be with the marina.

A. Yes.

Q. And can you tell me what scale of effect that change is?

A. For that Viewpoint I have referred to the, I've scored that a moderate effect.

Q. But now where do I find that? Is that in your evidence?

A. Yes that comes under all of the viewpoint discussions.

Q. Well can you point me to the bit in your evidence that does that? Viewpoint 5 starts at paragraph 62 doesn't it?

A. Yes I refer to, I cover both both Viewpoints 4 and 5 under those following descriptions.

Q. And whereabouts in there is the moderate effect recorded?

A. Under paragraph 65 I say, "Overall, the landscape and visual effects will be low-moderate from the foreshore and moderate from the northern slopes location." Which is the Viewpoint 5.

1505

Q. And presumably you've done that for each of those viewpoints in the evidence?

A. Yes I have.

Q. Good, thank you. When you were engaged to evaluate the proposal, I think in July 2010 I think you said it was?

A. Yes that's right.

Q. Had the proposal taken shape by that stage?

- A. At that stage the proposal was utilising the floating attenuators as part of the marina design. My recollection is that it was for a similar number of craft.
- Q. So you were not asked and I presume it was a blank sheet of paper what sort of shape you might think from a landscape perspective would be best?
- A. No I wasn't.
- Q. And the reason for my asking that is I asked of our oceanographer experts about the effect of waves on breakwaters and so on, and breakwaters on waves, and whether they would be better concave, convex or straight, and I wondered whether you from a landscape point of view had any view on that aspects?
- A. From a landscape point of view I think it's worth breaking down the primary breakwater from the secondary one. In my opinion I consider that the primary breakwater right next to the marina itself should be linear, just like all the other pontoons of the marina. My view of that was convex looking in from the entrance to the bay, there would be sort of an odd level of tension because the marina itself is of such a linear form. And to me if a breakwater that was somehow viewed in close proximity to those structures, there would be a level of tension. In consider that the secondary breakwater being quite separate visually could – there'd be potentially visual merit in it being less linear as it's completely separated from the primary breakwater. It's seen more as a stand-alone element rather than an integral part of the marina itself.
- Q. Are you saying that the tension between the secondary breakwater and the irregular shore is lessened by less linearity in the breakwater.
- A. For the secondary one, yes.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. I get the feeling in your evidence that you're using the existence of the wharf as a stepping stone to the proposal as making that more acceptable in the environment.

- A. The wharf is a very dominant element of that Matiatia environment. It sort of forms the gateway function of Matiatia. So it's not just the built structure itself, it's all the activity associated with the wharf, the comings and goings of the ferry. So in my opinion it is a very dominant existing feature of Matiatia and both the structures and the activity associated with it form a very strong character of that Matiatia environment.
- Q. So if the wharf was not there, would you view the presence of a marina differently?
- A. The presence or the existence of the wharf alters the character of that Matiatia Bay, and I think that was brought out quite strongly when we were looking at some alternative locations for the marina. And those other bays that I included in my evidence, some of them already had existing infrastructure there, others didn't. Obviously in bays where there are very few built structures, they are much more sensitive locations. If Matiatia didn't have an existing ferry terminal and wharf, the environment would be quite different. It's a little bit hard to assess, imagining what it would be like without that structure that is there at the moment.
- Q. I just want to consider a comparison between the north shore part of the bay and the south shore part of the bay, and the impression one has of those, for instance the south side seems to be where the ferry pulls into the wharf, it seems to be where the car parking is and in the summer when we visited the other day, the kayak place was all locked up. But there is some recreational hire activities going on there and I seem to recall a Zorb-type activity there I've seen down there as well operating from there, and I think even a floating pontoon, are you familiar with that?
- A. Yes, I have seen that pontoon.
- Q. So that part of the bay is quite busy?
- A. Yes.
- Q. Would you say that – and when you look at the northern part it's quite quiet by comparison?
- A. It's quiet in the southern side.

Q. And both bays are sandy, you have that sandy foreshore beach front if you like?

A. The northern ones more pebbly than sandy.

Q. The northern one is predominantly more protected, that's why it's favourable for anchoring?

A. Yes.

Q. And when you enter the bay you come past the rocky edges, and then sandy beaches is the point of human arrival if you like, because we can't land on the rocks, but the sandy beach is sort of the attractive point when you enter a bay, would that be –

A. At the head of the bay yes, on –

Q. Well any bay really, I'm just talking generally in terms of how we view the bay –

A. Yes, it's an arrival zone.

Q. So does the sandy beach in itself sort of present an arrival point in the bay?

A. It's just one of the elements as you move closer into the bay, the slopes rising up from the foreshore obviously get closer, so you physically get that feeling that you're arriving at the head of the bay. I consider it's probably more the vertical elements of those vegetated coastal slopes rising up from the foreshore than the actually interface as well that gives you that sense of arrival.

Q. So if you're arriving by water, it was rock all around, where would you go to land?

A. If you were, for example, in a kayak?

1515

Q. Well just a boat.

A. You would arrive on the foreshore.

Q. But if it's rock you would look for the sand wouldn't you?

A. Yes.

Q. That's the sort of natural arrival point for a boat.

A. Yes it is.

- Q. With the marina in place, there's the rocky breakwaters and a movement, if you like, if you're arriving by water what appreciation do you have of the sandy beach that's on that side, on the northern side?
- A. Arriving by water it wouldn't be as visible with the marina in place. I would still be very apparent though.
- Q. How would it be apparent?
- A. It's still accessible arriving by water, it certainly wouldn't be as visible with the marina in place. But it would still be accessible and visible as you move your way in.
- Q. Viewpoint 1 would probably be a useful page, in the 2013 package. So coming into the bay, in the top photo, you get the appreciation of the two sandy beaches.
- A. Yes.
- Q. And in the bottom photo, I'm not sure you can even see the sandy beach, maybe a little bit on the very far left. And as you approach one would assume would be, that view would be more restricted as you're getting closer to the breakwater.
- A. Yes the views will be screened from various locations coming in on the water. The southern beach however is very prominent and will retain that prominence.
- Q. Would you say that the northern beach has a more natural look at the foreshore than the southern beach?
- A. The northern beach is, I mean to me it's, when you look at that, the coastal edge coming around from say the ferry terminal, there's quite a transition from those rocky shoals through onto what becomes quite larger pebbles, rocks, before you actually get onto the sandy beach itself. It's, in landscape terms I wouldn't consider this a huge difference between the northern beach and the southern beach in terms of naturalness. It probably more arises from the northern beach not being as accessible in all tides. Obviously the recreational focus is more on that southern beach with the kayaking facilities and even the moorings on that south side of the bay and just being more accessible when you hop off the ferry to the carpark.

- Q. And leading up into the valley into town.
- A. Or if you're going on the coastal walkway to the southern slopes.
- Q. The other thing I wanted just to talk to you about was the Annexure 5 photo which was the one from Delamore Drive and you were discussing that with Mr Casey, I believe I've only got that on the iPad which was attached to your rebuttal was it?
- A. It's the first Delamore Drive viewing location?
- Q. Yes.
- A. Yes.
- Q. And you took the higher photo and you're looking out of the window of – I haven't been there so, we will see it but apparently your photo's out of the window, is that right?
- A. Annexure 5's from Delamore Drive.
- Q. Yes and is that where the sculpture is?
- A. No that's the Rocky Bay's store is.
- Q. Oh, Rocky Bay's store right, okay.
- A. So you're referring to annexure 4?
- Q. No I'm referring to annexure 5 I believe and I'll just bring it up again. Is that attached to your rebuttal? The one up the top looking out to the bay that opens out to the bay. But it's quite an open view.
- A. Yes.
- Q. And it shows in the right-hand side the existing moored boats which were in an approximate footprint of the proposed marina.
- A. Yes.
- Q. Have you done a or do you have a photo where you've, the same photo where you've imposed the marina in there?
- A. No I don't.
- Q. If you just look at it and I was just tracing a line around the outside of those boats, what sort of proportion of that view of the water would you think that that marina might take up?
- A. From that particular view it'll sort of approximate the area that you're referring to with the moored boats.
- Q. So you'd basically draw a line around the edge of those moored boats?

- A. Yes, correct.
- Q. Does that change the character of that view to a sort of more of an urban view especially when you're looking across to the city in a distance?
- A. It'll change the character of the view but I don't consider it will detract from the overall character of the wider view. It'll be a different view, there will be more boats in it and they will be more orderly but that is just one component of that much wider view.
- Q. In terms of the character of the bay that you're looking through if you like we can see the two headlands, we can see the bay, do you feel the shape would change that character?
- A. It will give it a more ordered look, yes.
- Q. Do you think it would give it a more urban look?
- A. I wouldn't refer to it as distinctively urban, it'll in my view reinforce the maritime characteristics of the area through a larger number of boats, I certainly don't consider that it would look inappropriate in that location.
- Q. Thank you.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- Q. Right now I will just pull up your evidence-in-chief Mr Pryor, page 35 I'm going to be hunting for I'm going to be referring to paragraphs 155 and 156.

MR R BRABANT ADDRESSES JUDGE NEWHOOK – CLARIFY PAGES

QUESTIONS FROM THE COURT CONTINUES: JUDGE NEWHOOK

- Q. This is where you're discussing the 87(f) report but its, it reflects some of the commentary you've provided in relation to viewpoint, some of the viewpoints earlier in your evidence.
- A. Yes.
- Q. And if you just quietly read 155 to yourself and in 156 you say, "(inaudible 15:26:29) a significant change in outlook I do not agree there would be adverse the marina is to be located in the area of the bay currently occupied by about 52 boats on swing moorings. While there

will be an increase in the number of moored boats the marina will not dominate the bay.” Now I want to focus particularly on the comparison between these various scenes with 52 moored boats on hand and the marina on the other, let’s just one way, one example take Viewpoint 5, look at figure 51 in the 2013 bundle. Now looking at the top photograph the existing situation and leaving aside perhaps a stormy day, would you agree with me that the scene there is one predominantly of scattered moored boats on the surface of the water? I think that’s quite trite isn’t it?

A. Yes, the existing few.

Q. Would you agree with me that that scene is placid? And I say again leaving aside a stormy day.

A. Yes it certainly depicts a placid –

Q. That’s a placid scene isn’t it? It’s a soft and placid, pleasant scene of scattered boats on blue water. Looking at the bottom visual simulation, would you agree with me that the boats there are depicted in a very concentrated form because they’re brought together in the marina.

A. Yes they are and there is that more regimented layout to them.

Q. Yes, regimented is another word one could apply to it. You’ve described the effect there as moderate in terms of the scale that you’ve employed from the NZII guidelines.

A. Yes.

Q. I’m wanting you to tell me why I shouldn’t form the impression from other evidence that I’m effectively testing you on now that when you move from a scene, from a placid scene with scattered boats on a blue sea surface to a very concentrated gathering of boats in a marina that you’re not moving into high effect territory rather than moderate? What is it that tells you that it’s moderate and not high?

A. Well in relation to that particular I’ve taken into consideration and if we take that Viewpoint 5, I consider and of course my moderate rating equates to more than minor, however in the context of that particular scene where the ferry terminal wharfs are quite a strong element, I consider that that provides the context within which that marina is seen.

So what I was saying there is that, and I think we can revert back to Commissioner Leijnen's remarks about the presence or absence of the ferry terminal, in the absence of ferry terminal and wharf, superimposing that scene into that context I agree would have high effects. However the wharf and the ferry terminal are an established component of that scene and I consider that there is visual similarity in terms of the use and activity that's happening in that.

Q. And the effect is actually even more marked at low tide, isn't it, as we saw from Viewpoint 5 illustrated in the other book.

A. Yes, the effect is greater at low tide.

THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL – RULER

QUESTIONS FROM THE COURT CONTINUES: JUDGE NEWHOOK

Q. Mr Pryor, I'll lend you the ruler that I've just been lent by Mr Littlejohn in a moment if you need it, but you might be able to take my word for it, if you have open in front of you Viewpoint 5, fib 51 in the 2013 book?

A. Yes.

Q. And if you apply a ruler to the fourth structure from the left-most end of what's visible to the right, there's 26, nearly 27 millimetres there. And then in comparison we actually go off the scale, this little scale of Mr Littlejohn's, on the bottom illustration you run (inaudible 15:34:13) 82 millimetres, so 27 to 85 millimetres, and this is just in terms of running from sort of north to south across the view of structures, that's a very very significant increase, isn't it, in built form across that view?

A. Sir, which – I got a little bit lost there as to what you were measuring?

Q. Yes, sorry, it wasn't the most elegantly-framed question. Just applying this ruler to the fourth structure in the upper photo, from end to end we've got 27 millimetres of built form on the ruler, that's just the wharf, do you understand what I'm saying?

A. So you've measured the length of the wharf?

- Q. Measured the length of built form from what's coming into view around the edge of the nearby pohutukawa tree, out to the end of I think it's the old wharf. The full extent of the built structure.
- A. Coming out into that view.
- Q. Yes.
- A. I simply have applied the rule to that built form there and I got 27 millimetres of it on this little beast here. And then I've done the same on the visual simulation on the bottom depiction and I've got 85 millimetres of built form that I measure. It's out to the right-hand end of the marina, out to that large moored launch there, I got 85 millimetres, now that's a very significant increase in built form across that view, isn't it?
- Q. It is certainly an increase from the existing situation, yes.
- A. It's more than treble isn't it, just in that one dimension.
- Q. Certainly in terms of the photograph yes it has.
- A. And do you want to convince me that that's not a high effect on your scale?
- Q. I don't consider in the context within which it's seen would jump it up to that high –
- A. Well what's the context you application?
- Q. The context that I am assessing the effects in primarily stem around the transport hub in the existing infrastructure that we have at the head of the bay.
- A. Okay, we've started to go in circles, I'll leave it there.

RE-EXAMINATION: MR R BRABANT

- Q. Mr Pryor, can I give you the ruler please, you can use the one to 10 there to do a measurement on that same – there's two, there's an existing view there at the top.
- A. This is Viewpoint 5?
- Q. Yes, 5. See the existing one at the top?
- A. Yes.

Q. If we just use it clean, measuring from the left-hand edge of the building out to the end of the wharf, can you put a dimension on that please?

A. I've got 55 millimetre.

Q. And then on the bottom one from the shed or the office across to that big catamaran boat, can you measure across there please?

A. 110.

THE COURT: JUDGE NEWHOOK

Sorry, the first one was measured from where to where on that top paragraph?

MR R BRABANT:

Sir, from the start of the building that you can see just where the emergence from the trees out to the end of the wharf. And with respect, Sir, I think three of us have measured it at 55, that's why I asked Mr Pryor.

THE COURT: JUDGE NEWHOOK

Look, never mind whether it's feet, inches, metres or miles, there's a trebling or more.

MR R BRABANT:

Sir, the other measurement he just gave you was 110.

THE COURT: JUDGE NEWHOOK

I doubt that's from the same starting point Mr Brabant, what was your starting point in the bottom illustration?

MR R BRABANT:

From the shed – ah, from the marina office – do you want to know the –

THE COURT: JUDGE NEWHOOK

No, I was comparing apples with apples Mr Brabant, I was starting at the beginning of the wharf structure, the left-hand end of the wharf structure in both shots, and I call that comparing apples with apples.

MR R BRABANT:

And not deducting the wharf structure that's already there. I didn't understand.

1540

THE COURT: JUDGE NEWHOOK

No, I'm talking about a comparison of the current built form with the proposed built form.

MR R BRABANT:

And with, right.

THE COURT: JUDGE NEWHOOK

Purely and simply and we've got, in that one dimension we've got a trebling in those photos.

MR R BRABANT:

Yes, I understand that.

THE COURT: JUDGE NEWHOOK

And I think he agreed with me. I said it was a bit more than trebling and he agreed.

MR R BRABANT:

It's just that he hadn't had a chance to measure it himself and I thought that was only fair.

THE COURT: JUDGE NEWHOOK

Yes, but I think you had the wrong starting point. In comparison to what I was asking him you had a different starting point in the visual simulation.

MR R BRABANT:

I think, Sir, the measurements come out exactly the same. It's just you've added the two together, the wharf and the –

THE COURT: JUDGE NEWHOOK

I've compared existing with proposed, as we usually do in landscape work with visual simulations supplied.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. Now Mr Pryor, the other thing I want to ask you about, if you could go to your rebuttal evidence please and paragraph 43. There were some questions asked of you about the gateway zone and the design of Mr Scott's and in your evidence there you had referred in the middle of that paragraph to a change of character?

A. Yes, I do.

Q. That would emerge from additional built development?

A. Yes.

Q. What are the range of factors or elements that in your view make up, would make up the change of character, all of them? If the mixed use zone development went ahead like the one depicted, what would bring about the change of –

A. Well there would be obviously the fundamental or the main change in character would be the visual effects of the built elements of the development, and then there would also be the activity surrounding the uses that occur within that mixed use zone. And I'm aware that that zone allows for a number of uses, including visitor accommodation, convention centres, recreation, hotel. So other than the visual components and additional built developments there would be the activity surrounding the uses within those buildings.

- Q. In the controls for the zone, is there advice as to bulk and other bulk dimensions that guide what might happen?
- A. There, I'm not –
- Q. Take your time to look through.
- A. The main... We have –
- Q. Have you found the bulk and location provisions?
- A. I'm sorry, I can't find –
- Q. Just start at the beginning and turn the pages over in sequence and if you can find the bulk and location provisions for me please.

THE COURT ADDRESSES MR R BRABANT

RE-EXAMINATION CONTINUES: MR R BRABANT

- Q. Page 74. You got page 74?
- A. I've got the building height and location, eight and 13 metres.
- Q. And what is that? What are the building height?
- A. Between eight and 13 metres.
- Q. And threshold controls?
- A. They refer to anywhere between 1500 square metres and 7000 square metres.
- Q. So just read the, just in order to advise the Court you need to actually just consider the items 1 and 2 and the total controls and give some advice about the anticipated GFA.
- A. The, well it refers to the establishment of a threshold activity where the activities are less than 10,000 square metres as being a permitted activity. And between 10,000 square metres and 12,000 square metres is a discretionary activity.
- Q. And are there some limits for particular types of activities that you can assist the Court with?
- A. And then it goes through retail premises, restaurants, cafes, 3500 square metres. Dwellings, visitor accommodation of 7000 square metres and then other activities of 1500 square metres.

Q. And does that have relevance to the point you were making in paragraph 43?

A. Yes it does because there are going to be some quite substantial buildings within that mixed use zone with associated activities.

THE COURT: COMMISSIONER LEIJNEN

Q. Just reading that rule for the – I think you're referring to 10A18.6.4 threshold controls number 1 where the aggregate gross floor area of all threshold activities is less than 10,000 square metres it's a permitted activity and then above that there's a stepped regime, is that right? It's the aggregate?

UNKNOWN SPEAKER (15:47:20)

Yes.

THE COURT: COMMISSIONER LEIJNEN

Thank you, I didn't quite understand that.

THE COURT: JUDGE NEWHOOK

Q. Did you understand that, Mr Pryor?

A. Not fully.

THE COURT: COMMISSIONER LEIJNEN

I'm just reading it. It might be the planner.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. It's probably getting into Mr Dunn's territory.

A. It's getting very much into the planning regime.

THE COURT: JUDGE NEWHOOK

I was wondering whether we're going to get more help from the planners and counsel anyway, Mr Brabant, on that point.

RE-EXAMINATION CONTINUES: MR R BRABANT

A. There will be a significant change.

Q. You were asked some questions about –

THE COURT ADDRESSES MR R BRABANT – TIMING**RE-EXAMINATION CONTINUES: MR R BRABANT**

Q. If you could go to figure 1 please in the March 2013 bundle. It's an aerial and I do note for the purpose of this question, Sir, that it's dated 2010. So it's not new. Do you have that?

A. Figure 1, yes I do.

Q. Just looking down, now Commissioner Leijnen had asked you some questions about coming in and, in a boat, it could be a small boat I guess, that you would go directly to a beach and she talked about the beach to the north?

A. Yes.

Q. If you like, in the marina location, in that area or the one to the south. Now I want to use that photograph in a minute but in your rebuttal, attached to your rebuttal you've got some photographs and the very first one is a set of six. And the one on the bottom left.

A. Yes.

Q. That's looking at that beach that you were asked questions about?

A. Yes that's correct.

Q. And do you know what those posts are there for?

A. There for the haul-out facility for boats.

Q. So would that be the same that is shown on the top left-hand corner of the same group?

A. Sorry top right-hand corner?

1550

Q. Sorry, sorry, top right.

A. Yes it is, they are at low tide with the, yes.

Q. In terms of the land behind the beach, do you know whether that's private or public land behind that area of beach? If you look at the aerial now please.

- A. The red hay barn, that's private land, privately owned land.
- Q. If you look at this aerial, behind that beach you can see some dwellings, existing dwellings overlooking it.
- A. Yes.
- Q. And there's another patch, there appears to be a patch, do you know what that is?
- A. That's an as yet un-built dwelling. So that is still to be built on.

WITNESS EXCUSED

COURT ADJOURNS: 3.51 PM

COURT RESUMES: 4.08 PM

MR R BRABANT CALLS

MAXWELL JOSEPH DUNN (SWORN)

Q. Is your full name Maxwell Joseph Dunn, you're a planning consultant with Andrew Stewart Ltd, residing at Auckland and you have the qualifications and experience set out in the first three paragraphs of your evidence-in-chief?

A. Yes.

Q. And that statement of evidence dated the 30th of April 2014, are there any amendments that you need to make to it Mr Dunn?

A. Yes there are.

Q. If you'd just like to take the Court and the parties to the paragraph numbers and just describe the alterations please.

A. Paragraph 190 of the primary evidence. The third to last line where it says, "Two public viewing points," it should be three public viewing points. Two becomes "three". And the next, over to page 62, paragraph 238. The fifth line down where it says "Two of seven public viewpoints locations," should read, replace the two with "three". And the next line down again there's a typo, it should be "from" rather than "form". And then, "One of five," not, "One of six."

THE COURT: JUDGE NEWHOOK

So "six" becomes?

MR R BRABANT:

Five.

WITNESS:

"One from five," it should say.

EXAMINATION CONTINUES: MR R BRABANT

Q. Are those the adjustments –

- A. No I've got some more.
- Q. And the main one?
- A. That's the main one, yes.
- Q. Let's move to the rebuttal.
- A. No I need to go to Annexure D to my primary evidence where the same numbers arise or similar numbers arise.
- Q. Annexure D?
- A. Yes, Annexure D.

THE COURT: JUDGE NEWHOOK

- Q. Can you give us a page number on that?
- A. Your Honour, I don't have a page number on mine.

DISCUSSION – LOCATING RELEVANT PAGE NUMBER (107)

EXAMINATION CONTINUES: MR R BRABANT

- A. It's a different correction but the same issue, visual effects, the fifth line down. In both of those columns it should read "Four of 12" rather than "Three of 13".
- Q. Is that all of the evidence-in-chief?
- A. Yes.
- Q. And then you've done a statement of rebuttal evidence dated the 26th of September 2014 and can you advise whether you have any corrections in that please?
- A. Yes I do, the same matter on page 6.
- Q. Paragraph?
- A. Eighteen. Second to last line. Where it should say, "Three of seven." And one more. Paragraph 19, the first line, delete the word "no".
- Q. Mr Dunn, with those amendments can you confirm for the Court that to the best of your knowledge and belief the two statements of evidence are true and correct?
- A. Yes.
- 1615
- Q. Now turn to the joint witness statement, tab 9.

- A. Yes.
- Q. Dated 3 September 2014?
- A. Yes.
- Q. And your signature appears on that document Mr Dunn.
- A. Yes.
- Q. Thank you. Would you answer questions please.

CROSS-EXAMINATION: MR ALLAN

- Q. Good afternoon Mr Dunn.
- A. Good afternoon.
- Q. Now you've got obviously your two statements of evidence there, do you have Ms Bremners' evidence-in-chief I think that's the only one I'm going to refer you to briefly at one point.
- A. 11 July yes?
- Q. Yes.
- A. Yes.
- Q. And do you have the three draft sets of conditions there? The applicant's versions?
- A. I might've left those on my desk.
- Q. I'm also asking some questions about the counsels original set of conditions that were attached to the section 87(f) report.

MR R BRABANT ADDRESSES THE COURT: JUDGE NEWHOOK – COPIES OF REPORT

CROSS-EXAMINATION CONTINUES: MR ALLAN

- Q. You understand just looking at those Council conditions those have been superseded to an extent by evidence from the Council where they've there is amendments but that was the base set of conditions?
- A. Yes that was the first set, yes.
- Q. Now could we just start with your rebuttal evidence please and it's paragraph 28 I'd like to take you to of your rebuttal and have you found that? Paragraph 28, it's talking about the navigation and safety.
- A. Yes.

- Q. And it's talking about the leading light towards the end as the experts do agree that the existing leading light should be moved. "I understand the need to move this light arises irrespective of construction of the proposed marina, on this basis I do not consider a fair and reasonable condition to be placed upon the applicant. I just wonder whether you've taken the wrong message from the joint witness statement in that regard? I'm happy to take you to if it would be helpful to the witness statement but perhaps you'll take it from me that the experts agreed that the light should be moved in any event to improve navigation safety but they also agree that if the proposed marina proceeds the light must be moved," and those were the words in the joint witness statement which for the transcript was paragraph 8(b). Do you agree that based on that very clear position the leading light must be moved before the marina proceeds? That's what they said.
- A. If that's what they said I must've misinterpreted it. But maybe I should read the – should I read this?
- Q. Let's have a look at it it was paragraph 8(b) of the joint witness statement.
- A. Maybe I misread that first sentence which says, "The experts agree the light should be moved in any event."
- Q. That's right but then they go on don't they and they say that if this goes ahead, it must be moved.
- A. Okay.
- Q. So all I want to put to you is that –
- A. Yeah I've just relied on that first –
- Q. A condition requiring that to be done in connection with this development is fair and reasonable isn't it? It's connected with the development and that's clear from the agreed position of the experts.
- A. Yes, I must've misunderstood that.
- Q. Thank you. Still on your rebuttal we're going to go down to paragraph 78, if you see towards the end you're talking about the Proposed Auckland Unitary Plan and you say there, "There is no limit in

the PAUP although these rules do not have any legal effect at present.
Do you see that?

A. Yes.

Q. You're probably aware that the Unitary Plan's regional rules relating to water have taken legal effect pursuant to section 86(b) of the RMA?

A. On moorings?

Q. And rules relating to water.

A. Okay.

Q. If you're not familiar with that legal situation –

A. No you are correct.

Q. Well perhaps to make it easier, do you remember how the Proposed Unitary Plan using grey shading to indicate –

A. Correct.

Q. Do you recall whether these provisions in the Unitary Plan had that grey shading? We can take you to them if need be but perhaps you can take it from me that they do have that.

A. Right, if they have grey shading would that have legal effect?

Q. Yes. And you're setting it right then –

A. Yes.

Q. You'd need to correct that paragraph.

A. Yes I would need to correct that paragraph.

Q. The next thing I want to ask you some brief questions about was, scroll down to paragraph 113 of your rebuttal; when I was reading your rebuttal evidence it seemed to me that you may have misread parts of Ms Bremners evidence possibly because of the way it's structured. I just wanted to work through that so that there's no confusion at all and this paragraph is a good example of a point. Do you see in the middle, you say, "I also understand with reference to paragraphs 90 to 98 of Mr Sargent's evidence and paragraphs 108 and 109 of Ms Bremners evidence that they have concerns with all or part of objective 10A.18.3.1 do you see that?

A. Yes.

Q. If we turn to Ms Bremners evidence, sorry for leaping around but it's important I think that we just touch on this, Ms Bremners evidence-in-chief which hopefully you've still got open there, if you go to paragraph 33, you'll see from paragraph 33 onwards she's addressing her previous report and basically providing a praxis of it, do you see that?

A. Yes.

Q. And that runs all the way through to paragraph 121, do you see that?

A. Yes.

Q. And then from paragraph 122 onwards she's providing a response to the applicant's evidence and she's updating her position in relation to a number of matters. Do you remember?

A. Right.

Q. So just to take an example relevant to the paragraph in your rebuttal evidence we were just talking about, if we go to paragraph 170 of her evidence-in-chief, it's quite a long paragraph but you will see the last sentence.

A. One seventy of her evidence-in-chief?

Q. Paragraph 170 of the evidence-in-chief.

A. Yes.

Q. You'll see there she says, "Relying on expert advice in this regard, my section 104(d)(1)(b) conclusions are on the proposal of change from a earlier assessment, I will no longer regard the proposal as being contrary to part 13," et cetera and then she refers to there still being elements of inconsistency and she refers to annexure B. Do you remember reading that, her annexure B?

A. Yes.

1625

Q. And in there, for instance, to take that policy you were talking about earlier, sorry, objective 10A.18.3.1 she notes that she now regards that the proposal is generally consistent with that objective?

A. Yes, I see that.

Q. So sorry if that was a bit laborious but –

- A. No, I see what you're saying.
- Q. Because you do the same thing in one or two other paragraphs as well and I think it's just important –
- A. My apologies to Mr Bremner.
- Q. No, that's okay.
- A. Yes, I've obviously not picked up the split in the evidence between the past and the change in position.
- Q. Now just in terms of the structure of the consent, the applicant's approach versus the Council's, and I think you're commenting on this in paragraph 159 of your rebuttal. You see that there, talking about the –
- A. Yes.
- Q. – two sets of conditions?
- A. Yes.
- Q. Now I don't want to dwell on this too long, but presumably you'd agree that both the Council's approach on a single set and the applicant's approach are a reasonably common practice and both can work fine?
- A. Yes.
- Q. Would you accept though that the Council's approach would lead to less duplication in some respects and a more integrated approach? I'll just give you an example to help focus your mind on that question. The requirement for a construction management plan in the applicant's conditions is spread across the coastal consent and the land use consent and there are some provisions which are repeated in both and others which are found in one and not the other. For instance, the construction traffic management component. Wouldn't it be more efficient to have a single construction management plan for the whole development rather than splitting it up in that way?
- A. As you said, there are pros and cons in the both approaches as I see it.
- Q. So one of the columns you've said and your paragraph 159, "I'm of the view that some matters, secondly, the Council's set contains some advice notes whereas the WML set does not." How's that relevant to whether –
- A. No, that's probably not, no.

- Q. So we'll move on from that and if we can turn now to the matter of the consent term and if we look at the coastal permit. And I just wanted to ask you a question about the -

MR ALLAN ADDRESSES THE COURT

CROSS-EXAMINATION CONTINUES: MR ALLAN

- Q. It's condition number 3, which mentions a 35 year term?
- A. Yes.
- Q. Can we turn to your evidence-in-chief and it's paragraph 383. Have you found that?
- A. Starts section 13?
- Q. Section 13, yes. And you'll see the subheading above, you're talking about consent terms?
- A. Yes.
- Q. Paragraph 383 you're talking about consent terms for the coastal permit for the capital dredging component and you mention it being a one-off activity and from your discussions with Mr Leman and Mr Wardale you consider a five year term is appropriate?
- A. Yes.
- Q. Should that be reflected in the condition?
- A. No, my position on that has changed having discussed with Mr Wardale and through experience of other projects. In terms of this project, as you know, there is in the construction programme a gap in the middle relating to settlement of the breakwaters which is nominally shown as 12 months. My understanding from the engineers is that that could actually send out to 24 months possibly, although the current programme, indicative programme shows 12 months. You've also got a start up period for marina projects which can be quite significant and just on that vein I've been involved in the Sandspit Marina consents which have a five year term and they have nearly run out, they're going to run out of time.

- Q. So are you confusing lapse periods with consent terms at all? What are you proposing anyway, now? Just to cut to the chase.
- A. The lapsing period which we're in, I'm in condition 1 that it doesn't lapse for 10 years.
- Q. And for the term? For the capital dredging consent?
- A. The term would need to relate to that as well.
- Q. Because you'll appreciate that there's a distinction between lapsing of consents and –
- A. Correct, I'd need to think that through.
- Q. Well perhaps...
- A. So my point is here that there is an unusual construction programme and you've got a, you can have a long lead-in period like at Sandspit.
- Q. Sure but you accept that it should have a –
- A. And then get into problems.
- Q. I think you accepted in your evidence it should have a shorter term than 35 years.
- A. Correct.
- Q. You're saying now that five years is probably too low.
- A. Yes.
- Q. Where would you settle? Do you have a view? And if you don't –
- A. I mean I could probably, I'd need to think about it a bit more carefully.
- Q. All right, but that's something that we need to revisit?
- A. I believe so, it would be useful, yes.
- Q. The next thing I'd like to ask you about, and we can stick with the coastal permit but it relates to all three of the applicant's versions of the consent, if we look at 6C, the review condition.
- A. The 6C of the?
- Q. 6C of the coastal permit. Do you have that review condition? Within six months from the commencement date.
- A. Yes.
- Q. Do you see how it's tied to the commencement date of the consent?
- A. Yes.

- Q. Given that it may be some time before the consent is implemented, it probably doesn't make much sense to tie reviews to commencement of consent does it? Which is obviously the date on which consent is granted by the Court if it decides to grant consent. Do you agree with that? I'll give you an example.
- A. Yes I think I hear what you're saying. Yes I think –
- Q. Because, say the consent's granted, a year later work starts, that takes two years. Three years down the track you've already missed the six month review, the first, second and possibly the third anniversary review and then you're just left with five yearly reviews.
- A. I think, you're correct, it is a complex area.
- Q. And the Council had tried to address that in its conditions, you might recall, by making that operational review tied to completion of construction I think, rather than commencement. So basically when the marina's up and running. There were construction review conditions but then after that have a separate process of review. Something like that would make more sense, would you agree?
- A. Yes I think I'm looking at 6(i)(b) of...
- Q. 6(i)(b) yes exactly.
- A. Yes definitely, it would start from the completion of construction yes.
- Q. Last night when I was reading both versions of the condition, the Council's and the applicants, I was wondering whether they perhaps were a bit overcomplicated with their six month, one year, two year, three year and five year – the way it's drafted. Perhaps it would be easier to have a six month opportunity and then annual after that on an ongoing basis, would you agree with that, it's much cleaner.
- A. I thought those were actually saying the same thing?
- Q. Well no they are, they are and that's not my point. My point is, having read both of those versions of the condition I wonder whether they're a bit overcomplicated and they could be simplified by simply providing for a six month review and then after that, annual.
- A. Yes.
- Q. What do you think?

- A. Yes. They're both too complicated.
- Q. Exactly, we're in agreement on that. The next topic is the bond. The applicant's initial set of conditions didn't include a bond, did it? The version that was supplied back in November last year I think?

A. Correct, correct.

1635

- Q. Now you've added one now and that's to be found in condition 14 of the land use consent I think, if we have a look at that?

A. Yes.

- Q. And that only relates to landscaping, doesn't it?

A. Yes.

- Q. Can you please have a look at Nicole Bremner's evidence-in-chief, and we're going to paragraph 192, page 44 of her brief.

WITNESS REFERRED TO EVIDENCE OF N BREMNER

- A. Can you just repeat that paragraph again?

Q. Paragraph 192?

A. Of evidence-in-chief?

Q. Of evidence-in-chief, it's page 44.

A. I've got that, yes.

- Q. And you see there she says, "Upon reflection and given these works are to be undertaken in the public domain, I consider that in addition to addressing landscaping the bond should also provide security for performance of the conditions relating to the provision of structures and amenities for public enjoyment and access, for instance the footpath and viewing platform upon the reclamation of the timber boardwalk connecting to the reserve and the footpath along the primary breakwater," do you see that?

A. Yes.

- Q. So those suggestions are fair, aren't they? Given that the applicant is promoting the benefits of the public access, the public access components of the proposal and the boardwalk as reasons for granting consent? I mean it's important that there's some security that those works are completed, isn't it?

- A. Well my understanding under bonds under 108.8(1) that they're really for ongoing performance rather than initial performance, and therefore that's why they're generally confined to landscaping rather than a bond to guarantee that a consent holder actually does the work.
- Q. I don't have it with me but I think there are examples of broader bonds than landscaping being required for marina, aren't there, I think Tairua might be an example addressing some of these other amenities that are there for the public? It's certainly not an unreasonable proposition that a bond also extend to those sorts of things as well as landscaping, is it?
- A. Well it's not my view, I mean a landscaping bond is to cover failure of the landscaping. I'm not sure what failure would happen in terms of a footpath no a breakwater.
- Q. The boardwalk.
- A. The boardwalk?
- Q. Couldn't there be a failure of the boardwalk?

THE COURT: JUDGE NEWHOOK

Could we leave this topic because there's a whole science around conditions of consent that an (inaudible 16:38:16) road show that I'm leading right around the country is addressing and there's quite a bit of discussion in the papers that we've prepared about the differences between bonds and consent notices and covenants and all the rest of it. It's important to get it right but I think it's legal detail. Can we just park this issue? I actually think it's more a matter for counsel than for the planners.

MR R BRABANT:

Absolutely Sir.

THE COURT: JUDGE NEWHOOK

Well, there's a bit of both but it's more a legal matter really.

MR R BRABANT:

Yes absolutely Sir.

THE COURT: JUDGE NEWHOOK

I could sit here and get into a debate with you perhaps, Mr Allen, or tease some further thoughts out of the witness, but I just think that we'd be spending time that we don't want to at this stage.

MR ALLEN:

I don't want to bog things down so I'll move on Sir, thank you. And similarly if you feel that my other questions are in a similar vein, but there are just some omissions and things that I do want to just touch on.

THE COURT: JUDGE NEWHOOK

Most of the others were more matters of substance, that was a matter of legal technicality.

MR ALLEN:

Okay, thank you Sir.

CROSS-EXAMINATION CONTINUES: MR ALLEN

Q. The next one is condition 25 of the coastal permit. Do you see how that deals with limits on vibration?

A. Yes.

Q. Now you're probably aware that the noise experts agree that both construction noise and vibration can be controlled through the implementation of a construction noise and vibration management monitoring plan, do you recall that?

A. Yes.

Q. So if we look at condition 9 of the coastal permit, we're working on the applicant's version, that only provides for a noise management and monitoring plan, doesn't it?

A. Yes.

Q. So that should include vibration? In keeping with –

MR R BRABANT:

Sir I'm sorry, just am very concerned about this Sir because if this happens to be wrong and it should, I'd like to know from Mr Styles who does these things all the time, so it's making me a bit anxious, Sir, that these things have been put in the way they are and Mr Dunn's is going to say yes or no, and I haven't got Mr Styles here.

THE COURT: JUDGE NEWHOOK

And he's not going to be questioned but you can take advise from him, Mr Brabant. If the advice is running contrary to Mr Allan's current thinking on the topic of doing away with condition 25 and bundling vibration under the acoustic condition in 9, then you can advise the Court though I'd invite you to confer with him first. And awful lot of this could actually be worked out between counsel.

MR R BRABANT:

That's what I don't been hoping because (inaudible 16:41:16) today.

MR ALLAN:

I suppose the difficulty Sir for counsel and I guess for other parties as well is obviously we didn't see the revised set of conditions until Monday, so we've been racing to try and work out what the implications are and what the differences are. We had hoped that more things would be taken in from the counsels. I don't see this is particularly controversial in view of the clear joint position of the two acoustics witnesses that there should be a noise and vibration plan. I'm just hoping to mop it up with the planning witness as I am in relation to these other conditions I've already been through.

THE COURT: JUDGE NEWHOOK

Q. So Mr Dunn, is your answer that you want to have advise from Mr Styles about whether to roll vibration into acoustics in the conditions?

A. It may be helpful. I mean I can check the joint witness statement but it may be easier also to talk to Mr Styles.

THE COURT: JUDGE NEWHOOK

Park that one and if counsel can remember to tell us where they get to.

CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. Now the next one, and again apologies for the laborious nature of this, Sir, this is another important one, condition 38 of the coastal permits are the same ones that you're in, that's about the sewage holding tank? Have you found that condition?

A. Yes.

Q. You'll see that the second paragraph there talks about a minimum of three days' emergency storage? Now, can we just do a quick cross-reference with the Council's set which is 60.2 of the Council's set of conditions, do you see there's a minimum of seven days' emergency storage?

A. Yes.

Q. And are you aware from the wastewater caucusing that the experts agreed that the Council's draft consent conditions were appropriate, do you recall that? I can take you to the joint witness statement.

A. I do recall that, yes.

Q. So that should be seven, shouldn't it, that's quite a change there.

A. Yes.

Q. Thank you, we're on the home stretch, I just want to rattle through the Council's conditions now quickly. Condition 8.2 of the Council's conditions?

A. Yes.

Q. You see at (f) there's a reference to a capital dredging breakwater and reclamation construction component? At (f)?

A. 8.2(f)?

Q. 8.2(f).

A. Of the Council's?

Q. Of the Council's.

A. Yes.

- Q. And then over the page at 8.8 we see the detail of that?
- A. Yes.
- Q. Now it's probably just an oversight but I couldn't find a capital dredging component anywhere in the applicant's coastal permit. Assuming that I'm right and it isn't there, you'd agree that that ought to be in there?
- A. I would need to check the joint witness statement on, because I thought our conditions were consistent with those.

1645

- Q. As I said it's probably just an omission but it's not in there. If it's not in there would you agree that it ought to be in there?
- A. I'd need to see what the joint witness statement found on this matter, if they discussed this matter.
- Q. The experts were agreed that the Council's conditions were appropriate.
- A. This is the –

THE COURT: JUDGE NEWHOOK

- Q. If that is the case, if that is what is said in the joint witness statement and if it's been omitted from your draft, would you agree that it should go in?
- A. Yes.

CROSS-EXAMINATION CONTINUES: MR ALLAN

- Q. The next one, 26.2a, that's dealing with temporary storage of moored vessels during construction. We're looking at the Council set now exclusively. 26.2a, temporary storage of moored vessels during construction, which is quite an important condition and I couldn't, again I couldn't see that anywhere in the applicant's conditions. I'll just put it in the same way, assuming I'm right and it's not in there would you agree that ought to be in there as a means of addressing that particular issue? How to deal with temporary storage of moored vessels during construction. It needs to be addressed.
- A. I believe it is addressed under 8.6 of the –
- Q. Well as I said, I may have missed one.
- A. It's been made part of the construction management plan.

Q. I stand corrected on that one, thank you. Condition 29. Financial security. Isn't this an understandable condition? I couldn't see it anywhere. Given that the applicant's undertaking works in the public domain, there's a clear interest in knowing that the applicant actually has the funds to complete the project wouldn't you think?

A. I would pass that –

MR R BRABANT:

I consider this to be a legal issue Sir. I wonder whether it's really fair to ask a planning witness something like that.

THE COURT: JUDGE NEWHOOK

Again, I think it might be a blend of legal and planning, let's see if he has a response but if the lawyers want to scrap over it the lawyers can scrap over it.

WITNESS:

I have seen a similar condition but I do know, from a planning perspective understand its rationale or basis.

CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. The rationale I just put to you, isn't that the rationale because an applicant's undertaken works in the public domain, it's not on private land. There's a clear interest, a public interest in making sure that it's actually completed, not get half developed –

THE COURT: JUDGE NEWHOOK

Mr Allan, if there was to be provision for a bond for removal of material and detritus, whatever, if in the event that the consent holder failed, that might cover the situation off, that's the technique we employed with the recent consent to a marine farm off Stevensons Island –

MR ALLAN:

That would be a very good way of dealing with it. I don't think, we don't have anything like that either. But that would be a good way of cracking it.

CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. Condition 39. Again, I'm not sure how familiar you are with the conditions, let me know if you're not familiar enough.

A. 39, signage.

Q. Signage plan, I couldn't see that there. Do you think that could usefully go in?

A. Well if you read the condition, it's sort of discretionary and consent hasn't been sought for signs so I just question its purpose.

Q. Isn't the purpose explained in the condition?

A. Well it says, "Such signs may be necessary."

Q. But you don't think it's required?

A. No.

THE COURT: JUDGE NEWHOOK

Is that a bylaw matter in the Gulf Mr Allan? The witness might have a point here. Council might deal with that matter through a bylaw in the Gulf Islands as it does, or it has done in the past in other parts of the old Auckland City area. You might want to look into.

1650

MR ALLAN:

Thank you, Sir.

CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. Condition 44.2 on the same page, page 23.

A. Yes.

Q. I couldn't see a counterpart to that one within the coastal permit or the other conditions about removing construction materials from the CMA. Does that look like a reasonable condition? Again, unless I've missed it.

A. I thought there was a condition on that of that nature.

Q. There was one I think in the land use consent, condition 25, dealing with clearance of that area but I couldn't find a counterpart relating to the CMA. If there's one, if it is missing.

A. Yeah, I mean if there's one in one consent it should be in the other.

Q. Condition 61.2.

A. Yes.

Q. I couldn't see –

MR R BRABANT:

Sorry Sir, this is, I mean some discussion, Sir, would have been helpful because you have to – we shifted that and it's, I think it's in 8.5(f) now but these are going through so fast I can't even keep up with trying to find where they are.

THE COURT: JUDGE NEWHOOK

All right, well let's do it another way. We're all getting a bit tired. You are moving through it expeditiously, Mr Allan, and that is something that I favour, as you know. But equally, Mr Brabant is concerned that he's trying to take notes and he's trying to find comparative provisions as between two sets and that is a bit of an ask. Why don't we conclude this and you tell him the balance of your questions and we'll see if we need to pick any of it up with the witness in the morning. It might be counsel can simply agree that if stuff is missing from the applicant's draft in comparison to the applicant's draft, counsel's draft, and there may be a residual question for this witness. It's whether it would be desirable to make sure that the applicant's draft is more completed.

MR ALLAN:

Yes, I wondered about that Sir, and with my opening I'll lodge a table which Ms Schlaepfer's prepared which compares the conditions and that might help mop up a few things as well. So I'll leave it there, thank you.

THE COURT: JUDGE NEWHOOK

You might want to use that table for your discussion, Mr R Brabant.

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

If your time is taken up then all of our time is taken up, Mr Brabant.

MR R BRABANT:

I'd welcome that opportunity, Sir, because we're working on updating this at the moment if there's some interchange, Sir, that could help.

THE COURT: JUDGE NEWHOOK

Yes, I'm keen for the statement of issues to be (inaudible 14:53:24) over another iteration of conditions of consent.

MR R BRABANT:

It has Sir, back in the office it has.

MR ALLAN:

So hopefully, Sir, I mean the conditions were intended to advance matters in a constructive way in relation to conditions even though it is very dull. Anyway, I'll wind it up there.

THE COURT: JUDGE NEWHOOK

I'm aware of some hearings that Judge Whiting, retired Judge Whiting conducted when he was on the bench, (inaudible 16:53:44) he refused to get the hearing under way until the statement of issues was present and had been worked over between the Court and counsel to sort it out. And one of them in I think the Waikato River phone call case went through nine iterations over two or three days before he was satisfied that there was a platform for the case to proceed. I'm being a laxer I think in allowing almost the whole (inaudible 16:54:07) this case to proceed before we've got that focus, I'm too generous. All right, that'll do for tonight Mr Allan, and there may be the odd residual questions from you in the morning.

MR ALLAN:

All right, just one more condition Sir. No.

**THE COURT: JUDGE NEWHOOK ADDRESSES THE COURT –
HOUSEKEEPING**

COURT ADJOURNS: 5.02 PM

COURT RESUMES ON FRIDAY, 10 OCTOBER 2014 AT 9.35 AM

**THE COURT: JUDGE NEWHOOK ADDRESSES MR R BRABANT –
STATEMENT OF ISSUE**

MR R BRABANT ADDRESSES THE COURT – HOUSEKEEPING

MR ALLAN ADDRESSES THE COURT

MAXWELL JOSEPH DUNN (SWORN)

CROSS-EXAMINATION: MR CASEY

Q. Good morning Mr Dunn.

A. Good morning.

Q. The area where the marina is proposed is currently shown as a mooring management area in the regional plan?

A. Generally yes.

Q. And it's the position that if consent is granted for a marina in that location, the mooring management zone will be displaced?

A. No the mooring management zone remains in the coastal plan.

Q. But the marina will effectively replace the moorings with a marina.

A. Yes but it doesn't change the zoning.

Q. What it does though is effectively put in place a marina on a mooring management area?

A. Yes.

Q. Now, the regional coastal plan does provide for mooring management areas as well, doesn't it?

A. Yes.

Q. So this will effectively become a marina management area in place of a mooring management area, correct?

A. Not in technical regional coastal plan terms because it doesn't change the zoning of the water space. But in reality –

THE COURT: JUDGE NEWHOOK

Q. If counsel was to place the phrase “de facto” into that question, would that help you to answer the question?

A. That would be helpful, yes.

MR CASEY:

Thank you Your Honour, that was going to be my –

THE COURT: JUDGE NEWHOOK

If that was what you had in mind, Mr Casey

MR CASEY:

That’s certainly what I had in mind, and would you agree with that Mr Dunn?

THE COURT: JUDGE NEWHOOK

I just wanted to short-circuit what could be a long answer that didn’t need to be.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Yes, it’s a de facto marina management area in place of the current mooring management area.

A. Yes.

Q. You’ll be familiar with the provisions of the Resource Management Act that talk about regional plans and the changes to regional plan?

A. Generally, yes.

Q. You’d be familiar with section 64(2), “A regional coastal plan may form part of a regional plan where it is considered appropriate in order to promote the integrate management of a coastal marine area and any related part of the coastal environment.” Now I suggest to you that in the case of a marina, it is appropriate that there be provision in the plan because involves or will normally involve the integrated management of the CMA and the related part of the coastal environment, would you agree with that?

- A. Sorry, could you just repeat your question?
- Q. That in the case of a marina it is appropriate that it be provided for in the coastal plan because it requires consideration of integrated management of the coastal marine area and the related coastal environment.
- A. No I would disagree and I've outlined in my evidence in terms of marina projects I've been involved in, Orakei, Sandspit and several in Northland where they have been consented through the consent process rather than through a phone call or the plan.
- Q. So is your answer then it would be inappropriate to have a marina provided for in a coastal plan and it's better for it to be provided for by way of resource consent?
- A. My answer is that the marina management technique which is used in Auckland and I think it's used in some other Council's area only identifies the existing marinas, and that is in my primary statement of evidence. It does not deal with proposed marinas and to my knowledge in Auckland they've generally been developed through the resource consent process.
- Q. You've agreed with me that there is provision in the regional coastal plan for marinas to be provided for through that plan as mooring management areas, correct?
- A. Yes.
- Q. And there's nothing in the plan or in the Resource Management Act that says it should only occur following the grant of a resource consent, do you agree?
- A. Correct.
- 0945
- Q. And I'm putting to you that the Resource Management Act contemplates that provision should be made in the Regional Coastal Plan or in the Regional Plan, where appropriate to promote integrated management of the CMA and related parts of the coastal environment.
- A. No I disagree with that.

- Q. So even after consent is granted you think it's still inappropriate to put provision for marinas in the Regional Coastal Plan?
- A. From my experience what normally happens is that after consents are granted and the plan is reviewed at the next stage, the Council normally introduces the marina management area over the existing marina.
- Q. I'm not asking you about what happens in practice, I'm asking you to comment on what's provided for in the statute that we're operating under here which is the Resource Management Act.
- A. My opinion is the same, that the Resource Management Act does not require that marinas be provided for through plan changes.
- Q. If the plan change process were followed then section 66 of the Resource Management Act would apply and that would include, among other things, the requirement to prepare a section 32 report and to consider that evaluation, do you agree?
- A. I would need to check the RMA but if that's what it says, yes.
- Q. Of course, if consent is granted and the marina is in place then that process won't have to be followed, whether or not the plan is changed after the marina is in place, do you agree?
- A. Correct.
- Q. So you're able to avoid, by getting consent first and perhaps plan change later, a section 32 evaluation.
- A. You avoid a section 32 evaluation but as I think it's been outlined in our evidence and some of it is in my evidence, that there has been an evaluation of alternatives for this project.
- Q. And that was undertaken prior to the lodge being lodged?
- A. Yes.
- Q. And that alternative included Kennedy Point?
- A. Yes.
- Q. And has there been an evaluation of the costs and benefits of the proposal in the way provided for by section 32?
- A. No because we approached the alternatives as per the, it's in one of the schedules to the RMA where you, with Resource Consent applications

and assessment of effects, I can't recall the section but there is a section that requires the applicants to consider alternatives.

MR R BRABANT:

Mr Dunn is clearly working off memory referring to Act provisions and similar questions. If he hasn't got a copy of the Act Sir may I provide him with one?

THE COURT: JUDGE NEWHOOK

Yes I think that's in order Mr Brabant.

MR CASEY:

I've got no objection.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Do you have that with you?

A. I have got section 66 in front of me.

Q. And you agree that section 66, when it talks about preparing and changing a Regional Plan records its obligation to prepare an evaluation report under section 32?

A. Yes.

Q. And section 32 in turn talks about an assessment identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects that are anticipated?

A. Yes.

Q. And you'll also be familiar with section 67 of the Resource Management Act.

A. Yes.

Q. And that requires, among other things, that the Regional Plan give effect to New Zealand coastal policy statement and regional policy statement among other things?

A. Yes.

Q. Whereas, of course, under section 104 the Resource Consent process only requires that those be had regard to.

A. Yes.

0950

Q. Do you consider, Mr Dunn, given your acknowledgement that this is a de facto marina management area that the Court should have regard to the fact that those requirements would apply if a plan change process had been followed?

A. But we haven't followed a plan change process.

Q. But you'll bring about what is in effect a plan change?

A. No, I disagree.

Q. A resource consent for a marina which will displace a mooring management area as provided for in the current plan and replace it with a de facto marina management area?

A. Well once again, back to the de facto, there will be pile moorings remaining as part of the marina. I think that's 17 or, I'll need to check the plan but...

Q. And so that makes the world of difference does it, Mr Dunn?

A. Well it's a factor in my view.

Q. I suggest to you that by reason of the consequence of what is proposed in this consent application that the Court should place significantly greater weight on those matters that if it were a plan change would have been required? And those are the matters that I've just directed your attention to. Would you agree with that?

A. No I disagree.

THE COURT: JUDGE NEWHOOK

Getting very close to a matter of law, Mr Casey.

MR CASEY:

That's right, Your Honour. That's right.

THE COURT: JUDGE NEWHOOK

I'm not sure the witness can help us much more with it.

MR CASEY:

No, I won't press it but it's clear that he hasn't himself done that.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. It's also the fact, Mr Dunn, that the marina proposal if consented will provide, use the word "storage", others have used the word "parking", for significantly more boats than are currently provided for in the marine – in the mooring management area?

A. Yes.

Q. So it's not a case where the existing number of boats are being more efficiently stored, the same area's being taken up, or more or less the same area being taken up to store a lot more boats, correct?

A. In that particular area, but you need to look at the whole of Matiatia Bay, and more importantly the whole of Waiheke so you are getting a significant efficiency gain.

Q. Why don't we look at the whole of Auckland and measure it by that?

A. That is a wider umbrella as well that needs to be taken into account.

Q. Why don't we look at the whole of New Zealand? I mean –

A. Well –

Q. – where do you draw the line as to where the efficiency gain kicks in?

A. In my view you draw it in the Auckland region because that's what the Auckland regional coastal plan covers.

Q. Well I suggest to you that in the case of a proposed marina in Matiatia you look at Matiatia. You disagree?

A. I disagree.

Q. We're told that this is the most popular mooring location on Waiheke. Do you accept that?

A. Yes.

Q. And that its popularity is reinforced by the fact that there are some 80 people on the waiting list for moorings at Matiatia Bay?

A. Yes.

- Q. And so those people will be disappointed because the displacement of the moorings in the northern mooring management area will go to marinas, not to moorings?
- A. I don't accept that because the people on the mooring list from my experience are likely to be people who'd be also interested in a marina berth.
- Q. All of the 80 will be interested in a marina berth?
- A. No, but I believe a significant number would be based on similar projects.
- Q. Similar projects at Waiheke?
- A. Similar projects at Orakei and Sandspit.
- Q. You see, we were told that some 241 people some time ago registered their interest in obtaining a berth at the marina?
- A. Yes.
- Q. Is that what you were told as well?
- A. I recall that being in one of the evidence statements.
- Q. We've also been told that those people weren't aware then of what the likely cost of a marina berth would be?
- A. Correct.
- Q. We're now told that of that 241, some 80 have confirmed their interest in a marina berth. You're aware of that?
- A. I do – I'd need to see that but I think that was mentioned earlier in the hearing, yes.
- Q. You were present when Mr Wardale was giving his evidence, weren't you?
- A. Most of it, I think I was, yes, most of the time, yes.
- Q. Well just to recap, we've been told that all of the 241 that are still contactable were approached and a certain number of responses came back, of which 80 confirmed their interest in the marina.
- A. Yes.
- Q. And a berth in the marina.
- A. Yes.
- Q. But again none of them were told what the likely cost would be?

A. Yes.

Q. And we understand that these are people on the island. We're not sure about that, but that seems to be the case.

MR R BRABANT:

Well Sir, with the greatest of respect I think that's a little unfair as a proposition or just an aside because Mr Wardale actually gave some percentage information about that issue and either it's put correctly to the witness, Sir. I can give Mr Dunn the actual information, he can be asked questions.

THE COURT: JUDGE NEWHOOK

Now Mr Casey, we are getting quite rapid turnaround of the notes of evidence.

MR CASEY:

Yes, well –

THE COURT: JUDGE NEWHOOK

And they are av – you should have the first three days worth of notes or the third one should come through in a few minutes, but the first two days of evidence is certainly there and you could actually quote from the notes of evidence.

MR CASEY:

Well if my learned friend is saying that I have put something incorrectly to the witness then perhaps he can correct me and I'll get it right. I don't want to mislead this witness but I'm trying to summarise what was said. If my learned friend says I have to go through word by word exactly what was said before I can ask any question about it, then I would suggest that's probably taking it a bit too far. I'm trying to get the general drift of what was said to this witness.

THE COURT: JUDGE NEWHOOK

Let's just try and see what is a suitable way forward. You've heard the questions, Mr Brabant. You were concerned that there's a need for some more accuracy. I've suggested that the notes of evidence could be used.

How important is it from your understanding of the passage of questioning to be able to nail the last few words down of the answers that Mr Wardale gave?

MR R BRABANT:

And with respect, Sir, I never suggested that. Mr Casey's actually misrepresenting. I'd simply said, Sir, the last aside was a generalisation that Mr Dunn was asked to agree or not to. When there is – appendix A, we don't have to necessarily go into all the notes but he can work with appendix A which has the actual figures, and I'm not going to read them out, Sir, because I'm not cross-examining but they do contain the detail percentages of people and so forth. And Mr Dunn could have a copy and after all he's –

THE COURT: JUDGE NEWHOOK

I'm not sure that there's a need for this argument to continue very much further to be honest. Mr Casey, if you were content to work with the exhibit and use that while framing your questions, the objection will go away.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Now you'll see, Mr Dunn, that we have had 113 responses of which 71% which by my calculator is 80 in number have confirmed their interest in the marina berth?

A. Yes.

1000

Q. Now we're told in this document that combining the updated information with the existing address details held, 78% of those on the list have a Waiheke Island address, have an on Waiheke Island address. Doesn't tell us what percentage of those who are still interested are at Waiheke, but there was some comment about that in the evidence that was given, did you hear that when you were in Court earlier in the case?

A. I believe I – when you say comment, yes I mean I'm pretty sure I was here so I would have heard it, but.

Q. It's not particularly relevant to my question.

THE COURT: JUDGE NEWHOOK

Can I just offer this thought? It occurs to me hearing your last question and that answer that Mr Wardale was going to interrogate his database and supply us with the answer to two questions that arose in my mind from that material, I don't think we've seen that yet.

MR R BRABANT:

No we haven't so I'm really only able to ask questions based on what we've been told today.

THE COURT: JUDGE NEWHOOK

Let's find out where this inquiry got to. Sorry to interrupt but I'm now reminded that I was seeking further information that's not forthcoming yet. Mr Jeremy Brabant?

MR J BRABANT:

Sir if it helps, I understand that over last couple of days some further responses have continued coming in which obviously poses a little issue given Mr Wardale has already given evidence, but some further responses have come in and he has been updating his records as a result, can provide that breakdown.

THE COURT: JUDGE NEWHOOK

That's a separate matter. If you want to make an application to have him re-called to offer that further information you make that application and we'll see what the other parties say about that. Where are the two questions that I put to Mr Wardale and which I gained the impression was easily capable of bringing his answers out of his database.

MR J BRABANT:

Morning tea time (inaudible 10:02:03).

THE COURT: JUDGE NEWHOOK

Well apparently it's coming Mr Casey.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Mr Dunn, you yourself haven't reviewed the database or the responses, have you?

A. The most recent one no.

Q. So you don't know how many of the existing mooring holders whose moorings will be displaced by the marina are still interested in taking a marina berth?

A. Not currently, no.

Q. And you don't know how many of the people on the waiting list would rather have a marina berth than a mooring?

A. Not currently.

Q. Do you agree that given the range of cost or the difference in cost that was indicated, that might be a significant factor for a number of people?

A. It will be a factor but from my experience people who register interests in marina berths do have a generally good understanding of their cost, because they are generally boating people who either have a mooring or have looked at marina berths in other locations, so from my experience people who register, because they are boating people, have a very good knowledge of prices. In terms of ballpark figures.

Q. I put it to you that a number of the people who currently have or would like a mooring in Matiatia Bay will be disappointed if a marina goes in.

A. Some will be disappointed and some will be delighted.

Q. And that the change from a mooring management area to a marina management area will have an adverse effect on those people who will be disappointed.

A. I couldn't draw that conclusion without talking to those people.

Q. And you haven't spoken to them, have you?

A. No I haven't spoken to them no, correct.

Q. Now, I think it's agreed either in the joint witness statement or in your evidence that the question of the activity status of the proposal with the suggested option, that is the carpark deck option, is a matter of law.

1005

A. Yes.

Q. But I understand it's your evidence that the carpark is an integral part of the marina?

A. The carpark is an integral part of the marina, yes.

Q. You note, I think in your joint witness statement but also in your rebuttal evidence that the practicality or the practicability of alternative locations for the carpark will be covered in rebuttal evidence?

A. Sorry, could you take me to the paragraph?

Q. It's at paragraph 14(g) of the joint witness statement for planners. And at the end of that paragraph you confirm, "That practicable alternatives to a reclamation or deck will be covered in the applicant's rebuttal evidence."

A. Sorry 14?

Q. 14(g).

A. Yes.

Q. And in your rebuttal evidence at paragraph 54 you say that, "Mr Wardale has outlined in rebuttal evidence the WML investigations into the availability of land-based sites for marina parking and impracticability of an alternative of this nature." And you say you rely on his evidence.

A. Yes.

Q. So you don't have any other evidence of that?

A. No.

Q. And you have not made any enquiry yourself.

A. Not of late, no.

Q. I'd like you please to have a look at Mr Mitchell's plan which is figure 24 in the March 2013, the 2013 bundle. Are you familiar with that plan?

A. Figure 24 in the March 2013, yes.

Q. And that shows the various parking areas?

A. Yes.

1010

Q. And what Mr Wardale told us was that he approached Auckland Council and, as I understood his evidence, a group called Swordfish. Now Swordfish is the owner of the land that shows on that plan as area F.

A. Swordfish is area F, yes.

- Q. He gave no evidence of having approached anybody else for parking provision on other land. You were here when he gave that evidence?
- A. He said he approached the Auckland Council.
- Q. And he said he approached the owner of area F?
- A. Yes.
- Q. Now surrounding area F is privately owned land owned by people called Hanson?
- A. Yes.
- Q. That land would be suitable for car parking?
- A. I would...
- Q. Sorry?
- A. On the face of it, it appears. I mean I haven't, I would need to look at the contours, et cetera, in terms of, terms of availability.
- Q. Before you could answer that, but subject to contour and access that would be suitable for car parking?
- A. It could be, yes.
- Q. And where area A is, which is a bit further away.
- A. Yes.
- Q. My, well from other records and we've got other ownership records in the bundle if you're not aware of this, I understand that land to be owned by Watercare Services Limited?
- A. Yes.
- Q. And they've been prepared obviously to allow some parking on their land already?
- A. Yes.
- Q. But there's no evidence that they've been approached?
- A. No.
- Q. So would you agree that the so-called investigation or assessment of the practicability of alternatives to parking in the location that's proposed has not been assessed as well as it could have been?
- A. Sorry, could you repeat the question.

Q. Would you agree that the investigation or assessment of the practicability of alternatives to parking in the coastal marine area has not been properly investigated?

A. Well I don't know whether I'd use the word "properly". It has been investigated in terms of the, probably the most feasible alternatives to the reclamation, which are the Council property and the current privately developed parking property.

Q. But there's been no investigation so far as we know of other property which, I'm instructed at least, is in terms of location and typography suitable for parking?

MR R BRABANT:

Sir, with the greatest of respect I don't understand, and I may have missed it, that there is any evidence, Sir. So to say someone's got instructions is not the same as saying there is evidence.

THE COURT: JUDGE NEWHOOK

Well Mr Brabant, time will tell. We've read all the evidence once through. I'm uncertain about this but we'll see and Mr Casey still has some opening submissions to make. He might find some. You have a right of reply. You might find some. I don't think we need to spend time trawling through the evidence to see whether you're right or Mr Casey's right just at the moment. I will say to Mr Casey that that last question was probably a bit unduly repetitive. I (inaudible 10:14:49) prior to that. I was going to intercede on that basis, which is quite different of course.

MR CASEY:

Well no, well I won't pursue that point, Sir, but I think the evidence, the answer was he hasn't investigated, he hasn't considered and I think I should give him a fair opportunity to do that if he felt that he needed to. That is in terms of its suitability for parking. I'll move on.

THE COURT: JUDGE NEWHOOK

We'll see where your point goes, Mr Brabant, we'll just leave it there for the moment.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Mr Dunn, in your evidence-in-chief at paragraphs 62 and 63 you talk about Matiatia being well served by public and private transport services?

A. Yes.

Q. Do I take it from that that you are implying that users of the marina will choose to access it by public transport rather than by private car?

A. Now, what I'm saying is that is a possibility, in fact a likelihood for some people.

Q. It hasn't, so far as I'm able to tell, been factored in by the traffic planning experts that have been engaged, they have as I understand their evidence based it principally on the Whitianga marina, is that your understanding as well?

A. Yes, they have adopted a worst case scenario in terms of traffic predictions in my view.

Q. All of the traffic experts seem to have agreed on that scenario.

A. Yes.

Q. And that doesn't factor in any public transport usage, does it?

A. I don't believe explicitly, no.

Q. Now, at paragraph 163 of your evidence you state that, and this is at the end of the paragraph, "As outlined earlier in my evidence, the parking deck proposal has a significant district plan permitted baseline component."

A. Yes.

Q. Can I ask you please just to identify where in the evidence I find that?

A. I do recall it somewhere, it's just a question of finding it and will take some time.

THE COURT: JUDGE NEWHOOK ADDRESSES MR CASEY – FINDING REFERENCE

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. What I want to be clear about Mr Dunn and why I've asked the question is whether this is a matter that I need to question you about or whether it's really just a matter of legal interpretation.

A. No I found it, 111.

1020

Q. So what you're saying there, have I got it right, that the deck footing and the handrail which are above MHWS are a permitted activity, subject to compliance with the development controls in the gateway zone.

A. Yes.

Q. And that's what you describe in your 163 as being a significant component of the car parking.

A. Well it's just about all of the deck, it's all of the land-based part of it appears to be a permitted activity.

Q. And the land-based part of it is the deck footing is it? And handrail that are above MHWS.

A. Yes.

Q. Are those parts of the carpark that will not be in the coastal marine area?

A. Correct.

Q. And you say that they will be subject to compliance with the development controls for the gateway zone?

A. Yes.

Q. But I think, as I understand your evidence, that is that the rest of the carpark won't be subject to those controls because they happen not to be in the area that those controls apply to, correct?

A. Yes they're in the coastal marine area.

Q. And so the controls don't apply to them because at the time those controls were written the land that's now proposed for carpark was not reclaimed and was not identified as likely carpark.

- A. I think you need to, could you repeat the question please?
- Q. The area that's now proposed for carpark, that is the area that's in the coastal marine area, I put to you was not included in the controls for the gateway zone because at the time those controls were written or set there was no contemplation of car parking in the coastal marine area in the proposed location.
- A. In terms of the District Plan, yes.
- Q. And so what's happening here is that you're wanting to create that area by a reclamation or a deck and having created that area its' your case that it's not subject to the controls.
- A. No, I'm simply that the land-based part of the deck, which is a small component and I'm not making an issue of that, appears to be a permitted activity.
- Q. Yes but I'm moving on from there now and asking you about the other part, that is the CMA based part which you're saying is not subject to the controls that are in the gateway provisions because the gateway provisions don't apply to them.
- A. Yes, because it's in the coastal marine area.
- Q. So it's a convenient way of getting around the gateway provisions by creating this land out of the coastal marine area and avoiding them.
- A. No.
- Q. Well do you then say that they should be treated as subject to the gateway controls?
- A. No I'm saying the part of the deck that is on land is subject to the District Plan controls and the part of the deck, which is the majority of it, is subject to the rules in the Coastal Plan.
- Q. And not subject to the District Plan controls.
- A. Correct.
- Q. I'm asking you, and we're now only talking about the part that's in the CMA.
- A. Yes.

- Q. So by using the CMA for your car parking, when I say “you” I mean the applicant, I’m sorry I didn’t mean to personalise it. You are circumventing the controls in the gateway zone.
- A. No because there’s two options, a reclamation or a deck. Both of which are primarily in the CMA. One is a discretionary activity and one is a non-complying activity so there’s no, I don’t see any smart manoeuvre or trick involved.
- Q. But you’re saying that the gateway controls that would apply, if it was on land don’t apply and therefore don’t rate for consideration.
- A. No as I said I’m not, I’m simply saying that it appears to be, the land-based part of the deck appears to be a permitted activity. I don’t believe it’s of any particular consequence because the majority of the deck is in the CMA and is a discretionary activity. It’s simply just pointing out a planning nicety I would call it.

1025

- Q. But there are planning controls and provisions within the gateway provisions, if I can call them those.
- A. Yes.
- Q. That would apply to car parking if it was on land?
- A. Yes.
- Q. For example, the need to screen medium or large carparks?
- A. Could you take me to the rule please.
- Q. It’s in the land unit Matiatia gateway provisions of the plan and they’re in the common bundle.
- A. Volume?
- Q. Volume 1 and it’s at CB54.
- A. Sorry, CB?
- Q. CB54.
- A. That’s not in volume 1 here.
- Q. Oh beg your pardon, volume 4 of the common bundle. I’m sorry, Mr Dunn, I’ve misled you there.

WITNESS REFERRED TO VOLUME 4

- A. Yes, I’ve got the first page.

- Q. That's the page that's headed up "10A"?
- A. 10A, yes.
- Q. 18. Over the page at objectives and policies 10A.18.3.
- A. Sorry, 10A18?
- Q. 10A18.3. It's on page 69 if you've –
- A. Got that, yes.
- Q. Do you see that?
- A. Yes.
- Q. And it's got a policy number 6?
- A. Yes.
- Q. "By ensuring that medium to large scale car parking areas," and so on?
- A. Yes.
- Q. And you'd rate this as a medium parking area?
- A. Yes, I say that in my evidence.
- Q. And it says that they're not to be located adjoining the esplanade reserve?
- A. Mhm.
- Q. Nor are they to be highly visible to those arriving at Matiatia?
- A. Yes.
- Q. And the purpose is to avoid adverse effects of the landscape character of Matiatia and then there are criteria that apply to the design and location of car parking. But if we just focus on the policy.
- A. Policy 6?
- Q. Policy 6.
- A. Yes.
- Q. Now it's your evidence, as I understand it, that that doesn't have any application because this is not going to be adjoining the esplanade reserve?
- A. No, I say that, I go to paragraph 123 of my evidence where I give my rationale.
- Q. Paragraph 123 of your?
- A. Yeah, I effectively say that I don't believe the first part of the policy applies but the second part does.

Q. To the whole of the carpark? You accept that it should apply to the whole of the carpark, not just to that part which is on the landward side?

A. Well it has primarily application over the land based part, yes, but you can't divorce the two. It is one structure.

Q. Now my understanding is that if there is to be a reclamation there is also to be an esplanade reserve?

A. That is covered in my evidence too where there are two options, an esplanade reserve or a strip.

1030

Q. You'll be aware of the requirements of the Resource Management Act that on subdivision and reclamation there is to be an esplanade reserve, and those have been taken into account as I understand it, in the application?

A. Yes.

Q. The application proposed is that the standard 20 metre esplanade reserve requirement be reduced.

A. Yes.

Q. So there will, if that reclamation is permitted, be an esplanade reserve.

A. Yes although the evidence does cover the option of an esplanade or a strip.

Q. But the strip is intended to have the same purpose –

A. The same purpose, correct.

Q. The same function.

A. Yes.

Q. And so policy 6 would then be triggered because the car parking would adjoin that esplanade reserve or strip.

A. No because the esplanade reserve is part of the proposed reclamation. It doesn't adjoin an existing esplanade reserve. It says "adjoining the esplanade reserve".

Q. Yes.

A. So I've taken that to mean the existing esplanade reserve rather than a proposed esplanade reserve.

- Q. So you say it doesn't apply to the esplanade reserve that will be required as a consequence of the reclamation?
- A. Well it can't be because that's part of the reclamation.
- Q. Well the car parking isn't part of the reclamation, we're talking now about the car parking adjoining the esplanade reserve that will be created as a consequence of the reclamation.
- A. But the esplanade reserve is part of the reclamation.
- Q. Yes? So once the reclamation occurs, there'll be an esplanade reserve?
- A. Yes.
- Q. And the proposal is that there will be car parking adjoining the esplanade reserve.
- A. I don't – to me that is nonsensical in terms of interpretation. I just cannot accept that, sorry.

THE COURT: JUDGE NEWHOOK:

Mr Casey I think at that point that becomes a matter of law. There's a chicken and an egg aspect in there that might be interesting for the lawyers to address for us in due course. Well, there may or may not be the chicken and egg situation, I think I should say, I just have a sniff of that.

MR CASEY:

Well it's not to say it's prohibited, but it's a question as to whether it's contrary or consistent with the policy.

THE COURT: JUDGE NEWHOOK

It might be interested to have an analysis of the logical meaning of the provision in terms of the context of the present proposal from counsel.

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. Now, you'll accept I think Mr Dunn that your evaluative assessment in the opinion you have arrived at relative to adverse effects is principally based on the evidence of others.

1035

A. Yes.

Q. And in relation to landscape, you rely on the evidence of Mr Pryor and you've also referred to some of the evidence of Mr Brown although you don't say which of his evidence but you just say some of his evidence?

A. Correct.

Q. And in the case of, for example, traffic and transport you've relied on the evidence of Mr Mitchell and Mr Apeldoorn?

A. Yes.

Q. And so you accept that the Court has the ultimate say?

A. Yes.

Q. In those effects and that if the Court decides that your assessment or that their assessment, I should say, is not as they think then it would affect your –

A. Yes.

Q. – opinion as well?

A. Yes.

Q. And can I ask a similar question in relation to your assessment of the policy, objectives and policies of the various plans and policy statements. That is that ultimately it's for the Court to make their assessment?

A. Yes.

Q. And so I don't propose to challenge you on your assessments, but do you accept that it's for the Court to make the decision?

A. Yes, yes.

Q. Now just one other point, and if you give me just a minute I've managed to lose my place in your evidence, about what you say is mitigation for the adverse effects of the proposal. I'm sorry, I did have a note of it but I've dropped my note somewhere. It's at paragraph...

THE COURT: JUDGE NEWHOOK

Is it 201?

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. 201, that's right, thank you, Sir, to 203. I was really going to ask you about 203.

A. 203 of primary, yes.

Q. Of your evidence-in-chief, yes. And do I understand that is what you contend is mitigation for the adverse effects of the proposal or just for the loss of public access, as you say there?

A. Just for the loss of public access.

Q. Now you say that the loss of public access is to be balanced against the provision of an esplanade reserve or strip but that's a requirement of the legislation, isn't it?

A. Yes.

Q. And you refer to the boardwalk. Is that the boardwalk that I was asking Mr Pryor about yesterday which connects the car parking area to the land to the north?

A. Yes.

Q. To the reserve land?

A. Yes.

Q. You tell us in your evidence that that will require a consent under the Reserves Act?

A. Yes.

Q. And that consent is not being sought in these proceedings?

A. No.

Q. And I think your evidence tells us that it's been indicated to you that the consent for that will be notified?

A. That was the discussion with DOC staff five or so years ago. That may not be the situation now.

1040

Q. But it's the evidence at paragraph 38 of your evidence-in-chief that, "A Reserves Act concession will be required. The concession application has been discussed with DoC staff who have indicated that it is likely to be notified."

A. Yes.

Q. That's still your evidence?

A. Yes.

Q. So, you can't put that up as being something that will happen because it has to go through a different consent process that may or may not result in permission, correct?

A. Strictly speaking legally, I suppose, correct yes.

THE COURT: JUDGE NEWHOOK ADDRESSES MR CASEY – QUESTION OF LAW (10:41:00)

THE COURT: JUDGE NEWHOOK

What was that paragraph number again that you were referring to Mr Casey?

MR CASEY:

Paragraph 38 was the one about the concession and notification Sir.

MR R BRABANT:

If I can just mention Sir, if Mr Casey wants to peruse the numbers of mooring owners and where they come from Sir, I could read out to you the information or we can provide in writing but if he wants those numbers I can provide them now.

THE COURT: JUDGE NEWHOOK

We'll be taking the morning break in a while, counsel could confer about those numbers and hopefully also about the two pieces of information Mr Wardale is hunting out for us and then we'll see whether there's a need for Mr Dunn to come back and answer any further questions about it.

MR R BRABANT:

I thought I'd just raise it.

CROSS-EXAMINATION: MR ENRIGHT

Q. Good morning Mr Dunn, just as a starting point Mr Dunn, in terms of the cultural effects you reply upon Mr Rikys' assessment don't you?

A. Yes.

Q. So if I could just take you to Mr Rikys' primary statement of evidence. And that's paragraph 9 of his evidence.

WITNESS REFERRED TO STATEMENT OF MR RIKYS

A. Paragraph 9?

Q. Yes.

A. Yes.

Q. And I particularly would like to draw your attention to the third sentence, fourth sentence. "We are hampered in making these assessments by the fact that Ngāti Paoa ultimately elected not to make submission on the proposal." He does go on to say, "It is dangerous to read too much into this position as I state in my evidence much can be gleaned from work undertaken," as he says there. So I just want to put to you that Mr Rikys accepted when he wrote his primary evidence that there was an information gap in relation to the cultural effects on Ngāti Paoa.

A. Yes, but he has produced another rebuttal statement of evidence.

Q. I accept that but I'm just dealing with the primary at the moment.

A. Yes.

Q. That's the position.

A. Yes.

Q. There was an identified information gap in relation to cultural effects. Mr Rikys quite properly pointed that out in his primary evidence. Now as you said in your answer, it's only when we get to the rebuttal evidence and the evidence of the 274 parties in particular, Ngāti Paoa Iwi Trust, that information as to the effects of Ngāti Paoa, the cultural effects, came before the Court. That's correct isn't it?

A. Correct.

Q. Now I'd just like to take you to your paragraph in your primary, 139. Sorry, just before we go to that, there was just a follow-up question which I need to put. In the light of that acknowledged information gap, your conclusions on cultural effects in your primary evidence should be seen in that light, it's not until we –

THE COURT: JUDGE NEWHOOK

Mr Enright, we didn't need this set of questions at all. What we've got is a slightly unusual situation in which Mr Rikys hasn't been called before the planner, the sweeper witness, because he's being called next week on Wednesday in a set of cultural witnesses including yours. We really don't need to spend time on whether there was a cultural gap, whether there's still a cultural gap, and the people who are primarily going to be able to assist us are those witnesses anyway, not the planner. The planner is just acting as a sweeper.

MR ENRIGHT:

No Sir, the issue has been raised and I take Your Honour's direction on that.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

- Q. So if we then move to your primary at 139 please. You refer to the rule relating to cultural impact assessment in the unitary plan – sorry I think it's the operative plan rule isn't it.
- A. Sorry, can you take me to the paragraph you're referring to?
- Q. Your primary evidence 139/140?
- A. 139 and 140 are primary, yes.
- Q. Sorry, it's the unitary plan rule isn't it, we're talking about?
- A. Yes, yes.
- Q. Now you say in 140 that cultural impact assessments should be prepared by an iwi authority or person or entity nominated by the authority, you understand that the CIAs prepared by Mr Rikys fulfil that requirement. I just want to clarify in terms of the CIA that you're referring to, is that the one dated September 2010 prepared by Mr Rikys?
- A. The one, I checked the date but the one that was in the application material.
- Q. And you say you understand that (inaudible 10:47:14) presumably is based on what you were told by Mr Rikys?

- A. No, well it is a cultural impact assessment.
- Q. Okay but in any event again that report was prepared by Mr Rikys and I can direct my question to him around that?
- A. Correct, yes, definitely.
- Q. And again your primary at paragraph 250?
- A. Yes.
- Q. Your third sentence you say, "Appropriate tangata whenua were consulted prior to lodgement." Again I assume you'd have to rely on Mr Rikys' evidence in relation to the appropriateness of who was consulted?
- A. No, there is in the AEE that was lodged with the application a list of the iwi authorities that were contacted, consulted, and some provided feedback.
- Q. In terms of the whole process of consultation, which is an issue for Ngāti Paoa, I presume again that process was managed by Mr Rikys?
- A. No.
- Q. Consultation with mana whenua tangata whenua?
- A. No, it was managed to a large extent by myself on the advice of Auckland Council as to who we were to consult.
- Q. Just in that case as a follow-up question, would you accept at no stage was Ngāti Paoa Iwi Trust consulted by the applicant recognising the trust itself wasn't formed until October 2013?
- A. Well –

THE COURT: JUDGE NEWHOOK

We know this Mr Enright, we know that, this is trite. It's in the evidence, I think it's a matter of agreement that that is the history of it and it's part of why I let your client into the proceedings at quite a late stage. We know all this.

MR ENRIGHT:

Yes Sir and I'll move on.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

Q. I just want to deal briefly with the consent conditions, Mr Dunn.

A. Yes.

Q. And it's a simple question. Would you accept that the applicant's proposed consent conditions don't envisage a consultation process with Ngāti Paoa Iwi Trust unless there is a discovery of archaeological remains?

A. Correct.

Q. There's no provision for consultation, unlike for example DOC and some of the other –

A. Yes, you're correct, yes.

THE COURT: JUDGE NEWHOOK

I'd observe that consultation isn't in the statement of issues list Mr Jeremy Brabant brought this morning. Are you contending that it should be, Mr Enright?

MR ENRIGHT:

Yes Sir. I gave my list of issues, Sir, to my friend Mr Brabant last week. I can't remember the exact sequencing, but the issues, the cultural issues remain the same four issues which are originally raised in the notice of motion.

THE COURT: JUDGE NEWHOOK

Well there's something for counsel to confer about over the weekend.

MR J BRABANT:

If I've missed it I apologise to my friend, sorry.

THE COURT: JUDGE NEWHOOK

Section 6, cultural, you possibly ought to have it. That is where counsel get to agree. I want counsel to nail down the issues that are truly in contention if necessary after vigorous debate about whether any particular items should be in contention or not.

MR ENRIGHT:

Yes Sir. For clarity, the issues raised were those originally raised but I'll discuss it with my friend.

THE COURT: JUDGE NEWHOOK

We have it firmly on board that your client wasn't able to be consulted at an earlier time because it didn't exist.

MR ENRIGHT:

Yes.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

Q. Now I'd just like to please turn to the planning instruments and we'll start with the coastal policy statement.

A. Yes.

Q. And if you have that, Mr Dunn, in the preamble it may perhaps seem a trite point but on the page 5 there are a number of bullet points and the

—

A. Can you tell me where the coastal policy statement is please.

THE COURT ADDRESSES MR ENRIGHT**CROSS-EXAMINATION CONTINUES: MR ENRIGHT**

Q. So hopefully you have the coastal policy statement to hand?

A. Yes, yes.

Q. So the preamble, page 5, it's just the last bullet point above the second paragraph reading, "The coast particular importance to tangata whenua including kaitiaki." I'm not sure that you've referenced that?

A. Sorry, where in the where? The preamble?

Q. Yes, so preamble, if you read down there's a list of bullet points.

A. Yes.

Q. The very last one before the sentence, "The coast environment faces the following key issues."

A. Yes, my evidence, like all evidence, focuses on the objectives and policies rather than the explanations and preambles because it just becomes too long to compile.

Q. It's not –

A. So it's an omission but it's consistent across all documents that we focus on the objectives and policies.

Q. I understand that but in terms of the receiving environment, the coastal environment is of particular significance in terms of cultural effects, heritage in relation to matters for tangata whenua or mana whenua, do you accept that?

A. Yes.

Q. If we go then to chapter, part 3 sorry, strategic management areas of the operative plan.

WITNESS REFERRED TO VOLUME 4

THE COURT: JUDGE NEWHOOK

Mr Enright, we're going to take the morning break now a little bit early and what's going to happen during that time is you're going to provide the, you might as well do a handwritten list that can be copied around to counsel, the witness and the Court of the statutory provisions that you want him to look at for some purpose and the reference in the common bundle. So that's going to speed things up. And then you're also going to give some attention to whether there is a purpose that you have in mind for having the witness look at each and every one of the provisions that you want to put in front of him, be it from the point of view of the fact that you might consider that he might have ignored them when he shouldn't have or he might have misconstrued them in his evidence or some other angle upon them that is coming out of the evidence of, say, Mr Sargent or somebody else so that we can actually have some structure to these questions. So that's what I want you to do in the next 15 minutes please.

MR ENRIGHT:

Yes Sir.

COURT ADJOURNS: 10.57 AM

COURT RESUMES: 11.20 AM**CROSS-EXAMINATION CONTINUES: MR ENRIGHT**

Q. Mr Dunn, do you accept that issue 3.3.3.9 specifically refers to the relationship between Ngāti Paoa and their ancestral lands for the sites (inaudible 11:20:40) and other taonga?

A. Yes.

Q. It's explicitly referenced to Ngāti Paoa isn't it?

A. Yes.

Q. I don't recall your written evidence addressing specifically this issue and its related policy.

A. That would be correct.

Q. And you accept, don't you, that the policy below 3.3.4.8 again it's explicitly in relation to the relationship between Ngāti Paoa ancestral lands and water et cetera so again it's an explicit reference to Ngāti Paoa. That's correct, again.

A. Yes but the CIA that was commissioned by Mr Rikys was, I believe, on behalf of Ngāti Paoa.

Q. And that's something I can clarify with Mr Rikys.

A. Correct.

Q. But the joint witness statement on cultural matters states explicitly that the Ngāti Paoa Iwi Trust are recognised as the mana whenua authority for Ngāti Paoa for these proceedings. That's correct isn't it?

A. I don't think it's for me to make a statement on that.

Q. Well the evidence, the Ngāti Paoa Iwi Trust –

THE COURT: JUDGE NEWHOOK

The joint witness statement is what the joint witness statement is Mr Enright. We've got it, we've read it. And I actually thought that Mr Dunn's further response that it's not for him to comment was entirely proper. It's for tangata whenua to comment.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

- Q. And again, Mr Dunn, as with the issue, you haven't explicitly addressed whether the proposal, the marina proposal is contrary to this policy in your evidence, that's correct isn't it?
- A. I haven't explicitly referenced it but as I said in response to earlier questions that when you're preparing evidence you focus on the ones where you believe there's some inconsistency. Either with another witness rather than just policies that you believe have been, are being met. And just repeating statements to that effect in your evidence. So, it's an oversight but I don't believe it's a significant oversight in the context of the work that has been done through Mr Rikys.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL**QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN**

- Q. Mr Dunn, good morning, perhaps if you could have open figure 79 in the 2013, in that bundle. I'm just following on from some questioning that you had around the location of car parking and looking at the plan provisions and I think you said that the parking was a permitted activity in the actual transport area on that map?
- A. Yes.
- Q. And you were referred to the policy around the location of that. If we then looked at the mixed use area which adjoins the transport area. There seems to be a specific rule, 10a 18.6.10.
- A. Sorry, the rule is?
- Q. 10a 18.6.10.
- A. 6.9?
- Q. No, 10.18.6.10.
- A. Yes.
- Q. And it's called "Setback from MHWS.
- A. Yes.
- Q. And it refers to the setback of car parking areas in car parking buildings.
- A. Yes.

- Q. Of 100 meters, and then it has an explanation that follows that.
- A. Yes.
- Q. It seems to me that there seems to be a strong push in these provisions to put unnecessary parking back from the foreshore, would you agree with that?
- A. Within the mixed use area that appears to be the situation. But that is as we know not the existing situation. So the provisions to me are a little bit, they leave a bit to be desired in that sense. I can see what the plan provisions are trying to achieve, yes, but that's not in terms of some of the current parking.
- Q. (inaudible 11:26:34) looking to the future one assumes a re-development.
- A. Yes.
- Q. The area that's associated with transport is a fairly limited land area, so although it's a permitted activity parking in that area, it's a pretty confined area now that it's developed to actually – there's no space for any more, is there? It's really configuration perhaps, or reconfiguration?
- A. Yes correct, that'd be correct.
- Q. I also notice and I just haven't written down the reference, I think it's in the policies right at the beginning and I'll just try and find it where the description of the area – I found it, under the resource management strategy 1 transport area, and that's page 70, 10a.18.4 it talks about the transport area is located directly behind the wharf in ferry building and makes specific provision for busses, taxis and other multiple-occupancy. So there seems to be a clear desire for that to be the activity that takes place in that area.
- A. Yes.
- Q. And any other parking areas, it looks like they've considered these use or activity areas on this map how they interrelate with each other. So where parking per se is required for other activities, there's a push to get it back away from the coastal environment, would you say that's fair?
- A. Yes generally, I mean all I suppose I pointed out in my evidence is that the transport area in terms of parking and traffic is the area where there

are less controls and it is more, it's called "transport" as opposed to "mixed use", so to me there is a bit of a distinction there that sure, they want the parking back from the foreshore but if you're having private parking it would be more in the transport area or associated with the transport area than the mixed use area.

Q. But it's a very defined area, isn't it?

A. Yes it is a very small area, I accept that, yes.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR R BRABANT

Q. Mr Dunn, we might just pick up on this last line of questioning first while you're at it. So we've got figure 79 that you were referred to.

A. Yes.

Q. And looking at the location I think you'd indicated in your evidence that were this all to be consented and the reclamation created, you would see the transport area zone extending onto the reclamation, is that the way you see it?

A. Yes.

1130

Q. Now can you look at the same document that you've just been referred to and the permitted activity provisions on page 71, they start for the transport area, and turn to the top of the next page and what's the provision for car parking in that zone please?

A. Page 71?

Q. Move over to 72 at the top.

A. Car parking is a permitted activity.

Q. So then we've got the rule, haven't we, that you were referred to in 18 – 10A.18.6.10?

A. Yes.

Q. So that's at the top of page 77.

A. Yes.

- Q. If you go back to the bottom of page 73.
- A. Yes.
- Q. You'll see the beginning of those rules, what do those rule – which area do those rules apply to?
- A. To the mixed use area.
- Q. Now you were asked some questions about - we've got the latest information now, Mr Dunn. Have you got those numbers that were provided during the break?
- A. No.
- Q. So the Court's handed out copies to everyone.

THE COURT ADDRESSES MR R BRABANT

RE-EXAMINATION CONTINUES: MR R BRABANT

- Q. So Mr Dunn, you've got something to write so there's just some numbers to give you. Of 80 responses reaffirming interest, a total of 55 have a mooring on Waiheke. Nineteen are in mooring management areas on Waiheke outside Matiatia. Thirty six are in Matiatia. Of these, 25 are in the northern MMA and 11 are in the southern MMA. So Mr Dunn, in terms of displacing people on moorings do you recall what the mooring capacity is in the northern MMA? Or Sir, do you mind if I give him a figure?

THE COURT: JUDGE NEWHOOK

It's in the record and I don't think it's controversial.

RE-EXAMINATION CONTINUES: MR R BRABANT

- Q. 52?
- A. Correct.
- Q. So we've got 25 of those 52?
- A. Yes.
- Q. Are indicating they go. What's the relevance, from your point of view, in terms of people being displaced out of the northern mooring management area of there being 11 wanting to move from the south?

- A. Sorry, just repeat the question.
- Q. What is the relevance in terms of this displacement issue that was raised by you that 11 people in the south saying they would take a marina berth?

MR CASEY:

My point, Sir, that's not what this information tells us. All that we have is information that they've expressed an interest and I think it's improper to put the question on any stronger footing than that.

RE-EXAMINATION CONTINUES: MR R BRABANT

- Q. And I'll rephrase about the interest. These questions are all to do with people expressing an interest.
- A. Yes.
- Q. So what is the significance in terms of displacement of people on moorings in the northern MMA that 11 have expressed interest who are in the southern?
- A. There will be opportunities for other people to take up moorings.
- Q. And does the whole facility that's proposed for consent, how is that made up in terms of opportunity for people to store their boat?
- A. In marina berths or on pile moorings.
- Q. And how many pile moorings are there?
- A. I get this, it's 16 or 17.
- Q. Given that range of information that you now have, what is your position concerning the mooring management, northern mooring management area mooring occupants being displaced?
- A. That only some will be displaced?
- Q. How many?
- A. The figures have got me a little bit here.

THE COURT: JUDGE NEWHOOK

Well if it's just a matter of arithmetic, Mr Brabant, lead. Put the arithmetic under his nose and see if he agrees.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. So you've got expressions of interest, 25 to the marina, 17 can go on a mooring, pile mooring. That's 42, isn't it?

A. Yes.

Q. And 11 can be displaced from the northern side to the southern?

A. Southern to the northern are you saying?

Q. Eleven have said they'll come across –

A. Yes.

Q. – as an expression of interest?

A. Yes.

Q. So that frees up 11 moorings, doesn't it?

A. Yes.

Q. So you add that to the 42?

A. Yes.

Q. And the number is?

A. 53.

Q. Now I'm moving now to some questions about is there any other places that the carpark that could be found for marina parking –

A. Right.

Q. – in the existing area, and you'll remember you were referred to that and you mentioned rebuttal evidence?

A. Yes.

Q. Of Mr Wardale, and then you had some propositions put to you about alternatives by my friend?

A. Yes.

Q. You'll remember those areas are located in that, on that... There were those parking areas laid out?

A. Yes.

Q. Can you remember the figure for those? If I can find it.

THE COURT: JUDGE NEWHOOK

24.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. 24?

A. Yes.

Q. Now my friend Mr Casey asked you about the land that wraps around the Swordfish land, area F?

A. Yes.

Q. And suggested that could be a location?

A. Yes.

Q. Can I ask you two things. First, would the contours on figure 5 help you with the question of whether the land is suitable? We've used that figure before.

A. Figure 5?

Q. Yes. It's got the contour's shown there, hasn't it, along, joining the land? Road I mean.

A. Oh the road. It's got contours at the...

Q. You can see them marked there and they're coloured?

A. But that's further up. Sorry, might be on the wrong plan.

THE COURT: JUDGE NEWHOOK

Mr Brabant, I'm comparing figure 5 with figure 24. I assume you're asking in re-examination about the Hanson land which wraps around area F on figure 24?

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

Figure 5, as I read it, I'm trying to sort of cut to the chase here a bit, figure 5 as I read it shows us what the contours are to the west of area F along the roadside and we know that's fairly cliffy, but it doesn't touch on the other part of the Hanson land it wraps around.

MR R BRABANT:

I realise that, Sir, but I thought Mr Dunn was trying to recollect in his memory what the land might be like and I've only presented this to see. If it doesn't help him to remember, that's fine.

1140

RE-EXAMINATION CONTINUES: MR R BRABANT

A. The other thing which I did forget to mention earlier is the zoning of the land.

Q. That was my next question.

A. Yes.

Q. Explain that to the Court please?

A. The focus of the discussion, and this is even before Mr Wardale (inaudible 11:40:14) sites, we had discussions with the old Auckland City Council traffic department and it focused on the land that was zoned mixed use or transport that they owned and the land that was Swordfish Holdings people had which was likewise zoned. It didn't cover the rural zoned land because that was considered to be quite difficult to obtain parking provisions on. And the Hanson property is zoned rural, and I understand the Hanson Family are part of Swordfish Holdings.

Q. Now, another topic, Mr Casey asked you some questions –

THE COURT: JUDGE NEWHOOK

Q. Can I ask a subsidiary question then please. What would the status of public parking be – sorry first what's the zoning on the Hanson land?

A. The same as the others around the northern bay, which is rural 3 landscape.

Q. Yes and what would the status of public parking be if somebody was to consider bringing an application?

A. I suspect non-compliant but I'd need to check.

Q. Perhaps you'll check later on, we won't hold the flow up right now, but I'd like that answer later even if we need to call you back.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. Mr Casey asked you some questions about the esplanade reserve or a strip that would be created on the reclamation being established if consent was granted –

A. Yes.

Q. – and focused on the esplanade strip, and suggested a conflict with plan provisions, do you remember that evidence?

A. Yes I do.

Q. Now, I think at paragraph 93 that – no, it was the evidence where you made particular reference to esplanade reserve singular.

A. Yes.

Q. Can you find that please? Is that in the rebuttal or the main evidence?

A. Rebuttal.

Q. Rebuttal, that's what I thought.

THE COURT: JUDGE NEWHOOK

Paragraph 123 might be the start of it.

WITNESS:

Yes.

RE-EXAMINATION CONTINUES: MR R BRABANT

Q. Now, can you turn up figure 79 again please? Do you have it?

A. Yes.

Q. What is the esplanade reserve describe to the Court that you're referring to in your evidence?

A. The white strip leading south of the transport area.

Q. Mr Dunn, do you have access to a document that you prepared or do you need this copy?

A. No, I would need a copy.

WITNESS REFERRED TO DOCUMENT

Q. You were asked some questions about consultation by my friend, Mr Enright.

A. Yes.

Q. Do you summarise there on page 5 of the assessment of environment effects the consultation that was undertaken?

A. Yes.

Q. And were you actively involved in that?

A. Yes.

Q. And does the list include Ngāti Paoa?

A. Yes.

THE COURT: JUDGE NEWHOOK

Thank you for your evidence, Mr Dunn. And if you could have a look for that little point that I was asking about?

WITNESS

I could probably do it now Your Honour.

THE COURT: JUDGE NEWHOOK

If you think it will only take a couple of minutes –

WITNESS

It's right here.

THE COURT: JUDGE NEWHOOK

– do it now, we'll then let you depart, or at least depart the witness box.

MR R BRABANT:

While he's doing that, Sir, I could give you an update in an email exchange with Mr Mitchell.

THE COURT: JUDGE NEWHOOK

Mr Mitchell? Yes, I was going to ask for that after Mr Dunn had finished.

MR R BRABANT:

He emailed me during yesterday and I replied to him, and just so there's no suggestion otherwise, I have not in the email raised any issues relating to his evidence or any other witness only his availability and his health and what his wishes are. He did, Sir, in a reply that came in this morning start by expressing thanks that he wanted me to pass onto the Court because I put a message in from the Court.

1145

THE COURT: JUDGE NEWHOOK

As I asked you to, yes.

MR R BRABANT:

His advice to me this morning Sir is he very much wishes, his words might have been "I am keen" or "I definitely wish" to complete the evidence that I started giving to the Court. So that Sir I can tell you that Mr Mitchell wishes to do that. I wanted to talk to him on the phone so that I can provide, I can find out about what medical clearances in case anyone's concerned about that Sir, Mr Casey had expressed some concern about cross-examining him, and because we're involved in this hearing Sir I've asked that I can talk to him on the weekend. So my plan is to talk to him on the weekend, find out more about his medical situation because the Court and others may want to know, and then Sir it seems to me I need to provide whatever information, maybe it's from his doctor or something that you may wish, and other counsel may wish, and then it would be a matter for the Court scheduling him in.

THE COURT: JUDGE NEWHOOK

Do we focus in a bit further though in this way that essentially the purpose of his being here before he collapsed was to answer questions from the other parties and if necessary from us and then of course re-examination if that was called for. Mr Apeldoorn took up the cudgels and was questioned on his area and also on Mr Mitchell's area. Perhaps we should find out whether the other

parties actually still feel the need to question Mr Mitchell in addition to the help that Mr Apeldoorn was able to give us. I've already indicated that for myself I felt that Mr Apeldoorn was able to answer matters that I could have put to Mr Mitchell. So having had that indication from Mr Mitchell that he's keen and I kind of expected that he would say that because he's known as a bit of a trooper, what I might ask the other main parties do they wish – would they wish to continue to question Mr Mitchell? Because it seems as though there is the possibility of that Mr Casey.

MR CASEY:

Mr learned friend wasn't present at the conference that we had in chambers after Mr Mitchell's episode Sir and may not be aware what was discussed and effectively agreed there and it was that we would put to Mr Apeldoorn the issues that we otherwise would have put to Mr Mitchell.

THE COURT: JUDGE NEWHOOK

That's right, and see how he was able to deal with them.

MR CASEY:

And if there was any difficulty in him dealing with them then there would be a process developed after that. I also indicated, I think, at that conference that I was most reluctant about having to question Mr Mitchell on whatever basis, and that's what I would do. I have done that. I've put to Mr Apeldoorn the questions that I would have put to Mr Mitchell and I believe that, I consider I should say, that Mr Apeldoorn was able to deal with those questions and he answered them.

THE COURT: JUDGE NEWHOOK

That was my tentative feeling too but it may also be a matter of submission by counsel I'm not sure.

MR CASEY:

I've also indicated to my learned friend that I'm still of the position that I'm most reluctant to question Mr Mitchell. I think now that it's unnecessary and if

needs be Sir I can address you on the fact that the applicant is calling two expert witnesses on the same subject and that's a rather unusual situation to begin with, I know that I've been the subject of adverse comment from other Judges in this Court about doing that but I don't have –

THE COURT: JUDGE NEWHOOK

Those two witnesses divided the responsibility up.

MR CASEY:

They did to a degree.

THE COURT: JUDGE NEWHOOK

Albeit there's been some collaboration and some peer reviewing that went on but I felt that their approach was actually quite proper.

MR CASEY:

My situation, of course, I would need to take instruction subject to what else emerges is that Mr Mitchell's evidence-in-chief and rebuttal statements are before you. The points that I would have raised with him have been raised. I wouldn't propose to question him any further unless my learned friend insists that I ask him the same questions that I asked of Mr Apeldoorn and I'm not sure what that would achieve.

1150

THE COURT: JUDGE NEWHOOK

All right, well that's your response for the moment. I think I would say for the record in response to that statement from you, Mr Casey, that I wouldn't expect to see submissions from you in your opening criticising matters that Mr Mitchell could perhaps have answered were he to be brought back and questioned in addition to the assistance that Mr Apeldoorn gave.

MR CASEY:

Look, I accept that and I haven't quite finalised the submissions but I don't expect that I will be doing that. But if that were to change then of course.

THE COURT: JUDGE NEWHOOK

If you were to be doing that then my expectation would be that we would follow up on Mr Mitchell's offer rather than leave you in the situation of being able to make such a submission. So that's where it leads to I think.

MR CASEY:

Yes, look I accept that.

THE COURT: JUDGE NEWHOOK

It's a matter of fairness and substantive importance.

MR CASEY:

Yes, no look I accept that, Sir, and I'll need of course just to confirm that I don't have that sort of submission to make and if I were to then of course the situation would change.

THE COURT: JUDGE NEWHOOK

So I think we just need to let – I'm going to hear from the others of course too I think, so let's do that and then try and wrap it up. Mr Allan, what's your position?

MR ALLAN:

You might recall I'd completed my cross-examination of Mr Mitchell.

THE COURT: JUDGE NEWHOOK

Oh yes you had.

MR ALLAN:

And Ms McIndoe was midway through. So I'm fine, Sir.

THE COURT: JUDGE NEWHOOK

I felt almost as sorry for Ms McIndoe as the witness who collapsed.

MS McINDOE:

It's not a good thing to have on my record, Sir.

THE COURT: JUDGE NEWHOOK

You having just said to him that you didn't usually have that effect on witnesses and you don't.

MS McINDOE:

No, not usually. For my part I have put to Mr Apeldoorn the questions which I had for Mr Mitchell and I don't wish to continue cross-examining Mr Mitchell asking him the same questions. I won't be making a submission that his evidence should carry less weight or be given any lesser regard –

THE COURT: JUDGE NEWHOOK

So you'll be subject to the same observation that I've made to Mr Casey. So you respond in like manner.

MS McINDOE:

That's right. The Court is aware I think through my questions of Mr Apeldoorn of the issues which my clients dispute and I'm happy to leave the matter there.

THE COURT: JUDGE NEWHOOK

Has anybody else got a comment on this? Probably not I don't think. Right.

MR R BRABANT:

I think it's important that I do respond having heard from my friends.

THE COURT: JUDGE NEWHOOK

Yes please.

MR R BRABANT:

In the first place, Sir, unless there was a problem for Mr Mitchell in reappearing, potentially there's a serious disadvantage to the applicant in terms of a witness whose evidence was carefully tailored to deal with one part of the whole thing, and in fact the major part, and Mr Apeldoorn who became

involved at the survey stage whose evidence focused on that. And yes, he did have some corroboration but essentially looking at someone else's evidence. So I want to say, Sir, that we will look carefully at the transcript but

–

THE COURT: JUDGE NEWHOOK

Look, we can probably cut to the chase. What I'm hearing is that you may find yourself in the position of wanting him to come back and answer the questions that Mr Apeldoorn dealt with in his area, although I'm not sure that you've formed that definite impression yet. You may, come Monday perhaps, be wanting to insist that that occur and that would be your right. I think tentatively

I –

MR R BRABANT:

Well, but on this basis –

THE COURT: JUDGE NEWHOOK

- doubt that we could resist.

MR R BRABANT:

On this basis, Sir, and please tell me if I've got this wrong, he is coming forward not to present evidence for the applicant that we've already put in but to be available to be questioned. So the way I see it, Sir, is if he is not challenged on material that's in his evidence that he hasn't been challenged on then in my reply I will regard that as unchallenged evidence. Now it's open to my friends to make out that Mr Apeldoorn was able to cover that and did, but I just want to place on the record now, Sir, that if there are parts of Mr Mitchell's evidence that were not canvassed and no one chooses to cross-examine him when I make him available, I'm going to be submitting that you will rely on that evidence. And that's only in fairness to my friends. I think that's what I –

THE COURT: JUDGE NEWHOOK

You've both heard the responses that I have addressed to each of you. I've taken it as far as I can until you get your head further around whether you're wanting to bring him back. And I'm directing that counsel confer prior to the resumption of the hearing on Monday and endeavour to put an agreed position to the Court.

MR R BRABANT:

Absolutely, Sir. I just –

THE COURT: JUDGE NEWHOOK

And that may go so far as to forecast the nature of the submissions that each of you would make in this unusual area.

1155

MR R BRABANT:

Yes, my friends for Auckland Transport and Direction Matiatia I'm really saying, Sir, can elect whether Mr Mitchell, they complete cross-examination of Mr Mitchell and I will make him available, but if they don't then matters in his evidence that are not challenged I will rely in my reply on.

THE COURT: JUDGE NEWHOOK

Right, well I hear you both, I think there's a little more water to flow under the bridge and I direct that you confer and advise your positions or hopefully a combined position on Monday. And I seek two issues here, one is a matter of procedural and the other goes to the merits and what the ultimate outcome on the merits in this corner of the case might be, if you wouldn't mind both thinking about carefully and addressing that.

MR R BRABANT:

Thank you Sir and subject to that, now to wrap up the situation we're in, Sir, to make the formal statement that subject to the question of Mr Mitchell coming back and subject, Sir, to whether Mr Dunn needs to come back in for

cross-examination on conditions which I'm seriously hoping we will not have, that completes the evidence for the applicant.

MR J BRABANT:

Sorry Sir, could I just add one other minor matter, just you referred to two issues relating to Mr Mitchell, and I had a couple of emails from his yesterday which I simply replied saying, "We'll be in touch." Could I add one further thing Sir and it's only if there's time, and there may be various ways to deal with that, and it's really about compassion for him, Sir. I got the distinct impression from his emails that he feels he's let everybody down, and I'm a little concerned if he doesn't come back, he feels like sort of no one wants to touch him with a barge pole because he's a health risk. And so obviously we can laugh about that but the impression I did get is he was concerned about that, Sir, so however this resolves, I just wanted to say hopefully we can do it in a way that leaves him not feeling that everyone has decided he's a total risk.

THE COURT: JUDGE NEWHOOK

Okay that may be a third matter that counsel could confer upon over the weekend in case that was how Mr Mitchell feels, yes, we understand him to be a bit of a trooper and he might feel that way, and hopefully if there's an agreed position it can be phrased in such a way that his pride will remain intact.

MR J BRABANT:

I think it's more than his pride, Sir, he actually said –

THE COURT: JUDGE NEWHOOK

His professional pride.

MR J BRABANT:

He said, "I've been five years," I can remember the words in the email as well, "I've been give years on this case or matter and I'd like to see it through," those were his words to me in the email.

THE COURT: JUDGE NEWHOOK

All right, and look I will say for the record that I'm not shrinking from the danger or the risk that he might collapse on us again, just that sort of thing goes with the territory. It's pretty rare, it's the only time I've seen it happen in Court. So I don't have that concern, Mr Brabant, and I most certainly for the Court, not saying that Mr Mitchell is to stay away in case that were to happen, that is definitely not the Court's view.

MR J BRABANT:

And I'm sure, I don't doubt that Sir, there was just an undertone that he was concerned about the circumstances in which he'd ended up leaving.

THE COURT: JUDGE NEWHOOK

All right, I think we've taken it as far as we can, thank you all. Thank you Mr Dunn, you may –

THE COURT: COMMISSIONER LEIJNEN

He was giving you a...

THE COURT: JUDGE NEWHOOK

Oh, yes, you were going to help me with that final thing, there's too much going on isn't there. Off you go?

WITNESS:

If you turn to – you must have the district plan provisions? Yes.

THE COURT: COMMISSIONER LEIJNEN

I haven't got them up, I was relying on you.

WITNESS:

If we go to pages 90 and 91 of the Hauraki Gulf Islands Plan, you'll see under "Resource Management Strategy" it says, "The general amenity of the land is protected by limiting the activities provided for to those of a residential or rural nature and avoiding activities that might generate adverse noise or traffic effects that are out of context with a rural environment. Then you look at the list of activities below that and it's basically restricted to dwellings, farm buildings and visitor accommodation, so non-complying and that, I recall it now, that that policy directive was why we never looked at approaching the Hansen's or other rural land owners in that area.

WITNESS EXCUSED**APPLICANT'S CASE CONCLUDES**

RESPONDENT: AUCKLAND COUNCIL

MR ALLAN READS OPENING SUBMISSIONS

“It may be... in zoning terms.”

Mr Brabant has covered this to an extent in terms of the application of section 89. I probably don't need to go over that again but it's treated as unzoned for the purposes of the district plan and I return to that in discussing the activity status below.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

“The consents required...of the proposal.

Sir, actually that's probably just relating to the carpark element, various land use aspects. In the original section 87F report there were references to earthworks and network utilities which have been separated out by Ms Bremner. She's satisfied that they're rolled into the creation of the reclamation and (inaudible 12:12:41). The main land use element is the car parking that's to come once the land's claimed.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

“The proposed unitary...in that decision.”

Now Sir, perhaps I can just take you to the final paragraph and take the rest as read.

THE COURT: JUDGE NEWHOOK

Yes, I think that's appropriate.

MR ALLAN:

Of course the case is in the electronic bundle.

**MR ALLAN CONTINUES READING OPENING SUBMISSIONS FROM
PARAGRAPH 35**

1215

“This situation is...an holistic approach.” The only other thing, Sir, I’d note which are in the previous discussion on the previous page, Mr Kirkpatrick, not Judge Kirkpatrick, made arguments I think of a similar nature about visual effects in recreational amenity and those sorts of matters being disconnected, and those arguments evidently didn’t win the day on that occasion.

THE COURT: JUDGE NEWHOOK

Now, are you talking about, touching briefly on Mr Brabant’s submission to us on Monday to the effect that landscape studies – or our assessment of landscape effects should be seen and taken in the round, is that what you’re addressing now or are you going to come to that later?

MR ALLAN:

Sorry, do you mean the overall effects? Sorry, -

THE COURT: JUDGE NEWHOOK

In landscape terms. It’s obviously not what you had in mind to draw to our attention –

MR ALLAN:

No.

THE COURT: JUDGE NEWHOOK

– talking about the Tairua marina case right now. Will you in a later part of your submissions address the topic raised by Mr Brabant coming out of this Tairua Marina – no, the Environment Court’s decision in Tairua Marina, not the High Court decision, to the effect that landscape assessments should be

taken in the round or in a holistic way rather than viewpoint by viewpoint or by grouping up of viewpoints?

MR ALLAN:

Oh yes, that reference was made I think as well to a case decision of Judge Smiths in that regard in terms of – yes Sir –

THE COURT: JUDGE NEWHOOK

That's what I had in mind.

MR ALLAN:

I'm happy to address you on that now.

THE COURT: JUDGE NEWHOOK

Or do you have a section on landscape later and we can deal with it then?

MR ALLAN:

I do Sir.

THE COURT: JUDGE NEWHOOK

Let's put it in then.

MR ALLAN:

I don't (inaudible 12:17:19) comment on that decision to be honest but I'm happy to come back to that point.

THE COURT: JUDGE NEWHOOK

Well let's see if you can help us when you come to your landscape section.

MR ALLAN:

I will try and help you with that Sir, yes.

THE COURT: JUDGE NEWHOOK

Thank you.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS:

Paragraph 21, Sir, “I submit that... for the applicant.”

THE COURT: JUDGE NEWHOOK

Just a quick question please in relation to the first three lines of that paragraph, you’re addressing now activities that would be undertaken on top of the reclamation as opposed to activities that might be undertaken on top of a completed deck, or is it both?

MR ALLAN:

This is the reclamation, Sir.

THE COURT: JUDGE NEWHOOK

Just the reclamation, we’re not –

MR ALLAN:

Just the reclamation, the deck –

THE COURT: JUDGE NEWHOOK

The deck is in a totally different space.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS:

Yes and I’ll come to the deck a little bit later in terms of the application to that. “Rule 4.2 provides... intended to address.”

THE COURT: JUDGE NEWHOOK

So that’s her view and your submission?

MR ALLAN:

Yes Sir.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS:

“In terms of... for marina structures.”

THE COURT: JUDGE NEWHOOK

This *Mapara* decision will be in the electronic bundle for us too. But just at this moment can you help us with any further information from that case as to what the policy reasoning was for this fairly blunt statement from Judge Whiting in that case?

MR ALLAN:

Sir, without bringing it up my recollection is that it was actually a straight application of the provision, a straight interpretation of the provision.

THE COURT: JUDGE NEWHOOK

Just legal interpretation rather than any underlying policy?

MR ALLAN:

No I don't think he did Sir, Mr Enright and Ms Schlaepfer both appeared for counsel and would be more familiar than me but I will just bring it up. No Sir it's a straight interpretation based on the provision.

THE COURT: JUDGE NEWHOOK

Thank you for that observation.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

“Pre-environment Court processing...274 party' submitters.”

THE COURT: JUDGE NEWHOOK

And indeed I think we have to send out 817 copies of the decision don't we?

MR ALLAN:

I think there may be an obligation in that regard Sir, I fear.

THE COURT: JUDGE NEWHOOK

Well we'll do as much as we can electronically I'm sure.

MR R BRABANT:

There's no issue about those late submissions Sir, I already told the Council.

MR ALLAN:

I'm just coming to the matter of late submissions.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

"The Court may...section 87F report." Just to make life a little bit easier for you, hopefully, there is that summary there.

THE COURT: JUDGE NEWHOOK

Yes, if counsel wouldn't mind just putting a brief note into the statement of issues to flag this one for us so that we cover it off and hopefully we will be well assisted by the overview of issues in the 87F report. I don't know at this moment whether issues raised by submitters who aren't here or haven't engaged under section 274 will take matters any further. The wealth of matters that have been brought to us by those who have got involved.

MR ALLAN:

I expect there may be some specific angles or points perhaps not covered but I'll hazard a general guess that they're probably generally encapsulated by the issues raised by the other parties involved.

THE COURT: JUDGE NEWHOOK

Right, well if can just have that flag raised in that statement of issues that would be a useful thing.

1235

MR ALLAN CONTINUES READING OPENING SUBMISSIONS FROM PARAGRAPH 42

“Late submissions. The...and spiritual matters.”

An example of one of those areas of inconsistency, and perhaps this is a useful time just to touch on the provision we were looking at before, we were talking before about policy 6 under objective 10A.18.3.1 and I think Your Honour indicated it might be useful to have a view on the reference to the esplanade reserve. That’s an example of a policy where Ms Bremner has identified partial inconsistency. There’s no change (inaudible 12:39:53) between her 87F report and her evidence now before the Court in that regard. That’s one where her views have remained the same. I might just briefly read a little passage from her 87F report which may be helpful just in terms of getting her views. “The reclamation parking will be separated from the existing esplanade reserve in the south part of the bay, to which this policy is probably directed. However, it will not be separated from the new esplanade reserve being proposed around the perimeter of the reclamation and this aspect of the proposal could be regarded as inconsistent with the policy.” That was at paragraph 796 of the section 87 report, for the transcript. So I submit she’s probably right there that the policy is directed at that southern esplanade when you read the provisions in the round. The plan simply didn’t envisage a marina and a reclamation in this location. That much is clear. But what she’s done is she’s still observed the spirit of the policy in her analysis in reaching that view and it’s obviously a matter for her as a planner.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS FROM PARAGRAPH 51

“In this section...the existing environment.”

And Sir, I’ll just pause. I’ll keep my additions to a minimum but there was some discussion about the permitted baseline in the evidence and I think perhaps a confusion at times about whether the permitted baseline applies in this situation. It comes out in the wash I suspect at the end of the day, but I would probably regard the existing moorings we see out there as part of the

existing environment rather than permitted baseline. Maybe it's an academic distinction but just an observation in that regard.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

"The proposed marina...for the Court."

And Sir, I've provided a footnote reference to a case. That case actually isn't in the bundle but that may be one of yours, Sir.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

1245

"And conditions are... during construction phase." Sir I will just pause there perhaps and return to your point, that's in reliance on Mr Brown, and Mr Brown has identified more than minor effects in his opinion from the beach, the northern beach, the reserve and some of the residential properties behind the terminal. While he's reached that view, and he refers I think in his evidence to a significant change, he's obviously satisfied, and I will come back to this in the landscape section, that the activity as a whole is acceptable. I acknowledge Judge Smith's comments in the Rotorua case about looking at the effects of activities in the round. I suppose all I'd say is from the Council's perspective the effects even looked at in the round are more than minor. One can't sweep these more than minor amenity effects under the rug simply because you're looking at the position as seen from the rest of the bay. I just want to be quite clear about that. While Mr Brown is satisfied with the natural character, the landscape and visual effects as a whole, he has properly acknowledged in my submission that there are more than minor amenity effects.

THE COURT: JUDGE NEWHOOK

I've not sat and looked close at Judge Smith's findings in that case on this holistic approach, but I'm wondering for myself whether, even if he is correct,

whether it might be case-specific as to whether one should be looking at landscape effects holistically or whether there might be some stand-outs from amongst individual viewpoints that create issues and that require a departure from a holistic overview.

MR ALLAN:

Yes, I think you're correct that you must look at the context in any given application and can't follow a rigid approach to these matters. Actually interestingly the case from my reading of it was focused predominantly on the other branch of section 104(d) to do with objectives and policies. So it seemed to me that it was more in passing that he touched on that issue. It was I think a comment that as has been held in a number of cases, and I don't think there was a footnote referring to those cases –

THE COURT: JUDGE NEWHOOK

And I'm certainly not aware of any higher Court decisions that might be binding on this or even guidance that suggest that one should take, in every case take a globalised or holistic approach to this kind of assessment. Even you can hear what I'm saying I think that the concept is not finding favour in my mind.

MR ALLAN:

No, I'm on all fours with you on this I think, you know. Well I can understand perhaps what he was saying, as I made it quite plain the Council wants to be clear that it wouldn't want those more than minor effects to be ignored somehow because of this holistic approach, so that's – the point that –

THE COURT: JUDGE NEWHOOK

Look, we'll be taking onboard everybody's views on it and we'd be very interested in the views of the landscape witnesses in the context of this case, and in counsel's submissions beyond yours that are being advanced right now and of course Mr Brabant's reply at the end of the case, the point is of some interest to me I'm signalling. Mr Brown himself was a thinking sort of witness

and he might have some observations in the context of this case or even beyond, I don't know, let's see.

MR ALLAN:

Yes, so that case though, as I've noted, it's perhaps of more interest in terms of the other branch of the gateway test because it dealt with Justice Fogarty's suggestion that you perhaps only need one objective or policy to be identified to fail the gateway test. So it's probably a bit more relevance in that respect. And there is a recent follow up to that as well, but now I'm getting off track. But Judge Hessen has recently discussed that that particular issue in a case I was involved in, which is *Calverly and Mangawhai Heads Holdings and Kaipara District Court*, and that's another useful case for discussion of that issue.

MR ALLAN CONTINUES READING SUBMISSIONS

Where was I? Positive Effects, (b), "Effects of copper... supply and wastewater."

I pause, there is that issue over the emergency supply in relation to wastewater that changed to three days, but we're going to iron out those details I'm certain.

"Storm water management and... which I address below." In fact that list is read, I'll obviously just be coming to each of those in turn.

THE COURT: JUDGE NEWHOOK ADDRESSES MR ALLAN – LUNCHEON BREAK

COURT ADJOURNS: 12.54 PM

COURT RESUMES: 2.14 PM

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

“Issues in contention... and sub-tidal area.” I’ll just draw your attention to that because it’s in the original peer review and might otherwise be lost in the mix. It’s not referred to in the evidence that point.

“Reclamation and Dredging... sub-tidal area.” I just draw attention to that because it’s in the original peer review and might otherwise be lost in the mix. It’s not referred to in the evidence that point.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

“Reclamation and dredging... appear to be relevant.” So I just refer that to Sir because it seems to have been missed in the evidence but seems to be a relevant part of that policy.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

“Dredging. Finally in... for turbidity monitoring.” And Sir there are monitoring conditions of that nature in the applicant’s conditions. “Conclusion. A Part 2” “of appropriate conditions...” Sir, if my monotonous cross-examination of Mr Dunn did nothing else, it at least showed that there are continuing areas of difference between the applicant and the Council as to conditions.

THE COURT: JUDGE NEWHOOK

You need to read this in the light of the fact that there is going to be further dialogue.

MR ALLAN:

That’s right, so I’ve attached a table, I’m not going to take you through it because that would take us some time into midway through next week probably.

THE COURT: JUDGE NEWHOOK

We've got a sheet introducing the table but the table's not here.

MR ALLAN:

That's the A3, it's the A3 document. I've briefly commented on the structure of the consents, Sir, I'll be touching that in cross-examination as well. It remains the Council's preference to have a single consent following a logical structure and a single construction management plan et cetera. That's something no doubt we'll be talking through on Tuesday as well.

THE COURT: JUDGE NEWHOOK

Yes.

MR ALLAN:

And Sir, after that is the list of the Council's witnesses in the proposed order.

THE COURT: COMMISSIONER LEIJNEN

Q. Mr Allan, just in relation to your paragraph 87, in a legal sense, this is the suggestion for managing access to the parking area. The Council came to the conclusion that it didn't want access to the parking area at all. Would that be available to (inaudible 14:56:30)?

A. In my submission that conclusion and that outcome of a review would be to frustrate the consent so I don't think legally it could go that far and I think this is probably an area where we need to have further discussions with Mr Brabant. So that would be my initial response. If the response were to completely close off access to the carpark that might be a step too far.

THE COURT: JUDGE NEWHOOK

Just for the information of counsel, there is a recent High Court decision that I can't recall the name of which contains a suggestion possibly by way of (inaudible 14:57:08) that in certain circumstances a review could lead to a situation which a consent might be frustrated. You'll find mention of it if any of you have access to the papers associated with the RMLA road show on

conditions of consent. I can't remember whose paper it was in but there is a suggestion in there and I have been heard to offer an aside during the course of delivery of that road show that I have some doubts about that apparent cautious statement by the High Court. And I think, and again I can't site the case, I think there's higher authority about this frustration on Resource Consent business.

MR ALLAN:

Thank you Sir, we'll see if we can track that down.

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL – AUCKLAND
ROADSHOW**

1500

MR ALLAN CALLS

MICA CATHERINE PLOWMAN (AFFIRMED)

**THE COURT: JUDGE NEWHOOK ADDRESSES THE WITNESS –
WELCOMES WITNESS**

EXAMINATION: MR ALLAN

Q. Your full name is Mica Catherine Plowman?

A. Yes.

Q. And you're currently employed as a principal heritage advisor at Auckland Council?

A. Yes.

Q. And for these proceedings you've prepared a statement of evidence-in-chief dated 10 June 2013?

A. Yes.

Q. And a rebuttal statement dated 23 September 2014?

A. Yes.

Q. And you've also participated in caucusing with the other archaeology witnesses which resulted in a joint witness statement dated 20 August 2014?

A. Yes.

Q. And can you please confirm that the contents of those three statements are true and correct to the best of your knowledge?

A. Yes they are.

**THE COURT: JUDGE NEWHOOK ADDRESSES MR R BRABANT –
QUESTIONS IN CHIEF**

CROSS-EXAMINATION: MR R BRABANT

Q. Good afternoon, can I just start with just a little clarification in your paragraph 37, because the words otherwise potentially ambiguous I guess, if you could go to that paragraph of your evidence-in-chief?

- A. Yes, got it.
- Q. And right at the bottom of the page there there's the sentence second to last line, "This part of the bay comprises two single beaches, but I think the word is "shingle" isn't it? Because every –
- A. "Shingle", it is, yes, and I've highlighted that.
- Q. Yes, every other description you've given of the beach is that they've got shingle on them. Okay, thanks.
- A. That's right, shingle beaches.
- Q. Now, if we go back now, turn back to paragraph 25, and there should be over there you'll find there's the volume of material. And it would be helpful, please, for the purposes of this if you could find figure 2. For the record, Sir, the aerial which has the footprint of the marina, thank you. Now this reference is a condition of consent relating to the Alison Woolshed and Yards, and that's the building that looks like it's a white building, isn't it, but that's just the roofs that are in that colour.
- A. That's right.
- Q. Now, you've referred there to some potential effect that could occur, effects of physical work or transporting equipment or storage of equipment behind mean high water springs within the scheduled buildings and surrounds during development."
- A. Yes that's right.
- Q. And I'm aware that because you've been there so often you'll be very frequent with access by road and all the rest of it. Can you explain please or identify for the Court what type of work or transportation of equipment or storage you might have in mind could possible effect that building and its surrounds.
- A. Well I believe that when I wrote that initially as part of the memo, built heritage was handled by a Mr Brian Bennett. And so it was really a precautionary measure that was put forward so that just really to say that no works should be undertaken within the scheduled sites around which is just a little bit further than the building.
- Q. Yes, and I think there was a condition at the back here, condition 41.2 which is in paragraph 73?

- A. Oh sorry, paragraph 73?
- Q. Yes and then at the top of the page which is either 17 or AC270 depending on what you're looking at, so in condition 73 at the top of the next page there's a 41.2?
- A. Yes.
- Q. That's the condition there?
- A. That's the one.
- Q. But it wouldn't be necessary, would it, to put some sort of fence or anything around it?
- A. No, it's just when we did the revised conditions, Mr Brian Bennett was unavailable, he was off work, so I really just translated that across as a "don't take (inaudible 15:05:38) any works in that environment."
- Q. Okay now so another topic now I'm turning to and that's if you go back to paragraph 28 of your evidence?
- A. Yes.
- Q. And this relates to submissions, as you say, expressing concern for the fact that kōiwi have been discovered and reinterred, and there's some discussion about the bay and where that might have happened.
- A. Yes.
- Q. I'd like you to have a look, please, at the evidence of Peter Rikys which is in volume 2 of the applicant's evidence, and behind you there you'll see them all lined up.
- A. I am familiar with Mr Rikys' evidence.
- Q. That's right but I don't like to refer a witness to any evidence without making sure they have it in front of them.

WITNESS REFERRED TO VOLUME 2

- Q. So you should have 13 and then 13(a) is his rebuttal.
- A. So it's the rebuttal you'd like me to go to?
- Q. I'm going to take you to some paragraphs in each one.
- A. Yes.
- Q. So the best way if I can, please, is to ask you to read paragraphs 25 and 26 in the first statement of evidence, give you a chance to read that. So 25 starts, "Taking the south-eastern part of the bay first."

- A. Okay, that's not what I've got. Sorry I'm on 12.
- Q. Under 13, tab 13? Not the rebuttal.
- A. Sorry, (inaudible 15:07:24) the beginning. I've got 12, which is Robert Pryor and then I have –
- Q. It'll be the next one.
- A. That looks like it there. No?
- Q. There's a lot of exhibits behind Mr Pryor's.
- A. Oh I see, sorry. Oh good Lord.
- Q. Yes, you have to get past all those.
- A. Got it, I've got it. Okay so the evidence or the rebuttal? Sorry, now it's all come spilling undone.
- Q. No the evidence first, that's all right. Now, so it's the first statement of evidence under tab 13, if you go to paragraph 25?
- A. "Taking the south-east part of the bay first."
- Q. That's right, now could you please take your time and read 25 and 26?
- A. Yes.
- Q. So that I can ask you one easy question about all this.
- A. Yes I've read it.
- Q. And could you now turn to the rebuttal, and that answers a witness but if you go to paragraph 16 the same consideration, if you could just have a look at that for me please? Paragraph 16.
- A. Paragraph 16, "Again as noted in relation."
- Q. Yes, yes.
- A. Yes.
- 1510
- A. Yes, I've read that.
- Q. Now my question is, in relation to what you've referred to being the presence of koiwi that have been discovered and reinterred and then later on in your paragraph 28 you refer to "These koiwi are reinterments of finds from the archaeological sites that are eroding out onto the foreshore and that the remains described are not in their pre-1900 context"?
- A. Yes.

Q. If you're able to answer this for the Court, do you find Mr Rikys' description of the locations and what has occurred to be accurate, to the best of your knowledge?

A. Yes, I do.

CROSS-EXAMINATION: MR ENRIGHT

Q. Ms Plowman, perhaps we could just go to your rebuttal evidence figure 3, which is the map of archaeological sites.

A. Okay. Sorry, I'm just trying to put back this volume. My map?

Q. Yes, so it's figure 3.

A. Yep.

Q. To your rebuttal.

A. Have it.

Q. Now Mr Prince agreed, he agreed with the accuracy of the map and the question I have for you is just about the number of recorded burial sites in the northern part of Matiatia Bay. Now you've identified R11/1378 and R11/1493 but there's two sites?

A. Yes.

Q. But Mr Prince agreed there was a burial site also at R11/1653?

A. That's right.

Q. And do you agree with that?

A. Yes I do.

Q. So there's three recorded archae –

A. Yes, it's just that with regard to R11/1653 the discovery to my mind and my information is it fell down from the coastal escarpment, which is where R11/1653 is recorded and so therefore the record of that burial has been attached to the midden terrace site. It's not been recorded as an individual koiwi as seems to be the case with all other finds in the bay.

Q. So the next question is, you accept, don't you, that it's likely that there are other unrecorded indigenous burials and indigenous human remains both in the northern and southern parts of Matiatia Bay?

- A. What I'm referring to is that it's, we do find purposeful burials and human remains commonly in coastal environments. It's not extraordinary.
- Q. It's probable, would that be reasonable?
- A. Well, yes.
- Q. And I just then want to deal with the inferences you've drawn about the history of indigenous settlements at Matiatia Bay based on the archaeological evidence that's available. And perhaps if we go to your, I think it's in your primary evidence at paragraph 28.
- A. Evidence-in-chief?
- Q. Yes. Do you have that?
- A. 28, yes.
- Q. You say there that, second sentence, "Matiatia Bay has a long history of Māori occupation, evidenced by the numerous and varied archaeological sites recorded there." And just drawing on that, is it generally, in terms of pre-European contact often settlements are of a sort of seasonal nature? Is that how they're discovered in terms of archaeological remnants or...?
- A. Well it depends and it depends on how much research has been undertaken of the wider area, and unfortunately the case with Matiatia and **(inaudible 15:13:49)** Waiheke is that very little research, when I say "research" I mean excavation, has been undertaken. So the pattern of the Gulf Islands is that they are often seasonally occupied. The larger islands obviously have more permanent settlement. So seasonal occupation is part and parcel of Māori occupation of New Zealand.
- Q. And it's –
- A. Resource exploitation on a seasonal basis.
- Q. And in terms of resource exploitation, it's agricultural and kaimoana of a seafood basis, do you know?
- A. It can mean you often get sites in the Gulf Island like on Motutapu sites for a stone exploitation and snapper fishing at the same time. So it's any number of activities where resources are being sought.
- Q. And that would apply obviously to Matiatia Bay as well?

A. Potentially, yes.

Q. And just in terms of the pa site at Mokemoke Pa site, now based on the excavations and fortifications or remnants of that that remain, would that suggest more permanent forms of indigenous settlement?

A. Definitely, yes.

1515

CROSS-EXAMINATION: MR LITTLEJOHN

Q. Good afternoon, I only have two brief matters I really want to talk to you about, thank you Ms Plowman. The first concerns your rebuttal evidence and paragraph 15, if I could just ask you to turn that up to refresh that. So there you are agreeing with – sorry have you got that?

A. Not quite.

Q. All right, lots of paper, we keep trying to avoid having paper but it never works. We've got a lot better, I can come to Court with one bag now that doesn't have to have wheels on it.

A. Paragraph 15, yes, I'm there.

Q. Yes that's correct. So you're saying there that you agree with Dr Bader's assessment that the recorded archaeological sites within Matiatia Bay form part of a pre-contact and post-contact heritage landscape involving seafood exploitation and horticultural activities and settlement along the foreshore and the ridgelines.

A. Yes.

Q. You then go on to say that you would add to that description of the archaeological landscape what you categorise here as post-contact European archaeological and heritage sites.

A. Definitely, yes.

Q. And you talk there about the farming activities, the hulk, what may or may not remain of it of the the Doran and the wharf, and then the fortress observation posts up on the back ridgeline.

A. Yes.

Q. And those are all what you'd describe as post-contact archaeological and historic heritage sites.

- A. Yes.
- Q. So if we can categorise the archaeological landscape, putting to one side whether that's a valid term or not but it's certainly one that, as I see it, the archaeologists who have caucused use a fair bit. We have pre-contact, post-contact, then post-contact European. And would you accept that it's almost in a layered framework over the same landscape?
- A. Do you mean stratigraphically layered?
- Q. Yes, they've come at different points historically and essentially taken over over the top of each other as time has gone on.
- A. I wouldn't necessarily say strictly over the top of, but yes it's a continuum of a landscape.
- Q. So the landscape has supported different uses of it by different people over a significant period of time.
- A. Yes.
- Q. You refer to the nature of the activities that occurred pre-contact and post-contact as involving seafood exploitation. Would you also accept that even post-contact European there has also been seafood exploitation within Matiatia Bay.
- A. By just Māori or Māori and European?
- Q. The latter.
- A. By European.
- Q. Yes.
- A. Yes.
- Q. And you would accept that a significant component of that activity is the seascape, isn't it?
- A. I'm not sure I understand I'm sorry.
- Q. Where does one find seafood?
- A. From the sea.
- Q. So would you accept that a significant feature of this landscape and the use that it has been put to has been the sea?
- A. Yes.
- Q. And so when you say in the joint witness statement, and by you I mean the collective you, not just you, because there are three signatures to it,

at paragraph 6(d) of the joint witness statement when you say that, "The marina will not significant obstruct views of any of the sites or inhibit people's ability to read and understand the past," you're not saying there that the marina in its marine setting will not read as part of this seascape/landscape continuum, you're not saying that are you?

A. At the time what we were discussing was whether the marina would significantly effect, have a visual effect on visual archaeological sites. And so I'm specifically referring to adverse effects on visible archaeological remains.

Q. And that's where you've used the term "obstruct" as in "be in place between the viewer and the site".

A. Yes.

Q. But you accept that the marina is still going to be within the marine environment within this broader archaeological landscape?

A. Yes, but unfortunately as archaeologists we assess effects on archaeological remains. That's primarily what we do.

Q. You assess physical effects? Is that what you mean when you used the words "assessing effects"?

A. My role is to assess the physical effects on physical remains.

Q. Physical effects on physical remains.

A. Pretty much.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

Q. Thank you for your map to your rebuttal evidence, I found that really helpful. There is an historical reserve around the northern bay edge.

A. Yes.

Q. And I'm assuming that the reason that there's a historical reserve there is because there's something of history to preserve there, is that a fair –

A. I'm not sure but I would certainly argue that the reason why the archaeology is still preserved is because it fall into that historic, that reserve environment. And Council will always seek to reinforce sites where we can manage them in reserves, so the Mokemoke Pa complex for example, when we did that assessment we were very well aware that

the bulk of it is in that reserve and on private land ownership, so it's a great example of where we can actually actively manage heritage. So it's a bit of both. The archaeology has survived because it's in reserve, not in development or private ownership. And also once sites are there we actively manage them. Does that make sense?

Q. Thank you. So do you think that there is greater preserved archaeology in that northern bay then than the southern part for that very reason?

A. Yes and if you look at the information that Mr Prince and Dr Bader have to assess, which is the NZAA database and the CHI, what hasn't happened as a result of the very very in-depth upgrade we did in 2002 was we assessed all of the sites in Waiheke and in private land ownership. And so as a result of that you'll see on my map there is virtually nothing on the southern headland left because that residential subdivision has removed those sites. So what's left is the raised rim pit on the very very headland and then there's a terrace, R11 1779, which is also in undeveloped land. But numerous other sites, including 250 which sits behind the pa, has been significantly affected by residential development.

Q. Is that true of that foreshore, that southern – or south of the wharf too?

A. I'm not sure. When we did the upgrade it was really a matter of what was known to be there, so I recommended that Ropata's grave to be scheduled as a significant site. There's a midden site which is what my pink outline actually refers to, and of course there's the urupa which sits adjacent to Ropata's grave. Behind that the Allison Family have done a lot of activities in that area over the years, and it's also been used for parking. So I'm not too sure. We were looking for new sites when we were there, but mostly we were upgrading what was presently recorded. So I've removed everything off of the map that once was there and has now been destroyed, or is recorded as destroyed.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR ALLAN – NIL

WITNESS EXCUSED

DISCUSSION – TIMETABLING OF WITNESSES FOR NEXT WEEK

DISCUSSION – PROTOCOL OF VISIT TO MARAE

COURT ADJOURNS: 3.40 PM

COURT RESUMES ON MONDAY 13 OCTOBER 2014 AT 10.03 AM

THE COURT: JUDGE NEWHOOK – DISCUSSION TIMETABLING

THE COURT: JUDGE NEWHOOK

Mr Brabant, you had a matter to raise?

MR R BRABANT:

Well it's a continuation of the issue about Mr Mitchell coming back as a witness Sir.

THE COURT: JUDGE NEWHOOK

Yes.

MR R BRABANT:

So I spoke to Mr Mitchell yesterday afternoon. He was back at work after leave on Friday but just to give the Court an update, he got fully checked out as you'd expect Sir at the hospital and blood tests and everything and they could find nothing untoward. I believe from talking to him he'd had a cold or it could've been a flu and he'd taken some of the medication that people can take to try and put these things off so his recovery time at home as I'm talking to has been as much getting over the cold or the flu as anything else and he wishes to come back and complete the evidence as I've indicated and that will clearly be Sir in the third week and that would suit, in terms of him being well, because then it gives him all this week as well. And so in the hands of the Court and anything other parties might want to say about timing of when they would prefer that he's heard but you know the nature of things, he could've been part of the group of traffic witnesses so I don't even have a position on that Sir other than his availability would be in the third week. So just I want to indicate that Sir. He would intend, I would imagine the Council's traffic witness would be heard this afternoon and when I know that Sir, he wishes to come over and sit in the back of the Court and listen to questions.

THE COURT: JUDGE NEWHOOK

Sure.

MR R BRABANT:

And so if we do hear from Mr Shumane this week you will see Mr Mitchell back here and I just wanted to let everyone know the position, yes.

THE COURT: JUDGE NEWHOOK

All right that's fine Mr Brabant. If you just keep working with the other counsel about timings of such things as Mr Shumane being heard on traffic issues so that you can keep Mr Mitchell in the loop for those purposes.

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

I'd just have to leave that to you people.

MR R BRABANT:

Yes once I know Sir I'll tell him the ferry to get down so it's just a matter of organising him to come over.

MR ALLAN CALLS

CHRISTIAAN MOSS (SWORN)

Q. Your full name is Christiaan Moss?

A. Correct.

Q. And you're the Deputy Harbourmaster for the Auckland Council?

A. Correct.

Q. And you've prepared a statement of evidence-in-chief dated 10 June 2014?

A. Correct.

Q. A rebuttal statement dated 23 September 2014?

A. Correct.

Q. And you also participated in caucusing with the other navigation witnesses which resulted in a joint expert witness statement dated 21 August 2014?

A. Yes that's correct.

Q. Can you please confirm that the contents of those three statements are true and correct to the best of your knowledge?

A. Yes.

CROSS-EXAMINATION: MR R BRABANT

Q. Morning Mr Moss could we start please with your evidence-in-chief and we'll go to paragraph 12 please.

A. Yes.

Q. So this is the question Mr Moss of people displaced from the northern mooring management area by the marina. Were you in Court when the latest figures were provided from the process that Waiheke Marina's done of re-contacting people about expressions of interest?

A. No.

Q. So is it alright Sir if I just provide those numbers to Mr Moss I don't want to prolong –

THE COURT: JUDGE NEWHOOK

No that's the most efficient, economical way –

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So the information on a review re-contacting people was that 25 mooring holders in the northern mooring management area said, "We have a continuing interest in going in the marina." Eleven from the southern mooring management area said they would like to go in the marina, obviously freeing moorings up and that comes to 36. In addition to that there are of course 17 whole moorings available to provide for people in exchange for their mooring and that comes to 53. If those expression of interests recently confirmed firm into the actual arrangements you'd agree then that the – there would be no effect on

the northern management area mooring because everyone can be accommodated.

A. If those numbers are correct than those people should be able to be accommodated.

Q. Yes, so if we now go to your paragraph 15 and you also refer to this issue at paragraph 9 in the rebuttal and the joint witness statement covers this. This is the question of the leading light for Matiatia and I point in order to discuss this, it's a good idea to put the chart in front of you.

WITNESS REFERRED TO CHART

THE COURT ADDRESSES MR R BRABANT – PROVIDE MORE COPIES

MR ALLAN:

With this document and any others of similar nature. Obviously we have the Waiheke service centre close by and somebody could run across and run off copies of this document like this quickly and perhaps this question could be moved to the end if it's an issue of concern.

THE COURT: JUDGE NEWHOOK

That's the most helpful thought thank you Mr Allan. Mr Brabant could you just invite the witness to sit there and look at the charge and then see whether –

MR ALLAN:

And then it can be taken away and be copied.

1020

WITNESS REFERRED TO CHART

EXAMINATION CONTINUES: MR BRABANT

Q. Mr Moss, the chart signifies a sectored leading light with red and green each side of the white down the centre and the first question is, what is the purpose of that light, in other words who would use it and at what

point on a passage to Matiatia would the leading light be used? What point in a passage.

- A. The purpose of the Matiatia light is to assist vessels coming out of the Motuihe Channel, so at the end of the Motuihe Channel the Matiatia light lines up and a vessel such as a ferry would line up on the white section so it's from the Motuihe Channel guides into Matiatia Bay.
- Q. And does the reason why the light needs to be moved relate to its positioning down the centreline of the old wharf rather than the new one? So another reason.
- A. The primary reason why it was initially included is because it was in Mr Varney, Captain Varney's initial report asking for the (inaudible 10:21:52) to relocate the leading light as part of the development.
- Q. My question is, leave the marina to one side for a minute, is the leading light in the position it should be in at the moment for a ferry approaching?
- A. I think the leading light requires a risk assessment to determine if it is in the correct position right now.
- Q. The joint witness statement on this issue –

THE COURT: JUDGE NEWHOOK

I doubt if we need to have the chart entered as an exhibit and if there's any further questioning about it you could probably use figure 2 in the 2013 bundle where it's very cleared marked in full detail.

MR R BRABANT:

I agree Sir, I just didn't want the witness to say well I need to look at the chart and he didn't have it there.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. So, the joint witness statement as you say in paragraph 9 of your rebuttal evidence says the light should be moved in any event to improve navigation safety so do I understand correctly that all of you around the table agreed that the light should be moved?
- A. Yes.

- Q. Can I go to your rebuttal evidence now, the joint witness statement records in 5(b) kayak use between the outside of the proposed marina and the shore would not create any navigational safety issues. Were you present when Mr Dilley spoke about this issue?
- A. Yes.
- Q. So, at the moment in terms of navigational safety, do you agree that the primary area of concern is the interaction between ferry traffic and kayaks right now?
- A. Yes.
- Q. And that is therefore a primary issue now if kayaks came off the southern beach and headed straight across in front of the two wharfs to access the northern beach isn't it?
- A. Yes.
- Q. Do you agree with Mr Dilley's suggestion that in some ways the southern access pier is helpful in that respect because it will encourage the kayakers to work up the southern shore first?
- A. A kayaker, again it comes down to their own safety, I wouldn't recommend kayakers manoeuvring around the ferry terminal, it is safer to proceed further along the coast and cross a bit further out.
- Q. Now, with the mooring people, people on moorings, there is some access available directly off the southern beach to the southern mooring management area but other people may use the existing boat ramp and the carparks, launch their inflatable or small dinghy and then want to go out to a mooring on the southern side. A marina offers a safer situation for those people than at present with the ferry traffic?
- A. Safer in what way?
- Q. Well they're not interacting with the ferries coming in and out if they've shifted into a marina berth.
- A. Oh yes I agree.
- Q. Fifteen of your rebuttal evidence and 7(a) of the joint witness statement, "The area proposed to be occupied by the marina provides good shelter from northerly winds and is conveniently located for access to shore." Are you talking about, and in your evidence you've referred to it more

directly, "The issue of Matiatia as a suitable anchorage (with regard to it being a safe haven)." You're familiar, without going to the plan, as to the footprint of the marina over the mooring management area in the north aren't you?

A. Yes.

Q. So, by and large with only a relatively small portion being outside the marina sits where the moorings currently sit.

A. Yes.

Q. Are you suggesting to the Court Mr Moss that in a safe haven situation, so we're anticipating a storm or an event like that, that you would endorse people attempting to anchor within those moorings to shelter?

A. I think with bad weather the master or a skipper has to make a judgement call and I would not recommend anchoring within mooring area however, if the situation is that and it's necessary to do that they will because you can get caught up on moorings but if you can get your anchor down, that's the main thing.

Q. But, this is a high risk proposition, is it not, to anchor in a storm condition amongst moorings because even if you are fortunate enough to hit a clear patch, if your anchor drags at all you could find yourself caught up in mooring tackle.

A. Correct.

Q. Surely as a Harbourmaster you wouldn't recommend, therefore, people to attempt that manoeuvre?

A. I don't recommend it but it's up to the master at the end of the day, there are alternatives. But if the situation dictates that they have to drop it, they would have to drop it. That's the master's decision but I wouldn't recommend it.

Q. No. If the marina is established as proposed and imagine a storm situation, do you agree that that marina becomes the safest place that anyone could secure their boat in a storm event on the island?

A. I would say it provides an alternative. I don't know if it is the safest but it does provide an alternative.

Q. What's unsafe about that marina in a storm event?

- A. I'm just thinking of other marinas that have been repainted by storm events, such as down in Lyttelton but that does provide an option.
- Q. Mr Moss, you are familiar with Lyttelton Marina aren't you? It's all floating attenuates that marina wasn't it?
- A. Yes.
- Q. This is backwaters, you've read the evidence from Cardo and Mr Leman.
- A. Don't know about that one.
- Q. Well the marina design has all been modelled hasn't it?
- A. Yes.
- Q. This is not a marina like Lyttelton or Bayswater is it?
- A. No.
- Q. So I ask again, do you accept, given the marina design and the modelling, that this will be the most sheltered location on the island in a storm event?
- A. Yes.

1030

CROSS-EXAMINATION: MR LITTLEJOHN

- Q. Good morning Mr Moss.
- A. Good morning.
- Q. I want to start and just take you back to the issue of the moorings and the questions that my friend Mr Brabant asked you about the numbers and whether everyone can be accommodated. Now my understanding is that the MMA at Matiatia has a stated capacity of 98 moorings is that right?
- A. Correct.
- Q. But if I understand your evidence, there are in fact only 88 presently in the bay.
- A. Correct.
- Q. And I understood from your evidence that that was because that's in effect the practical minute of the number of boats that can be accommodated on current swing moorings?
- A. Correct.

Q. Now it's the case isn't it, the Harbourmaster cannot direct a current mooring licensee to upgrade their mooring tackle.

A. That is correct.

Q. So the notion of Mr Dilley's more efficient or a different type of mooring tackle being deployed extensively throughout the mooring areas to fit more boats in there is not a practical option is it?

A. Best be on the Harbourmaster's remit.

Q. So for all intense purposes, the mooring capacity in Matiatia Bay is very much limited by the swing mooring tackle used by the existing mooring holders?

A. Yes.

Q. Now my understanding is –

THE COURT: JUDGE NEWHOOK

Q. Mr Littlejohn would you mind if I asked the witness where the legal restriction or limitation comes on the Harbourmaster's powers, does it come through the bylaws or does it come legislation?

A. The power of the Harbourmaster is section 33F of the Maritime Transport Act.

Q. Yes.

A. And within that the Harbourmaster has the ability to board a vessel or go into a maritime facility, direct vessels and also enforce the bylaws and the level that usually works is enforcing the bylaws is low-level offending, directing a vessel. It's a bit more serious and carries a lot more penalties.

Q. Thanks for that clarification. Sorry Mr Little I just wanted to understand why that difficulty existed.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

Q. Now it's my understanding that Matiatia Bay is a wait list area for moorings is that right?

A. Correct.

- Q. And what that means is that if anyone is interested in obtaining a mooring at Matiatia Bay they are directed to make inquiries of the Harbourmaster?
- A. Correct.
- Q. And presumably the Harbourmaster then puts them on a list?
- A. Correct.
- Q. And then the Harbourmaster will contact those, presumably the person longest on the list if a mooring becomes available?
- A. Correct.
- Q. On the nature of that process, is it the case that in practice a existing mooring holder is not at liberty to simply transfer their mooring licence to anyone they want to?
- A. Correct. If the correct processes come to the Harbourmaster's Office and the next person of the list.
- Q. So in the scenario being profit by the applicant whereby those mooring holders in the northern area might need to go somewhere else, it's not a given at all is it that they can simply moved into the southern management area?
- A. Correct.
- Q. Those mooring holders would effectively have to go onto the waiting list wouldn't they?
- A. I'm not sure if they would or if they would get first choice, I do not know.
- Q. But presumably the Harbourmaster operates on an equitable basis and those that have been longer standing on the list get the first choice of the vacated moorings don't they?
- A. Correct.
- Q. So the notion that any displaced mooring holders from the north can simply be shuffled into the vacating ones in the south, it's not a notion we can rely on here is it?
- A. Correct.
- Q. And if those mooring holders are unable to be found a spot in the south, where else might they be able to go on Waiheke Island in its current mooring areas?

- A. The current status of the Waiheke MMA's is that they are actually over capacity at the moment.
- Q. So those mooring holders would have to go on a wait list for another area wouldn't they?
- A. Correct.
- Q. How frequently do moorings turnover if I can use that phrase at Matiatia Bay for example?
- A. Uh, I'll use the expression very rarely.
- Q. Very rarely.
- A. Now, my friend Mr Brabant updated you on some of the more recent numbers that the applicant has been able to identify as to those people who may wish to take the marina berth and as I understand it, of the 52 in the northern area, 25 have expressed an interest?
- Q. Correct.
- A. Is that how you understand it?
- Q. Yes.
- A. Were you here when Mr Wardale gave evidence in Court?
- Q. No.
- A. Mr Wardale's evidence was that as yet, those people who have indicated an interest in a marina berth have not been appraised of what the probable or likely price of that marina berth will be. Are you aware of the possible cost of a marina berth as this marina?
- Q. No.
- A. Do you think it would be more than the cost of a mooring at Matiatia Bay?
- Q. Yes.
- A. Would you agree that there is a prospect that once those people who have expressed an interest in a marina berth learn of the cost of it, that they might withdraw their expression of interest?
- Q. That is possible.

WITNESS REFERRED TO APPLICANTS CONDITIONS OF CONSENT

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

Q. In your evidence-in-chief Mr Moss on paragraph 18, you referred to a proposed condition point 6 set out in the Council's draft conditions which would require a mooring's management plan to be submitted for the Council for approval and on the basis of that condition you stated that you were satisfied that this would provide an adequate response to concerns arising from the loss of 52 existing swing moorings. Now if, you recall that evidence?

A. Yes.

Q. If I could just ask you to cast your eye over the proposed condition 40 moorings management plan and just confirm that that is the same condition that you were talking about in your evidence at page 18, number 10.

A. Yes, correct.

Q. Now if this condition is put up as a method to let's say deal with the prospect that existing mooring holders in the north would have to be moved, they might not want a marina berth, then this condition is the method by which that effect, that displacement is to managed isn't it?

A. Yes.

Q. On the terms of the condition, a management plan is to be provided to the Harbourmaster showing where the northern moorings are to be relocated, that's the first step. Where one of the existing moorings is not taking a berth within the marina, the plan says that the following process should be followed. Firstly, they are to be offered a mooring site within the southern area of area 62 that has been vacated by a vessel taking a berth in the marina. Now, we now know though, on the basis of the answers to the questions I put to you that it's not as simple as that is it?

1040

A. No.

Q. That in fact it is not up to the consent holder to allocate where any displaced mooring holders may go is it?

A. Correct.

- Q. So this condition, on its face, cannot achieve a process of addressing the displacement of mooring holders from the northern area can it?
- A. I think it presents a lot of challenges.
- Q. I think Ms Dunn in answer to a question to my friend Mr Casey, said that there's likely going to be some disappointment amongst mooring holders.
- A. Correct.
- Q. Is that a sentiment you would express as well?
- A. Yes.
- Q. Or equally couldn't there be disappointment amongst those who wish to take a marina berth and find that existing mooring holders have got the right-of-way?
- A. I'm not quite sure about that.
- Q. The second part of the management plan condition talks about the mooring holder being offered a pile mooring. Now, what we know is that there are 17 of those, is that right? Is that your understanding?
- A. That's my understanding.
- Q. But that's not enough, effectively, to accommodate those that may be potentially displaced is it?
- A. Potentially.
- Q. Now I understand that the pile moorings, if developed, would be under the control of the marina operator wouldn't they?
- A. That's my understanding.
- Q. So it would be up to the marina operator to deal with allocation of those on and off at its desire.
- A. That's my understanding, yes.
- Q. Moving on from that topic, thank you for your answers. Kayaks. Are you aware that kayaks existing from the southern beach at present paddle under the wharf structures heading north to avoid the ferry lane?
- A. I'm unaware of that but I'm not surprised.
- Q. And that's because at all times, effectively, there is sufficient room between the large piles of the ferry wharfs for kayaks to slip through and avoid having to go directly through the open water in front of the wharfs?

- A. If you say so, I'm unaware of it.
- Q. Well, assuming that that is a route available currently, that wouldn't be altered by the construction of the marina would it?
- A. No.
- Q. But once kayaks were able to get under the wharfs and wish to continue in a northerly direction they would be confronted with the southern access pier wouldn't they?
- A. Correct.
- Q. Have you done any investigation as to whether there would be sufficient clearance for kayaks to go under the gangway leading from the reclamation down onto the pier?
- A. No.
- Q. So, would you accept that depending on the state of the tide there may be insufficient room for kayaks to paddle under that gangway to get to the northern beach?
- A. Yes, depending on the tide.
- Q. You and your navigation colleagues all agreed that prior to the operation of the marina a safety and risk assessment should be undertaken?
- A. Correct.
- Q. And my understanding is that such an assessment will look at all of the potential navigation risks posed by the location of the marina structures, is that right?
- A. Correct.
- Q. Does it also look at the risks that may occur as a consequence of the navigation of marina vessels in and out of the marina?
- A. Yes.
- Q. There was also agreement at caucusing that kayaking within the marina itself was not best practice.
- A. Correct.
- Q. Do you remember that?
- A. Yes.

- Q. Do you consider that a safety and risk assessment could lead to a conclusion that kayaks should not be allowed access into the marina ferry lanes?
- A. I think the risk assessment, the risk assessment will identify any controls required to make things safer. I can't say if they'd be banned or not.
- Q. That's a fair answer. Is there a prospect though that kayaks could be restricted from access into the marina.
- A. I don't know legally how, under what power could restrict access.
- Q. In your evidence-in-chief at paragraph 12, third bullet point, you expressed the view from, from your peer review, that small vessels wishing to gain access to the northern beach will have to take under consideration the state of the client and the placement of the mooring piles and these factors may restrict access to the northern beach. Do you still hold to that view following the caucusing?
- A. Yes.
- Q. So it would follow wouldn't it, that compared to the current situation of relatively sparsely located boats on swing moorings and what is proposed with the marina that general navigational access for small craft to the northern beach will be constrained.
- A. It will be another consideration for those craft.

CROSS-EXAMINATION: MS MCINDOE – NIL

CROSS-EXAMINATION: MS PARKINSON – NIL

CROSS-EXAMINATION: MS MOORE

- Q. I'm Janet Moore here from Direction Matiatia, I'm the secretary for Direction Matiatia. I'm also a s274. I just had one question for Mr Moss. He agreed that the marina would be a safe haven in a storm. What if the blow up was from the nor-east?
- A. The marina provides a safe haven in certain weather conditions. When the weather does change it presents other challenges.
- Q. So you would agree that a nor-easterly could actually compromise the safety of the marina with regard to craft that needed a safe haven?

A. A north easterly wind, the marina does provide options but if the wind comes from other directions it presents different challenges.

Q. So the north easterly could be a problem?

A. The north easterly lay of the land provides shelter. So I don't quite understand your question sorry.

Q. The north easterly, one of our lay witnesses who has used Matiatia a lot, states that it is very difficult to bring a ferry boat into the wharf when the nor-easterly is ripping. So, what tends to happen is it blows the boats back toward where the rock wall would be. Okay, so it blows the boats back in the direction of the northern bay and that could be problematic couldn't it?

1050

A. All commercial vessels operate within strict criteria through Maritime New Zealand and that criteria is based on the vessel, the draft, weather conditions, so those craft will be operating within set parameters so those issues that you describe are addressed through the companies procedures through Maritime New Zealand.

Q. It might address those procedures for commercial vessels, what about private vessels?

A. Again, it comes down to the competency of that person and a proven marina will be looking at all weather conditions, so again it's competency of that person.

Q. Often the nor-easter blows up with very little warning which could complicate the whole situation. Thank you very much.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

Q. On the moorings that the Harbourmaster allocates, what's the basis of them, are they an annual thing or are they a permanent allocation?
What sort of –

THE COURT: JUDGE NEWHOOK

Tenure

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER HOWIE

Q. Yes, tenure, and what sort of authority do you have to change the tenure or kick them out or something like that?

A. The tenure is a one year permit or licence that the applicant pays approximately \$218 per annum for the Harbourmaster to administer the mooring site and then there's an expectation that if that person is there for say three years, depending on the state of the tackle, they'd have to get that mooring tackle looked at and inspected. So the tenure is a year by year and there are inspection regimes to look after the state of the equipment.

Q. And what is the practice of renewal?

A. The renewal is under the bylaws. The bylaws change actually on the 20th of October, we roll over to the year 2014 bylaws and as part of that, the new bylaw process, those individuals who own a mooring actually have to prove they are fit and proper people as well. For example if people haven't paid their fees the Harbourmaster with the new bylaw has the ability to not renew so the normal process is you will have it renewed but if people have outstanding fees et cetera they might find it a bit more challenging to be renewed.

Q. So the normal position is that they are, the expectation is they're renewed and the bylaw provides for that?

A. Yes.

Q. And then the second question I had in mind was these mooring management areas and I was looking at the figure 2, the March 2013 folder on the front. Figure 2. I noticed this morning coming in some boats moored nearer the entrance than perhaps the mooring management area extends to. What's the situation about moorings outside of the mooring management area?

A. If there's a mooring outside the MMA the mooring should have a resource consent.

Q. So moorings can be established through a resource consent process?

A. For outside of the MMA, yes Sir.

- Q. In looking at figure 2, is there opportunity for moorings seaward of the secondary break water?
- A. Yes.
- Q. How many would you get in there?
- A. I don't know, it depends on the size of the vessel and the swinging room required.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. Just carrying on that theme, is there a monitoring regime for the use of the moorings?
- A. Yes.
- Q. So what I noticed is that, according to my count, there are only 28 boats present on the northern moorings and about 18, I think, on the southern mooring and that seems to have remained reasonably consistent with the two travel times that we've come over to the island. How do you manage that use? How do you monitor it? And what happens if it's not being used?
- A. The way we monitor the moorings, we do audits of the different mooring areas. There is a provision within the bylaws, a mooring can be left unattended or empty up to six months. So a good determination if the mooring area was full is actually to check with the Harbourmaster office how many permits have been issued. It's not necessarily if there's a boat there or not because a person has up to six months.
- Q. They can take their boat off for six months?
- A. Yes.
- Q. Then what happens? The Harbourmaster takes the mooring away from them?
- A. It's in the bylaw. There would then be a breach of the bylaw and also a breach of their conditions and the Harbourmaster has the ability to remove that mooring from that person.
- Q. Does that get done?
- A. Yes but it is very challenging to actually implement.

- Q. One of the issues from the navigation point of view is the sheer increased intensity of use of the bay with the prospect of the marina. And one of the things that I've noted is the recreational boaters propensity to try and get in front of a ferry to avoid the ferry wash or the – after the ferry.
- A. Wake.
- Q. Wake, that's the word. So do you see any risk around that for recreational boaters wanting to come into the marina or leaving the marina and the operation of the ferry, particularly now that we have a second service on so it looks like they're going to be operating on sort of the half hour. Do you see any additional risk by the addition of the marina?
- A. I think it's fair to say and we identified it in our joint witness statement to six year. That any increase in the future, the likelihood of an incident occurring will rise or increase. Vessels leaving the marina itself and going out, don't see too many issues there, but it's more the interaction between the marina people or just general boats who go into the ferry manoeuvring area or to the north fuel wharf area, increase of traffic, likelihood of an incident does increase as well.
- Q. Do you see that there's the potential, as you increase the intensity of that private recreation or private use of the area to have an impact on the ability of the ferry service? The number of ferries that may serve that area in the future?
- A. I think during busy periods in the summer it might be challenging for the ferry skippers and then they would have to be mindful of recreational vessels there so it might be challenging for the skippers at time.
- Q. And that doesn't raise any concern. I mean once you get that established you can't pull back I would have thought.
- A. Mmm.
- Q. So I'm trying to look to the future. Do you see the use for the ferry service being compromised in any way?
- A. I think it's a worthwhile question and there will be challenges, I don't know if I'd use the word compromise because again there's rules and

regulations governing the ferry behaviour. The challenge is to recreational behaviour and education is the key.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Mr Moss, just picking up on Commissioner Howie's first line of questions about the tenure of mooring holders and you answered to him that the mooring licences are for 12 months. But then you started to employ the term "renewal" it may be that we should actually look at the bylaw itself to drill down to get the answer but for the moment could you tell us your understanding of whether or not the bylaw carries in its terms any expectation on the part of a mooring holder to get a renewal? In legal terms.

1100

A. Yes, I think the expectation without looking at the bylaw relates more to the upkeep of the mooring.

Q. Yes.

A. Without looking into the bylaw itself I don't know about the expectation on that person.

Q. If there was no connotation of a expectation of renewal built into the bylaw, would there be anything to stop the Harbourmaster from refusing a renewal perhaps say in the circumstances in which the marina had been consented if it gets consented and that it's time for a change.

A. The way it currently works is the annual renewal, the individuals are sent a bill.

Q. Yes.

A. And that's usually when we hear if they want to move on or relinquish.

Q. Yes.

A. Because they get a bill. That's usually the first indication we get when people want to (inaudible 11:01:14) –

Q. But is there anything, would there be anything to stop the Harbourmaster from sending a bill and regarding the mooring permit as having come to the end of its life.

A. Not too sure, I don't know.

- Q. Yes, it seems to me that it might be useful for us to see this bylaw Mr Moss, I wonder if you can arrange to supply that to the Court and to all counsel when you go back to your office.
- A. Yes. We've actually got two, we've still got the current one because that rolls over to the new one on the 25th of October so –
- Q. In my, in view of that advice my inclination is to ask for the new bylaw, copy of the new bylaw so perhaps if you can work with Mr Allan to arrange for that to be forwarded to the counsel.
- A. Yes.
- Q. And one further question, do you personally know of any current intention on the part of the applicant Waiheke Marina's Ltd to provide any number of berths, any particular number of berths for visiting boats?
- A. No.
- Q. You don't have such knowledge? Okay.

RE-EXAMINATION: MR ALLAN – NIL

WITNESS EXCUSED

MR ALLAN CALLS**STEPHEN KENNETH BROWN (AFFIRMED)**

Q. Your full name is Stephen Kenneth Brown?

A. Yes.

Q. And you're a Director of Brown New Zealand Ltd?

A. Yes.

Q. And for these proceedings you've prepared a statement of evidence-in-chief dated 10 June 2014?

A. I did.

Q. A rebuttal statement dated 23 September 2014?

A. That's right.

Q. And you've also participated in caucusing with the other landscape witnesses which resulted in a joint expert witness statement dated 22 August 2014?

A. That's true.

Q. And can you please confirm to the Court that the content of those three statements are true and correct to the best for your knowledge?

A. Yes I can.

CROSS-EXAMINATION: MR R BRABANT

Q. Good morning Mr Brown. I start with your evidence-in-chief please if you could turn to paragraph 15 and some of these matters will flow through into rebuttal as well. Can I start by asking if you've got all the figures, that is the documents with all the figures in them with you.

A. I believe so.

Q. So you've got 2013 March?

A. Yes.

Q. And you've got October 2014? If you're going to work with those ones that's fine.

A. Actually mine read the 6th of April so I might –

Q. The Court should've supplied them, behind Mr Brown you can access to them there.

A. Yes.

- Q. Now in paragraph 15 you've talked about key factors that would influence how the proposed marina sits within its landscape setting and you've listed some items.
- A. Yes.
- Q. Can I ask first of all because I'm sorry I can't recollect. Were you involved in the plan change 38 hearing, that's the Waitemata infrastructure hearing before the Environment Court?
- A. No.
- Q. Were you familiar though with the outcome of that hearing and its flow through into the operative plan and now Matiatia Gateway?
- A. No.
- Q. You've ready though Mr Scott's evidence?
- A. Yes.
- Q. In the second bullet point in your paragraph you've referred to the site sitting within part of the bay that is both more obviously effected by residential development and nearby commercial activities. And I take it you're referring there to what can presently be seen?
- A. Yes.
- Q. Have you given some consideration and I think you have from your evidence to the future environment in relation to what's provided for and the Matiatia Gateway provisions?
- A. Yes I have.
- Q. Now I want to just refer you to the design work that Mr Scott carried out following on the plan change 38 approval. Are you familiar with the plans that I'm referring to?
- A. Yes I am.
- Q. In October 2014, annexure 10, 11 and 12. They came through Mr Pryor's evidence.
- A. That's right.
- Q. But you can find them in a second document, the folio that the Court has provided. Whichever way suits. Have you familiarised yourself Mr Brown with the range of permitted activities in the now operative Matiatia Gateway provisions?

- A. Yes I have.
- Q. And I'm referring there to residential, to retail, to tourist facilities, to cafes and restaurants, those activities being permitted?
- A. Yes I have.
- Q. And the first building designed is taken, is indicative of what could emerge, would you see the purpose of this to transform a carpark into something that enlivens and engages this part of the land behind the foreshore adjoining the ferry terminal for residential and visitors, enlivens and provides facilities and opportunities? Would that be a fair description?
- A. I think so in terms of the resource management strategy that's outlined in part 10(a) and especially when it describes the mixed use area, that seems a fair description.
- Q. And would you agree with me that with this form of development and the activities if they are worth it become established under the provisions that are now in the Matiatia Gateway Unit, that would be urban development?
- A. Yes.
- 1110
- Q. Now Mr Brown, there are some viewpoint photographs that have been presented by different parties who have taken those and I want to refer to the views that first of all from the houses that sit up behind and above both the wharf area and the proposed marina site, you've been up and looked at those views, for example from Nick Johnson Drive to gain an appreciation of the view of the house that sits immediately below or have you been onto private property as well?
- A. No I haven't been onto private property, I've been on to Matietie Historic Reserve, close to the private boundaries. I've been up onto Delamore Drive, I've been to the end of Ocean View Road and I've been onto the beach area.
- Q. Mr Pryor re-visited the sites and produced some new photographs. Annexure 6 to his further evidence, Delamore Drive viewing location, so

I think I might have mentioned Nick Johnson but it's Delamore Drive I was meaning to refer to.

A. I thought that might be an –

Q. Sorry.

THE COURT: JUDGE NEWHOOK

Just pause. Do you find this exhibit in these booklets or –

MR R BRABANT:

It's an attachment, annexure 6 to the rebuttal evidence of Mr Pryor.

DISCUSSION – LOCATING DOCUMENT

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So Mr Brown, the challenge always for the landscape architect, would you agree, is to take photographs that give the best representation that you can, using your experience, of what someone actually sees when they stands there?

A. Yes.

Q. Do you consider yourself that these photographs, and we may as well pick all three of them up, give within the limits of being able to replicate a fairly reasonable representation of the scope or breadth of the view?

A. Yes. It's actually quite difficult to find a place that offers a clear view of Matiatia Bay.

Q. And there's a little inset photograph, area down to the right-hand corner that tells us where these photographs were taken. For yourself do you feel that for the houses in the near vicinity we get a reasonable representation of what they experience?

A. For the houses in the near vicinity, though I have to say that there are three houses in the particular, I think they're 120, 122 and 124 Delamore Drive that site further down the slopes, I think that those have a slightly different degree of outlook and exposure to the bay. That's not captured by these photos.

- Q. And while we're on this topic if we move across to the Nick Johnson Drive photographs which relate to the Rocky Bay Store sculpture on the wall by where those sculptures are established, and you've been up there as well?
- A. Yes.
- Q. And I'm referring here to 4 and I think 8 as well.
- A. That's right.
- Q. Again, the same question, do you think within the limits of what you can achieve to photograph what people can see, those give a fair representation of the breadth of view?
- A. Yes I do.
- Q. Mr Brown, as with lots of projects there are the question of the impacts or effects while something's being built and then the impacts or effects including within your sphere of expertise once something is established and I'm referring here to your paragraph 26 in your primary evidence.
- A. Yes.
- Q. Would you accept the proposition that once established the marina is essentially a benign type of activity?
- A. Not entirely. My conclusions and general findings relate to the marina in its permanent state and in that the views, and as I've already indicated in my reports and my evidence, I do retain some concerns about the amenity effects of the proposal. So I don't believe that it will be entirely benign.
- Q. Now, if we undertake a comparative exercise of looking, we can go further afield, but if we look at other marinas in Auckland and I mentioned Orakei, Gulf Harbour, Half Moon Bay, those marinas all have hardstand or haul-out areas associated with them don't they?
- A. Yes they do.
- Q. And do you think that makes a change in terms of the amount of activity and everything that goes on where you've got a marina with hardstand haul-out area associated with it?
- A. Yes I do but I don't think that is the only difference or the only consideration that you have to take into account when comparing

marinas. You do have to look at the landscape context, the site context as well, and the general configuration of the proposal. So I think it's very difficult to contextualise it in that way and just focus on that one aspect.

Q. Can I ask you to go to the foot, so within paragraph 34, I'm still on your principal evidence, you've talked at the bottom of the page with a heading in bold, "The proposal would significantly detract from the aesthetic attributes and appeal of Matiatia Bay" and so forth.

A. Yes.

Q. And you refer there about two significant changes and the point being reached where it is now largely shaped and characterised by the presence of large lot residential properties, can we deal with that first and I just ask you look at figure 1 in the primary sect 2013? The aerial photograph.

A. Yes.

Q. So in relation to the marina, the wharf and then the mixed use and transport area to the right, these large lot residential properties and if you could perhaps help with a description just to tell us looking at the area which ones you're referring to.

A. Well when I'm referring to the inner bay and I know that's a contentious term but when I'm referring to that part of the bay which is the north-eastern end of the bay, I'm referring to those properties essentially below Delamore Drive off the end of Ocean View Road and they are the ones which are shown generally above or north of the existing parking facilities and wharf facility.

Q. And they all appear to have an area of curtilage around them that's not planted is that right?

A. Yes.

Q. And you'd expect that they would retain an ongoing view out from your observation?

A. Yes to varying degrees I think they will.

Q. And therefore they will remain conspicuous in the future looking towards them?

- A. I think some will be more conspicuous than others but I think there will be an ongoing awareness of those buildings, they will retain a certain visual presence.
- Q. Yes. And you've got a series of bullet points that carry on, if we go to the next page which for the record is AC115 but a bullet point heading, "The proposal would result in the loss of amenity along the shoreline?"
- A. Yes.
- Q. Now there you refer to kayakers no longer being able to cruise past the ferry terminal to directly access the beach. Even this morning we heard that people will go under the wharf but were you here when Mr Wardale pointed to the ability to go under the gangway that joins from the reclamation to the south access pier. Were you there?
- A. No I wasn't.
- Q. So if I take you to, this is in the first set, figure 14 so that the elevation that I'm referring you to is called elevation at carpark side.
- A. Yes.
- Q. Second one down the left.
- A. I see that.
- Q. Do you see the water space available there?
- A. Yes I do.
- Q. And if we go then to figure 33.
- A. Yes.
- Q. And if you open that right out you can see then can't you that they can continue and the contour lines are there, the depths, Mr Brown, they can continue round and continue clear of the marina for that matter either side of the pile moorings and out the other side. Yes?
- A. Yes, I agree that I may have misinterpreted the situation.
- Q. That's right. And so if we then look finally at that point, at Viewpoint 4 which is figure 55.
- A. Yes.
- Q. So I'd like to suggest and you can see actually where they'd come from over by the wharf there where the kayakers could come from.
- A. Yes I can see that.

- Q. And there's actually a fair bit of water space in there isn't there Mr Brown? I mean the marina doesn't – there's not impeding a – some water space that takes people right around that bay edge.
- A. Yes I think I mentioned the point where I just about need a magnifying glass to see that but I will take your word. There's enough room for a kayaker to get there, I believe there might be so.
- Q. I'm not asking about whether they can get under the gangway but someone else has said that. I'm just saying that if they merge, and you can see their little deck there, if they merge into that space I'm more talking about the water space available inside the marina which you can see.
- A. Oh yes, I've never thought that that was an issue, it was simply getting there.
- Q. If we can move now to your rebuttal evidence.

COURT ADJOURNS: 11.27 AM

COURT RESUMES: 11.55 AM

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Mr Brown, the next issue in terms of the effects that I'd like to address with you, in relation to the evidence that's both come from Ms Gilbert in particular, but also from individuals that you will have read about the characteristics of the bay is the question of the night time situation and can you go to Viewpoint D please which is figure 67.

A. Yes I'm there.

Q. It's fair to ask you first, of course, whether you have had occasion to be over at Matiatia Bay at night.

A. Yes I have.

Q. And does that representation of the wharf and Ocean View Road that's depicted there, and you can see where it's been taken from, there's some houses right... Does that surprise you? In other words the lit up nature?

A. Oh probably the starlight effects are a bit stronger than I would have thought but in terms of the actual degree of area that's lit up, no not really.

Q. And if you were coming in in a ferry in the evening, and we've heard about that in the evidence, you would see that and would you not also see the lights of these houses up on the slopes behind as well?

A. Yes you would.

Q. And when the mixed use development were to proceed, that would add to the amount of lit area as you come in?

A. Yes it would.

Q. Significantly wouldn't it? That mixed use development we've discussed.

A. I believe so.

Q. So you haven't said anything specifically about night time but do you agree that it's a relevant consideration when we look at what the bay is presently like and how a marina could affect it to take into account that night time situation?

- A. Yes, I mean night time effects are always complex because you're not so much dealing with sort of perceptions of a bit of landscape anymore or the environment, you're dealing more with perceptions of sort of the night sky, I guess solitude, remoteness, you're looking at a slightly different range of qualities. But I did actually raise the issue of night time effects in my original AEE review so it was a matter that I felt needed to be addressed.
- Q. If I can take you to paragraph 28 of your rebuttal. And your reference is to a, "Landscape that is more cultural and modified than natural," and what it includes and at the very top of the same page you talk about the local landscape being modified or manmade at night this is quite different from a natural bay that you may find if you went around the corner to like Opunake at night isn't it?
- A. It is, even at Opunake you're still going to see residential lighting an occasional car headlights but yes, this will be more strongly lit than Opunake or Church Bay or any of the others in the vicinity.
- Q. And then the last thing, your paragraph 29, and what you say there about the relationship the marina would have with the other structures and activities and characteristics. It's relationship or synergy (I think you put it somewhere else) with this ferry terminal.
- A. Yes.
- Q. Do you acknowledge that for some people not only would that marina be seen as an expected development as Matiatia grows and intensifies but may be seen by some people as a positive rather than a negative, in other words they enjoy seeing the boats there?
- A. I've tried to be careful about not making too many value judgements in that way. But I do think, and that's right I used the term synergy, I do think that in the future that co-locating the marina in this location next to an existing wharf and transportation facilities and a village, could be seen as a beneficial outcome.
- Q. And the access down the southern pier gets you to the primary breakwater, a 30 minute wait for a ferry provides an opportunity to enjoy that view?

A. Yes, on a fine day, yes.

CROSS-EXAMINATION: MR CASEY

Q. Mr Brown, you were engaged by the Auckland Council to undertake a peer review of the landscape, the visual and landscape assessment prepared by the applicant.

A. Yes I was.

Q. And in your rebuttal evidence you confirm that you did not yourself reassess Matiatia Bay but rather relied on the LA4 work that had been done.

A. I didn't undertake an assessment in detail, no. Certainly I didn't go as far as I normally would, for instance, to undertake an assessment of individual viewpoints and looking at the specific effects in relation to all of those viewpoints.

Q. When you prepared your evidence-in-chief, you identified what you considered to be the main viewing audience being the residents who would look at the bay and therefore see the development.

A. Sorry, which paragraph are you referring to?

Q. Paragraph 20 of your evidence-in-chief. You say that, "Those most affected by the proposal in terms of potential visual incursion," and so on, "Would be nearby residents."

A. Yes, that's correct, and that was specifically addressing the issue of amenity effects. It wasn't addressing landscape or natural character effects.

Q. So those who would be mainly affected by landscape and natural character affects would be who?

A. Oh well, you would still have local residents but you'll also have daily commuters, you'd have visitors to Waiheke Island. You'd effectively have everybody who uses or passes through Matiatia Bay.

Q. But they also, those people that you described, would also be affected in terms of the amenity that the current landscape offers?

A. No, more to the same degree, and the reason I say that is I think that when we're dealing with amenity you tend to be dealing with a more

focussed and more in-depth understanding of that local environment and landscape. And I think the people who are primarily affected in that respect, particularly in relation to the sort of identity at the place, its sense of place, outlook, views and so on tend to be the local residents.

Q. In your evidence you differentiate natural character from I guess amenity character or amenity value.

A. Yes.

Q. And if I have understood you right you say that the planting of (inaudible 12:05:02) seeds on the slopes as you enter Matiatia Bay is not natural because it's been planted, man-made plantings.

1205

A. Yes, in fact that was agreed in the joint witness statement. We all agree that the planting will in time contribute to the natural values and ultimately the natural character of the bay but it is still manmade, there are man-made patterns associated with it. It hasn't reached the point yet where there's a natural sequence and succession. So at this moment it's still not a natural element.

Q. Would you then say it was an amenity element?

A. Yes I would.

Q. But would you agree with me that the people who would most appreciate that amenity element would be the people you've described? The visitors coming into the bay or the non, if I can call it the non-local residents, if you know what I mean, the residents of the wider Waiheke experiencing as they've described.

A. Well I think it's part of the landscape experience and I think it's a positive part of the landscape experience when visiting Waiheke.

Q. Because not everybody has got your sense of appreciation of when planting is man-made and when it occurs naturally.

A. I quite understand that. And perhaps even some people don't clearly differentiate between the native planting and the olive groves and so on which are also found around Matiatia Bay.

- Q. And you'll be aware from the evidence you've probably read and from your own knowledge that a lot of the community on Waiheke do value the planting that's been done at Matiatia.
- A. Absolutely. I completely agree.
- Q. And a number of them have actually participated quite actively in it.
- A. Yes.
- Q. I put it to you, therefore, Mr Brown that you are a little bit unfair to categorise that re-planting as creating a veneer of naturalness. Isn't that being a bit harsh to the people who would appreciate it as, in the way that I've described?
- A. No I think what it reflects is the fact that there's been, and I hate to use this word but, a trade off. And a trade off has been the planting, which does create a natural, a more natural appearance for the level of increased residential development that now is found within Matiatia Bay and it didn't, for instance, exist there 16 years ago. So that has been effectively the change. Once or prior to around about 1995 most of Matiatia Bay was surrounded by pasture. There was some Pohutukawas on its fringes and the very odd small scale patch of remnant bush. Now there's much more vegetation than there was in those days. But there's also much more development.
- Q. When you say "much more development" are you there referring to the residential development on the slopes?
- A. Yes, residential development, the roading associated with it, the areas of (inaudible 12:08:40) and open spaces that still remain. So, the trade off has been one of, in one respect the creation of more natural patterns with planting but at the same time the development of residential properties, structures, infrastructure and activities, so that is the trade off that has occurred.
- Q. And would it be fair to say that the trade off was what the community desired and accepted?
- A. I don't know to be frank. I'd say that at the time there were mixed views. I remember attending a workshop held at Auckland University where Professor Palmer actually said that he much preferred Matiatia Bay

when it was still open pasture and had relatively few buildings and structures within it and around it. So I think there's mixed views on that and but you know my own view is that the change has been positive.

Q. And I think you mentioned before that this planting that has occurred will mature over time and become more natural, if I can use that phrase.

A. Yes, it will.

Q. And we're already seeing that it's helping to screen or at least moderate the appearance of the buildings, the houses.

A. Yes.

Q. And that will continue to occur.

1210

A. Yes, well it's more effective in some areas than others, I still have problems with some of the houses but I'm not going to go into which ones.

Q. Now you talk in your evidence about there being two parts to the bay, the inner bay and the outer bay.

A. Yes but I also qualify that by saying that simply reflects a sort of transition and you can't see it as a hard line.

Q. I suggest to you that for people entering the bay by ferry or boat, they don't see that as they enter the bay?

A. No, I figured something that's excused in the process of actually moving through the bay and entering and moving it so it's part of that, the part of the arrival experience is part of the journey through Matiatia Bay and out of it.

Q. Your arrival experience at Matiatia is that you come through the heads and what you see in front of you is the bay itself?

A. Yes.

Q. The water and what you see as you come through the inners is an opening up of that bay, is that what you feel?

A. Yes.

Q. And you also see the moored boats.

A. Yes you see the moored boats, you see the wharf area and so on, that will become clearer as you move into the bay.

- Q. And it's probably not until you're well within the bay that you see behind you there was an area without so much in the way of moored boats?
- A. Yes.
- Q. Now in the joint witness statement and I think you've already pointed this out at paragraph 12 it says that, "The experts agree that the ferry experience offers the most important visual experience of the bay"?
- A. Yes, that's in relation to the value of the setting for tourism and recreation.
- Q. So just in that setting and not otherwise.
- A. Not in general. The focus in that particular point was all about, really talking about the setting that Matiatia provides for tourism and recreation.
- Q. Well that might needs a heading that precedes paragraph 12 but paragraph 12 describes the most important visual experience of the bay as being the experience of passengers on the ferry?
- A. Well, but it's contextualised by that heading, I mean, that experience certainly wouldn't be as important for instance for people who live off Delamore Drive, they would have quite a different experience and they would value and appreciate the view and the experience in quite different ways.
- Q. And the importance to them is not to be underrated.
- A. No.
- Q. And I don't suggest that you do that but do you agree that the most important visual experience of the bay is that which the ferry experience offers?
- A. I think it is for the wider community but I don't think that reflects the importance of – it's very hard to balance that against the experience for instance that local residents have and their experience is quite different.
- Q. And just what's in paragraph 12 there, has that always been your view or is that a view that you came to after sharing with the other experts?
- A. No I think it's a view that I've always held and its probably the one that I can relate to the most because I don't actually live at Matiatia so it's the one that I've experienced the most too, it's the one is in that respect

most accessible to myself and others who go to and from Waiheke Island.

Q. And not just people like you and me that might visit occasionally but people who live here and for whom that is what they call their gateway.

A. That's right.

Q. Can I suggest that you don't emphasise that in your evidence, your evidence-in-chief that you've prepared, we don't see much focus on the experience of those entering or for that matter leaving the Matiatia Gateway?

A. I think if that had been the case then I wouldn't have reached the conclusions that I had overall I would have perhaps given far more weight to just the experience of the residents who live within the bay but as it stands I did in fact consider all of those different viewpoints and different perspectives when reaching my findings and conclusions.

Q. Well I'm interested you say that because again as I read your evidence-in-chief you were in fact looking at the assessments of Mr Pryor.

A. That's right.

Q. And his viewpoints.

A. Yes.

Q. And I suggest to you that only one of his viewpoints is a viewpoint that would be seen by visitors either entering or leaving Matiatia Bay by ferry.

A. I'll just have another look at those please.

Q. I'll take you to his viewpoints and if you've got the March 2013 volume, it starts at figure 47.

A. Yes.

Q. And that's the GPoint locations.

A. Yes. I think that Viewpoints 1 and 6 are probably important in terms of that arrival and departure experience.

Q. Well Viewpoint 6 is just from the wharf isn't it?

- A. Yes but that's where people either arriving or leaving Waiheke to spend at least some time so it's actually quite an important point, quite an important advantage point.
- Q. Well I suggest to you that the real issue for visual amenity, both landscape and amenity for each is the experience as you come into the bay and progress through it and then there's you leave the bay and go out.
- A. Yes but that gateway experience that you've just talked about acknowledging that it goes both way, on one hand it does have to deal with Viewpoint 1. But on the other hand it's also related to the experience of getting ready to depart, waiting for the ferry, standing on the wharf and looking out over the bay.
- Q. Well that's your support for Viewpoint 6, can I come back though to Viewpoint 1 which you'll see is shown at figure 48. And from the viewpoint location we can see that it is right out, almost outside the bay certainly it's before you get to the northern headland isn't it? The position from which that viewpoint was taken.
- A. Well it looks to me as if in reality it's roughly parallel with that northern headland. It's at the point where you just come into the bay, you're exposed to all of that what I've called the outer bay area and looking further ahead you can see the ferry terminal which acts as a sort of focus and you can see the head of the bay as well.
- Q. But it provides really only a distant view of the existing boats?
- A. Oh look I totally agree with that.
- Q. And a distant view of the marina.
- A. Yes.
- Q. All right, I'll simulate a view if I can call it that.
- A. Yes.
- Q. Of the marina.
- A. And let's be frank. I felt that you know photo points or viewpoints and photographs are always a pretty poor surrogate for the actual experience and I think any landscape architect who works in this area will tell you that it's absolutely critical to look at the situation on the

ground. So yes these photographs depict they're a snapshot that depicts one part of the experience but they're not the totality of that experience at all.

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Q. Do you think it would have been better if Mr Pryor had produced other viewpoints as one approached more closely of the wharf, for that matter, and the area that the marina is going to be located in?

A. With the benefit of hindsight I think it might have been useful, yes.

Q. Would you agree that if that were the case we would see more of the area to the north of the bay, what I've called the opening up of the embayment?

A. Yes.

Q. And the simulation of the marina would be showing more of how much that area would be taken up by the marina.

A. Yes I think that's absolutely correct.

Q. Now as well as talking about the inner and outer bay, I noticed in your evidence you also used the word "quadrant".

A. Oh yes.

Q. And if we go back, perhaps if we go to figure 2 of that volume. And without being too precise could I suggest to you that the marina shown there takes up a quadrant?

A. I think that's a fair description.

Q. Now, in the joint witness statement again, just keep figure 2 open because I'll probably want to ask you some questions about that. At paragraph 1 it says that the experts agree that the following landscape elements need to be taken into account. And because this is under the heading "The Existing Landscape, Natural Character and Recreation Environment" that's the context within which we're reading paragraph 1?

A. That's right.

Q. And so it identifies a number of natural character considerations or natural character factors?

A. Yeah, well landscape, it says there the "The following landscape elements."

- Q. Landscape and natural character. And you agree then the sea surface is one of those?
- A. Yes.
- Q. And you were here when Mr Pryor was giving his evidence?
- A. I wasn't there for all of his cross-examination, I think I probably saw about half of it, heard about half of it.
- Q. But it's not just the sea surface, it's the fact that the sea surface is of itself an interesting dynamic.
- A. Yes.
- Q. And it's changing character.
- A. Yes.
- Q. And the vegetation including heritage trees and Pohutukawa?
- A. Yes.
- Q. And the rocky foreshore. And the land – I'm just drawing your attention to a few that I then want to ask you about. The land/sea interface and the regenerating slopes?
- A. Yes.
- Q. Now if we go back to figure 2, and I appreciate this is an overhead rather than from the viewers viewpoint. But, in the quadrant or in the area that we say is to be taken up by the marina, there's obviously a fair, be some sea surface involved there.
- A. Yes.
- Q. It includes along the, sorry there's significant parts of the rocky foreshore?
- A. Yes. Perhaps less than other parts of the bay, I mean the southern shoreline and the outer heads are more dominated by that rocky shoreline, shoals and so on.
- Q. I'm not saying this is the only place but from the outer breakwater, the secondary breakwater there's a section of rocky foreshore there.
- A. Yes there is.
- Q. That then becomes part of the, we call it the beach, the rocky beach.
- A. Yes.

- Q. And at the other end where the carpark is to take up, that's another section of rocky foreshore?
- A. Yes. Small but yes it is there.
- Q. It's small but it's the bit that you would probably as a visitor be the closest to when you arrive.
- A. Yes, if you actually walk around that corner but yes I agree.
- Q. And if you were, for example, arriving and wishing to go on a walk, that's where you start.
- A. It depends which direction you're going.
- Q. Of course, I'm talking about a walk in that direction.
- A. Yes.
- Q. And I was going to ask you about the vegetation. We've got some rather attractive Pohutukawa, well established Pohutukawa right in that location.
- A. Yes they tend to be more prominent near the break, the proposed breakwaters and then extending out towards the headland, but yes.
- Q. And of course the land/sea interface, all around that shoreline.
- A. Well the land/sea interface is everywhere. It's all around the margins of the bay.
- Q. Now, in paragraph 2, "The experts agree that the natural character of the Bay in its entirety are not high or outstanding," but, "They agree that there are elements that do have higher natural character values." And would you agree that those elements that I've just pointed out to you would be included in that list?
- A. Sorry a list of high or outstanding?
- Q. No, where it says in paragraph 3 the ones that had, "Higher natural character values."
- A. Yes.
- Q. And higher means –
- A. Relatively.
- Q. Yes, more than high.
- A. More than high? Well no. I couldn't go along with that.
- Q. We've got high, higher and highest are you –

- A. No. Higher is, high is not higher than high. Let's just say high. I think this is where we get, we're getting into semantics but I think what I will say is that if you look at the entire continuing of natural character across, found throughout the bay, it goes from very low to high and some parts of it reveal more natural character value than others and these were the features that we identified as revealing more natural character value. But I wouldn't say that it's consistently high at all.
- Q. I don't think anyone's suggesting that and I'm not asking you to go against that but what I'm seeking to do and I think you've answered my question was to identify that in the quadrant we're talking about there are a number of the features that make or that come within this description of higher natural character values.
- A. Well some of them are, yes. I think actually when you look at that point 3 it's fairly clear that the locations that were being talked about. I mean it's quite clear when you look at figure 2, where the areas of rocky headland and shoals are, where they're concentrated. Where the mouth of Matiatia Bay is. Certainly where the water area of the outer bay is and birdlife is a bit harder to pick up and I've seen dolphins right in against the wharf, so you know that's something which is a bit harder for us to really quantify in any degree. But the mature Pohutukawa, yes, and I've said that those extend from close to the breakwaters out to the northern point and so on.

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- Q. And the rocky foreshore?
- A. Yes.
- Q. You see why I ask that question is, paragraph 3 talks about including, it's not intended to be exhaustiveness but I think you'd agree with me that the points on the list paragraph 1 that I identified also present in the quadrant that the marina will take up.
- A. Point 1 is ranging across the entirety of Matiatia Bay and I mean for instance, you know, it addresses the kayaking centre which isn't in that northern quadrant so some of these things really are associated with the bay as a whole not just that (inaudible 12:340:50) quadrant.

- Q. I'm sorry Mr Brown I understand that and that's why I picked out the things from the list in 1 that were particularly present in the quadrant that we're talking about.
- A. Well I think if you're going to do that I think you should also refer to the wool shed and the ferry building and the stoney beach and the rural residential housing and so on.
- Q. Yes, and some of those would contribute to high natural character and some perhaps not so much.
- A. Yes there's a clear counter balancing going on there.
- Q. Now the modification we talk about, that you talk about in your evidence as well, you've spoken about the residential development some of which features in the slopes above that area.
- A. Yes.
- Q. But as we understand it's a rural residential zone and so the residential is not intense, there's not that many houses in other words.
- A. No but there are parts of the bay where there's a greater concentration of housing than other areas for instance, the area north of the ferry terminal, there's a concentration of around about seven residential properties and there's another property that has yet to be developed, there's also the red wharf shed so there are more buildings as it were, more structures concentrated in that part of the bay then say elsewhere for instance along the southern shoreline where houses are pretty few and far between.
- Q. When you say there are seven in the area to the north of the wharf area.
- A. Yes.
- Q. Those are the ones that are visible from the bay itself?
- A. I think they're all visible from the bay itself. They're certainly also visible from the likes of Nick Johnson Drive and the old Rocky Bay Store lookout.
- Q. So we have that degree of modification in the land above the bay?
- A. That's right.
- Q. And except of course the wool shed which is on the bay, in the bay.

- A. Yes there's the wool shed bought out facility we see, now, there are structures.
- Q. Yes. The most apparent modification if I can call it that would be the ferry, wharf and the area where the cars park to the right of the ferry wharf as you come in?
- A. Yes, and I think even Viewpoint 1 shows that. It show the ferry terminal as a focal point, it's sort of on axis as you come into Matiatia Bay and it's something that is quite prominent in that view and it becomes more prominent as the ferry moves towards it.
- Q. It becomes more apparent but of course you're heading straight towards it, are you saying it becomes more prominent as well?
- A. Well it must do it's in the very centre of the view. It's framed by both sides of the bay and it really contrasts with a lot of the other elements that we've talked about within the bay so it naturally draws people's attention.
- Q. But as you say, it's in the centre and it's got the bay on either side of it.
- A. That's right.
- Q. And that gives the experience of entering the bay a certain symmetry, would you agree?
- A. I suppose you could describe it at that, yes.
- Q. Now I'll take you to paragraph 36 of your evidence-in-chief which is your conclusions, now you say that, at the end of it you say that, "Requirements will be met by integrating the marina with other maritime activities and structures within Matiatia Bay.
- A. Yes.
- Q. It's not really going to be integrated with those structures is it? It's going to be standalone time wouldn't it?
- A. Well I don't agree with you. I think there will be, and of course I've also risked, referred to a certain synergy. I think there will be a direct linkage for instance to the ferry terminal and wharf and therefore by extension to the future coastal village. I don't think that you can say that these are going to be three discrete separate entities, they are going to be linked quite clearly with one another if they go ahead.

- Q. But you also say that most of its affects are limited to that part of the bay which is already significantly modified?
- A. Yes.
- Q. Can I suggest to you that the part of the bay that is significantly modified is the ferry and terminal and the area to the right of it.
- A. I don't see quite the disconnect between the subject site and the ferry terminal and coastal village site that you appear to. I think the three are quite closely interlinked and that is fundamentally I think why there is a difference of opinion between the landscape experts. I think some of us see a logical connection and integration between the marina, the ferry terminal, the transport centre and the village whereas others do see them as separate entities. I'm afraid I'm in the first screw so that is the reason why I have reached the conclusions I have.
- Q. Do you accept though that even from a landscape point of view there's a separation because the ferry terminal and wharf at the base of the headland which itself is at the head of the bay, and even without the ferry terminal or wharf would separate the two parts of the bay?
- A. I thought about that and I suppose that there a number of viewpoints which are particularly relevant to that, Viewpoint 1 is relevant, there's also the view – if you'll excuse me for a second while I just check. Viewpoint (e), yes, I felt that, it's not a particularly good photo but I think that it shows that, even though that headland does create – oh sorry Your Honour.

THE COURT ADDRESSES WITNESS – IDENTIFY FIGURE 66

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CROSS-EXAMINATION CONTINUES: MR CASEY

- A. That's right. And the point I'm making is that even though you can see that headland and it's quite an apparent part of the landscape it doesn't actually divide the bay in quite the way that you've suggested, in fact there is a clear continuity across the head of the bay that stretches from the terrace area, which is to the right, and where the existing carparking

and so on are located, through the point or headland that you've referred to, which is where the ferry terminal is, through to the northern bay which is where the marina site is located. And I think the same experience unfolds as you come in by ferry, you don't see a clear division into a right and left-hand side. It reads as the head of the bay.

Q. Again if we come back to your word "quadrant", can I put it to you that the area that the marina will be taking up and the area that it will be affecting in terms of visual and landscape is an area that has not been significantly modified.

A. No I don't agree with that. I think that it's very easy to look at a map and say this area has been subject to change and that area hasn't and this area has got trees in it, this area's got sea in it and so on and they're all discreet and they don't overlap. But the reality is that if you are looking at a landscape you are influenced by everything that you see in front of you. You are also influenced by the experience of moving through that landscape. It's not a static experience in the way that these viewpoints suggest so my perception of Matiatia is that particularly around the head of the bay there has been significant modification and it relates to the ferry terminal which has been there for a long time in one guise or another, to the parking area and to the commercial facilities and more recently to the more residential development and to the more boats as well, of course.

Q. I put it to you that the rocky coastline and the land/sea interface and the mature Pohutukawa trees in the area where the marina is going, or proposed to go, and it will be affected by the marina in that quadrant of the bay show that that area has not been significantly modified.

A. They're residual elements, they're remnant elements of a time when Matiatia was much more natural than it is now but that doesn't mean that the whole of the bay or even a quadrant of it is natural at this point in time, it's not. It's been heavily modified in reality and the truth is that while the planting which has occurred over recent years has helped to give it the appearance of being more natural, virtually all of the bay surrounds have been modified by human action.

- Q. Can I then take you please to paragraph 17 of your evidence-in-chief. You say in that paragraph that, "It remains inevitable that the very presence of the marina would erode some of the natural character value," and you haven't changed that viewpoint?
- A. No I haven't, I haven't but you have to understand, as I've tried to make clear, I don't regard the part of the bay that we are addressing as having high natural character value. It still retains some residual or remnant natural character value, there's no question of that.
- Q. And that natural character value such as you describe will be affected adversely.
- A. Yes it will.
- Q. I'm also intrigued by your description of the affects being concentrated at the head of the bay.
- A. Yes.
- Q. Can I suggest to you that what will happen is that the effects will be concentrated across the whole of that part of the bay that we see in figure 2 which is the whole of the quadrant that we talked about before.
- A. I don't think that there's any doubt that that quadrant of the bay will be appreciably changed by the marina, there's no question of that. I think if you refer back to the example that you gave, in fact of Viewpoint 1 and the experience of arriving at Matiatia. I don't think at that point or moving through what I call the outer bay, the marina is going to massively change or grossly change people's perceptions of the bay. As you get closer to it that that will inevitably happen.
- Q. And as you get closer to it what it then obstructs is the view behind, when I say obstructs, it is in the view, that previously or currently shows the opening up of the bay as we described before.
- A. Yes. There's no question that that will be affected.
- Q. Yes thank you. Now, I just want to ask you a few questions about your rebuttal evidence. And if I can ask you please to go to paragraph 27 where you are addressing the evidence of Ms Gilbert.
- A. Yes.

- Q. And I'm not quite sure what you mean by the phrase, "I cannot help but wonder," does that mean that you disagree with her?
- A. Yes I do.
- Q. So you disagree with her observation that the marina will present distinctly engineered and linear form with –
- A. No I think I made it quite clear, if you go on to read my paragraph 28 I say that these effects which I accept will happen to a certain extent are all contextualised by the marina's location within an agreed landscape that is more cultural and modified than natural. So what I'm saying is yes, these things will be apparent but you have to have regards to the contexts in which they are seen.
- Q. So you're not disagreeing with her you're just saying that they have to be seen in context.
- A. That's right.
- Q. Thank you, I needed to understand that. And you say that far from least is the existing moored vessels, so you regard those as being quite a blight do you or not?
- A. No I don't think they're a blight. I think they're a part of a reasonably attractive maritime environment and I think they fit in there very well.
- Q. Now at your paragraph 31 when you are addressing the evidence, again I think of Ms Gilbert, we again have the phrase, "I cannot help but wonder just how realistic and genuine such concerns are." Does that mean that you consider those concerns are not realistic and genuine?
- A. No I probably could have used a wrong phrase there. I didn't mean genuine in the sense that they're not honestly held, I meant are they really robust. So I probably should have rephrased that. What I was really saying there was that I felt that some of her concerns that are indicated reflect the view of Matiatia Bay and even of Waiheke that I sort of think is a little bit green tinged, it doesn't necessarily reflect the reality of what Waiheke is like.

- Q. But I didn't read it the way the way you did, other evidence, particularly that of Ms Gilbert is comparing Matiatia with other parts of Waiheke, have you seen it differently?
- A. Perhaps I did.
- Q. And you see in another section of your rebuttal evidence you go on at some length about areas of the island that you regards as having outstanding natural landscape.
- A. Mmm.
- Q. Again can I suggest to you Mr Brown, that wasn't called for because it's not by way of reply to anyone's evidence that suggests that Matiatia has outstanding natural landscape.
- A. I don't think it was a response to the idea of an area being identified as an outstanding natural landscape but I do get the distinct impression that there were feelings about Waiheke being pristine and certainly clean and green and that those have to be contextualised by the reality of development across Matiatia and Waiheke.
- Q. Would it be fair to say Mr Brown that your main focus of both your evidence and your rebuttal is the natural character element of the landscape.
- A. No I don't think that would be fair at all, I think that I have definitely considered the natural character landscape and amenity implications. If I hadn't considered the amenity implications I wouldn't have reached conclusions that were so different from Mr Pryor for instance.
- Q. Now there are some questions by my learned friend Mr Brabant which I just wanted to clear up a few things with you. So far as the Matiatia Gateway land unit is concerned you've obviously read the evidence of Mr Scott?
- A. Yes.
- Q. And you were referred to some of the pictorial representations that Mr Pryor has put into his evidence?
- A. Yes.
- Q. Now you're aware I take it of the provisions of the Matiatia Gateway section of the plan?

- A. Yes I am.
- Q. And would you agree with me that there is a strong focus in them of the desire to recognise and to maintain the landscape at Matiatia?
- A. Yes I would. That's particularly apparent from ready any objectives.
- Q. The objective being to?
- A. Well successive objectives which refer to the one maintaining the landscape character of Matiatia.
- Q. Yes. Do I understand from the evidence that you gave is that if that developed were to occur in the form that's shown it would actually not achieve that objective?
- A. No, I didn't say that at all. I think it's going to be interesting how those provisions are actually interpreted and practiced. Does it mean that buildings can't look like buildings I don't know? I suspect that isn't going to be the way it's interpreted and I think that the reality is that while maintaining the landscape character of Matiatia is clearly enunciated in the objectives, there will also have to be a reasonable amount of pragmatism when it comes to looking at what sort of development can be accommodated within that land unit. I think there will be buildings and the buildings will go up to the heights that are indicated and will probably cover the site areas that are indicated and will change the character of the land unit.

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- Q. It was also a requirement that there be extensive landscaping and planting?
- A. Absolutely, but that doesn't equate with screening or camouflage, and I think that's the important distinction; it's really talking about trying to make the future village fit in, to integrate with its surrounds and I wholly support that, but that doesn't mean you're not going to see buildings, because I suspect you will.
- Q. You may see them from certain parts but there's clear emphasis, isn't there, on the viewpoint from visitors arriving at Matiatia?
- A. Yes but, you know, again this comes back to the static perspective of the landscape and people arrive at Matiatia or leave Matiatia and they

go up and down Ocean View Road so they're still exposed to the whole village, they will be exposed to all of its development, its buildings, activities, signage, vehicles and so on. So yes, they will see far more than just a sort of attractive landscaped margin. They will see all of it.

Q. Once they land they will see that.

A. That's right.

Q. Of course.

A. Or as they leave.

Q. Yes, and as you learned today if you go up over the hill you'll see it.

A. That's right.

Q. So that doesn't necessarily detract from the experience of entering the bay and seeing what is on either side.

A. I think that you've got, I mean I made the point at one stage in my evidence that you've got to see to a certain extent at least Matiatia Bay as a point of transit rather than a destination in its own right, and for visitors to Waiheke that's undoubtedly the case. People pass through it and it is a gateway and it is a point of arrival, but the whole arrival experience is what is important, not just what you see as you come in through the outer heads, it's what you see when you arrive at the ferry terminal, what you see as you go up Ocean View Road, and so on. It's that entire experience that's important.

Q. But the experience as you arrive is the particularly maritime experience, isn't it?

A. Initially, but I mean as we've just discussed you see the ferry terminal, you see the wharves, at the moment you see the parking area, which is quite a blight on Matiatia. You see the commercial activities. In the future we'll see a village which hopefully is a lot more attractive, but it is still going to be an urban development.

Q. It's still going to be an urban development but the effects, or the effects of the requirement to avoid adverse effects on the landscape character of Matiatia are as yet unknown, would you agree?

A. Yes, that's right. As I said, I struggle with exactly how Council is going to interpret while maintaining the landscape character of Matiatia. I

suspect that no matter what form of development goes into that land unit, it will have quite a profound effect in terms of people's perception of Matiatia.

Q. Profoundly different to what it is today?

A. Yes I think so, in some respects it'll be a big improvement. I mean honestly the carpark, the open gravel areas, they're not the greatest arrival experience.

Q. Now, my learned friend also asked you about kayaking and I think he was focused on –

THE COURT: JUDGE NEWHOOK

Mr Casey, if this is a switch of topic shall we take the break, or is this a set of the last questions or set of questions?

MR CASEY:

No, no, it's a different topic, Your Honour.

THE COURT: JUDGE NEWHOOK

Different topic? We might just take a break now, it's 1 o'clock. So we'll take a break until 2.15.

COURT ADJOURNS: 1.00 PM

COURT RESUMES: 2.15 PM**CROSS-EXAMINATION CONTINUES: MR CASEY**

Q. Mr Brabant asked you some questions about your evidence and the particular point I want to ask about was at paragraph 34 of your evidence-in-chief you speak, and this is the last bullet point of the evidence of that paragraph I should say, you say, "It will no longer be possible for kayakers to cruise pass the ferry terminal to directly access the beach." What he was trying to put to you was that you were not aware that kayakers would actually go under the, I think it's the ramp down from the carpark and I think you agree that you were aware of that.

A. That's right.

Q. If we go to figure 14 where that's shown and that's figure 14 in the 2013 bundle.

A. Yes I have that, yes.

Q. And if you have a look at the very top part of that figure.

A. Yes.

Q. It's a drawing showing the length of the marina out from I guess the land to the breakwater.

A. Yes.

Q. To the inner breakwater that is.

A. Called the southern access pier.

Q. The southern access pier. Thank you Sir. Do you know how long that is?

A. No I haven't measured it.

Q. I'm told and I'm subject to correction here but it's 225 metres long. Does that sound right? And you've probably got a better spatial understanding than I have.

THE COURT: JUDGE NEWHOOK

Do you want to scale it off one of the plans?

WITNESS:

I would over 200 metres looks about right in relation to the length of the boats that are shown which look to be –

THE COURT: JUDGE NEWHOOK

You could scale it off that drawing, scale it one to 1000.

WITNESS:

Yes let's get a figure. Sorry, what figure did you say?

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Figure 14, it said scale one to 1000.

A. Yes.

Q. Top elevation.

A. Looks to be 220 from the top of the ramp to the top of the breakwater.

Q. And if you go to figure 2.

THE COURT: JUDGE NEWHOOK

Q. Sorry to interrupt you again, it all depends as my colleague Commissioner Howie rightly points out as to whether that scale was created for a A3 drawing or some other size of drawing but it sounds from the answer and the feel that you had for it even before you did the scaling as though this is probably is the right scale to make for a ship.

A. Yes that was my (inaudible 14:19:31) it was somewhere in that vicinity I just didn't have the exact figure at my, um, yes.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. If you go to figure 2 which tells us it's a scale of one to 2500 at A3.

A. Yes I have figure 2.

Q. Now you will see and I wanted to take you to this figure anyway but fortunately it's got the marina design superimposed on it and it tell us that its scale is at one to 2500 of A3.

A. Yes and that also gives us, that gives us a figure of 220 as well.

- Q. So as I understand, what you were describing in your paragraph 34 would be somebody coming around the ferry wharf, around the wharfs and previously able to navigate directly across the beach.
- A. That's right.
- Q. Now not being able to do that.
- A. That's right.
- Q. We haven't had evidence and you may or may not know of any intention that there will be a sign post telling kayakers that there will be access under the little gangway down to the pier?
- A. I'm certainly not aware of that proposal otherwise I wouldn't have said that access was precluded by the proposal.
- Q. Yes. So would it be fair to assume that a kayaker wouldn't know that?
- A. Yes.
- Q. And would it appear to be obvious to a kayaker coming around the wharfs that there was some way of getting through at that end of the marina?
- A. Not necessarily.
- Q. And we don't know what tide is shown on figure 14 as to whether that's low tide, high tide or something in between.
- A. No that's quite correct, let me just see. No I can't see any indication there of the tidal range so I don't have the answer for you.
- Q. Now Mr Brown, you'd be familiar with some of the case law on how to evaluate landscape quality and character and effects?
- A. Yes I have a bit of experience with it.
- Q. I just wanted to make sure that I wasn't tricking you on this one. It's reasonably well recognised isn't it and it's confirmed by legal precedent that landscape matters that should be taken into account are legibility, transient values.
- A. Yes.
- Q. And also and this is the one I wanted to ask you about, if people in communities shared and recognised values including the memories and associations that the landscape raises.
- A. Yes.

- Q. Now would you accept that we've got a reasonable amount of evidence from the local community as to their shared and recognised values so far as Matiatia Bay is concerned?
- A. I would say you've got some, yes.
- Q. I think I suggested to you before that they rated the landscaping by highly in fact had some ownership of it in the way that they've contributed themselves to its development.
- A. Yes. I think, just a word of caution, and I think I've signalled this in my rebuttal is that most of this expression is in response or a reaction to the current proposal and most times when you're looking at landscape values and communities responses to different landscape elements and patterns and so on, you're doing so without having that sort of threat there. So in other words, the values aren't sort of pre-conditioned by the fact that they're responding to a particular issue. They're simply a response to that landscape. So that can colour people's reactions, so I want to just preface my response by saying that. But yes you have got a sample of certainly submitters and s 274 parties' interpretation of that landscape.

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- Q. Can I suggest in the case we've got here it goes further than that because it's not just people reacting after an application has been made but we've got good evidence of people having invested time and effort and capital, emotional or otherwise, into actually the landscape improvement that's been undertaken at Matiatia.
- A. Well that's a really difficult one because in some cases that's also bound up in improvement of their own residential lifestyles. In some cases it's bound up in gaining permission for subdivision, so and I accept for instance that the work that Forrest and Bird put into the area near to Matiatia Gateway and the street corridor down through the valley of Ocean View Road, that was basically voluntary work and it was for the sake of the re-vegetation. But work undertaken, planting undertaken on private properties has a variety of motives.

- Q. A variety of motives but in the case of the large re-planting that's happened here, that's been driven by the District Plan and as you talked about before, they're the trade off.
- A. Yes, and but of course that's not without motivation. I mean the motivation has been to change that land from pasture that was previously being limited return into a land that could be subdivided and developed. So there are different issues at play here than just the re-planting for its own sake.
- Q. But in answering that Mr Brown you've taken that down to the individual level. What I put to you before and I'll put it to you again is that what that is, it's a reflection of the District Plan provision which itself is the product of the community expression. That is, the individual is given the opportunity in return for planting but that opportunity is delivered through a District Plan that is itself a reflection of the community's desire to incentivise that planting.
- A. Yes that's true.
- Q. And you'll be aware of the evidence of Ms Coutts for example that she's one of a number of Waiheke residents that has delivered in tangible form her appreciation of the landscape qualities by getting involved in the re-planting and improvement.
- A. Well, as I said before, that is clearly the case but there are other motivations at play here than just adhering to or just doing something for the benefit of the wider community and environment. The truth is that a lot of this planting has been the quid pro quo for, or the outcome of gaining development rights.
- Q. And the planned provisions for the land, the Matiatia Gateway unit, I think you agreed before have a significant element of the protection and enhancement or maintenance, I should say, of the Matiatia landscape.
- A. Yes, that's right.
- Q. And again another expression of the community's sharing and recognising of the landscape values.
- A. That's right.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL**QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN**

Q. Just one area which I did ask Mr Pryor about too is this perception when you enter the bay and the significance of the beach area as the perceived natural landing point of the bay, would you think that is apparent here? Is it true?

A. I think when you enter most bays the sort of head of the bay becomes a sort of natural target as it were and in this case it's accentuated by the fact that the beach is there and the coastal terrace behind it. But I don't necessarily think that for instance that makes it the most attractive part of Matiatia Bay.

Q. No I wasn't asking that really, I was asking if that's the landing point –

A. Yes.

Q. Because you can't land on rocks.

A. That's right. It is the natural landing point.

Q. So do you think that has some perception in our psyche when we come into a bay?

A. Well I think two things happen, the first is you're absolutely right, you do look for a place that is a sort of natural landing point. But often people, and the reason I raise attraction is that often people are looking for somewhere that has appeal for them, whether it's for recreation, for picnicking or for just as you said, landing. So I mean people look for different attributes when they come into a bay and will go to different parts of the bay because of that. In this case if you're on a ferry and you're looking into Matiatia as you first arrive then it's natural to look towards that bay area, towards where you can see buildings and the ferry building and so on.

Q. Because that's where the action is.

A. That's right.

Q. Looking at the northern bay, the more passive part of the bay, would you say that there is an interface between the wool shed and the bay?

A. An interface? Sorry, do you mean interaction or...?

- Q. I understand it's an historic building. So that there's a relationship of that building to the bay.
- A. Yes, I think actually all, there's a relationship between all of the structures and buildings around the bay, with that bay itself. But the red wool shed is particularly strong, it's very prominent.
- Q. Because they must have come in with barges or something to take the – I know they've done that in other parts of the bay, to take the wool. On other parts of the island. Do you agree with its history?
- A. I can remember back to the days of (inaudible 14:32:48) but, and that's long enough. But I can't actually remember the (inaudible 14:32:54)
- Q. But that's how it worked because you couldn't...
- A. That's right and in fact it still happens, in Pauanui for instance with the Chamberland's.
- Q. So, in terms of that relationship and understanding that part of the bay, with the marina in place do you think you lose some of that relationship, some of that understanding?
- A. I think you may. I'd have to question for most people just how strong that connection is. I think a lot of people would look at it and say, "It's a shed." It's a shed of some kind. I don't know whether or not it's historic. But it's there and it's part of the context for the bay. But I don't know just how strongly most people would appreciate its historic significance, I doubt that most visitors would.
- Q. It's also intriguing to me that that particular edge of the bay, rather than having an esplanade reserve it's got a historic reserve status.
- A. That's right, Matietie historic reserve status, yes.
- Q. And do you think that has any visual linkage again with the foreshore?
- A. I think that it is a question better addressed by tangata whenua or mana whenua. I think that it would be quite inappropriate for me to really respond to that issue.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

Q. I approach this from an engineering point of view which you might gather and it's quite linear, the proposal. Would you consider any improvements to its layout from a landscape point of view?

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A. That is interesting because there has been discussion about the breakwater issue and I think if there's one area that – initially I sort of thought, hmm, most people will see it from some distance, it's a relatively flat, horizontally aligned sea surface and it won't make a lot of difference, but I think as you get closer it would be nice to see the breakwaters with a bit more curve in them. Something that responds a bit more to probably the natural land forms that are found around the marina site, so that would be the one suggestion that I would have. I don't think it makes as much difference what happens inside the marina, but I think the breakwaters, there could be some benefit in looking at a slightly more flowing form.

Q. And a second issue is Mr Pryor's ranking of viewpoints. Now he gives us, in his evidence, a five stage ranking which I understand is common practice?

A. Mmm, it is.

Q. But that the definitions he's used for those five are not as agreed by everybody, is that also true?

A. That's my understanding.

Q. Do you have a different set of descriptors?

A. Well I think the descriptors that I've used I think are consistent with those that the institute suggests in its guidelines and I think that I, for instance, in relation to Viewpoints 4 and 5 have indicated the ratings for amenity effects are moderate to high, but there is a bit of variation there because there is some variation in the extent to which the bay is visible, the extent to which it opens up in front of those houses which are closest to it, and the degree to which there would be change when you are right down on the bay itself pretty much at sea level. So, I don't think it's consistent but I've tried to reflect that in the way I have ranked things. That's certainly at the top of my impact ratings and the other

ratings for natural character and landscape effects and amenity effects elsewhere are much lower.

Q. So Mr Pryor gave us some rankings for each of the viewpoints.

A. Yes.

Q. Do you agree with those?

A. No I don't and I've indicated why I don't agree and I felt that in particular I had concerns about amenity effects in relation to Viewpoint 5 that I've explained in my primary statement and I think those concerns still remain.

Q. So you think Viewpoint 5 would rank as a higher effect?

A. It's up, it's getting close to high, I think I've indicated moderate to high for 4 and 5.

Q. And the rest of Mr Pryor's evaluations you would go along with?

A. Pretty much, yes.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Just on that latter aspect, Mr Brown, without having the particular page of your evidence open in front of me I think you also differed from him or made more of a point about the view from residences up high in the south-east quadrant of the bay and you gave three addresses I recall, we looked at that this morning.

A. They're actually in the north-east quadrant of the bay, Your Honour.

Q. Are they?

A. Yes, they're around 120 to 124 Delamore Drive.

Q. Oh, Delamore (inaudible 14:39:15), yes okay.

A. And number 7 Ocean View Road.

Q. Yes, yes, and so I think there was some point of difference between you and Mr Pryor as to those perhaps?

A. Yes. Just to clarify, the areas that I had concern in relation to were those four to five properties, I think it's 7 and 9 Ocean View and 120, 122 and 124 Delamore Drive, but I also had concerns about the effects on the beach area below those properties.

Q. Yes, I want to come to that. I'd like to come to that using 4 and 5, which you have spent quite a bit of time and care on in your evidence, I think. Starting quickly with Viewpoint 4 which is on figure 55 in the 2013 bundle. Now I'm proposed to in each case, I take it that is essentially a view from a portion of the Matietie Historic Reserve?

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A. Yes.

Q. And then jumping back to viewpoint 5, go to figure 51 just a few sheets back, I'm going to focus on this for a moment, we may find ourselves going to Viewpoint 4 as well because they were latent. Starting with the top view the current view and we pretty much get the same thing at low tide we're going to focus on the high tide view on figure 55, I put it to Mr Pryor that that particular scene shows scattered boats on the sea surface and he accepted it from me that it was a placid sort of view.

A. Yes.

Q. Other than perhaps on stormy days when you've got a fierce westerly coming in the mountain of the bay.

A. Yes.

Q. But as depicted there, a placid view of scattered boats on the sea surface. Do you agree with that?

A. Yes.

Q. The bottom simulation in contract shows a concentration of vessels doesn't it, that's what marina's do.

A. It does.

Q. Yes, and ultimately after we'd fooled around with some rulers for a while we got to the point I think in the general sense that he was accepting that that concentrated view of boat across that scene is a significant extension of the wharf arrangements as they presently exist.

A. Yes I was there for the examination –

Q. Oh you heard that person's questions?

A. Yes I did.

- Q. And eventually I gave up on the rules and we did however talk about proportion of extensions. Now you accept that in a general sense that that description, it becomes a concentration of boats significantly extending at the present built form of the wharf?
- A. Yes I think this is probably the area where I had this sort of slightly elevated view.
- Q. Yes.
- A. Through the gaps in the trees was the one I had the most concern about.
- Q. Yes. And is this more or less say from the top, near the top edge of the Historic Reserve?
- A. Yes, it's getting very close to the bottom of those residential properties at 120.
- Q. That was my next question.
- A. Yes. It's getting very close to the bottom of 120 at, I can never remember whether it's 122 and 124.
- Q. Yes.
- A. Or 120 and 122 but a couple of those properties are very close by.
- Q. This would be pretty close to the sort of view that the top view they have joined now bottom view what they would get if the marina was consented in this current form. Fairly close.
- A. Yes.
- Q. Now, I want to take you to one of your evidence-in-chief statements on page 8 and also one of your rebuttal statements I'll give you that reference in a moment. So again, Viewpoint 5, paragraph 21 of your evidence-in-chief. Here LA4's viewpoint images show Viewpoint 5 there would be still significant change to the content and nature of views from those properties close to the marina. And then paragraph 22 you talk about, "A significant impact on public use and enjoyment of the small beachfront and water are inshore of the both the application site and its proposed berths." And, "As a result, the application's impact on the public beach and Matietie Reserve would be appreciably greater than

for the rest of Matiatia Bay.” So that’s consistent with what we’ve just been talking about. And that’s under the heading Amenity Effects.

A. Yes Your Honour.

Q. And then going to your evidence-in-chief. If we go to the top of page 13 of your evidence-in-chief and we’re here dealing with some of the public submissions.

A. Sorry which paragraph?

Q. It’s the tail end of 34, you’ve got a series of bullet points. So in fact the bullet point I’m looking at starts on the previous page and deals with this properties in Delamore Drive and Ocean View Road. Yes I think we’ve probably covered the point with your responses a moment ago when I started asking you some questions, “Moderate to high level of impact on local amenity values.” Taking those two statements from your evidence-in-chief that we’ve just looked at again and then perhaps taking figure 54, Viewpoint 5, as a visual manifestation to assist us, would you have any advice for the Court about, particularly looking at the visual simulation in the bottom shot, the point at which reductions or modifications to what is shown there might bring these impacts back to a low rating from a high rating? If that were possible. I mean you might say no, it’s all on or it’s all off or there might be somewhere in between where an impact on the reserve and the impact on the three properties could rate low for impact on amenity.

A. I would like to just comment first on, if it’s all right Your Honour on Viewpoint 4, which is from the beach area.

Q. Yes they are rather related and I’m happy to hear about those.

A. They are related and I think the one point I’d make here is that, you might find this slightly strange but I’m going to say that the effects on this viewing point are actually not quite as bad as they are in Viewpoint 5. And there’s a number of reasons for that and part of it you can only appreciate when you’re in the bay as opposed to looking at a photograph and they involve being aware of the red shed, being aware of the haul-out facilities, the boats that have been pulled up at the back of the beach and also the flat –

- Q. The complete sort of surround or sense of place.
- A. That's right, and the houses that are visible from the beach area and from immediately behind it and so once you're there you get a more complete picture and it's not, in the sense these photographs are the worse case scenario, they show the maximum level of effect for the best views. The other thing to bear in mind is that this is a flatter viewing angle so that even though there's a greater concertinering of boats when you've got the proposed marina in view. It's perhaps not as evident as it is when you're slightly more elevated with Viewpoint 5. Viewpoint 5 shows a bigger area of the sea being occupied by the marina.
- Q. Simply it's a higher angle.
- A. That's right, so I'd say the effects are slightly lower in relation to Viewpoint 4 than they are to 5. But when you go to 5 – sorry there was one point I did want to make and that was when you're looking –
- Q. About 4? About Viewpoint 4?
- A. When you're looking from the beach area, one of the things that becomes apparent, particularly at low tide, is the close proximity of some of the boats that are, look to be within the moored line of boats, to the beach.
- Q. You mean the pile mooring craft?
- A. That's right, that's right. They appear that much closer so perhaps some improvement could be achieved by removing those pile moorings which are closest to the beach area. And when we go to Viewpoint 5 however, I just don't see that having much of an effect. I actually don't see a solution that would take us all the way from a high or moderate to high rating all the way down to low. So I don't have an easy answer in relation to that. So I think you can mitigate things to a certain extent by removing some of the pile moorings in terms of the beach area but it's much more difficult to address effects in relation to those more elevated viewing points.
- Q. Can I just put a particular or specific suggestion to you and see whether that might assist you to give us some advice about this. Purely

academic but it's this. If one were to remove from that view pier A which is after all the closest to the beach and the closest to the historic reserve and take half a dozen berths off the end of each of B and C to lessen the lineal impact across your view would that help?

A. It would help but I don't think –

Q. You don't think it would help a lot?

A. It creates a strange situation in which you've got a water area close in and then you've got a marina that's sort of perched out there in the middle of nowhere, as it were. I just have a suspicion that instead of making sense, I think a marina that's tucked in closer to the land makes sense. It's a hard concept to explain but there seems a certain rationality to it. Whereas a marina's that's perched out in the middle of the bay, in relative isolation could look quite odd.

Q. As marinas go.

A. That's right.

Q. I certainly can't think of one in my mind's eye and I suspect that's what you're saying, you can't think of any that are perched out of the bay in that way.

A. The only other option I can think of is something which is concentrated much closer to the existing wharf and jetty but I don't know if that's achievable or not.

Q. Yes.

A. It was interesting that recently I was down at Tairua and of course there was a great deal of discussion there about the marina that was proposed and the marina that has now gone in, it appears much smaller than I had actually expected it to be so that's not the same as this but it's just something to bear in mind and perhaps concentration closer to the wharf and jetty complex might actually assist.

Q. In case there's any comparison to be drawn, can you remember how many berths are in the Tairua Marina?

A. I think it dropped down to, I'd have to think, but I think it dropped to something like 80 or 90.

Q. Yes, that's my rather general recollection but I was only involved in one of the very early iterations of that marina.

A. Yes it started off quite generous.

RE-EXAMINATION: MR ALLAN – NIL

WITNESS EXCUSED

MR ALLAN CALLS**KALAYARASI SIVAGURU (SWORN)**

Q. Your full name is Kalayarasi Sivaguru?

A. Yes that's correct.

Q. And you're currently employed as a technical specialist in the coastal team natural resources and specialist input unit at the Council?

A. Yes that's correct.

Q. And for these proceedings you've prepared a statement of evidence-in-chief dated 10 June 2014?

A. Yes that's correct.

Q. A rebuttal statement dated 23 September 2014?

A. Yes.

Q. And you've also participated with caucusing with the other ecology witnesses which has resulted in two statements. The first a joint expert witness statement dated 27 August 2014?

A. Yes.

Q. And second a joint expert witness statement dated 9 September 2014 which dealt specifically with conditions of consent?

A. Yes that's correct.

Q. And can you please confirm tot the Court that the content of those four statements are true and correct to the best of your knowledge?

A. Yes.

Q. Just one quick question, I think you were in court when Mr Brabant was asking questions with Mr Poynter?

A. Yes.

Q. And there was some discussion about the timing of placement of nest boxes, penguins, in relation to the construction of the breakwater.

A. Yes.

Q. With the suggestion being that that could come after construction. Just wondered whether you have any comments on that?

A. Yes I do. I understand that nest boxes or rock boxes need to be accommodated during the construction and designing of breakwater

otherwise it is not going to be feasible so it needs to be done during construction.

Q. Are you able to elaborate on the reasons briefly why?

A. Because the nest boxes need to be the appropriate dimensions for the penguins to inhabit. The (inaudible 14:58:11) takes about 20 centimetres and the height should be around 40 to 50 centimetres so that's why I (inaudible 14:58:20) that, that needs to be done during the construction not after the construction because it is not feasible.

CROSS-EXAMINATION: MR R BRABANT

Q. It is almost like you would need to hand make some appropriate openings or crevices in the rock breakwater as you build it?

A. Yes that's correct.

Q. Is there anything else that you do, I mean there's no – when you talked about nesting boxes which gives you the impression of something made out of wood but is there something as well or is it just shaping and leaving a crevice in the rock itself?

A. There is a possibility that we could use the rock material and make it as a box for penguins or it could be wooden boxes installed in the breakwater design.

Q. Right, thank you. Now have you been involved in investigating the ecological aspects of a marina development previously?

A. Not really, no.

Q. I'd just like to ask about the reclamation proposal and you know there's a deck option as well.

A. Yes.

1500

Q. Could you find in the 2013 series there figure 21? You might have heard just now, you just keep looking at the bottom there to find the figure number.

WITNESS REFERRED TO FIGURE 21

Q. So did you have these or something like this available when you made your visit which I understand from here you visited in July 2013?

A. Yes.

Q. Have you made another visit since then?

A. (inaudible 15:00:54) yeah.

Q. So this gives us, and particularly if you had it with you at the time, an opportunity to look carefully, doesn't it, at the area of rocky foreshore that would actually be effectively displaced by the reclamation.

A. Yes.

Q. And you have a look over that to see what was there?

A. Yes.

Q. Mr Poynter who has been involved as you'll know in marina proposals before considers that there is again in terms of losing something in that area which is usefully kind of encapsulated there, there's an offset gain when the marina is finished you end up with the rocky faces all around the outside, provide a new home.

A. Yes to some extent, but the substrate will be different, it will be home for different species, not for the same species.

Q. I understand that, but that advantage is lost if a deck is built over the top of this area, close over it on piles, of creating that new home?

A. Yes.

Q. And what you end up with is a totally sheltered environment underneath.

A. Yes.

Q. Which you've referred to in your evidence.

A. Yes I agree but in the meantime if I consider the loss of habitats for penguins, it will be an advantage, because penguins have the ability to burrow or nest under the deck structure.

Q. But at the moment there's only one. In actual fact without a deck there the only burrow that's been located is right hard against the boat ramp, isn't it?

A. Yes.

Q. The penguins at the moment have adapted a living environment in Matiatia under a busy ferry terminal, haven't they?

A. Yes.

Q. And they've adapted obviously to the ferry's coming and going as well?

- A. Yes.
- Q. And the terminal being active until maybe midnight.
- A. Yes.
- Q. Would I be correct in understanding that any questions about heavy metals and things like antifouling are best to be addressed to Mr Cameron?
- A. Yes I agree.

CROSS-EXAMINATION: MR LITTLEJOHN

- Q. How is it going so far?
- A. Good thanks.
- Q. I'm just interested, you say you did your PhD research work in soft sediment ecology and ecotoxicology. Could you just give me, it's not an easy question, just a quick description of ecotoxicology, what did that involve the study of?
- A. I collected sediments from different parts of the Manukau Harbour where we could find different concentrations of copper, zinc and lead, and then I also spiked the natural pristine or pure sediment with different concentrations of these metals and observed how the mud crabs react to these concentrations.
- Q. And out of interest or curiosity, what happened to the mud crabs?
- A. We are fortunate in New Zealand not to have the concentrations they need to show the effects from these high level contaminants. But in the lab experiment I found them showing little effects. They started dying and also they started slowly moving and showing different behaviour from their normal behaviour.
- Q. Thank you for that. Were you here when Mr Poynter was questioned?
- A. Yes, yes.
- Q. Okay well that's good. So I want to ask you a similar series of questions along the lines I asked Mr Poynter and hopefully we can move through it a bit quickly. In terms of what you know about Matiatia Bay and its ecology at the moment, do you agree with Mr Poynter that its water quality is quite high?

- A. Yes I agree, yes.
- Q. And do you agree that that is a consequence of quite considerable tidal flushing throughout the bay?
- A. Yes.
- Q. And do you also agree that its quality is as it is because there aren't significant inputs of contaminants from land into the water?
- A. Yes.
- Q. Now, Mr Poynter also agreed with me that at present there are no detectable signs of any water pollution as a consequence of the boating in Matiatia Bay, do you agree with that?
- A. Ah I –
- Q. If you don't know you don't know, you don't have to –
- A. So you are talking about the water quality, not sediment quality?
- Q. Yes, water quality.
- A. Yes, but probably I will leave these type of questions to Mr Cameron to answer.
- Q. Okay.
- A. Yep, thank you.
- Q. In terms of the sediment quality that has been sampled on Matiatia Bay, apart from an area around the little hall out and cleaning ramp, and you know what I'm talking about there?
- A. Boat cleaned area, yes.
- Q. The boat cleaning area? You obviously agreed with Mr Poynter's conclusions that the sediment quality is very high in Matiatia Bay?
- A. Yes.
- Q. Would you accept that what we observe in terms of the ecology at Matiatia Bay is sustainable based on the inputs and what we know about the water quality there?
- A. Yes.
- Q. Looking further forward, and if you don't want to answer the questions that's fine, but do you know of any changes that might be likely in catchment activities that might change the water or sediment quality in Matiatia Bay?

A. Yes, we will not be able to observe any immediate defect, but in five to 10 years time there might be a shift in the community structure in terms of species composition.

Q. I understood you to be answering the question about what you might see if a marina was built at Matiatia Bay.

A. Yes, yes.

Q. If there was no marina built at Matiatia Bay, what would you likely see in terms of water and sediment quality in the bay in the future?

A. It's hard to predict but there might be no change, yeah.

Q. Have you studied the contractual design of this marina in any great detail?

A. No, not really.

Q. This proposed marina doesn't involve the creating of a basin by way of excavation, but rather the trimming of one edge close to the shore to make the entire seafloor able to accommodate the boats.

A. Yes.

Q. So you understand the difference between the two?

A. Yes.

Q. And would you accept that with the type of construction methodology proposed for this marina, we don't have a situation where water or contaminants from boats might gather within a marina basin so to speak?

A. Yes, yes.

1510

Q. Because there's tidal flushing, what we would see, you would accept, is a general circulation of contaminants that enter the water column from boats throughout the entire bay?

A. Yes.

Q. And that was one of the parameters that NIWA modelled when they endeavoured to quantify the potential anti-fouling discharges, is that right?

A. Yes.

- Q. Now the NIWA modelling discusses in detail the quantities and concentrations of copper and other anti-fouling chemicals likely to arise from boats in the marina. Do I understand that I should perhaps talk to Mr Cameron about those matters?
- A. Yes please, yes please, thanks.
- Q. It was the outputs from the NIWA study, discharges of copper and the concentrations predicted over the 10 year cycle, I think that's what you referred to before?
- A. Yes.
- Q. That led at the witness conferencing to a detailed discussion on the proposed conditions, didn't it?
- A. Yes.
- Q. Have you got in front of you, or do you have available the second joint witness statement that you signed with the other ecologists which deals with conditions?

WITNESS REFERRED TO SECOND JOINT WITNESS STATEMENT

- A. Yes I do.
- Q. And I want to particularly ask you about the conditions on page 5, if I could ask you to look at that?
- A. Yes.
- Q. And you'll see there that the four of you, Mr Poynter, Mr Cameron, Mr White and yourself, provided a note to the Court?
- A. Yes.
- Q. And expressed where you had disagreed as to the likely, as I understand it, the likely methods or measures to be taken in the event that certain trigger levels might be exceeded for water quality parameters?
- A. Yes.
- Q. And Mr Poynter on the one hand proposed a remedial condition (f) and yourself, Mr White and Mr Cameron proposed a more detailed condition (f)?
- A. Yes.

- Q. And to be clear, so that I understand it, the condition here is what the marina would do if water quality sampling and sediment quality sampling had detected exceedances of the threshold for anti-fouling contaminants in water and sediment in the bay?
- A. Yes.
- Q. Now Mr Poynter's condition or suggestion is that the results are to be reported to the Team Leader Coastal for written approval, and options for reducing water column and sediment contaminant levels to be investigated?
- A. Yes.
- Q. The other three ecologists suggested that rather than simply reporting an investigation, what ought to happen was a contaminant management plan be prepared and provided?
- A. Yes.
- Q. Outlining specifically how contaminant loading to the marina will be reduced?
- A. Yes.
- Q. Or low impact anti-fouling paints, or, and this quite interesting suggestion of differential fees being paid as amongst berth holders depending on how dirty they're being?
- A. Yes.
- Q. In respect of both these conditions do you accept the obligation is simply to report and investigate options?
- A. Yes.
- Q. Did the ecologists discuss amongst themselves what options there might be to reduce water column and sediment quality contamination in Matiatia Bay as a consequence of the marina?
- A. I prefer to leave the answer to Mr Cameron, but if I recollect properly one of the things we discussed with all the meeting, anti-fouling paints.
- Q. And that's the only thing you discussed as a possible –
- A. It's one of the things I remember now.

- Q. Okay, all right, well I'll talk to Mr Cameron. As a theoretical proposition, if there was no ability to control the anti-fouling paint what could you do to bring the water quality in Matiatia Bay back to an acceptable level?
- A. There might be a broad management regulations but I don't have the standard management plan in front of me, there may be other options which I can't remember now, sorry.
- Q. Management options. If the source of the contamination is the paints being put onto the boat and that is not able to be controlled, how could other management options really bring the water quality back?
- A. I wasn't prepared for these questions because I thought Mr Cameron is going to deal with it.
- Q. Okay, well I'm quite happy, I'll direct them to Mr Cameron.
- A. Yes.
- Q. Would you as an ecologist be concerned if there was no effective method available to return the water quality back to what it was?
- A. Yes of course I would be, yeah.

CROSS-EXAMINATION: MS MCINDOE – NIL

CROSS-EXAMINATION: MS PARKINSON

- Q. I'm going to ask you to start with your peer review which is in the Court record in volume 3, common bundle tab 47 and attachment page. Now you prepared this peer review which is dated 27 November 2013?

WITNESS REFERRED TO PEER REVIEW

- A. Yes.
- Q. And you looked at Mr Poynter's assessment of the bio effects?
- A. Yes.
- Q. And you commented on direct effects and also some of the more indirect effects of contaminants in the water column and sediment.
- A. Yes.
- Q. Now if I can take you to some of your statements in there at paragraph 12 of the peer review.
- A. Yes.

Q. And you're commenting in the previous paragraph on the lack of transect sampling in the intertidal rocky shore and you express the view that qualitative surveys can easily underestimate the biodiversity of this type of habitat and in your opinion it would've been better to have the transects of the site undertaken?

A. Yes.

Q. Now you've also expressed concerns at paragraph 25 concerning the methodology used for the sub-tidal survey.

A. Yes.

Q. And at paragraph 15 you make a general observation that these minor technical points don't affect the overall outcome that (inaudible 15:19:24) underestimate the biodiversity of the areas?

A. Yes.

Q. Was there any further information provided after you prepared your peer review to offset those gaps?

A. No.

Q. Now at paragraph 30 of the peer review you also record there were no specific water quality measurements undertaken by Mr Poynter.

A. Yes.

Q. Was any further information provided after that peer review to address that gap?

A. No, I didn't do this with NIWA modelling report, I was provided after I finished writing these peer review comments.

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Q. Okay, and are you aware whether the NIWA report included any water quality testing of the current quality?

A. Yes.

Q. Now if I could take you to the joint witness statement, second joint witness statement and the recommended conditions at page 4 (iii) there's a recommendation for coast town construction and water column monitoring which will measure things such as copper and zinc and pro-biocides. Would you agree that it would've been better if that

information had been provided as part of the assessment of environmental effects?

A. Yes it would guarantee that is one of the reasons for us including this condition because at least this will be seen as baseline for that information, yes it would guarantee to have the information beforehand, yes.

Q. Do you accept that that condition is going to post-date the decision of the Court so it will only come into effect, if the Court grants consent so it's not part of the assessment of effects.

A. Yes, yes, yes.

Q. There's also a recommended condition for sediment monitoring.

A. Yes.

Q. Which looks at copper, lead, zinc, arsenic and other pro-biocides?

A. Yes.

Q. Would it have been better if the assessment on environmental effects included that detail as well the sediment monitoring?

A. Yes.

THE COURT: JUDGE NEWHOOK ADDRESSES MS PARKINSON – WHICH EXAMPLE

CROSS-EXAMINATION CONTINUES: MS PARKINSON

Q. Would you accept that section requires the Court to assess the effects of the proposed marina against the existing environment?

A. Yes.

Q. And in the case of the coastal marine area that would include the coastal waters?

A. Yes.

Q. And the inter-tidal, and sub-tidal zones?

A. Yes.

Q. The foreshore and flora and fauna lives within that marine environment?

A. Yes.

- Q. And would you therefore also agree that in making assessments under section 104 it's necessary to give sufficient quantitative data about that marine environment?
- A. To my knowledge, when you use the word quantitative information, it is a very wide, it's a broad terminology so quantitative information is important but in terms of section 104 assessment, we don't need to have quantitative information for everything so to my knowledge, you need to have appropriate information for all the habitats in the application to assist the environmental affects, that's my understanding.
- Q. And that's the reason why in the joint witness statement there's general agreement and the experts part is that the broad scale approach used by Mr Poynter to assess the affects as appropriate in this case.
- A. My understanding is again, for me to assist the environmental effects I considered that I had enough information because I also have experience in sampling in similar environments in the Hauraki Gulf. So based on the information provided by Mr Poynter, I cannot see any unique or special species inhabiting in the habitats Mr Poynter identified. So I didn't see the point of getting more quantity of information for any other habitats which are less likely to be impacted by this proposal. That was the reason for agreeing to that conclusion.
- Q. So if we just go back to the environment which we discussed, that would be covering the habitats and the biota was in those habitats in the inter-tidal and sub-tidal areas. Do you consider that the broad scale approach gave sufficient information about water quality and the state of the water in Matiatia Bay?
- A. Water quality is different. I wouldn't say the same for water quality. When I mentioned about different habitats I was referring to species composition and also that biological factors, so water quality is not and also my understanding is sampling water to measure the water qualities also not easy. You have to collect the samples at the right place and at the right time to get a consistent result so that's something different.

- Q. Would you agree that there are limitations on the current understanding of the environment in Matiatia Bay and how this proposal is going to interact with the environment?
- A. So are you referring to water quality or...?
- Q. In terms of that water environment, so water quality, sediment and the habitats within the bay.
- A. Having more information is always helpful, that will help us to make an informed decision but I could see that information we have already got is adequate for this type of assessment.
- Q. If I can take you to the joint witness statement, the first joint witness statement in 10(j) on page 6, at the top of page 6. And there's a discussion there of the water column contamination and a statement, "There's no existing water column chemistry information for Matiatia Bay."
- A. Yes.
- Q. And it talks through some of the difficulties of obtaining those measurements with levels of detection available in New Zealand laboratories. And it's correct that there were no tests undertaken to check those assumptions.
- A. Yes.
- Q. And Mr Cameron in his peer review records, dated from the Gadd and Cameron reports that indicates that existing concentrations of copper in parts of the Waitemata are already at the 95% thresholds. But considers that it's unlikely that that would be the case at Matiatia. Would you agree with Mr Cameron that the existing concentration should be factored into the NIWA model?
- A. Yes I agree.
- Q. And could that result in the level of contamination in the water exceeding the 95% threshold?
- A. It's less likely but I think it might have been a bit more than what we have now but I don't think it would have exceeded, that's my understanding.

- Q. So in terms of the joint witness statement and what's agreed between the witnesses at page 6 again at the bottom, paragraph (n) which is that once full occupancy of the marina is reached, copper levels in the water column inside the marina will increase to a 95% level. Is that within a number of years or is it upon the marina being constructed and at full occupancy?
- A. Yes.
- Q. And perhaps a bit more in your area, the effects of having water above the 95% threshold will have, it's expressed here, a no more than minor effect on the biota that resides in the water column.
- A. Yes.
- Q. At what point would the effect become more than minor?
- A. So are you referring to benthic communities or sediment quality?
- Q. Any marine life that's within that water column so impacted by those 95% thresholds.
- A. If you see a shift in the community composition that will be an indication for having an impact on the biota. But again, it takes a long time to see a clear picture in terms of benthic index or benthic health index and community composition. But there will really be a picture after, between five to 10 years time.
- Q. Are the benthic communities affected by both the contamination in the water so they dissolve copper in the water and the contamination in the sediment?
- A. Sediment would be the most, yes.
- Q. The primary impact?
- A. Yes.
- Q. What other species would be impacted by the water column?
- A. I would say the species use the water for filtering nutrients and other particles for their survival and also the migratory species or the species coming and going for different purposes. Fish and other mobile species. But again it depends on the current, the environment too so if the area has more current then getting washed very quickly it will not affect that much.

- Q. So species other than shellfish which you referred to in your evidence, this bioaccumulating copper, there's other species that may also bioaccumulate copper and other toxins in the water column?
- A. Yes, they do live in the bottom, sorry so there are benthic communities. So they will accumulate, bioaccumulate, and that's the reason I recommended being to include in the monitoring condition as indicators.
- Q. And would that pass into the food chain from those benthic communities by other species eating them –
- A. Yes, that's right, that's why we use the term bioaccumulation from. For on the first traffic level to the higher traffic level.
- Q. And how does that impact carry through? Does it stay at the same level of impact or does it reduce down as you go up the food chain?
- A. If we are considering only the shellfish over time the bioaccumulation level will increase and we will see a direct relationship between the contaminant levels in the sediment and the contaminant levels in the fish off these shellfish species.
- Q. And species that are eating those shellfish, would you see contamination, bioaccumulation in those species as well?
- A. Yes, ideally yes that would happen.

COURT ADJOURNS: 3.34 PM

COURT RESUMES: 3.50 PM

CROSS-EXAMINATION CONTINUES: MS PARKINSON

Q. If I can take you to your evidence-in-chief, paragraph 13. This is addressing the direct effects of the dredging and you state that the dredging will be a no more than minor effect because the benthic communities will re-colonise the new seabed. Would you accept that there will be an effect on the benthic biota as a result of the dredging and that biota that's in the sediment will be destroyed?

A. Yes.

Q. But that's a short-term effect because new biota will come into that area and re-colonise it?

A. Depends on how long it is going to take to have the same substrate after dredging. So if the substrate is similar to pre-dredging, the colonisation rate will be quickly.

Q. So there needs to be a sufficient bed of substrate for that community to establish in.

A. For example if the sediment grain size is coarser or 50% sand and 50% mud just for example pre-dredging, we will expect certain communities to be present in that substrate. So after dredging it will take time to get that same proportion of sediment grain size in the substrate. So when the similar grain size proportion occurs in the substrate, we can expect the same communities to colonise in this area.

Q. Do you have an estimate of that period? Mr White's put it at something two years or more?

A. Two to three years, but again depends on the species composition inhabiting that dredging area and also substrate composition. So it's not a standard period.

Q. And Mr White also reports that research shows that it tends to be opportunistic species is how he terms it that recolonise an area, would you agree with that?

A. Yes I do agree, because there are some species that are tolerant to disturbance and some species are not tolerant. So if the species are

tolerant and opportunistic, they will be the first one to come and recolonise that area. Or some species that are sensitive to disturbance will take longer time to recolonise.

Q. And so if that area was re-dredged at some point in the future you'd have to start that cycle again?

A. Yes.

Q. Now, Mr Poynter's survey which you refer to in your peer review at paragraph 26, he recorded some 65 taxa which you describe as diverse and abundant.

A. Yes.

Q. Would you expect to find that same diversity in the re-colonised area?

A. Yes and no, because this identification to the taxa is not always – doesn't give a clear picture about the things happening in the habitat. So when someone says 65 taxa, it could be any species. As I mentioned before, it could have opportunistic species and sensitivity species. So the total number of taxa can be higher than what we have now, but the species composition will be different.

Q. Is it likely that that community will be less diverse and less abundant than the community that is there presently?

A. That's why I'm saying it could have – when we talk about the diversity it could have more tolerant species and less sensitivity species. It could be the other way around too.

Q. Going again to your evidence-in-chief at paragraph 12, you observe or note there you didn't observe any special or unique species during your site visit, which is also confirmed by Mr Poynter's statement.

A. Yes.

Q. Now, is the absence of any special or unique species the basis of your conclusion that the adverse effects will be no longer minor?

A. Yes. Yes, during my site visit in there – based on my experience with intertidal rocky shores, you can see different zones around the transit or some distinction between zones, you could see that around the transit then you are – then you have the knowledge about intertidal rocky shore key forming species. So during my visit I observed the site in terms of

different zones and key forming species that forms those zones. So I did expect any keyhole species to be there from, this is also from my experience and based on – that is similar to what Mr Poynter provided in his report.

Q. Have you read Mr Waters' evidence-in-chief?

A. Yes.

Q. Mr Waters describes in that the importance of those common and typical species in influencing the condition of the marine environment, and he gives the example of the filter feeders who contribute to water quality.

A. Yes.

Q. Would you agree with Mr Waters that those common species are still important to the ecosystem and the quality of that ecosystem?

A. Yes I do agree with Mr Waters, yes. But I consider those species are less likely to be affected by this proposal compared to where the reclamation and dredging is going to happen.

Q. If we are to look forward a few years and the marina is in place and some of those effects on water quality and sediment which are predicted in the NIWA model are starting to have an impact, Mr Waters in his evidence considers that those increases in coppers and other biocides, sorry, will impact on the ability of the benthic community to re-establish in the dredging area. Do you think that's a concern that's warranted?

A. To my knowledge I wouldn't totally agree to Mr Waters because as I mentioned before there will be shift in the community structure, but I don't think you will see a significant change in the species composition.

Q. And those species may be less sensitive to copper and other contaminants –

A. Yes, yes.

Q. Now, turning to paragraph 51 in your peer review, and you're discussing in that paragraph the operational effects on water quality of the proposed marina.

A. Yes.

Q. And you're identifying there that the agents for potential effects are dissolved antifoulant agents copper and zinc, and also pro-biocides leaching.

A. Yes.

Q. Are there contaminants other than copper and zinc that have an impact on the benthic communities in marine life?

A. Yes.

1600

Q. Now just turning to paragraph 19 of your peer review, you recalled that modelling has shown that metal concentrations below threshold values can also affect benthic ecology?

A. Are you referring to my peer review comments or?

Q. Yes.

A. Line 10?

Q. Paragraph 19 about two thirds of the way down, benthic modelling by Hewitt 2009.

A. Yes.

Q. I was interested to hear about your research papers as well, would that be consistent with your research of crabs that below those thresholds you still see an impact on survival or behaviour?

A. The research I did for my PhD was different from what I have quoted here. So I did observe differences or changes in the behaviour of mud crabs then the threshold levels increased but again that is a species specific experiments not something to what we are talking here.

Q. What Hewitt was researching are they what you would call a sensitive species that –

A. Yes.

Q. – may be excluded?

A. Yes that's right.

Q. So in your view is it likely that the benthic communities in the sediment may start showing some impacts below those thresholds?

A. Yes.

- Q. Just in terms of the effective, the water contamination and the sediment contamination, in parts of your evidence-in-chief you've talked about a percentage effect for the direct effect so if you turn to paragraph 11 of your statement.

THE COURT: JUDGE NEWHOOK

Evidence-in-chief?

CROSS-EXAMINATION CONTINUES: MS PARKINSON

- Q. Evidence-in-chief Sir page 3, paragraph 11. And you're quantifying there that there's 1500 metre squared of inter-tidal and sub-tidal rocky shore and 1500 of shallow sub-tidal?
- A. Yes.
- Q. And then over the page you say that that equates to 6% of the total sub-strata?
- A. Yes.
- Q. And you've done a similar exercise for the dredging –
- A. Yes.
- Q. – area and percentage. For the effects on sediment, do you agree that it's the whole marina footprint that would have that effect? So the sediment within the marina footprint would be impacted by contaminants from anti-fouling paints?
- A. (inaudible 16:03:21) the art to clarify the present date I have quoted in my evidence, I got this from Mr Poynter's right? So it gives estimated and I checked that. So in terms of your question, I didn't get the question so –
- Q. So if we're looking at the operational effects of the marina on the water column.
- A. Yes.
- Q. And on the sediment.
- A. Yes.
- Q. And there's modelling NIWA shows that over time that water column will become contaminated to threshold levels.
- A. Yes.

- Q. And similarly the sediment will become contaminated threshold as well.
- A. Yes.
- Q. Is it your understanding that that's an impact around the whole marina footprint? The whole marina area we'll have.
- A. The marina basin, yes.
- Q. Yes. And so we're talking a much larger area than the direct impacts of the dredging of the breakwaters?
- A. So the dredging of the 8.73 hectares.
- Q. Yes.
- A. Yes, so you are including the area for proposed breakwaters as well or is it?
- Q. I'm talking about the – I take you to the joint witness statement and if we're talking in terms of water quality, page 6 at paragraph 10(n) and the NIWA model predicting that the copper levels in the water column inside the marina will increase to that 95% threshold.
- A. Yes.
- 1605
- Q. That's the whole of the marina area?
- A. Yes.
- Q. And similarly over the page at 10(q) the modelling for the sediment reaching those thresholds is the sediment within the hole of the marina area.
- A. Yes.
- Q. And now there's an area given for that in the NIWA model which I'll just put to you is 5.6 hectares.
- A. Yes.
- Q. Which is measured from the rock wall and floating piers to the coastline.
- A. Yes.
- Q. Now, in terms of quantifying the effect, that's a much larger area than the reclamation or the breakwaters, isn't it?
- A. Yes.
- Q. And if you're looking at the hole bay and the sandy subtidal habitat in Matiatia Bay, which is put at something like 39 hectares –

- A. I haven't done that calculation yet.
- Q. So I put to you that 5.6 hectares is a significant amount of the whole Matiatia Bay.
- A. We don't have the figure for the whole Matiatia Bay so I'm not sure with that sort of percentage where we fit into in terms of – well comparing with 5.6 percent.
- Q. If you're comparing it to the dredged area which is .73 hectares, and if you turn to your peer review that gives you the figure, paragraph 40 of your peer review?
- A. Four-zero?
- Q. Four-zero.
- A. Yes okay.
- Q. And that refers to the .73 hectares of the seabed which is to be dredged.
- A. Yes.
- Q. And the last sentence says that's about 2% if the 39 hectares.
- A. Yes, yes, that's right yes.
- Q. The sandy subtidal habitat.
- A. Yes.
- Q. So 5.6 hectares is much more significant, isn't it?
- A. Yes you could say that.
- Q. And if the contamination is going to have an effect on the benthic community in terms of a qualitative assessment, would you say that is a minor effect or a no more than minor effect?
- A. In terms of the benthic community or the effects on benthic community, as I mentioned to you before there will be a change or shift in the community structure. So I wouldn't say there will be a loss of benthic community structure, so it will be a shift and species composition will change. But I can't see the species or benthic communities disappearing from the sediment. So I don't think – and so the assessment of mine so is the same.
- Q. So in the joint witness statement the experts have agreed at paragraph 10(q) that after five to 10 years there will be a shift in

community composition which is likely to continue or increase beyond the 10 year period.

A. Yes.

Q. And that's termed a more than minor effect.

A. Yes.

Q. Do you agree that that's a more than minor effect?

A. Yes I do agree and when we say more than minor, the species composition will be different. So if we monitored or if we see any changes happening, it will be more than minor and also it will not be the same species inhabited now.

Q. In terms of mitigating that effect, there's recommended conditions and my friend, Mr Littlejohn, has taken me through those conditions. Is it correct that in terms of those main management measures, you're relying on Mr Cameron's assessment?

A. Yes.

Q. And so where you conclude in your evidence-in-chief at paragraph 41 that, "Provided these conditions are imposed, I'm satisfied that the proposals effects on ecology will be no more than minor."

A. Yes.

Q. That assumes that condition 17 as promoted by yourself and Mr Cameron is imposed?

A. Yes.

Q. And is effective in managing contaminant levels in the sediment in the water column.

A. Yes.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT – NIL

RE-EXAMINATION: MR ALLAN – NIL

WITNESS EXCUSED

MR ALLAN:

Just to let you know, Sir, the next one after Mr Cameron I have on my list is Mr Cawley. I understand nobody has any questions for him except for Mr Brabant and if, we'll see how we're tracking obviously but whether we can fit him in at the end I don't know, but I'll just leave that with you to keep in mind.

THE COURT: JUDGE NEWHOOK

We'll see how we go time-wise with this witness.

MR ALLAN CALLS**MARCUS JOHN CAMERON (AFFIRMED)**

Q. Your full name is Marcus John Cameron?

A. Yes.

Q. And you're currently employed as a storm water contaminant scientist in the environmental science team and the Research, Investigation and Monitoring Unit of Auckland Council?

A. Yes.

Q. And for these proceedings you've prepared a statement of evidence-in-chief dated 10 June 2014?

A. Yes.

Q. A rebuttal statement dated 23 September 2014?

A. Yes.

Q. And you've also participated in caucusing with the other ecological witnesses which resulted in two statements, first a joint expert witness statement dated 27 August 2014?

A. Yes I did.

Q. And second a joint expert witness statement concerning conditions dated 9 September 2014?

A. Yes.

Q. And can you please confirm to the Court that the contents of those four statements are true and correct to the best of your knowledge?

A. Yes they are.

- Q. Thank you. Just a few quick questions before I hand you over. I think you were in Court when Mr Brabant was questioning Mr Poynter about the effectiveness of low-impact antifouling paints, do you recall that?
- A. Yes I do.
- Q. Do you have any comments that you can offer to the Court in that regard?
- A. Yes I do. There was a question asked about the effectiveness of alternative antifouling products and there was an inference that alternative antifouling products would be less effective than traditional antifouling products. I don't believe that to be correct based on my research and understanding of antifouling paints. The newer products are just as effective as traditional antifouling products.
- Q. And are you able to offer the Court any comments in relation to the relative cost of the low-impact products versus the traditional products?
- A. Yes, they're approximately the same cost. The very cheapest products are perhaps 10% cheaper than alternative products, about \$230 for four litres of a common paint. The alternative product mentioned in the joint witness statement is of equal value, so not significantly more expensive, no.

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- Q. And finally I think you've probably heard the discussion between Commissioner Howie and Mr Poynter, the discussion was about whether this development could affect the population of the bay by a factor of more than 20% or something to that nature. Do you recall that discussion?
- A. Yes I do recall that.
- Q. Do you have any comments to offer the Court in that regard?
- A. Yes, based on the existing metals of copper in the sediment in the bay around nine milligrams per kilograms is the average and based on the predictive levels of sediments with the marina in place, we're talking about 21 milligrams per kilogram based on the NIWA modelling, so that level of change from nine to 21 milligrams of copper based on an inter-tidal benthic health index that is used by the counsel, that would

result in a change from an ecological health state of moderate to what we would classify as poor on a five point scale and that change in ecological classification is reflective of a change of greater than 50% than community composition.

Q. So greater than 50% rather than the 20%?

A. That's correct.

Q. Thank you

A. But I will qualify that that is an inference based on an inter-tidal index and it's also an inference based on the predictions from the modelling so there are a number of inferences made there to draw that conclusion.

CROSS-EXAMINATION: MR R BRABANT

Q. Now the easiest place to do this may be Mr Cameron is to go to the draft recommended conditions of consent that follow in your main evidence or paragraph 21 because you've got a list there of the heavy metals in (b).

A. Sorry which page of the recommended conditions of consent?

Q. No, no. I'm talking about your evidence.

A. Oh the evidence.

Q. Twenty one. And then you've got a draft on the next page which is numbered page 7, you've got a list of, in (b) starting with copper, you see that?

A. Yes.

Q. Copper we know about already. The identified source of copper in this marina environment we're discussing is anti-fouling paint. Would that be right?

A. That would be the primary sources, yes.

Q. And what about lead?

A. Lead traditionally, obviously in leaded fuel, that's becoming less of an issue over time but we also find lead in batteries still and we still find levels of lead in marina areas.

Q. Let's just be a little bit more precise here. So lead and leaded fuel so how – well let me ask a question before we can go any further just on

this point. The work you've done and you've explained the work you've done and you've been to some marinas and done some testing, have you also contact with the marine industry and with marina operators to gain an understanding of what happens in marinas?

A. Yes I have through that research I've spoken to a number of marina operators.

Q. Yes.

A. I've spoken to a number of people in the anti-fouling industry regarding anti-fouling paints, their application, their use. I've been involved with the New Zealand EPA around the reassessment of anti-fouling paints and I've spent time in marinas and I understand how marinas operate.

Q. So if you say that the source of lead in relation to a marina comes first of all from leaded fuel, is that the –

A. No I'd like to qualify what I said was that the primary source of lead use to be from leaded fuel.

Q. Okay so –

A. But that was taken out of use in 1996.

Q. Yes, okay.

A. So there is still a source of lead to the marina environment, it's in soils, it's used in batteries and it is a common contaminant that we find in urbanised marina environments.

Q. Well I'd like to just take this – thank you for all that information at once, but this is a new marina right?

A. Mhm.

Q. This isn't an existing one so let's go back lead again. So we can discount the lead in fuel in this new marina right?

A. Yes.

Q. And in any event you'd be aware that, do you have any idea in moored yachts and launches, what the likely fuel they'll be using for the engines is?

A. For moored vessels if they have an engine, if they're –

Q. Yes.

A. Then they'd primarily using two stroke.

- Q. No, moored. That's why I asked you if you had been talking to marina operators and gained an understanding. We've got yachts and launches in these marinas haven't we not powerboats?
- A. Yes, oh well then if you've talking about the marina once it's established.
- Q. Well of course I am.
- A. Then primarily the boats will be using diesel I would imagine, yes.
- Q. That's what I'm trying to talk about, the effects of the boats that are going to be there.
- A. Mhm.
- Q. So if you're not sure about these things you can tell me. So now you then you mentioned about lead in batteries.
- A. Yes.
- Q. Do you know anything about the modern marina battery?
- A. It's not near my expertise, no.
- Q. So you wouldn't know whether the batteries were the old style open casings or whether they're fully sealed or what they are would you?
- A. I know some basic, I have some basic knowledge about marina batteries. I know that they need to breathe so that there's not an accumulation of gas so I know the basics about marina batteries.
- Q. So is it the breathing of concern into the air or is it the risk that a battery, the internal workings of the battery end up in the water? What exactly is the concern Mr Cameron?
- A. Yes, we have seen batteries ending up in the water in marina areas. We've also seen the use of lead weights, sinkers, dead weights et cetera ending up in marinas and one aspect we haven't covered is the previous use of lead in anti-fouling paints. A number of boats still have lead underneath their existing layers of anti-fouling paint and when that is sloughed off or has maintenance work done then that lead can be exposed.
- Q. Right and that would occur in a hard stand yard wouldn't it?
- A. It would primarily occur –
- Q. If you're going to expose some lead, yes.

- A. Yes maintenance activities would primarily occur in a hard stand yard or on a tidal boat grid, smaller maintenance activities could expose that.
- Q. Do you agree that a well run and managed marina would be providing facilities if need be for people to safely dispose of used batteries? A well run marina?
- A. Yes I would hope a well run marina would provide those to release yes.
- Q. Now let's go to zinc. You've mentioned, I'll get back to cadmium in a minute, you've mentioned zinc so I gather you know that zinc anodes are used on boats?
- A. Yes I do know that.
- Q. Do you know the reason for that?
- A. Yes it's to prevent electrolyses of the other metal structures on the boat.
- Q. Yes. So it is likely that if there are 160, 170 boats in this marina, there would be one zinc anode for each boat or maybe two on some of the bigger boats?
- A. Yes, that's my understanding that a smaller boat would require one, larger boats often more.
- Q. Has the work you've done tested the significant of that release of zinc into the water because the information I've seen at the moment is rather focused on diuron and copper but you've asked that the marina test for zinc so can we get some idea of the significance of this?
- A. Yes during the sampling work that I carried out at a number of marinas across Auckland we also sampled for zinc and the zinc levels were found to be elevated in a number of marinas. Zinc, pyrithione and other zinc pigments and carrying agents in anti-fouling paints are also a significant source of zinc to marina environments.
- Q. And which marinas did you find what we call on elevated level?
- A. Off the top of my head we found elevated levels of zinc in several of the marinas we sampled.
- Q. Which ones please?
- A. I know we found it in Milford, in West Park, in Gulf Harbour, in Westhaven. I cannot recall whether we found levels of zinc above

guideline values in Bayswater or Orakei but they would've been lower levels than more flushed.

Q. So this type of contaminant could that also come from storm water flowing into those marinas such as at Milford?

A. Yes it could and there was a correlation between the levels of zinc that we found in the marinas and inputs of storm water.

Q. Yes.

A. To those marinas.

Q. Let's move onto arsenic. So how do boats produce arsenic into the water can you explain?

A. Arsenic is also contained in some batteries but I would expect the primary source of arsenic into a marina environment would be from copper chromium arsenic treated timber piles we used in marina infrastructure.

Q. The issue that Mr Poynter's addressed in his evidence?

A. Yes that's correct.

Q. Mercury.

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A. Mercury is used in a number of medical applications, it's used in thermometers, it's used in some ships and boats use thermometers and barometers et cetera which contain mercury.

Q. So are you postulating then that someone breaks a barometer on their boat and let's the mercury escape into the water, is that what you're suggesting?

A. That is a possibility.

Q. Chromium.

A. Sorry, what's the question?

Q. Well it's the same question as all the others, sorry I'm just short-circuiting. This is a new marina that's going to provide berthage for around 170 recreational yachts and launches and you've no doubt read the evidence, it gives you a picture of what's there and I'm wanting to know in respect of each of these heavy metals that you're referring to

where these are sourced from, from the marina including the boats. So can you tell us about chromium please.

A. Yes.

Q. Where does that come from?

A. Chromium again is contained within copper chromate arsenic treated timber and it's also contained within stainless steel and other metal alloys which are often used in the marine industry.

Q. Cadmium, I think you mentioned in your evidence that the cadmium can be found in zinc, was that the connection? With cadmium. I saw in your evidence you refer to cadmium being found in the zinc anodes. Or did I misunderstand what you wrote?

A. No I don't recall writing that in my evidence no.

Q. So where does that cadmium come from then?

A. Again, cadmium is contained within batteries and a number of metal alloys.

Q. And lastly, nickel.

A. The same as cadmium and chromium, that's in batteries and a number of metal alloys.

Q. Now, diuron, my understanding Mr Cameron is that a national regulation has been introduced as it was for, has been in the past for other products in antifouling which says that it won't be available on the market or antifouling containing that product won't be on the market until 2017, correct?

A. Yes, that's correct.

Q. If this marina is consented, are you aware there will be a construction phase before it could be occupied?

A. Yes I am.

Q. So assuming, hypothetically, that it was consented by the end of this year and construction took place and it was available at the end of two years after that the marina could commence operation at a time where this product was effectively banned for new applications, couldn't it be?

A. Yes that's possible and that's why in our joint witness statement and our recommending conditions of consent we included a review, a

recommendation for a review condition so that if another biocide became the predominant biocide in use that that could be then introduced into the monitoring programme instead of diuron as it became deregistered.

Q. But this product is being removed out of use like TBT was in New Zealand because of perceived adverse effects isn't it?

A. That's correct, yes.

Q. So why would we expect the national authority that regulates things such as antifouling paint to allow one toxic product to be replaced with another Mr Cameron?

A. The NZEPA's process looked at the costs and benefits of various antifouling agents used in products. Copper, for example, was deemed a risk to the marine environment and the EPA stated that it would be preferable to remove copper or reduce the use of copper in antifouling products but that there wasn't currently and economically viable alternative to copper and so the benefit of its continued use outweighed the risk of removing it.

Q. Can you answer my question please.

A. Sorry, could you repeat the question?

Q. Yes. Our national authority for controlling these sorts of things is going to direct that diuron no longer be a product within antifouling paints applied in New Zealand from 2017. Why would we expect that that organisation, having decided that that type of product is toxic in the environment and should be removed, then permit the antifouling manufacturing market to substitute that toxic product with another additive that has the same effect, why should we expect that?

A. It would not necessarily be a substitution, essentially there are a range of high number of other biocides that can and are being used in antifouling paints. Essentially the, going back to the risk benefit analysis, they have decided that other antifouling co-biocides still the benefit outweighs the risk and so they can continue to be used in antifouling paint.

- Q. Mr Cameron, copper is a method of preventing holes from fouling, it's been around since Lord Nelson hasn't it?
- A. That's correct.
- Q. So that's a different issue altogether, we're talking here about other products and I put it to you that the national authority can be expected by the general community and the boating public not only to remove products from antifouling where they can and I understand copper may be a different issue, but also will be looking at any new product that people might try to replace diuron with. Isn't that realistic?
- A. Yes, that's absolutely correct. The EPA will look, they will do an assessment of any new product that is applied for.
- Q. So you've got one that's already there and like TBT it's being phased out, but any new replacement that comes along has got to get past the national authority before it can even be sold, won't it have to be?
- A. That's correct.
- Q. So there is no reasonable expectation that diuron will be replaced by something equally as bad is there? Because they have to get a new approval.
- A. That is inferring that diuron would be replaced with something else.
- Q. Well you suggested it.
- A. No, what I mean is, if I could clarify for the Court, that a different product could be used with a different biocide in that product and there are a number of other biocides, co-biocides other than diuron that are still in use and have not been deregistered.
- Q. So, people could bring those forward as a new additive in their paint without having to get approval from the national regulatory body, is that what you're saying?
- A. No, to clarify again, there are a number of other co-biocides that are currently in use that have not been deregistered by the EPA and therefore they are still available for use in antifouling paints.
- Q. And if they came to pass as a significant component the EPA has got the power to act hasn't it? To do something about it.
- A. I'm not sure what you mean by that question.

THE COURT: JUDGE NEWHOOK

Mr Brabant, this is now going around and around. It occurs to me as just a strictly practical matter that the area that you are drilling into is speculative and depends on what the EPA might do next. And for instance, just as a purely practical response, it might be that diuron is removed by order of the EPA. It might be replaced by something that is not very nice but might be only 80% as bad as diuron and that might be the best that the EPA could do. But it's speculative because we don't know what the EPA will be looking at, as I hear the answers from the witness (inaudible 16:33:52) even your questions. Now, where is it taking us?

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. If we get back to the list, is this a standard list that you've engaged in here or is it a list that is tailored to a new marina at Matiatia? And I'm talking about the list of items that you've got there, starting with copper right through to the end of those heavy metals and then diuron.
- A. It's both, it's a mixture of what's been used in other marinas, what we've found in other marinas and then based on an assessment of potential sources of contaminants to this new marina we've decided to include or exclude contaminants from the list and that is the list that we've come up with as agreement in the joint witness statement.
- Q. As I understand it, you at the moment consider that the proportion of biocide exported is considered likely to be similar to that of Orakei Marina.
- A. Broadly speaking that would be correct. I'll qualify though in saying that the amount of biocide or copper in particular produced by this marina would be similar because of a similar number of boats. In this situation approximately 50% of the copper is predicted to be exported and I can't remember of the top of my head the proportion from Orakei but I believe it to be similar.
- Q. Of the items that you've listed for monitoring and then potential action, all of them are a potential source from boats aside from timber-treated

piles. Those would be the two components, boats and timber-treated piles.

A. The other source of contaminants that was discussed in the caucusing with the other witness was storm water, so that is another potential source.

Q. The storm water here is subject to a separate consent, isn't it?

A. That's correct.

Q. In addition to some of the marinas you tested having storm water input into the marina basin, you also did some testing work at marinas that had hardstand yard associated with them?

A. Yes that's correct.

Q. Which ones were they?

A. The marinas we tested with hardstands were Westpark, there are hardstands adjacent to Westhaven, Orakei, those are the three – oh and Milford Marina as well has a hardstand adjacent.

THE COURT: JUDGE NEWHOOK

Now, who is going to go next? Do you want Ms Parkinson to go next, Mr Littlejohn?

MR LITTLEJOHN:

I had intended to question Mr Cameron, but I got a few dead ends with, no disrespect, with Dr Sivaguru, so I was going to ask Mr – but I understand Ms Parkinson has prepared more thoroughly, there were only a few –

THE COURT: JUDGE NEWHOOK

Shall we put her up next and then if you find that there are some dead ends left after her thorough questioning then you can have a go then.

MR LITTLEJOHN:

Thank you Sir.

CROSS-EXAMINATION: MS PARKINSON

- Q. Now, I'm going to ask you to mostly focus on your peer review if you could get that out, the Court record volume 3, common bundle tab 47, attachment 5.

WITNESS REFERRED TO VOLUME 3

- Q. The focus of your evidence is on the toxicological effects of contaminants that will leach into the marine environment from boats moored within the proposed marina, is that correct?

A. Yes, that was a primary focus.

- Q. And that's an area which you've got specific expertise in, you've recently been a co-author in a technical report which has investigated that type of contamination in marinas around the Auckland region?

A. That's correct.

- Q. If you turn to your peer review, paragraph 7, which is on the second page? We're looking at paragraph 7 where you're discussing those points including one that you co-authored in 2012, where you record that the sampling of marinas in Auckland showed that copper concentrations in all of the existing marinas was above the guideline thresholds for the protection of marine life. To flip that around, no marina was below those thresholds?

A. The statement doesn't read "all marinas". It says "existing marinas." From recollection at Bayswater Marina the guideline they use or the levels in that marina were at or about the 95% ANZECC value. But all other marinas were above.

- Q. Did that include Orakei, (inaudible 16:41:01)?

A. Yes I believe it was.

- Q. And you state that the copper levels in the sediment and water column of those marinas is likely to be having effects on non-target organisms. By "effect" do you mean that those organisms are unlikely to survive over the marine environment?

A. No, what I mean by that statement is that antifouling paints are designed to prevent hull fouling and reduce bio-security risk, so that is their primary target. There are other organisms that are not a bio-security

threat that may be affected by antifouling paints. But that does not necessarily mean that they will be killed by those antifouling paints.

Q. So the co-biocides are designed to be toxic to the target species but can also be toxic to non-target species?

A. That's correct.

Q. And it will depend on how much of that contaminant is leached off the bottom of the boats and into the water column and sediment.

A. That's correct and obviously the sensitivity of the species or the stage in their life cycle, with earlier life cycle stages being more sensitive.

Q. Did your research include any sampling within the marinas to determine the levels of biota and diversity and abundance was in those marinas?

A. No, that particular piece of work did not sample for biota, it was focused on contaminants.

Q. Are you aware from your work with marinas whether that type of monitoring is being carried out in any of the marinas around Auckland?

A. As far as I'm aware biological monitoring or for biota in the sediment is not being carried out. I am aware that some contaminant monitoring in shellfish has been carried out in marinas.

Q. And is that showing an impact on the shellfish and their bioaccumulation of proper and other toxins?

A. Yes we typically see elevated levels of particularly copper in shellfish, particularly oysters that are monitored in marine environments. But again another potential source of contaminants is storm water in many of those environments.

Q. So you're informing the Court there is no specific reports or evidence that you're aware of which can quantify the effect on the biota, the benthic communities within marinas?

A. Not that I have looked at specifically. I understand there are examples in the international literature and there may be marinas outside Auckland where there is benthic ecology monitoring, but I'm not aware of any of that monitoring in Auckland.

Q. At paragraph 6 of your peer review you state that copper is in almost all antifouling paints used in New Zealand. You later state at paragraph 25

that there are a number of other contaminants in the marine environment – I'm sorry, I'll actually leave that question because it's one that my friend Mr Brabant has asked, I was going to ask about the source of those contaminants. Now, the NIWA, just in terms of those other contaminants which you've been taken through by my friend, Mr Brabant, the NIWA model has focused on copper and diuron. If modelling was done for those other contaminants, would you expect to see elevated levels over time?

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- A. I would expect to see some increase in zinc because it is also used in most antifouling paints and there are other sources within the marina. I would also expect to see some increase in the levels of hydrocarbons because they come from fuel and boat use within the marina. The other contaminants there is less certainty about whether they will increase over time and that is why in our joint witness statement and recommended conditions of consent we have recommended that those other contaminants could be reviewed in the future if monitoring reveals that they haven't increased then they could be removed from the monitoring.
- Q. Just turning to the joint witness statement, 27th of August 2014, tab 3 of the common bundle. And turning to paragraph 10(n). And this is the agreement between the experts that when the marina is at full occupancy copper levels in the water column inside the marina will be at the 95 level of protection. Just to explain that, does that mean that 5% of the marine life in the water column will be affected or is it not quite that precise?
- A. That is a general interpretation of that guideline value, yes.
- Q. And similarly and if it's at the 90% threshold then 10% of marine life will be impacted.
- A. Yes, that's correct.
- Q. And the experts suggest in the joint witness statement that between those two thresholds, 95 and 90, the effect would be no more than minor but if it goes above 95% it becomes more than minor.

- A. To clarify what we said in the joint witness statement is actually once the levels in the water column exceed the 95% protection level then we would consider that to be a more than minor effect. If they were to exceed the 90% protection level then that would be a further effect again be on that more than minor level.
- Q. Your peer review report at paragraph 13 addresses the NIWA model which you record assumes a zero concentration of copper in the water column and you express the view that copper levels should be factored in. Now as there's no information on the existing levels, what concentration needs to be assumed and factored in?
- A. So there are two parts to that answer. The first being in the water column, there's no existing information for copper levels in the water column. Compared to levels in the Waitemata Harbour which I qualified would likely to higher so we wouldn't want to add that level. And we also qualified that detecting the existing level may be problematic because of analytical techniques available currently in commercial labs. For the sediment concentration, the sampling by Mr Poynter has given us a baseline of contaminant levels, heavy metals in particular. So the nine milligrams per kilogram of existing, average existing copper in the sediment is what you would want to add to the NIWA modelling and that brings it up to that 21 milligrams per kilogram. If you factor that in after the five to 10 year period.
- Q. So when you factored in existing copper levels in the water column, what level have you assumed?
- A. We haven't assumed a level because we don't know what that level is. We would expect it to be less than 1.3 micrograms per litre which is the same as the ANZECC 95% protection level and that 1.3 micrograms per litre is what we see in the Waitemata Harbour so we'd expect it to be less than that. The detection limit is 1 microgram per litre so we believe that you may not be able to pick up the existing level, it may well be less than 1 microgram per litre currently.

- Q. The applicant didn't undertake that exercise did they, they didn't attempt to test the water quality and assess it of copper?
- A. No they didn't and we discussed in the caucusing whether that would've produced a usable result and we concluded that it probably wouldn't have. We discussed that there are laboratories in New Zealand that are non commercial, universities for example that may be able to detect that and that is something we could potentially assist with if we wanted to establish that baseline in the future.
- Q. The joint witness statement at 10(q) you're discussing the sediment quality which is recorded as being even more uncertain that the water quality and unable to predict contaminants beyond 10 years.
- A. Sorry could you just repeat the paragraph number?
- Q. That's 10(q).
- A. In the joint witness statement?
- Q. In the joint witness statement page 7.
- A. Okay.
- Q. Now just with reference to that paragraph and then your peer review paragraph 22.
- A. Yes.
- Q. Where you're discussing the existing sediment copper concentration and you conclude that the predicted maximum levels would reach the ERC amber threshold somewhere between 10 and five years post-construction and that will increase steadily over 10 years if there's no maintenance dredging. Is paragraph 10(q) of the joint witness statement in acceptance by the other witnesses of your peer review conclusions?
- A. I believe that they are similar statements. I can't speak for the other people to say whether they accept specifically what I've said in my peer review but they appear to be similar statements.
- Q. And the reference in the joint witness statement to exceeding the TEL, is that the equivalent to the ERC amber threshold or a different threshold?

- A. That's correct it is equivalent. We chose to use the TEL in our joint witness statement rather than the ERC's because the TEL is an internationally recognised guideline and it's also contained within the proposed Auckland Unitary Plan and the Auckland Regional Plan Coastal.
- Q. So in your opinion the 177 boats which are going to be moored in the proposed marina will have an appreciable effect on contaminant levels in both the water column and sediment within five to 10 years?
- A. Yes I believe it will have an appreciable effect. In the water column to clarify there, essentially once the marina is fully occupied the copper and other antifouling biocides leached from the vessel holes will essentially bring us up to the approximately the ANZECC 95% level quite quickly, within weeks whereas the sediment will take a longer time to accumulate and we expect the guideline there to be breached somewhere between five and 10 years based on the modelling and the existing baseline.
- Q. Would those two contaminants, say the water quality and the sediment interact together? So will some communities, will marine life within that environment be impacted by both water quality and sediment?
- A. Yes, most sediment dwelling organisms also have a larval phase which floats around in the water column so there will be organisms that will be impacted both by contaminant levels in the water column and in the sediment.
- Q. And in your view will those contaminants have a more than minor effect on the marine life within the marina footprint?
- A. Yes I do, that's the statement that I made in the joint witness statement in my evidence particularly in the sediment between that five and 10 years period, we expect that effect to be, we've turned it more than minor but to clarify that, we expect there to be a appreciable change in community appreciable change in community structure for the benthic biota living in that settlement.
- Q. I take you back to the joint witness statement paragraph 10 page 4 and there's a preamble set up there.

- A. Yes.
- Q. And subparagraph (b) which I suggest poses an issue for the Court to determine which is the extent to which it might be acceptable to allow an increase affect within a marina and goes on to discuss antifouling paints and some of the developments and antifouling. That issue, is that the same issue which is addressed in your report that you co-authored with Gadd which recognised to the lower level of protection of the marine light might be appropriate in marinas? Is that an issue that the expert's opposing for the Court?
- A. What I have stated there and the other experts have agreed with is that marinas are a modified environment. The ANZECC guidelines are applied differently depending on the level of modification of the environment that you're applying them to and therefore if you consider the existing level of modification to the minor or moderate then you may choose to apply a different guideline value to that environment that is appropriate to its existing level of modification.
- Q. So if we're looking at Matiatia Bay, it doesn't currently have a marina in the bay.
- A. It doesn't but I would classify it from a contaminant perspective as being slightly modified already due to the swing moorings in the bay and the ferry service and other boating activities.
- Q. So in your view, is Matiatia Bay similar to other marinas and deserving a lower level of protection from marine life?
- A. No I don't think Matiatia Bay is equivalent to other existing marinas, I think it is – has a lower level of impact currently than other existing marinas.
- Q. So as a starting point a higher level of protection for marine life?
- A. Yes I would agree with that.
- Q. Now the NIWA model predicts that 170 kg of the copper would be flushed out into Matiatia Bay after a year. Based on your research are any contaminating effects outside the marina footprint likely?
- A. That is more difficult to assess. I stated in the joint witness statement that I don't believe the effects outside the marina are likely to be more

than minor because of the level of flushing and dilution of the contaminants once they leave the marina area.

Q. Did your report in 2012 investigate or do any sampling outside of the marina footprints or was it solely inside the marina?

A. Yes we did sample outside the marina footprints. We took three samples in the Waitemata Harbour as a sort of indication of background and their levels of contaminants and we also sampled at the mouth of West Park Marina to estimate how much copper was exiting the marina on each tidal cycle.

Q. What did you find at West Park Marina? Was their sediment contaminated?

A. Sorry, in regards to sediment contamination?

Q. Yes.

A. We didn't sample in the sediments during that study, we sampled in the water column so to clarify there are other marinas where there has been sampling outside the marina basin, Pine Harbour for example and that has shown a gradient of contamination in the sediment from the mouth of the marina decreasing as you go further away from the marina basin.

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Q. Still showing some impact outside the marina?

A. That's correct.

Q. Do you have a copy of the joint witness statement on recommended conditions, which is –

A. Yes I do.

Q. – 9th of September 2014? Your Honour, I understand that this has been inserted into the common bundle behind tab 3 as well of the joint witness statement. I'm looking at page 5, which is the notes to Court and it starts at page 3, "The water quality and sediment quality monitoring conditions," and then continues on 4 and 5. Now those conditions have been proposed to manage contaminants within the marina and the proposed (f) only kicks in once it gets above certain thresholds, is that correct?

A. Yes, that was what was proposed.

- Q. So once the contaminant levels are above those thresholds and the biota within the sediment in the water column are being impacted, those management measures that you're recommending will start to be put into place.
- A. Yes, that was the recommendation. The level at which we've specified the guideline levels below that, we consider that the effects would be no more than minor, so we wanted the management to kick in at that guideline level so that we could avoid any significant increase beyond that guideline level into an area where the effects would likely be more than minor.
- Q. And am I correct in my understanding that once those threshold levels are reached, the biota will be impacted to a more than minor degree, is that not the agreement of the witnesses?
- A. At or around those levels we would start to see effects that could be more than minor, yes.
- Q. So with management measures are, put in the alternative, there is a contaminant management plan which may include uses of low-impact antifouling paints, there's the adoption of low-impact antifouling paints or there's the differential berth holder fees. Is there a management tool that you favour of those three?
- A. Yes there is, the second option to use low-impact antifouling paints is my preferred option because I believe that would have the most immediate and memorable effect on contaminant levels. And in fact to take that further, if low-impact or low-copper specifically antifouling paints were used from the beginning of the marina, then we may actually be able to avoid reaching those guideline levels in the first place.
- Q. Is that a preferable option in your view?
- A. Yes, that would be preferable that we used low copper formulations from the beginning.
- Q. And are those formulations available on the market at the moment?
- A. Yes they are, there is a formulation if I can name the brand, Pettit Vivid, that uses a new copolymer technology which essentially allows a more

sustained release of the copper rather than allowing the copper to leach out at a very high rate. So it is still as effective as a traditional antifouling paint, but releases the copper at a lower rate, more sustained rate, and therefore releases less copper overall.

THE COURT: JUDGE NEWHOOK

Q. Mr Cameron, is that an example of paints that you say are just as effective and about the same cost that you gave in answer to Mr Brabant in a more general way?

A. Yes that's correct.

CROSS-EXAMINATION CONTINUES: MS PARKINSON

Q. And you also refer in that condition to non-biocidal if available. Are there any paints of that type available in the market or are they still to be developed?

A. Currently there are no non-biocidal paints available in New Zealand. There are products that do not contain biocides or the traditional biocides available overseas. There is a large body of research going on in that area to develop antifouling paints that are non-biocidal, and there are active research programmes in New Zealand to develop that type of product.

Q. Just returning to what's on the market now, if that was modelled by NIWA in the same way that you've done a model for the existing antifouling paints, what do you expect would be the outcome?

A. That particular paint was assumed to be applied to 100% of vessels in the marina. It has approximately 30 to 50% of the copper levels of other common copper-based paints and so we would expect the level of copper to be in the region of 30 to 50% of what was modelled in the NIWA project.

Q. So perhaps an impact in 10 to 20 years rather than five to 10 years.

A. The impact in the water column may be able to be kept below guidelines for the foreseeable future. In the sediment it's possible that the guidelines would still be breached over a longer time period, but I couldn't say what that period would be.

THE COURT: JUDGE NEWHOOK

- Q. By which timing one might hope scientists might have developed something better again.
- A. Yes that's correct, and that's –
- Q. I'm sorry Ms Parkinson if you don't mind me interruption, because they're working assiduously on these issues all the time, aren't they?
- A. That's correct, there's a significant amount of research going on in that space both nationally and internationally.

CROSS-EXAMINATION CONTINUES: MS PARKINSON

- Q. Mr Cameron, you may be aware that there is a jurisdictional issue that's been raised in terms of these conditions. If there were no management measures in place do you agree that the Court should have regard to the predicted effects of contamination in the water column and the sediment in assessing this application?
- Q. From a commonsense perspective yes, I believe that the Court should consider contaminants. The activity of a marina involves boats inherently and therefore the contaminants that are associated with the boats. And as we've discussed there are also some other potential sources of contaminants from the marina infrastructure and from storm water and general boating activities in that area.

THE COURT: JUDGE NEWHOOK ADDRESSES MR LITTLEJOHN – TIMING OF CROSS-EXAMINATION**CROSS-EXAMINATION: MR LITTLEJOHN**

- Q. When you were discussing with my friend, Ms Parkinson, about the background water quality sampling, I understood you to say that your understanding of the quality of the bay there was that it was going to be very very difficult to detect any existing contamination in the water column, is that how I understood it?
- A. I'll give you the first one, yes.
- Q. And that was because you are likely to find contaminants at less than one microgram per litre?

- A. That is my assumption.
- Q. Now, there is evidence that this bay has probably the second busiest ferry terminal in New Zealand. With the answers to my first question in mind, is it safe to assume that that operation is not having any detectable impact on water quality in Matiatia Bay?

1710

- A. No I don't believe it's safe to assume that. There would likely be some effect from that operation yes.
- Q. But if you say that there's little point in measuring because we might not be able to detect this, is that, or am I getting this wrong and what you're saying is that this is your slightly modified water quality environment, even though we can't detect it?
- A. Yes, and the detection aspect is specifically in regard to copper from the antifouling paints so there maybe other contaminants, for example hydrocarbons from existing boat use that you could detect and we certainly, sorry, Mr Poynter detected contaminant levels in the sediment so in regard to not being able to detect contaminants, particularly copper, that's just in regard to the water column.
- Q. Thank you for clarifying that. In the case of copper in particular, if it weren't for a proposal to bring in the number of boats proposed by the marina, would you expect in time to see similar levels of copper accumulation in the sediments in the water quality in Matiatia Bay?
- A. If the existing number of swing moorings stayed the same?
- Q. Yes.
- A. I would expect the levels to remain similar to those that we see currently in the bay.
- Q. You answered my friend, Ms Parkinson's last question with a view that the Court should take into account the effects of the discharges of such, like from the boats from the marina because it brings the boats into the bay doesn't it?
- A. That's correct.
- Q. There has been a suggestion made by Mr Poynter and I think it was in his letter where he explained the NIWA, he covered the NIWA report

back to the Council processing team saying that one factor that ought to be borne in mind is that there might be these boats in the coastal marine area anyway and I took him to mean that that was a way of saying we shouldn't be so concerned because there's going to be this copper out there anyway. Do you recall reading that in Mr Poynter's letter?

A. I do recall reading that. My interpretation of that statement was that there may be an increasing number of moorings in Matiatia Bay and my understanding is that that is proposed, it's proposed to have a greater number of moorings around Waiheke so it could be assumed that you will have some increase in contaminant levels as you have an increasing number of swing moorings.

Q. But under the current regime we could not expect the scenario where the total number of boats currently proposed to be more than are berthed in Matiatia Bay could just occur any day of the week could we?

A. No, that would be quite unrealistic.

Q. And finally, and my friend Ms Parkinson alluded to it, the applicant is saying that it effectively can't direct any of the berth holders to change the paint they may apply to their boats and this is what, I think, my friend referred to as a jurisdictional issue. Now putting that to the side, as to whether that is legally correct or not, if that is the case then any conditions directing the marina to take steps to make its berth holders change their paints would not be effective. That's what we lawyers would call it. If that was the case, would your concerns about being able to address long-term accumulation of copper in the sediments in the marina be addressed?

A. No, if there was no mechanism to require berth holders to use low copper formulations then I would be concerned that the breaches of guideline levels would occur and therefore the effects would be more than minor as we've stated.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

Q. Did I hear you say that the water quality in Matiatia was better than in the Waitemata? Is that your – did you say that?

- A. Yes that was our assumption, my assumption.
- Q. So what area do you define as the Waitemata, where does that go to?
- A. Approximately out to the area between North Head and the Port, being the inner Waitemata.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

- Q. Does the Council control any other marinas in this way?
- A. No we don't. This is the first marina application since the body of research that I carried out in conjunction with NIWA into the extent of copper, in particular, antifouling biocides in and exported from marinas. So our understanding of the issue around antifoulants has changed in the last two years and we understand the extent of effect from marinas better and therefore I am proposing to manage that effect more actively than has been in the past.
- Q. And how do you propose to capture the existing marinas?
- A. That's a good question. As they come up for their consent renewal, that would be an opportunity to review their consent conditions. There is the opportunity to review the consent conditions of some existing marinas and we're also, other departments within Council, I understand, are working with marina operators to improve discharges from their hardstand areas where treatment is required and there has certainly been an improvement in the treatment of hardstand run-off. The issue of boats within marinas as we're seeing is more complex and therefore that will take some time and some relationship communication between Council and marine operators to look at options for managing contaminant effects from boats within marinas.
- Q. So, when an existing marina came up for consent renewal, what would you expect to do?
- A. I would expect if they are currently exceeding guideline levels, as we've outlined, as I've outlined in the joint witness statement, and if the amount of copper in particular that is being exported from those marinas is significant, then I would expect that we would be looking at the same kind of approach as discussed and outlined in our proposed conditions.

Q. Presumably that would entail quite a period, some of these consents would have quite a few years to run I presume.

A. That is correct, consents can be up to 35 years and some of those marinas have been relatively recently established.

Q. And if the question of contamination from antifoul paints is as widespread as you're suggesting it might be, would not the supply, control of the supply of the antifouling paint in the first place be a point of control?

A. Yes, and the New Zealand EPA in their review of current antifouling products as discussed earlier, they have identified that copper is an issue, that they would prefer an alternative to be found to copper because of the risks from copper. And they are the authority controlling the use and registration of those products and so I would expect over time that they would be encouraging, looking for alternative products as they become available and as they are tested and registered.

Q. So, you're describing sort of two methodologies of control of this problem. Do you favour one over the other, do we need two ways of doing it or would you prefer something alternative?

A. In regards to the two ways, do you mean that the Council can control or an individual marina application could be controlled in regards to the products and then the national body controlling the products.

1720

Q. Yes, I'm referring to different Councils controlling different marinas in different ways compared to a national body controlling the supply of the material in the first place.

A. I don't have a preference per se for either approach. I think we've identified an issue and the NZEPA have allowed copper to continue to be used, so therefore it will be some time before they review those products again, and I think in the interim we need to address the current effect of those products that are in use and manage those until such time as the national body can put a blanket conditions over the products that can be used.

Q. So you're leading the charge.

- A. That's one way of looking at it, yes.
- Q. And just finally, there's a level called TEL, this is I think in respect of sediment?
- A. Yes.
- Q. And in the joint witness statement I think it refers to TEL as the threshold effective level, or should it be the "threshold effect level"?
- A. That's correct, I think that might be a typo, yes. It should be "threshold effects level".
- Q. "Effect level".
- A. Yes.
- Q. So I take it then that that means it's the effect on biota that is just detectable?
- A. The guidelines that have been developed which include that particular guideline are outlined as less than the TEL being a situation where you would rarely see effect, between the TEL and a higher guideline called the "probably effects level" is an area where you would occasionally see effects, and above the PEL, the probable effects level, you would frequently see effects. The TEL guideline itself is calculated on the 15th percentile or 15% of effects tests that were carried out, so 15% of those tests showed an effect. And that is how that guideline has been determined.
- Q. And what's the PEL?
- A. That is the level at which 50% of tests showed an effect.
- Q. An effect?
- A. An effect, yes.
- Q. Which might be small but it was detectable.
- A. Yes, the magnitude of effect is not a component so yes, it could be small, it could be large, but that is – yes, the effect was shown at that point.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR ALLAN – NIL

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

All right, now somebody mentioned the possibility of (inaudible 17:23:36) trying to get Mr Crawley. We'd be pushing the boat out a little far, if you'll forgive the terrible pun. Who wants to question Mr Crawley (inaudible 17:23:46)? You do Mr Brabant, how long is it going to take you to do that?

MR R BRABANT:

Well the problem is, Sir, I think we need to discuss where you're going to go on your site visit tomorrow, and there's a ferry at six and I'm not sure when the next one is. Oh 16.15, oh well.

THE COURT: JUDGE NEWHOOK

Yes, there's heaps of ferries at the moment at this time of the day. I wouldn't get too anxious about that. How long were you wanted to ask Mr Crawley questions for?

MR R BRABANT:

It won't be more than 10 minutes.

THE COURT: JUDGE NEWHOOK

Where is Mr Crawley? Can you come back later in the week Mr Crawley?

MR CRAWLEY:

Yes I can Sir.

THE COURT: JUDGE NEWHOOK

Without too much (inaudible 17:24:21)?

MR CRAWLEY:

Yes, (inaudible 17:24:23).

THE COURT: JUDGE NEWHOOK

Yes, I think we'll ask you to do that if you wouldn't mind working with Mr Allan, with the registrar, and Mr Littlejohn's got a part to play in some timetabling (inaudible 17:24:36). So I will come to you later in the week if you don't mind, Mr Crawley.

MR ALLAN:

It's likely to be Friday afternoon if it happens at all, isn't it (inaudible 17:24:50)

THE COURT: JUDGE NEWHOOK

Yes, it sounds like we'll be getting back to your case if we can this week on Friday. I wouldn't necessarily say Friday afternoon as opposed to earlier in the day, but we're just going to have to play it by ear I think a bit Mr Allan. Such is the nature of this week's beast.

THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL – SITE VISIT

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL –
HOUSEKEEPING**

COURT ADJOURNS: 5.47 PM

COURT RESUMES ON TUESDAY, 14 OCTOBER 2014 AT 2.35 PM

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL –
HOUSEKEEPING**

MR LITTLEJOHN:

This afternoon I have available as independence to give a brief submission, a Janet Moore or Shirin Brown. Now Shirin Brown unfortunately either has to present briefly before 3 o'clock or after 4 o'clock, she has to be away for an hour in the middle, so we may be able to accommodate her and –

THE COURT: JUDGE NEWHOOK

Was that before 3 or after 4?

MR LITTLEJOHN:

Yes.

THE COURT: JUDGE NEWHOOK

Getting close to 3 now so it'll probably be after 4. Unless she's 10 minutes worth and we'd have to do her right now. You can come back to your little list after she has presented, so let's hear from her this minute.

MR LITTLEJOHN:

All right, very well.

1450

SHIRIN BROWN

THE COURT: JUDGE NEWHOOK

You're a s 274 party?

MS BROWN:

Yes I am.

THE COURT: JUDGE NEWHOOK

We'll find your 274 notice.

MS BROWN:

Wait, I'm not actually talking specifically to that.

THE COURT: JUDGE NEWHOOK

Well that's the way we usually do it. Is it within subject matter of what you said in that 274 notice?

MS BROWN:

Yes. So basically I'm the Deputy Chair of the Waiheke Local Board.

THE COURT: JUDGE NEWHOOK

How do you spell your first name?

MS BROWN:

Shirin, S-H-I-R-I-N, Brown.

THE COURT: JUDGE NEWHOOK

With no E?

MS BROWN:

With no E.

THE COURT: JUDGE NEWHOOK

And you are the Deputy?

MS BROWN:

Deputy Chair of the Waiheke Local Board. So I thought I'd come and see what was going on and I thought I'd say something. So I guess my main point today is –

MR R BRABANT:

I just wonder Sir if it is possible that we could just pause a minute. This is an unexpected addition which is fine but we're just trying to find the notice because for me it has some relevance to this.

THE COURT: JUDGE NEWHOOK

Thank you.

MS BROWN:

So basically I just wanted to say that myself and the other people who are elected were elected resoundingly to the local board and one of the key aspects of the platform is that we were very clearly against a development at Matiatia.

THE COURT: JUDGE NEWHOOK

A development being a marina or any development?

MS BROWN:

No, a marina. And the specific grounds for that is that we felt that there should have been greater community consultation on whether the community actually needed a marina and if so where that should go. I guess since the election the comment that one could make is that there's been no process for local board input, nor has the Council or Auckland Transport or anyone else involved ever come to the local board and suggested that we might have an

opinion on what's going on at the marina which in some ways given the fact it does affect Waiheke, as you can see by the volume of people sitting behind there, you know it's quite an important issue. I guess what I want to also mention is that I have the transport events and economic development portfolio. I share transport with the Chair. These are all key issues for an island and Waiheke is regionally significant. We know that Auckland leverages Auckland Tourism off people who know Waiheke as a destination without even knowing that it's next to Auckland and it's really important for us that in terms of future proofing the island for future possibilities in terms of visitors that we don't preclude that by putting additional pressure on an area which is already under significant pressure. And in terms of the transport portfolio I'd just like to draw attention to the fact that we are constantly, as local board members, being asked to mediate or create space for additional tour operators in the keyhole.

1455

Now I don't know what the specific numbers are on the numbers of operators, but there are more every year. And specifically in the last year we have E-Bikes and cycle tours who are also demanding space and want to be accommodated. So there are a lot of pressures, lots of different industries which are locally based and are seeking to bring money into the local economy, not to mention all the events that we have. So of significance there we have Sculpture in the Gulf, which has just been accepted onto the 80 list of regionally significant events and we have a number of events that have grown from small events to regionally significant events. So there we have the Eco Festival which is tapping into other, the northern area Ecofest and also the southern initiative Ecofest.

THE COURT: JUDGE NEWHOOK

That's just been held hasn't it?

MS BROWN:

Yes. There's the Jassy Dean Safari, there's the Community Art Gallery, there's just lots of events and that's just increasing all the time. We're also seeking to support local businesses and events organisers to increase the shoulder season because we already have like lots and lots of people coming at peak time, to just increase that shoulder season. So we anticipate that in the next 10 years there's going to be quite a lot of demand. And you can also see that there is the additional ferry service which I'm sure you've heard about which is coming in cold, which is actually quite a difficult thing to do so they clearly see that there's going to be demand in that area as well.

I guess from a personal point of view I'd just like to acknowledge the Court for coming to Waiheke and yourself are making that possible. I think it's really really important for something that is so significant to the community that you come, so that's absolutely wonderful. Because when you look at Court processes they tend to exclude people or create the impression of being some sort of (inaudible 14:56:55) chess game. So it's really nice that you've come here.

THE COURT: JUDGE NEWHOOK

Just in response to that there quickly, thank you and I would say that this having been a direct referral particularly with no counsel here, and there is provision for that in the RMA, we're probably going to see more of big projects like this. It's important in my view to continue to allow the community to feel involved in the process and not feel cut out because of the fact that it's (inaudible 14:57:320 straight to the Court, so that's the thing.

MS BROWN:

And I think we appreciate that and also the fact that you're doing it on Waiheke, because the cost of going to Auckland, you know –

THE COURT: JUDGE NEWHOOK

And I'm including doing Waiheke as an important part of that, yes.

MS BROWN:

– would have precluded quite a number of people from being a part of that. Okay so there are a couple more points. I guess what I'd like to also draw attention to from a personal level is that I'm a working mother and I work in a professional role in Auckland, I'm an academic. So and that is a role that's shared by quite a few people on the island. So what does that mean? That means that in order to work from nine to five in town I need to be on the 8 o'clock ferry, and when my children were slightly younger I was dropping one at childcare, one at school 45 minutes early running for the ferry, which I'd just make in time, running to get the ferry at 5 o'clock and just being in time to pick them up from daycare. So anything which adds to that journey either that I have to plan for in terms of traffic movements and truck movements and congestion on the roads is not going to cheer me up at all. And especially if I miss that ferry and I've got a room full of 75 students waiting for me, that's not going to cheer me up at all either. And I think, you know, you have a lot of people who are running businesses from town and – well whatever, I don't need to carry on about that.

Okay, and I think the other thing I'd like to talk about is the feeling of relief and arrival that we collectively have as islanders coming back to our island. And this is based on coming into a peaceful environment and arriving. I think there's a misconception of people against development, it's not true. It's against development that's inconsistent with the character of the island. You know, a lot of people have talked about the fact we're far enough behind to be ahead, and as we develop more the value of undevelopment becomes greater.

So it's really important that we don't preclude future use, and when we talk about effects and effects no more than minor, I'd really like us to really think about who those effects are on. Yes they're on the environment, but they're on people who are affected by the environment.

Lovely and I think that's pretty much it so thank you very much.

THE COURT: JUDGE NEWHOOK

People by definition are part of the environment under the RMA.

MS BROWN:

Yes.

THE COURT: JUDGE NEWHOOK

That wraps around your submission supportively.

MS BROWN:

Thank you very much.

THE COURT: JUDGE NEWHOOK

All right well thank you for taking the time and the trouble to put the material together and to come and address us. Thank you Ms Brown, thank you very much indeed.

MR LITTLEJOHN ADDRESSES THE COURT – WITNESSES FOR THE AFTERNOON

1505

MR LITTLEJOHN CALLS

MICHAEL JOAO TAVARES

Q. So I don't embarrass you, could you please say full name properly for the record please.

A. My name is Michael Joao Tavares.

Q. And have you prepared a written statement of evidence that is dated the 24th of July 2014?

A. Yes.

Q. Do you have any corrections that need to be made to the text of that evidence?

A. A spelling correction please.

Q. Could you please advise the Court what corrections it ought to make?

A. On point 1 where it states my name there has been an additional "A" to the end of my name, of the middle name.

Q. And is that the only error in the evidence?

A. There is a spelling mistake.

THE COURT: JUDGE NEWHOOK

I don't think we'll worry about that.

EXAMINATION CONTINUES: MR LITTLEJOHN

Q. With that correction do you confirm that the evidence you have prepared dated the 24th of July 2014 is true and correct to the best of your knowledge?

A. I do.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT:

Q. Mr Tavares, it relates to the photographic material made use of by Susan Fitchett, is that the story?

A. That's correct.

Q. That's where we'll find that material. So you prepared that for her?

A. I did, yes.

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

MR LITTLEJOHN:

Janet, do you want to present your submission?

JANET MOORE

I was going to present a nice little summary but unfortunately this was all brought forward and it's still in the making, not quite finished.

THE COURT: JUDGE NEWHOOK

Do you want to come in a day or two instead?

MS MOORE:

So, no, no, I'd rather bore you. What I'll do is simply pick out the salient points, I hope, as I go along.

THE COURT: JUDGE NEWHOOK

I'm sure you'll make it interesting.

MS MOORE READS SUBMISSION

"I feel that...harbour and bay." And I do feel that it is an outstanding natural character. What I've attempted to do in these submissions is to bring common sense into the equation with legal underpinnings.

"Notwithstanding Mr Pryor's...no longer extant," that's the dotted blue lines that used to go around the headlands. "Leaving none of... encompassing is needed," and the Environmental Defence Society has noted this too. "So landscapes which... scale and intensity" –

THE COURT: JUDGE NEWHOOK

Can I stop you there and ask you something?

MS MOORE:

Yes.

THE COURT: JUDGE NEWHOOK

A couple of sentences ago you said that the proposal would cut off access to the reserve, you're talking about the Matiatia Historic Reserve?

MS MOORE:

Yes I am, yes.

THE COURT: JUDGE NEWHOOK

And how's that occurring? My understanding as I sit here is that there is a proposal for a small boardwalk to link from the proposed carpark to the reserve which would actually provide access at high tide which doesn't exist now. So can you just explain that a little more for me?

MS MOORE:

Okay, I think that's actually over the page where I talk about a truncated – yeah, number 8.

THE COURT: JUDGE NEWHOOK

Yes.

MS MOORE:

"The applicant's proposal for a narrow, truncated esplanade reserve vested in Council around the southern access pier and primary breakwater." No actually that's different isn't it?

THE COURT: JUDGE NEWHOOK

I think so.

MS MOORE:

That's the primary breakwater. What I mean by that is that whereas at the moment it's freely accessible it's going to be more difficult to identify and people have the feeling that maybe they shouldn't go there unless it is

properly signposted because it could be part of the marina and it's just not so obvious that it's public space. That's my concern.

THE COURT: JUDGE NEWHOOK

Is that concession, that tentative concession perhaps something of a little bit of importance because first do you accept, sorry we normally leave questions to the end but I'm pretty interested in this. The proposal is, as I've said, to put a small boardwalk to link the end of the carpark and what you call the truncated esplanade reserve to the historic reserve which actually is said by the applicant to improve access to the historic reserve at high tide because at the moment you take your life in your hands a bit if you get along there, there's erosion on the track up higher.

MS MOORE:

Yes.

THE COURT: JUDGE NEWHOOK

That's almost cut it off. And you can't get across the top of the beach at high tide at the moment, particularly if there's wave action.

MS MOORE:

Okay, I didn't approach it at high tide. When I went over that track we approached it from the Owhanake end and came down that way and there are places where that track is badly eroded and dangerous and I consent that.

THE COURT: JUDGE NEWHOOK

Thinking of the access from Matiatia and wharf area –

MS MOORE:

Yes, I can see what you're driving at. I sort of feel like that's it's a way of selling us the idea and I don't particularly like it because I don't like the idea of the marina for a number of reasons. I feel it is misappropriation of the

commons and misappropriation is really a euphemism for another word that's much stronger.

THE COURT: JUDGE NEWHOOK

These are slightly different points, I'm just trying to understand your concern about the cutting off of access when in fact I thought I perceived an improvement. They haven't showered goodies around. I'll be quite unvarnished about this but that's one that they've put forward and you did tentatively suggest that signposting might possibly help but you did move on very fast.

MS MOORE:

Well if it means another blue Auckland City signpost, you know, I wouldn't be very keen on that but... Yes I sort of feel like it's a bit of a sop to be honest. And I mean if people really want to access the MHR at high tide they can scramble over the bank, I'm sure that's possible and if they're prepared to do that sort of walk they should be wearing sensible shoes anyway or they can take their jandals off perhaps.

THE COURT: JUDGE NEWHOOK

Yes, carry on.

MS MOORE:

I just rather resent the fact that something that's natural and presently accessible will become part, the most intrinsic part of something that is an artificial structure that has been plonked there and that's the part of it I don't particularly like.

THE COURT: JUDGE NEWHOOK

And that would apply to the carpark deck as much as to the reclamation?

MS MOORE:

Oh but the carpark deck I understand isn't part of the marina, isn't that Mr Brabant's submission?

THE COURT: JUDGE NEWHOOK

I understand that they're in the alternative.

MS MOORE:

I see. Right, so perhaps if I go onto the next point. Privatisation of public space, and there was certainly a lot of submitters who object to this and it is a trend on Waiheke that people are really concerned about and I note there the houses on Onetangi Beach and the public reserve at 88 Vintage Lane in front of Wharetana Bay which became the grassed area in front of the property in land agent's speak. And when this so-called boat shed went up for sale through Sotheby's it was still referred to as having coastal access and I had to send an email to Sotheby's and point out that there was actually a certificate of title for that reserve vested in Auckland Council and that to advertise that property –

THE COURT: JUDGE NEWHOOK

Ms Moore, I'm sorry but if we let you start telling us about a whole lot of problems on Waiheke with coastal access and so on it really gets right outside any control that the applicant has or that the Court has as the consent authority on this Matiatia Marina.

MS MOORE:

Okay.

THE COURT: JUDGE NEWHOOK

We're here to talk about the Matiatia Marina, if you've got concerns about coastal access on other parts of Waiheke I know that you're sufficiently wordily-wise about the workings of local government to take it up in the appropriate channels with the Council. We're not the Council. We can't help you with those and neither do I think it's fair for you, us or anybody to blame

this applicant for those ills. And even if there's a pattern, if there's a pattern of problems, you take it up with the Council.

MS MOORE:

We did try to but we didn't get very far.

THE COURT: JUDGE NEWHOOK

Well it's not within the jurisdiction of this case and we can't help you with that.

Ms Moore continues reading submission

Sorry, I digress. Then going onto paragraph 8. "The applicant's proposal...within the CMA." And I understand people won't be able to fish from there. Reading through the report I noted that fishing will be banned because it's considered to be dangerous. "And in the...Coastal Policy Statement." So it's about what is to be protected and preserved. And not what will possibly be built by way of secondary development in the southern part of the bay. So, that language I imagine would not preclude extensions to the wharf in the future which is necessary infrastructure, but as for Mr Brown's coastal village, I think it could be called in to question under those provisions.

THE COURT: JUDGE NEWHOOK

Now what's Mr Brown's coastal village Ms Moore? What's that? Are you talking about land change 38?

MS MOORE:

Yesterday when he was doing his submissions he referred to the proposed development which will initially propose Waitemata infrastructure.

THE COURT: JUDGE NEWHOOK

Oh yes, that's (inaudible 15:20:29) 38 isn't it?

MS MOORE:

Yes. And he referred to that as a coastal village and Waiheke people better get real because we're becoming urban whether we like it or not. That was the gist.

THE COURT: JUDGE NEWHOOK

Well I don't think those were his words quite, he was –

MS MOORE:

No that wasn't.

THE COURT: JUDGE NEWHOOK

He's more careful with words than that Ms Moore, he's very careful with words.

MS MOORE:

I'm sure he is. But that was the gist of it and that's what we took from it so I think that possibly under that legislation it would come under scrutiny.

MS MOORE CONTINUES READING SUBMISSION

"So the RMA...other relevant considerations." So which is more important? A marina with a little boardwalk for the people wanting to use the MHR or public access to a natural environment and landscape?

"Under the main...and recreational attributes." So I think the northern quadrant really comes under that description. In fact I think the whole of Matiatia comes under that description and I like what Mr Casey said yesterday about the symmetry of the bay and the fact that there's a wharf there is really not all that intrusive, it's very necessary, it's a bit like a shunt in the arm of the island because it is our lifeblood and I think that Mr Brabant has over emphasised the intrusiveness of the wharf structure, I don't believe it's as imposing as he claims it is and I think people are pleased to see it, after all if it weren't there, you really would have problems wouldn't you?

THE COURT: JUDGE NEWHOOK

Just a little thought here, we're must more interested in what the expert landscape witnesses say and we want to listen to what the local people including yourself say about that environment at Matiatia. Counsels job and this includes Mr Casey and Mr Brabant have a duty to advocate things but at the end of the day they're not giving evidence and we'll hear the advocacy for and against the proposal and how it may be in each case but we will be focusing on the advice from the expert witnesses and we will be listening carefully to the statements of people such as yourself. That's to put Mr Casey and Mr Brabant in context.

MS MOORE CONTINUES READING SUBMISSION

"Overall the activity...10.4.13 is met." And I do believe she's modified, Ms Bremner, I think said that and I do believe she might have modified that since but unfortunately I haven't updated it so that's for someone else to comment on.

"The effect would...would be compromised," and I believe it would be and then I go into detail which I think is self-explanatory because of the flow chart showing the way in which the Matietie Historic Reserve – Matiatia Historic Reserve was set up by the Delamore family and it is my honest that if Matiatia did not have outstanding landscape value, the Delamore family would never have bothered to make that considerable grant for the benefit of the public. After all, if tourists are coming into Matiatia, they might say, "What a darling little bay," or "What a beautiful place," but I'd very much doubt that they would say, "What a delightfully regionally significant landscape," in real terms unless they've done their homework.

So I'll leave that because as I said it's self-explanatory and also Jude Delamore is going to elaborate on that so I won't bore you that much.

“To allow a... the Dalemore family.” Now, when I looked at this idea I gleaned it from Mr Makgill article and I had concerns that perhaps like privity in the law of contract it was tied down to the relevant parties. In actual fact he reassured me that because the public were beneficiaries it had a wider effect, so I proceeded on the basis of his superior knowledge.

THE COURT: JUDGE NEWHOOK

Ms Moore, I’ve got to say that, having (inaudible 15:31:28) at Rob Makgill’s article, and I know the man well, he’s not here to participate in our hearing and offer us legal advocacy about this branch of the law, which is a fairly complex beast. There are commentators who agree with Rob in his writing and there are others who don’t. I think it’s probably fairly important for us in this hearing to focus on what is brought to us directly by qualified lawyers that we can get our teeth into and test them on or agree with as the case may be. So it’s actually not something that we can really get to grips with reading his article.

MS MOORE:

Yes, okay.

THE COURT: JUDGE NEWHOOK

I know you find it persuasive –

MS MOORE:

Yes, I do.

THE COURT: JUDGE NEWHOOK

But you’re not legally qualified and, believe me, it’s a complex area of law.

MS MOORE:

It does, yes.

THE COURT: JUDGE NEWHOOK

With two major statutory changes by two recent central administration, the Labour administration and then the National administration within about eight years, and fraught with –

MS MOORE:

Landmines.

THE COURT: JUDGE NEWHOOK

Yes, yes, absolutely.

MS MOORE:

Right and if Mr Key has his way so will the RMA become that way I do believe.

THE COURT: JUDGE NEWHOOK

Well that's not something we can help you with Ms Moore.

MS MOORE:

Okay so anyway, I'll leave that part out because it actually deals with the law as I've been able to glean it from that article.

THE COURT: JUDGE NEWHOOK

Yes I'd really rather if the lawyers see something in it they'll bring it to us and then it'll be open for them to debate and for us to test them on, and that's the way we need to work on that.

MS MOORE CONTINUES READING SUBMISSIONS FROM PARAGRAPH 18

Right so I'll go to number 18 then and say that, "It would be disrespectful in the extreme and a total travesty to denigrate this gift to the people with a marina development which would benefit a select few in Matiatia Bay," because that is totally contrary to the intention of Mr Dalemores grant and his mother, Jo Dalemores. It was to benefit the public.

I don't know whether you're going to like this but I'm sure you'll tell me, number 19, "Where an area... character are concerned."

So I think to –

THE COURT: JUDGE NEWHOOK

Sounds like the language of the Supreme Court decision in *King Salmon*, am I right?

MS MOORE:

It is, it is.

THE COURT: JUDGE NEWHOOK

Has anybody classified Matiatia as an outstanding natural landscape or having outstanding natural character?

MS MOORE:

It came out I think when Mr Casey was questioning Mr Brown that there are pockets there that have higher, and there was a semantic tussle there.

THE COURT: JUDGE NEWHOOK

Yes, but there's another laying called outstanding, and just so you understand what we're working with and what we have to work with, (inaudible 15:35:23) work with, is either a public document that's gone through a submission process and/or an appeal process in the Environment Court needs to label a landscape as outstanding either in natural character terms or as an outstanding natural landscape. Or alternatively expert witnesses, expert landscape witnesses can assert to us in sworn evidence that could be tested by us and other parties that a particular landscape is outstanding, and I think you'll find that if you go back to the joint witness statement of the landscape witnesses that none of them are saying that this is of that character, of that supreme character if you forgive the pun. And that they're saying that it's in

varying degrees from low through moderate to higher, and then we get the semantic play with words between lawyers and Mr Brown which is always fun to listen to, about high, higher and highest or whether that's (inaudible 15:36:33). So I just don't think anybody's stepped into that labelling of Matiatia as "outstanding".

MS MOORE:

They haven't and I do –

THE COURT: JUDGE NEWHOOK

Unlike the far end of Waiheke where there's been major work done on that just recently including by myself.

MS MOORE:

Meaning?

THE COURT: JUDGE NEWHOOK

On the Spencer property. But the plan changes publicly notified (inaudible 15:36:59) the people involved –

MS MOORE:

For subdivision?

THE COURT: JUDGE NEWHOOK

No, no, outstanding natural landscape notation and labelling in the regional plan.

MS MOORE:

Right, I hope that includes the area around Stoney Batter.

THE COURT: JUDGE NEWHOOK

Well let's not go there, this case isn't about that.

MS MOORE:

Okay. No, I understand what you're saying but surely the fact that it hasn't been classified leaves it open then to interpretation by lay people who don't know any better.

THE COURT: JUDGE NEWHOOK

Well look, I've said it before, we listen carefully to the landscape witnesses who I think I'm right have agreed that Matiatia is not an outstanding natural landscape or of outstanding natural character, but we also listen to local people and want to know their values, their values of Matiatia Bay.

MS MOORE:

Right, we love it.

THE COURT: JUDGE NEWHOOK

We've got to make a call about this and put it all in the mix.

MS MOORE:

Right, thanks very much. Yes, we love it and we all felt a bit offended by Mr Brown's observations about it being green-tinged and the replanting being a veneer.

THE COURT: JUDGE NEWHOOK

He was just having a little snip at Mr Scott.

MS MOORE:

He didn't make himself popular.

THE COURT: JUDGE NEWHOOK

I've been watching them for years.

**MS MOORE CONTINUES READING SUBMISSIONS FROM
PARAGRAPH 20**

So going on to point 20, “The problem is... to police this?” And I understand that Ms Parkinson elaborated on this so I’m not going to say anything else.

1540

THE COURT: JUDGE NEWHOOK

She asked questions of witnesses because again she’s a lawyer you see, that’s their role if they’re not expert witnesses.

MS MOORE:

What bothers me is that it is local knowledge and it’s probably reliable, because people have observed boats being cleaned in that area for a very long time and long before they had sophisticated antifoulants and probably used lead-based paints, so I think – I’m happy to rely on that information.

THE COURT: JUDGE NEWHOOK

We’ve got to rely heavily on the scientists in that area, Ms Moore. It’s highly technical area –

MS MOORE:

It is.

THE COURT: JUDGE NEWHOOK

Look, there are many old practices like the scraping down of boats on (inaudible 15:41:08) like in the corner of Matiatia, I’m sure that’s gone on for forever and is not frowned on, and we will see these practices changed. We are seeing scientific advances in antifouling paints and the experts will continue to debate the success or otherwise of those advances for some time to come.

MS MOORE:

Can I just say at this juncture it brings up the point that I’m actually appalled at Mr Brabant’s suggestion that they should not be responsible for their grey

water and for the discharge of water resulting from and containing residues of these antifoulants, I found it reprehensible.

THE COURT: JUDGE NEWHOOK

Well, let's not play the man rather than the ball. We're here to play the ball.

MS MOORE:

All right, the applicants rather than Mr Brabant, sorry.

THE COURT: JUDGE NEWHOOK

And what it boils down to is a point of law and it's been suggested that our hands are tied by the law in that area. We're going to hear from others including the DMI lawyers about that aspect, and then at the end of the day we have to make a call on that matter of law. So there's a long way to go on that and all the issues in this case, and I'd really prefer that people didn't sling labels like "reprehensible" at each other. It doesn't help, I'd rather we focused on the science, the legal issues, things that we need to get to grips with rather than play the person. Do you mind?

MS MOORE:

Right, okay, the reason I say that though is that we're trying to teach our children to be responsible for taking care of the environment, and I just don't think it's a very good example.

THE COURT: JUDGE NEWHOOK

We're also trying to teach people to play the ball rather than the man in the Environment Court when we're running our proceedings.

MS MOORE:

I've got nothing against Mr Brabant, he was just the one who said it.

THE COURT: JUDGE NEWHOOK

It's so much more helpful if we're going to focus on the real issues.

MS MOORE CONTINUES READING SUBMISSIONS

Okay. "Lastly the report... private marina development." That figure came from (inaudible 15:44:30) infrastructure and it was based on an estimate of numbers going through Matiatia in 2005, 1.8 million. Since then if we look at Mr (inaudible 15:44:50) book, he said we're second only to Picton for the number of visitors of going through. Now I don't have any (inaudible 15:44:56) data but it seems to me no matter which way you look at it, Matiatia has a significant number of people using it.

THE COURT: JUDGE NEWHOOK

Yes, well I think we're going to be hearing from Mr Monin anyway.

MS MOORE:

Good.

THE COURT: JUDGE NEWHOOK

And he's done some research.

MS MOORE:

He has.

THE COURT: JUDGE NEWHOOK

Then he can talk to us about that.

MS MOORE:

His book is excellent, yes. So that's really all I want to say, thank you for listening.

THE COURT: JUDGE NEWHOOK

Okay, thank you very much for your thoughtful presentation. Let's just see if my colleagues have questions for you.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. I don't think so. I was just trying to work out the boundaries of the Heritage Reserve relative to either the reclamation or deck and so forth and I think I have found the plan that gives me that so I understand what you were talking about there thank you.
- A. Good concern.
- Q. That was my only thing that I needed to clarify and I've found the information so thank you for that.
- A. That's good.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

- Q. Just on one point, earlier on at the beginning you referred to a need for the marina and you said that you didn't think that they'd be (inaudible 15:46:13) the need.
- A. That's right.
- Q. (inaudible 15:46:14) it should be somewhere else.
- A. Yes, I don't think Matiatia is the appropriate locality.
- Q. Do you think it should be Kennedy (inaudible 15:46:26) or Church Bay or (inaudible 15:46:26).
- A. Having regard to the applicant's submission to the proposed unitary plan I feel very nervous about allowing them to get a foot in the door because their submission is that all swing moorings should be converted to marina moorings and I don't feel very fortified by that information so I feel that to do justice to the people that I represent I have to say no.
- Q. No to what?
- A. No to a marina.
- Q. Anywhere?
- A. Yes.
- Q. Okay.
- A. I think Waiheke Island is special, I think the swing moorings are part of our character and I think our character is the jewel in the crown, it needs to be protected with special legislation, preferably from the United Nations and I think we are really going to have to fight for a

status that will preserve our identity and the precious things that make us what we are.

Q. So you're saying notwithstanding a need for a marina at Waiheke if there was such?

A. I think it's yet to be demonstrated adequately.

Q. It shouldn't be there anyway.

A. I think there is a need for it to be demonstrated and if it is demonstrated, then maybe we need to revisit it but as I say I feel extremely nervous having regard to the submissions that have been made. If they hadn't been made I might've been more open to that but I represent other people who've (inaudible 15:47:56) on this and I have to say that.

THE COURT: JUDGE NEWHOOK

I'd simply comment Ms Moore that we're not the unitary plan hearings panel.

MS MOORE:

I know.

THE COURT: JUDGE NEWHOOK

So we can't help you with your concern about whether there should be a marina at Waiheke at all, that's right outside our writ. Thank you very much for your thoughtful presentation.

WITNESS EXCUSED

MR LITTLEJOHN:

As I mentioned I've got some witnesses now.

THE COURT: JUDGE NEWHOOK

Yes.

MR LITTLEJOHN:

There is a matter that arises from a comment Your Honour made about the nature of this process and it's certainly something that Mr Casey and I discussed and it really turns on the issue of how the evidence is presented, how we are all very much players in the statements files, everyone reads and gets questioned when it relates to experts that is the process we very much follow. In the case of a first instance hearing though, there is something to be said in my submission for people being entitled to at least read and speak to the material that they circulated. Now I only make the point because there are a lot of people who will be giving evidence that, although they've converted it to writing, still like the opportunity to feel as if they've had a say. Now I don't suspect that that would be all of the witnesses but there are those that might, and they may wish to revert to the traditional approach to be able to read their evidence. Most of the briefs are very short and I appreciate that that is not something that we have catered for but I at least wanted to wave a flag for the prospect that some people might actually like to look you in the eye when they speak to you rather than be processed and have questions asked or not.

THE COURT: JUDGE NEWHOOK

All right, well it's very fair of you to raise that Mr Littlejohn and I'd quite like to speak to the people who've come to the hearing about that matter because I have done so in the prehearing conferences that were held here in this hall. Now you can sit down because I'm going to talk to everybody now. Thank you for raising it it's a fair point. I did talk about this in our prehearing conferences and the situation is simply this. Well there are a number of aspects to it. First, the Environment Court does have this, has built this recent tradition of getting everything in in writing in advance, well that is evidence I'm

talking about evidence not submissions, evidence in advance and then reading it and for instance in this case I haven't actually eyeballed all the folders but there is a written records, about 8 (inaudible 15:51:17) folders is it Madam Registrar? It's a lot of material and we happen to have it all in iPads and it's all on the Court's website and so we developed this work method of reading all that material carefully in advance. Now this is perhaps a bit unusual for you but we find as I said in the conferences but not all if you would've been here so I want to say it again, we find that to do that, we can open up a statement of evidence and be reading it and looking up graphic exhibits as it refers to and then either it comes out of that evidence or it occurs to us that there's something else from somebody else either for or against that point that comes out of another piece of material that we've been reading so we can dot over to that and then we can go to some more graphic exhibits and we really work very thoroughly through all of the materials, referencing, cross referencing and building ideas in our minds. The more traditional way to tackle heads in the Environment Court and it's tend to be done by the Council Hearing Commissioner's I know, is to pretty much by in large have everybody read their statement out. But in that way, things only unfold as they come and they hear this moment being read out and then they go on onto the next thing and we just don't have this opportunity to move around and gain a deeper level of understanding about all of the materials that is in front of us so that's the way in which we have developed our approach to the cases. The second point I want to make is that in the old days with the traditional method of everybody reading their statement of evidence out, this three week hearing would've taken six, or seven or even eight weeks and I suggest to you that people struggle to get that much time off work, it's costly like you wouldn't believe, well you do actually I think you know about this to have the lawyers, the experts for all that extended period of time so we've developed this newer method of us working behind the scenes which doesn't have a time or money cost to all of you to do all this sort of thorough preparation and then come here and be able to test things and talk about things in a way that you've seen us operating for the last week and a half. Mr Littlejohn quite fairly makes the point that people like to be able to stand and look us in the eye and tell us

really what's in their minds and I respond to that by saying yes I understand that but we, again we've had this thorough method of working in behind the scenes and we've gone through everything really carefully, more carefully than we probably can if we just hear it just read out in front of us and secondly, the process is one in which ultimately we're the audience so while we appreciate that you might feel good about getting something off your chest, looking us in the eye and saying X, Y and Z, it's how it's impacting in our heads that's important to the case rather more than how good or bad you feel as you go out the door having said what you want to say to us. So that's just a bit of an explanation for why we've developed things in the way we have. What I'm going to suggest is that if self-represented people or your people, Mr Littlejohn, under the DMI banner, have particular things that they want to highlight for us from their prepared statement of evidence, if they're giving evidence after they've been sworn in or if they get questioned they should do that. And in particular if something has occurred during the hearing that's on point that you've been talking about in your prepared statement but is another wrinkle on that point that's cropped up during the hearing before you have your turn then I'm very happy to hear from you about that and Mr Littlejohn knows this and in respect of DMI witnesses will be alert to asking you to help us with those things. So, a bit of a long speech but I hope that explains the processes a bit and I've gone out of my way, I think, and it's been acknowledged by a number of people to try and make local people feel included and Mrs Brown made the point, and it's part of why we're here so that we can be here on your territory and listen to you on your territory. But we have these ways of working which we hope are cost efficient for everybody including you as well. We're trying to meet with all these ideas. Mr Littlejohn thank you for raising that.

MR LITTLEJOHN CALLS**JUDITH MARY PEMBERTON (AFFIRMED)**

Q. Is your full name Judith Mary Pemberton?

A. It is.

Q. And have you prepared a witness statement in these proceedings that is dated the 28th of July 2014?

A. Yes.

Q. I only ask you that, I know the answers, it's just so we can put it into the record. Now, Ms Pemberton are there any errors you might have identified in the written text after you prepared it that you might want to correct?

A. At point 4 I put, "We remained close friends until his death," and I think probably "good friends" is probably, close is too close. So, "Friends until his death." And I'm also 65 as of yesterday.

Q. Now with those corrections noted, do you confirm that the contents of that brief are true and correct to the best of your knowledge?

A. Yes I do.

Q. Now, Ms Pemberton you heard His Honour's brief statement just before you came up.

A. Yes I did.

Q. I want to ask you whether there are any things within your written brief that you might like to highlight for the Court.

A. My written brief concerns the historic, establishment of Matietie Historic Reserve and I wanted, I had wanted to talk about how it came about because originally the intent – well we worked and lived on the farm at Matiatia for many, many years and I lived there from 1976 until 2001 and they'd farm there for, from the '60s until late 1987 so we were very, very familiar with Matiatia and all its moods and my husband's family were very welcoming to walkers on the farm, there was no attempt to exclude the public at all. So they did attempt, when it became apparent that farming was not going to be any longer viable they did attempt sell, very cheaply sell the land to the Department of – the whole farm, 400

and something acres, to the Department of Conservation or the Regional Council. Neither of those was followed up so that they decided, particularly my husband Rob who was a strong environmentalist, my then husband Rob, to set up Matietie Historic Reserve. I would, if I'm permitted, just like to be able to read a little bit about his intentions, is that okay?

THE COURT: JUDGE NEWHOOK

Q. All right. Which paragraph are you reading from?

A. I'm reading 19. Actually I might go quickly to 18. "In the mid-1980s Rob and I noticed significant changes to the demographic make-up of the island. Rob had a background in geography and political studies and subsequently gained a qualifications in resource management and became an environmental consultant and so on. But he was the deputy chair of the Council and chairman of the town planning committee so he was very involved in land issues. And he observed the advent of the fast ferry made commuting more feasible, brought a lot more people to the island. And also farming a coastal property became much less viable as the rates went up and also costs of freighting to and from became greater. Now Rob held strong views because he was the architect really of the Matietie Historic Reserve supported by his mother and they were the directors of Matiatia Farm. The farm was owned by other family members as well but they were not party to these decisions, well the decisions were discussed with them but it was essentially Rob and his mother who were the driving force."

WITNESS CONTINUES READING STATEMENT OF EVIDENCE

A. "Rob held strong...hills around Waiheke." He was very much concerned with keeping a sort of homogeneity of impact on, as people approached from the Gulf, as people looked out from the land that it should be green and at that stage it was not bushed. "He regarded the...rural and coastal land." So he was very strongly, in the 1980s he had a very strong and clear idea of how he hoped the island would develop and he was in a position where he was perhaps able to try and set something

up. Point 21, the family always wanted to revegetate the farm land. Now, on the island we're very aware of (inaudible 16:03:20) whenua and John Chapple's contribution to bushing the island. Rob did a similar thing but a kind of back door method because he amalgamated a number of titles on the farm down to nearly four, four over the 400 acres knowing that later on if the subdivision occurred then that would, a requirement would most likely be that the land would be revegetated. So he deliberately set that up. Now I refer to this because it is to do with this kind of the green gateway to the island.

Following discussions in 1986 they decided, the family decided to sell the farm but they wanted to preserve as far as possible the public access to the coastline and they wanted to retain the views, you've got the interior views of Matiatia Bay which are charming if not described as of higher (inaudible 16:04:18) but they're very charming. But also the views out over the Gulf are quite extraordinary so they wanted to preserve the views, they wanted to preserve the public access, they wanted to preserve the significant Māori historical sites, because there are kumara pits all the way along the coastline, there are platforms, there are ditches, defensive ditches all the way around that coast but particularly at Moke MOke point, but also further around. So they wanted to preserve that and to keep it again in public access in perpetuity.

When they were not able to sell the farm as a whole farm because I suppose other people, it didn't fit the brief of the Regional Council, Department of Conservation, Rob talked about creating a reserve with the Department of Conservation and the reserve was accepted in August 1987 and he and I walked the coast and sort of decided what would go into the reserve and where there as a big headland we put that into the reserve so that it wouldn't have an obtrusive house sort of right on the headland. We tried to keep that area, again that kind of coastal margin relatively as natural as possible. Now the part that really relates

to the marina of course is within the interior of Matiatia Bay though the reserve goes much further. But, so there's a couple of other points if I could read, just about Matietie Reserve. May I?

Q. Yes. I'm trying to be as kind as I can in saying these things and I know you want to get some things off your chest. But most of what you did say is indelibly recorded in writing there and you didn't read it with the greatest care and greatest interest. And let me just tell you one other thing. I may not have the longest memories of Waiheke in this room but I've been coming here all my life. My earliest memories date from 1955 when electric power came to Waiheke and it was joined up to my grandfather's cottage near Popes Corner and I've been a regular on Waiheke throughout my life. So I want you to know that I have an understanding of these sorts of things.

A. The changes.

Q. Many of the names, particularly the Delamore family and others like the Day family and others who have farmed at Waiheke and struggled with it and had to reinvent themselves and do other things, are particularly well known to me. I just thought you might like to know that you're not just sitting in front of people who come from outside the space and know nothing.

A. I appreciate that but I will emphasise that the reserve is not the result of a sub divisional move it was –

Q. I'm very aware of that.

A. And it was to keep these things in the public eye, to keep the views into the bay and out of the bay and further on in the public eye, so what I feel is that though the reserve land isn't indicated in the plans to be taken from the marina it's still impacted in the way that Janet referred to, the entranceway, even if a boardwalk is provided would be, I think, the entrance would no longer be the entrance to Matietie Reserve but it would be the entrance to a walk way provided by the marina to get across, so that you wouldn't get your foot wet. It would slowly detract, on my feeling, to from the spirit of the entrance of Matietie Reserve as it

is which is relatively natural and just leads down to the beach and along and so on.

Q. Just on that point, what if there wasn't the carpark there, be it reclamation or deck, but there was a walkway created by someone, whether this applicant if it happened to get a consent for something or the Council or DoC what do you think of that? How would that appeal to you?

A. Well I think it depends what it's appended to really. I mean if it was simply for the reserve I'm obvious, well not obviously, but I probably wouldn't find it as difficult as something that was going to have a carpark and an infrastructure –

Q. You don't like the idea of it tacked onto the carpark –

A. No that's exactly right, it is tacked on. I mean I've said, I've also said that the entrance to the marina would run alongside the entrance to the reserve and I think that would detract from the feeling of the reserve and I also think it would be incredulous to have the entrance to an area which effectively precludes the general public from access sitting beside and obscuring the views from a reserve, the entire purpose of which is to ensure public access and enjoyment. So that's really the comment about the reserve. I think it's very significant because it provides immediate walking track halfway from the ferry, adjacent to the ferry. It follows the coastline so it shows local geology, flora, fauna. Local history with the evidence of both Māori and European occupation and many of us are very fond of the woolshed, I'm very fond, I've spent many years slogging away in there.

Q. It was one of the features of Matiatia, definitely on my notes, since arriving here in the Muritai. Do you remember the Muritai?

A. Yes I do.

1610

Q. A big steel vessel that actually pre-dated the (inaudible 16:10:10).

A. Well Rob and I were discussing that the – where the hulk was because it was there in the early, I remember walking across it and talking just

shortly before he died actually of where it was in relation to the wool shed.

EXAMINATION CONTINUES: MR LITTLEJOHN

- Q. All right Ms Pemberton, is that sufficiently highlighted? Other people are going to ask questions and it may be that there are things that you recollect from your statement that you can say back to them.
- A. Well that's the historic part, there's also the penguins because there was intervention at the time the wharf was established, my son and I intervened and one of the effects of that was that the new rock wall penguin habitat was established and of course that links into today's issue about what happens to those penguins and also I'm a bus driver and so I'm involved with the keyhole and I just note that I support Christine's submission completely. I also just note that the people who use the keyhole are holiday makers and I haven't written this down before. They're holiday makers, they're dawdling, they arrive, they take selfies, they wander across the keyhole, it's not like an official city bus stop where people want to get home or want to get to work or whatever, they are in holiday mode so it's not just a vehicle access point it's also got quite a lot of pedestrian interaction there.

THE COURT: JUDGE NEWHOOK

- Q. Equally if it's congested it's moving pretty darn slowly isn't it?
- A. Oh absolutely.
- Q. We haven't had any deaths there.
- A. No.
- Q. Or serious injuries. We might've had some frights.
- A. We do have to watch closely but –
- Q. It's pretty slow moving isn't it?
- A. It's slow moving but people go back and get friends or they get lost or they don't speak English you know, it's not like a transport hub in the city, it's slow.

EXAMINATION CONTINUES: MR LITTLEJOHN

Q. Now I'm going to simply ask that you answer any questions, some of the other lawyers here might want to ask you some questions. All the documents that they refer you to, the documents are either going to be in front of you or you'll be directed to them so don't get flustered if someone's going to ask you about something then we'll get it for you to have a look at.

A. Okay.

CROSS-EXAMINATION: MR ALLAN – NIL**CROSS-EXAMINATION: MR R BRABANT**

Q. Good afternoon, if you could have a look at the one that's already open there might be the one. Have you been here at all during the course of this hearing so far?

A. I haven't been able to be.

Q. No that's alright, it's just so that I don't end up repeating what I might've said or the Judge might've said. At the bottom of these you'll see figure numbers.

A. Yes.

Q. So I understand that the farm was eventually sold.

A. Yes.

Q. And then it went into an ownership situation where development occurred in conjunction with a major replanting project.

A. That was some years ago.

Q. Yes, but you are familiar with what happened aren't you?

A. Yes, distantly familiar because we were in the South Island.

Q. Sure. Done by some different people and the product of it can be seen now.

A. And if I could just make the point that I did make before, that it was what Rob had intended by amalgamating all the titles into four.

Q. Sure, sure, sure. Now I wanted to just refer to you reference to, well maybe the best place to take it out of is paragraph 24, "We sought to include in the reserve those areas, particularly headlands, where future

buildings would be highly intrusive.” So if we just start first and if you could turn up figure 12 because I’ve been looking through here and it doesn’t get us all the way to the headland but it gives us the picture. Figure 12, marina layout plan, as I say that gets us past the wool shed which we can see there, I’m now asking you to look at the Historic Reserve that starts around by the keyhole as people call it and its labelled there isn’t it, Historic Reserve, and it runs along it’s got the word Historic Reserve and around the corner, and around and past the wool shed and then it opens up doesn’t it, up as you’ve described up to the headland.

A. Yes.

Q. And that’s the reserve that’s the reserve that you’re referring to isn’t it?

A. And it carries on.

Q. Yes of course. But as much as in this picture and it actually takes in the marina location as well, what you’ve been telling us about in real terms is that area defined on that map isn’t it?

A. I think it is and within this localised area yes. (inaudible 16:15:48) was the start of the whole reserve.

Q. Yes. And have you seen the evidence of the Council archaeologist Mica Plowman, have you seen that at all?

A. Not recently, no.

Q. And she produced a figure in which she’s located all the known archaeological sites relevant for and of course relevant to whether or not they’re located in the reserve, are you not familiar with that?

A. I’m not totally familiar with that and in fact the points that I was referring to were points along, particularly along here.

Q. Yes.

A. The naval points.

Q. Am I understanding correctly that a focus, hence the name Historic Reserve, was on those recorded historical archaeological sites and settings these boundaries up?

A. Along the reserve, the whole of the reserve.

Q. Yes.

- A. Which went right up to the point.
- Q. Yes I know and included the point. The focus, hence the name Historic Reserve was on those recorded known archaeological sites, is that your understanding of it?
- A. It is but it's also, we talked quite a bit about how it should be vested and what it should be and a great intent was that it should be a public reserve and scenic and we were aware of the sites, Rob did talk with Ngati Paoa elders, I can't give you the names I'm afraid, I'm sorry. But it wasn't just the ones around this area, Matiatia Historic Reserve of course took in a much greater distance.
- Q. Sure.
- A. So I can't answer the questions about those particular ones.
- Q. Obviously my questions were focused around what we can see on that plan.
- A. Sure.
- Q. And which relates directly to the marina. Now could you go to figure 2 which is entitled "Marina concept plan." It's right at the beginning. Do you have that?
- A. Yes.
- Q. Now we can see the relatively white roofs of the woolshed except it never looks anything like that from the water but we can locate the wool shed and as we move towards the headland you can actually pick up the walking trail in that aerial can't you?
- A. Yes.
- Q. And you can see it disappearing around the headlands and up the top left-hand corner of the page. Am I picking it out right?
- A. Yes.
- Q. And that gives us an idea too doesn't it of the closest residential home to the headland that's actually the reality of what's emerged?
- A. Yes that is the reality of what's emerged.
- Q. And if we go back one to figure 1, and there we can see and this is October 2010, we can see can't we the houses in amongst the new plantings?

- A. Yes.
- Q. And also are you aware that there are some vacant areas like to the right-hand side of the wool shed and up the hill a bit?
- A. Yes I am.
- Q. Of sites where houses are yet to come and that's what's happened under the subsequent ownership isn't it?
- A. It is but it is – I think the point that I was making and that Rob was making was that it's not – it could've been sold straight away by the Delamore's as 13 or 14 blocks that which could then have been subdivided by you know different people in different ways and what he was trying to do was, he was aware that it was extremely likely that it would be subdivided in the future. He wanted to sell it as a going farm nonetheless which is why the wool shed was still included in it because we had heated discussions about this but he was, had to keep faith in his family as well and who were also shareholders, it was a bit of a tricky path, it was to try and ensure that it wouldn't be a kind of open slab urban situation, yes I accept that there are houses there naturally, but they are softened by the bush around it.

1620

- Q. Yes. I'm only referring to what's emerged since –
- A. Yes.
- Q. Now, can we just look quickly at the last section about congestion at Matiatia, and you've been driving for a bus company.
- A. Can I just – oh sorry, no.
- Q. Yes you can –
- A. I was just going to say when I spoke to my boss the other day he said that the more than 500 trips is pretty conservative, it's closer to 600.
- Q. A couple of things, you've referred in 42 to peak summer season and in 44 to peak visitor numbers.
- A. Mhm.
- Q. I've tried to read and understand all of the evidence and would that be, those two descriptions would coincide, in other words what I'm asking is

the peak visitor numbers found in the peak summer season in your experience?

A. Yes in my experience, yes. However can I also say that what we have found is that those periods are longer than they were in the past, so it's not just the Christmas break or the New Year break or the immediate summer holidays, it is going on longer. Those times are the very very high.

Q. Yes. Now the area that has had the focus in the end is what has been described as the keyhole and you've referred to that as well. The busses both move and stop in the keyhole, don't they? So when a bus is using that area it's not moving all the time, it comes in, it stops, and then it moves again.

A. Mhm.

Q. And there are other vehicles that do that as well, aren't they, that are currently allowed in there, taxis and shuttle buses?

A. Yeah.

Q. What we call, you know, the vans, they move into the keyhole, they stop in the keyhole and they move again?

A. Yes.

Q. So you've got those vehicles. Now out the other side of the keyhole, and this has been there for some time and you'll know this, there are places where other vehicles can stop aren't there?

A. Over –

Q. First of all there are –

A. By the –

Q. I'll ask you and you can tell me if you think I've got this right, there are scooters and motorbikes, a place for them to stop.

A. Yes.

Q. And they move through the keyhole but they don't stop in the keyhole.

A. Mmm.

Q. But they're a moving item, they haven't got a place to stop in the keyhole have they?

A. Mmm.

- Q. And then the other thing is you know, don't you, that there is a place for some disabled parking and there are some spaces for mooring owners as well, so they move through but they don't stop in the keyhole, do you agree?
- A. Mmm.
- Q. And then people who have moorings, because we've been told that although there's a boa tramp there it's not considered appropriate for launching small boats, but I understand that people who have moorings in the bay and who bring their dinghy or inflatable down instead of having it on a rack would move through and stop at the ramp and offload their dinghy off their roof and gear out so that they can use the floating pontoon and go out. Have you seen people doing that?
- A. I haven't seen people doing that actually, no I haven't specifically seen them taking their dinghy off the roof or that sort of thing. And I haven't seen – I'm not saying they don't but at the time when I'm down there with the bus you are not terribly much aware of other people moving and stopping, but there is congestion, you know, it's congested.
- Q. So you mentioned moving and stopping, I'm talking about right now –
- A. Moving, yes, I know.
- Q. – about the people who don't stop in the keyhole, they just pass through. They're there, they happen don't they, the scooters, the motorbikes, and the people who have moorings who come there they just move through?
- A. Yes, I take your point but –
- Q. I'm not making a point, I'm just asking a question sorry.
- A. Okay, they do move through but, you know, sometimes people have to pause and wait while a bus parks or while a taxi parks or something.
- Q. Yes, for sure.
- A. And I'd also like to say that the kind of concentration of vehicles that I would anticipate would be part of a marina carpark seems to me – or associated with a marina seems to me a greater concentration perhaps than the people who move through at the moment. Because you're not terribly aware of them.

- Q. I'm sure you may have a view about what effect the marina traffic may have if consent were granted. I was just asking you about what's happening at the moment, thank you very much.

CROSS-EXAMINATION: MR ALLAN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

- Q. There was a phrase that you've used a couple of times I think and it was called a "green gateway to the island". Now, I was thinking about this and the green I presume you're meaning the hillside –
- A. Yes.
- Q. – and the re-vegetation and so forth as being green and natural, reasonably natural. The gateway is an entranceway presumably.
- A. Mmm.
- Q. And I take it that as an entranceway it's primarily the ferry entranceway, do you think?
- A. Yes.
- Q. What about private boat entranceways, would that be included as an entranceway do you think?
- A. Yes it would be of course, but possibly it probably wouldn't relate to as many people as come and go now on the ferries. I mean I think that that entranceway which also for me it includes Matiatia Bay and the relatively green slopes because of the bush, it also for me includes the valley going up to Oneroa which has been pushed relatively on both sides. There are a million – well, thousands and thousands and thousands upon thousands of people who actually are able to take in that impression and I think there are many who really value that coming and going more than necessarily just boat owners perhaps who might be coming into a marina, in terms of the numbers of people who can appreciate that green gateway as we call it – as I call it.
- Q. Sure, but I take it that you wouldn't have an objection to private boats entering Waiheke by there?
- A. No.
- Q. So it's a gateway for them as much as –

- A. It's a gateway yes, of course.
- Q. – a ferry. It's not just confined to the ferries, no.
- A. No, of course not.
- Q. The gateway concept's a bit broader than that.
- A. Mmm.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. Thank you Ms Gilmore, I was interested particularly – Pamberton sorry, I was interested particularly in the background you've given to the specific choice of the heritage reserve as opposed to an esplanade reserve or any other nominated purposeful reserve.
- A. Mmm.
- Q. And I assume that that was discussed with DOC, that particular –
- A. Yes, very much so.
- Q. And the benefits of that particular characterisation of the reserve?
- A. Yes it was definitely discussed with DOC. It was a very complex time and process and so decisions were made in the best possible way that they could be made at the time. And because of the wish to protect – you'll notice on, I can't remember which number it was page, but where the reserve goes out to the headland – what was the page Mr Brabant that you've directed me to, do you remember?

THE COURT: JUDGE NEWHOOK

You were looking at 12 but that didn't go out to the headland.

WITNESS:

There's one that went out (inaudible 16:29:03) –

MR R BRABANT:

Two.

WITNESS:

Two?

THE COURT: JUDGE NEWHOOK

It's got the reserve marked on the – see the situation of the headland.

WITNESS:

Well the one that went right out to Moke Moke headland, you see the reserve becomes much much much broader?

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER LEIJNEN

Q. Yes, yes.

A. And that's because it was not to be just a walking track but was to take in this considerable Māori modification there, kumara pits. And leading to Mokemoke which had, you know, quite a lot of historic cultural material there. So I mean we did discuss what it should be and how it should be, but Rob, I mean we also discussed should it be the Department of Conservation, should it be – who should it be really? And he had a very strong identification with the Department of Conservation just because of its principles and that sort of thing, and that was how it came, particularly how it came to be vested with them and protecting the sites. Because it's not just where Matiatia, though that's, I know, the only matter that really is here but further out on Owhanake Point and right out further around there are quite considerable ditches and you know there's a lot of stuff that he wanted to ensure would be under greater protection than and in private hands. Because in those days people were bowling things, people were bulldozing through them. And there was a sort of less awareness of the significance by the board of developing public if you like. So that was why.

1630

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL**RE-EXAMINATION: MR LITTLEJOHN – NIL**

WITNESS EXCUSED

MR LITTLEJOHN CALLS**JUDITH MARILYN COUTTS (AFFIRMED)**

Q. Is your full name Judith Marilyn Coutts?

A. Yes.

Q. And you confirm that you have prepared a brief of written evidence for the Court and it is dated the 25th of July 2014?

A. Yes.

Q. In relation to that brief are there any errors that you have found in the text since producing it that you might want to draw to the Court's attention.

A. Only one that I suspect I made myself which is in the first line of Don's poem. The word shouldn't be "wide" it should be "wild". That was, only wrong that. That's all.

Q. With that correction, do you confirm that the contents of that statement are true and correct to the best of your knowledge?

A. Yes.

Q. Mrs Coutts, without reading your statement, are there any matters within it that you might like to highlight to the Court, bearing in mind that you might be asked questions about it.

A. Yes, I have absolutely accepted the Judge's utterance that all of this has been carefully perused and considered and if I may just bear, one or two things. I've been gratified with reference to paragraph 6. I've done my best to understand the expert evidence, it's been a hugely unpleasant and (inaudible 16:33:28) experience for me but I particularly am grateful to the two environmental officers from the Council that I thought gave really clear and unbiased evidence for all that's worth. That is just my view. I'd also like to say that Waiheke is a tolerant community and there's no personal animosity between the various groups of which I'm aware. We each hope to win, of course we do, but that's where it begins and ends. And also if I may just say that with reference to paragraph 14 where I discovered little, in my view, imperfections in the Poynter report, I did take, I have a friend who obligingly took, in the

approved fashion, photos but it wasn't until Judge Newhook said at that meeting of the 30th of September that anything that wasn't already presented was new evidence and I realised this was rather my own personal collection now but that I would photographic records of that. The other thing I would like to say is that this has been a hugely community effort. Don Chapple taught at the university, I'm not sure in what discipline. He was well respected in the community and Waiheke has a history of planting. We've also traipsed our way across to Tiri Tiri Matangi to Rotoroa under the new ownership there, administration there. Some of us have dragged ourselves off to the Little Barrier to plant there too, all over the place, Motuihe Island, Motutapu. Waiheke is a community thing it isn't just me, there's heaps of people and I would like also to pay tribute to Eugene from the Marae who they gave us a huge number of (inaudible 16:35:14) and he came out leading a group of young fellows to plant down near Cable Bay Vineyard. He's also given us things so this is very much community effort and the final irony is that most of my work under Don's direction is on Council land. The wetland of which there's probably 20 or 30 acres in lot 51, I do of course also work at Te Atawhai Whenua which Don wouldn't allow any recognition of his name and he asked for it to be called He Atawhai ki te Whenua which means kindness to the land. As a commuter for 12 years I love coming into that bay, I love the old wool shed and it would be a huge adjustment for me to accept any difference to that but I understand the procedure, I understand it's people's rights and their feelings and I thank you all for giving me this opportunity and wish you all well.

- Q. I will need you to stay there because Mr Brabant or members of the Court may wish to ask you some questions.

THE COURT: JUDGE NEWHOOK

And let me just say something to you, I too know and love Little Barrier Island, Hauturu and have planted there and I also conduct a lot of planting on Coromandel Peninsula so there are many in the community but I acknowledge

that it is a special thing that happens here on Waiheke, there's a great deal of it and it's a very fine thing.

CROSS-EXAMINATION: MR R BRABANT

Q. I asked the previous witness to look at the documents there and you'll see right on the table there, the aerial photographs?

A. Yes.

Q. Can you go to the figure 1 first.

A. Figure 1, yes.

Q. Now I just want to make sure that this is on the record correctly and you've talked about the planting you've done and Don Chapple and I can assure I know exactly what you mean but I want it for the record, the planting and the referred area that you're talking about, if we look at that we can see Ocean View Road going down?

A. Yes.

Q. Towards the carpark in the wharf?

A. Yes.

Q. And if you recognise north you'll see on the left-hand side at the top of the aerial there's an arrow to north?

A. Yes.

Q. So we're talking, aren't we, the planting area in which you've been so fully and committed and involved is to the south, that is the bottom towards the page.

A. Yes.

Q. Of Ocean View Road isn't it?

A. That's the one I'd referred to for some reason as the western but I'm not –

Q. No that's alright.

A. – clear.

Q. And you told us about the stream at the bottom of 14.

A. Yes.

Q. And onto the next page, the stream that flows from and into Matiatia, if you turn over to two and I just want to confirm that's the next one, you

can see at the bottom there, south of the building and you can see where the stream comes out can't you?

A. Yes I can see it.

Q. Correct?

A. Yes, there's a creek there.

Q. That's the stream you're referring to isn't it?

A. Yes and I do have photos of them from –

Q. I'm sure you do.

THE COURT: JUDGE NEWHOOK

Q. I can tell you we had a very good look around there last week and again today.

A. I hope you enjoyed it.

Q. I always enjoy it there.

A. My best remark with some tourists who came by and said, "Isn't is lucky that you people didn't cut down those trees." Anyway thank you all.

CROSS-EXAMINATION: MR ALLAN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

WITNESS EXCUSED

**THE COURT: JUDGE NEWHOOK ADDRESSES THE COURT –
TIMETABLING**

MR LITTLEJOHN ADDRESSES THE COURT – WITNESS AVAILABILITY

MR LITTLEJOHN CALLS**JUDITH MARGARET JOHANNESSEN (SWORN)**

Q. Is your full name Judy Johannessen?

A. It's Judith Margaret Johannessen.

Q. And have you prepared a brief of written evidence in relation to this proceeding dated the 24th of July 2014?

A. Yes I have.

Q. In relation to that brief are there any errors that you've identified since providing it to the Court that you would like to correct?

A. On paragraph 15 in my second line, "In my experience since mid-February" instead of "early".

Q. With that correction noted do you confirm that the contents of the brief are true and correct to the best of your knowledge?

A. Yes.

Q. Are there any matters without reading your evidence that you might like to highlight to the Court on your brief?

A. I'm just wondering whether it would be best just to be able to read the two last paragraphs of the conclusion if that's all right?

LEAVE GRANTED TO READ BRIEF

A. "As an elderly resident with mobility issues who relies upon the Matiatia ferry for the purposes of getting to and from Auckland, it is important that I and others (like my elderly neighbour) have access to reasonable, safe and accessible car parking. My personal experience over many years is that there is insufficient parking at Matiatia and the pressures on parking have increased over those years. I am concerned that a marina at Matiatia will lead to additional pressures on available parking. Based upon my experience on the ferry," other people haven't heard or read all this but this is about I brought up two issues, one about the parking and one about the ferry docking in stormy weather.

THE COURT: JUDGE NEWHOOK

Q. You had a scary experience one stormy night on the ferry, we've certainly read about that with interest.

- A. “Based upon my experience on the ferry which had trouble docking during inclement weather, I am also concerned that the existence of a marina at Matiatia will determinetally impact upon me and other ferry passengers during stormy weather and high winds, making it more difficult or impossible for ferries to dock safely by limiting the space on both the northern and southern parts of the bay for ferry skippers to manoeuvre when trying to dock in those conditions.” And that’s all really. I am a boaty so I know a little bit about tides and with the storm conditions that night it was actually, we did have to use – the boat had to circle and circle and circle to get the speed up to be able to get in the dock.
- Q. Did you say which boat it was, was it the Jet Raider –
- A. No look, no, it wasn’t the Jet Raider, I know that (inaudible 16:45:57) –
- Q. We know (inaudible 16:45:58) very much.

NO FURTHER EXAMINATION – MR LITTLEJOHN

CROSS-EXAMINATION: – NIL

QUESTIONS FROM THE COURT – NIL

WITNESS EXCUSED

MR LITTLEJOHN CALLS**DAVID WATERS (SWORN)**

Q. Is your full name David Waters?

A. That's correct.

Q. And Mr Waters, did you prepare a brief of evidence in these proceedings that's dated the 25th of July 2014?

A. Yes thank you.

Q. Are there any corrections that you might like to make to the brief since you filed it with the Court that you've picked up?

A. No, I read it through and it still stands.

Q. Very good. Are there any matters you might like to highlight to the Court subject to the caveat that reading it out loud might annoy the Judge?

A. No, the only thought I have is that referring to safety and the ability to anchor in the corner of Matiatia, while it's not generally considered proper to anchor among a mooring area, in extremeness with a trip line on your anchor you can indeed do so, which makes that northerly corner, although it's crowded with boats, even more useful than I've indicated in my affidavit where I refer specifically to more shallow vessels that could get up inside the mooring area. That's probably my only additional thought I think.

Q. But before I asked you to do that I omitted to ask you to confirm the contents of your brief as true and correct, do you do so?

A. I do, I do indeed.

CROSS-EXAMINATION: MR R BRABANT

Q. Mr Waters, I have noted sailing background and I'd like to turn to at 11, this is maybe the best place to ask these questions, you have a mooring Te Huruhi Bay and do you have a boat still at this time?

A. Oh yes, yes indeed.

Q. And what sort of vessel is that, please, just a brief description, yacht, launch size?

A. It's an ocean going ketch.

Q. And how long would that be?

A. Forty-eight feet.

1650

Q. And do you keep it on your mooring around there?

A. I do.

Q. Just in relation to that bay, do the moorings there have variable water depth available and for water depth, and you're a boating person, we're talking of course, the low tide, what you've got left, so what sort of depth do you have under your mooring at low tide?

A. Well we're comparably shallow draft and we have about two metres, just slightly under two metres.

Q. And, sorry, I don't know the name of your vessel and I do apologise because I like to know the names of vessels, but what draft does she have?

A. The vessel is (inaudible 16:50:46) and she draws four foot six, 1.5 metres.

Q. But am I right from, I mean it's not the only time I've been there but years ago but we had a more recent visit, the moorings there, some of them if I remember might dry out at low tide?

A. I'm referring essentially to the controlled moorings, there are a number of drying moorings that are unofficial as I understand it.

Q. Tell the Court please what wind conditions, and we could turn up the chart or one of the maps but as you've already heard the Judge knows the area very well –

THE COURT: JUDGE NEWHOOK

And the three of us were there this morning.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So what wind directions, Mr Waters, with your mooring and the others adjoining you be exposed to?

A. I am fairly close in because the boat's fairly shallow so we are just out of the south-west, further out they get more of the south-west.

Q. But you would be exposed to the south and the south-east wouldn't you?

- A. The south-east comes over Kennedy Point. Directly southerly is from the mainland Beachlands and so it affects us a little less.
- Q. I always feel happier when I've got a chart in front of me and asking questions.

THE COURT: JUDGE NEWHOOK

Why don't you just carry on because –

MR R BRABANT:

It's all right I will –

WITNESS:

I may be able, I know it fairly well and may be able to help you out.

THE COURT: JUDGE NEWHOOK

And we all do too.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. I'm not going to fossick around, anyway, your mooring would be sheltered from the northerly wind?
- A. Oh indeed.
- Q. And the north-easterly?
- A. Yes.
- Q. So, let's go then to paragraph 17. As a boat owner I have, on many occasions, used Matiatia Bay as a safe haven but you wouldn't use it, would you, in preference to your mooring?
- A. Not personally in the present situation. Previously I've owned much shallower vessels and have used this frequently.
- Q. If you could turn up in that booklet, that's right in front of you there. If you go to figure 36. So you'll see there these are the moorings and boat names. You'll see underlying the dotted outline of the mooring management area.
- A. Yes.
- Q. You've got that?

- A. The yellow.
- Q. In the yellow dotted. And there's some contour lines there too, you see those? See the contour line?
- A. The blue?
- Q. Yes. See what that is?
- A. Yes, it appears to be a metre. A metre low. Is it?
- Q. I don't know. It seems to have a 0.3 on it to me.
- A. It's got minus, sorry it's 0.8 on one side of it and 1.1 on the other.
- Q. It gives you an idea of depths. So, what I was going to ask you is, and you've partly answered it in something you added in from your evidence. What part of the bay are you referring to as a safe haven during rough weather accompanied by northerly winds? Is it the area where all these boats are shown?
- A. Well it would have been before they were all there but now it's confined to rather a small area approximately between the woolshed, lying outside the woolshed. And this, of course, is only at very low tide, probably low water springs. And conceivably the period when people need the shelter the tide may be well in.

1655

- Q. I've had a discussion, were you here when any of the navigation experts gave their evidence?
- A. No I wasn't.
- Q. So Mr Dille gave evidence. He used to be a Deputy Harbourmaster up here.
- A. Yes he's a friend of mine.
- Q. And we heard from Mr Christiaan Moss who is, the Council called him as their witness, and they both spoke about this because there's reference to people anchoring for shelter and of course it implies, unless you can get a shallow draft boat into that corner there, it implies anchoring amongst moorings. Now you've referred to that. I take it then that you personally feel comfortable with the notion of going in there in high winds, in these northerly winds and dropping an anchor amongst

moored boats with a trip line, do you feel comfortable about that personally?

- A. It wouldn't be my preferred choice but needs must. I've done that sort of thing before when I've had to.
- Q. But maybe people without your experience they are risking dragging their anchor if they don't carry the manoeuvre out and ending up caught up in the tackle aren't they?
- A. They take that risk but just referring to there, I do moor, frequently we have people anchoring among the moorings there in strong northerly weather just for safety's sake.
- Q. If the marina were to be granted consent in this location we're just looking at now and if, I don't know whether you've read Mr Wardale's evidence, and if there were availability of berths to be rented out, in other words people could go in on short-term rental at short notice via text or some other communication, if that was available and there was strong storm northerly winds, the marina would offer a safe, secure no risk situation wouldn't it, for someone in that circumstance?
- A. It probably would. The shoal draft boats I'm referring to which are not totally uncommon around the Gulf probably would not be the sort of people that could afford to go into a marina, they would probably prefer to anchor.
- Q. You mean to rent just one overnight or for a couple of days?
- A. Yes, because there is no visit, as I understand it, there's no dedicated visitor's berth at the marina and the marina may well be full.
- Q. Oh it could be. But if these berthing arrangements are available then the marina would provide a very secure environment for someone with a yacht or a launch.
- A. Generally speaking, yes. At a cost.
- Q. Of course. Are you familiar with the Bay of Islands over Christmas and other periods of the year?
- A. Not very familiar but I have been there over Christmas and other periods.

- Q. Okay, well if you're not very familiar over the Christmas period I won't pursue that.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. Mr Waters, we were told that with the, I've noticed you observed the mooring use in the bay that you anchor your boat, or moor your boat I should say.

A. Yes.

- Q. And we were told that the use of the moorings is monitored and if it's vacant for six months then something's done about it, I understood from Mr Moss. But you're monitoring, unfortunately, didn't run for six months if I'm counting correctly.

A. It has not changed visibly in the last year or two. There's been a gradual increase in the number of moorings because I used to be with a previous boat, the only boat on a mooring there permanently and over the years there's gradually got to be more but it's never been more than what there is at present which are the numbers I suggested to you in my affidavit.

- Q. So who uses them? There's obviously a long-term mooring.

A. There are about a dozen long-time moorings who, as far as I know, would be all residents with maybe one exception.

- Q. And then how are the rest used? Are they just not used or is there some short-term...?

1700

A. There are a few that are used short-term, one or two obviously have properties ashore that come and use the mooring. A number of them simply grow weed and appear not to be used at all, and most of the – if the harbourmasters – well I'm not sure, in the Auckland Council evidence was suggested that there were 68 allocated moorings, most of

them don't have any indication of where they are, there is no buoy or apparently any mooring on them.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL –
HOUSEKEEPING**

COURT ADJOURNS: 5.05 PM

COURT RESUMES ON WEDNESDAY 15 OCTOBER 2014 AT 11.10 AM**THE COURT: JUDGE NEWHOOK – TIMETABLING DISCUSSION**

1115

MR ENRIGHT READS OPENING SUBMISSIONS

Thank you Sir, may it please the Court. I've given just a short roadmap just so you know what topics are being covered. "Matiatia Bay is a significant... decision." And Sir, I'll just go to the, there's a quote within the quote which is a paper I think from Justice Joe Williams, he may have been a Judge at the time, but that helpfully says, "Of all the values of... and taonga." Sir, I haven't given you an evidence reference but that's out of Mr Wilson's evidence.

THE COURT: JUDGE NEWHOOK

Do you recall where?

MR ENRIGHT:

I'll find it for you, Sir, perhaps I could come back to (inaudible 11:22:17).

THE COURT: JUDGE NEWHOOK

Thank you (inaudible 11:22:18) when you sit down if you could find it and advise us.

MR ENRIGHT CONTINUES READING BRIEF OF EVIDENCE

Yes Sir, thank you. So in terms of the issues, there are three key issues, for cultural effects. "Ngāti Paoa Iwi... of Mr Sergeant." And Sir, just to interpolate, I would like to ask Mr Sergeant a few questions (inaudible 11:23:14). "Additional points as follows." Oh, I have the paragraph reference Sir, so if you – thank you, so paragraph 9(f) is a cross-reference to paragraph 10 of Mr Wilson's evidence, thank you.

We turn to my paragraph 12, "The coastal environment... the coastal environment"

1125

Just to interpolate Sir, I've just brought to the Court's attention a few references in the Coastal Policy Statement to cultural landscapes where that phrase is used and my friend for the applicant opening criticised potential use of cultural landscapes but I think more particularly the cultural heritage landscapes, so just to be clear, my case relates to cultural landscapes not cultural heritage landscapes and that does reflect in the Coastal Policy Statement.

THE COURT: JUDGE NEWHOOK

As referred to in the Regional Policy Statement, is that it?

MR ENRIGHT:

No sorry the NZCPS

MR ENRIGHT CONTINUES READING OPENING SUBMISSIONS

"Paragraph 13, policy...on the merits." And Sir I've given it the quote from Your Honour's decision (inaudible 11:27:20) which I won't read other than to note that the last paragraph of that does make the point there's no right of veto or priority as between section (inaudible 11:27:33) and that's not contested.

"Paragraph 19, recorded...recorded burial sites." Now I'll just interpolate Sir I haven't, unfortunately, given you the transcript page references yet, just time reasons, but I also note that my friend Mr Allan for the Council, last night, there was an exchange between Council about whether it's described as two or three and that's just an issue for the summary of facts so I might come back to you on that Sir when – I think it's just a point of detail there. "Unrecorded indigenous burial... accepted as relevant." I should interpolate there Sir, in fairness to Mr Rikys, in his primary evidence at paragraphs 30 to 33 he does discuss cultural landscapes but there seems to be a bit of a shift in position in his rebuttal where he refers to Mr Pryor. And Sir this may be a case which to some extent falls between two stools in terms of the applicant's case because

Mr Pryor did not assess the need leaving cultural dimensions of landscape to Mr Rikys. "Mr Pryor did...on the Marina." Now Sir this is just a point, there is a plan which Lucy Tukua in her evidence produces and it's clear the plan is not accurate in terms of surveying the mean high water springs mark and counsel put some evidence in about that. It's intended Ms Tukua will simply delete that paragraph in her evidence and not produce the plan. And that's the position I agree with my friends. "Despite that the... to the proposal."

So in course with Your Honour's indication, Mr Morehu is the first witness.

MR ENRIGHT CALLS**MOREHU ANTHONY WILSON (SWORN)****INTERPRETER (SWORN)**

Q. Mr Wilson, through the interpreter your full name is Morehu Wilson and you're currently employed as an aviation fire-fighter in a management position? And you prepared a statement of evidence, can you confirm that it is true and correct for these proceedings?

A. Āe ra.

Q. Now I understand that you would like to as appropriate to Tikanga give a initial statement in relation to the matter in this case. Kia ora.

A. With humility I come before you all to give a truthful account in my evidence that I will be presenting. I have prepared and written evidence and it is my desire to present of this in Te Reo Māori for my people of Ngāti Paoa. I acknowledge the bench and especially to the Lead Judge Mr Newhook. I also would like to acknowledge all those who are gathered here today to hear this evidence and I defer to my Honourable interpreter. Without doubt I believe that our ancestors will be here in attendance with us spiritually and it is my desire to embed our ties, our deep ties to Motu-arai-roa, Waiheke. I want to begin my evidence with the arrival of the Tainui waka to these shores with Hoturoa as the captain of that waka. Our relationships, our genealogies go back to Hoturoa the captain of Tainui as well as to Tama-te-kapua who came on board as the captain of Te Arawa waka. The forenamed lineage, and I think that we need to have a copy of that, the foregoing lineage of the connection between Hoturoa to Paoa has been announced in his delivery. The lineage between (inaudible 11:42:56) is through the foregoing ancestral lineage which ends with Paoa. The ties from Paoa in terms of the hapu that came from Paoa were Ngāti Hura, Ngāti Kapu and Te Urikaraka. The relationship between Hura who is the eponymous ancestor of Hura was through Toahu, Moretoahu and of Tainui and therefore the linkage between Tainui and Moretoahu through Ngāti Hura as the hapu. The authority, the genealogical authority has

come down through this lineage that has been endowed to Rawiri Puhata. Rawiri Puhata, it is correct to say that his authority is maintained as he was born at Matiatia, at the village of Ahi Parenting order. As you approach on the western approach to the island and if you look towards the north you will see the battle, the Pa Tuwatawata which is the fortified village of Mokemoke. There lived Rawiri Takurua who was the father of Rawiri Puhata. And this is the linkage that Ngāti Hura has to these lands. I will now address Ngāti Kapu. Paoa's daughter married Kapu. From that union was born Whatunuku. From Whatunuku, Pareunga was born. From Pareunga was born Whaeorongorogno. From Whaeorongorongo was Rawiri Takurua was born. These are the genealogies of Rawiri Puhata through his father Rawiri Takurua that gives them legitimate residence on these lands here. From our perspective there is nothing more that gives you ties to the land than genealogy. This is indeed the platform or the basis of families, of hapū and iwi. These have been spoken about for eons of time from our people in regard to hapū, iwi and whānau. Perhaps there are two distinctions for these that have been spoken about. The hapū is a part of the iwi. Hapū is also a word used for pregnancy before the child is born. And so the lands, to talk about the word "land" would tie to Papatūānuku who is indeed the primordial female. "Whenua", the word "whenua" also describes or is also given the name for the placenta of the child as it is in the womb of the mother. And again with iwi there are two distinctions, firstly that the iwi comes from is a group of wider relationships. And the second distinction is in regard to the skeletal remains (inaudible 11:52:59) of the bones that have the genesis from Papatūānuku, Mother Earth. And our belief is that these give a description of how we as Māori find connection between the physical world or the terrestrial world and the celestial world. So at Matiatia there are many wāhi tapu or sacred places where people have been interred, and from our perspective that the cemeteries aren't the only wāhi tapu. And in times gone by families lived in specific areas, they grew there, they had their entertainment, they ate, they slept and all the things of

living that they did together in those places. And these also are sacred places to us. There are many places that surround Matiatia. The community knows well of the unearthing of the remains, skeletal remains. It was a custom of ours that the internment or burial of remains were close to the sea. So Matiatia is a prime example of this kind of issue that has been left with us. At this time I will turn my attention to the lands of Waiheke. At the death of the taniwha Ureia this taniwha was murdered by the people of Tāmaki Makaurau, of Auckland. And there was a war party that came from Hauraki. They fought at all the fortified villages. Fought against all the fortified villages. At that time the people of Hauraki occupied those pa or those fortified villages that fell in battle. And following that there was an occurrence where two chiefs died and again the war parties from Hauraki came to take up battle with those pa, with those fortified villages and this is the reason why Ngāti Paoa has lived continually at Waiheke.

We acknowledge the many iwi who have arrived on the tides. We know that the tides come in and they go out and as they come in, people arrive. Ngāti Paoa knows that it, through its occupation, (inaudible 12:00:29), are the rightful and the legitimate people of Waiheke. The two boards, at this time I want to announce that the two boards of Ngāti Paoa Trust Board and Ngāti Paoa Area Trust in regard to this concern. And the Ngāti Paoa Trust Board chairperson is here. It is Ngāti Paoa's desire that we embed the connections of the ancestors, ancestral ties, to Matiatia. Ngāti Paoa also has a mother hapū here at Waiheke called Te Urikaraka. The authority of Te Urikaraka is through Kaiwhakapae and he was a contemporary Kiwi Tāmaki. And again the lineage were tied between Te Urikaraka and he has interned the generations, I think there were four or five, down to Te Aho. (inaudible 12:04:21) married Rawiri Takurua and the lineage through to (inaudible 12:04:27) Karaka. And these are the connections, the genealogical connections and ties of Ngāti Paoa to the harbour or the bay of Matiatia.

- Q. Mr Wilson I just have a couple of questions for you relating to Mr Rikys rebuttal evidence and then I would ask you to answer questions that come to you. Now the first question for you is from Mr Rikys rebuttal, he refers to the paragraph 34, he refers to the Agreement of Principle dated July 2011 and can you just update accordingly in terms of where things are at with the Treaty settlement negotiations as at October 2014 including how that relates to Matiatia.
- A. At this point in time we are having continual conversations and discussions with the Crown in regard to the lands at Waiheke. Ngāti Paoa's Treaty claims have not yet been completed satisfactorily. Now we have a place where we, and the Crown will come together to negotiate and to fulfil the desires of both the Crown and Ngāti Paoa. At this time we want to with the Crown to negotiate with the Crown to include the wahi tapu at Matiatia in our negotiations.
- Q. And in relation to the DOC Reserve, the DOC Matiatia Historic Reserve, can you just update the Court on that point?
- A. At this point in time we are still constructing dialogue in regard to that reserve.
- Q. My next question, Mr Rikys, in his rebuttal paragraph 10 say that, "It is for the mana whenua, Ngāti Paoa and in particular the hapu from the Matiatia Bay Area, Ngāti Hura, Ngāti Kapu and Te Urikaraka to both make and authenticate wahi tapu status. The question to you is, what is your Tikanga in terms of how you authenticate wahi tapu?
- A. We are saying that the whole bay is wahi tapu and it's difficult to segregate out which is tapu and which is not of wahi tapu so from their perspective, from the Ngāti Paoa perspective, the whole of the bay is wahi tapu.
- Q. Some questions were put to the landscape expert for the applicant, Mr (inaudible 12:09:22) about cultural practices that may take place in the northern beach area adjacent to or on the DOC Historic Reserve, can you comment on the types of the cultural practices Ngāti Paoa engages in or could engage in?

- A. From times before, it is the Iwi's belief that examples have been premised on incantations on historical evidences through stories and also on their belief that from the waka traditions also came the authentication and authority in terms of Ngāti Paoa's occupation here
- Q. And in modern day terms for example, what types of practice might occur for example, if kōiwi are exposed there?
- A. Over the last 20 or so years, those skeletal remains that have been exposed have been reinterred at the Ngāti Paoa farm as well as at Matiatia. Although we have continued to do this, the burden has been upon us to ensure that the right and proper things are done to reinter.
- Q. And what is your Tikanga in relation to kōiwi that come from ancient times before Ngāti Paoa occupied Matiatia Bay?
- A. It is true to say that and it was a good question that you've asked and it's true to respond by saying the tides speak to us, the tides come in and they go out. People come in and they stay and some go. Also, there have been many people who have come and stayed prior to the occupation of Paoa, Ngāti Paoa. However, having said that the Ngāti Paoa through its ability to confiscate, through its ability to wage war and through its ability to hold fast to those that they have gained since coming into Waiheke gives them that authority to be the rightful people here. Although the ancient skeletal remains that have been exposed over time, we as Ngāti Paoa are here to take care of them.

1215

CROSS-EXAMINATION: MR LITTLEJOHN

- Q. Tēnā koe Mr Wilson, I am here today representing Piritahi Marae just so you know who I am. I just wanted to ask you a few brief questions about the relationship between Ngāti Paoa and Piritahi Marae. Have you personally had involvement with the Piritahi Marae?
- A. Āe.
- Q. Could I ask you to describe the nature of that involvement, please?
- A. My duty is to support the community that lives and uses Piritahi. I will now address my remarks in regard to Piritahi. The name "Piritahi" was

given by then Te Ata Rangi Kahu and it was in recognition of the relationship, the close relationship between Ngapuhi and Ngāti Paoa through the marriage of (inaudible 12:17:64) to Takarangi. So there's nothing greater that was left for us to do as the descendants to ensure that we are uphold the peace between each other that was set by our ancestors at that time.

Q. Are you aware that people from the marae have been undertaking cultural practices on the island?

A. Āe.

Q. Are you aware of the types of practices that they have engaged in?

A. I've heard what they had to say.

Q. And could you tell us that?

A. We have a responsibility to look after the land and no matter from which we come and where we are, we have that responsibility of taking care of the whenua.

Q. Have you personally participated with people from the marae in practices, cultural practices on Waiheke?

A. Yes, we have worked together.

Q. Has the marae and its involvement in these practices and rituals been consistent with tikanga and kawa in your view?

A. From my perspective if the practices are premised on truthfulness, are premised on the way practices should be done, then it's worthwhile.

Q. Mr Wilson, have you read the written statements of evidence that people from the marae have put into these proceedings?

A. Yes I have, there are many statements made in the evidence that hasn't perhaps settled quite well in my understanding.

Q. When you were reading those statements, did any of the things that the witnesses were saying strike you as inconsistent with a Māori worldview?

A. It seems to me that our thinking are almost the same.

CROSS-EXAMINATION: MR R BRABANT

Q. Tēnā koe.

A. Tēnā koe.

Q. You were asked a question by Mr Enright concerning the tikanga or rules or formal process to authenticate wāhi tapu status. Your answer was about a conclusion in respect of Matiatia Bay. Can I ask you again to advise and assist the Court in providing advice as to the tikanga authentication process for arriving at that conclusion?

A. These can be authenticated by those people who have been imbued with that knowledge by being at the ankles of their forebears, of their parents, their tupuna, and who were the holders of those knowledge and the holders of those rituals. There are many families, very many families, and among them there will be differences in way things are done and understanding.

Q. Do you please have a copy of Pita Rikys evidence for this Court here to look at please. It should be in one of the volumes there.

WITNESS REFERRED TO EVIDENCE OF MR RIKYS

Q. I refer you to paragraph 2 of that evidence and ask –
1225

THE COURT: JUDGE NEWHOOK

Just pause Mr Brabant. Evidence-in-chief or rebuttal?

MR R BRABANT:

Evidence-in-chief.

THE COURT: JUDGE NEWHOOK

Page and paragraph number?

MR R BRABANT:

I'll give you a page number Sir, it will be the Court's sequential one, 782, paragraph 2.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Do you acknowledge what is set out by him there in the second sentence concerning the work he has done on Waiheke Island for Ngāti Paoa?

A. I am aware of the work that he has done and certainly yes.

Q. In addition to this evidence have you read the cultural impact assessment report that Ngāti Paoa arranged for him to do at the request of Waiheke Marinas Limited?

A. I've read it.

Q. We need now the evidence of the Council archaeologist, volume 3.

WITNESS REFERRED TO EVIDENCE OF MS PLOWMAN

Q. So if you go in that evidence under tab 10 and you'll see a little subsidiary tab 10(a) which is what's called the reply or rebuttal evidence. If you go to the back of that and can I ask you to go to figure 3 please. First, have you looked at this before?

A. I have seen it.

Q. Have you studied the information on it, as to sites and their description?

A. Ae.

Q. Witnesses before the Court, this witness obviously and Don Prince, the archaeologist, have advised the Court that this is an accurate record of recorded cultural sites. I mention also it includes the woolshed which is of course a European site and observatory posts up the hill from the Second World War times, do you accept this is an accurate record of location and extensive sites?

A. In terms of Ngāti Paoa's position in regard to the wahi tapu, we don't place great importance on the Second World War embattlements but rather, our importance is placed on things that can't be seen and that is the pathways when you look at the map, you can't see the pathways where people have tread over times and you can't see the pathways through the sea that the waka have taken over the comings and goings of eons of time.

Q. Okay, I'll ask the question again. The reference to European sites were simply to recall that they are part of what's there but my focus with my

question to you was to address cultural sites and to ask whether you accepted in terms of sites that have been identified and recorded whether this accurately records where and what sort of site, and some site that has been marked as well notably on the headland. So I'm just addressing what is there, not what you can't see.

A. I agree with the work that the researchers have done but there are a lot of works, a lot of other wahi tapu but in essence.

Q. So we have recorded more towards the centre of the bay R11/1493 do you see that one recorded as burial?

A. Āe.

Q. And then back towards the, and just beyond the two pohutukawa coming from the wharf is the reburial locations that you are familiar with?

A. The wahi tapu or the sacred places where the former skeletal remains were interred have been lost and so there are others that aren't included there.

Q. That may be so but I wanted to ask you about the specific ones that are recorded. Of course you may say that there are others but I was asking about these. Can you look at Mr Rikys evidence-in-chief at paragraph 26 please? Do you have that?

A. Āe.

Q. Do you acknowledge and accept the accuracy of what Mr Rikys has told the Court in that regard including his involvement in one reinterment?

A. Āe.

Q. Can you turn to his rebuttal evidence which is under a tab 13(a) Mr Rickys. If I can ask you to look at paragraph 7 and the second part of that where he says, "I take the view it is highly likely there are some burials in the coastal strip of the Southern Bay especially adjacent to the stream bank. There is general acceptance of this conclusion and that strip is now identified and treated as an urupa." Do you concur with him on that?

A. To that reference only.

Q. Yes, yes, just the words I referred you to. And sorry, the answer is?

A. Yes.

Q. Can you go to paragraph 14 of his rebuttal please? There he talks about what was done by Kato Kauwhata in his paragraph 14 in relation to reinterment of kōiwi, do you read that there?

A. Yes.

Q. Do you have knowledge of that? Personal knowledge of that?

A. I wasn't present.

Q. I want to refer you now to the folder that's what is called "Joint Witness Statements" in them. And if you would be so kind as to look behind there should be a folder there with those. And there's a contents at the beginning if you find in there under tab 5. Do you recall this meeting?

A. Āe.

Q. Chaired by Kevin Prime do you know him?

A. Āe.

1240

Q. I want to address the matter covered in paragraph 7.3 that is the existence of a mahinga mataitai. Mr Rikys speaks of that in his evidence doesn't he? I'm sorry, I should do better than that, 24 and 25 of his rebuttal evidence, 13(a) where he discusses the evidence of Kathryn Ngapo. Do you recall that now reading that? Now I just want to confirm that when in 7.2.1 of that joint statement that you all signed it records agreement that this area was a mahinga mataitai up until the late 1980s, that sister and remains your position?

A. Āe.

Q. There will be a question now in the area where the marina would go as to whether it would be wise to harvest shellfish because of the tidal grid activities, is that a concern you would have too about harvesting shellfish in there?

A. Because of the diminishing supplies of shellfish there, our communities do not go there to harvest shellfish.

Q. But you know that your people in times gone by did have?

A. Āe.

Q. And the bay remains a resource in that regard for fish by line or net?

- A. According to our customs and saying, the Hauraki Gulf tikanga is our food cupboard and that hasn't diminished.
- Q. This bay is part of that food cupboard, is it?
- A. Āe.
- Q. The recognition by Ngāti Paoa of Matiatia Bay as a mahinga mataitai is inconsistent with the waters of the bay being a wāhi tapu, is it not?
- A. I just recently seen (inaudible 12:44:40) that whales on our visit the bay, and so what sign does that give us or tell us, with the visitation of the whales?
- Q. So I need to ask the question again please, if this bay is recognised as a food gathering place, it would be inconsistent with that recognition which you agreed to at the meeting for it to be a wāhi tapu, would it not?
- A. But you would have a different perspective, come from a different perspective in terms of what wāhi tapu. And wāhi tapu from our perspective of Ngāti Paoa is that we can delineate where our wāhi tapu are and we know where they are, and it's from that perspective that Ngāti Paoa maintains the issue around what you were talking about. It is through incantation and through our customs protocol and etiquettes that we are able to move or rename where wāhi tapu are.
- Q. There is a boook of figures which has got March 2013 on the front, that should be under there please? Now, if you go to figure 2, do you have figure 2, the next one? That overlays the location of the proposal to the bay. Consistent with what you told the Court a short while ago, that area of the bay has in the past been used for gathering of shellfish hasn't it?
- A. Recently.
- Q. And it would be inconsistent indeed to use the words in the statement that you signed it would be inappropriate to gather kaimoana across a wāhi tapu, wouldn't it?
- A. For our perspective that we don't delineate portions as being wāhi tapu we had the whole of the bay as being wāhi tapu.
- Q. Can you answer my question please?
- A. I'm unable to concede as you have a different view than mine.

- Q. I'm sorry Mr Wilson, I'm not actually putting my view to you. I'm putting what's in a joint witness statement that you are a signatory to am I not? If you look at 7.3.2? Can you read it again please? "One, agreement the area was mahinga mataitai." Please refer, I ask you again did you sign agreement that that was so?
- A. Āe, (inaudible Māori 12:49:54).
- Q. And you've said to the Court just now with reference to the location of the proposed marina and where the boats are moored that recently oysters had been taken from that area by your people didn't you?
- A. Kāo.
- Q. You acknowledged that oysters have been taken here.
- A. Previously.
- Q. Reflecting that status as a Mahinga Mataitai, yes?
- A. Āe, (inaudible Māori 12:50:30)
- Q. And 7.3.3 if you read please, "The gathering of kaimoana across wāhi tapu is inappropriate." Do you agree with that, that you agreed to at the joint conference?
- A. If you have descent to those specific areas which are wāhi tapu you are able to placate the atua who have dominion over those wāhi tapu. If you have genealogical ties that allows you to do that.
- Q. So selected people of Ngāti Paoa are you saying, thinking that there was wāhi tapu status there because of possible koiwi could nonetheless gather kaimoana could they?
- A. As I said before, that all the sites with cemeteries are not the only wāhi tupu. We consider wāhi tapu as places that have been inhabited by our ancestors where they ate, where they lived, the pathways that they tread as being wāhi tapu. Also, we don't consider separating out portions of the bay as being what tapu only, wāhi tapu only but we insist that the whole of the bay is wāhi tapu. Not confined to burial sites only.
- Q. That's not the question I asked you though is it Mr Wilson?
- A. Can you please ask your question again?

- Q. Where shellfish have been gathered in the past in this location that I asked you to look at in figure 2, they would be in the sea be wouldn't they? Living on the bottom of the sea, do you agree?
- A. Shellfish grow on cracks on rocks, whether they are closer in shore or whether they are at the bottom of the sea and they like fish that swim and like the mussels that shift and that oysters may shift as well. They are not confined to one space only within the sea. They move with the tides, they move with the times, they move with the food and so what you are saying is that what we need to do is confine the fish and the things that we are talking about Mataitai, Mahinga Mataitai as you've spoken about, to those areas only. And we can't tie the fish there all the time, they come and go.
- Q. I'll ask the question again. If shellfish, kai moana were to be gathered in the area where you can see the outline of the marina over, they would be gathered off the sea floor, yes or no?
- A. Yes. To that specific place that you're talking about.
- Q. And would that be described accurately as the gathering of kaimoana please?
- A. Āe.
- Q. And you signed a statement, didn't you, when this was done with Mr Pryor on the 27th of August this year saying that that practice across a wāhi tapu is inappropriate didn't you?
- A. Āe.
- Q. Now, in your evidence, and I'd ask you to turn to paragraph 31 and 32. There's reference midway down paragraph 31 to the advance of the sea and its impact and encroachment upon the land where a wāhi tapu and urupā is situated and then you say some of the land is now under water. There is no evidence to support that contention is there Mr Wilson?
- A. There is evidence that ships have arrived to take the rocks from those areas. It was because of the removal of the rocks at Owhanake that the land itself had fallen into the sea and it was through that exposure of the burial grounds happened. So these would – we had to buy the companies from Auckland at Owhanake and Hangaura, the removal of

the rocks that has caused this subsidence. Why didn't they come to Matiatia to remove rocks? If that occurred with the removal of the rocks the land would also have subsided into the sea. At this time, the tidal activity are the only things that subsidence has occurred where the remains, skeletal remains of the ancestors have been exposed, through tidal activity only. And for me, yes the land has subsided into the sea.

COURT ADJOURNS: 1.02 PM

COURT RESUMES: 2.16 PM**CROSS-EXAMINATION CONTINUES: MR R BRABANT**

- Q. Could you please go to the evidence of Moana at paragraph 16?
- A. Sorry evidence of who?
- Q. Moana Karaka. Paragraph 16 please. It will be at the very back of volume 4, that's grouped with your evidence as well. Paragraph 16. Do you remember this paragraph if her evidence?
- A. Āe.
- Q. And it refers to a statement made by George Garrett from Auckland City Council and then refers to Bruce Croll being told that the high tide mark had risen five chain since the Deed had been written protecting the wahi tapu urupa. See that?
- A. Āe.
- Q. Now can we go back to your evidence please to 31.
- A. Āe.
- Q. That's the process that you're referring to you in your paragraph 31 isn't it? That is the sea advancing over the land effectively?
- A. Āe.
- Q. Now if you – do you recall that this suggestion was going to be supported by an old survey matter, the cadastral overlay in blue?
- A. Āe.
- Q. And that's been withdrawn today hasn't it from the evidence of –
- A. Āe.
- Q. Of Lucy Tukua. Right. Have you read the evidence of the Council witness Richard Reinen-Hamill about the question of whether the sea could've risen like that?
- A. I can't recall Richard's evidence. I just know him through his name only.
- Q. So you need now volume 3 please and if you got to under tab 11. So now if you turn to the page 3 which has got also the number AC317 at the top and paragraph 7. I'll just give you a chance to read that and see

if you can remember reading it because if you can't I'm going to give you the time to have a read of it.

A. I haven't seen this.

Q. Right. So can you please read if you haven't seen it paragraphs 7 through to 15. Just take your time and make sure you've had a chance to understand it.

A. Āe.

Q. You've read all of that? Three to 15?

A. Āe.

Q. Do you see Mr Wilson that Mr Reinen-Hamill who's described in his evidence-in-chief as a coastal engineer has gone to the historic records that had been kept by Ports of Auckland and the Harbour Board before them and identified that since 1900 the average increase in mean sea level is 0.2 of a metre. Did you read that?

A. Āe.

Q. And then he's also referred to some historic photographs going back to 1928 and 1983, there are copies of those attached to his evidence you might like to have a look at them. So behind his evidence you will see the recorded data on a graph and then some historic photographs.

A. Āe.

Q. Do you accept that what was reportedly said by Bruce Croll referred to in paragraph 16 of Moana's evidence is not supported by any scientific information having read that evidence.

A. Āe.

Q. Now before lunch you were referring to a different situation with effects on the land because I think you referred to presumably scales, you didn't maybe say scales but the collection of shingle off Owhanake Bay that is what you're referring to isn't it?

A. Āe.

Q. And you would know being a resident here that those major shingle removals had an effect on the land behind didn't they?

A. Āe.

- Q. Looking now please at the sites that are found and I would like to take you back to Ms Plowman's evidence which should be in the same volume, it's at 10 and 10(a) instead of 11. Now I'd like you to look first of all and the archaeologist refers to this in her main evidence and behind it you will find some photographs and I want you to go to page 22 or AC275 and in fact, the previous page as well. Can you remember seeing this – I mean, you've seen this out there no doubt but can you remember these photographs showing the effects of erosion on live in sites?
- A. Aë.
- Q. And also the larger one there, taking of a larger slip that's right were R11/191 is it's figure 5, yes?
- A. Aë.
- Q. But this is a concern I imagine for your people that erosion of that coastal edge is damaging these sites, would I be correct?
- A. Aë.
- Q. Can you go back to her evidence paragraph 65, do you recall reading this evidence?
- A. Aë.
- Q. Thank you. She discusses these affects and the marina with the breakwaters resulting in much calmer water inside the marina and preventing storm waves coming in. Do you remember reading that in the evidence about how the marina breakwaters would have that effect?
- A. Aë.
- Q. And she says doesn't she that the result should be a reduction in coastal erosion of the archaeological site and says the proposal may have a positive effect on the ongoing preservation of the sites she names there. Do you accept that as a positive outcome for those sites if the erosion is prevented because the sea is quiet?
- A. There are similarities in terms of, from a spiritual attention to the way in which we view the erosion to take of the incoming and outgoing tides where erosion barriers may be erected to mitigate any of the erosion.

- Q. I will ask the question again. The marina designed is intended to stop storm waves and also ferry wake waves from coming inside the marina and the effect therefore is to prevent those wave effects reaching the shore. The archaeologist says that is a positive outcome for the sites that she's identified and I just referred to in her evidence. Do you accept that would be a positive effect for those sites?
- A. It's difficult to see what good can come out of these issues you're talking about in regard to when we take into account those issues that we look at from our own spirituality.
- Q. Has it been your position that there is the prospect that kōiwi could be there on the seabed where the marina might go? Is that a position that you've taken?
- A. I'd love to show if that's the case because when these gales come to scrape away the bottom of the sea where Papatuanuku is, whether that will have any effect on what you're talking about.
- Q. Sorry, do you mean something that's already happened or something that may happen?
- A. Things that have already happened.
- Q. Can you go to figure 11 please in the big folder it's got 2013 in front of it, March 2013, go to figure 11. So this shows all the moorings in that area, they're all marked with the red dots. Are you familiar with what's involved in a mooring in terms of what is termed "the tackle," what is put down on the seabed to secure the bottom of the mooring?
- A. Āe.
- Q. Some heavy weights, old railway wheels or other things are used, are you familiar with those and the heavy chains?
- A. Āe.
- Q. And the chain that goes up to the vessel on the surface has a curve in it doesn't it?
- A. Āe.
- Q. These moorings in this bay have been there a long time, 10 decades, do you know? And during your lifetime there've been boats moored there?

A. I am familiar with boats that come in for a short term and I'm not really familiar with the evidence you're talking about regard to those moorings being there for eons of time.

Q. Coming and going from Matiatia on the ferry for how many years you've done it, have you always seen boats moored in that area?

A. Āe.

Q. And they will swing around with the tide and the wind?

A. Āe.

Q. And if there was kōiwi on the bottom the chain could damage that, couldn't it?

A. Āe.

QUESTIONS FROM THE COURT – NIL

RE-EXAMINATION: MR ENRIGHT – NIL

WITNESS EXCUSED

MR ENRIGHT CALLS**MOANA TE AIRA TE URI KARAKA TE WAEROA (AFFIRMED)**

Q. Kia ora Moana, just to firstly confirm your full name is at paragraph 50 of your statement of evidence?

A. Yes.

Q. Moana Te Aira Te Uri Karaka Te Waeroa? That's correct isn't it?

A. Āe.

Q. And I understand you would like to be referred to as "Moana" during questioning?

A. Āe.

Q. That's your request. Now you wish to make a correction to the spelling of your grandmother's name –

A. Āe.

Q. – at paragraph 30, can you please explain the correction we should make to the Court?

A. "Atariti" should be spelled as A-T-A-R-I-T-I.

Q. And that correction should be made wherever it's referred to in your witness statement?

A. Kia ora.

Q. Now apart from that correction can you confirm that your statement is true and correct?

A. Āe.

Q. Now, you've asked for an opportunity just to respond to two points that come out of Mr Rikys' rebuttal evidence and the first question is at Mr Rikys' rebuttal evidence at paragraph 47.

A. Can I seek clarification, is it in this folder?

Q. Yes it should be.

A. I have a few folders in front of me.

WITNESS REFERRED TO PARAGRAPH 47 REBUTTAL EVIDENCE

Q. Now, Mr Rikys refers to having attended a wānanga at Piritahi Marae and he says that you presented at the wānanga and covered the Matiatia area in detail, referenced the kainga in the southern bay but no

mention of the issues you've now raised about wāhi tapu. I'd just like you to respond to that, what he says about that wānanga.

- A. Would Mr Rikys be able to supply the date that I said that?
- Q. It refers to it being a few years earlier so it's really for you if you can comment on the wānanga and his suggestion that you did not refer to (inaudible 14:40:54).
- A. The only awareness of a wānanga that I have taken in a formal capacity was at the invitation of a friend of mine who is a (inaudible 14:41:01) in Te Reo Māori, where she agreed for a (inaudible 14:41:06) Aotearoa, and she knew that I had been through the Treaty process and she asked if I would participate in running a Treaty workshop, if that is the one Mr Peter Rikys is referring to. I don't know. That is the only thing that I am aware of. And it wasn't necessarily site-specific to Matiatia, it was actually a workshop to enable both Māori and Pākehā to participate in going out onto the land and identifying as if they were alienated from lands and looking to the land and seeing if what they would address in the Treaty situation, and then I performed a mock Court at Piritahi Marae.
- Q. Thank you, now and also in relation to para (46) of Mr Rikys' rebuttal, where he comments on the Māori owners of (inaudible 14:42:08) 12B Block, I understand you wish to reply to that as well?
- A. Yes, in respect to what is being said there, when I was referring to Matiatia I was referring to the Matiatia block, a partitioned block, not the bay.

CROSS-EXAMINATION: MR LITTLEJOHN

- Q. Tēnā koe Moana.
- A. Kia ora.
- Q. Do you hold any position or have any role at the Piritahi Marae?
- A. I held a position of secretary at Piritahi Marae, yes. Previously.
- Q. When did you hold that position, do you remember?
- A. After the passing of my father.
- Q. And when was that?

- A. My father passed in 1999 and it was after that that I picked up the responsibility areas because of the suddenness of my father passing away and I picked up the responsibility areas that had been left.
- Q. Thank you for that. How long did you have a role at the marae for?
- A. Initially it was started in around 2000, but prior to that I was the te kaiwhakahaere at Te Huruhi kohanga reo so I've had an association with the marae prior to my father passing, yes. And then I have had an ongoing association with the marae whānau whenever I return to the island.
- Q. Thank you for that, now we know Piritahi has been described as a Taurahere Marae rather than a Manawhenua Marae, is that your understanding of how the marae has been called, what the marae has been called?
- A. My understanding is that the initiation of the Māori that were on the motu had asked and sought permission from the elders of Hauraki as to whether they could have a marae built on the island. And my understanding is that they went on a hikoi and spoke to the chiefs, rangatira, and sought permission for that to take place. And one of those people that gave their consent was my grandfather's brother.

1445

- Q. What role has the marae since it was created on the island, what role has it played from a Māori perspective on Waiheke?
- A. When Māori live out of their (inaudible Māori 14:45:13) they have practices that still need to be looked after and that is the celebration of births, that is the tangihangi processes, that is the welcoming of manuhiri. And Piritahi Marae has, in that capacity, fulfilled all of those things, all of those events plus more.
- Q. Have you been a party to the fulfilling of these events? These rituals?
- A. I have been out the front, I have been out the back. I don't hold any special seat when I'm on the marae, I clean the toilets as well as everybody else does. We are one when we're on the marae. That's tikanga Māori.

Q. And just following on from that, how would you describe the way in which Piritahi Marae and the people there have undertaken their role upon Waiheke?

A. It pleases me that there are still people there on the marae whom I know and who had a connection with my father as well as my father's family. I look at the marae, Piritahi Marae being my marae whānau and there are also members of the marae who we share whakapapa, who I share whakapapa with. I don't see them as a separate entity. I see them as one that upholds mana of Ngati Paoa. Upholds the mauri of the environment and upholds the mauri of me.

CROSS-EXAMINATION: MR R BRABANT

Q. Can you turn to paragraph 16 of your evidence please. Do you have that there?

A. I do.

Q. And am I correct that the person that you were talking to or maybe you only knew George was George Farrant, the manager of Heritage in Auckland Council?

A. I've since been told that is his full name. I was only introduced to him as George.

Q. And you told him of this information that had come, looking at your evidence, from Bruce Croll, correct?

A. Correct.

Q. Now, since you wrote that evidence have you had an opportunity to read the evidence of Mr Reinen-Hamill, the Council's coastal engineer?

A. (inaudible Māori 14:48:17)

Q. You have?

A. No.

Q. Well we'd better turn that up then. 11(a) in volume 3.

WITNESS REFERRED TO EVIDENCE OF MR REINEN-HAMILL

Q. If you haven't read this evidence before, can I ask that you take your time and read through from paragraph 7 to paragraph 15 and then you

can have a look at the attachments at the back of the evidence. If you could let us know when you're finished please.

A. And your question please?

Q. So you've read all the paragraphs through to 15?

A. Yes.

Q. And have you had a look at the data at the back please? First of all you can see the tidal records there that he's attached from 1900 and then cadastral boundaries that he's done. And then there's the old photographs, one from 1928, one from 1983.

A. Yes.

Q. Do you accept that this evidence from the Council's coastal engineer, Mr Reinen-Hamill, tells us that what Mr Croll may have said must be incorrect?

A. No.

Q. Is there anything you don't understand about the information in Mr Reinen-Hamill's evidence?

A. No.

Q. Now there's evidence also, isn't there, going to be given shortly by Lucy Tukua, have you got her evidence there please?

WITNESS REFERRED TO EVIDENCE OF MS TUKUA

Q. And go to paragraph 10. And then on the right-hand side, and you've got it open now, you can see that old survey map.

A. Yes.

Q. You know, don't you, that paragraph 10 and the map have been removed from her evidence?

A. I heard just before, yes.

Q. And that's the same issue, and your name is referred to here, that we've just been discussing isn't it? The suggestion that the sea might have advanced inland. It's the same issue isn't it? The question of the sea advancing inland.

A. Yes.

Q. Is the same issue in paragraph 10 there isn't it? And your name is referred to about it.

- A. My name is referred to yes.
- Q. And that paragraph and the map are now removed, so do you want to reconsider your position?
- A. Bruce Croll took me on a hīkoi after my father passed and he took me to all the landmarks around Matiatia, around to Owhanake, around to (inaudible 14:52:52). Also that were accompanying us was an archaeologist who pointed out to me that the island has been under water at least twice.
- Q. So my question is, this paragraph and then that having being removed from Lucy's evidence do you wish to change your position about what you say about 100 metre advance?
- A. What I wish to say is that when I realise that five chain equals 100 metres I wanted to clarify that with Bruce Croll but he's out of the country and he doesn't return until Sunday.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR ENRIGHT – NIL

WITNESS EXCUSED

MR ENRIGHT CALLS**LUCY ANNE TUKUA (AFFIRMED)**

Q. Your full name is Lucy Tukua?

A. Āe.

Q. And you have had a statement of evidence, now before your confirm it's confirm, do you confirm that you wish to delete paragraph 10?

A. Āe.

Q. And the reference to the plan?

A. Yes.

Q. Other than that correction, do you confirm that contents as true and correct?

A. Āe.

Q. Now just two follow up questions, can you just explain to the Court a recent point made before you in relation to the Council.

A. Sir just in terms of my background I've been working for my people since the day I could hold a tea towel and like Moana, I've traversed from the settle of the table when I could reach up and put the salt on the table to washing the pots and so now my role for the Iwi is as the foot soldier. I have been involved in local government for over a decade. In 2004 I was the Māori advisor for the Papakura Council, I chaired the Māori standing committee for Franklin, I also chaired the Mana Whenua Forum for the Manukau City Council under Mayor Len Brown and in 2010, I was the Rugby World Cup Iwi Relationships Manager. In 2011 I was a Ngāti Paoa Trust trustee and I have since resigned from that position I'm not with the Ngāti Paoa Iwi Trust as their Environment Manger. Last week I was appointed to Auckland Councils Urban Design panel and I represent Mana Whenua of Tamaki Makaurau on the stakeholder, working group for the development of the marina

spatial plan though I must say the best position that I hold to date is as the secretary of my Marae, Wharekawa Marae in Kaiaua.

CROSS-EXAMINATION: MR LITTLEJOHN – NIL

CROSS-EXAMINATION: MR R BRABANT – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

WITNESS EXCUSED

NGĀTI PAOA TRUST CASE CONCLUDES

MR R BRABANT CALLS**REGINALD PITA RIKYS (SWORN)**

Q. Is your full name Reginald Pita Rikys but you prefer to go by the name of Pita Rikys?

A. Āe.

Q. You reside at Waiheke and you are a consultant.

A. Āe.

Q. Now you've done a primary statement of evidence Mr Rikys, it's dated the 29th of April 2014.

A. Āe.

Q. And you have that in front of you now?

A. I do.

Q. And are there any amendments that need to be made to that please?

A. No.

Q. And you have a rebuttal statement of evidence dated the 23rd of September 2014? Do you have that in front of you?

A. I have.

Q. And do you need to make any changes to that?

A. No.

Q. To the best of your knowledge and belief are the contents of both statements of evidence true and correct?

A. Āe.

Q. Now the joint witness statements, there should be a volume there –

A. I'm familiar with them.

Q. Okay.

A. Commissioner (inaudible 15:00:40) prepared them so.

Q. Yes. So the joint witness statement is dated the 27th of August 2014 and you can identify your signature on that?

A. Indeed.

CROSS-EXAMINATION: MR ENRIGHT

Q. Good afternoon Mr Rikys.

A. Tēnā koe.

- Q. We will just probably focus on your rebuttal evidence if you'd like to turn to that.
- A. I have it in front of me.
- Q. Thank you. And if we just start with your paragraph 8, and you also make the same point at paragraph 10, you say there, "In the absence of conclusive authoritative evidence and affirmation from the appropriate mana whenua mandated authority," you say in 10, essentially you say it is for the mana whenua to make and authenticate wāhi tapu status. So your starting point for wāhi tapu is that it is for mana whenua to make and authenticate wāhi tapu status at Matiatia Bay.
- A. Without a doubt.
- Q. And I expect that you don't claim authority to speak for Ngāti Paoa in these proceedings?
- A. Good heavens no.
- Q. And you've also agreed through the joint witness statement that Ngāti Paoa Iwi Trust is the authorised mana whenua representative in these proceedings?
- A. Well it's a subtle distinction but they're the only mana whenua representative in these proceedings.
- Q. If we look, just to be clear on that, at the joint witness statement at 7.8.1 which I presume you have in front of you, it's quite clear isn't it, it says, "The Ngāti Paoa Iwi Trust are recognised as the mana whenua authority for Ngāti Paoa," and you agree with that?
- A. In these proceedings, yes.
- Q. Yes, in these proceedings.
- A. Yes, happy.
- Q. So it would seem then that based on your starting point we can rely on Ngāti Paoa Iwi Trust's evidence to identify wāhi tapu at Matiatia Bay, is that right?
- A. That's the starting point as you say. If you read the rebuttal evidence a bit further on then there are issues of how, if that evidence is (inaudible 15:02:58) there are issues of how that traditional evidence, if I might call it, should be assessed.

- Q. And in terms of the way it's authenticated or assessed, would you agree that it's authenticated by Ngāti Paoa Iwi Trust, by Morehu Wilson in particular, giving the connections to whakapapa and connections to traditional knowledge through which he identified wāhi tapu at Matiatia Bay?
- A. Yes that came through in the evidence given today. The question was asked specifically what are the rules or law or tikanga, which is the Māori equivalent, as to how to authenticate wāhi tapu status, and Mr Wilson Morehu referred to what an effect was (inaudible 15:03:53), yes.
- Q. And so you don't take any issue with Mr Wilson's methodology by which he has identified wāhi tapu at Matiatia Bay?
- A. No.
- Q. Now you will be aware that Mr Wilson says both in his written evidence and he's also said it today orally that the entire bay is a wāhi tapu from the perspective of Ngāti Paoa Iwi Trust.
- A. Using traditional evidence methodology, yes.
- Q. You've also heard his evidence and he uses the word that this proposal is offensive to the wāhi tapu he's identified and is therefore for that reason opposed.
- A. (inaudible 15:04:39) notes actually comes from your submission as counsel. I have some difficulty with it. If I just might find my notes.
- Q. Please.
- A. Here we go, "Concept of a (inaudible 15:04:51) alongside marina is offensive." Now, from my expert knowledge that would need to be clarified in a lot more detail.

1505

- Q. So again and of course the evidence was elaborated upon today in oral evidence, Mr Wilson gave a very fulsome description of the number of wāhi tapu present at Matiatia Bay but also if you like the relationship between them all, and again you're not disputing that evidence are you?
- A. The evidence as to the land-based wāhi tapu at the archaeological sites, the site of the reinterment of koiwi which I myself personally participated

in. There's no issue about the location. The question in my view is how that can be shown to be offensive. And in terms –

Q. Okay so –

A. No, let me finish, if you're going to ask me a question then allow me please the opportunity to give a full and correct answer. In relation to the koiwi on the seabed, Mr Wilson has right towards the end of his evidence, and yes I took notes, was less clear now as to whether the koiwi were there or could still be there. There's a whole raft of different things that might have interceded such as the chain moorings that counsel for the marina development raised. And so the issue then becomes one of testing the validity of the traditional evidence. Now – no, I still haven't finished, now for example the evidence given by your witnesses is that there has been this 100 metre tide issue, and quite clearly the scientific evidence is in total conflict with that. So I can be absolutely clear, that raises issues about the authenticity of the validity of the traditional evidence.

Q. Okay, now I'll deal with that in two chunks. If I heard you answer correctly you don't take issue at all with the land-based identification of wāhi tapu by (inaudible 15:07:16), you accept that evidence?

A. No I preferred, and I think he also accepted it, Mica Plowman's identification.

Q. But you don't take issue with Mr Wilson's is the question specifically, his land-based wāhi tapu that he's identified at Matiatia Bay?

A. Well presumably they're no different than what the archaeologists identified, because he agreed with Matt that what he said, and I accept, is that there may be sites that have yet to be identified.

Q. And even the archaeologists agree that it was either probable or likely there may be additional burial sites unrecorded obviously.

A. My own evidence is that it's highly probably there are burial sites in the southern bay near the stream.

Q. Yes and the point being then that the archaeological evidence doesn't give the full picture from a tikanga perspective, and that was again Mr Wilson's evidence if we're talking about the land-based wāhi tapu.

- A. That's the nature of archaeology.
- Q. Okay, now turning to the water-based issue, now you've indicated you take issue with that from a scientific perspective. In a way though we've got two types of knowledge we're dealing with here don't we, we've got science-based knowledge and the coastal scientist information, and then we've got knowledge based upon oral tradition and tikanga, and to some extent there is that clash here isn't there between those two types of knowledge when we're talking about what may be in the water, in the sea.
- A. It's not too much a clash, it's understanding how, and I have tried to address it quite fully for this very reason in my rebuttal evidence, how traditional knowledge is held, how it's preserved and how it's transmitted. And because of the impact of colonisation and probably Ngāti Paoa started this more than any other iwi in terms of time proximity because of the desirability of Waiheke. Most of the land on Waiheke was sold pre-1850, so they then went through the rigors of colonisation and over time were forced to retreat to their tribal homelands on the mainland. Now all of that has an impact on how the holders of (inaudible 15:09:32), they fragmented, they've been to land wars, there's the epidemics. To put it in a nutshell, the receptacles of that knowledge had been fragmented by these things, and therefore in my expert experience the knowledge that flows or in some cases what little is left can be fragmented and can in some instances be inaccurate.
- Q. But to be fair in this case ultimately that tikanga, that traditional knowledge links back to whakapapa doesn't it?
- A. Yes.
- Q. And you accept that again Morehu Wilson has an obvious expertise and knowledge of whakapapa for Ngāti Paoa.
- A. Yes that's not disputable, I don't think you're understanding the point I'm trying to make. Let's say you have a kainga, let's take the southern bay. Let's say the people of that kainga suffer the influenza epidemic and most of them die as (inaudible 15:10:37) almost certainly from the same

epidemic. A lot of that traditional knowledge would have died with the old people.

Q. But the fires continue to burn in terms of that knowledge was passed down.

A. (inaudible 15:10:56) that's my whole point. That's how they get fragmented. So that's how they get what? It doesn't get passed on. You've read my rebuttal evidence.

Q. And I certainly have.

A. Didn't think so.

Q. We were talking before about trying to differentiate wāhi tapu on the land and wāhi tapu in the water, but of course Ngāti Paoa's position is the land and the sea are one, so there is an influence between land and sea in terms of wāhi tapu.

A. The lack of boundaries in the traditional Māori view isn't unique to Ngāti Paoa, that's a –

Q. No it's not but it is certainly a premise for Ngāti Paoa and you would accept that.

A. No, definitely.

Q. Now, these are probably more points of detail but if I can just take you to your rebuttal at 34. You've referenced Mr Morehu Wilson's evidence about the Treaty settlement negotiations with the Crown, and you've gone back to the agreement in principle dated –

A. I have it here if you wish to refer to it.

Q. – July 2011. No, it's more a question of you'd accept wouldn't you that Morehu Wilson as one of the two mandated Treaty negotiators for Ngāti Paoa obviously has more up-to-date knowledge on the state of play in those –

A. Yes he's updated that, that's fine.

Q. So paragraph 36, this question relates to the issue of mauri and the effects of water quality. And you accept there, don't you, that there can be adverse effects to mauri, so the sea, the mauri, sea, even if the scientific evidence on water quality takes a different view.

- A. They're from different, totally different social and cultural frameworks, and perhaps I can reinforce this by giving the example of kaitiakitanga in the Resource Management Act. That concept which was changed by amendment in the Act to guardianship was because as a traditional concept kaitiaki sat in the Māori world framework and therefore could not be correctly reflected in the Resource Management Act.
- Q. And so for the Court, the extent to which it decides that the issue of copper and antifouling paints used on boats as a relevant RMA issue, and if it decides there is an adverse environment effect arising from that, that will have a flow-on effect to the mauri of the sea itself, do you accept that?
- A. The mauri in a broad (inaudible 15:13:53) means the life force to the sea, so in fact the two concepts are quite parallel.
- Q. And to some extent, or perhaps a large extent, archaeology sits in its own silo as well versus cultural spectres, and I think all of the three archaeologists agree they haven't looked at the cultural significance of the archaeological records that remain in place.
- A. I don't have a decision on that.
- Q. Paragraph 38, now that's a cross-reference by you to again Morehu Wilson's evidence where he refers to persons of highborn chiefs being buried either in forest areas or by the foreshore in symbolic poses, and I think you agree with him that is the tikanga, how it is done in Ngāti Paoa.
- A. That's not unique to Ngāti Paoa and certainly my experience on the island taking Owhiti Bay which I've referenced, there were several seated burials found there over a period of about 15 years or so. The seated burial and the burial in the crevice which Morehu referenced are in my expert view very clear evidence that that is a very early burial. Certainly in Owhiti Bay the expert evidence in that case which fortunately is on a (inaudible 15:15:30) was in 17th century that that's about the period those seated burials would've dated from. That tends to suggest, if I might finish, that the burial in the crevice is likely to be of the same period and my conclusion as an expert would be that they well

pre-dates the time that Ngāti Paoa were in the possession of Mana Whenua at Matiatia.

1515

Q. You haven't carbon dated it to cross reference?

A. I'm not a carbon dater. I'm a carbon dater's son.

Q. So the probably the point I was, Mr Wilson's evidence is about ancestors of high birth, so of the chiefly rank being buried in the foreshore areas.

A. Yes.

Q. At Matiatia Bay, you'd accept that as highly likely?

A. Highly likely.

Q. Your paragraph rebuttal 39, the last sentence you refer to Ngaro Whenua Pa, the last couple of sentences. Now that's quite a different situation, that's a quarry that was established in the 1950s approximately and until recently didn't have – was always consented by (inaudible 15:16:54).

A. We're both familiar with the case, yes.

Q. But the Court of course isn't so do you accept it's a very different main situation to what the Court is dealing with today?

A. It's very different, the issue is really if you want to take the issue of kōiwi on the seabed. If we accept, and I'm not accepting that as an absolute given at this point. If we accept that there were kōiwi, but by various reasons they no longer exist, the question is can the location of them be a wahi tapu and I'd want to, as an expert, be far more convinced about the existence of them in the first place.

Q. Yes and we have your evidence on that but the point really is that it is quite, it is to do with a quarry of a sacred mountain, maunga –

A. It's a Pa, and important Pa.

Q. But the resource consent was applied for when approximately half the maunga had already been quarried away, that was the situation of that context.

A. It wasn't us, yes.

CROSS-EXAMINATION: MR LITTLEJOHN

Q. Tēnā koe Mr Rikys.

A. Tēnā koe Honeiti.

Q. Would you accept that tutelage by kaumātua and regular practice and tikanga and kawa provides a foundation to speak with authority on Te Ao Māori?

A. On behalf of whom?

Q. On behalf of the person who was tutored.

A. On behalf of Mana Whenua?

Q. On behalf of Mana Whenua.

A. Yes.

Q. On behalf of kaitiaki.

A. The two concepts are coextensive.

Q. Thank you for that. Would you accept that Paora Toi Te Rangiuiaia has such tutelage from Kato Kauwhata?

A. I have no knowledge to say.

Q. Have you not read his evidence?

A. Yes.

Q. He says so in his evidence, did you not read that bit of the evidence?

A. I spent many years working with Kato Kauwhata and have a vast respect and aroha for him. I am not aware of what work the person you referenced did with him. He gave evidence that he did and certainly that would've been tutelage in the areas of matauranga that Kato was renowned for and that included of course kitanga and kumara growing.

Q. So if I understand your answer correctly, the upholder does have sufficient knowledge to speak with authority on matters (inaudible 15:20:25) Māori?

A. He has some knowledge of the area.

Q. In your answer do you not diminish the respect you just said that you had for Kato?

A. Not at all, that can't be diminished.

- Q. In your rebuttal evidence, you say with respect to each of the witnesses for Piritahi Marae that because they are not Mana Whenua then their evidence should not be accorded weight. Do you recall that?
- A. Less weight, they are lay witnesses and we understand that that process which in the environment with.
- Q. In your 2010 cultural values assessment you referred to Piritahi Marae and stated that notwithstanding the lack of Mana Whenua, this group still derives rights from broader definitions of the Māori interest and that they could be prosecuted those rights in the past. Do you stand by that statement still?
- A. I represented the Marae as it's well known in an Environment Court on a number of cases arguing the position from the broadest Māori perspective as opposed to a Mana Whenua perspective and if I might just illustrate that with one case example. I represented the Marae over the establishment of the waste water treatment plant at Matiatia based on a brief from Kato Kauwhata that these mixing of waiora and waimate was in conflict with the spiritual and the cultural values held by all Māori.
- Q. Do you have your 2010 assessment there?
- A. Not just in front of me, no. All right I've got it.
- Q. Just before I ask you about that, reflecting the answer to my last question, I understood you to say that you worked for the Marae and represented the Marae in the past?
- A. Yes.
- Q. And in the course of those representations, in making those representations for the Marae, what authority were you vested with?
- A. I was appointed by the then Marae committee and instructed typically by Kato Kauwhata and held until advised in the proceedings to this case the role of advising the Marae on RMA matters.
- Q. The role that you undertook is a role that's still continued at the Marae isn't it?
- A. I have no idea.

- Q. You have no idea. On page 4 of the report that you've opened up there. For the record this is the witnesses 2010 Cultural And Heritage Impact Assessment, do you remember this document?
- A. I've got it in front of me.
- Q. Do you remember it though? That's a different question.
- A. Not intimately. I've written a huge amount of these sorts of things.
- Q. But in respect of this particular project, I have been working on the assumption that you've effectively only written three documents. (1) The report you have in front of out, (2) your evidence-in-chief and (3) your rebuttal evidence.
- A. Correct, I'm talking about for other cases. Only about 30, but I haven't bothered adding them up.

1525

- Q. Well, we're not so much interested in the other 29 today.
- A. Perhaps you should.
- Q. We're interested in this one. I want to ask you about a statement recorded there at page 6, if I could just get you to turn that up. Now, the version I have, the paragraphs aren't numbered so I'm looking at the first whole paragraph at the top of the page there.
- A. It starts with habitat/species.
- Q. I'm referring to that as a half a paragraph so I'm looking at the next one down. These obligations are continuing ones and any participation within management structures for the marina, as in the case of the recently completed Orakei Marina and Ngati Whatua are entirely appropriate.
- A. Yes, I have no issue with that.
- Q. Well I should hope not, because you wrote it.
- A. Very perceptive of you, so what's your question?
- Q. At the time you produced this report, were you privy to information about how the marina applicant company was going to make provision within its management structures for iwi?

- A. Only to the extent that there was a suggestion and no more than a suggestion that if iwi were to make an approach they'd be receptive to a position of that (inaudible 15:26:38).
- Q. So at the time you wrote this report there was no –
- A. Agreement in place, no.
- Q. No agreement in place. And since writing this report are you aware of any other, or any agreements being put in place with iwi, mana whenua?
- A. I'm aware there are a number of discussions going on both at Council level and some of these have been referenced in relation to the southern bay and Auckland Council Properties Limited. I'm not aware of the details of those discussions.
- Q. The situation at Orakei and you can correct me or educate me if I'm wrong, is that representatives of Ngati Whatua or Orakei sit, they occupy a position on the trust that owns and operates that marina. Is that your understanding?
- A. I don't have the knowledge to answer that.
- Q. Well, when you referred in 2010 to participation within management structures for a marina such as the completed Orakei Marina, what were you referring to?
- A. Advice by a consultant that that's who had done that marina, that that's an arrangement they'd made.
- Q. Would you accept that that type of arrangement would be an appropriate way to recognise and provide for the relationship of mana whenua with their sites, their taonga?
- A. One of seven, if possible. Mechanisms, yes.
- Q. And you're not aware of any that are in anticipation yet?
- A. That's not part of my brief.
- Q. I can take you to paragraph 21 of your rebuttal evidence. Sorry to jump around like this. You're there making some comments about Paora Joseph's evidence but at paragraph 21 you talk about some of the matters Mr Joseph says as being ignorant, both as to the, "Socio-economic benefits flowing from the development, and the

potential for Māori specific components to be included.” Just in respect of those two items, there has been no evidence to this brought by the applicant of any direct socio-economic benefits to iwi arising from the development project. Are you aware of any reports that you might rely on for that statement?

A. The reality is that there is evidence that the marina has benefits for the community of which iwi and Māori residents are part.

Q. And where is that evidence?

A. As to the need for the marina and the social and economic benefits that will be derived from.

Q. And where is that evidence?

A. Before this Court.

Q. So do I take it that what you're saying is that if a marina gets built there will be jobs, then that's socioeconomic benefit to iwi.

A. To the community of which the iwi are part.

Q. Have you seen any breakdowns or cost estimates or budgets in relation to the construction of the marina?

A. That's not part of my brief.

Q. So you've got nothing more than an assumption I put it to you that there will be socioeconomic benefits flowing for the community and iwi.

A. It's a bit more than an assumption. I'm involved in quite extensive economic and tourism impact work at the moment, of which that is clearly going to be part, and we are doing tourist spend, projection analyses, and clearly a marina there would be part of that economic growth including jobs, including money in the local economy. To me it's (inaudible 15:31:42).

Q. But you're not aware of anything specific that might improve the socioeconomic position of mana whenua, are you?

A. Not if you isolate them as mana whenua per se, no, although there has been some talk of it. No, the short answer is no, I don't know of a particular specific proposal.

- Q. You talk about potential for Māori specific components to be included. Have you been in discussions with the marina development about such components?
- A. I've had informal discussions with the developer representative in terms of including carvings, in terms of including other recognition of iwi in Māori as part of the design of the development, yes.
- Q. Are you aware of whether that advice has been accepted and such matters have been incorporated into a proposal?
- A. My understanding is it's still being thought about.
- Q. Sorry say that again?
- A. It's still being thought about.
- Q. Still being thought about. Have you reviewed the proposed marinas conditions of consent in this case?
- A. No I haven't.
- Q. There is nothing in there I put to you that makes any provision for such Māori-specific components to be included.
- A. My understanding, Mr Littlejohn, is that those conditions are still in a preparative form.
- Q. Oh.
- A. As we speak.
- Q. So we should all await a voluntary proposal by the applicant to make provision for such things, should we?
- A. Possibly agog.
- Q. Possibly a what?
- A. Agog.
- Q. Okay. I want to talk to you briefly about your use of the term "cultural landscape" if I can, and I think a probably useful place to pick that up –

**THE COURT: JUDGE NEWHOOK ADDRESSES THE COURT –
AFTERNOON ADJOURNMENT**

COURT ADJOURNS: 3.34 PM

COURT RESUMES: 3.52 PM**CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN**

- Q. Now Mr Rikys, have you still got your 2010 assessment in front of you?
- A. Yes I have, yes.
- Q. If I could just ask you to pull that up, and I'm looking here at page 6 of that assessment and the paragraph down the bottom with the little bold starting with the words "landscape values". And there you set out your few statements about Māori perspectives of landscape, do you recall writing that?
- A. I certainly do.
- Q. And presumably, given the number of these sorts of assessments you told us you do, that's a relatively frequent phraseology you use in these reports when it comes to landscape values?
- A. It's in my view a generally accepted position if you look at the work in this area of (inaudible 15:53:07) Stephenson for example.
- Q. And you cite a case there which – you cite the case but then you refer to some expert evidence that was given, and who gave that expert evidence?
- A. (inaudible 15:53:20).
- Q. So you cite yourself as a source for your own statements?
- A. Yes why not?
- Q. You have indicated in the last sentence, "A preliminary set of landscape values across the range of Māori landscape perspectives does not identify specific concerns derived from the project in relation to those values, in particular structures and boats in this part of the bay are a visual continuing of the status quo, (inaudible 15:53:48) ramps, moored boats, et cetera," do you recall that statement?
- A. I do.
- Q. In the preliminary assessment that you refer to there, are you referring to the assessment that you reviewed at the time you prepared this report?
- A. In 2010, yes.

- Q. And that's the report identified in appendix 1 to this report? To your report?
- A. You've lost me.
- Q. Page 8 of your report there you've listed the documents that you reviewed?
- A. Oh yes, yes, yes.
- Q. And you recall that you presumably saw a landscape report prepared by Mr Pryor?
- A. Yes.
- Q. And was it that assessment of landscape values that you're referring to page 6?
- A. Yes correct.
- Q. Did that assessment provide visual simulations of what the marina might look like in the bay?
- A. From memory yes. The evidence has been updated of course considerably since then.
- Q. And you say there that the structure of the marina – oh actually I need you to clarify here, are you simply reciting in here the conclusion from that landscape assessment or are you saying something else?
- A. The first part, your first conclusion.
- Q. All right. Now you refer back to this part of your report in your evidence-in-chief at paragraph 30, have you got your evidence-in-chief here?
- A. Yep.
- Q. Sorry to jump around. You've said, "I've covered this area in my initial assessment and looked at it again after the project was modified," I think you've just mentioned that.
- A. Sorry what's the paragraph?
- Q. Paragraph 30 sorry.
- A. Yes I have it.
- Q. And you say there that, "In terms of landscape the breakwater provides a solid form in the bay seascape that neither it nor the marina structures collectively offer visual elements that are incongruent with Māori cultural

landscape values in regard to the land form making up the sweep of the bay as a backdrop.” I must say I’ve scratched my head over that sentence and I’m just wondering whether you might be able to explain to me what it means?

A. I’m talking about landscape. Now in terms of Māori cultural landscape values, as has already been covered in this hearing since I’ve been present, that area and certainly instructions from Council are that that’s an area that I shouldn’t address in terms of my evidence.

Q. So should we take our pens and strike some words out of your evidence?

A. No, I’m happy enough with what’s there. You want me to explain this paragraph there, do you?

Q. No, I want you to explain what the Māori cultural landscape values are at this location that the marina is not incongruent with.

A. That’s surely fairly obvious but I will attempt to explain it more fully. We’re talking about landscape and the marina is part of the seascape, and therefore the landscape is a continuum and those values are the old Pa sites (inaudible 15:57:38). The point I made in the *Awhiti* (inaudible 15:57:59) case is that the traditional Māori landscape approach is not just what you see at present but what is understood and remembered in terms of occupations of the past on the land.

Q. So what you’re saying is that the marina won’t affect Māori cultural landscape values because it’s being built in the sea?

A. Yes. Landscape values.

Q. In your joint witness statement with the witnesses for Ngāti Paoa you reached some agreements in respect of cultural landscapes. One of those, if I can remind you of it, was at 7.5.2 where you said that, “Cultural environments cannot be compartmentalised and are to be recognised in a holistic manner viewed as a hole to include among other things such as Pa, (inaudible 15:59:13), Aramoana, Mahingapai, Urupa, Marautanga,” do you remember agreeing to that proposition?

A. Yes I do.

Q. And yet if I understood the last answer you gave to my question about your paragraph 30, you are in fact suggesting that a compartmentalised view of the environment is appropriate, is that what you're saying?

A. That is the (inaudible 15:59:40) landscape assessment, yet. And I repeat for the third time, landscape.

Q. So are you saying that traditionally Māori place no value in the seascape?

A. Not at all, what I'm saying is the approach used in environmental law assessment does compartmentalise whereas the Māori world view doesn't.

1600

Q. Well let's talk about that then, because one of the things you referred to as being part of an holistic view of cultural landscape was Ara Moana. Ara Moana is a passage through the sea for us Pākehā isn't it?

A. Ara being a path, yes.

Q. And you would agree that in traditional times the clearest access for sea going iwi would have been to either of the beaches on the north or the south at Matiatia?

A. Given that there was a kainga on the south beach I would say predominantly to the south.

Q. But the northern beach would have still been a landing point wouldn't it?

A. At some time, yes.

Q. And the marina will obstruct that won't it?

A. I don't think we're talking about at this present day and age, position where there were Māori kainga up on the hills, Mr Littlejohn.

Q. Well I'm not asking you about that though Mr Rikys.

A. But then why would your waka be coming in there?

Q. I'm asking you about the cultural landscape which includes Ara Moana, which is a passage from the water to the land. And you've agreed –

A. And vice versa.

Q. And vice versa. That the location of the marina structures in the water will alter that cultural landscape, that Ara Moana, won't it?

A. Yes.

- Q. Have you been present during the giving of evidence by the ecologists and antifouling paint specialists?
- A. No sorry, I haven't.
- Q. Have you been provided copies of the evidence from the ecologists in this case?
- A. No.
- Q. The evidence from the ecologists is that over a period of time the discharge of copper and related antifouling contaminants into Matiatia Bay will potentially reach a point where it will start to have impact on the biota in the bay.
- A. Yes I can accept that.
- Q. Would you accept that an impact on the living organisms in the bay would also be an impact on the mauri of the bay?
- A. Of course, it's also a matter I would expect to be addressed in the conditions.
- Q. You'd expect it to be addressed in the conditions?
- A. Yes.
- Q. And if it wasn't addressed in the conditions?
- A. It would be an issue.
- Q. Because you would accept that the mauri of the bay is a very important matter for mana whenua and for all iwi as well isn't it?
- A. I've answered this question as presented by Mr Enright, yes.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

- Q. Mr Brabant asked a question today of someone, which I'd have to look up to be sure of, about the effect of tackle on treasures on the seabed.
- A. Yes, I recollect it.
- Q. And I wasn't quite sure where it led to but in my mind it raised the question of whether you think the marina would have more or less effect than the multitude of moorings that are there?
- A. You're probably asking me a question slightly outside my area of expertise but let me let's attempt an answer of sorts. (inaudible

16:04:51) was my understanding of the chain moorings which are part of the current mooring arrangement in the bay and as I think came out of the evidence they swing as the boat swings on the mooring. And the question of whether or not there were koiwi or bones in the seabed then became a matter of whether over decades they would have been disturbed and possibly carried away by the currents.

1605

Q. Yes.

A. Is that right?

Q. Yes. That's my understanding of the impact of the moorings and I'm just extending it to see whether you had a view about whether –

A. My understanding of the construction of the marina is it doesn't have swinging tackle, does that answer your question? So and it's not my field of expertise so I would suspect from that basis that it would have less effect.

Q. It would have piles instead.

A. Yes, and they don't move around.

Q. Okay.

A. Well I've never seen piles moving around.

Q. No, that's right. They're usually stationary aren't they?

A. Of any kind. Does that help?

Q. So do you think that would have less effect than the existing set up?

A. Yes.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Mr Rikys, just one more question about the comparison that Commissioner Howie put before you. It is, however, your understanding from having studied the proposal that much of the seabed under the footprint of the marina would need to be excavated.

A. What is the right word? Well "excavated" will do yes.

Q. Dredged?

A. Dredged, that's the word I was looking for.

Q. Pretty much across the footprint?

A. Yes.

RE-EXAMINATION: MR R BRABANT

Q. You need to find the 2003 volume of figures. And go to 19, at the bottom "Plan of dredging".

A. Thirty-three?

Q. No 19. So head back a bit. So if you also just have a quick look at 12, and you can see the whole marina, so keep 19 in and go back to 12.

THE COURT: JUDGE NEWHOOK

I think the point's been made Mr Brabant, it's much of a pier and little else shown on this plan as opposed to my whole of the footprint of the marina, that's what you're driving at.

MR R BRABANT:

Yes, well I think the witness might have agreed Sir without having had a look at it.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So you can see the extent of the dredging there, in 19 as the dark black outline.

A. I'm at the wrong figure.

Q. Go to 19, we'll just say get a measure of how much. So you can see the dredging takes out along A pier either side and then a bit up the side towards B.

A. Yes, so it's roughly half the marina side.

THE COURT: JUDGE NEWHOOK

No probably not, a good deal less than that actually Mr Rikys –

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. I don't think so, I don't think so if you go back to 12 you'll see that isn't the case. It's only either side of A.

A. Yes all right, I take your point.

THE COURT: JUDGE NEWHOOK

Q. Mr Brabant's intervention does however invite a supplementary from me and (inaudible 16:09:59), that is the portion of the marina that is closest to the foreshore, isn't it Mr Rikys?

A. Yes it is.

Q. So it is closest to the area that some witnesses are saying contains more sensitivity in Māori cultural terms.

A. The sites have been identified on the foreshore, there can't be any argument about where they are.

Q. This is the closest bit of the marina too?

A. Correct, correct.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Mr Littlejohn asked you some questions about the effects of antifouling, in other words stuff that can come off boats Mr Rikys, and that with the marina there there could be some problems. Can you go to paragraph 24 of your rebuttal evidence?

A. Got it.

Q. Which seems to be talking about a current situation relevant to that?

A. Yes, that was the situation as I understand it. This is the current mooring holders use that area (inaudible 16:10:15) these chemicals.

WITNESS EXCUSED

MR LITTLEJOHN:

The first witness I want to call is Huhana Davis, whaea of the marae. Now with the indulgence of the Court what I would like to do is have Ms Davis sworn in in respect of the written statement. She would like to by reference to the projector provide a brief tour of what she records in writing in her evidence so that she feels more associated with it for the purposes of questioning, and also to highlight to the Court the expression of the landscape.

THE COURT: JUDGE NEWHOOK

Mr Littlejohn, you say you'll use the projector, what's to be shown on the projector, is this something that we've seen in evidence already or something new?

MR LITTLEJOHN:

It is new but you've seen it before, it is simply a graphic of Matiatia Bay at an elevation that has been converted so she can point to features around the bay.

THE COURT: JUDGE NEWHOOK

Well is she able to do so by reference to any of the materials that we have in front of us?

MR LITTLEJOHN:

I imagine she could but she has very much provided upon me to seek your indulgence to allow her to do it this way and that is what I'm doing.

THE COURT: JUDGE NEWHOOK

Well, I'm going to have to tell you that I have a concern about it and it's something that I anticipated arising in the context of some other presentations yet to be made including that of Mr Wragge, where we've been asked to consider a video that he has taken of an educational cruise I think I can call it, around the Hauraki Gulf, with the only view of Matiatia appearing right at the

end when the ferry disappears between the headlands into the bay, and that's all we see of Matiatia. And he wants to present that video in the context of submissions rather than the evidence, and I think in that way he's probably seeking to get around my resistance to new evidence continuing to arrive, remembering that I think I was rather lenient with Ping Lee-Wragge in relation to a video the week before, and I'm concerned that the Court is being somewhat taken advantage of and that new material is continuing to arrive and people are popping up and giving us yet more stuff that has not been considered as a matter of fairness by the other parties.

UNKNOWN FEMALE ADDRESSES THE COURT (16:13:43)

MR LITTLEJOHN:

Well I have to be very clear here and say that there are certain aspects of this portion of the case which even I'm not aware of, and I don't mean that as that I'm in the dark, it's just that well I am in the dark. And on some of these matters the process here, Sir, has led witnesses who very much conduct conversations back and forth to not fully appreciate protocols of the Court around that, and for example Ms Davis has produced a brief summary of her evidence that she wishes to talk to. Now, I've expressed to her that I very much want her to feel comfortable giving her evidence but that it will be over to Your Honour and the Court to make a ruling on that because I'm bound to obviously listen to and pass forward your directions but at the same time I have to say that there are some comments that particularly Ms Davis might like to make, and I on instructions am standing up here saying that that is the position –

THE COURT: JUDGE NEWHOOK

Yes, well look Mr Littlejohn, you're advancing these things very properly as counsel. I'm going to respond and I'm actually thinking off the cuff as I do it, so this is going to be my stream of consciousness in answer to your stream of consciousness.

MR LITTLEJOHN:

Did I sound that unprepared?

THE COURT: JUDGE NEWHOOK

And I think the worry is that we are a bit in the dark. Over many months I've endeavoured to work with the parties by coming to the island, conducting conferences here, exchanging a lot of material with the parties in various ways but particularly electronically to assist them to understand the way in which the environment Court works. I've also I think gone out of my way to embrace different ways of doing things and in particular of course we need to be alert to matters of tikanga. And I hope I have. I think I have? I hope I have. I'm not sure that the current request about using a new visual aid that hasn't been shown to the other parties and could have at least as late as yesterday is fair on any of us really, including you. And I'm not sure that I perceive a tikanga issue in it. I just perceive a wish on the part of the witness to be comfortable. There are some aspects of our Court practice that in relation to which people can feel uncomfortable and I'm sorry, but we are what we are, designed by Parliament, for better or for worse. But I do go out of my way, I do have broad procedural powers. But at the end of the day I have to work with fairness to everybody. And the fact that I was in the dark until pretty late last night when it figuratively and literally dark that other counsel are in the dark and even that you're in the dark, I'm sorry, I'm really struggling with this one.

MR LITTLEJOHN:

Maybe we should just clarify, Sir, if I lied – sorry, I'm having to look back at the email on my phone, I got an email from the registrar last night popped up at about 20 past 10 when I was enjoying myself doing work and as I –

THE COURT: JUDGE NEWHOOK

If it's any consolation to you so was I.

MR LITTLEJOHN:

So as I understand it the visual is just a part of a map from the district plan in which case although on the one hand I don't know if it adds very much to then project it up, it's not something that's controversial if that's all it is.

THE COURT: JUDGE NEWHOOK

Okay look, let's see whether the darkness can be removed. No, I won't hear from you yet please, Ms Davis. What I'm going to do is we're just going to go into our retiring room for two or three minutes, and counsel and this witness can talk amongst themselves, look at what she's got and see whether there's a quick way through this, one track or the other. Okay? That might be the quickest way through.

MR LITTLEJOHN:

I guess there are two things here, the first is whether Ms Davis could be permitted by reference to her written brief just to explain the geography of the bay by reference to a plan and I'm sure she could do that sitting in the box there. Her preference was to do that and it's not surprising given her school teacher background at the blackboard. So there are two permutations here, the latter suits her style a little bit more, but I'm sure the former would satisfy her if we've all got the same plan in front of us and it may be we can use one from the bundle.

THE COURT: JUDGE NEWHOOK

And then we would run into some process problems in the Court of the creating of exhibits that become the record of the Court that's available for us and/or any higher Court of matters go elsewhere. At the very least one might have expected a request for an electronic whiteboard to have been made for the purpose of that kind of teaching so that we could then run photocopies out of this good old fashioned beast, but we haven't got that technology. So could I just leave the group of you for a few minutes so see if you can come to an official and fair way forward on this one before I have to make a ruling that somebody's going to be unhappy with one way or the other? Give it a go.

COURT ADJOURNS: 4.20 PM

COURT RESUMES: 4.27 PM

THE COURT: JUDGE NEWHOOK

Okay have we got a resolution? I hope a happy and fair resolution. Mr Littlejohn.

MR LITTLEJOHN:

Thank you Sir, we do. We've identified a plan from bundle, figure 1 and what I'd like to do is have the witness sworn and then as a brief supplementary question just simply ask her to point out some of the key features which she's referred to in her evidence. She assures me it'll take two minutes. She is aware that while she is away from the microphone that it's not part of the record and then she can return to her seat and answer questions.

THE COURT: JUDGE NEWHOOK

I do thank you all for working this out. I'm sorry if you thought I was being a bit pedantic but no, actually I don't apologise because I just want to make the observation that is a matter of transparency and fairness. We all have our ways of doing things. We come to the Marae, we observe tikanga, you come to the Court and then it's fair and transparent to everybody and so I am grateful to you all for working out the solution.

MR LITTLEJOHN CALLS

HUHANA DAVIS (SWORN)

Q. Is your full name Huhana Davis?

A. Āe.

Q. And you're a whaea of Piritahi Marae.

A. Āe.

Q. And you've prepared a written brief of evidence in these proceedings dated the 28th of July 2014?

A. Āe.

Q. And are there any corrections that need to be made to the text of that evidence that you may have found? No? Well with that, do you confirm

that the context of that evidence true and correct to the best of your knowledge?

A. Yes.

Q. Now Ms Davis, could I ask you by reference to the plan that is displayed, or will shortly be displayed behind us, to provide a brief graphical presentation by reference to your evidence as to the features of Matiatia Bay.

A. First of all Tēnā koe.

THE COURT: JUDGE NEWHOOK

Tēnā koe to you.

WITNESS:

So Matiatia, and I'm going to start in Māori terminology so that you can get the pictures of why I needed this. It cannot be done through pages so ki te wehi, the inner awesomeness; ki te wehe, the aura of what we know we see as our harbour, as our gateway; ki te mana, the mana of what Matiatia is; ki te tapu, the sacredness. To the Māori, that connects all things to the wairua, the wairua that we'd give intrinsically for our gateway; ki te wahi tapu o te katoa, none of those words that I have just spoken can you decompartmentalise, can you touch, can you sell and so that in essence is the intrinsic value for all of us that live on this island and for us the Mana Whenua so that if any that were here, the mana, the tapu, the mauri, the wairua, the wahi tapu. Tēnā koe momoe hū. First of all I want to start in regards to, there was questions over my whakapapa of Marutūahu, Ngāti Paoa, Tainui Waka. It was submitted but it was challenged by Pita Rikys so I have brought the fuller whakapapa of myself so I just want to do that again it goes beyond Paoa, from Paoa, Toawhane, Toapoto, Koura, Parehiawe, Kirilka, Pareue, Wairoro, Te Tiwha, Tiki, Maraea, Mere Kaimanu –

EXAMINATION CONTINUES: MR LITTLEJOHN

Q. Excuse me Huhana, could I ask you to refrain from going through that while you're up there.

A. Okay.

- Q. Can we go through the landmarks of the bay while the plan's there's.
- A. Okay.
- Q. And then we'll move back to the witness box where you can explain those matters.
- A. All right. Going around our bay, I'll go back to the other reference point. So Matiatia, wahi tapu. In that (inaudible 16:33:21), in Māori terminology, can you see the mouthpiece? It looks like a mouthpiece the shape and so in Māori terminology, we have te kauwae runga which is the upper jaw, we have te kauwae raro which is the lower jaw and so we start with Whetu Matarau which is this point here, Whetu Matarau and the shape of the land of Whetu Matarau as in the bow of the waka, you've all seen there, you've all been there visually as we leave, Whetu Matarau is on the left-hand side and the layout of that land is like this. Whetu Matarau, the kuia of Whetu Matarau is amongst us, Teremoana Ashmore as the land holder. Moving around off Whetu Matarau, our headline is by Marutuahu. Marutuahu that's really meaning the face of 100 stars and Ara mentioned, (inaudible 16:34:32), landowner here with us. I've already submitted that that landform lays to the north, it looks to the north. In whetu mata raro, land names given as in Matariki, that all of Aotearoa name, land names given and connected from the heavens to the lands of astronomy important to kiwi Māori. Whetu Matarau.. That is the kauae runga, because we're talking the celestials. Stars, face, of the 100 stars in meaning. Moving around from Whetu Matarau, so we do note that it is the base of a waka then it has the land form looking directly north, that it talks in connotation of the naming of, from the stars to that particular land, we emphasis the importance and as given in evidence, of the star charts relevant to Tainui waka, astronomy. And that evidence is the birth of our King (inaudible 16:35:52) and the star charts relevant. Now relating the shape of the whole bay from the mouth piece and Māori reference terms the kauae runga Whetu Matarau. We're moving around (inaudible 16:36:13) where man has fought and protected this island, Mokemoke, the pa site. So we have the bottom jaw and we have the top jaw and

along here we have the koiwi, the teeth, the bones of our ancestors. So land of celestial recognition going right around to Moke Moke kauae (inaudible 16:36:45) being the registered waahi tapu site, so Mokemoke is a registered waahi tapu site on the other side opposite Whetu Matarau. So Matiatia, including all mauri, all of the seashore and seabed, encompassing all sea life. We acknowledge here the strong (inaudible 16:37:13) presence as mentioned, (inaudible 16:37:15) of the many dolphins and the tohorā, the whales that have been very prolific over these last few months in our harbour, more than so than in the last 30 years of my living here, that has been endorsed by an entire community and from our major fishermen that are moored in this harbour. So I claim again, Matiatia landscape, (inaudible 16:37:47) a spiritual significance and cultural importance to Waiheke, its people and Hauraki as a whole. I just want to acknowledge our community for its stance and its resilience and upholding our respects and the protection of our homelands and their care for Matiatia.

Now, most importantly returning to the tupera, the ancestors laying at the waahi tapu. And I acknowledge those (inaudible 16:38:25) I return. So from the upper jaw of Whetu Matarau to the lower jaw of Mokemoke we now have the Niho as we said, our (inaudible 16:38:36) ancestral bones resting in the seashore sea beds from the significant history of life and death of our tupuna who have lived life in the sacred cultural landscape of Matiatia. I need to also bring to light my direct whanaunga on Ngati Maniapoto, Tapara, we lost his life building the new wall. His memorial stone stands in the middle of the termed island beside which is the taxi carpark. (inaudible 16:39:13) So to all spirit of this bay we acknowledge, including that of Ngā Puhī district and the warfare, we counted and recognised as the ancient ones of Matiatia Bay included, tēnā koutou moe mai. Reinterred (inaudible 16:39:32), I've lived here over 30 years. I've personally, over the 30 years of living on Waiheke helped with the re-interment of many, many kōiwi, alongside (inaudible 16:39:47) who was endorsed to carry out this sacred work by mana

whenua over his many years of serving in this community as kaumātua, chairperson of Piritahi Marae and direct descendant of Ngā Puhī Marae and direct descendant of (inaudible 16:40:03) Chief Patuhone whom settled the peaceful Waiheke in his marriage to (inaudible 16:40:09), and being the spiritual guide for this island for many generations here, confirming that his kaitiaki (inaudible 16:40:20) has been continued by us, (inaudible 16:40:23), I belong (inaudible 16:40:25) of the four winds as all of us that belong to at Piritahi Marae to uphold these tikanga of our ancestors. The reinterment of bones at Matiatia directly. I have personally been involved with the reinterment of bones over Matiatia Bay on the north and the south side on this bay on several occasions. Reinter one lot beside Ropati (inaudible 16:40:54) who lies here in white picket fence, the only obvious feature on the beach line of our tupuna. We lay beside him and reinterred beside him. On another occasion as written in my affidavit we walked to the northern side directly alongside where the marina carpark is proposed to be sited. So we walked past the old wharf and along further just here, and he reinterred here. And there is a sizable group of mana whenua on that day.

Q. Who – can we –

A. Shall I come back? Yeah.

Q. That would be good. Have you finished pointing out the landmarks?

A. I think so, I think I've finished now, I can change things around, yes I will. Thank you for (inaudible 16:41:52).

Q. What I'd like you to do is take a seat please and I'm going to ask that, if you just take a second, and I'm going to ask whether you could answer questions. I know you've got a lot on your mind and hopefully you can concentrate on that, that would be very good if you could, so if I could ask you to answer your questions and provide information to the Court, that would be very useful. And bear in mind that if it's in your evidence that's all been read and everyone has read that.

A. Kia ora.

Q. Ka pai?

A. Yes.

THE COURT: JUDGE NEWHOOK

Mr Enright, do you have any questions for this witness?

MR ENRIGHT:

Sir just one, it seemed the witness had a whakapapa she wanted to produce and may have forgotten, and I wonder if she could just produce that rather than read it out. I wouldn't want her to forget that one.

THE COURT: JUDGE NEWHOOK

She left it over here on the table. Madam Registrar, could you take those materials back to Ms Davis.

MR ENRIGHT:

Is that the same as the one in the evidence? I don't know.

THE COURT: JUDGE NEWHOOK

Is that the one that was in the evidence Ms Davis?

WITNESS:

(inaudible 16:43:07) relevant to Ngāti Paoa is submitted. To reaffirm I was challenged the (inaudible 16:43:16) cultural standing on this island.

CROSS-EXAMINATION: MR ENRIGHT

Q. Yes so but you do affirm your whakapapa links to Ngāti Paoa?

A. Yes.

Q. Yes thank you, that was my question.

A. And Ngāti Maru (inaudible 16:43:31).

THE COURT: JUDGE NEWHOOK

Does anybody have any resistance to the idea that the whakapapa on the A3 sheet that Ms Davis has could be copied and provided to the Court in the morning and copies to the other parties? No, no objection to that, so let's do it

that way Ms Davis, can you with the assistance of Mr Littlejohn achieve that overnight for us.

MR LITTLEJOHN:

We'll arrange some copies, that's great, thank you Sir.

CROSS-EXAMINATION: MR R BRABANT

Q. Tēnā koe. Just before and I think in your evidence at paragraph 21 you were referring to reburials at Matiatia, yes? You remember?

A. Yes.

Q. The actual reburials that have occurred are reference to, do you have Mr Rikys' evidence there please? No, maybe not.

A. (inaudible 16:44:57)?

Q. No, volume 2, we need to find volume 2, under tab 13.

WITNESS REFERRED TO VOLUME 2, TAB 13

Q. If you could go to paragraph 25 of the evidence-in-chief and you'll see a page number at the bottom. Yes, the first lot of evidence and the page number is WML787 at the very top.

A. 787, yes.

Q. And paragraph 25?

A. Yes.

Q. And then that deals with the south-eastern part of the bay and Mr Rikys' knowledge and information that he's provided, and 26 in relation to the reinterments on the north-eastern part of the bay that occurred in they're just past the two pohutukawa trees.

A. Questions, yes.

Q. Can you read those two for me?

A. Question, "I'm only aware of one koiwi find in this area."

Q. And then read on.

A. "two lots of bones were found at the foreshore site at the eastern end in the foreshore by the tree roots. I personally reinterred one lot and was present when kaumātua (inaudible 16:46:32) reinterred the other lot. So eastern end, clarify these, eastern end, we're talking northern –

- Q. The north-eastern end, north-eastern –
- A. – could someone –
- Q. Remember you just talked to us about going down past the dinghy racks –
- A. North and south, yes.
- Q. Remember the description of going past the dinghy racks and down and along –
- A. Yes, yes, yes.
- Q. And the two pohutukawa trees are there?
- A. Yes.
- Q. And then you went up into the reserve and reinterred, and there was a group?
- A. Yes.
- Q. And Mr Rikys says he was present when that was done, but he also reinterred on another occasion as well, he said that there.
- A. I just want to say before I was moved over there I was about to say there were more internments that I was not present at, but Kato Kauwhata and others within the Piritahi Marae kaitiakitangi were involved with the reinterments. As Morehu has mentioned back to the farm and also around that side.
- Q. Yes, and the reinterments for burials at the farm have been referred to in evidence by others as well.
- A. Yes, yes.
- Q. But he specifically referred to the situation at that north-eastern part by the tree roots he says, and do you agree or disagree with the information he provided?
- A. He said in the foreshore by the tree roots. No, I don't agree to tree roots, it was on a land and I can take you directly there. It wasn't under trees at all, it was up accessible, if you know the area it goes straight up, it was an accessible metre high bankment, that is there. So I don't remember tree roots at a.
- Q. Sorry, we'll need volume 3 now please Mr Littlejohn.

WITNESS REFERRED TO VOLUME 3, EVIDENCE OF MICA PLOWMAN

Q. AC277. So there's a photograph there and you can see the pohutukawa trees just on the right-hand edge.

A. At the back.

Q. Yes.

A. Is it at the back in the picture? Is that the one in figure 9?

1650

Q. Well you can see a person there.

A. We're looking at figure 9 on page 24, are we?

Q. We're looking at 8.

A. Oh figure 8 and there's a person down the bottom.

Q. Yes.

A. Yes?

Q. And that was around the area where the bones were found and they were reinterred up behind?

A. They were reinterred up behind there, yes.

Q. We're talking about the same place aren't we?

A. Yes, but there's no tree roots there.

Q. Well –

A. As I questioned.

Q. Yes that's okay. We've identified it another way so that's fine. This is very (inaudible 16:50:48) isn't it?

THE COURT: JUDGE NEWHOOK

Yes it is. If you can step back a little from it, you might get less reverberation Mr Brabant. We'll have to have this looked at again in the morning.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. That's alright Sir I'll just back off here a bit. If we can go back then to the south eastern part of the bay and that's where the –

A. You've lost me again.

Q. So we're finished with that now please.

A. Finished with that thank you.

- Q. And if we can go back to Mr Rikys paragraph 25 and this is the south eastern part of the bay, Matiatia and we have the picket fence with the grave inside it.
- A. Yes.
- Q. And he refers to a kōiwi reinterred beside that existing grave there doesn't he?
- A. Yes.
- Q. And that's the other kōiwi find and it came down the stream didn't it?
- A. It came out of the rock way that's holding up there, part of it as I said, that's only one other. There have been many others that our Marae have been involved with, our kaumatua has been involved with. One certainly that you've mentioned eluded to on the northern side but many others on the southern side.
- Q. Now can I go to your evidence please I'd like to refer to your paragraph 17.
- A. Yes.
- Q. Your first sentence.
- A. Yes.
- Q. "We know kōiwi are on the bottom of the bay because of history." What history do you refer to please?
- A. The history –
- Q. I don't mean general, I mean specific, can you tell me?
- A. I don't do specific well. The history is what I've just reaffirmed –
- Q. As specific as you can do.
- A. I'll speak and you can maybe make me more particular from that point. The history of the entire bay of battle sites, of living, of papa kāinga, rākau of those papa kāinga still there, bones coming out all over this island that we reinterred as kaitiaki of pare tahu. The bones I've just discussed that, if we had not found on that presence would've been washed into the bay and this time close, it was in the waterways and the rock ways. Bones have been surfacing all the time on this island, through the waterways, under house constructions, under major constructions on this island, yes. So in looking at life, in looking at the

urupa, right along there, bones of the history of Matiatia would definitely be in the bay.

Q. Do you think the historian Paul Monin can help avouch some history in this regard, you refer to history?

A. I respect Paul Monin's work ultimately.

Q. He's done a statement of evidence hasn't he for this hearing?

A. Yes.

Q. Did you know that?

A. Yes, he's here today.

Q. Yes he said, "I'm also aware of the local law of bones in the bay relating to a battle but have found no corroboration of this battle in the written record. This is not to say that it did not happen but simply that to my knowledge it is not in the written record." Now that's an indication isn't it that as a historian he can't assist as to whether this law about bones in the bay can be relied upon. Do you accept that?

A. No I don't. I've lived quite a short time, 30 years and the amount of bones that I've reinterred in my very short space of time on this island says that it was in the history of that bay there has been many bones that obviously have gone into the bay or through the pakanga, the warfare's et cetera lined within that bay.

Q. So you talk though in this sentence quite differently from the other examples you've been giving us which is, they are dug up or found, or erosion uncovers them on the land or they can come from erosion of the edge down onto the beach but here you say because they have washed up on the shores of Matiatia in the past meaning they'd come from the seabed upon the shore, can you describe a specific location or locations where you can say that in Matiatia, kōiwi bones have been found on the beach that are washed up onto the beach not down from the coastal edge. Can you give the Court any specifics?

A. First I'd like to reflect to your korero that some of those bones from your korero to me had washed down the river and were found on the seashore.

Q. Yes.

A. Yes and the bones that we have found could've been, they were at the bottom of rocks on the base of the seashore. Now whether they came in on old in tides as tai timu, tai pare as Morehu has mentioned, the tides that bring it in and take it out as you've mentioned, washed down from, found on the seashore, it's harder to determine whether it came directly out of those cracks or was washed back into those cracks. On other occasions, I have found we, the Marae, ko Kato Kauwhata, with him found bones on the seashore and reinterred from the seashore directly in front of the Marae which is still in kaupapa Māori land ownership to Huruhi Bay.

Q. Right.

A. And okay we go around but same principle stands.

Q. Now, were you aware that there was a meeting of some of the witnesses on this issue that took place, what they called a meeting of witnesses.

A. No.

Q. Have you seen the joint witness statement that was signed afterwards?

A. No.

Q. Now you will need to look in volume 4, joint witness statement document under tab 5. Do you have that there?

A. Expert conferencing.

Q. Yes. And do you see who the participants were?

A. Pita Rikys, Catherine Ngapo, Morehu Wilson, Lucy Tukua.

Q. Do you acknowledge and recognise that Ngāti Paoa Iwi Trust recognises having Mana Whenua status for these proceedings?

A. Certainly.

Q. So they were present here at the meeting weren't they?

A. Yes.

Q. And they signed the document if you look over the other side.

A. Okay I haven't read this document so...

Q. Take your time.

A. Yes.

1700

- Q. And do you want to turn the page and see it's been signed?
- A. Yes.
- Q. Can we go back to 7.3 please. Those there agree that the –
- A. 7.3?
- Q. 7.3. Those there agree the area, the area of the proposed development and the bay are mahinga Matiatia. Do you accept that? Do you accept the bay is –

THE COURT: JUDGE NEWHOOK

What it says is that it was. It was until the late 1980s.

WITNESS:

I agree that this area was a mahinga. "Was" is the optimum word there. Matiatia. Āe.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. And 7.3.2 they refer to fish still being caught in the bay by netted line but shellfish, that is oysters, are no longer regularly harvested by locals within the area of the bay, do you have knowledge of that yourself?
- A. I agree with the statement.
- Q. And do you agree with the statement in 7.3.3?
- A. Yes.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- Q. I've got a question for you Ms Davis, you and some of the witnesses have referred to several interments having occurred –
- A. Sorry Sir, I didn't quite hear you.
- Q. Shall I say it again?
- A. Yes please.

Q. You and some of the witnesses we've heard to some re-interments having occurred in two places, I think, but I'm not sure if it's two, the Matiatia and Ngati Paoa Farm.

A. Yes.

Q. Can you tell me where Ngati Paoa Farm is?

A. Down the bottom end, that's how we term it. Down the bottom end.

Q. It's at the far end of the island?

A. Well half way down.

Q. There's no –

A. So it's by my own (inaudible 17:02:58) down the bottom of the hill.

Q. I think for present purposes it's a long way from Matiatia, it's in another part of the island and I think I know more or less where you mean and I don't need to ask anymore about that. I just needed that clarification thank you.

A. We've reinterred other places, (inaudible 16:03:17) pa beside the marae.

Q. Yes.

A. The cemetery there.

Q. Right.

A. The farm and other areas where we re-interred as (inaudible 17:03:30).

Q. Yes I'm aware of the practice and that it's quite common on Waiheke Island for koiwi to be found in various places, particularly on the coast. I've come across evidence about this.

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

DISCUSSION – TIMETABLING OF WITNESSES

COURT ADJOURNS: 5.12 PM

COURT RESUMES ON THURSDAY, 16 OCTOBER 2014 AT 9.30 AM**THE COURT: JUDGE NEWHOOK ADDRESSES MR R BRABANT –
HOUSEKEEPING****MR LITTLEJOHN CALLS****PAUL DEREK MONIN (AFFIRMED)**

Q. Is your full name Paul Derek Monin?

A. Yes indeed.

Q. And you've prepared a written statement of evidence in these proceedings dated the 29th of July 2014?

A. Yes.

Q. And you confirm that you have the qualifications and experience as set out in that brief of evidence?

A. Yes.

Q. Are there any items within that brief that require correction since it's been filed with the Court?

A. No.

Q. Do you confirm that the contents of that brief are true and correct to the best of your knowledge?

A. Yes.

CROSS-EXAMINATION: MR ENRIGHT

Q. Good morning Mr Monin, just a couple of questions. I understand you're essentially the only historian giving evidence and I wonder if you might briefly describe the types of, what the historical records may show about the types of use by local iwi post-European contact at Matiatia Bay?

A. From the historian's point of view (inaudible 09:38:39) with the western way, here I'm talking about (09:38:43) as a hole. This was a 2100 acre block created in 1869. It generated a very substantial Court record. In 1897 at Thames, before Judge Gilbert Mair there was a very extensive partition hearing. It generated 150 pages of Court record. So Matiatia is one of the Māori settlements on Waiheke that's covered by that Court

record. This, we're extremely privileged to have this and as a result that record has given an historian like me a job to do. History is only as good as its sources. If the sources don't exist the historian has nothing to work with. To be more specific, at Matiatia the Court does refer to economic activities. The community down there was very active in (inaudible 09:39:54) at Auckland in the 1840s/50s and the (inaudible 09:39:58), and there's also a reference to the whānau, the people with interests in the land because the partition naturally generated a high degree of contest between land claimants. So yes we have that and more recently I'm finding it's very good that we're moving and looking at the little bit of evidence we've got for the northern foreshore that's relevant to this hearing whereas we've been looking a bit more specifically at the southern foreshore which is the carpark area and we've done extra work and now, I think, it's time for us to look at the Ahipao, northern foreshore. Now, so no way information is drawn from that Court record of 1897 and that can be made available.

Q. So just in brief terms, what types of uses by the local Māori within the northern beach area, that post-contact area?

A. The northern beach area, the references are much more slender but we, there's a page, page 88 of that record which does refer to the birds and also to cultivations. It's quite obvious that there would have been very extensive cultivations on the southern side but the record does indicate that those cultivations extended and I'm hoping that when the Court went to Matiatia you had a chance to look at the – there's a little stream that comes out between the historic woolshed and the crevice, if you want to call it the crevice, which is our principal concern about koiwi. There's a stream that comes out there and there's a little triangular, what I'm calling a stream mouth flat (inaudible 9.42.14) and I think that's where there would have been a small claim, I basically agreed with the placement of that claim on the Ngati Paoa site plan. I think it's located correctly, you agree with that.

- Q. So that plan wasn't produced, but you might if you wished to you could refer to a plan that is before the Court, I think you have the figure actually open before you, what figure number is that?
- A. Which?
- Q. Aerial figure 1, perhaps might be the figure.
- A. Now I'm just, I decided to get the Ngati Paoa map because there's a dot on it and I think it's probably –
- Q. But the one, Sir, the one the witness is referring to was, following discussions between counsel, not ultimately produced.
- A. Well actually I think descriptively I would say it's between the historic woolshed and the little stream and this is, by the way this is an unrecorded archaeological site. If there's reference to habitation in the written record I would suggest that in due course it would be a good idea for us to have some sort of archaeological investigation.

CROSS-EXAMINATION: MR R BRABANT

- Q. Good morning Mr Monin. On this issue of sites and locations, I need you to have a look please in the Council evidence and the rebuttal statement by the Council archaeologist so you need to look –

WITNESS REFERRED TO VOLUME 3, FIGURE 3

- Q. Before you start looking at it please I'll just ask you the necessary preliminary –

THE COURT: JUDGE NEWHOOK

We're looking at Ms Plowman's evidence are we?

MR R BRABANT:

Rebuttal, figure 3, that was the final agreed map with Mr Prince.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. Now first of all have you read the evidence and the rebuttal evidence of Mica Plowman?
- A. I've read her evidence but not the rebuttal.

- Q. You haven't read the rebuttal? Have you seen the joint witness statement that they've done?
- A. No. I do acknowledge of course, I'm not an archaeologist.
- Q. You've just been telling the Court about the potential for other sites, so this is a product of communication with Don Prince who gave evidence as well as an archaeologist and this figure 3 is supposed to draw together all of the sites that have been identified over the years by archaeologists and I know it's on an A4 page but that was the final representation to the Court from the experts of the recorded sites and their location and you can see on the northern side that there is a reference now in that stream, near that stream you refer to of an urupa, do you see that?
- A. Yes.
- Q. And then further around towards the two big Pohutukawa trees as you move back nearer to the wharf there's the re-interment sites, you're familiar with those?
- A. Yes.
- Q. Mr Monin, are you prepared to accept that the archaeologists who have given expert evidence here should be relied on as having correctly identified the known sites on the northern side, well in fact over the whole of the bay?
- A. Absolutely, yes.
- Q. I know want to turn to your evidence please. Have you read the evidence and the rebuttal evidence of Mr Rikys?
- A. I read the original evidence of Mr Rikys, yes.
- Q. Well I don't know whether you've been accessing the Council website yourself or Mr Littlejohn has been helping you, but have you been reading the rebuttal evidence as well?
- A. I have to admit that I have not read them recently.
- Q. So would that apply to all of the witnesses, so there are witnesses for the Ngati Paoa Iwi Trust and Direction Matiatia has produced some witnesses as well on cultural matters. Have you read all of that evidence?

A. I haven't read all of it.

Q. I need you to look at a joint witness statement in tab 5.

WITNESS REFERRED TO JOINT WITNESS STATEMENT - CULTURAL

Q. So do you have that there?

A. Yes.

Q. Just for the record, you haven't read this before?

A. I haven't.

Q. And you'll see that there were some participants there listed in paragraph 5.

A. Yes.

Q. Including two from the Ngati Paoa Iwi Trust.

A. Yes.

Q. And can you read paragraph 7.8 and the agreement as to who held Mana whenua for the purpose of these proceedings.

A. Yes.

Q. And of course you know what that means.

A. For me?

Q. Well it means authority to speak.

A. Yes, well I made that clear at the beginning of my statement of evidence that I have approached this exercise as an outsider, I don't claim to have authority either as Mana whenua.

0950

Q. No, no.

A. Or –

Q. I don't want to ask questions that we aren't on common ground about.

A. Yes.

Q. And understanding that because those two people from the Ngāti Paoa Iwi Trust were involved in this and the agreed position and if you turn the page you will see they've signed it.

A. Yes.

Q. Can you look please at paragraph 7.3 and I've asked you because you haven't read this before. Can you carefully read the three paragraphs that are under 7.3.

- A. Yes I've read those.
- Q. You're familiar with the concept of a Mahinga Mataitai?
- A. Yes I am.
- Q. Yes, and the people who've met reached agreement as you will see didn't they that this area was such a food gathering resource up until the late 1980s which references the harvesting issue in 7.3.2 do you see that?
- A. Yes.
- Q. Now that means doesn't it Mr Monin that in respect of any consideration of wahi tapu status arising because of old sites, things that happened long ago, this Mahinga Mataitai is relevant to a question of whether wahi tapu status would apply to an area, wouldn't it be?
- A. Yes.
- Q. And you'll see that in 7.3.3 there's agreement between these people that gathering of kaimoana across a wahi tapu is inappropriate and you would know why wouldn't you?
- A. With respect here, this is beyond my purview, beyond my competence. I'm a historian, you can offer useful information from the written record, this is not my area of competence.
- Q. Well I'll get to that in a minute but I'm only asking at the moment because of your long involvement on the island and naturally a deep involvement as a historian in cultural matters whether you understand these concepts before I ask the next question, that is why it would be inappropriate to gather kaimoana –

THE COURT: JUDGE NEWHOOK

Well Mr Brabant he said that it's outside his field, I think he was saying among drawing an inference that it would be insensitive for him to interpret it but why don't you try asking your next question and see whether it is within his field of competence.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. So can I go now to paragraph 18 of your evidence? There you have expressed an opinion at the end haven't you? "The effects of a

proposal on cultural and spiritual values will most certainly not be minor.” So you have expressed a view.

- A. Yes, I cogitated, (inaudible 09:53:46) caused to cogitate a little when i re-read my statement. I think, given the qualification that I offered at the beginning that I am an outsider, this is a comment from an individual from a private citizen she will carry (inaudible 09:54:11) authority beyond that. It’s a personal view.
- Q. Right. So you’ve included in your evidence at paragraph 7 a reference to the code of conduct and qualified yourself here as an expert haven’t you?
- A. Yes.
- Q. So if you’d been thinking about that last statement, do you perhaps wish to remove it from your evidence?
- A. I’d be very happy to remove it.
- Q. Well it’s an invitation but I’m not putting it to you one way or another.

THE COURT: JUDGE NEWHOOK

He’s given you the answer Mr Brabant, he’s just said he’s very to remove it and I now consider it removed on his invitation.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. In terms of your reference to the kainga in that northern area Mr Monin, what the sort of activity that you would expect that the people that were living there would be doing? Would there be a waka landing there?
- A. Yes. The reference also includes a mention of two berths, particularly interested me because one of the two berths was Rawiri Puhata, we heard about him from Mr Wilson yesterday he went on to become a leading Rangatira of Ngāti Paoa in the early 20th century, we also have a reference to his sister being born so we’re looking at a place where life began, we’re looking at a household. I noticed on the map there’s (inaudible 09:56:30) midden, possibly some of the – in the vicinity I’m talking about that midden might relate to one or in fact it sounds like there were two houses, but just a small walk, semi-temporary, semi-permanent settlement. I suppose just to give you, get back to

context, the bulk of the human activity would've been on the southern side. It's nice to see evidence of this extension to the northern side as well where of course there was very much, there was very little flat land and that's the main reason for the limited activity.

Q. That would extend through to present time and perhaps be part of the reason why there's more evidence left if you like of older, the archaeological evidence seems to be concentrated in this area?

A. It's concentrated on the south side.

Q. Is it?

A. And I'm talking about the carpark area, the foreshore area down to the stream but that's of course outside of the scope of this hearing

Q. The discoveries that were shown seem to show more evidence and what I'm asking really is that because that area has been less modified as subsequent (inaudible 09:58:00) –

A. Oh yes, and the point was made by Mr Rikys yesterday that the very possibility there had to be discovered archaeological sites so I'm very happy to acknowledge the archaeological summation to this point but that doesn't (inaudible 09:58:23) the possibility of more (inaudible 09:58:28).

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

MR LITTLEJOHN CALLS**LORNA MAIKARA ROPATA (SWORN)**

Q. Is your full name Maikara Ropata?

A. My full name is Lorna Maikara Ropata.

Q. Lorna Maikara.

A. Yes.

Q. Very good. And do you confirm that you've prepared a written brief of evidence on these proceedings dated the 5th of August 2014?

A. Āe.

1000

Q. And are there any matters within that brief that might require correction since it was prepared?

A. No.

Q. Could you please confirm that the contents of that brief are true and correct to the best of your knowledge?

A. Āe.

CROSS-EXAMINATION: MR ENRIGHT – NIL**CROSS-EXAMINATION: MR R BRABANT**

Q. Can I take you please to paragraph 73 of your evidence.

A. Yes.

Q. So you speak there of how your grandfather identified Matiatia as a wāhi tapu, a sacred site.

Q. Āe. So for clarity first of all are you referring there to the entire entirety of Matiatia Bay?

A. Āe.

Q. To the two headlands at the beginning as you come in and right to the end of the bay?

A. Yes.

Q. And do you include the water as well as the land?

A. Absolutely.

- Q. So I'd like you, and this is again Sir the same joint witness statement, and I've got my electronic version running now so again it's cultural which I see has got a number 5 next to it, you should have it right there?

WITNESS REFERRED TO JOINT WITNESS STATEMENT

- Q. Have you seen that document before please?
- A. No.
- Q. You can see in paragraph 5 who attended that meeting, names?
- A. Āe, yes.
- Q. Do you recognise those people, do you know them?
- A. I know who they are yes.
- Q. Two of them are described as representatives of Ngāti Paoa Iwi Trust, do you know the Ngāti Paoa Iwi Trust?
- A. Yes.
- Q. If you look at paragraph 7.8 you'll see the people there agreed that the trust for these proceedings were recognised as the mana whenua authority, do you see that?
- A. Yes.
- Q. That is, can I put it this way, that is they have –

THE COURT: JUDGE NEWHOOK

Just pause Mr Brabant, you didn't complete the sentence and I'm going to read it into the record, "agree that Ngāti Paoa Iwi Trust are recognised as the mana whenua authority for Ngāti Paoa for these proceedings," you didn't read "for Ngāti Paoa."

MR R BRABANT:

Sorry.

THE COURT: JUDGE NEWHOOK

You left it after that, and there could, I don't know but there could be differences.

MR R BRABANT:

Yes.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So as the Judge says, there was agreement that the Iwi Trust are recognised as the mana whenua authority for Ngāti Paoa for these proceedings.

A. For these proceedings, yes.

Q. I'd like you to have a look at and read carefully what is set out in three sentences under 7.3, "Clarification of existence of mahinga mataitai," can you read that please?

A. 7.33?

Q. Yes, there's three sentences there I'd just like you to read please.

A. "The gathering of – "

Q. No, you don't need to read them out but start, just read them for yourself because I understand you hadn't seen this before, starting with 7.3.1.

A. Okay.

Q. So if you are unable to agree or not agree, please tell the Court, but do you accept the agreement that was reached by those people that the area, which is obviously referring to Matiatia Bay, was a mahinga mataitai, do you accept that?

A. I accept that Matiatia is wāhi tapu, I accept that mahinga mataitai is a wāhi tapu. Used to cause a lot of conflict with each other (inaudible 10:05:25) not in opposition to each other. There are those who have forgotten Māori tikanga, Māori principles and practices. The gathering of kaimoana is a sacred act. You will ask for permission to enter sacred space and you will ask Tangaroa to help provide help and provide food. So yes, I agree.

Q. So we get to 7.3.3, "The gathering of kaimoana across a wāhi tapu is inappropriate and when done often occurs due to the lack of awareness," do you not agree with that statement?

A. Can you repeat that question please?

- Q. If you can look as I ask it at 7.3.3, “There was agreement of those there who signed this document the gathering of kaimoana across a wāhi tapu is inappropriate and when done often occurs due to the lack of awareness.” Do you not agree with that?
- A. A wāhi tapu is a sacred site, (inaudible 10:06:32) is also the sacred site. And as I said these two are not in conflict with each other. We’re talking about Matiatia as a wāhi tapu, we’re also talking about (inaudible 10:06:46) from my perspective is also a sacred site.
- Q. So the identification of an area as a mahinga mataitai is recognition that food resource is there and is gathered by the people, is that not right?
- A. When we talk about gathering, when we talk about tikanga, there’s certain protocol. And within that that’s a sacred act.
- Q. If an area is recognised as a mahinga mataitai, does that reflect the fact that kaimoana is gathered in that area?
- A. As I said, it’s a sacred act. And it is. (inaudible 10:07:38) before pre-European it was classed as a sacred act, yes.
- Q. The gathering of the kaimoana is a sacred act, is that what you’re saying?
- A. Yes, I am saying that.
- Q. Right, thank you. And then does that mean that you disagree with what the people who signed this document said in 7.3.3?
- A. I actually agree with what they’ve said because that’s the sacred space. When you collect cray from Tangaroa there are certain protocols you need to do in order to gather that food.
- Q. When you have told the Court that you consider that the recognition of the whole of Matiatia Bay as wāhi tapu and it applies to the water space and the seabed, are you saying that the wāhi tapu applying to the water space and the seabed is in respect of it being a mahinga mataitai?
- A. Each area, so for that particular area mahinga mataitai, that is a sacred area. Matiatia Bay (inaudible 10:09:07), that’s a wāhi tapu. These sacred spaces, they are both sacred spaces.

Q. A sacred space you're saying because that recognises mahinga mataitai? That is the recognition of that, of the water and sea bed as a wāhi tapu?

A. A wāhi tapu is a sacred space.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

1010

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Just want your help please, could you look at that joint witness statement again 7.3.3 have you got that there in front of you? See 7.3.3, have you got that there?

A. 7.3.3, yes sorry.

Q. “The gathering of kaimoana across a wahi tapu is inappropriate and when done often occurs due to lack of awareness.” My interpretation of that statement by those four people I thought was telling me that the gathering of kaimoana is not to be considered wahi tapu, that's how I was reading 7.3.3. Now you said you agreed with these four people in this whole paragraph 7.3.3 but then you gave detailed answers to Mr Brabant that led me to doubt that. So just coming back to 7.3.3, “The gathering of kaimoana across a wahi tapu is inappropriate.” I'll say it again, I had interpreted that as suggesting that the gathering of kaimoana is not itself sacred. Are you saying you have a different view from my interpretation?

A. Yes, I have the Māori worldview.

Q. Sorry you have the Māori?

A. A Māori worldview.

Q. Yes.

A. So where I come from, it's from tikanga, it's from our practices and principles. So that's the view I come from when I speak about this.

Q. All right, I just needed that clarification as to where you sat with the statement by those four people in 7.3.3.

A. Yes.

Q. And I think I've now got an understanding of where you are with it.

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

MR LITTLEJOHN CALLS**KATHRYN ANNE REREMOANA NGAPO (SWORN)**

- Q. Can you just confirm, is your full name Kathryn Ngapo?
- A. Kathryn Anne Reremoana Ngapo.
- Q. Can you just say that again?
- A. Oh it's written in my statement there somewhere.
- Q. And do you confirm that you've prepared a written brief of evidence in relation to these proceedings dated the 28th of July 2014?
- A. Mhm, yes I do.
- Q. Are there any errors or corrections that you need to make to the written brief?
- A. Yes there is, it's not an error but at the end of my whakapapa I asked if I could submit a full whakapapa because I didn't know the full Nga Puhi one and I've got it here today and I was wondering if I could do that?
- Q. Have you got copies of that?
- A. No, I've just got "it".
- Q. Well what we'll do is get that copied and supplied.
- A. Is that alright?
- Q. Can you just clarify what that document is?
- A. It's stapled to the old one but I submitted which was partially, I had a partial whakapapa of Nga Puhi, or maybe it's – yes, so that was the original appendix.
- Q. Yes.
- A. But on the front of it I rewrote the whakapapa which is exactly the same for Ngāti Paoa except written in the long version more or less but I added at the beginning of that which I only had back to my great-grandmother.
- Q. So would you like to replace the existing appendix to your written brief with a new appendix?
- A. Either that or add it. It just felt funny putting it in with only a partial one.
- Q. That addition, do you confirm that statement of evidence that you've prepared is true and correct to the best of your knowledge?

A. Yes.

CROSS-EXAMINATION: MR ENRIGHT – NIL

WITNESS:

Can I say one thing beforehand?

THE COURT: JUDGE NEWHOOK

Yes.

WITNESS:

It was just that you said those four people agreed to it, I was there that day as an observer so I wasn't in the group.

THE COURT: JUDGE NEWHOOK

Oh you were just an observer, so it was really three people, that's an important point of clarification thank you for that.

CROSS-EXAMINATION: MR R BRABANT

Q. I'd be grateful if you could go first please to paragraph 42 of your evidence.

A. Yes.

Q. Thank you. You refer there in brackets as part of the first sentence to the applicant having applied to the Unitary Plan that all other mooring areas on Waiheke be signed marina areas.

A. I did.

Q. Can I ask please, have you read the submission that was lodged by their planner Mr Dunn, have you read it?

A. I actually briefly did read it, yes.

Q. Yes.

A. But I can't say, at the time that I wrote this it was probably just after you'd done it according to the Gulf News and I added it in from that and I read it later. I didn't actually focus on that because I was looking at the archaeological thing that you'd asked for as well.

- Q. So is it fair to say that what you've said there is more an understanding from –
- A. The Gulf News.
- Q. – the Gulf News.
- A. That's true.
- Q. That's fine. So let's go up please to paragraph 39. Now, the sentence starts with the plural, so I'd first like to ask you.
- A. Yes.
- Q. If we replace "we" with "I", does the sentence stay the same for you or would you need to correct it?
- A. I mean I don't think they say the same for every place (inaudible 10:18:44).
- Q. Yes.
- A. I could say "I" but I don't think it says the same as saying "we".
- Q. Yes, would it be fair to say that for you personally, you understand from what others have told you and it could be generations that of people earlier that even may have died now you may have had some handed down information but when you say "we know" if that became "I know", I have been told would be accurate?
- A. I think in the absence of, as Paul said, a written record, it's fairly obvious that it would've been a oral telling.
- Q. Yes. Were you here when the archaeologists were questioned about their knowledge?
- A. I wasn't.
- Q. Now you say according to Paul Monin, that site which I can see as a reference to the area of dredging was considered wahi tapu in the 1900s. Have you read his statement of evidence for the Court?
- A. I have, and actually what he says is that where the kōiwi were found.
- 1020
- Q. So, can we just go to his evidence please and it's tab 18 of volume 4. So you look for volume 4 on the back and turn –

WITNESS REFERRED TO DOCUMENT

- Q. Just remembering the sentence was, "According to Paul Monin that site was considered waahi tapu in the 1900s," can you find for the Court where he says that in his evidence please?
- A. Do you know when I'm looking?
- Q. Well the thing is I can't find that so I'm asking for your help.
- A. He said that Bruce Croll said it and I assumed it was in the 1900s rather than the 2000s but I could have been wrong. Whereabouts is it?

THE COURT: JUDGE NEWHOOK

- Q. Ms Ngapo, could you look at Mr Monin's statement and if you think this information is wrapped around the involvement of the Croll's find the paragraphs referring to the Crolls if that would help you to answer Mr Brabant's question. I can see the paragraph 14 there is one such. So could you go through this evidence.
- A. I got mixed up because of the 1900s mentioned in the date, it doesn't actually say that. He said it in the 1900s sorry. But there's lots of 1900 something's in the paragraph which made me think, so sorry about that.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. I'd like you to have a look at the record of the meeting at which you attended as an observer and that should be right there in that folder just to the left, the ring binder.
- A. What number?
- Q. No we're looking at the joint witness statement now which is just right there. Now, because you were there as an observer it's fair to ask that you're happy with the wording that's contained under the heading 7.3, that's accurate to you as an observer?
- A. That's an accurate, yes that is what they said.
- Q. And you have the benefit, so we can maybe make these questions short, the benefit of listening to the discussion before this was arrived at and you understand exactly what those sequence of paragraphs means.
- A. Well I'm not a lawyer but presumably with an ordinary understanding.
- Q. So it starts, doesn't it, with agreement that the area was a mahinga mataitai until the late 1980s and you know what that means, a food

resource, a place where kaimoana would be gathered. Do you disagree with what the people who signed this document said or recorded in 7.3.3?

A. I partially agree and I partially disagree.

Q. Because you were the observer and therefore not a signatory, can you tell the Court why, in your view, the gathering of kaimoana across a waahi tapu could be appropriate?

A. It's something that Morehu vaguely brought up yesterday but I felt he could have gone into more detail and it's something Mikara alluded to today and often, I haven't got a good knowledge of Māori law so I'm not speaking as, from that point of view, I have a knowledge of my mother and father and I have a knowledge of being someone who grew up here and I agree with Maikara that in the old days before the taking of seafood a karakia would be said before the catching of fish. A karakia would be said and then that would make it all right to do something. So, in the sense of something being inappropriate, maybe it is inappropriate but maybe you are living somewhere where your family needs to harvest those things and it would be equally inappropriate not to take that seafood because otherwise your family would be hungry. So in a sense of that need then there are various rituals that can be carried out in order to allow people to take seafood. In a sense if especially if you belong to a place.

Q. The qualification that you've just picked up on –

A. And it's also to do with that word "inappropriate", it does say you never do it, it says it's inappropriate.

Q. And in your paragraph 39 you make specific reference to koiwi where the marina developers will be dredging don't you? So if there's a waahi tapu status (inaudible 10:26:18) in that area it relates, if they're there, to koiwi. Bones of ancestors.

A. I think it partially relates to that and it partially relates to the connection to the land.

THE COURT: JUDGE NEWHOOK

Q. Sorry, what was the last part of the sentence?

A. I said it partially relates to the connection to the land.

Q. I'll just ask you to raise your voice a little bit, you're quite softly spoken.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Are you able, and you'll tell us if you're not, to express a view as to whether it will be inappropriate to undertake some sort of ceremony to enable kaimoana to be taken from the seabed, like shellfish, where it was thought there were bones, or is that outside your scope?

A. It is outside my scope a little but I have taken seafood from that area and this is when I think, and I did it with my mother and an aunty from the marae and at that stage we weren't as aware of the koiwi in the bay but should someone have been really hungry I would say they should say a karakia and take the shellfish, that's my own personal view. It has nothing to do with any expert.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL**QUESTIONS FROM THE COURT: COMMISSIONER HOWIE**

Q. Ms Ngapo, you've referred to a term that I haven't heard before, in your last paragraph, paragraph 69. And the term you referred to was Tukuwhenua.

A. Yes.

Q. Now you say a gifting of land or the sea.

A. Yes.

Q. And that –

A. I wouldn't necessarily think you would just gift the sea, it would be involved with the land, not just the sea by itself but I'm not an expert on that either. I just know the instance of the Tukuwhenua down at where my family comes from.

Q. (inaudible 10:29:04)

A. Yes.

Q. What did that involve?

- A. What happened was that, I guess people on the east coast wanted to be able to trade with, trade their produce further afield and so they chose to trade with people in Auckland and in that process it was a relatively long trip from the east coast up to Auckland and it was relatively dangerous and they began to call in at (inaudible 10:29:52) to have a break in their journey and that was over several years and in the process of doing that, relationships were formed and marriages and stuff happened, and people died. And as far as I know from the thing that I read about, this is, I've known this from my own family but I'm still giving you more information from the thing that I read about. In the thing that I read it stated that people will die and they'll be buried, but then the tribe that's the visitor has to get those bones and take them back where they come from because the bones would rather be there, but also if you leave the bones in the land that means that you start to have a little wee bit of ownership in the land, so the local tribe is sort of keen on you to take those bones away. But by the time you've married a few people and the relationship has been a little bit mixed up, then the bones get to stay there. So there is that partially. And then there was also the idea that they did need a safe place to land, and so one of the chiefs or perhaps a party of chiefs asked, and they were using schooners and stuff to take produce from the east coast to Auckland, they asked for a formal little bit of land that was theirs to own rather than they just stay there and it's not theirs. And a chief who was from Ngāti Tamaterā, Paora Te Putu, actually gave them quite a huge chunk of land. And that land included a great big bay. And that land recently in the last decade or two has caused the formation of a new Māori entity in terms of a tribal unit called Ngāti Porou (inaudible 10:31:50). So the *tuku whenua* sort of is a gift which then became a legal entity gradually process in terms of the Māori Land Court I guess.
- Q. Very interesting. Whereabouts was Harataunga?
- A. Harataunga is Kennedy Bay on the Coromandel, and that part of land was given, and there's a little bit further south called (inaudible 10:32:19) which we also have family shares in.

THE COURT: JUDGE NEWHOOK

Q. So north-east of the Coromandel Coast.

A. Yes, it's very beautiful, both places are very beautiful.

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

**MR LITTLEJOHN CALLS
TOI TE RANGIUAIA (AFFIRMED)**

WITNESS:

If I may, just with tikanga procedure, can I just say a little three minute greeting, as has been done the other day, to yourselves? It's a tikanga practice. As the chairperson of the Piritahi Marae and committee, I'd be remiss not to do it.

THE COURT: JUDGE NEWHOOK

All right, did you say about three minutes?

WITNESS:

Yes, probably less.

MIHI PERFORMED

THE COURT: JUDGE NEWHOOK

Kai ora, and just for the record Mr Littlejohn, we acknowledge hearing the mihi but it probably won't be transcribed into the record. I don't think you'll find that at all offensive, you were simply pursuing tikanga and –

WITNESS:

And it's been recorded amongst those who are here and who aren't here, yes that's fine.

THE COURT: JUDGE NEWHOOK

Indeed.

WITNESS:

Thank you very much.

EXAMINATION: MR LITTLEJOHN

- Q. Can you confirm that your full name is Toi Te Rangiuaia?
- A. I do, yes.
- Q. And that you've prepared a written statement of evidence in these proceedings dated the 28th of July 2014?
- A. Yes.
- Q. Are there any corrections that you need to make to that statement of evidence?
- A. No, no.
- Q. Do you confirm that the contents of that brief are true and correct to the best of your knowledge?
- A. I do.

CROSS-EXAMINATION: MS ENRIGHT

- Q. Kia ora Mr Rangiuaia, just firstly your paragraph 4 of your evidence you refer to being of Ngāti Porou descent and u refer to that (inaudible 10:37:51) having an affiliation to Waiheke in the Hauraki Gulf refers to occupations of these shores, I just wonder if you could elaborate on what you're indicating there?
- A. Certainly, the whakapa o Ngāti Porou in the beginning goes back to (inaudible 10:38:10), they were the first people who occupied the Aotearoa, hence the name of Te Ika a Maui to Waka a Maui, the Coromandel, Te Tara o te ika o Maui, you know, the barb of the fish of Maui. So these are found in the landscape. Following from Maui we have the occupations and the mix of marriages with the (inaudible 10:38:31) Toi and Toi te huatahi. And Ngāti Porou's whakapapa goes back through those people around – so from 900 AD through to 1150 AD through to Paikea the whale rider who place was out at Mercury Island, Ahuahu. And then also like Kathryn Ngapo, my connection is through (inaudible 10:39:02). My tipuna had schooners back in that day coming up to Auckland, to the Bay of Islands and were taking produce. Aand so I also have an Irish heritage from intermarriage of a rangatira from Gisborne, his Detective Garrett and Hore Penehu, George Taylor,

and he also came up to Auckland to be as a translator for the Land Court (inaudible 10:39:43) at that time.

Q. Now Mr Pryor who is the landscape expert for the applicant was asked about the possible effect of having a marina in the northern part of Matiatia Bay on cultural practices. I'd just like you to comment on that in terms of what types of practice you engage in at Matiatia Bay?

A. In order – because it's an easy thing to say karakia but actually it's very deep. You know the Māori word tau Māori. You start from, like on a Bible, from the (inaudible 10:40:31) down to, from Genesis down to Creation and the Māori worldview is based on mana Atua, mana whenua, mana tangata. And mana, if you would want to use the English term power and in each of these realms carry with them tapu aspects of tap and noa and it's through the navigation and the management of karakia that you can cross the weave of tapu and noa in corporeal world. You know it's like saying in a cloak which is the fabric of life, you have the weft which is the corporeal body and then you have the warp, the longitudinal strands which is the tapu or the spiritual body and for Māori, the world paradigm is that past, present and future exists in one time. For someone who's versed in karakia and whakapapa as with Morehu when he talks about items with regards to wahi tapu, he has that knowledge in his being, his whole being, his ancestors live within him as mine do within myself and it's awareness, it's a actual awareness you can tangibly feel this awareness and so when he says that it's a wahi tapu, he's able to navigate through those aspects taking into consideration all matters to do with his genealogy. So to have a marina in a wahi tapu, what happens from what I understand of the marina is that there's going to be some dredging for a start. Dredging in a area that's perceived as being sacred and my understanding is some of those dredgings will be used for a carpark and I find it incredible that you know, I (inaudible 10:43:28) in my own evidence that, when would it be deemed appropriate to take the dredgings out of Gallipoli and to use them as a carpark because for Māori, when you talk about the memory of old, actually the memory's right here now, we are the living memories,

the mata ora, we are the kana hui ora, the living faces of those who have been, the representative of those who are about to become. We have pastoral care and duties to uphold and you saw yesterday with the Whaea Huana and the other people here how they're moved emotionally and you know it's not something that you can for example say to people who've died in Flinders, who've died in other Wars, oh well, time the other lights are flickering, it's all over forget it. There's no obviously retention of emotion or connection to those places, you know. So it's a violation on many areas with regards to a wahi tapu. If you take the word wa in Māori it means time, ahi is fire, or to ignite. So you're talking about maintaining those sacred fires as in the Catholic Church, the priests who do the same. I'm just trying to give an understanding to the Māori paradigm.

THE COURT: JUDGE NEWHOOK

It's very (inaudible 10:45:20).

WITNESS:

Being out, sitting outside these areas of what waahi and tapu are in the Māori paradigm, it's easy to be quite dismissive of these as realities.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

Q. Perhaps if we just take His Honour's leave though, and thank you for your answer. You started the answer by reference to karakia and you'll recall the question was about if you were physically on the beach, that type of thing, how do you, what types of practices do you do and how they be might be effective. So just the practical example.

THE COURT: JUDGE NEWHOOK

You do need to listen to the questions.

WITNESS:

My own practice from coming to the island has been with karakia coming on a Fullers boat, coming into the bay, giving mihi to the motu where my

whakapapa springs from. Practices, once I associated myself with Piritahi Marae, in '91, have been to do ceremonies within the bay referencing from the bay itself out in the front of the rapata on the southern side and the northern side. Mokemoke. On the northern side of that bay and then Whetumatarau. Acknowledging the tapu-ness of that bay, the people who lie in there and the people who lie in the landscape and the seascape. To acknowledge the winds, the hau of vitality around that area. Every time my family and myself depart for my work overseas, my boys and myself go through the ritual of connecting and making the promise to return to those areas to continue the ahi kaatanga to keeping those fires burning.

CROSS-EXAMINATION CONTINUES: ME ENRIGHT

Q. And how do you perceive having a marina there may affect those practices?

A. Well I can't imagine it for a start because I can't imagine following the protocol of karakia and trying to relate to that (inaudible 10:48:01) of that landscape and connecting through a forest of masts to Mokemoke, back to the bay, either coming or going. I can't imagine within myself apologising to those sacred energies that lie within that bay for that violation. I can't imagine in Maoridom (inaudible 10:48:36) that hurt travelling down through to my boys and carrying that. I don't know if I answered the question sorry.

CROSS-EXAMINATION: MR R BRABANT

Q. So these practices you've just told the Court about, tell the Court how the wharfs, the ferry terminal and the commercial traffic to and from it affect those practices please.

A. I came here when those wharfs were here, not the new one, the new one was built. It's like at any stage of one's life you come into awareness, you get shoulder tapped, as I have been by kaumātua to take on a mantle, until that time you are deemed as a boy. Even at the age of 40 or 50 you could still be a boy amongst your kaumātua so but once they shoulder tap you and they say you have this responsibility now, you pick up this mantle, you carry this. So with that in mind I

navigate myself with karakia to those sites but those, with that in mind with the wharf that is there now, as I said I, from that wharf I have done opening ceremonies for people walking from Matiatia around the motu. We've done ceremonies, opening ceremonies and preparation ceremonies for Sculpture on the Gulf there. It's not only as Piritahi Marae but with Ngati Paoa, with Ngati (inaudible 10:50:33) with karaka.

Q. So you've used those structures in commercial activities as a location to carry out these practices, is that what you're saying?

A. No it's not what I'm saying. I haven't used those structures, those structures have been there and I've stood on them, yes.

Q. That's what I meant.

A. As you stand in this building, you're using this structure, it doesn't, it's a structure that exists, so what can you do? I don't understand the direction. The question.

Q. And how does the presence of the moored boats affect those practices?

A. Well they don't affect those practices as, well they're there, they've been there since I've come to the island, the boats were in the bay. They don't affect my practices. As I said when I arrived those practices were from the time of my arrival. And also those moored boats in that bay, they don't actually obscure the view from Mokemoke, (inaudible 10:51:37) or back to the foreshore. They don't, in my world view, as a Māori, they don't violate the waahi tapu.

Q. You're going to need now please volume 2.

WITNESS REFERRED TO EVIDENCE OF MR RIKYS

Q. Now, in your paragraph 23 you've referred to sea burials through the loss of life and pakanga battles, historic Nga Puhi battles within the bay that even Mr Rikys sites evidence of, and you give a reference. Can you look at his rebuttal evidence which is under tab 13(a) in your folder. Have you read this evidence before?

A. Yes.

WITNESS REFERRED TO REBUTTAL EVIDENCE OF MR RIKYS

Q. Under 13(a) so tab 13 in that folder first.

A. Yes, I've got tab 13(a) yes.

- Q. And you found Mr Rikys evidence?
- A. His rebuttal against myself, yes.
- Q. So if you look at the numbering at the top, WML page number 796.
- A. Yes I have that.
- Q. He replied to your paragraph 23 didn't he, in paragraphs 31 and 32?
- A. Yes.
- Q. And he refers, including in that the opportunity to have a personal discussion with Mr Williams as he describes in paragraph 32 doesn't he?
- A. He does.

THE COURT:

- Q. Can I ask a matter of clarification about paragraph 32, just while we're here because I'm just a little confused. In the second line you talk about Weremu/ William Peters. In the fifth line you talk of Mr Williams, are they the same?
- A. It's the same, the Mr is probably a misprint.
- Q. Do you really mean Mr Peters in the fifth line not Mr Williams?
- A. Yes, Wiremu Peters.
- Q. Oh sorry this is Mr Rikys evidence I should've been asking him this, we're dancing around yes, but that's your understanding, Rikys almost certainly meant that?
- A. Yes that's the same person.

MR R BRABANT:

I think both of them are talking about the same information and a reference to the Waitangi Tribunal Hearings helps us there Sir, I think there Sir I think there is a bit of a name confusion but I think it's the same.

THE COURT: JUDGE NEWHOOK

Mr Brabant I'm going to ask you, checking with Mr Rikys please about whether in the fifth line of his paragraph 32 his reference to Mr Williams means to Williams Peters or Wiremu Peters. If you could just advise us of that when you've checked with him seeing it's Mr Rikys evidence.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. Your paragraph 23 I believe is intended to inform the Court that you consider there are kōiwi or skeletal remains lying beneath both the northern and southern foreshore. So first of all when we understand that you mean the land sea edge?
- A. (inaudible 10:57:54) side, yes I think, if you could just repeat that again?
- Q. The northern and southern foreshore.
- A. Yes.
- Q. I'm just wanting to clarify.
- A. Yes.
- Q. Are we talking about above high water mark or the inter-tidal area there?
- A. While it's a reference to above, but at the same time some of those bones because of the heights of the tides, king tides, the spring tides have taken bones and as his evidence around the island as well.
- Q. But they could be washed?
- A. Yes.
- Q. And then you say, and those of sea burials.
- A. Yes.
- Q. Which – so then are we talking about a view you have that kōiwi can be found on the seabed below low tide mark?
- A. What I'm referring to is conversations with Mr Rikys that he and I have had with his comments to me that it's obvious that there were pakanga there and that those bones were left there and also from my conversations when the big contingent of Ngāti Paoa came over to reinter some bones and there were probably 15, 18 kaumatua in the whare nui at Piritahi and they referenced that this had occurred, that's what I'm referring to.
- Q. So, my question though was first of all to understand the foreshore and then the sea burial implies burials at sea meaning burial would have taken place into the water and therefore below the low tide mark, is that what you're saying?

- A. No, sea burial in this instance from my understanding is from a pakanga where people have died and they've, the imprint of the blood and the bones has fallen into the water.
- Q. Into the sea.
- A. And rested on the seabed.
- Q. Right, thank you.
- A. Yes.
- Q. And as a result, is your position that the seabed in that location is a wahi tapu?
- A. Yes.
- Q. It is? Thank you. Can you have a look at the joint witness statement that's right there in that folder and the same one Sir, paragraph 5. Do you know the people who attended that meeting?
- A. I do.
- Q. Were you aware that there was an Environment Court Commissioner Mr Kevin Prime at that meeting with them?
- A. I wasn't aware of the meeting at all actually.
- Q. And as we've heard from the previous witness Kathryn Ngapo she was there as an observer, do you observe the signatures of the three others to the document on the following page?
- A. I do but I've never seen the signatures before but I do see them.
- Q. Okay that's fine. Can you look specifically at paragraph 7.3, have you see this document before please?
- A. No I've only heard of it today actually.
- Q. So then can I ask you to read carefully 7.3.1, 7.3.2 and 7.3.3. The first question, from your personal knowledge which includes handed down information, oral history or it could be written record, are you in a position to say whether you agree with what these people concluded in 7.3.1 that the area was a Mahinga Mataitai?
- A. I've heard of the evidence yes and I agree with it.
- Q. And you?
- A. Agree.
- Q. You agree?

- A. Yes.
- Q. Referring to 7.3.3 do you agree with those who signed this document that, "The gathering of kai moana across a wahi tapu is inappropriate and when done it often occurs due to lack of awareness." Do you agree with that?
- A. Not wholly because once again I tried to explain about Māori paradigm and karakia, you know, people who don't have that knowledge of karakia and don't contain the awareness of past, present, future do transgress a lot of tikanga and Maikara referred to that as well. Someone with that awareness and through karakia, my boys know this as well when we go to gather kai at a place, as I said the first thing I do when I arrive anywhere, karakia. I relate my whakapapa to the place and then we go and we gather food but it's an acknowledgment not just of the place, it's a beautiful day, there's beautiful trees it's acknowledgment of the whole history of the place (inaudible 11:03:38) and from there once the food is gathered, and there's all these procedures within that gathering where you return the first catch as well and acknowledge the vitality of the area. Then once before you eat the food you then have to go through more karakia and so you navigate with karakia these aspects of tapu but it doesn't make it quite, that evident in 7.3.3 but if you know this fact then you are able to do these acts. With that former knowledge, there's no transgression of tapu.
- Q. So for you personally.
- A. Yes.
- Q. Saying as you do that you understand there are sea burials in this location and you consider therefore the place is wahi tapu.
- A. Yes.
- Q. You would go to that place where shellfish may be amongst those bones and you would gather them would you?
- A. No I didn't say that.
- Q. Well I'm asking you now whether you would.
- A. No I personally wouldn't, but that's my tikanga.

QUESTIONS FROM THE COURT – NIL

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

I have something that I want to raise with you first as it is in this area of the cultural evidence. And I don't have use of the transcript in front of me so I'm working from recollection, and we've covered an awful lot of ground with now quite a large number of people giving evidence of these cultural matters. This issue that's been the subject of questioning this morning focusing in on paragraph 7.3.3 of the cultural witness statement, one of the signatories to which was Mr Rikys, I'm struggling to recall whether Mr Rikys was tested on the matters that have been spoken of by this witness and by the previous two witnesses, and I'm just wondering whether we're actually left with a gap there. I don't think you actually raised this with him did you?

MR LITTLEJOHN:

No, no I didn't, I was going on the face of the statement.

THE COURT: JUDGE NEWHOOK

Yes so what you're saying is you were unaware that this was going to be raised by Mr Brabant, such is the order of things.

MR LITTLEJOHN:

I did not understand or anticipate the answers that were going to be given to my friend's questions I think is the way to put it.

THE COURT: JUDGE NEWHOOK

And agreed statements can be helpful to a point, but we can still find (inaudible 11:07:28) other matters arise during hearing. So your recollection is as good as mine, but this issue in Mr Rikys...

Turning now to you Mr Brabant, what do you say to this question that I'm putting to you, that this issue on which you've been testing Mr Littlejohn's witnesses this morning should probably be put, in the interests of our gaining

full information from the relevant people, should be run past Mr Rikys here in the courtroom.

MR R BRABANT:

Yes Sir, well of course I put it to other cultural witnesses yesterday, every witness has had the same thing put to them. This is new today. The other cultural witnesses yesterday did not say this and answer these questions, so yes and it was not put to Mr Rikys and Sir –

THE COURT: JUDGE NEWHOOK

I'm not criticising you, don't be defensive. I'm simply postulating that in the interests of our receiving information that is as complete as is possible on this topic, which is one that appears to have been important to you to put to witnesses, it should also be run past Mr Rikys.

MR R BRABANT:

Yes, so that was just by way of introduction to the fact that I wasn't expecting the answer today because they weren't matters raised by others yesterday and I agree that –

THE COURT: JUDGE NEWHOOK

Can you just answer my question?

MR R BRABANT:

And I agree for that reason Sir that it would be appropriate for Mr Rikys to come back to deal with that specific point. And I could –

THE COURT: JUDGE NEWHOOK

Yes. Mr Littlejohn, do you have any difficulty with that?

MR LITTLEJOHN:

I have no difficulty with that. An alternate course which may be more productive, he says thinking off the top of his head –

THE COURT: JUDGE NEWHOOK

Don't suggest hot tub.

MR LITTLEJOHN:

Well no, I wouldn't suggest a hot tub, but perhaps a further meeting and a clarification and some advice to the Court from the cultural witnesses collectively on that proposition. That is another thought that came to mind. At the end of the day it is an issue that needs to be addressed in my submission, and really that's the fairest way to do it and the most effective way.

THE COURT: JUDGE NEWHOOK

Yes it is, but I don't have the ready assistance of Commissioner Prime who was the facilitator and the right facilitator of that particular session in my view. Now I think we should start, we should just see where we go with it. I hear what you say, I'm not presently in agreement but let's hear from Mr Rikys on the subject if he can be asked to return perhaps sometime today, Mr Brabant, while this is all fresh in our minds? If he's around?

MR R BRABANT:

Yes Sir, I definitely feel it does need to be a matter that's tested under oath, Sir, given the way this has emerged, and as an indicator Sir, so I can get a lead on what you'd like to be done, in the morning adjournment it's a matter I think would be best if the transcript could be extracted of each of the witnesses and that made available to Mr Rikys, and then he comes along and that's what I was thinking so that he can see what others have said, that that would speed the process up as well.

THE COURT: JUDGE NEWHOOK

Yes, probably would.

MR R BRABANT:

So I know that we can get transcript from yesterday I imagine, but today, I'm just thinking of my co-counsel back in town, getting access to it and then making it available to Mr Rikys. And I just thought it might be a good idea.

THE COURT: JUDGE NEWHOOK

All right, we'll take the morning adjournment in a moment –

MR ENRIGHT:

Sir, may I be heard also just before the adjournment?

THE COURT: JUDGE NEWHOOK

Yes, yes, I'll hear from you as well.

MR ENRIGHT:

So I submit, Sir, that it would be sensible just two things, Sir, first that although the joint witness statement was done under the auspices of the Environment Court, two of the three participants were not experts so it's probably not quite the same (inaudible 11:12:02) one would attach to it that might normally apply in terms of the words used. But also the witness yesterday, Mr Wilson, was questioned about it and he did make reference to the proposition of karakia being a method to negotiate the wāhi tapu. So for those reasons Sir I think I'd support the idea of Mr Rikys having that opportunity to respond, but Sir I would agree also it would help to have the transcripts including from yesterday before that happened, and today. Thank you.

**THE COURT: JUDGE NEWHOOK ADDRESSES THE REGISTRAR –
TRANSCRIPTS****THE COURT: JUDGE NEWHOOK**

I would quite like to deal with this matter today while things are fresh in our minds.

MR R BRABANT:

Yes Sir, and the other thing Mr Guthrie I know would help me to try and contact Mr Rikys and find out if he's available, that's another important thing I'll need to do as well. We can try and do that straight away.

THE COURT: JUDGE NEWHOOK

Yes that's right, yes, you can do that in the break as well. Now Mr Littlejohn, has is that perhaps now an indication in all of our minds that we aren't actually quite completed or concluded on the cultural issues and we might perhaps leave the karakia if one was in prospect until we've actually dealt with those matters.

MR LITTLEJOHN:

I'm looking to the expert on tikanga here Sir.

THE COURT: JUDGE NEWHOOK

Yes.

MR RANGIUAIA ADDRESSES THE COURT – WAIATA

THE COURT: JUDGE NEWHOOK ADDRESSES MR RANGIUAIA

WAIATA PERFORMED

COURT ADJOURNS: 11.19 AM

COURT RESUMES: 11.42 AM

**THE COURT: JUDGE NEWHOOK ADDRESSES THE COURT –
TRANSCRIPT**

THE COURT: JUDGE NEWHOOK

What's his availability do you think, have you been able to check that?

MR R BRABANT:

I have been, I have been busy on the phone, Sir. So I spoke to Mr Rikys, explained the Court would like to hear from him again and what the issue is about. In terms of availability Sir, he has a meeting – you may remember he said something about a tourism project that he's been working on I think during his evidence, but he's organised a meeting with a whole lot of people this afternoon. And I can go back to him and tell him that he has to undo the whole thing, but it obviously will be difficult for that to happen.

THE COURT: JUDGE NEWHOOK

Can he come first thing tomorrow morning?

MR R BRABANT:

Yes so that's right, I was just going to –

THE COURT: JUDGE NEWHOOK

It'll be reasonably fresh in our minds then.

MR R BRABANT:

I was just going to say that Sir. So I said, "Can you come instead at 9.30 in the morning," and the answer is yes, tomorrow morning first thing is better. If he is required this afternoon I would need to phone him immediately and ask him to undo his whole meeting arrangement.

THE COURT: JUDGE NEWHOOK

All right well and then he can look at the material and the transcript overnight and be ready to help the Court in the morning.

MR R BRABANT:

Yes and I've spoken to my co-counsel and explained the situation with the transcript, and he will access that and extract from it the pages which have questions from me to all the cultural witnesses starting yesterday (inaudible 11:44:39) Mr Littlejohn, my friend Mr Enright, and he will send that to Mr Rikys, so I have organised all that. And the next thing I've done Sir, I've also organised for the statement of issues to be completed. I've conveyed the changes that we discussed this morning. In the meantime Sir Mr Allan had suggested another change to Jeremy this morning, but we've dealt with that I hope. And so he's going to correct that now and email it through to Janice and to everyone involved, the lawyers involved, so I'm hoping Sir that within an hour or so you'll get a version that's finished.

THE COURT: JUDGE NEWHOOK

And Janice will arrange for it to go up on the website as well so that other people can be looking at it too.

MR R BRABANT:

So that's what I can report from my morning break, Sir.

THE COURT: JUDGE NEWHOOK

Great, okay well I'm pleased you were busy.

MR LITTLEJOHN ADDRESSES THE COURT – HOUSEKEEPING

MR LITTLEJOHN CALLS**MICHAEL STRUAN KNUCKEY (SWORN)****WITNESS REFERRED TO WITNESS STATEMENT**

Q. Is your full name Michael Knuckey?

A. Michael Struan Knuckey?

Q. Struan?

A. Yes. S-T-R-U-A-N.

Q. Thank you for clarifying that, and do you confirm you've prepared a brief of written evidence for this case dated the 28th of July 2014?

A. Yes.

Q. And I see that's open in front of you there on that interesting-looking device you've got there. Do you confirm that the contents of that brief are true and correct to the best of your knowledge?

A. Yes.

1150

CROSS-EXAMINATION: MR R BRABANT

Q. Morning Mr Knuckey, so just looking at your evidence, so you're taking the boat you refer to in paragraph 3 into the wharf area without a motor?

A. That's right.

Q. There's quite a lot of ferry and other traffic in there isn't there?

A. Yes.

Q. Do you go in at times when it's very busy and congested?

A. Yes, anytime I need to.

Q. And you never got into any sort of difficulty through not having a motor to be able to get out of the way?

A. No.

Q. And you've manoeuvred fine into the wharf?

A. Yes.

Q. So you wouldn't be using the refuelling facility obviously but do you go and get water sometimes?

A. There's water, yes.

Q. Yes. are you familiar with the plans of the marina?

- A. Vaguely, yes.
- Q. Okay, let's be a little bit more specific then. That one there, that's fine. If you turn up 12, figure 12. You look at the bottom, there's a little box in the bottom of each page and it's sequential and it says figure 1 and on it goes until you get to 12.
- A. Yes.
- Q. I imagine sometimes you've come in there and you're wanting to go into that pontoon on the wharf to get water and there might be some boats in there already picking up fuel or water or people and you have to wait for them? Does that happen?
- A. I could also use the wharf. I don't see the –
- Q. If you just put the figure down for a second.
- A. – old map.
- Q. I'm going to ask you a specific question about getting in there once this is built but I just wanted to ask you first of all, you could come around in your mullet boat without a motor, so you've got some sort of sail up.
- A. Yes.
- Q. To produce sail maybe, obviously and you're wanting to go into that inner pontoon to get water or to pick someone up. Now as you approach it there may be people using the pontoon either to get fuel or water or even to pick people up and you've got to wait for them. Has that happened to you before?
- A. I think I have had to wait, yes. I can also tie it to the wharf, the old wharf.
- Q. Yes. So if you look at the design there, you see the southern access pier?
- A. Yes.
- Q. And evidence was given earlier that I imagine you mightn't have heard that short-term tie ups can be made available on that access pier by the marina management to actually help people in smaller boats, not being large commercial ones but boats like yours as somewhere to wait until they can go into the wharf. That would be helpful sometimes for you wouldn't it?

- A. Yes but if sailing in.
- Q. Mhm.
- A. I'm thinking if it was a – it'd be fairly tight say in a south-westerly to south-east, you've got to sail up to the down side of the wharf –
- Q. I am admiring of your sailing skills there's no question about it.
- A. That would pose a 37 meters of their –
- Q. In envisaging a mullet boat with (inaudible 11:54:19). Maybe I saw it down at the hardstand yesterday but you're undertaking a reasonably skilled and tight manoeuvring there aren't you?
- A. Yes.
- Q. So at the moment there's moored boats that you have to deal with if you actually fall away to (inaudible 11:54:40) in a southerly and I'm suggesting that that pier provides it a haven if you like if you have to stop to be able to get across there because someone else is in your way.
- A. No I see it as an obstruction. It's not like a moored boat because you can go around it.
- Q. Are you aware that there's a possibility of another ferry service coming on?
- A. Yes.
- Q. Well it's temporarily delayed.
- A. Yes.
- Q. So there could be even more ferries coming in and out.
- A. That's right.
- Q. Have you considered that you might need to get an outboard motor?
- A. No.
- Q. No. It's sort of against your principles?
- A. Yes, because it's a boat that was built not to have a motor.
- Q. Yes but I don't want to start giving evidence from the (inaudible 11:55:44) I'm not going to but there are boats that traditionally have not had motors and people have resorted to engines, either a bracket on the back with an outboard motor like a pied piper for instance or another way, because things become too difficult to do things the old traditional

way, that's why I raised the question with you, it gets busier and busier there, you may have to look at some way in which you don't get yourself into trouble sailing in, is that not something you've thought of?

A. No.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

Q. The boat that you have would be reasonably rare would it?

A. I suppose in a general (inaudible 11:56:37) boating numbers out there is probably a little (inaudible 11:56:42) yes, it's a classic.

Q. I've sailed on one actually. Would there be many other people trying to do the manoeuvre that you do?

A. A few yes, would be good to see more it's a very good skill to have for staying out of trouble, managing under sail and engines do fail and they smell, they smell bad. Some people get seasick on the smell of petrol or diesel.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. I'm tempted to ask you a couple more questions about your boat Mr Knuckey. It's got a vertical transom?

A. Yes.

Q. And it's got a transom hung rudder?

A. Yes.

Q. And no skeg in front of the rudder?

A. It's got a digwood on the bottom.

Q. It's got a digwood on the bottom but a rudder protrudes below the digwood?

A. Yes.

Q. By about how much? Half a meter?

A. Might even be a – yes, 300?

Q. Yes, and then a rudder of such configuration I'm assuming also myself having sailed on a mullet boat that it's quite manoeuvrable?

A. Yes.

- Q. You can spin it in its own length in lighter airs?
- A. Yes, with the plate down.
- Q. With the plate down.
- A. Yes.
- Q. That was my next question. It's got a drop centreboard hasn't it?
- A. Centreboard.
- Q. Made of?
- A. Steel.
- Q. Steel, yes. So it can really spin around those two elements?
- A. Yes.
- Q. So just looking at this figure 12 again, you've got that open still?
- A. Yes.
- Q. So if you're coming into the bay on a south-westerly, you've got the wind at stern of you. You'd sure to say wouldn't you probably drop the main?
- A. I'd leave the main up.
- Q. Leave the main, you don't do the final manoeuvring under (inaudible 11:58:55)?
- A. No because it won't go around into the wind.
- Q. Yes.
- A. You need to have the weather hound to be able to –
- Q. I understand.
- A. Go through the eye of the wind.
- Q. Yes I understand. If you were coming into this configuration here with that – if the marina was there and it had that southern access pier with fenders along it, would you come in and then turn to port and come up into the wind alongside the southern access pier?
- A. No, I will like to try that in south-wester.
- Q. How would you do that?
- A. Well –
- Q. Because that will bring you almost up into the wind for your final stop wouldn't it? That's how I'd do it but I'm interested to know how you think you might do it.
- A. In a south-wester –

- Q. Because you know your boat and don't.
- A. Yes, in a south-wester, it's a slightly (inaudible 12:00:00).
- Q. Yes.
- A. And one has to be very careful with a lee shore. So I'd rather come into the old wharf and approach it from, so put have it to windward. So the southern access pier would be very difficult in a sou-wester. Or any time that's on the lee.
- Q. Yes. So if that marina were there and if you were still prepared to come into that old port, this boat your apparent reluctance, you would come down close to the southern access pier would you and spin and come up alongside the pontoon?
- A. Yes, if it's fairly fresh one would need to, it's a good idea to have a bit of room.
- Q. And have you used the pontoon on the other side of the old wharf?
- A. I've used it yes on the, when the wind has been sort of north-easterly, northerly.
- Q. So that does present another option in some conditions doesn't it?
- A. Yes, west-northerly's.

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

MR LITTLEJOHN CALLS**SUE FITCHETT (AFFIRMED)**

Q. Could you confirm that your full name is Susan Mary Fitchett.

A. I do.

Q. And you confirm that you've prepared a written brief of evidence for these proceedings dated the 27th of July 2014?

A. I do.

Q. Are there any corrections that you might need to make to the text since you prepared your evidence?

A. I'd like to draw the Court's attention to the fact that actual name of the Forest and Bird branch on Waiheke Island is Hauraki Islands branch of Forest and Bird.

Q. So you refer to that in your –

A. That's in, part of who I am in number 4, in the introduction.

Q. So that should read, "The committee of the Hauraki Gulf Islands Forest and Bird."

A. Hauraki Gulf Islands branch of Forest and Bird.

Q. With that clarification do you confirm that the contents of your evidence is true and correct to the best of your knowledge?

A. I do, I'd like to refer to, in my evidence to the clause 21(a) that I'd like to draw the attention of the Court that my understanding is that the status of Little Blue Penguins is, because of declining populations, my understanding is it's threatened. In my clause I said that it was becoming a threatened species.

Q. And what has caused you to make that change Ms Fitchett?

A. My understanding from scientific experts in the field.

1205

CROSS-EXAMINATION: MR R BRABANT

Q. Can you tell me while we're just trying to find a photograph – I can't find it Sir, I'll see if I can do it this way – your evidence includes some aerial photographs identifying locations of current penguin activity and I'm

talking now about photos at the end of your evidence, do you have them there?

A. I don't have them, the copies were with my original affidavit.

Q. We can find them in the evidence that's up there, so volume 4 under tab 8, and this time it is under (inaudible 12:06:15).

WITNESS REFERRED TO VOLUME 4, TAB 8

Q. So these are your photographs, the ones you've had organised for you?

A. I had photos organised for me so I could indicate.

Q. Yes that's fine, so the first one shows some documented nesting sites.

A. That's correct.

Q. Are those all of the documented nesting sites that you've located?

A. Those are the ones that we located.

Q. Yes, and then on the next page and across towards the tidal grid, in fact you can see a boat sitting on the tidal grid and the woolshed, there's another dot there indicating seasonal visits?

A. That's correct.

Q. And can you tell us during what period of the year if it's seasonal?

A. Seasonal visits would be unclear whether those would be during the breeding season. Of course penguin do come ashore during times when they're mating and when they're moulting. So it would be unclear, it could be between late winter to late summer.

Q. So then the last one, we've got the series of dots that runs right along for the red ones which include those four identified nesting sites, and then extend right along underneath the wharf and running right out tapping right out to the top of the boat ramp, isn't it?

A. That's correct, they do.

Q. And you spent a bit of time looking at this and learning about them, and so what appears to be the case is that this group, I'm just thinking that we call them a "flock".

A. A colony.

Q. A colony, that's right. This colony has proved to be very adaptable to its environment, hasn't it?

- A. It has been, this colony has been frequenting the Matiatia harbour for many decades.
- Q. Yes but what I'm talking about I guess is that they continued to carry on coming here underneath what Mr Monin suggested was the second busiest ferry terminal in the country. So we've got an environment that's got very busy with ferries coming and going and lots of people as well.
- A. I agree that the penguin have continued to come to Matiatia. I do believe that they are species that do adapt from scientific evidence, but they also prefer the traditional burrows and they have been coming to this seawall for many decades.
- Q. Yes, well I'll get to that in a minute. We've got large catamaran ferries coming in and out of that bay, now that appears to be increased with the new service, and the penguins are managing amongst the ferry traffic, that's clear isn't it?
- A. They manage among the ferry traffic as I have outlined in my affidavit. Penguins are also susceptible to boat strike, so it's the number of boats and of course with the ferry there are only so many ferries per day. But with increased recreational boating coming into the bay with a marina, the risk of boat strike would increase exponentially in my opinion.
- Q. But there's a lot of boat activity at the moment regardless of the marina though, isn't there? Particularly in the summer there's boats coming and going, we've heard about them coming into the wharf? It's a very busy place?
- A. It is quite a busy place but my understanding in my opinion is that with the marina with an increased number of boating, that the boat strike mortality would increase.
- Q. Now, is it your understanding that their main comings and goings would be at nighttime?
- A. Penguins tend to raft in to the shore, that's a term that's used, and they come in around about dusk, between five – well, depends what time dusk is in summer and winter. So they raft in in dusk and they leave before – they don't necessarily are there during the day to be seen by people.

- Q. So they're going in to that area right under the ferry terminal and down past it to the boat ramp at the time of the afternoon or evening commuter peak of ferry traffic, would that be right?
- A. When I have been observing the penguins coming in, I noticed that they wait until the ferries actually leave.
- Q. They seem to (inaudible 12:11:50).

THE COURT: JUDGE NEWHOOK

They're quite clever little things in some ways aren't they?

WITNESS:

They're very clever little animals.

MR R BRABANT:

I think even I could work that out as a good idea.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. Okay now have you seen the Council have produced some conditions of consent and it was in the section 87(f) report, and the specific provision if the proposal went ahead for what were called "nesting boxes" which I misunderstood, but I understand the construction of the rock breakwaters would have suitable sized premises or apertures in them to create places for them to nest. You're aware of those conditions?
- A. I'm aware of the conditions.
- Q. And actually that will replicate exactly what they're using at the moment, because all of their nesting activity under there is in the same sort of man-made rock wall, isn't it?
- A. I understand that this rock crevices, they certainly eventually learn to use them, but I just wanted to draw the attention of the Court to my affidavit where I mention that the North Island Little Blue Penguin isn't a great user of wall structures very easily. They don't use their nesting boxes straight away and it takes some years for them to adapt to new nesting sites. And they're not easily translocatable, and in fact during

the building of the new wharf, rather than move to some other crevice, where the rock wall was disturbed the penguins came and stood on the wall (inaudible 12:13:43). So the concern for me is because the North Island penguin doesn't adapt very easily to new human constructions for nesting sites, that it'll be some time, maybe decades, before they start using any new structure.

Q. My question actually was a bit different so I'll start again.

A. Sorry, sorry.

Q. It's all right, it's not a problem. My understanding from the photographs in the evidence is that what is developed here with this colony is that all of the nesting sites and where they rest up at night are all along a created seawall, in other words the same construction that's under there as will be in the breakwaters. They've adapted to that artificially-created environment haven't they?

A. They have adapted to that environment but that's been over decades.

Q. Sure. And so what's proposed in the Council conditions, and I'll get to the applicant's proposal about that in a minute, is that when the new breakwaters are built, which would be the same thing with the jumbly rock face, can some apertures be especially built, that will be effectively like what they're using at the moment, do you understand that to be the case?

A. I understand that there will be those crevices in the rock wall.

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Q. And they would be the same effectively as what they're using under the water at the moment because there will be an artificial breakwater like what's there.

A. I understand that it will have a similar characteristic.

Q. Yes.

A. And can I add to that?

Q. Yes sure, answer.

A. But my concern is that they will not adapt fast enough being a threatened species in that a very important colony, our only colony on

Waiheke of a live population of penguins will be impacted upon in a adverse way.

Q. Now, the Council condition that you've read was proposing that his be undertaken on the breakwater. The applicant is going to propose in their condition that those words be amended to include the reclamation as well so that in consultation with Royal Forest and Bird and the Department, all of the constructed rock breakwaters that would be in the marina and therefore including the reclamation can be used for that purpose. Do you see that as an improvement over the Council condition if we include the reclamation as an option?

A. Are you referring to the carpark reclamation?

Q. Yes of course. You know the same rock face essentially as you find under the wharf now will be created around the reclamation so the applicant proposes to add that in as a location for DOC and Royal Forest and Bird to look at. Does that seem an improvement over the Council condition?

A. I have to say I have great concern, the carpark reclamation because of the closeness of the reclamation to the first of the burrows although I don't have photographic evidence, I have seen penguins actually write on the footprint of the reclamation area so I do have, I can't support personally a reclamation or a carpark being so close to penguin activity.

Q. I'll just put the question again. I understand your position but we're talking about if the reclamation is constructed with a breakwater, the Council condition had proposed nesting boxes out on the breakwater; the applicant suggests it's going to propose that the condition be amended and so they could be put in the breakwater a well. So what I'm asking you to do is not accept that there will be but if there is, do you think it's improvement that there in an option of putting those in the reclamation breakwater as well as the other breakwater's further out?

A. Reclamation of any crevices and potential nesting areas would be an improvement to any condition. I remain, in due respect to the Court, that this would take some time for penguins to adapt but certainly it would be improvement on existing conditions.

- Q. Now my last question I think and looking again at the photograph which is numbered at the top DM95 which shows all of the red dots from where they start to the left-hand side of the page and right through to the end of the boat ramp, that one there.
- A. Yes.
- Q. The development of the marina including the reclamation and then the creation of nesting boxes would be additional to all of the penguin nesting boxes and activity that you have shown won't it? If new ones are put in they will be additional to what's already there.
- A. They will be additional to what is there.
- Q. They won't be replacing anything that you've shown on your – with your red dots will they?
- A. They will not be replacing what is the red dots.
- Q. Yes, where the penguin activity is.
- A. Where the penguin activity is but they may – the activity of the marina may impact on the colony.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- Q. Are you a boatie?
- A. I have sailed, I use to crew in a Devonport Yacht Club boat.
- Q. Yes, so yachts as opposed to powerboats?
- A. A yacht.
- Q. Yes.
- A. A yacht, a (inaudible 12:20:22).
- Q. Yes. So you'd know something about the five knots speed restriction rule coming into close quarters with the coast or near moored boats and in particular in the Matiatia case coming into the (inaudible 12:20:41).
- A. I'm aware of the five knot rule.
- Q. And so that's without the ferry's do as they're coming through the Matiatia Heads and that is what all boaties are supposed to do when

they're coming in if they're on a vessel that's capable of going faster than five knots, and you might agree almost invariably do in Matiatia, you don't keep charging around Matiatia very much?

A. Sorry I didn't catch that.

Q. You don't see many boats charging around Matiatia at high speed do you? It's pretty orderly most of the time?

A. Pretty orderly most of the time.

Q. Yes. Now I'm just thinking you see about the boat strike issue. As somebody myself who's spent my life on yachts and powerboats including quite fast powerboats, my experience of the little blue penguin which is – quite a lot, is that they seem very adept ducking away from even quite a fast moving boat. Do you agree with that?

A. They are adept. The evidence that I have acquired from people who are dealing with injured penguins suggests that the boat strike is higher than we realise and it may be that in the dusk situation or the dawn situation as with other creatures that, the ability to do the manoeuvring might not be as good. I'm concerned that even slow moving marina craft at dusk or dawn might be a problem for the rafting penguins coming ashore.

Q. You see my inclination from my experience with boating on the Hauraki Gulf and if you look at the penguins is that they seem, they have always seemed to me to be sufficiently adept at moving away from a boat particularly in a slower moving boat but even a fast one that I struggle at the moment to believe that there would be a problem from boat strike with boats moving at the speed they usually do at Matiatia which is about five knots. Have you seen any dead penguins in Matiatia that would appear to have suffered boat strike?

A. Personally I haven't seen any dead penguins in Matiatia.

Q. And you're there quite a lot aren't you? Particularly in going to find penguins and care for them.

A. I use to commute too.

Q. It appears. Just another question for you about Matiatia. The Jet Raider.

A. The dreaded Jet Raider.

Q. Yes the dreaded Jet Raider but (inaudible 12:24:01) might be a thing of the past but we've got it still tends to tie up some if the time and probably depending pattern with stern facing the shore.

A. Correct.

Q. And leave its Jet apparatus going creating an enormous wash.

A. Mmm.

Q. To your knowledge is that troublesome to the penguins? Because it's facing right into many of the red dots on a third of your collections of aerial photographs with red dots on them.

A. I actually can't answer that question. Certainly even with the Jet Raider coming in and out, penguins have continue to frequent and to come into the area –

Q. That's my impressions too.

A. – as I said earlier, my observations suggest they wait until the ferry's go or they might dawdle maybe.

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Q. Yes.

A. That beyond the wharfing area before rafting in.

Q. Yes. And I heard that observation and I was very interested in that and it just occurs to me that they might do the same with recreational craft coming in at five knots.

A. They might.

Q. Anyway, one more question, do you know anything of the operations for the fostering of bird life on Tiritiri Matangi Island?

A. I'm aware of some of that. I'm aware that they do have penguin boxes there.

Q. Have you been there and seen those?

A. Yes I have.

Q. My understanding from second-hand knowledge, I have to say in relation to the penguins there, is that the penguins actually came to those nesting boxes quite shortly after they were established on the shoreline. Do you have any knowledge of that?

A. My understanding is it took longer than it would a South Island Penguin, for some reason it's the difference between the North Island Penguin and the South Island Penguin.

Q. Let's focus on the North Island one.

A. So longer than it would for a South Island Penguin to make use of those nesting boxes.

Q. What's your understanding of how long it took after they were established?

A. I can't give you an exact time.

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

MR LITTLEJOHN CALLS**CHRISTINE ANNE GISBY (AFFIRMED)**

Q. Is your full name Christine Gisby?

A. Christine Anne Gisby. With an E.

Q. Have you prepared a written brief of evidence in these proceedings dated the 27th of July 2014?

A. Yes.

Q. Are there any corrections you wish to make to the text that have occurred since you prepared the brief of evidence?

A. Yes.

Q. Could I please ask you by reference to paragraph numbers in the brief to take the Court to those changes so that they can make them please.

A. Paragraph 14, where it says Auckland Transport enforced the rules, I'd like to have that changed, where it says , "Transport changed the rules," I'd like to change that "enforced the rules" and I can explain that if you like. The next one is paragraph 15(d) where it says, "Holds up all traffic," I'd like it to be a full stop there and delete because the road into Matiatia is only one lane wide. Paragraph 16, the second to last line, "The situation is now typical for a Saturday or Sunday," I'd like the words "is now typical" striked and put "occurs regularly".

Q. So the last sentence of 16, is that right?

A. Yes.

Q. Sorry, can you –

A. Where it says, "The situation is now typical." "is now typical" take out and put in "occurs regularly". I got a bit carried away there. Paragraph 18(d).

Q. Paragraph 18?

A. Paragraph 18(d) the third to last line at the bottom of the page where it says, "Ignores the efforts by the Waiheke Local Board," there needs to be added in "ATED Auckland Tourism". It's a combination between the local board and Auckland Tourism that are doing that work to extend the tourist season.

- Q. So we could put “/ATED”.
- A. Yeah, well they’re working together.
- Q. They work together?
- A. Yeah.
- Q. Those are the only corrections?
- A. Yes.
- Q. With those corrections made do you confirm that the content of the evidence is true and correct to the best of your knowledge?
- A. Yes.
- Q. Now there are a couple of supplementary matters I wanted to just put to you Christine, I asked the witness whether she wanted a Mrs or a Ms and she said neither. Paragraph 14, when you were correcting or changing the word from “changed” to “enforced” could you please explain why you made that change?
- A. Yes, in my eight or nine years I’ve been down in Matiatia within the keyhole the signage that Auckland Transport have there is taxis, buses, taxi shuttles and registered at the time, I was registered as a shuttle/private hire and so when, about three years ago, well no this last season the, because of the congestion within the keyhole Auckland Transport have enforced the rule that there’s actually no signage for private hire. So any vehicle that is under eight seats is now categorised as private hire and therefore, and as there’s no signage therefore is not allowed in the keyhole and this affects four companies down there. So it wasn’t that it was changed, it was never, it was never legal but we all were there for like eight or nine years from my experience.
- Q. In paragraph 11 of your evidence you discuss the number of tour buses, commuter buses and tour vans that are using space at Matiatia and I understand that that was at the date you prepared your evidence. Have there been any developments since then that you might like to tell the Court about?
- A. Yes, there’s, since I wrote this evidence there is one more tour company started up that has two times 12 seater vans. There are three new

shuttles (which are eight seaters and above) and there are two new taxis added to one of the taxi companies.

Q. Paragraph 15(d) where you made a change, could I just take you there?

A. Yes.

Q. And you were talking there about what happens at Matiatia when the ferry arrives during the extended tourist season, and you talk about a line up of cars waiting to pull into the drop-off zone. How does that line up affect your operations as a tour van driver?

A. It's a continual thing happens pretty much every time you can say from the three, four or quarter to four, quarter to five, 5 o'clock ferries, the whole afternoon period, when you come down, you come around down Ocean Road and you come around that last bend and in front of you is the drop-off zone and the first one is for invalid parking and then there are three to four spaces for vehicles to drop off their passengers and as you come around that last bend, all the time there will be about two or three cars parked on the broken yellow lines, illegally parked because there's actually, the drop-off zone is full and as you come down that road to drop your people off you've got two options, you can either, you can't really go anywhere because you can't back up, you can't go left, you can't go right, so what people do is they will, just go up a bit and double park. And then if you coming down you've either got to wait dropping everything up, you've got traffic coming up the other side leaving the area and you've got buses coming down. So it becomes a grid lock and that is constant. That's constant all through the summer season.

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CROSS-EXAMINATION: MR R BRABANT

Q. For the purpose of these questions I think it might be useful if we had an official diagram of this area, the keyhole area and the area leading up to it in front of us, so attached to the Auckland Transport evidence which is in volume 3 under tab 2.

WITNESS REFERRED TO VOLUME 3

Q. So this is the evidence of Mr Karndacharuk. So you'd have that, Sir, in your material. I've got an A3 here. Have you looked at that before?

A. I haven't seen this before, no.

THE COURT: JUDGE NEWHOOK

So you're looking, are you, at drawing DPS2011/464?

MR R BRABANT:

Exactly Sir, thank you, for the record I am.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Dated the 21st of October 2011. Now I guess if you haven't looked at it before it's proper for me to start by asking you as to whether having looked at it you think that what's on there is accurate. Is that difficult to do?

A. No, it looks very accurate. I mean I can't say from the – I'm assuming the measurage and everything is correct but, yeah, I am familiar with the area of course so.

Q. Yes, and that helpfully indicates to what area (inaudible 12:37:35) from the raised part of the road at the end of the first roundabout area, which has got the squiggly line on it, and we move into what I think people call the keyhole, it actually tells us what areas are taken up for what kind of parking, doesn't it?

A. Yes.

Q. And you're happy with the accuracy of that?

A. Yes although what happens in reality and practice down there is that the signage, because there's far more people to shuttles, taxis, everybody works in together. So even though it might say this is a bus stop, in particularly if you're going into the keyhole on the right-hand side at the back right-hand curve even though that might be a bus stop, if there's a lot of taxis down there they will take up those spaces, so it does move around. But I agree that this is probably what the signage says.

- Q. And this isn't intended to be (inaudible 12:38:54) or critical but in practical terms if people are coming in in what you might call "private" vehicles that provide transport rather than a public bus, and the shuttle or taxi spaces are all used up and some bus stop space is free, that'll be used because that way you can get to the kerb and do your business.
- A. By a private vehicle?
- Q. Yes? Is that what you meant?
- A. Well if you want to risk the wrath of Parking Paul you can do that, but that's very, I mean –
- Q. I thought that's what you were saying.
- A. No, I'm saying that the taxis and shuttles and designated vehicles that are allowed in that keyhole, they have their designated signage areas. However because we're all working together, you might find a taxi standing in a shuttle stand and vice versa, that's what I mean.
- Q. And the person from Auckland Transport is happy enough for that give and take?
- A. Are you meaning the parking wardens?
- Q. Yes, I think that you referred to someone by another name –
- A. Parking Paul.
- Q. Yes, Parking Paul.
- A. There's three parking wardens and we all work in together.
- Q. So that's what I was asking, so the public bus stop area are sacrosanct as far as Parking Paul is concerned, but –
- A. They're way bigger than us as well so you don't, yeah.
- Q. Yes, okay. Now can I ask in your evidence you've referred – I can't find it but you'll know I know somewhere in here you made a reference to an extended tourist season.
- A. Yes.
- Q. And you've given some evidence about it. Let's be up-to-date and talk about this year, can you give the Court an indication of what you think the tourist season in terms of it being extended, what would you say when it starts?

- A. Well officially the tourist season starts at Labour Weekend, the end of October and runs through to the end of April, that's sort of the official line. From October right through November – well there's two things, from October right through right up until Christmas it gets really really busy from now on with Christmas businesses from Auckland doing their Christmas shout and staff party on the island, and they bring – so that will be like just full on. What's extended before October is what I was mentioning before in the local board and (inaudible 12:42:14) working on is to tap into conferences and for example the under 20 soccer world cup that was on in Auckland, tapping into those events and bringing more and more people over for a day out on Waiheke. The Waiheke Wine Association is very proactive in that and they have set up another harvest festival that comes just outside that area as well, so that very busy season. So there's more things going on that are trying to extend their winter hours because that is the hard time on the island where everything's being packed into that summer season. So the emphasis and particularly these last few months there's been various gatherings that are organised by Auckland Tourism to extend the period into the winter months.
- Q. All right well then so after that explanation here we are midway through October, would you be able to tell a Court that this is now in what you would call the tourist season, the extended tourist season, we're in that now?
- A. Yes, it depends on what operation you're doing. I have a private and small group tours, so for the busses that take the Christmas parties and the hen's dos and the wedding season kicks off soon as well, that's not me, so I just do private and small group. But for certain tour operators they will be fully into their – or starting to get into now their extended season. But is not – every year it changes so you can say what's happened the year before and you can look back on your data and it changes every year, it's getting busier and busier.

THE COURT: JUDGE NEWHOOK ADDRESSES WITNESS – SHORTER ANSWERS

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. My understanding you see is that quite as you might expect the evidence as you describe it in 8(a) is daily observations of congestion, parking and traffic safety, so I understand and your evidence seems to read that you're not just referring to your own business but what you observed down there taking place generally as a result of being down there a lot, that would be fair wouldn't it?

A. Yes.

Q. So getting back to my question then, in terms of what I understood you were telling the Court about tourism activity, right now, this week, do you feel that there is tourist activity now taking place?

A. Yes.

1245

Q. And would those people, would they come up, would they normally – what ferries would they leave Waiheke on normally?

A. Would they leave Waiheke on normally?

Q. Mmm.

A. The Fullers.

Q. Well actually until they get the engine back in, that's the only way at the moment but that wasn't the question, maybe I didn't do it precisely enough. I was meaning there's schedule right of when ferry's go.

A. Yes.

Q. So if people are over here for some of the events you're talking about, what ferry would they leave on meaning what time ferry?

A. Three, four, or quarter to five or five o'clock usually.

Q. Yes, right. And what ferry would they come over in the morning?

A. Usually either the nine, ten or eleven o'clock.

Q. And outside of those times at this time of the year, would we expect to see congestion and parking and traffic safety problems at Matiatia?

A. At this time of the year?

- Q. The time I'm talking about.
- A. The time of day? Yes, depending on – well this time of the year depends on the weather but yes, those times, those timings in the morning and afternoon.
- Q. At the moment and I asked you about what ferries the tourists would take and you've told us both times morning and afternoon; and then I've referred to congestion parking and traffic safety at Matiatia which is what your evidence you say focuses on and I'm asking, would you expect to see any congestion or parking and traffic safety issues outside those tourist ferry arrivals or departures that you told me about just a minute ago.
- A. I'm not there during the middle of the day, I'm not there for the 12, one, two o'clock ferries so I don't know.
- Q. Well it isn't the only space though is it because you started your arrivals from nine I think it was.
- A. Yes.
- Q. So before nine or after the five o'clock ferry, at a time like this that we've just been discussing would you expect to observe congestion parking or traffic safety issues?
- A. I can only speak for the times that I'm down there and certainly dropping off in the afternoon at this time of year on those ferry times there is congestion at the drop off zone. Not so much of the pickup times.
- Q. After five o'clock?
- A. I'm not down there usually after five o'clock?
- Q. And you don't have any other knowledge of being down there otherwise?
- A. I was a taxi driver about 10 years ago so I was down there a lot during that time but that was maybe nine or 10 years ago so I don't have any knowledge of how that's different now.
- Q. And in the morning the 8.15 ferry over is the what ferry going back? The other way, be the nine o'clock or –
- A. I think it's the nine o'clock, yes.

- Q. Would you expect to observe any congestion or parking or traffic safety issues at around that time?
- A. Going back from – at nine o'clock?
- Q. No, around the ferry terminal.
- A. Around the ferry terminal.
- Q. At around the time that ferry comes in and the nine o'clock goes.
- A. Yes it depends on what's going on there can be different things happening but not so much congestion at this time of the year during that time of the day.
- Q. Now you've mentioned that in addition to your evidence this morning that there can be a problem with people arriving to use the two minute drop off – you can pick up the as well as drop off?
- A. No the two minute is the pickup that's on the opposite side of the drop off zone, so yes, it's just a pick up zone.
- Q. So coming in when you're driving in to get to the keyhole, the only people who are allowed to stop in that two minute are dropping off?
- A. No they're picking up.
- Q. They're picking and the opposite on the other side of the road.
- A. Dropping off on the other side of the road. Well that's the official one but of course people, you know, because they've got nowhere to go they tend to you know it happens a lot, the people dropping off on the pickup side as well because there's nowhere else to go.
- Q. Is that policed at all by a parking (inaudible 12:49:51) or is that outside the (inaudible 12:49:53).
- A. Yes, there – no, no that's exactly what he's there to do.
- Q. And is this policing effective in your experience? Don't be unkind to the man I'm just asking.
- A. It's very difficult because of the congestion there, you'll have, if someone is using for example what happens all the time very frequently, the pickup, driving in , drop off zone's there, you turn around, the pickup zone is there, there's parks there. What will happen is someone will come down trying to drop off there's no room, they can't go anywhere except turn around, they stop then behind the cars that are picking up

effectually blocking off that area. The parking wardens are there to actually keep, to go over and warn that person, "You've got to go," and to try and keep that flow moving but that is a very difficult job at the height of the season.

Q. The question I put to you, is his policing of this effective and I'm not telling you what to say but you could say "yes" or you could say "no" or "sometimes" and can I ask the question again, it was just that and is it policed and you said, "Yes," and then I asked is the policing in your observation effective? Can you answer that?

A. I can answer that, I can't answer what exactly what you would like me to answer. I could say yes it's effective but it is with difficulty, that they have a difficult job.

Q. And so there can be a situation where people such as yourself or even a bus entitled to and wishing to go into the keyhole can be impeded because of the difficulties that you've raised but none of that traffic ends up in the keyhole does it?

A. Yes they have difficulty coming through but none of that traffic ends up in the keyhole.

Q. So –

A. Well except after the ferry leaves, the parking warden that is there directing that traffic at the top of the keyhole then moves off to go to the carparks and do ticketing up at the carpark so there is no security or no one there at the top of the keyhole during that whole period.

Q. Right.

A. So then what happens is that people are coming through, you can see people coming through that aren't supposed to be coming through.

Q. So they're disobeying the signage.

A. They don't look at the signage. Sometimes they don't read English so that's – hire cars are just up the road that happens all the time.

Q. But the question was so they're disobeying the signage?

A. Yes.

Q. Then in the keyhole where authorised vehicles only can go, that's in relation to being able to go in there and stop and disembark or embark

passengers and that applies to all of you doesn't it? That's what it's all about?

- A. No, it's not about disembarking or picking up passengers, it's about actually parking within the keyhole.
- Q. If it's a bus going there, the purpose of the bus going in there and stopping is so passengers can get on board or get off, that's the purpose of going in.
- A. There is a difference within the keyhole, you have to have a certificate of fitness and you have to have a P endorsement in all your licences and it's not a matter of going in – for example if I'm –

THE COURT: JUDGE NEWHOOK

- Q. Just pause there, you didn't hear the question, you need to answer the question please.
- A. I'm sorry –
- Q. You're telling us something else entirely can you just put the question once more Mr Brabant, please listen to it and please answer "it".
- A. Okay.

CROSS-EXAMINATION CONTINUES: MR BRABANT

- Q. If you're a bus or a taxi or a shuttle, I'm just looking at the different varieties, the purpose of going into that keyhole area is to stop in the parking designated for that particular vehicle for the purpose of either letting passengers off or picking passengers up, that's the purpose of going in there.
- A. Yes.
- Q. And the congestion that you speak about that occurs in the keyhole is when that activity of parking or leaving before or after passengers get in or out become so busy that there can be holdups?
- A. Yes.
- Q. And that's the situation that's occurring now as you very clearly explained to us.
- A. Yes.

Q. And there are some periods of the year when it's a lot worse than other times?

A. Yes.

Q. And it's also true isn't it that even in say December or February, I'm only leaving January out because I'm not sure, I don't have a clear understanding of that at the moment, if you were to go down outside the period that people have given evidence about from when the build up starts, or a ferry arriving and then it'll leave, and then at the other end of that period, and the buses have gone, the taxis and the shuttles have gone and there aren't any more arriving because the next ferry hasn't arrived yet, it's very quiet.

A. Yes.

Q. So you get these kind of little patches of activity and congestion that are directly linked to ferry arrivals and departures right?

A. At the moment you do.

Q. Now your evidence tells us all about that and the problems that there have been –

THE COURT: JUDGE NEWHOOK

This is a slight change of topic, shall we take a break?

MR R BRABANT:

Yes I was just thinking that, I have been trying to keep an eye, it's a whole different topic altogether.

COURT ADJOURNS: 12:56 PM

COURT RESUMES: 2.19 PM

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Can I ask you now to look at your paragraph 15(b) where you say, “Usually, the entire keyhole is taken up with buses and larger vans as well as taxis.” Now I understand that the reference to larger vans is because of what you’ve told us in paragraph 14 whereby at the beginning of this year’s tourism season vehicles like yours have been asked to move somewhere else.

A. Yes.

Q. That’s why you’ve said that.

A. Yes. I’m guess I’m meaning is that larger vans perhaps, maybe I was also, I could also be talking about shuttles, you know, yeah. There’s vans that are 12 seaters, 10 seaters, eight seaters.

Q. So that change that you’ve told us about applying from this year is – do you understand it? I don’t know whether you’ve talked to anyone from Auckland Transport but there’s been a re-arrangement of parking that Auckland Transport have made to try and keep the keyhole area from getting congested because of double parking and things like that.

A. Yes, my understanding, as I was told, because when I queried that being asked to leave that keyhole area and when I queried that I was told that because my vehicle was under eight seats that therefore there was no private hire signs that therefore we had to go.

Q. Yes.

A. That’s my understanding of it.

Q. But the effect of that, therefore, in a busy time is to reduce the number of vehicles that actually go in there, isn’t it? If you can’t go there.

A. Yes I guess so.

Q. And do you agree with the proposition that Auckland Transport should prioritise the use of that area for public transport?

A. I agree for public transport but I don’t agree that doesn’t go anyway to talking about people have been plying their trade there for many, many years and now are no longer able to do that.

- Q. Have you raised that with Auckland Transport?
- A. I have raised that with Auckland Transport, I didn't get any response. I have raised it with the parking wardens but they can't answer that. I have raised it with an Auckland Transport representative who came over during the winter and he couldn't help me with that either.
- Q. So I imagine for an operator like yourself, if you have been asked at these busy times, or told I should say I suppose, not to use the keyhole you and others like you would be looking for another location close by the terminal that you can use.
- A. Absolutely.
- Q. Now, in that paragraph (b), 15(b) you say, "As a result many of the operators will double park." Double parking wouldn't be permitted would it?
- A. I'm talking, in that paragraph, I'm talking about the operators that are allowed inside the keyhole and until last season that was including myself and lots of taxis, everybody was double parking.
- Q. But that wouldn't be permitted in there would it?
- A. It's illegal yes. I would add, like to add to that, that just like it might not be good practice to come into a marina with a kayak or (inaudible 14:23:20) emergency in stormy weather, it's like as needs must and it's the same in the carpark there.
- Q. Well, we have heard some evidence about whether it's safe to take kayaks into a marina area but here you're saying or you're telling the Court that operators will double park, effectively blocking off access in or out of the keyhole. That's actually directly causing a problem for the other vehicles in the keyhole isn't it, which is a little different –
- A. Yes.
- Q. I asked you before about the purpose of the arrangements in the keyhole by reference to this diagram and you agreed with me that for the vehicles that are identified there, the buses, the taxis, the shuttles that are permitted in, the purpose is so they can stop and either passengers get out or passengers get in. Can you find please in the

March 2013 set which is probably the one under the folder there and you look for figure 8 please. There's some photographs.

WITNESS REFERRED TO DOCUMENT

A. Yes.

Q. Now there's four there, on the top left-hand and the top right-hand you can see the same vehicles, because I think in (inaudible 14:25:10) they're described as vehicles, and that's motorbikes and scooters, there's parking there for them isn't there?

A. Yes.

Q. And to get to that parking do you agree that they go through the keyhole?

A. Yes.

Q. And then at the bottom there on the left-hand side there's a view of disabled and mooring holder parking isn't there?

A. Yes.

Q. And do they drive through the keyhole?

A. Yes.

Q. They don't have authority or nor do they need to stop in the keyhole, they're passing through aren't they?

A. Yes.

Q. And have you observed in the time you've been down there in this keyhole area people will come through to drop off equipment or perhaps a dinghy or people by the boa tramp, because they're going to go out to their boat, have you seen that happen?

A. Very seldom have I seen it in the periods that I'm there, very seldom have I seen those vehicles come through that area.

Q. So have you thought about why you don't see them often when you're there in those congested periods?

A. I'm assuming that people, the cars, well I know for sure the bikes and the motorbikes, those people are mainly commuters so they're coming through early in the morning and leaving their bikes there and then coming back later in the evening. The cars that are going through you hardly, I've hardly ever witnessed any cars going through to go to that

dinghy (inaudible 14:26:37) area there. I'm assuming they – very seldom have I seen that carpark there full. I know I've seen the parking warden's car there, you can see it there in the top left-hand one, I think that's the parking warden's car, and also the security car will park there sometimes. I'm assuming that the reason I haven't seen those vehicles coming through is because they may go out early in the morning, they get their tender, they go out to their boat and they're off the whole day. I have very seldom seen those cars coming through that area.

Q. So one way or another looks like they're driving habits avoid the congested periods, is that the conclusion you have?

A. Due to work and whatever yes, that may be yes.

Q. Can you go please to your paragraph 22.

A. Yes.

Q. You'll need to find your volume 2 of the evidence for the applicant.

WITNESS REFERRED TO VOLUME 2

Q. So it's the rebuttal evidence of Mr Pryor please. So if you could – so you need – there are some numbers at the very top of every page, see WML, so the page number you're looking for is 772. It's annexure 4 Sir.

A. I can see at the top WPL6 and that sort of thing, where are you wanting me to look? Oh here you go, yes. What are you asking me again?

Q. 772. I think you're just about there.

A. Yes.

Q. Right, and that should say, "(inaudible 14:30:12) or panorama from Rocky Bay Store sculpture on Nick Johnson Drive."

A. Yes.

Q. And I don't know whether you were here when Mr Pryor gave his evidence but anyway, have you had a chance to read his evidence and look through all these?

A. I think I was here when Mr Pryor gave his evidence.

Q. Have you seen these before?

A. I have not seen this particular picture.

Q. Okay so Mr Pryor is a landscape architect and he's taken these photographs and produced them in evidence. And my question is do

you consider that that gives you a reasonable picture of the expansive view that you have from the Rocky Bay Store sculpture?

A. Yes.

Q. And then I think in another paragraph of your evidence you talk about stopping above the bay at Dalemore Drive in 20.

A. Yes.

Q. And if you turn you'll see annexure 5, 6 and 7 are three panorama photographs in a series of photographs that he's joined together and the same question, do you think that gives a reasonable representation of the expansive view that the people you take up there can see from that location?

A. Yes.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

Q. I'm just a little puzzled, because at the moment you describe periodic chaos if I could put it that way, perhaps it's not as bad as that, it's periodic congestion?

A. No, I'd say chaos is probably quite a good description.

Q. At present. But there's also I think you report quite a strong will to improve tourism to the island and business activity and so on, and it seems to me that that's adding to the problem isn't it?

A. Yes I think what I was referring to before is that the local board and Auckland Tourism have been working together lately to look at how they can get visitors in the winter which is a very, you know, much quieter time. So yeah that's what I was referring to in that period, so I was trying to extend that period of tourism coming over to the island.

Q. So do you think that a more general increase in tourism ought to be avoided because of this congestion?

A. No I think it's a concern for the community and the local board and the tourism industry in general to see how we can keep the characteristic of Waiheke beautiful. You can keep people coming over, but try and involve everything so that it works well. And I think at the moment at

Matiatia that is a very difficult thing to do because it has been so congested for so long. So it's a very difficult thing to do.

Q. So is your view then that the infrastructure, if I could put it that way, like the roading and the parking and stuff ought to grow with the growth and demand?

A. Yes, I think that's correct, but it is we all love our island and we what the nature of the island, and it is so popular because of its idyllic nature. So that's a very, you know, how much growth do you want to have and what kind of growth do you want to have I think personally is a very big thing for the community to answer and to ask. And it can be done but it's a very difficult thing. I think also the taxi industry, all those tourism industries and the vehicles, it's all deregulated so everybody who has passed a police check can start a taxi company, tour company, shuttle company. We have the problem there at Matiatia also that you have, because we're part of Auckland City we have other companies coming over from Auckland during that period, so nothing is regulated. And that could be a consideration in the future as well I feel.

Q. Just on the simpler point of matching infrastructure with demand is what you'd really look for.

A. You would.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

1435

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. In your paragraph 15 you've talked about this gridlock situation.

A. Yes.

Q. And Mr Brabant asked you questions about it, and indeed Mr Littlejohn asked you his very last question, and this is as a response about the gridlock so it's obviously very much in your mind.

A. Yes.

Q. I'm not sure whether my colleagues have but I've been here high days and holidays when every man and his dog seems to be coming to Waiheke and I quite liked your response to Commissioner Howie about

chaos. How long does this gridlock last when it occurs in the area before the keyhole?

A. Well the times that I, I can only speak when I'm going down there dropping off my people so then it can be between five or eight minutes that myself personally is finding that effect but of course I'm not the only one down there so the period that the whole thing lasts I'm not sure. I'm just aware of when I go down there, drop my people off and then go.

Q. Well hang on, I wonder if we're actually talking about the same thing here. The impression that I have is that you may be down there in that vicinity noticing chaos for five or eight minutes, around about the time of a ferry arrival or departure on one of these really busy days. But to me gridlock means traffic actually jammed stopped, going nowhere and my impression is that that doesn't last for five to eight minutes. That cars and other vehicles may come to a standstill for a moment or two while Parking Warden Paul moves a double parker along and otherwise sort of frees things up, but my impression is not that the whole thing is locked solid, nobody goes anywhere for five to eight minutes. To my understanding, but you tell me if I'm wrong because you know it much better than I do, it's fleeting. It comes to a stop, everybody gets a bit annoyed but it frees up with help from Parking Warden Paul.

A. It is –

Q. And his mates.

A. It is, as you say sometimes but I think there's gridlock when my experience of being inside the keyhole that could be quite an extended period and my thinking to the Sculpture in the Gulf event where there were, the last one there were five ferries and you've got not only – gridlock, I would still call it gridlock inside that keyhole and I think to an certain extent you're correct when you say that the gridlock outside the keyhole, that may, well my experience is like I can be there at least five minutes sometimes dropping off my, quite often dropping off people before I can actually leave there. But the experience inside the keyhole is definitely gridlocked. And it's just that there's more –

Q. Has that continued since vehicles like yours have been kept out?

- A. Absolutely, I mean vehicles like mine are small and just the effect of, in my evidence of saying how many new companies are coming on and it's a deregulated industry, that there's just so many, I was away for two weeks, come back and there's a new tour company.
- Q. So are you telling the Court, is this your objective evidence from your having observed this that inside the keyhole all traffic grinds completely to a halt, nobody can go anywhere for five to eight minutes on these days at those times?
- A. Yes I have witnessed that regularly during the busy season, especially when you've got buses coming over like last year there was a booze bus, you know, a big double decker bus. There's more tour buses if there's a big event on like the Sculpture in the Gulf or the Harvest Festival or those festivals.
- Q. We understand what the occasions are.
- A. But that's my experience that that – it's my experience that over the last two or three seasons it's got worse and worse and worse and I can't see that stopping and that, I have witnessed that so many times.
- Q. We'll keep asking people about this as well.

MR R BRABANT:

Excuse me Sir, may I be permitted a question arising out of your question?

THE COURT: JUDGE NEWHOOK

Yes, but others might need to be extended the same courtesy. All right, off you go.

FURTHER CROSS-EXAMINATION: MR R BRABANT

- Q. Just on the very last point and I won't repeat the question and the answer, based on your personal observation, how long has it taken before the situation you described to the Judge has cleared?
- A. I can't say that I've timed it as such in that sense but for example the Sculpture in the Gulf, last time that it was on, that would have been for longer than 10 minutes I would have said because there were some many people trying to find their customers and so many boats coming

in. So I would say, you know, I don't know. I don't know how many minutes exactly.

FURTHER QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Ms Gisby, what that is suggesting to me, however, is that it's not just a traffic situation it's actually that half the world has arrived in Matiatia and the other half is leaving.

A. Yes.

Q. All at the same time. People are running around trying to find their customers, people trying to wheel their luggage through the throngs of people. It actually sounds more like that, like sort of an overall disorganised chaos starting right at the ferry door and extending right out into the road and probably up almost as far as the carpark. The overall situation just being a zoo.

A. Yeah.

Q. But it sounds to me it's not just about the traffic jam situation it just sounds like the whole thing's a zoo, am I right? And I have to say it is an impression that I had last year having come over on a number of these occasions including Sculpture on the Gulf.

A. Yes, I guess it's right. I mean some of the, if you observe the top of the keyhole when you enter the keyhole in that turn around area there the big buses, the 40-seater buses, if there's taxis and buses parked all around the island and all around the area they actually have to go over the island, they have to actually drive off the, over the island to actually be able to turn around and then they've got to try and do a three point turn and it does become gridlocked very quickly I must say.

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

MR LITTLEJOHN CALLS**SUSAN MCCANN (SWORN)**

Q. Is your full name Susan McCann?

A. Yes.

Q. Do you confirm that you've prepared a brief of written evidence in these proceedings dated the 27th of July 2014?

A. Yes.

Q. Are there any corrections you need to make to your evidence?

A. There is one thing, I'd like to add something and one small correction.

Q. Well let's deal with the correction first and if I could just ask you to take the Court to the part in the evidence you want to correct.

A. In my evidence I've used the word "day".

Q. Whereabouts is that?

A. Seventeen. I wish to say that that "daily" means daily when I'm working and I don't work every day in winter but I do work nearly or basically every day in the summer. So daily in my work.

1445

Q. Okay. So perhaps after the word exposure we should add the words, "Based upon my daily exposure while working"?

A. Yes, and at other times.

Q. Doesn't make sense. Now you said there was another matter you wanted to add?

A. We have recently formed a new tourism group. It's still in the planning stage but it has the Central Government and (inaudible 14:46:09) and I will be the retail representative in that group.

Q. And is that a tourism group for Waiheke Island?

A. It is, yes.

Q. Ms McCann with those matters noted, do you confirm that the contents of the brief are true and correct to the best of your knowledge?

A. Yes.

Q. Could you please answer any questions.

CROSS-EXAMINATION: MR R BRABANT

Q. So what you've told us about is your experience in various ways and being involved in tourism and the (inaudible 16:47:35) I'd like to get to perhaps is the way of being able to ask you some questions is to get to 14. Paragraph 14 of your evidence? "The vast majority of tourists (whether day-trippers or those intending to stay)," so we've got people coming for the day or people staying for longer, "Arrive via the passenger ferry service between Auckland and Matiatia." Now I guess some people as well might bring their vehicles over in the other service, you know how you can bring your car over?

A. Yes.

Q. So you'd include them as well obviously wouldn't you?

A. Yes, that was extracted from the report. That was written by Dr Lucy Baragwanath.

Q. Yes. So I'm really keen that you can give the Court some of your own insights because you live here and you work with and this is your focus, is tourism so we'd just like to consider the range of the people that you're interested in looking after, you personally, and the people in Waiheke are interested in tourism so as I say, we'd have people, not likely day people either but maybe coming over for a while, could bring their vehicle over.

A. Yes.

Q. So we could add them into the list couldn't we?

A. Yes.

Q. And then I thought, wouldn't you add into the list as people that Waiheke tourism, you and all the others involved will welcome are people who arrive on their own boats, you'd be happy to see them too wouldn't you when they come ashore?

A. Yes.

Q. And is your shop.

A. Oneroa.

Q. Oneroa, are you up in that village?

A. Yes.

Q. So if you look out on a summers weekend and the winds from the south, there'll be I suggest hundreds of boats out there on anchor in Oneroa Bay won't there?

A. Yes.

Q. And they can come ashore and it's an easy walk for them to come up.

A. Yes.

Q. And you will see these people in the restaurants and they'll come into your shop as well and they're as welcome as someone off ferry aren't they?

A. They are.

Q. And further afield for example if we think of the restaurant facility at the end of Te Whau, I don't know whether you've ever been out there and noticed that there have been some boats on anchor down below in the bay there and they've come up to the restaurant, do you know what I mean?

A. Yes.

1450

Q. Have you thought about how having the marina there could help people who are using their own boat, particularly obviously the larger boats that would normally have to go on an anchor or a mooring, that they could come to the marina and know they could leave their boat safely there for three or four days while they went off to the bottom end or somewhere, have you thought about that?

A. I have thought about it and I have no objection to a marina in another location, I just think the size and scope of this marina is, it's (inaudible 14:50:52) and it's disadvantages were will well outweigh its benefits.

Q. I understand of course the expression of dissatisfaction with the marina proposal being granted consent but I'm trying to talk to you about tourism and whether or not a marina would provide an alternative, people coming in their own boat to safely leave it (inaudible 14:51:18) for a few days, and do you accept that will provide an option for them?

A. It would but I can't see the relevance.

Q. And if they came into the marina there, they would have direct access, wouldn't they, to the busses and the taxis and the shuttles? That's true isn't it?

A. Yes that's true.

QUESTIONS FROM THE COURT – NIL

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

MR LITTLEJOHN ADDRESSES THE COURT – WITNESS AVAILABILITY**MR LITTLEJOHN ADDRESSES THE COURT – WITNESS KRISTABEL WICHERS****THE COURT: JUDGE NEWHOOK**

No, none of us have questions for her so Mr Littlejohn, we could save her the trip and we will take her evidence as read, which it has been, and it will add to the record and be part of the information that's before us. If you could explain that to her that would be good.

MR LITTLEJOHN:

Very good Sir, thank you. She no doubt will turn up a little bit later today and we can just say that her evidence was so good that no one wanted to question her.

THE COURT: JUDGE NEWHOOK

That Mr Brabant didn't want to test it.

MR LITTLEJOHN:

Just at the close of proceedings yesterday an elderly lady stood up and said she wanted to speak on various matters.

THE COURT: JUDGE NEWHOOK

And you being the willing person that you are I (inaudible 14:55:00) be so kind as to speak with her, and you have.

MR LITTLEJOHN:

I have spoken with her. I have not dissuaded her from the notion that she would like to say something and I've said to her that I will at least put her request on her behalf to the Court for the Court to make a ruling on. I have explained to her that there are limitations given the absence of a 274 notice or

anything filed, but I undertook to explain that to the Court and put the request on her behalf and leave it as a decision for the Court to make.

MR R BRABANT:

I have instructions on that matter Sir.

THE COURT: JUDGE NEWHOOK

Yes, what are your instructions Mr Brabant?

MR R BRABANT:

I have made enquiries as well and I understand that the lady in question is either an owner or a trustee or on a board of control of the land on the (inaudible 14:55:57) the southern headland area which was referred to by Mr Rikys in his evidence. I am familiar with this because I'm involved in management. My instructions are that he takes his instructions from the chairman of the trustees, I think they're trustees Sir I could have that wrong, and that currently his instructions are to assist in seeing the land sold. And my instructions are that there are other people including this lady who is resident in Auckland or on the island who disagree with that proposition, and I understand Sir that's the reason that why she asked to speak. Now if that turns out to be right, it's clearly in my submission outside the scope of this application hearing. So those are my instructions Sir as to what we understand the issue to be.

THE COURT: JUDGE NEWHOOK

Yes, now I didn't allow you to say a great deal before I requested Mr Littlejohn to speak with her. She did mention paragraph 46 I think, did she, of Mr Rikys' rebuttal, so let's just find that. Yes. Is the lady in question here? Come forward, we'll just have a talk about this. Now, if you've been here observing the proceedings in this Court, you'll probably have noticed that I have endeavoured to operate a friendly, I hope reasonably welcoming environment for the local people who have prepared evidence and come along to tell their

story and to answer questions and generally help us with making a decision on a very difficult case.

You've also heard me say probably though if you've been here that we do have to operate to some rules that are actually made by those people in Wellington. They make the law and we run our part in it. And one of the rules is that we need people to have become parties to the proceedings about the marina in order for us to be able to allow them to help us with all of this basket of issues.

Unfortunately if we open the proceedings up to allow people who are concerned about something one of the witnesses has said to come and talk to us about that concern, it would get out of hand. And it would potentially get outside the relevant issues that we have to weigh to make a decision about whether to allow a marina or not. And so I am in real difficulty about allowing you to become involved from the outside as it were as a non-party.

I would also say that the existence of the case has been well known in the community, not just the Waiheke community but the Auckland community and beyond for a long time now, about a year, and that the opportunity for people to become parties has been there for most of that period of time. So, it's not like some other cases that do sort of get through under the radar, pretty secretly. It's had a lot of publicity and look I just feel that to open it up to non-parties, if I allowed you to do it I'd have to allow others and I know that this case is so controversial that there's probably a few dozen people on Waiheke who'd like to trot up and start talking about things. My understanding from what you said last night was that you might have felt some affront from something Mr Rikys said of a cultural nature that concerned you in paragraph 46 of his rebuttal statement but I have the impression that that particular paragraph, and I've got it open in front of me here, is not something that seems likely to tip the balance in the case that we've got to decide which is whether to allow a marina or not. So I think, I'm sorry, and I know you're feeling wounded but I just don't think I can let you into the case.

WITNESS:

Thank you, Your Honour. I was, either way, I knew (inaudible 15:01:50) But I thought under the circumstances of what's been said in that particular paragraph and the fact that here is a man who's supposed to be a consultant and by the Court he had to be transparent and it was never, ever discussed with us.

THE COURT: JUDGE NEWHOOK

Yes okay, well it sounds as though it's something that impacts on something else you're dealing with. And look, I think we've just got to leave you to deal with it in those channels. I don't think we can bring it into our channel. All right?

WITNESS:

(inaudible 15:02:28) the lamb too.

THE COURT: JUDGE NEWHOOK

Yes, you asked the question and I hope I explained.

WITNESS:

Thank you very, very much.

THE COURT: JUDGE NEWHOOK

Nice to meet you.

THE COURT: JUDGE NEWHOOK ADDRESSES MR LITTLEJOHN – SUBMISSIONS OF WITNESSES**MR R BRABANT:**

I think it's fair to everyone, including my client, that I just indicate I have seen and I've been able to read evidence of Mr King Turner, from Ms Pawley and Mr Davies. Their statements are here. I have been given the names of Mr Walden, Mr Meeuwsen, Mr Wragge and Mr Gillepsie. I have seen no evidence from them and I understand therefore they're making a submission.

THE COURT: JUDGE NEWHOOK

That's my impression.

MR R BRABANT:

And not presenting evidence.

THE COURT: JUDGE NEWHOOK

Those that are intending to give submissions won't be going over there to the witness box and swearing on a Bible or making an affirmation, they'll come up to one of these tables to deliver their submission to us. So if any of you are in that category, not having pre-exchanged evidence that you could be tested on by the lawyers and by us then that's how we'll be dealing with it. Right now have you some idea of who might needs to come first?

MR LITTLEJOHN:

I've had a request from Sue Pawley simply because she's not feeling that well and might not be available tomorrow, she would like to I think...

THE COURT: JUDGE NEWHOOK

She did pre-exchange didn't she?

MR LITTLEJOHN:

Yes she did.

1505

THE COURT: JUDGE NEWHOOK

Would you like to come forward Ms Pawley?

MS PAWLEY:

Well my brother and I have had this huge argument about one of the boats that I named and we've decided that we better, because he thinks I'm an idiot and it will be that I probably am, that we better take out the name of Lady Roberts and put it in the Koheno instead. On the second page, one paragraph says two of the fore-mentioned, well I've changed that to one of the fore-mentioned boats, the Lena sank in storms with Russell's wife and the Koheno was the Salvation Army boat that sank in the 1970s while the Lena sank in 1957 and I wanted to add, these are but two of many which have claimed our friends, mothers, (inaudible 15:09:06) et cetera.

THE COURT: JUDGE NEWHOOK

Where were these sinking's? Where did they happen?

MS PAWLEY:

Around Waiheke here. Sort of from here to off Chadwell and so a number of friends have ground in these.

THE COURT: JUDGE NEWHOOK

Yes.

MS PAWLEY READS SUBMISSIONS

"Every ten to...storms blow up." The most recent example and now I've added to that, most recent mostly some examples of frailty of ships and (inaudible 15:09:48) which most of you will have seen or know about are the Costa Concordia or the New Zealand waters, things like the (inaudible 15:09:59) in the Wahine but our cats could come to the same sticky end as these aforementioned three. And at the bottom paragraph it says, "One of these easterly gales could result in the ferry hitting the rocks," and I've added

to that. I refer you back to Peter Brough page 1, paragraph 7 and paragraph 8 which includes that.

The next page which is page 3, we had a lady, and I'm sorry I've forgotten her name, talking about the ferry coming in and going around and around because they couldn't berth and stuff like that. Well a lot of us who have lived here all our lives have experienced that quite often but one of the other things, at the top of the page I've said, "About 15 years ago the Quick Cat was holed after hitting the wharf," et cetera and I just wanted to add to that. That I was at the end of the wharf as I'd been for years, waiting for the ferry when the Quick Cat was about 150 to 200 yards out. It became obvious to me that she was in trouble and she wasn't going to stop. And it was really difficult getting those around me to realise this and that they had to run. Even though I was yelling "run" and trying to usher them back from the end of the wharf it was really difficult and a lot of people don't understand the sea and its moods and just how powerful it is and how dangerous it is and that sort of thing and how a ship can get, like the Cat, can get into amazing difficulties.

And then it says in the third paragraph, "If maintenance is less frequent and timeframes have been lengthened, the likelihood of engine failure has been increased which could prove disastrous," and I again wanted to refer you back to Peter Brough, paragraph 1 and paragraph 7 where he agrees with that premise.

Again, the next paragraph down where it says, "A rock wall in Matiatia Harbour would make the ferries move east, which means they may lose moorings," et cetera. Again, I want to point out that Peter Brough's paragraphs 14 and 15 are saying it there. The paragraph which says, "Another reason to approach the marina is the matter of silt laden with lead," and other stuff, I've just paraphrased it okay. If this material is dredged down and is used to build the parking area and the access to the marina and more towards the wool shed beach, anyone accessing Rob's gift of the foreshore heading wharf is being exposed to those contaminants and toxins and I want

to know how many core samples have been taken of the seabed to prove there isn't any anger because I have seen ships being careened and scraped there for over 60 years.

THE COURT: JUDGE NEWHOOK

Same, me too.

MS PAWLEY CONTINUES READING SUBMISSION

"Regarding the Matiatia...disadvantaging the tourists," by stealing the views of North Head and the Western Headland with a (inaudible 15:14:54) great rock wall. It's the end of the paragraph so it's not a whole paragraph, it's just the end of the paragraph from the page before, I've added to that. I think we'd all agree that yesterday was quite a pleasant day weather wise yet yesterday afternoon, the Super Flight at four o'clock had to go up past the point and headland between Motutapu and Waiheke and then run in through the south-west corner of Matiatia to provide a safe comfortable passage for the passengers. I was delivering three of my 19 year old soldiers from Stony Batter back to the wharf so I watched it. Now if you have a look at map 6 I'll tell you what it did and yesterday was a lovely day.

THE COURT: JUDGE NEWHOOK

It wasn't rough, the sea wasn't rough.

MS PAWLEY:

No but because of the tide and the swell coming in through the Motahi channel he went that way to ease the – because these days we get people who panic on those boats but we didn't have in the old days.

THE COURT: JUDGE NEWHOOK

To be honest with you I'm not sure about this Ms Pawley because we were on the very next sailing of the Super Flight, well it might've been the one after that and there was no swell.

MS PAWLEY:

But yes, but was it the turning of the tide?

THE COURT: JUDGE NEWHOOK

No.

MS PAWLEY:

You see the turning of the tide plus the wind often kicks up a (inaudible 15:16:49) out there on the corners and quite often –

THE COURT: JUDGE NEWHOOK

Now hold up the map that you said you were referring to.

MS PAWLEY:

So the sixth one. So he came in here right and he went across and he could've wiped out that if that was a (inaudible 15:17:09) point, okay, and he went somewhere between there and that boat there right to turn and come in. So he came on that end, this so often happens but it also happens on the other entrance like (inaudible 15:17:24) particularly if they've come around Motahi.

THE COURT: JUDGE NEWHOOK

That's the south corner of Motutapu isn't it?

MS PAWLEY:

So basically what happened –

THE COURT: JUDGE NEWHOOK

With the single danger rock marker on top the yellow and black, that's what's showing there isn't it? The bottom corner of Motutapu.

MS PAWLEY:

No this is the entrance to Matiatia.

THE COURT: JUDGE NEWHOOK

Oh that is the entrance to Matiatia, sorry.

MS PAWLEY:

So he came in around the heading – so he disappeared and then he came in on an angle through the opening rather than just watching them come all the way from Motutapu –

THE COURT: JUDGE NEWHOOK

I think he was more likely to be avoiding some boats out there fishing but anyway I don't think we need to argue about that

MS PAWLEY:

They often do it though.

THE COURT: JUDGE NEWHOOK

What was the danger of that?

MS PAWLEY:

If we cut down the woods of say, for the entrance here, when they are having to do that because of the weather and coming in from that way or coming in from that way we are increasing the danger and if they've come around Motahi because weather's bad and they came in this way, they're heading straight out towards the (inaudible 15:18:49).

THE COURT: JUDGE NEWHOOK

Okay, I don't want you to take any offence from this question Ms Pawley but have you ever been a ferry skipper to Waiheke?

MS PAWLEY:

I have not been an official one but yes I have.

THE COURT: JUDGE NEWHOOK

I'm not quite sure what you meant by that.

MS PAWLEY:

(inaudible 15:19:06) Well in the old days, okay –

THE COURT: JUDGE NEWHOOK

No, I'll just finish what I was going to say really. What I have in mind is that witnesses like Mr Brough are, and don't take offence, but they're more likely to be able to offer us professional experience about how to manouevre these large ferries into and out of Matiatia than you are.

MS PAWLEY:

And each of the points that I've brought up emphasise what Peter Brough said.

THE COURT: JUDGE NEWHOOK

Yes so we're probably better, aren't we, to focus on his evidence and see what help he can give us with answers to questions with all respect to you. I know you are concerned but we really need to rely on the experts on this kind of thing don't we?

MS PAWLEY:

And I'm just backing him up from having driven boats in, in and out there.

THE COURT: JUDGE NEWHOOK

You're telling us that you think he's talking good sense.

MS PAWLEY:

He's talking very good sense.

THE COURT: JUDGE NEWHOOK

And that point is noted and we'll see how he helps us shall we?

WITNESS CONTINUES READING SUBMISSIONS

Okay, and so page 5 the one where it says, "Summer parking is really impossible. There are usually at least 5 buses," et cetera. I've put a piece on the end of it. "Wharf construction will interfere with buses, taxis, shuttles and scooters, thus creating major problems for our tourists and damaging the islands economy and threatening the livelihoods of the tourist providers and operators." Especially if tourists are subjected to unpleasant delays and unsafe conditions caused by through traffic accessing the marina. More confrontations are likely to increase and that will, itself will damage the tourist operations. We've already had confrontations which have ended up in Court.

And then at the bottom, the second to last paragraph it says, "Spoil disposal." I again I sort of tie that back into the pollution that may be exposed as they dredge or the old lead and stuff that where the core samples that proved it's not there and I just wanted to point out that, you know, these days you're not even allowed lead in paint because people scraping houses have had children poisoned. So if we dredge up lead, and nobody's proved to my satisfaction we're not going to, and then we use it to build a parking area et cetera, then those toxins are being imposed upon those who walk across there or who park there.

And then, that's the end of that. I just wanted to, because of what I read about the Harbourmaster's submission, evidence, whatever, I just wanted to say that I looked really at the Harbourmaster's qualifications et cetera and noted that he's a navigator and he's a navigator of large container ships and international cargo ships et cetera. He doesn't mention that he's ever been involved with passenger liners. He doesn't say that he's a pilot in Auckland or a qualified pilot in Auckland. And he doesn't say that he's got a commercial launch masters qualification which is necessary to wander in and out of Matiatia and which is one that's missing, from my experience. Harbourmaster's are paper pushers, they know the bylaws et cetera and they make them. The (inaudible 15:23:33) had a real cool Harbourmaster in

charge of it when it went to the bottom, so does that prove a Harbourmaster is qualified to –

THE COURT: JUDGE NEWHOOK

Well there was an inquiry into that Ms Pawley and there were findings made about the situation of that gentleman and I don't think we need to dwell on that incident.

WITNESS CONTINUES READING SUBMISSIONS

And then I just finished off with Peter Brough is much more qualified than the Harbourmaster to say what is safe and will work in Matiatia. And then I just had a nice little comment there for everybody. Do you want Captain Smith on Jamieson, the (inaudible 15:24:19) skipper or Peter Brough making the call on your safety in Matiatia? And in case anyone's saying, who is Captain Smith? 1912 an iceberg.

THE COURT: JUDGE NEWHOOK

Thank you very Ms Pawley, thank you for your submission. The written submission, the additions and for answering my questions as you've gone along. I'll see if my colleagues have anything they want to ask you.

QUESTIONS FROM THE COURT – NIL

WITNESS EXCUSED

THE COURT CALLS**ROSS GILLEPSIE****ROSS GILLEPSIE READS OPENING SUBMISSIONS**

My name is Ross Gillepsie and the following comments are some of my sincere views on the Matiatia Marina proposal. I have lived on Waiheke for 34 years and have made the effort to be here today to convey information that might otherwise remain unknown to the Court and be left out of the panel's deliberations. I can remember a sign under the lamp at the roadside end of the old wharf that said "Would the last person to leave the wharf please turn off the light". I don't think that they meant the light of intelligence. I have put in hundreds and hundreds and hours ascertaining, restoring and extending public access along the western coastline of Waiheke. From this came the idea of the around the island walk and an annual walking festival is now an island feature.

It is probably no exaggeration to state that the first rule of successful development is don't fight the site. At present almost 2 million passengers pass through Matiatia Bay a year with little impact on it. There are rest periods between ferry arrival and departures when the bay can be enjoyed as a pleasant refuge. It's the way most islanders would like to return home and greet visitors from around the world. The marina proposal involves complete disfigurement of the bay and the undoing of its integrity. The bay is highly valued public domain, part of a special marine park and the shoreward margin at the side is public historic reserve. The company has no land holding at the site and so the whole proposition is speculation within reserve public space. This ludicrous and gauging process flies in the face of Auckland Council's policy of minimising private use of public space. It is the complete antithesis of this policy. The company wants to set up gridlock boat garaging berthing for a wealthy few and a bottleneck thoroughfare further constricting public space. Hook into publically paid for infrastructure, roading and the like and add further complications of intensive used mix and who are Waiheke Marinas? They don't represent the Waiheke community, and they haven't

built a single marina, let alone two or more. The name is as silly as the proposal.

The marina proposal is a Pandoras Box. The appearance of antoerh ferry company making it even more so. To entrust the bay to any company would beggar belief. I had hoped that in the face of the companies (inaudible 15:29:25) Euripides saying, "A good retreat is worth more than a foolish abiding" might come into play as some sea founders have already had second thoughts. But no, instead the proposal is politically fast-tracked to the dismay of the Waiheke community. It is worth realising that on decline of the marina proposal Waiheke Marinas would lose nothing as they didn't have anything in Matiatia Bay to begin with. The only advantage that I can see from this ludicrous proposal is that it alerts authorities to the dangers of large scale, haphazard, private appropriation and development within the interior of the Hauraki Gulf islands marine park. The entire proposal is an encroachment of digging out, piling up and filling in premium protected public space. (inaudible 15:30:21) commonsense. Back then one party wanted to cut the baby in half showing that they did not love it. This is effectively threatened at Matiatia Bay with over 200 metres of breakwater dividing the inner bay. We are having an incongruous Waiheke foisted upon us by an equivocating Council that has missed the point.

Now, this is the Hauraki Gulf form 2012, the annual report, it's got a koura crayfish on the front, I've just read in the Gulf News that they're pretty much scarce now. And it says in here just inside, "Councils must give effect to the Hauraki Gulf Marine Park Acts management objectives as if they were a national policy statement or New Zealand coastal policy statement." I've got the New Zealand coastal policy statement here, 2010, extensive document. I just note briefly policy 3, "Precautionary approach," policy 3, "Integration of natural and physical resources," policy 5, "Land or waters managed under other Acts," policy 30, "Preservation of natural character et cetera," and so on.

Going now to the Hauraki Gulf Marina Park Act 2000, purposes of the Hauraki Gulf Marina Park, this is section 5 of the RMA, the purpose in that case. The purposes of the Hauraki Gulf Marina Park are (a) to recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the park, (b) to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features et cetera. Now, in perpetuity is a long time. It's forever. And my dictionary says "endless duration". And it takes vision to see it.

We're still on 32, the purpose is (c) to recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park, and (d) to sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.

It's been said that you don't know what you've got till it's gone, but truly you don't know what's going when you don't know what you've got now. And what we've got now within the structure of the Hauraki Gulf Marina Park is something crucial that is (inaudible 15:33:30) and sets the tone for a park that could be an inspiration to New Zealand, (inaudible 15:33:36) and the world.

In September 2012 I presented to Te Kapa Moana, the Hauraki Gulf Islands Park forum about this matter as follows, so the timing is slightly different, it happened in about 2007 but I'll read it as I wrote it then.

About five years ago I was invited to attend your annual conference at which the head of parks and reserves for the United Nations spoke. I remember his first name was Aman. He said something that was very simple and also true in a relative way. He spoke of how delighted he was (inaudible 15:34:19) how big the park was.

I would like to comment on something of complementary and additional significance to my mind that wasn't mentioned. The proximity and accessibility from the North Island mainland of all the other islands and boundaries of the marina park. From above Leigh in the north down to the mudflats of the (inaudible 15:34:40) of Thames, back up north to Cape Colville on the Coromandel Peninsula and then down the east coast to south of Whangamata. I feel that the inherent blessing of this horseshoe shape landmass is yet to be fully recognised. Here is an extended (inaudible 15:34:56) coastline from which the main population base can launch their boats, and presently all of the marinas within the park are on the mainland periphery of the park. This horseshoe shaped landmass and catchment in conjunction with the finger of the Coromandel Peninsula is the geographic boon that will enable this particular marina park to be both much enjoyed by the public and to remain enjoyable, but only if you, members of this forum, recognise in accordance with the purpose of the Act and at this early stage, we were only 14 or 12 years into it then, 14 years now as against perpetuity, the dangers to the park that the development of marina complexes on the offshore islands within the park would have on the nature of the park.

I avow that such development would radically and detrimentally impact on the (inaudible 15:35:51) values and characteristics of the marina park that you are entrusted to recognise and protect in perpetuity. Even in this inaugural stage, and that is where we are, through lack of awareness the future of the park could so easily be irreversibly damaged and sent away. Superfluous marinas on the islands of the gulf would lead to increasing overflowing of the park's waters as an ongoing commute of boaties sought to save time getting to their congregated crafts. Small plane and helicopter overflying are really at the nuisance stage especially around Waiheke. Marinas mean concentrations of pollutants and industrial activities, sewage disposal issues and gridlock within bays where presently boats on swing moorings move harmoniously with wind and tide. To me this is a chief characteristic of the relaxed atmosphere and lifestyle generally embraced by gulf islanders.

What needs to be said is we will lose what we have because we do not know what we have, and most will be none the wiser. And so in accordance with section 18 of the Act I seek a recommendation from the forum to constituent parties that marinas will only ever be permitted along the mainland periphery of the Hauraki Gulf Marina Park to be recognised in perpetuity. I would like (inaudible 15:37:09) further comment.

Now Mike Lee, the first time he heard it up he stood up straight away and asked for a debate which was closed down by the bench (inaudible 15:37:17) and Mr (inaudible 15:37:19) the chairman, and then (inaudible 15:37:20) came and apologised to me saying he was under the thumb of Auckland Council.

In the meantime I obtained (inaudible 15:37:25) going to the water cooler giving me the thumbs up and saying, "Well done," and all the rest of it.

Now I'd just like to comment briefly on experts. This is from the previous Chief Environment Court Judge, Judge Thomson, 2012 August, it's the very last thing he's put before the (inaudible 15:37:48) of conclusions for the one plan. "We are conscious that there are things we do not know about the relationships between water quality and ecological health and there are issues about which those expert in the field hold different views. But we are convinced by the evidence we heard and accept that decisive action on the planning front is necessary now to minimise the risk of serious damage to ecosystems which support plant, animal and human life and contribute greatly to the economic, social and cultural wellbeing of the region and its communities," and that's straight back into the purposes of the RMA.

There is a lot of detail I could refer to that the (inaudible 15:38:33) Matiatia Bay prevents flushing and keeps contaminants at the lower end, and that it is upside down and inside out to pretend that the walkway on the historic reserve needs to have a marina to be upgraded. There is an alternative route from Dalemore Drive and we have other tide-dependant walks, not that there is much impediment here. It can be hilarious and bonding fun piggy-backing

walking companions. And that once private parties somehow get themselves into reserves, compliance is so negligent.

So there you have it, the choice in my opinion between the devil or the deep blue sea for the greater good. Best of that what works now to err on the side of caution considering what is at stake.

THE COURT: JUDGE NEWHOOK

Thank you very much, now I'm going to see if there are any questions. Just to those who clapped, I know you felt (inaudible 15:39:370 just bear in mind that we're actually the audience that need to hear everything and make the decision. So I'd actually prefer that we just (inaudible 15:39:55) but just remember we're the audience, we're the ones that have to be convinced.

QUESTIONS FROM THE COURT – NIL

WITNESS EXCUSED

COURT ADJOURNS: 3.40 PM

COURT RESUMES: 3.55 PM

THE COURT CALLS

ANTHONY KING-TURNER

MR KING-TURNER READS SUBMISSION

I came to Waiheke in 1983 so I've had 30 years to observe the changes down at Matiatia. When I first came it was on the Baroona and it took about an hour and a half and at that stage there was a carpark with just 57 carparks in it. Now there's over 1000 and I make that point just to show how rapidly the number of fuel users has increased year on year since that time.

In the late 80's, heralded the beginning of the use of the big fast Fullers Ferries to and from Waiheke and this created a surge of ferry user numbers but a need for more carparks due to the halving of time spent on the water. Almost overnight Waiheke Island became a good option for commuters to live in and since the early 1980s, Waiheke's resident population has almost trebled to more than 40,000 people.

In the early 90s a new wharf was built to accommodate the fast ferries supplying the waters and as I said, there's been a steady increase in traffic use in the valley. There's also been a really rapid increase in the number of buses, taxis, shuttles, drop offs, scooters and cycles which although they make no impact on the parked carpark availability, they do add to the frequent congestion at the keyhole by the ferry terminal particularly at peak summer holiday time.

Often what you see down at Matiatia in the summer is sometimes two or three boats, ferries, come in at the same time and they're stacked up one after the other. What that means is there is actually – the amount of quiet time if you'd

like down at Matiatia is lessened so there's more ongoing activity and therefore more ongoing congestion.

In Mr Monin's talk about Matiatia I think it was last year, I find these numbers pretty interesting. You see the passengers numbers through Matiatia have increased dramatically since the 1950s divided evenly between the residents and visitors. By approximation, it was 220,000 in 1960; 400,000 in 1985; 650,000 in 1990 and more than 1.16 million in 2010. These figures make Matiatia the countries second busiest passengers port for New Zealand surpassed only by the Inter-Island Ferry Terminals at Picton and Wellington. The carparking availability is reaching saturation point once again at Matiatia. There was a new carpark that was built called Opunake carpark. That now is often full. It's a sea of cars. Matiatia has no through road. The (inaudible 16:00:20) rules restrict all traffic to travelling along the valley floor to a dead end at the ferry terminal. It's also worth remembering that Auckland is experiencing growing pains as is Waiheke. The pressure created by Waiheke's proximity to Auckland and its increasing popularity among visitors and residents is most evident at Matiatia. At the busy, at the most busy periods, during the summer holidays, extra ferries are put in service to cope with the throngs of people travelling to and from Waiheke and that gets us to the keyhole. The keyhole has changed a lot in recent years. The more, the most, the biggest change, of course, is congestion and it's used as a pickup point for busses, taxis, tourist shuttle busses and also it contains a parking area for cyclists, scooters, motorbikes, and cycleway.

As you heard earlier on, the number of tourism-related transport companies is certainly increasing as Waiheke now has an international and domestic reputation, it is a great place to visit and live. Waiheke Marinas plans to access their proposed 55 space carpark servicing the proposed marina by the keyhole which will further strain the flow of vehicles during holiday periods, especially during the summer. More vehicle movements leads to congestion, it's a simple equation really, the two go together.

Waiheke Marina Limited propose to use the keyhole to access the marina during the quiet time between ferry departure and arrival times. This makes sense with the present situation of only one ferry travelling per hour. We know that that's already changing. The big thing that's changed since I wrote this evidence is that there is now another ferry operator and I don't see this changing. We could very well have three ferry companies operating in the future, who knows, but what it does mean is that the keyhole, whether you want to call it a gridlock or not, it's not going to be a pleasant place and a really off place for people who first arrive here, that's their first thing they see, experience.

No one knows the timeframe when these extra ferries will kick in, but it's inevitable it will happen as is already. In a few years the numbers will continue to grow. I think one of the big things that the various transport experts have said for Waitemata, sorry, for Waiheke Marine Limited, there's been no mention of the future. This is our only access to Auckland is via Matiatia, it's the closest point; strategically it's really important. To put something like a marina, swept, pretty much, well I was going to say a little bit, slightly to the side, I believe it will be cursed by generations to come if the wrong decision is made here.

Auckland, New Zealand's biggest city, is home to approximately one-third of New Zealand's population and Auckland International Airport is the main entry and exit point for overseas travellers to New Zealand and domestic travellers, and is just 90 minutes by taxi and ferry from Waiheke. Waiheke also is situated within the renowned Hauraki Gulf maritime park, it has endless outdoor opportunities and it's a really big draw card for people wanting something different. We also know that in the last district plan changes, the island's biggest land owner, John Spencer, who owns close to a quarter of Waiheke's land, announced his wish to subdivide via the unitary plan. The pressure to subdivide lifestyle blocks and sections here and elsewhere on the island into small lots will also have an impact on population growth now and into the future. I was talking recently to a real estate agent and asked, who

are the main buyers coming to Waiheke, I mean where are they from, who are they? Most of them are Aucklanders, he said, and most of them are commuters. This is a great place to commute from, the pressure's on and, of course, this leads to more housing, more road traffic, more ferry users.

So, in summary, at Matiatia, the cul-de-sac encompassing the drop off and pick up areas and the cul-de-sac for the parking of busses, taxis and tourism shuttles is often congested and I would put here to the point of gridlock. Why do I say that? Because I've seen it. The addition of marina-related transport into this area will have more than a minor impact on transport movements. Due to the steady growth of residents and visitors to Waiheke, the traffic volumes will also continue to grow. At peak travel times in summer, oh no, I mentioned that before, the amount, you know, the increase in ferries coming here over in summer and then the fact that there is very little quiet time. If we had three ferries coming in, say three different companies, or even the same company, there's very little so-called quiet time for the marina traffic to duck past a ferry terminal and into their little safe spot.

The only, there is also, I believe, there will be in the future a need for a second wharf which will probably mean upgrading the present wharf and this will be pretty much stymied by, or it will be a big pain basically if there's a marina there and all the associated traffic. The only possible location of a new wharf there is on the, yeah, and compatible to location of the proposed marina in the marina-related traffic. Sorry, the only possible location of a new wharf at Matiatia will not be compatible with the location of the proposed marina and the marina-related traffic.

Ferry movements and safety margins will conflict with the marina sited in the present location. Also the evidence of Mr Apeldoorn and Mr Mitchell, both the WEML Transport experts, have based their evidence on surveys of other marinas throughout New Zealand that do not have a busy ferry service operating adjacent to them with shared vehicular access. Hence the conclusions made from the data that they have gleamed and not relevant to

the situation at Waiheke. They have these other marinas, for example in Whangamata, Westhaven, et cetera, do not have a busy ferry service operating adjacent to them.

Also Mr Apeldoorn and Mr Mitchell have based their findings around the present day situation. There's been no serious attempt to foresee what Waiheke may be like in, say, 30 or more years time so as to assess the impact of a marina at Matiatia within the environs of the main ferry service between Auckland and Waiheke. I agree that the location of the proposed marina will have, will thus have a more than minor effect on the future transport needs of Waiheke and on the economic wellbeing of Waiheke's residents and visitors. I think that's it, yep.

THE COURT: JUDGE NEWHOOK

Q. Thank you Mr King-Turner. Mr King-Turner, can you just help me with this, Ms Gisby answered some questions for me about the gridlock situation on the really busy days in the summer at the busiest times of the day, particularly because my impressions from, I think, having seen some of that last summer myself, didn't seem quite to line up with hers. Now I'd be interested to have your take on how long or, first, do you understand the term, "gridlock," and the term, in the way I explained it to her that the traffic absolutely jams up and they don't go anywhere.

A. Yeah.

Q. Is that gridlocked in your mind?

A. Yeah, you know, the only thing, variation we, I mean what (inaudible 16:09:43) period of time, but I've seen up to three busses, one after the other, they can't get in there, so they get blocked and then there's traffic behind them gets blocked and this can go quite a way back, so that to me is, you'd call it extreme congestion, or gridlock. I mean it's not like gridlock in LA where it's going on for hours but it's bad, it's bad.

Q. How long, roughly how long does it go on for on those occasions?

A. Well I've seen 20 minutes down there, yeah.

Q. Well, if it's stopped, nobody goes anywhere, 20 minutes?

- A. Well yeah, then the, then the, well, no, Sir, I mean people, people get across and try and get in their things but there's so much activity going on that it's –
- Q. No, I'm talking, I'm not talking about people in their work-arounds doing u-turns further up the road and that sort of thing, I'm talking about complete gridlock, stopped, everything's frozen solid at around the ferry times, whether there's a single ferry's come in or two or three, have you seen that traffic absolutely frozen solid and, if so, for what sort of periods of time?
- A. Well as I say I've seen up to 20 minutes, yes, you, what happens though is you'll get, um, like, one tourist shuttle bus will be trying to get its people on the, on the, what would it be, on the east side of the cul-de-sac, then that'll move, then the one behind can move, you know, and so on. But there's just such volumes of people and volumes of support vehicles, for want of a better word. It's a mess. Is that what you were –
- Q. Yes, I called it chaos before.
- A. Yeah, well –
- Q. And I say, and I think it was a call to discern.
- A. And you know, what I really feel is that, you know, you can have all this paper and all these people talking and all that but unless you've got the hard facts, in other words, unless you've either got people down there recording or, for example, Labour Weekend coming up, if there was a fixed camera above and you could, from maybe several viewpoints, and you can actually see on the screen what's going on, then I think it would be very, very valuable –
- Q. Well trust me, trust me, I've seen it.
- A. – I don't know whether at this point you can do that but I think that's what should be done, otherwise you're just, it's just semantics, you know?
- Q. I've seen it, last summer. Now, did you hear the traffic engineers for the marina company and others earlier in the hearing back in Auckland last week talking about the possibility of a conditional consent that actually

would limit the times at which marina berth holders could access the carpark, were you present during any of that?

A. Mhm.

Q. Do you have a view as to whether that would ensure that the current zoo wasn't made worse by marina vehicles coming through?

A. You know you might be able to pull it off for one or two years, but as the numbers increase, like the numbers of ferries and the numbers of people and the number of shuttle drivers and so on, it will get continually worse.

Q. Can I just test you with this theory?

A. Yeah.

Q. If it really just gets worse and worse as you fear it will, and things get more and more jammed up down there at the busy times of day in the summer, is, in your view is the marina traffic actually going to make it very much worse, is it, perhaps another way of putting that is it possible to make it any worse?

A. Sure, you could have people waiting for an hour to get in there, or two hours or whatever, but I mean that's not going to happen, but yeah, it can always get worse.

Q. Yes but I'm asking for your, you for some thoughts on will that proportionately, will the marina traffic proportionally make it worse, particularly if they are subject to a condition that keeps them out for a large part of each hour, cycle of the busy times of the day?

A. I believe it will because you won't just be dealing with cars that are going to the marina, you would have their vehicles servicing the marina, like fuel tankers, food, water, the people that fix boats, all those sort of things, they'll want to get in there, you know, so if you don't let, you know, if you've got a big fuel tanker going in well, yeah.

Q. But if they're subject to that same restriction that the berth holders are, so, you know, your diesel mechanic can't get through there either, it's really not going to proportionately increase what already is a serious problem and may become worse as there are more taxi drivers and more shuttles and buses?

- A. Yes but why would you want to chuck in another whole spanner in the works to make that worse, you know, congestion is only related to the number of traffic movements over time, you know, so yeah, it'll make it worse for sure.

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

Now, who might we have next, do you think, Mr Littlejohn?

MR LITTLEJOHN:

(inaudible 16:15:46) all we have left for today is Mr Wragg.

THE COURT: JUDGE NEWHOOK

Yes. Mr Wragg, would you like to come forward? Now, have the lawyers got a copy of this, Mr Wragg?

REGISTRAR:

Do you want me to pass it to the witness?

CHRISTOPHER WRAGGE

I'm open, really.

THE COURT: JUDGE NEWHOOK

Have you got copies for the lawyers?

MR WRAGGE:

Yes.

THE COURT: JUDGE NEWHOOK

Yes, can you pass them out please. Right, now, Mr Wragge perhaps we just need to deal with one issue first, you approached the registrar earlier in the week with a video that you asked be played as part of your submission. I don't know if you heard back from the registrar but she brought your requests to me and we had a look at the video to see (a) whether we considered that it was appropriately a part of a submission as opposed to evidence, and then secondly, given the feeling that we had that it looked more like evidence to us than a legal submission, whether we would be prepared to admit it at this late stage. Now, I already offered some leniency, I thought, to Ping with another video, but yours came in a few more days after that, and that's when my

eyebrows really went up. Now, I've seen it, it hasn't been seen by others because we haven't posted it on the website, and essentially what it is, for the record, as I viewed it is a series of video bytes of portions of some presentations by some people on a charter ferry ride around various parts of the Hauraki Gulf to various of the islands, in which one gains some sound bytes, just small portions of what, of clearly longer presentations by the likes of Raewyn Peart from the ES, DOC board member et cetera. And I have to say to you that I have some difficulties with that helping us at all, (a) because the video didn't seem to deal with Matiatia as such and that's what we're here to deal with today. Secondly, they were, it was a series of truncated sound bytes of some presentations of some people who aren't themselves here making submissions or giving evidence who can be tested and questioned by us, so I was left with the feeling that it shouldn't be part of your presentation, but I want to hear from you if you have anything to say in answer to that view that I've just expressed.

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MR WRAGGE:

Look, all I'm going to say Sir is thank you for looking at it, very happy for it not to be part of today, it was very much a supplementary add-on to assist a wider argument but I'm very happy to leave it aside.

THE COURT: JUDGE NEWHOOK

Well I'm glad you see it that way because I'm not sure that it really was helping us at all with Matiatia.

MR WRAGGE:

May I make one inquiry first Sir?

THE COURT: JUDGE NEWHOOK

Yes.

MR WRAGGE:

The submission I gave to Janice includes other attachments. Have the bench been able to look at those attachments?

THE COURT: JUDGE NEWHOOK

What were those, remind me?

MR WRAGGE:

They were documents from RT. I have summaries of them here if they're not the formal documents which I gave to Janice and they have some relevance.

THE COURT: JUDGE NEWHOOK

We've got them under the heading "WCIPG submissions" under the electronic heading "Proposed Matiatia marina direct referral," so they're right up the early end of the collection of materials. What I want you to do Mr Wragge is to read your submission to us now and we'll see if we need to come to these documents. Yes I've seen them, I'm not quite sure how far they've been circulated. The material in the part of your name but they tell us things by in large that are very well known about the importance of tourism for instance.

MR WRAGGE:

Mhm.

THE COURT: JUDGE NEWHOOK

Which I don't think is disputed by the applicant and I'm just not sure that we actually need to send time on them.

MR WRAGGE:

I appreciate that in generality Sir, there are a couple of particular items I'd like to refer to that's all.

THE COURT: JUDGE NEWHOOK

Let's go through your submission and see where we get to with it.

MR WRAGGE:

I don't propose to read it all because it's longer than I need to.

THE COURT: JUDGE NEWHOOK

Okay that's fine you take us to what it is you want to focus on.

MR WRAGGE:

But I'll go to and I think it's relevant to start at paragraph 2 which is, "Once upon a time I was a Civil Engineer."

THE COURT: JUDGE NEWHOOK

Yes we've read your credentials bit of work in West Australia.

MR WRAGGE:

And secondly, I was also involved with property development and those two things are relevant because if I got to the next page paragraph 10, with this submission, it's primarily focused on strategic infrastructure matters and it's something which as an ex-engineer is probably closer to my heart and something when I put that together with property development, it's something which I imagined forwards more and I've been using that imagining forwards more to look at the growth issue, and it's the growth issue which is pivotal to the submission.

THE COURT: JUDGE NEWHOOK

Okay, proceed.

MR WRAGGE:

And so the real concern I had before I wrote this was going and being able to be able to participate in the expert witness conferences and especially the traffic one and hearing the nature of the way evidence was given and what

was accepted and what was dismissed and after further inquiry, the (inaudible 16:25:34) was dismissed and that created some concern and I think many of the other people have spoken about our concern about the future. If I look at paragraph 13, I quote from Mr Langwell of DMI and he said the WML Council approach did not seem to allow for this future affect and in my view it is a very important consideration and with this view, it is a very important consideration.

Now if we come back to paragraph 20, it's talking about the projected increase of tourism and so the reason I'm bringing it up is it's not just a casual kind of idea, this has got growth and the numbers are real and it's meant to become very much a part of the Auckland economy and its' more significant I believe than most people have given it recognition and in focusing and looking at that, I could then go to 21 which it says, "The real pivotal step changes in this will happen after the Sky City Centre is open." And that's not likely to happen for five years so what we're looking at here is a projected increase but we obviously in Waiheke know is congested but the real energy for demand change for tourism is going to happen in the five to 10 year horizon and I've reconciled that with what's happening with hotel development and conference centre this is considered to be of some impact.

Now separately from that I don't know if you had a chance to look at one of the other pdf's on ATEED looking at the Hauraki Gulf?

THE COURT: JUDGE NEWHOOK

Yes I have.

MR WRAGGE:

But I do have a copy made in very simple form for anyone who may want to quickly look at that.

THE COURT: JUDGE NEWHOOK

You tell us what you want us to take from it.

MR WRAGGE:

This was done a year and a half ago but what it's saying is that the ATEED is focusing on the Gulf and ATEED is not without economic substance and so what I'm saying is that we may not really kind of see what I call a slow tidal wave coming but that slow tidal wave is coming and my interpretation, this new ferry operator coming on board is just the start of that trend.

THE COURT: JUDGE NEWHOOK

Okay. I don't think anybody in this room has a difficulty with your emphasising these things and they'll add something to it that perhaps isn't in your presentation. Maybe it is, or maybe we'll all come to it and it can be no doubt on the national scene which of course very much includes Auckland, probably almost to a high percentage includes Auckland, that the government considers that tourism is one of the big earners into the future and it's, I think it's tried but the government is signalling that for instance, by the Prime Minister himself taking the role of Minister of Tourism as he has and as he's picked up again in the last election that's a powerful signal isn't it? Even sort of over and above what ATEED may be signalled to us regionally so I don't think anybody in this room is under any illusion that that is National government policy, and I mean national in the generic sense not the political party sense. It's government policy.

MR WRAGGE:

What I would like to suggest is that when I start to reconcile that trend and that energy for expansion, what is likely to mean on the ground?

THE COURT: JUDGE NEWHOOK

Well that's what I'm coming to. That's what we're interested to hear from you. I don't think you need to spend time with these materials. I think "trite" is a rather poor sounding word. I think we are under no illusion at all that this is a matter of government policy and what I'd like you to do is actually to move into the area where you perceive problems generated potentially by the marina if it gets consent.

MR WRAGGE:

I want to suggest and I've got to say these are scenario ideas as opposed to realities at the moment. But feedback, one of the feedbacks is there is, I move a foot to have access to this Coromandel cycleway and instead of going around the Firth and up the other side, the southern side of the Gulf that that comes through the inner islands. And some initial discussions have been had, I understand from what you're saying, where the local board intends Coromandel for cycles to come through the inner islands –

THE COURT: JUDGE NEWHOOK

Could we, I mean that, I suspect, is a bit speculative at the moment. It might become reality.

MR WRAGGE:

Yes it is speculative.

THE COURT: JUDGE NEWHOOK

But can we actually sort of put that to one side too and again go to a higher plane and say this, before we get you to move on to potential impacts from the marina development. Again, a very high level. I don't think anybody in this room will doubt that central government, local government, bodies like ATEED will continue to endeavour to come up with ideas to foster tourism. And the example that you've given is, I think, but one and there are dozens. And what I'm saying to you is I really don't need you to stress this, I don't think there's any argument about it. That's happening. What we want to hear from you and (inaudible 16:32:41) is we perceive potential problems from the establishment of the marina as proposed by WML.

MR WRAGGE:

Well thank you for accepting it Sir. I suppose the next jump is, I can see an opportunity, albeit it's an idea, for such a cycleway to go through –

THE COURT: JUDGE NEWHOOK

No, can we please move on from the cycleway.

MR WRAGGE:

May I just refer just for one second Sir.

THE COURT: JUDGE NEWHOOK

One second.

MR WRAGGE:

Because it's possible for that to go through to Motutapu and for them then to want a ferry connection to Matiatia.

THE COURT: JUDGE NEWHOOK

Look, what I'm saying to you is we don't need to engage in discussion about speculative ventures like that because if we take a step up to a higher plane and accept that people will continue to come up with great ideas for tourism that involve Waiheke Island as a jewel in the Auckland Regional Crown or national Crown, all right? So we don't have to discuss prospective cycle ways and more ferry trips. If we accept that there will be these continuing endeavours in tourism generally that will drive more and more ferries. So drive more and more traffic.

MR WRAGGE:

The point I'm trying to lead to Sir is that I believe what this is leading to is Matiatia as a mini hub for the inner Gulf, not just a commuter wharf. And that leads in infrastructure terms to an additional kind of infrastructure being required.

THE COURT: JUDGE NEWHOOK

All right, well let's put that into the equation. Can we move to your discussion of the potential problems that you (inaudible 16:34:37)

MR WRAGGE:

Well that comes back to saying if indeed we do need more ferry arrivals and departures of whatever kind at Matiatia we need to have an infrastructural capacity to cope with that.

THE COURT: JUDGE NEWHOOK

Well I can't help you with that. The three of us can't help you with that, we're not here to plan Matiatia and you do know this I know, we are not the Council.

MR WRAGGE:

I appreciate that.

THE COURT: JUDGE NEWHOOK

We are the Environment Court, so we don't making planning policy for the Gulf or any other part of Auckland or New Zealand, we are here today to hear a case about the proposal for a marina and what its impacts might be. So, we can't help you redesign the port, the bay or the roading or anything else. We need to take the situation as we find it. We need to get the advice of the experts and there are dozens of them and weigh up all these issues about the proposal for a marina. Can we come back and focus on that?

MR WRAGGE:

So if I take this forwards, that at the present time, being part of the expert transport conference, is that there seemed to be a reluctance or incapacity to find methodologies to give reliable projections. And what I want to refer to in the pdf on the visitor survey which I referred to is that there are a number of references there to a group called Covec.

THE COURT: JUDGE NEWHOOK

Are they coming to give evidence to us?

MR WRAGGE:

No, but what they are showing is that they have methodologies to actually take more abstract spaces and put them into hard projections and what I'm saying is if that's not possible in the Court's evidence process which I believe probably is not, then I want to suggest something which is from one of your earlier cases saying perhaps we need to seriously consider the precautionary approach.

THE COURT: JUDGE NEWHOOK

Well there are many Environment Court decisions about the precautionary approach Mr Wragge. But you're not a lawyer –

MR WRAGGE:

No.

THE COURT: JUDGE NEWHOOK

So what I'm really asking you to do is move on with your submission and address in particular your concerns about the proposal that's before us.

MR WRAGGE:

Right, so my, (inaudible 16:37:35) concerns about the proposal, is it by virtue of taking the space out of the bay for a marina we are denying the opportunity for some other future use which is more necessary for the infrastructure for Waiheke.

THE COURT: JUDGE NEWHOOK

Can we go back to the printed word, can you take us to that theme in your prepared submissions and develop it through the use of your prepared submission?

MR WRAGGE:

I suppose it's really between paragraphs 51 to 56 and talking about, "It is clear that long-term infrastructure planning is yet to be factored in."

THE COURT: JUDGE NEWHOOK

Keep going.

MR WRAGGE:

And really it's saying nobody is picking up the batten to say who should do that except that many experts have related to concerns about the future but we're all dropping the ball because no one's actually doing it and how do we

bring that into this whole consideration. And that really is the dilemma. Because it is a dilemma the way we see it.

THE COURT: JUDGE NEWHOOK

Yes, and I've read your paragraph 57 which develops that concern as well. And 58.

MR WRAGGE:

And so, what we're seeing I have no, I have a legal confusion as to where the Local Government Act fits into all of this but there does seem to be an increasing legislature priority about infrastructure and certainly Mr Key on TV a week ago after the election referred to the fact that section 6 and 7 would have a little bit more focus given to the legislature.

THE COURT: JUDGE NEWHOOK

We can't concern ourselves today with other than Resource Management Act matters so we can't go down the Local Government Act route and we can't concern ourselves with what is still speculative on the national scene about the old section 6 and 7 the Resource Management Act will be amended. (inaudible 16:40:20) whether they'll be amended, let alone what they might be amended to, let alone what might then be confirmed if anything is passed by the Government (inaudible 16:40:27). We can't (inaudible 16:40:31).

MR WRAGGE:

Right, well in that case Sir, I refer to the coastal policy statement, policy 6(1)(a) and (b) which from my interpretation, but I'm not the lawyer, recognises that the provision of infrastructure was important. And that the reasonably foreseeable means for such infrastructure must be considered.

THE COURT: JUDGE NEWHOOK

So paragraph 60 and following?

MR WRAGGE:

I'm not –

THE COURT: JUDGE NEWHOOK

At this (inaudible 16:40:59) you refer to policy 6(1)(a) of the NZCPS?

MR WRAGGE:

Yes, (inaudible 16:41:07) I didn't actually refer to part B, which I have as the other notes in front of me, because part B refers to "foreseeable needs".

THE COURT: JUDGE NEWHOOK

We are going to hear from the lawyer today about that?

MR WRAGGE:

Yes, as (inaudible 16:41:26) I'm certainly not the lawyer. So in following that through, explaining, we seem to have a problem coming and the dilemma of not quite knowing what to do about it, and we have a need to keep within the jurisdiction of the RMA or the CPS, but the CPS does seem to give some relationship to it.

THE COURT: JUDGE NEWHOOK

Yes, well I believe you've expressed your concerns?

MR WRAGGE:

Yes.

THE COURT: JUDGE NEWHOOK

As a lay person, and they'd heard. And we will knit into that what the lawyers and the planners, the planning witnesses are going to say about it, because that's part of their training. So we note your concerns as part of (inaudible 16:42:28) case.

MR WRAGGE:

And the last issue is really paragraph 63, which relates to the proposed unitary plan and to part 2 chapter 5 coastal, paragraph 5.1.1(3) and it talks about a different way of moving ahead with the marina proposals. And it's not for me to say how much weight should be given for that, but I just note that it's there and it seems to be, have some worthfulness to us.

THE COURT: JUDGE NEWHOOK

So you're saying that (inaudible 16:43:08) supports those statements?

MR WRAGGE:

We have made submissions to the energy plan in support of, that's it.

THE COURT: JUDGE NEWHOOK

So we're all going to have to see where that goes next?

MR WRAGGE:

Yes we are.

THE COURT: JUDGE NEWHOOK

One of the (inaudible 16:43:21) which Waiheke Marinas Limited has also made submissions about this sort of thing –

MR WRAGGE:

They've made submissions for the designing and they've made submissions to have prohibited activities.

THE COURT: JUDGE NEWHOOK

And we'll see where that all goes next?

MR WRAGGE:

We'll see where that all goes.

THE COURT: JUDGE NEWHOOK

And we can't help with that today.

MR WRAGGE:

No.

THE COURT: JUDGE NEWHOOK

What else would you like to –

MR WRAGGE:

I think that pretty much wraps it up sir. Let me just cross-check in case –

THE COURT: JUDGE NEWHOOK

What's this figure "1" on the back?

MR WRAGGE:

That was done for my own interpretation because every time I look at something there's a different way of –

THE COURT: JUDGE NEWHOOK

The coastal environment?

MR WRAGGE:

Right, yes, and I just thought for my own clarity or anyone else who looked at this, who may not be expert, that might have helped, that was all sir.

THE COURT: JUDGE NEWHOOK

I've badgered you enough I think, we'll just see if my colleagues want to talk about anything.

CROSS-EXAMINATION: COMMISSIONER LEIJNEN – NIL

CROSS-EXAMINATION: COMMISSIONER HOWIE – NIL

THE COURT: JUDGE NEWHOOK

Mr Littlejohn, it seems I think from (inaudible 16:44:50) assistance that might bring us to the end of available presentations today.

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL -
HOUSEKEEPING**

COURT ADJOURNS: 4.50 PM

COURT RESUMES ON FRIDAY, 17 OCTOBER 2014 AT 9.32 AM

**MR R BRABANT RE-CALLS
REGINALD PITA RIKYS (RE-SWORN)**

MR R BRABANT:

Can we just do that little correction first Sir of the man's name, can you remember that came up yesterday?

MR RIKYS:

Seven-fifty-five in the transcript.

THE COURT: JUDGE NEWHOOK

Yes okay.

MR R BRABANT:

So Sir that's in paragraph 32 of the rebuttal where Wiremu/William Peters and then three lines down we've got Mr Williams and I just would get a correction made, you did ask if that be clarified.

MR RIKYS:

So I can confirm that, I meant Mr William or Wiremu Peters not Mr Williams. I don't know how that slipped through, never mind.

THE COURT: JUDGE NEWHOOK

That's fine, no trouble. Now have counsel discussed who is going to place questions before Mr Rikys?

MR R BRABANT:

Yes I was just going to ask for some guidance for you Sir, what I've done is I've supplied them with a transcript.

THE COURT: JUDGE NEWHOOK

Yes.

MR R BRABANT:

So that he can go to the areas in question and it does include also a transcript of what you raised and the prospect of Mr Rikys coming back.

THE COURT: JUDGE NEWHOOK

Yes.

MR R BRABANT:

He's familiar with the process and I imagine Sir that it may not be necessary for me to ask him.

THE COURT: JUDGE NEWHOOK

Right.

MR R BRABANT:

He knows what the issue is.

THE COURT: JUDGE NEWHOOK

Yes.

MR R BRABANT:

And the Court may even want to start the ball rolling as it were Sir but I'm in your hands just how you'd like to do it.

THE COURT: JUDGE NEWHOOK

No I think I'm happy for counsel to do that. The only slight query that in my mind was that the information about clause 7.3 of the joint witness statement was laid out before us under cross-examination by you Mr Brabant of a number of witnesses. I vaguely wondered whether to have Mr Rikys cross-examined on the same point, might balance the scales rather than you lead him albeit if other counsel are happy that you'll lead him or he simply

Speak to us himself and other counsel would obviously have the right to cross-examine if Mr Brabant led or Mr Rikys simply spoke to the record himself. Mr Enright, Mr Littlejohn in particular any views?

MR ENRIGHT:

Sir we haven't yet heard this witnesses evidence on the particular point in issue and for my part it may exist, I think to have, just to hear Mr Rikys views and then some questions might (inaudible 09:37:00) there may not be a need.

THE COURT: JUDGE NEWHOOK

Mr Littlejohn are you happy with that?

MR LITTLEJOHN:

No I don't (inaudible 9:37:11) Sir, I think if Mr Rikys has reviewed the transcript then he said he has the issue in his mind.

THE COURT: JUDGE NEWHOOK

Yes.

MR LITTLEJOHN:

I would not to reserve the right to ask any supplementary questions.

THE COURT: JUDGE NEWHOOK

Of course, as I said.

MR LITTLEJOHN:

But I'm happy if the Court thinks it more efficient or effective to question directly Mr Rikys on the points.

THE COURT: JUDGE NEWHOOK

Yes, well he's now read the transcript including my comments about what was going to be happening and he's quite experienced with Environment Court processes so I think we might follow Mr Brabant's suggestion that Mr Rikys now tell us his thinking about clause 7.3.3 and the information he elicited

under cross-examination from other witnesses and/or anything he wishes then to add about the meaning of 7.3.3 and then Mr Brabant could elicit anything further that Mr Rikys doesn't cover in his view and then cross-examination can occur (inaudible 09:38:17) in the Court.

EXAMINATION CONTINUES: MR R BRABANT

Q. If I may Mr Rikys refer you first of all to that joint witness statement which you recognised when you first gave evidence and were signatory to?

A. Correct.

Q. And in particular 7.3, and there's a series of statements there, the identification of a Mahinga Mataitai in Matiatia Bay and the changes that have occurred, environmental changes perhaps and where the harvesting still occurs in these days and lastly the key statement about in 7.3.3. Now Mr Rikys you've received a transcript of the evidence that is questions and answers of three witnesses yesterday, those were the ones I think you identified for us Sir and you've read in there some evidence about practices that could be carried out in relation to that last issue in 7.3.3 and I'd ask you now having read that if you could assist the Court with a response to that.

A. I confirm I've received the transcript, I confirm I've spent a considerable period studying the evidence given closely. So in reference to the issue in 7.3.3 about gathering kaimoana across the waahi tapu and whether karakia might be some way of permitting the gathering of kaimoana over an area that is waahi tapu. My knowledge and experience in this area is that an area that is waahi tapu is first and foremost avoided. Tapu means sacred, leave it alone, the more tapu it is the more you leave it alone. It's a basic and fundamental promise. As a rule the principle of gathering kaimoana would infringe the tapu. A good illustration of this is the urupa area in the southern bay where I was part of a group that had the picnic tables removed from the urupa area and signs installed to say the consumption of food and drinks in that location was inappropriate. So the question is can karakia be used to make infringement okay in

some other way or to use wording of one of the witnesses, to placate the atua, atua being the Māori gods, specific to particular practices such as Tangaroa in relation to the moana. First, if I might must review some of the statements because the evidence provided by the witnesses is, um, uneven. Taking firstly at transcript page 744 the evidence by witness Ngapo, she refers to not having a good knowledge of Tikanga, that her mother, at page 745 – and I might just refer to this because I think this is one of the underlying problems and issues – and I quote at paragraph (a) page 745, sorry, it means an answer, not a paragraph reference. “It is outside my scope a little but I have taken seafood from that area and this is what I think, I did it with my mother and an aunty from the marae and at that stage we weren’t aware, as aware of the koiwi in the bay but should someone have been really hungry I would say they should say a karakia and take the shellfish, that’s my own personal view. It has nothing to do with any expert.” She also says at 744 in the transcript that karakia before catching fish would make it right, and I confirm that saying karakia both before and while fishing is a common practice, but it’s more evoking the energy of the atua to facilitate a good catch, which I think is quite a distinct thing from infringing a tapu. Moving to witness Te Rangiuiaia at paragraph, transcript page 750, he talks about tapu and noa and, quote, the management of karakia, that you can cross the weave of tapu and noa in the, the word “the” is missing, in the corporeal world. 757 he says karakia relates as whakapapa to the place, no reference to tapu. Also states that Morehu Wilson in references, karakia is a way of negotiating tapu whereas I can’t find that reference in Mr Wilson’s evidence. And finally witness Ropata at transcript pages 735 and 6, again karakia to us (inaudible 09:44:25) to provide help, “and provide food.” Permission to enter a sacred space, gathering kaimoana is a sacred act. And finally for the sake of completeness, where it’s not one of these three witnesses but I think it’s pertinent, transcript page 669, Morehu Wilson, “Descent into those specific areas can placate the atua, those who have descent, who have dominion over the waahi tapu, and he talks of

incantation customs, protocols and etiquette, he does not reference karakia. So then, from those statements the question is what is our understanding of karakia? That's quite a complex issue and I think it's central. It's an issue that has fascinated me all my life because of the idea that we now think of karakia as prayer and in fact the idea that karakia fits deeply in the Māori world and in the traditional understandings of atua and cosmology and the understanding's relative to the word today are very different. So if the suggestion is taken from the evidence is that karakia can be used as either a prayer or some mechanism to placate the atua and to allow the taking of kaimoana in the waahi tapu. My knowledge of this area goes back decades. I have been very fortunate to have that access to the leading experts in the Māori world in this area, all of whom, sadly, are now deceased, in particular the Reverend Mori Marsden who was the last individual trained in the traditional Kohanga school, the Reverend Hone Ka and (inaudible 09:46:33) Taho. And the teaching they have given me in the traditional understanding of karakia is that it is a mechanism used to evoke the power of the atua, and I emphasise the word "evoke", whereas over the decades it has become understood to mean more of a prayer and a placatory mechanism. That is not my view. So to conclude then, would it be appropriate to use karakia to attempt to negate a tapu or to allow the taking of kaimoana which would otherwise infringe that tapu? My view is it would not be appropriate. Use of prayer to (inaudible 09:47:42) infringement of the tapu I believe is not correct Tikanga and would not be done and more so in a situation where why would you bother when if you wanted to take kaimoana it would simply be a matter of going to somewhere close by where that could be done without the risk of infringing a tapu? The other point I would make, and there is a number of examples here on the island where this has been done, I believe the correct process would be if it was absolutely essential to take that kaimoana from that location, and I can't see why it would be but if it was, then the correct process would be to remove the tapu. Your Honour might remember the evidence of (inaudible

09:48:30) Hariata Gordon in the Owhiti Bay case where kaumātua and (inaudible 09:48:39) Gordon removed the tapu in the bay where the burials were. They went to a very lengthy process to remove the tapu and that in my view, it would have been the correct way to deal with this. I think that gets me (inaudible 09:48:58).

THE COURT: JUDGE NEWHOOK

Any further supplementary questions, Mr Brabant? The witness has prepared quite thoroughly and...

MR R BRABANT:

Yes Sir.

THE COURT: JUDGE NEWHOOK

Now, I have a core question in my mind, counsel, but the usual order of things would have it that you cross-examine next and then if I ask, and I'm happy to leave my core question and see where you get to, if you wish. Alternatively you might want me to put my core question and see where we go.

MR LITTLEJOHN:

Can you pass it to me on the notes, Sir?

THE COURT: JUDGE NEWHOOK

Nice try, Mr Littlejohn.

LEGAL DISCUSSION – ORDER OF QUESTIONING (09:49:52)

CROSS-EXAMINATION: MR LITTLEJOHN

Q. Mr Rikys, the question that you were asked to advise the Court on was whether or not karakia could be used to navigate tapu to allow use or access to such a site that might be waahi tapu. The question that you rephrased and answered was whether it was appropriate to use karakia. Coming back to the question you were asked, can karakia be used to navigate tapu, Mr Rikys?

- A. There's nothing to prevent anybody doing that, the consequence falls on their shoulders.
- Q. Mmm, but you, in answer, well not answer, you confirmed in your reference to the (inaudible 09:51:08) Bay case, that indeed a tapu was removed.
- A. Correct.
- Q. How is it removed, Mr Rikys?
- A. It's a very complex process and –
- Q. Did it involve karakia?
- A. That is one of the mechanisms used, yes.
- Q. Oh –
- A. But it's not the only one and, in fact, Morehu Wilson refers to this in his evidence and he uses the word, "incantation," which I would translate as (inaudible 09:51:37).
- Q. Okay, so your evidence therefore is that traditional practices can be used to navigate tapu?
- A. Yes of course.
- Q. Thank you Mr Rikys.

CROSS-EXAMINATION: MR ENRIGHT

- Q. Just a couple of questions first on Morehu Wilson's evidence and it probably assists if you have the transcript, Mr Rikys. Do you have the transcript, because I can read it out to you if you don't. Page 668 –
- A. I'm pretty familiar with it, but let's go and see where we can get to.
- Q. Page 668.

THE COURT: JUDGE NEWHOOK

Yes, you read it out Mr Enright, we might need to nail this quite accurately.

MR ENRIGHT:

Yes Sir.

THE COURT: JUDGE NEWHOOK

I'm sorry I do have it, yes, just give me a tick but read it out anyway for us because I haven't called it up on screen yet.

CROSS-EXAMINATION CONTINUES: MR ENRIGHT

Q. So the question through Mr Brabant was, "So I need to ask the question again please, if this bay is recognised as a food-gathering place, it would be inconsistent with that recognition which you agreed to at the meeting for it to be waahi tapu, would it not?" The answer he gave, the witness gave, "Does (inaudible 09:52:42) have a different perspective, come from a different perspective in terms of what's waahi tapu?" "It means waahi tapu from our perspective of Ngāti Paoa is that we can delineate where our waahi tapu are and we know where they are and it's from that perspective that Ngāti Paoa maintains the issue around what you are talking about. It is through incantation and through our customs protocol and etiquette that we are able to move or rename where waahi tapu are." Now my question for you is do you agree with Mr Wilson's evidence on that?

A. That's exactly the matter I've just referenced in answer to Mr Littlejohn two minutes ago.

Q. Yes, sorry.

A. I used the same word, "incantations." (inaudible 09:53:20) is the more appropriate.

Q. Now you did say that Mr Wilson doesn't refer to karakia, but surely be definition, referencing incantation is effectively a karakia?

A. No, they're quite different things and this is why we need precision. A karakia in the old world with a new vocation of the power and energy of the atua, not a prayer. It's become understood because of the influence of Christianity to be a prayer and to seek, you see how different this is, and to seek placating the atua, whereas based on my teachings from the primary sources of this area of knowledge, it is an evocation of the energy of the atua. They're quite different things.

- Q. And so Mr Wilson refers on the next page to, that if you have to (inaudible 09:54:20) to those specific areas which are waahi tapu, you are able to placate the atua who have dominion over those waahi tapu, if you have genealogical ties that allows you to do that and again that is his reference to a, both a karakia and his whakapapa, his genealogical ties, which allowed him to navigate the waahi tapu issue.
- A. I think the fact that you can whakapapa to the underlying basis of the waahi tapu is comfortable and I know of some other instances where that has occurred in my experience. The primary obligation would nevertheless be to respect the tapu as I've said.
- Q. Now let's just (inaudible 09:55:12) just to remind you of one thing, Mr Wilson obviously speaks in terms of the tikanga of Ngāti Paoa, and if that is the approach to karakia you'd have to accept that's legitimate, his definition of that/
- A. That's not what he's done here. Show me a definition of karakia here?
- Q. But that's not the question, the question is you respect don't you that Mr Wilson understands the tikanga of the mana whenua?
- A. No, I'm agreeing that the issue of whakapapa is helpful, I agree with that.
- Q. Now just moving back to the working of the joint witness statement.
- A. I have it right here.
- Q. Good, 7.3.3 obviously is the one we're focused on, where it says, "(inaudible 09:56:00)" (inaudible 09:56:05) would you accept that that doesn't state the extensions that can apply and the exception which we've just been talking about now is the one identified by Mr Wilson in those two passages I've just read to you.
- A. You're referring to the issue of descent or whakapapa.
- Q. And the use of incantation.
- A. Yes. As I've said they're mechanisms that it is possible that might be used. The issue of appropriateness is left with the mana whenua. That's something I can't comment on. And wouldn't.
- Q. And that's a legitimate exception to what was agreed by you in 7.3.3?
- A. Don't think I'd go quite that far.

- Q. From the perspective of –
- A. What I would say is the issue of measuring appropriateness is within their mana.
- Q. The mana whenua of Ngāti Paoa?
- A. Yes.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- Q. I'd just like a bit of clarification please, Mr Rikys, you have this morning I think as I've listened to your carefully prepared response offered views that I perceived as strong but personal, and that I infer have come to you from teachings from the elders from whom you've learned tikanga as one would expect.
- A. Correct, yes.
- Q. Very often, Mr Rikys, in our work in this area we experience or hear evidence of differences in tikanga amongst different groups, amongst different iwi, amongst different hapū throughout the Māori world. And I left with the impression that I invite you to comment on that this might perhaps be another, I think you phrased it very carefully, you didn't I perceive want to trample on the mana of other iwi, but I did hear your introductory words when you commenced your careful statement first and foremost, for instance am I right in my understanding that there are these differences and that others might have a different approach to wāhi tapu and how to deal with them from time to time?
- A. That's a very tricky question and I will not attempt a very tricky answer, I'll try and be as direct as I can. There is variation as between iwi right across the Māori world dialectic in terms of te reo, certainly in terms of tikanga, certainly in terms of (inaudible 10:00:05), certainly in terms of different practices and (inaudible 10:00:11) and I won't go into detail.
- Q. It's very hard to be black and white about it –
- A. I don't know that it's helpful, but the point I was trying to reinforce in relation to the teachings that have come to me from for example the last person trained in the traditional (inaudible 10:00:29) school is that

karakia are evocative of the energy of the (inaudible 10:00:35), they are not placatory, and that is one of the reasons why I have difficulty.

Q. Yes but is that a universal belief in the Māori world? It might be quite a powerfully-held one in the school that you've just mentioned.

A. I think it's an absolute belief in terms of karakia as understood pre-Christianity across the Māori world.

Q. That's what you've been taught.

A. That is not only what I've been taught but I've just done a lot of extensive research across this area for a book I've just finished and that is my view.

CROSS-EXAMINATION: MR R BRABANT

Q. Mr Rikys, you've referred to an example of wāhi tapu being lifted and mentioned Awhiti Bay, and the involvement of (inaudible 10:01:39) Gordon who is of Ngāti Paoa.

A. Correct.

Q. And was that in relation to a burial site or urupa?

A. A very important one, yes.

Q. And what was the circumstance in which the wāhi tapu would be lifted, why would it be lifted?

A. My understanding was that it was to enable the use, there were seated burials removed from the site.

Q. Removed?

A. Yes. And so it was then a matter of cleansing that area and removing the tapu.

Q. Now you've read the witnesses here all maintain there are presently bones, koiwi, and say it's wāhi tapu. Can you tell us if you're aware of a lifting of wāhi tapu to enable kaimoana gathering where there hasn't been a removal of the burial?

A. Not to my knowledge.

QUESTIONS FROM THE COURT – NIL

WITNESS EXCUSED

MR R BRABANT:

Sir, before you start again with witnesses and I'm sorry to have to introduce a possible complication, but I should advise you now that there is one potentially which I hope will be resolved. It relates Sir to the evidence of the harbourmaster Christian Moss in relation to the permits for moorings and being able to move moorings if a marina was to go there and displace it. The answers to this question, Sir, have led us to make enquiry of our witness, Mr Dilley, who was formally in the harbourmaster's office. And he has advised us of three specific situations, Bayswater, Orakei and the extension of the Half Moon Bay ferry terminal where the provision for the harbour master to use maritime operational reasons was engaged to move moorings to enable that. I've asked my friend, Sir, because that's inconsistent with what Mr Moss said, that if they seek that that happen on those occasions, I'm not willing to go further than that. If that's not accepted during the morning Sir, Mr Dilly, of course is from out of town, he's here till this evening. So I just indicate Sir that there is the potential, unless we can get acknowledgement on that.

THE COURT: JUDGE NEWHOOK

So you're applying to have him recalled –

MR BRABANT:

(inaudible 10:05:25) Sir, just on that specific matter.

THE COURT: JUDGE NEWHOOK

To deal with matters that transpired while Mr Moss was being questioned.

MR BRABANT:

Yes, because it wasn't in his evidence Sir.

THE COURT: JUDGE NEWHOOK

And that you were sure it wasn't in his prepared evidence?

MR BRABANT:

Yes, specifically about whether that provision could be used, that's the only matter. I'm hoping it can be resolved Sir, but if it can't then Mr Dilley's leaving tonight. It's not a long issue, and I've have to bring him all the way over on the ferry, but...

THE COURT: JUDGE NEWHOOK

Mr Littlejohn, you're looking a little non-plussed?

MR RIKYS:

Well firstly Your Honour, I've just been assaulted outside and I'd like the police called please.

THE COURT: JUDGE NEWHOOK

You better come back inside probably Mr Rikys.

MR RIKYS:

I've just been struck by an individual with a (inaudible 10:06:15)

THE COURT: JUDGE NEWHOOK

Now everybody please remain very calm, nobody else I suggest go outside, one person has, but we don't want – Madam Registrar would you please call the police.

MR RIKYS:

Sir I'm sorry.

THE COURT: JUDGE NEWHOOK

Well just, we'll all take deep breaths. While we're taking a deep breath I want to address the people in the public part of the room. While Mr Rikys was giving evidence, I think he was being taped on an iPhone – Madam would you please stand up. You were the one who was filming?

MEMBER OF THE PUBLIC:

Yep.

THE COURT: JUDGE NEWHOOK

You're also now sitting there eating.

MEMBER FO THE PUBLIC:

Yeah.

THE COURT: JUDGE NEWHOOK

Now I'm sorry, we have standards, this is a courtroom.

MEMBER OF THE PUBLIC:

I wasn't told I couldn't eat or have my coffee or film, so sorry.

THE COURT: JUDGE NEWHOOK

Well do you realise now that you're not permitted to do that, you're not permitted to do any filming or photographing without permission from the Court.

MEMBER OF THE PUBLIC:

Well I photographed yesterday as well, so my apologies for that.

THE COURT: JUDGE NEWHOOK

Your apologies are accepted.

MEMBER OF THE PUBLIC:

And I apologise for eating yesterday, because I didn't know I couldn't eat. I shall now go outside and finish my (inaudible 10:07:55)

THE COURT: JUDGE NEWHOOK

Well I think that's a good idea and I ask you to delete the film from your camera.

MEMBER OF THE PUBLIC:

I did, I will.

THE COURT: JUDGE NEWHOOK

Ladies and gentlemen this is not a whare kai, this is a courtroom.

MR RIKYS:

I'm really sorry to interrupt proceedings, what I'd like to do this afternoon, I will go to the police station directly, that will allow the proceedings to –

THE COURT: JUDGE NEWHOOK

Yes that would be good if you would I think.

THE COURT: JUDGE NEWHOOK

Now let's return to the issue about Mr Dilley, you're looking a little non plus Mr Littlejohn have you had some time to reflect?

MR LITTLEJOHN:

No, no. The way the issue unfolded was through questioning of Mr Moss, that led to Your Honour requesting Mr Allan to produce the bylaw and various permits.

THE COURT: JUDGE NEWHOOK

And some berth, some mooring licences.

MR LITTLEJOHN:

Thank you, and then the last request was for Mr Allan to provide some legal advice or some submissions on what the powers may or may not be under those matters. Now I understand what my friend wants do is bring his witness who was the former Harbourmaster to offer an opinion on the interpretation of those legal documents and whether or not that that has happened in the past is not really the issue, the question is whether it's lawful or not and what are the powers under those documents, that's my submission Sir, I don't know what the benefit will be.

THE COURT: JUDGE NEWHOOK

The new debate arises out of the witness having used the words, I think I'm right about this with a simple phrase, the issue was a challenge.

MR R BRABANT:

Though I'm close I wasn't asking Mr Dilley to interpret anything, I was quite precise I said we have made inquiries Mr Dilley after Mr Moss asked questions about his ability to move people and whether the waiting list would take priority and Mr Dilley has informed us as to what was done to his personal knowledge in respect of Bayswater, Orakei and Half Moon Bay ferry terminal and that's all I wanted to get him to address, not to interpret it but

what the Harbourmaster's Office did in relation to those particular situations with the same wording in the permit, the interpretation is the lawyers.

THE COURT: JUDGE NEWHOOK

Can we approach it this way Mr Brabant, I know your witness is departing presumably heading back to Christchurch tonight but Mr Littlejohn is right in one respect that I charged Mr Allan as counsel for the Council with first of all bringing us the bylaw and the permits which he did but also next to make submissions about those and of course you have a right of reply, that's the interpretation issue, that was the homework that I set in relation to this issue. Shouldn't we hear what Mr Allan has to say in his submissions, I know it might mean bringing Mr Dilley back but then again it might not depending on what Mr Allan offers us in his usual thoughtful fashion about this matter.

MR R BRABANT:

Yes absolutely Sir and I have asked my co-counsel who's still back in Auckland at the moment to see if he can talk to Mr Allan about this so that –
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THE COURT: JUDGE NEWHOOK

They might be able to advance matters between them.

MR R BRABANT:

Exactly Sir, and if it's agreed by Auckland Council's counsel that indeed that provision is utilised and has been, then the problem goes away. My only difficulty is Mr Dilley is disappearing, but I guess we'll just have to deal with that.

THE COURT: JUDGE NEWHOOK

Well Christchurch isn't quite that, all that far away.

MR R BRABANT:

No, and in any event Sir his statement of evidence may not be contested as to what he says.

THE COURT: JUDGE NEWHOOK

Well that's possible, yes, that's another angle. Let's see what Mr Allan comes up with.

MR R BRABANT:

Thank you Sir.

THE COURT: JUDGE NEWHOOK

Rather than keep throwing bits and pieces into the mix.

MR R BRABANT:

Oh, I didn't want to.

THE COURT: JUDGE NEWHOOK

Good, let's handle it that way. Right, now Mr Littlejohn, you've got some witnesses to call this morning?

MR LITTLEJOHN:

Yes, Sir, just if we can move through the agenda, two preliminary matters. One of my witnesses, Mr Anderson, who prepared and gave the wharf (inaudible 10:16:04) data for the old wharf. His wife is very unwell, as is he, and if he could avoid coming to the hearing then he would like to do that and we would like to accommodate that. My friend Mr Brabant has indicated he had no questions of Mr Anderson so I was going to ask for an indulgence if the Court could have a quick look at his evidence to see whether it might have any questions of him, and if not then he could be excused from appearing, with his evidence entered into the record.

THE COURT: JUDGE NEWHOOK

Right, all right, I'll just finish this note. Just have a seat for a moment.

MR LITTLEJOHN:

Yes.

THE COURT: JUDGE NEWHOOK

None of us have any questions for Mr Anderson.

MR LITTLEJOHN:

I'm obliged, Sir.

THE COURT: JUDGE NEWHOOK

And no counsel do, nobody else in the room has questions for Mr Anderson?

MR LITTLEJOHN:

Yes, I advised my friend last night Sir.

THE COURT: JUDGE NEWHOOK

All right then, we can take this evidence as read and it enters the record accordingly without questions being needed.

MR LITTLEJOHN:

It's cross-referenced into Mr Drake's evidence as well so if any of the issues arising from that can be dealt with –

THE COURT: JUDGE NEWHOOK

No this part of it seems relatively uncontroversial

MR LITTLEJOHN:

Now, I have three witnesses left but I've also had a request from Ping Lee that if possible she make her submission earlier this morning, I'm conveying that to the Court, my three witnesses will be available this morning, I imagine they'll be relatively brief, if the Court wishes to accommodate Ms Lee then we could probably get on with that right now.

THE COURT: JUDGE NEWHOOK

Yes, all right, well let's do that. Thank you for that indication.

**MR LITTLEJOHN CALLS
PING LEE-WRAGGE (SWORN)**

MR R BRABANT:

I'm sorry Sir, is this evidence that she's giving?

THE COURT: JUDGE NEWHOOK

She's provided evidence I think.

MS WRAGGE:

I provided a video which was meant as a submission but the Court received it as evidence and so I will be very brief.

THE COURT: JUDGE NEWHOOK

I've got her in a list of witnesses but the page is blank so apart from this video having come in. Your intention was that that video be a submission anyway wasn't it, you've just said?

MS WRAGGE:

Yes

THE COURT: JUDGE NEWHOOK

We've seen the video. Have others seen the video, I did admit it. I'm moderately flexible with some of the things that we've done.

MR LITTLEJOHN:

The thing is I can't find it in here so I can find it if it is meant to be in here but I don't think –

THE COURT: JUDGE NEWHOOK

But there's a link to it that the registrar has.

MS WRAGGE:

I do have it on my computer if you'd like to watch it, it's –

MR LITTLEJOHN:

If I could just be reminded Sir, I seem to remember one with – was it dolphins or something?

MS WRAGGE:

It has orca and manta ray and the sharks.

THE COURT: JUDGE NEWHOOK

And some Māori folk on the shore at Matiatia.

MR LITTLEJOHN:

And then some feeding of bronze whalers?

MS WRAGGE:

That's right, that's the one.

THE COURT: JUDGE NEWHOOK

Yes.

MR LITTLEJOHN:

Yes I saw that.

THE COURT: JUDGE NEWHOOK

I don't feel the need to ask you questions about it Ms Wragge and I'm not sure how much weight we can give it in the overall proceedings. Does anybody wish to question Ping Lee-Wragge about that video? I did admit it as submission rather than evidence. No, okay. We needlessly swore you in it seems.

MS WRAGGE:

May I share a few words?

THE COURT: JUDGE NEWHOOK

I'm sorry?

MS WRAGGE:

May I share a few words?

THE COURT: JUDGE NEWHOOK

You wish to add some words to your submission do you? Now that you're sitting there you may as well stay there and do that.

MS WRAGGE:

So good morning Commissioner Leijnen, Judge Newton –

THE COURT: JUDGE NEWHOOK

Can you speak up please you're very softly spoken.

MS WRAGGE:

Good morning commissioners and Judge Newton. Hello. Oh this one, sorry. Okay. Hello. Good morning Commissioner Leijnen, Judge Newton and Commissioner Howie. I realise that I didn't put a profile so very briefly about myself is that I've been here since '99 and I've lived here as a permanent resident for almost 10 years now and that my highest qualification is Masters in Science and Geography, first class honours, and that the video was made this year in May 28th and it was essentially a field trip of Doctor Kepa Morgan, who is here today, and there are five main points I'd like to make and one is about homecoming. Because the bay, with its promontories, essentially for many people, for many in the audience it's welcome, these welcoming arms once you come back from the ferry and having the (inaudible 10:24:06) coming out would essentially be like cutting off an arm and it would eventually atrophy and it would just be left like this and then that might dwindle as well, so that's the first point about the homecoming. And secondly about habitat because the manta the bronze whalers, the orca, they're there all the time. You know, fishes migrate and it is part of their habitat and their home and like (inaudible 10:24:35) Mike Brown and Phil Scott know this very well, they feed the bronze whalers all the time. And the orca, that was filmed this year and so they migrate, you know, but it's also part of their home. And the third part is humanity. So homecoming, habitat and humanity. The closing lines of the

video, the song that they sing as the credits fall, it refers to a Kiwi folksong that, what's the point of life on earth if we're not here to care and cherish for the life around us and so that brings to the fourth point of the (inaudible 10:25:14) if the marina is built, if all the (inaudible 10:25:16) environmental and social and cultural effects it would have and the video cinematically doesn't meet with previous submissions that have probably already been spoken to, Charlie Waters about (inaudible 10:25:30) mobility, (inaudible 10:25:35) the pathway, the gateway that Matiatia Bay is and about the (inaudible 10:25:45) it holds and (inaudible 10:25:50) the energy, the (inaudible 10:25:55) the vitality of the bay and lastly cultural landscape was the concept that framed the video and because we have to (inaudible 10:26:06) which has been around for 10 years as a (inaudible 10:26:10) indicator, methodology, (inaudible 10:26:16) who the future happened because of him, he had his third year engineering students be examined on Matiatia Bay and just as a brief introduction, (inaudible 10:26:35) model and recently the (inaudible 10:26:37) institute based in Nelson has a study where (inaudible 10:26:44) evaluated sustainability indicators, (inaudible 10:26:49) model methodology was one of the top three internationally to be used, to be picked as, according to (inaudible 10:27:01) well, okay, I'm not an expert here, so (inaudible 10:27:04).

THE COURT: JUDGE NEWHOOK

Sorry, who, are you calling upon somebody else to speak now?

MS WRAGGE:

As my witness because he's the expert and I'm not and the future is all about him.

THE COURT: JUDGE NEWHOOK

Well has this witness exchanged evidence during the course of preparation for this hearing?

MS WRAGGE:

The video encapsulated essentially what it was about.

THE COURT: JUDGE NEWHOOK

Oh now look, Ms Wragge, I, in the slightly flexible way in which I have been running this hearing, I allowed that video to come in.

MS WRAGGE:

Yeah.

THE COURT: JUDGE NEWHOOK

Late, significantly late, and after everybody else had exchanged their evidence.

MS WRAGGE:

Thank you for that, yeah.

THE COURT: JUDGE NEWHOOK

Weeks or months after.

MS WRAGGE:

Mmm.

THE COURT: JUDGE NEWHOOK

And that was, that was very generous of me.

MS WRAGGE:

Okay.

THE COURT: JUDGE NEWHOOK

I'm not, I'm afraid, prepared to extend that generosity for you now to call another piece of evidence.

MS WRAGGE:

Okay, perhaps I could express what the (inaudible 10:28:00) model was, what the field trip was all about really, or maybe I should just –

THE COURT: JUDGE NEWHOOK

Yes, I don't think that would be helpful because you see that's second-hand. Mr Wragge is very well familiar with the processes of the Environment Court and will have been available to you to give you guidance during the last six months that we've been doing all these things. If I was to allow all these new materials to come in and then for you to give second-hand evidence about somebody else's academic research. Now, at this stage, I would be extending liberties that, to be fair, I would have to grant to all sorts of other people and this hearing would never end.

MS WRAGGE:

I apologise, so I've been an art teacher and perhaps I'm not (inaudible 10:28:53) –

THE COURT: JUDGE NEWHOOK

Yes, well I say it again, Mr Wragge has been available to you to give you guidance, he is very familiar with the processes of the Environment Court and I'm a little disappointed that, you know, given an inch, take a mile, sorry, I'm not happy about it. But I accept your apologies, all right.

MS WRAGGE:

Yes.

THE COURT: JUDGE NEWHOOK

Okay, so we won't be hearing from your other person.

MS WRAGGE:

Right.

THE COURT: JUDGE NEWHOOK

Okay, now was there anything more that you've got written down that you wanted to be saying?

MS WRAGGE:

No I just wanted to read brief, just to I guess reiterate the points of the, what the video cinematically conveys, the homecoming, because the Court is a very bird, a very bird-focussed medium whereas having been an art teacher, and –

THE COURT: JUDGE NEWHOOK

We are different from the visual arts, yes.

MS WRAGGE:

Yes.

THE COURT: JUDGE NEWHOOK

But having said that, we also have a great many graphic materials presented to us, so perhaps there's, you know, a bit of a crossover into the art world there.

MS WRAGGE:

Right, (inaudible 10:29:56) new medium. So I guess just to conclude that I just want to bring home the points of homecoming and habitat and humanity and hubris, and lastly the cultural landscape being the framing concept that the video was made under, and cultural concept singly meaning according to the Cultural Landscape Foundation in America based in Washington, "Cultural landscapes provide a sense of place and identity and (inaudible 10:30:27) relationships with land and sea over time, and cultural landscapes are part of our national heritage as well as part of each of our lives.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT – NIL

WITNESS EXCUSED

MR LITTLEJOHN CALLS**JOHN ALEXANDER (SWORN)**

Q. Is your full name John Alexander?

A. Yes.

Q. Do you confirm you've prepared a brief of written evidence in these proceedings dated 24th of July 2014?

A. Correct.

Q. Are there any errors or corrections you need to make to that brief of evidence? Spelling mistakes, wrong words, things of that nature?

A. I was thinking somewhere in the evidence it says I'm 70 years old, yesterday I was 71.

Q. Thank you for that correction. Mr Alexander, do you confirm that the contents of the brief that you've prepared are true and correct to the best of your knowledge?

A. Yes.

CROSS-EXAMINATION: MS SCHLAEPFER

Q. My questions relate to paragraphs 10 to 15 of your statement, the part about fuel service support at Matiatia. At paragraph 10, the second sentence you say that you've personally seen dangerous fuel spillages occur despite stringent safety protocols being in place. Now have you had an opportunity to review the applicant's conditions of consent or proposed conditions of consent?

A. No I haven't.

Q. One of the conditions proposed is a marina management plan and (inaudible 10:33:41) in that plan is an oil spill contingency plan and a fire contingency plan, and I just wondered if plans of this nature reduce your concerns?

A. Yes they do for the reason that the experience we've had in the 10 or so years that we were delivering fuel, despite all the plans and all the procedures and processes, these spills still occur. And the unfortunate part with marinas is that when a spill occurs into the ocean or where the marina is obviously, it's a lot more damaging than a spill on the land.

The land you can contain it a lot easier whereas in a marina you can't. So I'm aware of the procedures required in harbours, tier 1 plans, tier 2 and 3 going right through, but we have still seen that and it still does happen. So that's what my concern is. And then going further on in my submission, if an emergency does occur in this marina, this is a very difficult position to be in for the reason of access.

Q. Thank you. Can you just open the page at paragraph 15, again the second sentence you say that in your experience increasing the size and availability of boats types (inaudible 10:35:09) and I assume you're referring to fuel service facilities, (inaudible 10:35:12) necessity increases the risk of potential accident or fire. I just wanted to make sure Mr Alexander that you're aware that the applicant is not actually proposing any new or additional fuel service facilities than what's already existing at the old wharf?

A. Well that's interesting for the reason that obviously with the build-up of extra craft there'll be a requirement for extra fuel. Now I would assume then that if the facility is not changed then it'll be required to have more vehicles coming constantly doing its discharging on a more regular basis or a bigger truck that would come in that would have a bigger load obviously. Now, one of the interesting parts about these vehicles is that they discharge at the rate of 350 to 500 litres a minute. So if something goes from, and most times when this is happening the person managing this is on his own, doing it all on his own, and if something does happen I believe that the response to this area is very lengthy and difficult to access obviously. So that's what my concern is, that you'll need a lot more fuel coming into this process.

CROSS-EXAMINATION: MR R BRABANT

Q. We'll just stick with that for a minute, Mr Alexander, as you've acknowledged this is an existing facility and is not one that will be created or established by the marina or on the marina, you do realise that?

A. I appreciate that.

- Q. Have you had any personal involvement in supplying this facility?
- A. No I haven't.
- Q. Are you aware of the provisions in terms of equipment, areas for loading, existing safety procedures and emergency arrangements that the operator – I understand that Salters run it at the moment?
- A. Yes.
- Q. Are you familiar with the procedures they've got in place at the moment?
- A. Yes I'm aware of that.
- Q. No but are you aware of what they – have you seen their emergency response arrangements and their equipment and provisions for dealing with emergencies?
- A. No I haven't seen any specific one because each company has their own.
- Q. Yes, and isn't it the case that they will have to make arrangements with emergency services such as fire to run that facility as has been done for some years now?
- A. I would hope so.
- Q. Well it's inconceivable really isn't it that they won't have an arrangement to deal with that sort of emergency given its existing, right?
- A. Exactly.
- Q. And when you talk about difficulties of access, are you very familiar with the Auckland and Northland coastline in places where you can get refuelled at the moment? Do you do any boating yourself?
- A. I do but I don't go to marinas to fuel –
- Q. I wasn't actually talking about marinas. Have you been to (inaudible 10:38:32) Island or have you been to Great Barrier?
- A. Yes.
- Q. And do you know that there are fuelling facilities there?
- A. Yes.
- Q. So they have to make arrangements to deal with some spills or problems there, don't they?
- A. Yes.

Q. As would other places like Tutukaka and you can think of the ones that are probably more remote than Waiheke to emergency services, that'd be true wouldn't it?

A. Yes, that would be true but there's also, like I mentioned before despite all these things there are still spill issues that are well documented, particularly around New Zealand. The other point that I would like to make about servicing marinas with fuel, all the major oil companies now do not do this. It is done through people like Ron Salter or ancillary people. And the reason for that is take a risk away from themselves. And it's around reputation and particularly around spills into the environment. The big companies like the company (inaudible 10:39:36) work for for Shell, they stopped delivering to marinas some five or six years ago.

Q. But you wouldn't want to suggest that the people who do this facility any more than your company when it did that kind of work rather than the major oil companies who paid less attention to risk or safety or procedures, would you?

A. I was making the point that it's become that difficult around the new procedures and new laws relating to health and safety that these companies are taking that measure, or have taken that measure, quite some time ago.

1040

Q. Can I take you to 19 of your evidence please, and this is about "Safe Harbour" it's headed. You say you've seen on four occasions in 2014 boats taking refuge in Matiatia Bay. Now you say, "On these occasions the number of boats mooring in the bay has doubled and sometimes tripled," now maybe that's not what you mean but I just want to check, are you talking about people coming in in a storm event and using a vacant mooring, is that what you mean?

A. No I mean they've come in to anchor there for safety.

Q. Safe anchor, right.

A. Sorry.

Q. Have you seen them anchored amongst moored boats?

- A. Yes.
- Q. If there is a marina there and short-term berthage I guess you haven't, have you been here Mr Alexander during the case at all?
- A. Yes.
- Q. If there is a marina there and the marina operator was able to make short-term berthage available would that provide a safe haven for a boat in a storm to go into the marina onto a berth?
- A. I presume it would but I would presume also that the only boats that I've seen come in, not only in my last seven or eight years I've been living there but in my previous, when I lived there in the '60s it happened regularly where there's well in excess of boats that could come into the marina.
- Q. Now, can I go to 21 and you deal first of all with the construction period you say, effectively over two years. Have you looked at the evidence and the construction programme that goes with it before you wrote that?
- A. Not in detail no.
- Q. So I just put this to you, you can say whether you were aware of it or not and the construction programme demonstrates it. There's two separated stages, Mr Alexander, the first establishing the rock walls for the break waters and partially building them and then leaving them to settle and doing the reclamation outside wall and moving the dredgings in and then everyone goes away and waits and then comes back and does the next bit. Were you aware of that?
- A. I'm aware of that process, yes.
- Q. And then you say, "The location and size of the marina will significantly impact on the views I enjoy from my property." Have you, you haven't. I can't see a photograph or any visual information so that we can see what your view is like. You don't have one do you?
- A. I don't have one but there's many views that you've given me in your application which are very similar to mine. I can see every centimetre of where that marina will go.
- Q. Yes. That's not all of your view though is it? You've got a much more expansive view than that.

- A. Oh yes.
- Q. Can you see down to Auckland City?
- A. Yes.
- Q. Other islands in the Gulf?
- A. Yes.
- Q. Over Rangitoto?
- A. Yes.
- Q. Motutapu?
- A. Yes.
- Q. Up to Kawau maybe?
- A. Yes.
- Q. And if we sort of think of a compass, have you got 180 or more than 180 degrees spread of view?
- A. Probably more than 180.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. Good morning Mr Alexander. How many other fuelling places are there approximate to Matiatia? Are there are other fuelling places in the Gulf?
- A. I cannot answer that correctly, no I don't know.
- Q. You don't use any yourself?
- A. No.
- Q. I noticed in paragraph 21(c) you were referring to people who may stay on their boats in the marina, and I heard in one of the questions that you answered that you haven't had a chance to have a look at the suggested conditions of consent.
- A. Yes I understand this is relating to noise and activity in the area. One of the issues that the bay has is that it acts as an amphitheatre so any noise at all that comes, you know, that's even quite small, reverberates right through the whole bay and everybody that lives there will attest to that, so what I am concerned about is the extra activity there and I appreciate that it will probably meet the requirements of noise, it still has a big effect once it's in that bay, particularly on calm nights and

particularly when wind direction is going the wrong way or the right way according to what you're doing.

Q. So do you think that might be helpful then in any sort of rules that go with the use of the marina that that issue is addressed?

A. It will be good but I'm not sure how you do that because it'll obviously increase a lot of activity by just the sheer nature of a marina.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Mr Alexander I've got a few questions for you. Just picking up on the noise issue. The ferries are coming in and out of Matiatia now until at least midnight and even a bit after in the summer months aren't they?

A. Yes.

Q. And they have mechanisms for loading and unloading those big crates. And there's a bit of noise associated with that, isn't there, as those get bumped around on the boat and on the wharf. Do you really think that the noise from the marina might be any greater than what's already happening through to about midnight or a bit beyond in those terms? Can you hear those? Can you hear those operations, perhaps I should ask.

A. They only operate through the day when there is other noise activity around.

Q. Are you saying they don't do that freight operation at night?

A. No. It's mainly done, I assume, from just remembering, in daylight hours. But it's not done on every trip.

Q. So that's not a noise that disturbs you at night?

A. No, and the interesting part about the ferries are they're always at a slow pace coming in and out so they're not at, you know, they're very, at a low noise level. The biggest noise level comes from say festivals or particularly base music from concerts and things like that because it just reverberates around the whole area, so any noise, particularly a repetitive rhythmic noise, that just keeps going and going.

Q. You've been off the island for a number of years, have you lived near a marina at all anywhere?

- A. No I've seen many around the world in my travels. I could bore you with a whole lot of details about that but I won't.
- Q. I don't think we'll go there. There are many in this room, including the three of us here who are pretty familiar with marinas and the way they are operated. And they can cause problems if they're not well controlled, equally, might you be able to agree that increasingly they are regulated and controlled by operators these days?
- A. I appreciate –
- Q. And pretty jolly well.
- A. I appreciate that Sir, I think we all have a big concern about how, well the ability of the authorities to control the whole transport hub at Matiatia is a big concern, and that's the biggest part of my submission that I see a problem with. It's just more activity in that keyhole window of Matiatia.
- Q. I understand what you're saying I think.
- A. I can see it all the time if I want to look at it, but I don't all the time.
- Q. Now, earlier in the hearing when we were setting off to do our site and locality inspecting, we were invited to come to your property because you're at 89 Nick Johnstone Drive aren't you?
- A. That's right, yes.
- Q. So we were actually invited to go there, we tried to, we couldn't find you. We found 91 and we found 55 and we found (inaudible 10:49:31) nothing in between. How do we get to your place if you still want us to come and look?
- A. Well if you came to 91 you turn right at the top of the drive.
- Q. So you go up that driveway that's got big gates labelled 91. Go in there?
- A. Yes.
- Q. And turn right at the top –
- A. Turn right at the top, I have a sign 89.
- Q. You were quite cunningly disguised.
- A. Well you can't see my property from the road.
- Q. No, I'm aware of that.

A. But you're welcome any time. Just let me know when you want to come.

1050

Q. Yes, well towards the end of today, after we finish here?

A. Yes.

Q. Could we come by and view from your property?

A. Yes.

Q. Okay, thank you. Yes, well coming and having a look will answer any other questions that I've got, I think.

A. I think it's worth noting that I lived in Matiatia in the 60s. My parents were farmers from South Waikato and they bought that property, the whole of that property which was then an 1800 acre farm.

Q. Yes.

A. And we farmed it just as a farm.

Q. Yes.

A. It's very different now, obviously.

Q. Well obviously and you may not have been here when I offered some thoughts at an earlier time in the hearing, I've been coming to the island since 1950 and my earliest memories are from 1955.

A. Mmm.

Q. And so I can remember your family farming at that end of the island and I remember the days and other of the notable farming families of the time, so I'm interested to meet you. You might remember the *Miritai*, you would have travelled to and from the island on the *Miritai*, a great big steel thing?

A. Yes.

Q. It took about two hours each way.

A. Yes.

Q. And rolled its (inaudible 10:51:30) out?

A. Yes, yes I remember that.

Q. (inaudible 10:51:32).

A. Yeah, but I also remember the Manu-wai, the hydrofoil.

Q. Yes.

- A. That is quicker than any boat now.
- Q. Yes, that was in the mid-to-late 60s, wasn't it?
- A. Yeah.
- Q. And it went to Queenstown and rotted away I'm afraid.

RE-EXAMINATION: MR LITTLEJOHN

- Q. Mr Alexander, when, it refers to the issue of noise and His Honour asked you questions about current noise from ferries. When ferries are not coming and going, what sort of noises are occurring in the bay that you can hear?
- A. Well that's an interesting part about the bay because when the ferry is not there and there's no traffic coming and going to, you know, service the ferry, it is very quiet and very peaceful. It's sort of every hour, and it's sort of like that for quite a period of time.
- Q. Do you hear noises coming from the existing facilities at Matiatia?
- A. Not really, no, not unless there's some work activity down there.

THE COURT: JUDGE NEWHOOK

- Q. The busses? It seems that Auckland's old diesel busses come to Waiheke to die.
- A. Yeah.
- Q. And they (inaudible 10:52:55) noisy, do you hear those?
- A. Yeah, you hear them sometimes but that's just sort of a traffic noise that occurs but, like I say, it only happens in that small window of 10 or 20 minutes. The rest of the time it's very peaceful and quiet.
- Q. Okay, thanks. I couldn't resist that, sorry.

WITNESS EXCUSED

MR LITTLEJOHN CALLS**ALAN PETER BROUGH (SWORN)**

Q. Do you confirm your full name is Alan Peter Brough?

A. That's correct.

Q. And do you confirm that you've prepared a written statement of evidence for these proceedings, dated the 6th of August 2014?

A. That's correct, yes.

Q. Now in reviewing it for this hearing, have you noticed any matters that might need correcting, typos or anything like that?

A. No I don't think so, no, no.

Q. Well thank you for that. In respect of that brief of evidence Mr Brough, do you confirm that its contents are true and correct?

A. I do.

Q. Could you please answer any questions.

CROSS-EXAMINATION: MR SCHLAEPFER – NIL**CROSS-EXAMINATION: MR R BRABANT**

Q. Good morning Mr Brough.

A. Good morning.

Q. See you again after a long time. Now there are some diagrams, some things that I'm going to refer you to in a little while and maybe we just find them first. If you – for this one here, is the 2014 edition and we start off with you object at the beginning of it and I think you are sort of in the middle of it there maybe?

A. Yes, probably am.

Q. So see if you can find the – it's got a cardboard backing on it too, so if you get to that and then start from the beginning and we'll be in good shape. So if we look at figure 2, so the figures at the bottom of each page.

THE COURT: JUDGE NEWHOOK

You said 2014 Mr Brabant.

MR R BRABANT:

Sorry.

THE COURT: JUDGE NEWHOOK

Do you mean the 2013 book.

MR R BRABANT:

Sorry, I do too. My mistake I'm sorry Sir.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Now before I start asking some questions about your descriptions of taking vessels in and out of there. Are you aware that there were two applications publicly notified for a proposed marina in this location?

A. No I wasn't.

Q. So it follows you're not aware that Fullers made a submission expressing concerns about a first application, you didn't know that?

A. No, I'm not here with anything to do with Fullers.

Q. No, I realise that, I'm just asking you some questions and if you don't know the answer, I know you'll tell the Court. When this application was put in, it was accompanied by a letter of support from Fullers Group in relation to the changes that had been made and what they saw with the new proposal. Have you been shown that letter?

A. No.

Q. So let's have a look at paragraph 7. You particular refer in paragraph 7 of your evidence, to the navigational issues involved when you got the wind from west through north to east. And conveniently on that figure 2, we've got a compass rose haven't we?

A. Yes we have.

Q. So that will help in answering any questions and Brough feel free to actually refer to those as long as you describe them, the Court's got the figure in front of you, you can see the two rules there and you can see superimposed in it, the marina proposal?

A. Yes.

- Q. So first of all, looking at that, you're coming down the right-hand side of the bay in that weather condition and presumably therefore coming down in there, close by the boats that are moored in that southern mooring area, correct?
- A. Yeah, not in the moored area you wouldn't be, you'd be up on the other side on the northern side.
- Q. Sorry –
- A. So I'd be coming down virtually where the (inaudible 10:59:11) is marked in.

THE COURT: JUDGE NEWHOOK ADDRESSES MR LITTLEJOHN – ASSIST

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. So, now we've got that paragraph, you'll see in paragraph 7 that you described when you wrote this evidence about the wind blowing west from north to east, see that?
- A. Yes.
- Q. And the next paragraph which is what I was onto next, "In these conditions you have to approach the wharf along the southern side of the fairway and then point the bow to the north (and the wind). Now I'll just revert to my question which you may have forgotten what you wrote but then I understand from that that you're going to come down the ferry channel close by the boats in that mooring management area to the south so that you can swing the bow up into the north, is that right?
- A. That's correct.
- Q. And then you've said you approached the wharf along the southern side – you swing the bow into the wind and you say sometimes up to a full boat length or more beyond the northern side of the main wharf. Just looking at that diagram and of course most people here including the Court are familiar with the manoeuvring of different ferries and to extend the bow to a full boat length beyond the northern side of the main wharf, the bow wouldn't reach the old wharf would it?
- A. No.

- Q. Because you're turning the boat back down if you – you know pier 1 as opposed to pier 2?
- A. Yes.
- Q. Pier 1 on the southern side?
- A. Mhm.
- Q. So if you're using that, you'll use the corner of that wharf won't you to turn the boat around against it.
- A. Yes.
- Q. And as you say you've got to avoid the moored boats to the south. Now Mr Brough, that manoeuvre that I've just taken you through looking at your diagram, that's not effected in any way by the marina is it?
- A. Well I think it is actually –
- Q. Do you?
- A. Yes because you're coming up very close to the stone breakwater that –
- Q. What stone breakwater?
- A. You've got to remember that is going down, right down through the lead light as it is at the moment, the lead light actually clips the corner doesn't it of the breakwater?
- Q. Yes, this – let's just go back to what you've described and I've taken you through and you've agreed.
- A. Yes.
- Q. You come down the southern side of the ferry channel.
- A. Mmm.
- Q. You swing the bow up into the wind but it doesn't go as far forward the bow as to reach the old wharf looking at the aerial and then you rotate the boat around the edge of the main ferry wharf backing it in on the southern side of the ferry terminal. Now you tell me please how that manoeuvre is affected in any way by any part of the marina.
- A. Are you telling me that every berthing's the same, its' not.
- Q. No, no.
- A. You've got, you've always got variables, every berthing is different.
- Q. Yes.
- A. So you must keep making allowances for it.

- Q. And the difficulty you were concerning yourself here with a wind from west through north to east was avoiding the moored boats to the south that's what your evidence says doesn't it?
- A. Yes, not only the moored boats but it could happily keep them all away from the shingle bank as well along the southern sea.
- Q. Yes, and I guess if anyone had anchored in there, but the marina isn't to the south is it Mr Brough?
- A. No but you're cutting down on the (inaudible 11:03:45) we've got 40 odd (inaudible 11:03:47) that we've got to turn in that area there with a lot of windage and once you start cutting down the room, cutting down the variables for what you can do, so I think you know that – the main approach is excellent as it is now and I don't think it should be tampered with at all.
- Q. Well, let's talk about that because in the next paragraph 9 you talk about congestion at Matiatia don't you?
- A. Yes.
- Q. I mean this is your experience up until you've retired obviously?
- A. Mhm.
- Q. And then you say, "Most boats keep clear of the fairway, but it's not uncommon for boats to anchor close to it," right? Do you remember writing that?
- A. Yes (inaudible 11:04:33), Mmm.
- Q. So in the summer when it all gets popular and of course you'd agree wouldn't you that boats shouldn't anchor inside the mooring management area.
- A. That's right.
- Q. So they've got to anchor outside the mooring management area don't they?
- A. Mhm.
- Q. And that's what you're referring to by them anchoring close to the fairway, makes your life more difficult. If there's a marina and boats can go in the marina, they're well clear of the fairway then aren't they, the boats.

- A. Well depends, could be queuing up to go into the marina which is highly likely.
- Q. The entrance to the marina, look at the figure there, has been designed it hasn't it by the designer to take the entry and exit from the marina away from the ferry operations isn't it?
- A. Yes.
- Q. Now I can show you some plans if you need them for refreshing your memory but do you accept that the boats moored, some of which are not in the, strictly in the mooring management area presently constrain the ferry channel?
- A. Not at present, no.
- Q. You don't think they do?
- A. No. Only on busy weekends, holiday seasons, that type of thing that it is.
- Q. That'd be much –
- A. Now you can't talk about what happening in the middle of winter, early spring and if it was going to be happening at Christmas time.
- Q. Yes. Now you're talking about the breakwaters extending out into the fairway about the boat (inaudible 11:06:29).
- A. Mhm.
- Q. And a reduction in operating space. Have you seen the joint witness statement that was signed by all the navigation experts?
- A. No.

MR R BRABANT ADDRESSES THE COURT – TIME FOR WITNESS TO READ REPORT

COURT ADJOURNS: 11.08 AM

COURT RESUMES: 11.35 AM**THE COURT: JUDGE NEWHOOK**

- Q. Right now, Mr Brough were you able to read through that joint statement?
- A. Yeah, I browsed through it.
- Q. Thank you.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. So are you familiar with any of the people who are involved in completing that?
- A. Oh, not for some years.
- Q. Well, yes. Now the context of your evidence needless to say is you're experienced as a ferry skipper, so if we just concentrate on that. There's a topic in here, isn't there, and they've attached the maps as well that give you an idea of –
- A. Mhm.
- Q. – the prohibited anchorage area in map 3, did you have a look at that?
- A. Yep.
- Q. And they've marked in, haven't they, on map 4, and I think you've referred to this, the intrusion of the primary backwater and some of the marina.
- A. Yep.
- Q. Into that line.
- A. Mhm.
- Q. But you agree, Mr Brough, don't you that if you look at the outline of the existing mooring management area, that extends pretty much the same as what the marina will, doesn't it?
- A. Well it doesn't really, I don't believe it does. It's, they actually claim that they're cutting down from what was 100 metres to 75 metres, don't they?
- Q. Mhm.

A. So, you know, if you're turning around a 43 metre boat during a 30 knot winter evening, you know, in 75 metres of space, you know, you really haven't got much room for either aft, for getting the boat in the right position to back down onto the berth.

Q. So can we just go back to this map 4, and I asked you a question, just looking at, do you understand the dotted outline is the outline of the existing mooring management area on this map 4? It's attached to the joint witness statement. Do you have the joint witness statement there? This one here, and I'm sorry, Sir, if you don't mind.

WITNESS REFERRED TO JOINT WITNESS STATEMENT

Q. Did you have a look at these?

A. If I can just have a quick glance at the...

Q. Okay. So can you turn up map 4 and open that out, do you get that?

A. Yep.

Q. The people who did this work include the current harbourmaster and Mr Dilley, who was in the Auckland office.

A. Mhm.

Q. So would you expect them to have got the dimensions of the mooring management area correct on that map?

A. Well I would expect that they should go down on one of our boats and look, you know, because it's very easy for a person who sits in an office every day to say, you know, oh 75 metres, that's good, you know, but 75 metres really shrinks when the wind's blowing.

Q. I know and you've already said that, but I've got a question for you in relation to this map and, first of all, I need to ask, and you can say what your position is, the dotted outlines on each side of the ferry channel –

A. Mhm.

Q. – are where those experts have marked in the exiting mooring management areas, are you prepared to accept that they have done that accurately? The mooring management areas, that is that are defined in the coastal plan.

A. Well I haven't sort of looked at it for several years because I haven't been on the (inaudible 11:38:35) for a couple of years but, ah, it looks –

- Q. Well let me ask the question –
- A. – it looks familiar, yeah.
- Q. Sorry, I'll ask the question Mr Brough another way. Assuming that these three experts have correctly marked in with the red dotted outline the authorised area for boats to moor –
- A. Mhm.
- Q. – and we look at that dotted outline, the black, solid black line drawn –
- A. Mhm.
- Q. – and then the outline of the marina, do you agree with me that essentially the mooring management area of the dotted outline they have shown extends beyond that black line to the south, the same essentially as the proposed marina breakwater, doesn't it?
- A. Yeah, it does.
- Q. Okay, now if we go then back to their words –
- A. Mhm.
- Q. – the words in their document, if you could turn back to that and I'm referring you now to paragraph 3(a).
- A. Paragraph...
- Q. It's before those, the words that go before it, under the same tab.

WITNESS REFERRED TO PARAGRAPH

- Q. All right, so 3(a) do you remember reading that during the break, so these people have said that with the marina in place the manoeuvring area off the wharf is within the international guidelines, are you familiar with those?
- A. No, no.
- Q. That's all right, okay, and they have said, haven't they, that they see no navigational safety issues that would not be addressed by ferry companies' operational procedures and they've referred to the Maritime Transport Act 1994 and Maritime Rules. From your time with Fullers are you familiar with those ferry company operational procedures that Fullers have in place?
- A. No.

- Q. Can I take you to paragraph 15 of your evidence please, now there you've talked about a breakwater creating an issue with visiting boats no longer able to get to the old wharf for fuel or berthing without going into the ferry fairway, do you see that, where you've said that?
- A. (No audible answer 11:41:50).
- Q. Now, if we go again to that map 4, so just for clarity what you're talking about is that boats would have to go round the southern end of the primary breakwater to get down to that fuelling pontoon, that's what you mean isn't it?
- A. Yeah, yeah.
- Q. At the moment, though, they have got to skirt around the edge of moored boats unless they go through don't they?
- A. But I don't think there's, there's not much moored out that far at present, you know?
- Q. Yes but you're familiar with mooring management areas, Mr Brough, aren't you, there's always the, someone who would come along to have their mooring placed, to get the harbour master's agreement to go within that area isn't there, or is, that can always happen?
- A. Mmm.
- Q. Now, you've said at busy times the area where the marina is proposed is already used for boats to queue.
- A. Mmm.
- Q. So are you saying that boats at the moment would circle or manoeuvre or try and hold their position amongst the moored boats, waiting?
- A. No, we'd keep in the buoy channel, if we can't keep in the buoyed channel they would stay outside the heads.
- Q. Yes, the ferries?
- A. Mmm.
- Q. But if you look again at your paragraph 15, the third sentence, "At busy times the area where the marina is proposed is used for boats to queue as they wait, but with the marina there queuing boats will end up waiting

in the ferry turning zone.” So you’re talking about small boats, recreational boats going in to get water or fuel aren’t you?

A. Yeah.

Q. So looking at map 4, or even figure 2, there is room for the smaller yachts and launches between the southern access here, which you have called a breakwater, it’s a floating one, and that wharf, for people to wait in there isn’t there?

A. Mmm, well it looks on, on the map here, it’s on the chart it looks it, but (inaudible 11:44:39) all line up neatly down the side of the breakwater are they, they’re all going to sit wherever they want to sit, and have their beer while awaiting for their turn to go in there, you know?

Q. Yes, now during the course of the hearing when this matter has been discussed, and I’ll take you back to, we’ll get a better – if you can go back to the 2013 volume there, the big fat one, which should be there somewhere?

A. 2012 –

Q. Find you something to look at. Now can you go now to figure 12, do you see that, so we’ve got a plan there of the marina and like a proper drawn plan and you could see the wharf and you could you can see the fuelling pontoons sitting in there. Now during the course of the hearing, the prospect of the marina management organising short-term stay along that southern access pier for people waiting to go in, has been raised. Obviously you won’t have heard of that before. But if that arrangement were made, so that the yachts and launches could tie up temporarily, waiting to go in, does that seem a good solution to you?

A. Well no, because the wharf’s got to be kept clear for the ferries that are coming in there on a busy period (inaudible 11:46:34) a second ferry company coming now. And there’s boats coming from other destinations, so it’s not just the Waiheke ferry that you’ve got to think of.

Q. Yes, but if you offer a launch, was tied up against the southern access pier, look at the plan please, waiting to go into the fuelling pontoon, that keeps them clear of those movements doesn’t it?

A. Yes it does, yeah.

Q. Now let's go to your last paragraph please, about this leading light. I'm going to – just so that you can describe this by reference to the chart Mr Brough, I'm going to ask you to have a look at the chart and I'll just put this point to you first and I'll hand it over to you to confirm. Looking at charge NZ5324, what you are saying in paragraph 18 is that the leading light orientation is currently too close to Te Whetu (inaudible 11:48:14) Point.

THE COURT: JUDGE NEWHOOK – SUPPLY PHOTOCOPIES OF CHARTS

MR R BRABANT:

Because he said you're trapped to the southern headland, I just wanted to identify particularly.

THE COURT: JUDGE NEWHOOK

Get him to look at it, get his answer and then you'll just have to pass the blanket around and share it, but it's not very satisfactory.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

WITNESS REFERRED TO CHART

A. Well it looks there as though you've got a cable off it, but you actually haven't. When we come in there at night, on your right ark you are very close to the (inaudible 11:49:30) especially at low tide and so in fact we never used the light, in fact what we do is, well when I was there I don't know what they do now, but we would come from Motuhi and head up to the (inaudible 11:49:48) headland up past the northern headland until we lost the (inaudible 11:49:52) and there we'd cut down into Matiatia Valley, which gives you the widest gap between the north and south headland and, as soon as we came into the wide arch of the lot, then we'd turn down onto the light.

Q. Yes.

A. And that to us, well to me anyway, gave us the safest entrance because you had the maximum gap for going into Matiatia at night.

- Q. And over how many years have you actually had to use the leading light facility in that way? How many years can you remember?
- A. Quite often, quite often.
- Q. No, but I mean for how many years?
- A. 22 years.
- Q. It has been like that as long as that?
- A. Well, when they put the new light in, they took the old light off the end of the old wharf. There used to be a bottom backlight there and they took it off and put that halogen (inaudible 11:50:47) light there and the thing is it was put on higher and, of course, with a halogen light, you go underneath it, and lose the light and, on several occasions, I've had small boats and they have just about gave me three new holes because they have lost the light, because the light's gone over their head and while they've still got the light, you know, wonderful. You know, the light for a start needs to be at a height where it's there for everybody's use, not just the ferry's use and I'm quite sure that there's boaties here who have tried coming into Matiatia on a dirty night and found that the light has all of a sudden disappeared because they've gone underneath it.

THE COURT: JUDGE NEWHOOK

Now can you pass the blanket around, starting with members of the Court, please. Okay, that chart is going to become exhibit 3, you're losing it. Any other questions for Mr Brough? All right, Commissioner Leijnen.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. About two weeks ago, I was over on the island, and I caught a, I don't know, it was around about a 4 o'clock ferry home on the Saturday, and it was really blowing down at Matiatia and, in fact, I reckoned you could have surfed on the southern beach, on the waves, and I was a passenger on the *Jet Raider*.
- A. Ah, my favourite.
- Q. And it reversed out of the wharf and it seemed to go further than the old wharf in order to get its, I don't know, get comfortable I suppose before it could turn around and move off, do you have any experience with that?

I noticed in calm water, it seems to just do its turn between the two wharves (inaudible 11:54:47) over.

A. If you've got a nor'wester coming through there and you've got to put the stand up into the nor'wester because there is just no way it will go anywhere else, so you back out as far as you can and then spin around, but I've always found, normally, with any other direction I back out (inaudible 11:55:08) past the end of the wharf and then spin up there as fast as I can and get out of there. That way you're out of everybody's road.

Q. So there's different manoeuvres for different boats?

A. Yeah. Well *Jet Raider* is one of a kind.

Q. Sorry I didn't hear that.

THE COURT: JUDGE NEWHOOK

What are you saying about the dear *Jet Raider*?

WITNESS:

It's one of a kind and in actual fact the only people who like the *Jet Raider* are the people who are driving it. It's actually a fun boat to drive, you can do things with it that you can't do with any other boat. I just don't want to be a passenger in it.

THE COURT: JUDGE NEWHOOK

We understand.

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER LEIJNEN

Q. Sorry, can I just take you to figure 2 which is the photograph, that figure in the 2013 volume which shows the marina superimposed in the bay.

WITNESS REFERRED TO DOCUMENT

Q. That sort of sets the marina in the context of the wharf. My impression when we backed around, which was very exciting, was that we got way over towards that southern access pier, is that – it's very hard to make that judgement of course because that wasn't there, but what would be your view on –

- A. Yes, it's probably dangerously close. But mind you, a single screw vessel would probably be very much the same problem. You know needing to really push it around in a strong wind. So most of, the wharfs are actually designed to back into, the whole set-up there is designed to back into, but unfortunately the *Jet Raider* is one boat that you can't do that with and a lot of single screw boats which come in there you don't really want to be on any of them because you've got to get blown down onto the wharf and bang around and stuff like that. But yes I would say that *Jet Raider* would be very close to that, you'd get as close as you possibly could and then boot it to get the bows up into the wind.

THE COURT: JUDGE NEWHOOK

- Q. Can I, just as a subsidiary to that, are you saying that the big cats wouldn't necessarily have the same issue that Commissioner Leijnen has asked you about in strong westerly and nor-westerly conditions in relation to this mapping of a possible marina.

- A. Well what we do with the, well what I did with the big cats is if I had a nor-wester which was blowing off I'd come right upside, just the quarter was on the knuckle on the southern corner of the wharf and then come down on that, on about a 45 degree angle. Probably head like that and then hang on that and swing my stern in. otherwise if the bows go, get blown off, well then you've got to get out and do it all over again.

- Q. So this reversing out of the wharf wouldn't be a manoeuvre that the big cats would have to do?

- A. No.

- Q. *Jet Raider*, single screw ferries but not the big cats?

- A. Not the big cats.

- Q. I just thought I'd get the clarification about that, thanks.

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER LEIJNEN

- Q. I suppose I just wanted to explore with you when you were operating the ferry you would have encountered a lot of recreational boaters using the bay.

- A. Yes, many.

- Q. And their behaviour in terms of their operation and respect of the ferry path, one of the things that I've observed is people trying to beat the ferry to beat the wake. Did you have difficulty with the recreation craft operating in the bay or was it generally well behaved?
- A. It was generally pretty good, you get the odd one but you get that anywhere. But I find that most of them are pretty good.
- Q. Do you think one of the consequences of putting a marina there is the solid nature of its edges. Do you think there's any less accommodation for recreation boats in terms of times when they might need to seek shelter in the bay as a result of the marina being there?
- A. I don't really know, not being a recreational boater myself but...
- Q. That's fine.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

WITNESS REFERRED TO MAP 4, JOINT WITNESS STATEMENT

- Q. Remember that, that Mr Brabant questioned you about with those red dashed oval shapes being the Harbourmaster's mapping of marina management areas. So in other words the Harbourmaster saying under the Rules, those are areas where we can authorise moorings to be put down. Now, as I read that map, when that aerial photo was taken, whenever that was, there don't happen to be any moored boats showing south of the big heavy black line that comes out from the boat ramp, correct? That's how you read that photo?
- A. Yeah.
- Q. What Mr Brabant didn't ask you is whether you would have any opinion about the desirability of the Harbourmaster coming along now and throwing in some new moorings in the D shaped bit of that northern area that hangs below that heavy black line. Do you have a view on whether it would be a good idea or not from your point of view to stick moorings in there?
- A. No.
- Q. It wouldn't be?

- A. No. I wouldn't. There's one thing that this photo hasn't got and it hasn't got the yellow buoys marking the fairway so, you know, and I'm quite sure if they put the yellow buoys in, in their accurate position, all of a sudden this would look a lot different.
- Q. Turn over to the next one, I think you'll find they're there. Map 5. Does that appear to show them? But then of course what we've got to do is to compare map 4 with map 5, it would have been helpful if the two had been overlaid so we could actually have both pieces of information on the one.
- A. But you know it's all the (inaudible 12:03:34) ones here look a whole lot different, they're all heading straight, over the top of the marina.
- Q. But here's a way to make the comparison between map 4 and map 5. In map 4 we've got that red dashed line showing the edge of the management area coming out to near the tip of the break, the potential breakwater on the marina. Turn over to map 5 and you'll see then again the mapping of the end of that breakwater and you've got your yellow ferry route limitation markers (inaudible 12:04:17) haven't you?
- A. Yeah.
- Q. So that gives you the comparison in your mind's eye between those two? Are you saying to us that it's your view that nothing, whether it's a marina or a mooring, should intrude south of those buoys coming out on the northern side of the channel?
- A. Yes I do. That's exactly why the Harbourmaster put them there. To make the place a whole lot safer for vessels coming in and out of there. Now they were only put in there eight/10 years ago at the most. At the very most, and before then it used to bedlam. Like, I'd come in there in the Barooka where I've had the deck hands sitting on the (inaudible 12:05:05) pushing boats off with his feet, it was very trying to get down to the wharf, you know, and –
- Q. So if the harbour master was to come to you now and ask for your advice about whether that red dashed marina management area should extend south of the big heavy black line your answer to him would be, Don't do it.”?

A. That's right.

RE-EXAMINATION: MR LITTLEJOHN

Q. Just on that point, Mr Brough did I hear your answer correctly to His Honour that the buoys, the yellow buoys were located 18 years ago or eight, eight?

A. About eight, I'm, I don't really know for sure, I can't remember now, I was driving when they were put in so I should know but, you know...

Q. You mentioned the Baroona, when did that ship go out of service?

A. Oh, yeah, many years ago, I was driving the (inaudible 12:06:10) Baroona 23 years ago, yeah. In fact I ran the last service to Waiheke with it, Easter weekend, I don't remember which year it was but it was an Easter weekend, dammit...

Q. Well that's good, that's clarified the sequence for me. So the, at the time the buoys were put in can you recall how many ferry services were operating to Waiheke each day?

A. Yes, basically what's happening now.

Q. Same as now?

A. Yes, same as now. The harbour master that was, that came in at the time, can't remember his name off-hand, he made the, he put that ferry lane in the muddy channel and also had these buoys put in in Matiatia, you know, he made great improvements I thought, you know, there, to the whole setup.

THE COURT: JUDGE NEWHOOK

Thank you very much for your evidence, Mr Brough.

WITNESS EXCUSED

MR LITTLEJOHN CALLS**PHILLIP MURRAY JUDD (SWORN)**

Q. Do you confirm your full name is Phillip Murray Judd?

A. Yes, Phillip Murray Judd, correct.

Q. And do you confirm you prepared a brief of evidence in these proceedings dated the 24th of July 2014?

A. Yes I do.

Q. Now are there any typographical corrections or matters you wish to draw to the Court's attention before I ask you to confirm its contents?

A. Yeah, a couple of small matters, well, no, a couple of significant matters actually.

Q. Well are they typographical or are they –

A. No, not typographical, they're the developmental synthesis report terms, if we could –

Q. All right, well look, we'll deal with that separately, so –

A. Okay, typographically, no.

Q. So on that basis do you confirm that the contents of the brief that you have provided are true and correct to the best of your knowledge?

A. Yes.

Q. Now Mr Judd, I want to just ask you briefly two matters, and I think it probably is going to assist you in terms of getting the information out that you wanted to tell the Court. It may not, and if it's not then I'm sure you can have an opportunity to say that. In your paragraph 11 of your statement you refer to a pier 4 being used for the taking on of fuel and water, do you recall that?

A. Yes.

Q. From your knowledge of sailing and boating in the gulf, can you tell the Court where the nearest other fuelling services are?

A. Well the service on pier 4 is the only available fuel (inaudible 12:10:25) service on Waiheke Island. The next closest would be Pine Harbour which is about 10 nautical miles. You've got Half Moon Bay which is about 11.5 nautical miles. You've got Westhaven which is about 12 nautical miles, you've got Gulf Harbour which is 12 nautical miles,

and from there heading north you've got Whangaparoa Harbour on Great Barrier Island which is 41 nautical miles. So for a small vessel seeking fuel, it's a significant distance of travel.

Q. Now at paragraph 14 you talk about the facilities on the old pier and it's a part of the proposal that the applicant has here that it intend to pump-out facilities on that pier.

A. Yes I read that, yes.

Q. Where are the other closest waste pump-out facilities to Waiheke at the moment?

A. Yeah there's no other pump-out facilities on Waiheke Island and the Westhaven has pump-out facilities. There's no – I'm not aware of any pump-out facilities in Half Moon Bay but there may be. Pine Harbour has pump-out facilities as part of the marina development, and Gulf Harbour has pump-out facilities. So the same – similar to the fuel, similar locations to the fuel and water facilities. But I'm not quite sure about Half Moon Bay's.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Did you have other matters that you wanted to draw our attention to beyond what Mr Littlejohn has asked you?

A. Just in addition to my paragraph 21 where I'm talking about the (inaudible 12:12:28) this is about the congestion generally in the harbour but in particular reference to piers 3 and 4 and access to it. I know the Court is already aware of the two additional players coming into the market, into the area since this was, since I wrote this submission which of course explored the ferries which are coming, and I spoke to SeaLink this morning who confirmed that they will be doing a regular weekly service with their Pine Harbour ferry into Matiatia commencing very shortly. So in addition to the Fullers ferry service which are sporadic (inaudible 12:13:07) where they come and go as they can rather than to any schedule, the Explorer ferry which I presume we'll be using only have access to pier 2 because of its berthing and loading mechanisms. But the Pine Harbour ferry of course will use pier 3 because it requires a

pontooned berth. So you've got now two other significant players coming in to that same area at the same times during the peak seasons to add to what I've referred to here.

Q. Anything else that you wish to change or add to before you're questioned?

A. I don't believe so no, there's a few comments but, no, that's insignificant changes I think (inaudible 12:14:04) the witness statement here.

CROSS-EXAMINATION: MR R BRABANT

Q. Mr Judd, by reference to paragraph 10 can you describe to the Court the vessel you operate with your chartered sailing business?

A. I have a 12 metre (inaudible 12:14:34) catamaran, a 12 metre by seven metre (inaudible 12:14:36).

Q. When you're not using it for your business where do you keep it at present?

A. I have a mooring in the south side of Matiatia Harbour on MS80 which is closest in on the – it's the mooring adjacent to the Fullers number 1 pier, between there and where the (inaudible 12:15:09) is.

Q. Sorry can you give us the number again?

A. MSO 80 I think.

Q. Right, so have a look in that southern mooring area and can you tell us which one it is?

A. I'm not quite sure how old this is –

Q. Oh I can see MS80, MS80 did you say?

A. MS80 which would be in the other, MS20 –

Q. Which has a got a –

A. MS80, yes, it's actually moved to the north of that relocated by the Harbourmaster but in those mooring.

Q. Yes.

A. MS80, It's now located maybe 10 metres north of that.

Q. So sort of gone closer to the mooring that's marked Paraha 3.

A. No it's gone behind that and closer to the mooring (inaudible 12:16:34) 016.

- Q. Oh okay, that about.
- A. Yes. So in between those it's this one. That's the mooring at the bottom located there.
- Q. If the marina was approved, would it potentially be a suitable location for a business like yours? I'm not asking whether you would go there, I'm asking would it be a suitable location.
- A. There's lots of bits to that question. From a cost point of view, no because well it's a small single boat, single operated business it couldn't possibly afford the communities to get into. From an access point of view probably not as well. There's great advantages for being on a swing mooring. One advantage is of course the weather because I mean the entire aft to stern on a marina, you're exposed to whatever weather's going to come in so your (inaudible 12:17:39) is going to get exposed or your (inaudible 12:17:40) those were his (inaudible 12:17:42) on swing moorings. The boat will almost face the weather so of course you're much drier, the boat's safer, I personally feel it's a more secure place to be assuming that the mooring's up, it maintained in accordance with the Harbourmaster's requirements.
- Q. So really in summary your personal situation is you being content to staying on your swing mooring?
- A. Absolutely.
- Q. All right. And being a catamaran you've got a bit more beam there to manoeuvre.
- A. Yes.
- Q. And you'd be going in either one side or the other of the old wharf and using the floating pontoon pickup and drop off your clients.
- A. Correct.
- Q. Your customers.
- A. Yes. I would normally use pier 3 for loading, unloading customers but that's the sole pressure on pier 3 already with the – otherwise pier 4 but generally 3 I queue up and use pier 4 for fuel and water.

- Q. So we're talking about these additional ferries and your speculation is and I understand it is that the Pine Harbour option, the smaller one is, you think, is going to use pier 3.
- A. Well I think, it needs a pontoon to berth it, it doesn't have the loading access ramps (inaudible 12:19:20).
- Q. Yes. So in the summer when things are busy that might oblige you to use pier 4 mightn't it?
- A. Normally to fit in, the Pine Harbour ferry we had last year during the last Fullers I believe were chartering it through the (inaudible 12:19:39) the Gulf.
- Q. I'd really be grateful if you'd just answer the questions that I ask you so let me put the question to again.
- A. Okay.
- Q. You've told the Court about these new services and you've also referred in your evidence to busy times. Your busy time to take people out would often coincide wouldn't it with increased ferry traffic?
- A. Yes.
- 1220
- Q. And if another ferry operator comes onboard, as you've described through the SeaLink Connection, it's going to make it more difficult for you if they're coming in and out, a lot of them, to cope with the tourists to get access to one pontoon or the other?
- A. Yes obviously there's greater volume but if they're coming in on a schedule, then I can work in between their schedule, because I arrange for them to pick up some of my clients in (inaudible 12:20:30) depending on when the wharf is available. It's not so much the scheduled services, it's for sporadic charter boat services coming in.
- Q. So are you telling the Court that all of this can happen and you don't see it make any difference to you being able to go in when you want to and collect clients or drop them off?
- A. No, I'm telling the Court that there is really a huge demand on the services in Matiatia.
- Q. In 27 you refer to Matiatia being used for shelter?

- A. Yes.
- Q. And that boats will anchor wherever they can between existing moorings to maximise shelter?
- A. Yes.
- Q. Now do you regard yourself as a prudent and experienced seaman?
- A. Well I'm very well (inaudible 12:21:250 but I'm working towards it.
- Q. That is a good point, because we're always learning aren't we. You've been sailing for a while?
- A. I've been sailing most of my life, and had commercial sailing charter tickets, for (inaudible 12:21:43) five years.
- Q. Do you agree it's not seaman-like and prudent, particularly in rough weather for people to go into a mooring management area and drop their anchor?
- A. Absolutely.

CROSS-EXAMINATION: COMMISSIONER HOWIE – NIL

CROSS-EXAMINATION CONTINUES: COMMISSIONER LEIJNEN

- Q. Just in relation to the last question, what's your knowledge of going into a marina and casually anchoring or trying to tie up to something, do you have any experience of that?
- A. I'm in and out of marinas quite a lot, I use – pick up from the viaduct, from Gulf Harbour and worked (inaudible 12:22:27) out of St Katherine's Dock in London for some years. So I'm experienced in getting out of marinas, is that the question?
- Q. No, are you able to anchor or tie up in the marina on a casual (inaudible 12:22:40)?
- A. (inaudible 12:22:43) the marina berth so I've allocated is (inaudible 12:22:48) so there's not normally any facilities to tie up unless you book a casual berth with the (inaudible 12:22:51) management people. It's, of course attracts a fee which is normally quite significant.

QUESTIONS FROM THE COURT – NIL

RE-EXAMINATION: MR LITTLEJOHN

- Q. Have you still got figure 36 there in front of you?
- A. I have, yes (inaudible 12:23:11).
- Q. That was the plan my friend Mr Brabant referred you to, on which you located your current mooring in the southern mooring management area?
- A. Yes.
- Q. You indicate that the location shown on that plan of your actual mooring is not correct?
- A. No, it's just slightly further north than that by about, (inaudible 12:23:39) about 20 metres.
- Q. How often do you go in and out of that mooring management area?
- A. I try to operate daily on – very regularly, several times a week.
- Q. So do you have a good knowledge of the boats that are moored there?
- A. Yes.
- Q. And their comings and goings?
- A. Yes.
- Q. By reference to that plan, are you able to advise whether the moorings shown on that plan are consistent with the moorings as you see them on a day-to-day basis in that mooring management area?
- A. Well I think there's about – in the actual location of the moorings, there's been a bit of jiggling since this, whenever this was drawn. November 12, it's identified as, but I think – but it's close to.
- Q. Close to it?
- A. Like for example and S16 is (inaudible 12:24:45) that's further out to the side, so it's very similar.

WITNESS EXCUSED**THE COURT: JUDGE NEWHOOK ADDRESSES MR LITTLEJOHN – WITNESSES****LEGAL DISCUSSION – HOUSEKEEPING**

THE COURT: JUDGE NEWHOOK

Now Mr Davies, are you with us?

MR DAVIES:

Yes Sir.

THE COURT: JUDGE NEWHOOK

Come forward please. Now, you were intending to make submissions to us, I think, or did you file the statement of evidence earlier?

MR DAVIES:

Filed a statement.

THE COURT: JUDGE NEWHOOK

Is anybody wanting to cross-examine Mr Davies?

UNKNOWN MALE: (12:30:578)

Yes please.

**MR LITTLEJOHN CALLS
ALLAN EDWIN DAVIES (SWORN)**

THE COURT: JUDGE NEWHOOK

Now Mr Littlejohn, can I put your arm up your back and get you to help some more, you just, it flows off your tongue much better than I do, I don't have to do this anymore.

MR LITTLEJOHN:

I don't have a copy of this witness' evidence directly in front of me, I keep it all electronic, so I might just borrow Mr Brabant's, just for the purposes of swearing.

THE COURT: JUDGE NEWHOOK

Yes, dated the 22nd of July.

MR LITTLEJOHN:

Okay, very good.

EXAMINATION: MR LITTLEJOHN

Q. Is your full name Allan Edwin Davies?

A. Correct.

Q. And have you prepared a statement of written evidence in these proceedings dated the 22nd of July 2014?

A. I have.

Q. In reviewing your brief for this hearing have you come across any typographical errors you might wish to draw the Court's attention to in your brief?

A. Yes I have.

Q. Could I please ask you by reference to the paragraph numbers to attend to that now?

A. Yes. Page 4 clause 12, the last line after "cannot" the word "be" should be inserted. "Cannot be," it should read. Page 4 clause 13, second-to-

last line, “regular” should read “regularly.” And then also clause 28, second-to-last line, the word “it” should be removed, last line, the word “would” should be removed. In other words “It would” should be removed. Doesn’t make sense with them there. I’ll have to talk to my typist. That’s the, the full extent of those errors.

Q. And with those corrections made do you confirm the contents of the brief are true and correct to the best of your knowledge?

A. Yes I do.

MR LITTLEJOHN:

Now, Sir, I don’t know whether you want the witness to, extend the invitation of highlighting any matters, I’ve certainly not had any discussion with him about that.

THE COURT: JUDGE NEWHOOK

Q. Well what we do need to ask him is are there matters that have arisen during the hearing and since you wrote this evidence that you need to draw to our attention, Mr Davies?

A. Yes, I believe there are, particularly when I attended the transport experts’ meeting at Surfdale, I became aware of things then that I really didn’t understand or what, at the, until I was at that meeting.

Q. Yes, what do you want to say about those?

A. The most important thing was that Mr Apeldoorn, I think is his name, he used the date of the 2nd of January as being a date given to him by Fullers as being the busiest day. What I would like to say to that is that it’s not necessarily the busiest day in the Keyhole, which is the area of my concern. Passengers on the ferry don’t necessarily equate to passengers on the buses. Many people, depending on what they’ve come here for will actually walk to Oneroa. In fact, if you drive up the road there, you can see streams of people walking. So, as I say, numbers on ferries don’t equate to numbers on busses and so I’ve made some further enquiries directly with the bus company, Fullers and Waiheke Bus Company, of which I’m an employee of course, and the

busiest time in that area is from the beginning in December through till Christmas, where many people come down for their firm's functions and all of those people want a bus, so we provide numbers of charter busses then which then also help clog up the keyhole. Not only ourselves as Fullers, but there's also Jaguar Tours, he has four 47 seat Mercedes busses. I don't know if they all work but you can get up to two down there at one time, I know that, and there's also Executive, they also have a bus or a couple of busses there, and also they quite often bring busses over from the mainland, Murphy's Busses, because they're associated with Murphy's, so you can find down there, in the keyhole, the whole area completely blocked with busses because there are the need for those busses because there are charters and other things going on. Something else that possibly needs to be brought to your attention is that during the summer period, when we get all those cruise liners arriving here Auckland, many of those people come to Waiheke. They don't all go to Rotorua or places like that or Waitomo Caves, a lot of them do come to Waiheke Island.

Q. There was a big swag of them this morning on the Jet Raider, I think, on the 8.15 from the Sea Princess, I think.

A. Yes.

Q. The cruise liner was called.

A. So of course when those people arrive, it's all onto a bus; they don't walk up to Oneroa, that's for sure, so the times that that area is busy can vary quite considerably, but the busiest time is basically after Labour Weekend through November, getting extremely busy in those early weeks of December, right through till Christmas. The 2nd of January, there might have been more people coming down on the ferry, but they weren't getting on busses, so the amount of, effect that they would create in the keyhole isn't that great. It's the same as Labour Weekend, which I believe you've been invited to, to visit at Labour Weekend to see the chaos that occurs down there. It can get chaotic, depending on the weather, but not as chaotic as those other times when the area is full of charter busses.

- Q. Yes unfortunately we've had to decline the invitation to come at Labour Weekend, we're just not in town, not in Auckland.
- A. Yes. So there are quite variations as to when it can get into the chaotic situation down there and other times, of course, Sculpture on the Gulf, the wine festival, all of those functions that occur, the people want to be moved by busses and so we have to provide busses. It's not unusual for Fullers in particular to have up to six busses just for these functions, not all down there at the same time, but we did do, park them opposite the bowling club in Marko Street and then as one fills at the wharf, send another one down. So that we're not clogging up the keyhole but rotating them if we can, because we understand the problems that occur down there.
- Q. We have heard about that practice, I've actually thought of something else that I think you could help me with, you mention pre-Christmas work functions, people coming over on the ferry and being bussed to some venue on the island for a party, it occurs to me to ask you about weddings. I came to a wedding on the island in March, on a beautiful fine summer day, and I was told by the driver of the bus that I took with many wedding guest, that at the time of the year there can be up to 10 or so weddings taking place on a Saturday on the island.
- A. In fact, there's one, there was one weekend earlier this year, there was over 20 weddings on that weekend.
- Q. Yes. Are those the sorts of functions where the busses are used?
- A. Yes, yes, and people charter the busses to take the guests to the wedding.
- Q. Yes. Yeah, I think we were on Robbie's Fun Bus, not one of yours?
- A. No. Well that's another bus again that I haven't even included in the list that I've mentioned.
- Q. And I think Robbie was supposed to be "the fun."
- A. He can be a bit of a fun.
- Q. Yes.
- A. And I think he's a friend of the owner of our bus company, so he's a fellow Scotsman.

- Q. Yes, and just finally on the issue of weddings, is it, am I right in thinking that it is the pattern that groups of wedding guests would tend to come together on the ferry and get onto a chartered bus, is that what happens?
- A. If the people who has organised the wedding, yeah, they will organise it that they come on the same ferry.
- Q. Yes.
- A. So that they can have the charter bus there waiting for them, although there's the odd occasions when that doesn't occur, but –
- Q. Yes, sure.
- A. – but generally that would be the case.
- Q. Yes, and what does that do in the keyhole when these events are occurring, is that similar to some of those other types of events that you have described?
- A. The problem is that when people charter a different bus company, if they're chartering Fullers, we know what busses are going to be there but it's when we're chartered and then Jaguar Tours has also got a charter coming off that same ferry and Executive Busses have also got a charter coming off that same ferry, that there is absolute chaos.
- Q. Mhm.
- A. Because there are things that you can't manage because you've got so many busses down there. We have not only the charters to cater for but there are, on those busy days, there will be three service busses down there. There will be two of our own tour busses down there, that's five busses to start with.
- Q. Mmm.
- A. Without the charter busses then on top of that.
- Q. Okay, thank you for that clarification.
- A. Yeah. There is another small thing that came up in questioning that, it was to do with the motor scooters and motorcycles were to park there at the end of the keyhole and as to what effect they may have on the movement of other vehicles in the area and I think somebody else did mention it but I noted it down, to raise it, but the majority of those

motorcycles arrive there early in the morning because they're commuters and they then leave later in the day and later in the day they are a nuisance, some of them, because you're trying to manoeuvre a bus and they're trying to zoom up the wrong side of the road, so there are those problems there but, at the weekend, there would be very few motorcycles there and if there are any there, they generally they will have been people that have gone off to town early in the morning anyway. Our biggest concern, of course, is people trying to drive motor vehicles; cars and utes into there when they shouldn't be.

Q. Mhm, okay. Was there anything else that you wished to add that's cropped up since you wrote your statement?

A. Actually I've got a whole heap here but you don't want to hear it all. Yeah, no, I think they're the main points I wanted to raise.

Q. Good, thank you.

A. But I did have something here, because you keep asking a lot of people the question, you haven't asked me, do I remember the

A. Muritai?

Q. I stand corrected.

A. Do I remember the Muritai, so I thought I'd bring this along so that you could actually see the Muritai tied up at the wharf at Matiatia.

Q. I'm overjoyed. Now I've got to tell you my Muritai story.

MR R BRABANT:

We'll take that as an exhibit Sir.

THE COURT: JUDGE NEWHOOK

Q. I'm happy to have your chart, Mr Brabant, and I'm not going to steal the picture of the Muritai, but you travelled in the Muritai did you, Mr Davies?

A. I have once.

Q. Only once?

A. Only once did I ever travel on it.

Q. Yes, my memory bears considerable scars from travelling on the Muritai as a child as a child coming to and from the island because it had

capacious holds low down, probably below water level, which were full of bodgies and widgees drinking beer and canoodling, and when I reported this back to my mother she was horrified and I wasn't allowed to go back in the hold. Scarred, scarred. The Muritai of course, pre-war was an Eastbourne ferry in Wellington. During the war it became a mines, commandeered as a mine sweeper –

Q. Yes.

Q. And after the war the Devonport Steam Ferry Company took it over to run to Waiheke, but it only ran Friday, Saturday and Sunday, something for the crowds –

A. There's a bit of history for you.

Q. Thank you. Who wants to question Mr Davies? Mr Brabant?

CROSS-EXAMINATION: MR R BRABANT

Q. I'll need to find you a plan to look at. Have you, Mr Davies, have you read the evidence of the traffic engineers including those from Auckland Transport?

A. No I haven't.

Q. And this, Sir, is a plan that I have produced before and it's part of exhibit, for the record, part of exhibit, appendix A to the evidence of Mr Karndacharuk. So Mr Davies for your information this has been drawn, as you can see, from the prominence at the bottom by Auckland Transport people and for the record the drawing number is 2011-464. Can you have a look at that and could you tell the Court from your experience in the work you do here on the island whether that accurately depicts the arrangements within the Keyhole?

A. As it is organised down there, that appears to be correct yes.

Q. So there is shown there, is it, there an area for buses to stop and then we have, as you rotate clockwise around the end and down the other side they indicate there taxi and shuttle arrangements, and then towards the end of the Keyhole rotation as you move to leave it, is there another area for buses to park on that side?

- A. Buses can park both sides of the road there and there's quite an extensive area there where the buses can park, that's providing there's not a shuttle parked in the way.
- Q. That's coming into that first area that we can see on the left-hand side of the road, as you come in?
- A. As you come in on the left there's room there for five buses.
- Q. Right, five buses, thank you, that's helpful.
- A. And that – it's supposed to be three service buses and two tour buses would fit in there, but quite often there are other buses in there.
- Q. And then is there more dedicated bus parking on the other side?
- A. Yes.
- Q. And is that shown, "proposed bus parking 30 minute maximum" is that –
- A. That's the sign that's up there, correct, yes it is there.
- Q. And how many buses can fit on that side please?
- A. Possibly four could fit there because of the shape of it, it's very difficult to actually, as you can see at the back end there, parking a bus – they don't bend very well and that's quite a curve there, so it's very difficult to fit a bus in there. In fact if a bus is to park there it makes it extremely difficult for anything else then to go round.
- Q. So, yes but looking at this, it would appear that the area's that's marked "proposed bus parking 30 minutes maximum" that area is where the road is straightened out, it's not right back on the curve where it says that there's going to be a bust stop removed and a taxi and shuttle going. So can you just help me with that?
- A. I really need to actually see, use this, to see what's actually there at the moment. It looks reasonably accurate to what's there, but I'm not too sure that the 30 minute doesn't go right back to the end there. So if it's saying it's different to that, then that's something that I was of the belief the signage that I've seen there, that the 30 minute limit for those buses goes right back, yes that's my belief.
- Q. So we've got five bus opportunity in the side that you arrive in and if I can put it that way then there's more bus parking opportunity on the side of the road that you would leave or exit and on that side of the road,

which is the eastern side, how many buses, in your experience can be accommodated over that side?

A. Be a maximum of four.

Q. Four so –

A. Maximum.

Q. – we've got room, there's room in the keyhole then for nine altogether?

A. Providing of course it's not been taken up by shuttles.

Q. Yes, now that's where I would have thought that someone kindly described as "Parking Pete" would come in –

A. Parking Paul.

Q. Parking Paul, got his name wrong. (inaudible 12:53:00) and the busy period that you've talked to the Court about from I think we saw a man that seemed to be him down there this morning. So in the times where it's busy, he would be down there?

A. He is a singular person of course, standing there at the entrance to the keyhole, trying to stop all those motorcars coming in and also encouraging those people who are supposed to be a couple of seconds at the drop-off, stopping them from staying there, waiting for people getting off the ferry. He's extremely busy and particularly on a busy day, he hasn't got time to worry about actually what the buses are doing within the keyhole. So we will find, in actual fact, that chaos reigns in there and vehicles are parked where they shouldn't be parked. I heard one of the other witnesses say that's it goodwill between the different operators as to how things work. Yeah, there's a certain amount of goodwill and there's a certain amount of shouting and yelling at times too.

Q. So, and I'm asking you this really nice, in that you are a bus driver, working for the bus company, but nonetheless, is it your view that within that keyhole area, the public transport that the buses provide, well the ability to shift lots of people that buses provide, is it your view that they, the buses, should have priority in that area?

A. Most definitely.

- Q. And I can see there are some good reasons for that Mr Davies. And so when you get a problem with shuttles parking illegally I presume you and the other bus drivers would recognise, not only regular offenders, but because the islands quite a small place you'd know who these people were.
- A. Yes.
- Q. So, whether you feel it's your position to do so or someone else in the bus company management, to your knowledge are steps taken to have a word to the people involved and require them to remove themselves from areas where buses need to go. Do you know whether that's done?
- A. The biggest problem is, if you want to rectify when it occurs, and that is the problem to get it rectified at that time, as I've said the parking warden is generally completely tied down at the entrance to the keyhole with trying to keep that under control without – it really needs a second parking warden to be there during busy times. That would certainly make it much better. Someone who can actually control what happens within the keyhole and somebody then controlling what may or may not enter the keyhole and what's happening outside. That would assist greatly, so once again, when it occurs, and it does occur regularly that there's more shuttles than there are spaces for them, let's be honest. And they come in there and they want to – and they park, quite often they're there before any extra buses may arrive there to carry off charters and things like that. So, rather than fighting with them or arguing with them or creating any problems you let sleeping dogs lie and try and move the people.
- Q. Now I think the Court will have seen, as I did, that there is a prominent sign at the entry to what's called the keyhole which makes it plain that authorised vehicles only are meant to go in that area.
- A. Correct.
- Q. And to your knowledge, and I think you've mentioned it, there is an issue with private vehicles that do not have that authority going in that area regardless.
- A. Yes.

- Q. And so these people would not have a sticker or permit on their windscreen authorising that.
- A. I don't think anybody has a sticker or a permit.
- Q. Right.
- A. You recognise who's allowed in and who's not.
- Q. We'll get to that in a minute. So, in your observation are these people using this as a roundabout or are they attempting to behave like a shuttle, as it were, and drop people off or pick them up?
- A. We've got people who are not using it as a roundabout, they're using it as trying to get their particular friend or passenger as close as they can to the ferry. If they could drive onto the ferry I'm sure they would.
- Q. Well let's hope that sort of thing doesn't occur. Now, I'd like you to go in this book here, the March 2013 book, and I'll ask you to go to figure 72 and if you look at the bottom at the right-hand side of each page, ignore the numbers at the top and you'll see figure numbers and it's consecutive from the front to the back and it's figure 72 entitled –
- A. I can't see any of those numbers. Oh yes, yes I can now. It's in that big box.
- Q. Figure 72 please. Do you have that?
- A. Yes.
- Q. And it's entitled, isn't it, "aerial photograph of ferry terminal and Ocean View Road".
- A. Correct.
- Q. Now, I'd like you to look at your evidence please.
- A. I buried that.
- Q. At paragraph 15. And you say, having described times of business. "Very clearly times at times as described above, even one car trying to travel through that area to access the proposed marina carpark is neither a practical nor a common sense manoeuvre."
- A. Correct.
- Q. Now, if we just look at this aerial, beyond the keyhole we can see some dinghy ramps and the boat ramp can't we?
- A. Correct.

- Q. And then on the right-hand side at the top there it says, "Parking for disabled two spaces and mooring holders three spaces" although can I add, we've heard some evidence and the Court can see that there appear to be some informal additions for the mooring holders. So, in order to get there, to the disabled or the mooring holder spaces those people would have had some authorisation given to them, wouldn't they?
- A. They would need some authorisation.
- Q. Yes. And so during these summer periods do you agree, Mr Davies that those people are entitled, as are disabled parking people, to move through the keyhole and park in there?
- A. Correct.
- Q. And with the mooring people, then there will be people, and tell us if you've never seen it, who come through to off-load gear or people because they have a permit, and there won't be enough spaces for all the mooring owners, and they could come through there and drop people and gear off and because those are filled up they would need to go out again and park in the carpark, wouldn't they? You've seen people doing that?
- A. No.
- Q. You've never seen that?
- A. Not at busy times, no.
- Q. So is it your impression then that the people who are coming down for that purpose to go out and access their boats on moorings, is it your impression, having not seen them during the periods you describe, that they avoid those congested times?
- A. That would be my impression that they have enough common sense not to come there.
- Q. But you'd have seen it over the years in the summer that the boats will be used out in the bay.
- A. Oh certainly.

QUESTIONS FROM THE COURT – NIL

THE COURT: JUDGE NEWHOOK

I have got no further questions for you Mr Davies, so thank you very much for your commitment and your evidence and your assistance with our questions today. Thank you very much, good to hear from somebody on the ground so to speak.

WITNESS:

Well it was disappointing to me that people went to the wrong place to get the data that they should have been looking for and the correct place to have gone was to the Waiheke Bus Company not to Fullers head office because Fullers head office basically had no knowledge as to what happens at that wharf other than where the ferry ties up itself. They know, in fact...

THE COURT: JUDGE NEWHOOK

Point made. Thank you.

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

COURT ADJOURNS: 1.03 PM

COURT RESUMES: 2.18 PM

MR BRABANT CALLS

JOHN HALLIDAY HALL (SWORN)

Q. Is your full name John Halliday Hall and do you and your wife live at Beach Parade, Oneroa, and you have prepared a statement of evidence for this hearing?

A. Yes.

Q. And do you have a copy of that in front of you and it's dated the 16th of July 2014?

A. I do.

Q. And have you any alterations, like corrections that are needed to it?

A. No.

CROSS-EXAMINATION: MS SCHLAEPFER – NIL

CROSS-EXAMINATION: MS PARKINSON – NIL

CROSS-EXAMINATION: MR LITTLEJOHN – NIL

RE-EXAMINATION: MR BRABANT – NIL

THE COURT: JUDGE NEWHOOK

Q. You're getting off lightly, Mr Hall, nobody has any questions for you.

A. Your Honour, can I just make a remark.

Q. (inaudible 14:20:40) take that as a plus.

A. Well, I've been coming to Matiatia for over 70 years.

Q. Yes.

A. And I had my first sailing lesson in Matiatia, my father had a launch and (inaudible 14:20:55).

Q. Yes.

A. And my father (inaudible 14:20:59) he took me to the sailing venue, pushed me away from boat and gave me my sailing lesson. He pointed

to the sail and said, "Son, don't let the sail flap," and that was my one sailing lesson (inaudible 14:21:15).

Q. That's a good story, so that was Matiatia.

A. Mmm.

Q. Yes, okay, well thank you very much, it appears they don't have any questions and so I'm sorry if you've had a wasted trip but I gather you didn't have to come all that far.

A. No, I didn't.

Q. Good, thank you very much.

QUESTIONS FROM THE COURT – NIL

WITNESS EXCUSED

ROSS BARNETT

THE COURT: JUDGE NEWHOOK

Now Mr Barnett, you're a section 274 party, that is when the case came to Court, you lodged a notice with us?

MR BARNETT:

Yes.

THE COURT: JUDGE NEWHOOK

Yes, and I know I've seen that, did you send in any evidence after that?

MR BARNETT:

No, I didn't send any other evidence after that but I have asked if I could come in (inaudible 14:23:14) to be able to give my views on it.

THE COURT: JUDGE NEWHOOK

Yes.

MR BARNETT:

On the matter.

THE COURT: JUDGE NEWHOOK

All right, well what we'll need to do I think is have you stay seated where you are and regard your input as what we legally-trained people call submissions, that is it's not evidence to which you swear the truth because that could have come to us many weeks ago when we were doing the exchange of evidence through the website. So we'll just have to have you present there and you won't be questioned other than perhaps by us a bit. The only consequence is that we might not be able to place quite as much weight on what you tell us as we would have if you had given evidence sent in a few weeks ago and (inaudible 14:24:10) sworn to tell the truth and (inaudible 14:24:14), but that's

I'm afraid discovery (inaudible 14:24:20) with our system. Now how long do you think you might be wanting to talk to us by the way?

MR BARNETT:

Probably about 14 and a half minutes.

THE COURT: JUDGE NEWHOOK

Fourteen and a half? Well I'll set the clock at 14 and a quarter and then stop you. No, I'm just being silly. Yes, so you would like to talk (inaudible 14:24:36), yes.

MR BARNETT:

Thank you.

THE COURT: JUDGE NEWHOOK

Off you go.

MR BARNETT MAKES SUBMISSIONS

Okay, yeah, my name is Ross Barnett. I have been living most of my life down there on the beach at Matiatia, I've been there for, ah, over 30 years and I've been running a commercial business there for 27 and I think I'm a person that stands in different shoes to most other people because just because of the sheer time that I've spent down there, I have probably put in the water probably about 60 or 62,000 people and I've guided about 12,000 trips, so I know the bay inside and out and believe I have some good knowledge about the place. In fact I believe I've travelled around the bay in a kayak more than anybody ever of all history of mankind, and that's saying something. But what I wanted to quickly say was just talk about the living in Matiatia Harbour, just what comes and goes, very quick. You probably know about the, what the most prolific, what the most living creature is that moves around there and what it does. I don't know whether you've gone into that, (inaudible 14:25:58) seem to be going into everything else. But what it is, it's, it's a little thing called the cushion star or I call it the sea biscuit, and it's everywhere in the bay, there'd be thousands of them. It's a native to

New Zealand and what it does, it cleans the bottom of the ocean and it's got a little mouth and it's got a little (inaudible 14:26:20) and it goes through and it does a good job. So we do have a lot of them and so the bottom of Matiatia Harbour is actually in pretty good nick, really, and I've noted that, so I thought I'd want to share that with you. The biggest schools of fish that come into the bay through the year would have to be the grey mullet and they come in through the summer months and they breed underneath the old wharf. Sometimes there's thousands of them, in fact they're very, they are very good at giving eggs, they give about, one female can do a million eggs apparently, there really is a lot of grey mullet that come into the bay and swim around the bay, and you see the juvenile jumping, it's entertaining to watch. So the grey mullet there is a fish that's there all the time, but of course almost every kind of North Island species of fish can be caught in Matiatia. The shape of Matiatia allows for the currents to move around, bring the fish in and they come and visit and then they move out. You've no doubt talked about the little blue penguin, the colony exists there, probably that I know of the only colony in the North Island, I don't know why DOC recognise that, but it's very special to have seven to 12 pairs of blue penguin and there every year, year after year, it's quite, very special to have that. Their diet is anchovy, they come into the bay, they school, they (inaudible 14:28:07) their balls, they huddle together for protection, they tend to hang around the fishing boats and particularly all the mooring boats and that's why there's so many, so many penguin there. I've seen over 100 penguins in the bay, hard to believe, that's because of their feeding manner, and orca as you know come into the bay, they, they're getting more common these days. This year there's been four groups of orcas that come into the bay so far that I know of. They chase the stingrays, as you know, they chase the stingrays out onto the rocks and they go under the wharf now, for the first time, and they chase the stingrays under the wharf, and the stingrays high-tail over to the north-eastern side where the shallows are and get some refuge there. The stingrays do figure eights in the bay and that's how they kind of like it, and it's an ideal environment for them and they tend to, tend to like it because they feel protected because of the two wharves. Dolphins are frequent as you know. They come in because of, not

food but ferries, they follow the ferry bow, that brings them into the bay. There's one, once I did see just run blood red and the common dolphin had a great time and devoured the school of kahawai. That was just inside where the marina is proposed. I have noted that the newly planted bush, I suppose (inaudible 14:30:04) has really come along well. The reason for that is because it's got heat and moisture between the two that allows that bush to go very well. I do like the, how it was developed in that way, the natural beauty of it, it's creating more nutrients feeding the shores from the bird life, and the soil runoff has been mineralised because of this bush coverage. The harbour is now clearer than it's ever been, the water, 20 years ago it wasn't so clear. And basically Matiatia has improved over the last 15 years getting its ecology in better order. It's improved.

Matiatia Bay I believe needs respect to keep its natural beauty because I personally have buried placentas on the hills for friends, for myself. On occasions people have asked me to take them out and they've put their ashes of their parents and their spouses. Sometimes I give them a kayak and they do it by themselves.

But I can see that this is not about emotions and these animals really don't cut the mustard when it comes to humans and wanting something. But I believe the real big picture of this marina really isn't Waiheke but Auckland, it should be looked upon as part of Auckland, the growth and tourism. Good planning would turn Auckland into a tourism Mecca and it deserves it. Auckland has suffered being labelled the gateway to New Zealand. Tourism is now a \$24 billion industry in New Zealand. Waiheke is a hot potato, it's one of the four big ones in New Zealand. Auckland needs something to hang its hat on, the hat needs to hang on Waiheke. Auckland needs just one good natural harbour. The best handshake a tourist could make when visiting the jewel in the Crown, it needs to be natural. So why on earth would you build a marina in Matiatia when just six kilometres around the corner at Kennedy Point already a rock wall exists for every which reason gives all the benefits solving all of Matiatia's complications.

And I've got a little note here for you, I want you to take it and read it tonight, Your Honour, if you can do that.

THE COURT: JUDGE NEWHOOK

Well, I don't think we can quite approach a note that way.

MR BARNETT:

I'll just explain what it is, it's a note that I wrote 20 years ago, or longer. And it was with going to the school and taking my five year old son out of school for two hours to kayak with killer whales at Matiatia. That's what that note is about.

THE COURT: JUDGE NEWHOOK

Yes, I've just got to explain a little bit about our procedure to you Mr Barnett. We can't take things in and just privately read them to ourselves because we are here to listen to everybody in a public space, in this is a courtroom at the minute, and everybody who is involved in the case is entitled to hear and read everything that gets delivered to us. So I heard what you say, it's a nice thought, but really we can't do it, we have to be completely transparent in the delivery of justice in whatever form that justice is going to take at the end of the day, whether it involves a marina going there or no marina going there, or whatever. So I appreciate the sentiment in which you offer that note, but we can't. And if you wanted to read the note out and into the record, you're welcome to do that, but if you don't feel up to doing that, then we'll just have to thank you for the sentiment and leave the note with you. It's your choice.

MR BARNETT:

Okay, that's fine.

THE COURT: JUDGE NEWHOOK

So I take it that you'll do the latter?

MR BARNETT:

Ah, no, I'll do the latter it's on my website so we (inaudible 14:35:29).

THE COURT: JUDGE NEWHOOK

Well everybody can read it then if it's on your website, that's good. Anybody who wants to do that can go onto Mr Barnett's website and do that. Now we'll see if we've got questions for you ourselves.

CROSS-EXAMINATION: COMMISSIONER LEIJNEN – NIL**CROSS-EXAMINATION: COMMISSIONER HOWIE – NIL****QUESTIONS FROM THE COURT: JUDGE NEWHOOK**

Q. I've got a question for you Mr Barnett, essentially you're really part of the Waiheke tourism scene aren't you?

A. Yes.

Q. And quite a visible one?

A. Correct.

Q. Aren't you, you're apart from Fullers' Ferry Terminal, you're probably the first business that a visitor lays eyes on when they come in on the ferry or on a private vessel to Matiatia, you're in the shed at the end of the, the south end of the beach?

A. Yes.

Q. With a very big sign on it, advertising your business?

A. Mhm.

Q. So you're the first business we see when we come in, tourism business or any business, apart from the buses and the ferries?

A. Beg to differ, but depends which way you're looking.

Q. Well I'm not sure that I quite understand that but anyway let's just say that you're visible and you are a tourism business, so people coming into Matiatia, you would like them to come and rent your kayaks, wouldn't you?

A. Yes, that's how I make my –

Q. Your living?

- A. My living.
- Q. And it's a pretty good spot to be I imagine, from that point of view, because you've got a couple of million people a year seeing your business, not all of them, especially if they're dressed like we are, can come and kayak, but it's not a bad place to be is it?
- A. It's not a bad place I've been there 27 years so I've seen the changes.
- Q. Yes, but you won't have been there for 27 years unless it was a pretty good place for you to be, right, is that fair?
- A. That's fair.
- Q. Just a quick question about kayaks going under the wharf. Do you issue instructions to people who rent your kayaks as to where they can go, particularly if you're not leading a flotilla?
- A. Yes, we must do that.
- Q. Yes, I thought so. What are your instructions, if any, around the use of kayaks near the wharf or in the ferry lanes?
- A. Well it gets quite technical because it really comes down to the person and it comes down to the weather and you've got to marry the two things together and put them in a kayak and out they go. But obviously we have to stay – well if you cross the ferry lane, it's done very quickly and going under the wharf and over that side of the bay it allows me to work it with certain weather and it's the safety zone, going that way, because if you're to go, send them out in the wrong direction with the ferries, you will have more problems.
- Q. So in fact it's a safe thing to send them under the wharf if they want to go to the north part of Matiatia, is what you're saying?
- A. Yes.
- Q. So they don't actually have to cross the ferry route at all to do that?
- A. Not at all, no.
- Q. If they do that. They come along the beach and go under the wharf?
- A. Yeah, and that's safety –
- Q. Can they do that at all times, high tide included?
- A. 99.9, there is like a 3.5 where there might –
- Q. King tide?

A. Yeah, that you might not be able to.

Q. But just about all the rest of the time?

A. Yeah, but it's essential that they don't get into the way of the ferries, 'cos there's going to be so many of them now.

Q. Yes, well if Auckland's going to get a continued boost for its tourism, so is Waiheke.

A. Yes.

Q. And there will be more ferries and I have no difficulty in understanding that point.

WITNESS EXCUSED

MAXWELL IAN WALKER**EXAMINATION: JUDGE NEWHOOK**

- Q. Now just for the record your full name is Mr?
- A. Maxwell Ian Walker.
- Q. Yes okay.
- A. I'm 70 years old.
- Q. And you filed a section 274 notice with the Court?
- A. That's correct.
- Q. And what were the subjects in your notice that you want to tell us about?
- A. They're pretty varied. Can I start with the first one?

THE COURT: JUDGE NEWHOOK ADDRESSES WITNESS: TIMETABLING**MR WALKER:**

I think to be fair to you, I should give you my legal background which is not a lawyer. I first approached, you've heard of Justice Speight?

EXAMINATION CONTINUES: JUDGE NEWHOOK

- Q. I'm not sure what he has to do with Matiatia?
- A. He does have a lot to do with my background. What it is Sir is I had dealings with Justice Speight in 1991, he threw out a whole lot of trivia and Justice Speight was a bit of a character. I won't go out in any detail, I've also been arrested twice for trespass on the island, I won both cases and I did them myself. I've been charged for the maritime safety thing, Michael Corry represented me, I won that one. I've won a major –
- Q. I'm sorry Mr – I'm not happy.
- A. Fair enough I've got your message, you don't want to hear all about my Court case victories.
- Q. I don't, all the losses.
- A. Okay.
- Q. I want you to talk about Matiatia and I want you to do it in a succinct and focused way.
- A. Okay I'd like to talk about –

- Q. And only the subjects that raise in your suit in your 274 notes.
- A. Could I possibly talk about the adversarial system versus the inquisitorial system?
- Q. No.
- A. Can I say that Quebec indigenous people have an advantage over the Māori in New Zealand, should I tell you why?
- Q. No.
- A. In Quebec they use French inquisitorial justice and the French, I have met indigenous people from Quebec who –
- Q. I'm going to stop you right there.
- A. That's okay, I'll move onto the next thing.
- Q. I don't want to hear about those things.
- A. You don't want to hear about them but they're quite critical to the way you conduct yourself because you're locked, I notice you haven't take your tie off.
- Q. Mr Walker.
- A. Okay.
- Q. Shush right? We're here today to talk to us about Matiatia, that is your opportunity and I have written a good deal of material about inquisitorial, this other kinds of Court systems. This Court happens to run a bit of a blend of the two main types but we're not going to have a discourse about that this afternoon.
- A. Fair enough.
- Q. I'm going to give you five minutes to tell us your concerns about the proposed marina in Matiatia and nothing else.
- A. Okay. The applicant's call themselves the International Marine Consultants. I would like to know which countries this consultancy has worked with because I have some information here I'd like to give to you so you can read.
- Q. Stop.
- A. No, I'm not allowed to give to you any information.
- Q. No, not that you haven't filed it earlier in Court and incidentally we're not here to play the person we're here to play the ball.

- A. True.
- Q. And whatever they call themselves and my understanding is they call themselves Waiheke Marina's Limited, we are here to talk about a proposal for a marina in Matiatia.
- A. So can I conclude that they're international and that they've done work in Australia and New Zealand only?
- Q. They've told us their credentials, it's there available for you to read on our website, we have read it too.
- A. Do they have any credentials in the British Isles?
- Q. And I'm not here to answer your questions.
- A. Well I've got some information on the Isle of Wight. Can I introduce you –
- Q. No.
- A. – to some interesting facts.
- Q. No.
- A. No?
- Q. I being quite definite aren't I?
- A. Okay, can I introduce you to the fact that my daughter was with a planner at the Council?
- Q. No.
- A. Fair enough.
- Q. We're moving on through aren't we?
- A. Who do you accept? Because I've been taxi driving and shuttle driving at the wharf since 1991 and nobody's spent more time down there are you prepared to listen to what I have to say about Matiatia?
- Q. Yes I'm interested to hear about Matiatia.
- A. Well forget the Isle of Wight stuff.
- Q. Yes.
- A. We'll forget the inquisitorial system.
- Q. Yes.
- A. And we'll forget notes by a legal philosopher called – okay we'll leave that away and I'll leave out the (inaudible 14:49:04).
- Q. And I'm giving you five minutes on traffic at Matiatia.

- A. Traffic at Matiatia. I know I'm just a submitter but I have to tell you now that the shuttle and taxi rank at Matiatia is illegal.
- Q. No?
- A. I can't tell you that?
- Q. No?
- A. That's Matiatia?
- Q. No? Because –
- A. Well you're changing the rules.
- Q. No because, I'll tell you why, I'll give you a reason and it's a pretty good one and it's that we are not the Auckland Council, we are not Auckland Transport, we do not control that road, we do not control that traffic and therefore we are completely and utterly disinterested in whether there are illegal aspects to traffic control at Matiatia. If you want to talk to us about traffic volumes and traffic movements from your experience as the taxi driver, go right ahead, that's relevant. You've heard other people talking about them. But we're not going to talk about stuff that the Council and AT control and we don't. We're the Environment Court of New Zealand, all right?
- A. So can I talk about the dagger in the heart of Matiatia?
- Q. No because you told me you were going to talk about traffic volumes and movements in Matiatia, didn't you?
- A. Okay. The problem is that the applicant's analysis is based on last summer's information. I put it to you that those, all of the applicant's figures are meaningless seeing that there's going to be two – another ferry starting. And there's talk of even two more because of what we've heard today while I've been listening. And so I'm saying a request is that you delay your proceedings on this until the end of February. You've said you'd like to get everything out the way before Boxing Day. I'm making a request that you – it was very good that you listened to me and my request about coming at Labour Weekend, I can see that you're not able to come at Labour Weekend. But if you can you're coming on Friday night, which would be appreciated. But the Christmas period is when the chaos could turn to gridlock. At the moment there's been two

witnesses who've said that it's gridlocked down there, and you're concerned about that, I've picked up that you understand that. at the moment I would call it chaos and I'm the person who has the most experience down there. And the reason is that I'm a New Zealander with an Australian personality. And that means –

- Q. We're not going to go into that, we're talking about the traffic of Matiatia.
- A. That means that I concentrate my income is 90% with the people who are low on the paranoid scale. Now low on the paranoid scale means the casual customers. So I meet every theory. Nobody spends more time – as a bus driver already mentioned that, quite obviously he's referring to me, there's a certain shuttle driver that causes problems down there. It's me. Right? Now, the reason is that because of my Gisborne Boys High School background –
- Q. No we won't go into that.
- A. Well, my son got fifth in the Beijing Olympics –
- Q. No, don't want to go into that.
- A. I'm a competitor.
- Q. (inaudible 14:52:50) –
- A. And what happens is, I just want to tell you, can I tell you a little story on Monday?
- Q. No, no, no.
- A. No, you don't want to hear it, okay. Okay, as far as I'm concerned –
- Q. What are you going to tell us about traffic movements in Matiatia –
- A. For a start the parking officer should not park their car in the keyhole and take up space for shuttle drivers.
- Q. It's not in our control.
- A. So you think I've got no contribution to make. Could you ask me a question?
- Q. I'm waiting for it Mr Walker.
- A. Okay. It's chaotic down there because of the cliff face and the chaos the applicants are forced to dredge the harbour to the north because they want a carpark. It's all caused by that cliff face. And there's not one marina in the Isle of Wight, there's not one marina in Rode Island

where I studied at university where they've had to dredge for a marina to put a carpark in. And isn't that relevant?

Q. No.

A. It's not relevant?

Q. It might be relevant –

A. Well –

Q. – as to whether it has to happen at Matiatia and that's what we're told so –

A. Maybe they do it all the time and that's why the Barrier Reef is being destroyed. Maybe these marina applications have destroyed the ecology and that's where it's come from.

Q. Mr Walker, those things make me sad but I can't fix the Barrier Reef this afternoon either.

A. Well the thing is Sir, wouldn't it be helpful if the applicants – my point is wouldn't it have been helpful if the applicants could show us a genuine test case which proved how everything they've done in the past has worked perfectly. Wouldn't that be a nice idea?

Q. My one response to that, Mr Walker, is that sometimes some people in life, including you and including me, have had to start somewhere. We can't all claim to have experience from day one.

A. True, so they've only just started, is that what you're saying?

Q. I don't know. I've read (inaudible 14:54:59), you've had the opportunity to, and we'll just keep those on the record and deal with them as we see fit.

A. I think the public of Waiheke deserve to know what projects have been successful with the international marine development company –

Q. All right, now you made that point before and, as I said, you weren't going to explore it anymore.

A. Okay, all right, so I've got that point, so once you've established that, you see, because of my experience in Court, it's all right –

Q. No, no.

- A. – it's always the omissions of an application that gives you a clue to their weaknesses. It's what they decide to admit, what would they present to the Court, because of (inaudible 14:55:45) justice.
- Q. No, no, no, we're not talking about British justice now.
- A. Okay.
- Q. What else would you like to tell us about the traffic situation down there at the keyhole as a shuttle driver that is relevant to this case?
- A. Okay, I have two 12-seater vans and I have a BMW for my up-markets. I find that very few people can, who, who, you see Government policy, it's to go for the rich tourist.
- Q. No.
- A. Now okay, so I've got that, I can carry 28 people, so that means that I'm entitled to have the BMW outside the keyhole and two 12-seaters. I will guarantee this summer I will have two 12-seaters in there, every ferry, and there's a mistaken view that Christine Gisby has put to you, Sir, that says because she gets all pre-booked, I hate the Internet with a passion.
- Q. No, we're not going to (inaudible 14:56:53).
- A. Okay, so what's is she's dealing with the pre-booked market, the bus driver deals with the Fullers market, I'm the only true independent that you've heard from.
- Q. Okay, we're down to two minutes that this true independent has left to talk and if you're going to tell us anything about traffic that's in the keyhole, you've got that time to do it.
- A. So my view is, can I make a point about the uniqueness of Matiatia.
- Q. Yes, but if it's inside your two minutes.
- A. Yes, yeah, two minutes. Would you believe there is no offshore island on the planet within 40 minutes of a million people that is so sparsely populated. If somebody back there can think of another island within 40 minutes of one million people –
- Q. No, we didn't come here to, Mr Walker, we didn't come here to talk about other islands on the planet.

- A. What this marina is going to do is put a dagger through the heart of Waiheke and I call it the womb. You're going to put a cancer in the womb and the worst part of the proposal is the carpark. All of those people have four legs, they could walk. The carpark is not necessary. Let them walk and you know what half of the problems of turning the ferry around, if there's no carpark, there's no dredging, think about it.
- Q. Well I don't know if it leads to no dredging, Mr Walker, but the point that you've made hasn't been lost on us now, what else would you like to say about Matiatia; keyhole, traffic, (inaudible 14:58:45)?
- A. I think I've done enough, I think you've done very well; I'm glad to see you've got your tie on.
- Q. (inaudible 14:58:52) something relevant.
- A. Okay.
- Q. And I'm not trying to be smart.
- A. Very good, and no doubt I'll see you every time you come off the ferry, "Hi Sir."

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

Now Mr Walden, come forward.

PAUL WALDEN

THE COURT: JUDGE NEWHOOK

Now you've not, you've filed a section 274 notice with us so you're a party in the case.

MR WALDEN:

Yes, that's correct.

THE COURT: JUDGE NEWHOOK

You haven't filed evidence on which you can be questioned and you want to offer us some submissions this afternoon about the marina proposal.

MR WALDEN:

Yes please Your Honour and Commissioners, I'd just like to add some verbal submissions to my original 274 notice.

THE COURT: JUDGE NEWHOOK

Yes it will need to be on the same topics as were in the notice, that's one of our rules. And again, just give me a bit of an indication how long you think you might want to talk to us for?

MR WALDEN:

Sir, I was busy down the back trying to concentrate on getting my notes succinct, but the lay presentation was making it difficult, but I expect I'd be done within five minutes Sir.

THE COURT: JUDGE NEWHOOK

That's fine. Ready, willing and able to hear from you now Mr Walden, the floor's yours.

MR WALDEN MAKES SUBMISSIONS

So Sir, my position in the community is as the chairperson of the local board on Waiheke Island. I've made a submission as a 274 party in a personal capacity and that was prior to my election into the position that I'm in presently. The election took place almost a year ago today, the Saturday just past. And it was an election that was very much predicated from the subject of this application. And the thrust of what I'm talking to is the, you know the notion of the community aspect, environment in section 5 and the interpretation of the RMA. And just to give some sort of indication, you know there's (inaudible 15:01:35) four other people that were elected at the same time, they'd all been involved with the 274 parties and I think you know this election period represents something of an identification of community views around this application. It's concerning somewhat following that and another year's gone past and looking at the Council's responsibility under section 79 of the Local Government Act is there forming their views around decisions and their obligation to consider community views. And we've been through a process where the board's been advised that because we've been involved as 274 parties, we in fact have a conflict of interest and you know we hadn't been involved in sharing our views with the Council.

That being said Sir, I just would like to talk very briefly through some of these issues as I see them. The Matiatia directional plan which is evidenced through my submission but also through the documentation and it very much signals the values in there that the community has aspired to through very robust public consultation. Identification of Matiatia as a transport hub. The main gateway to the island, a destination, a significant coastal landscape in ecology and a special place for tangata whenua, also a sustainable development.

Throughout local board, which was developed over the last year, we've got five chapters, one of those is singularly focused on Matiatia and I think if there's one pressing issue which exists on Waiheke and that's at the front of

mind for everyone that visits and lives in this community, that's the infrastructure at Matiatia. So we've got a plan that we're working through here with various departments of Council and it's very much focused on looking at how Matiatia will look and feel and to ensure that those values of the community will be reflected there.

THE COURT: JUDGE NEWHOOK

So it's currently in a consultation phase is it?

MR WALDEN:

Yes.

MR WALDEN CONTINUES MAKING SUBMISSIONS:

One of the points that I make and Mr Walker touched on this very briefly, is with respect to reclamation. You will be very aware of the realities that we face, congestion at Matiatia presently as far as parking and traffic movement, we're under tremendous pressure with Government and Council and the tourism business looking to use Waiheke as a drawcard to get tourists from New Zealand. We've got new ferry services opening up and potential by the time this summer rolls over, we'll have an extra 40% carrying capacity or people coming to this bay.

My point is Sir, that the Council have been through exercising historically to look at how traffic and parking can be managed and some of those will be referenced in the documentation that you will have on file, such as the Matiatia transportation plan, of which there is a pre-stage development to provide for further carparking up the road on existing Council owned property. Which, I guess, when I look at the New Zealand coastal policy statement, as it talks to reclamation, you know which suggests that we should be avoiding it if we can provide an alternative somewhere else and I think this does (inaudible 15:04:58) with the level of community interest in this conversation, this is all public interest, we've got public open space in the bay and we've got public open space that some would demand elsewhere.

THE COURT: JUDGE NEWHOOK

I've read some material about this, but what stage has the prospect of further carparking on Council land up the valley reached Mr Walden, can you help me with a bit more detail about that?

MR WALDEN CONTINUES MAKING SUBMISSIONS

Yes it's stored Sir at the creation of the Super City, the local board passed a resolution that there would be no further development at Matiatia until there had been a full review of all of the plans and that review is only taking place now but my point is Sir that there is land, there are plans which will be on file which detail how extra parking can be provided for. And lastly just looking at, and I think we're down to lastly, this concept of values and amenity, and I think back to some of the stories which so many of the people that live in the community and I've heard some wonderful stories, including from yourself over this week Sir, but these values that we all hold for the bay and when I look back at the legacy of a property that was in original ownership of the Royal New Zealand Yacht Squadron bought out by the Alison family and then a succession of owners through that time and I think of that story of the Alison family buying the licence for that (inaudible 15:06:33) on the beach so that it could be conserved. And then also these wonderful tales from the Ellison family and the (inaudible 15:06:41) family that embrace the culture of the Māori that were living in the bay, we've got this beautiful bay which has got the only piece of (inaudible 15:06:49) Māori land on the island contained within it. And very much the thrust of what we're talking through as a local board and with Auckland Tourism and the Council is how significant this landscape is in the space of tourists coming to Auckland. We've got one of the busiest points, it is a wonderful sequence as you come off that ferry, you've got the (inaudible 15:07:12) on the foreshore, you've got the documented and recorded sites of the old kai, we've got the pa sites on the hill, we've got this ecological sequence through wetlands up through the valley which we're putting some work around at the moment, we've got the Alison Homestead in the bay there Sir which was originally owned by Captain (inaudible 15:07:27) who was the Auckland Harbourmaster in the 1870s,

shipped to the island, and it's there today and then the architecture of that building just tells this wonderful sequence. And so I just partially want to thank you for bringing this hearing to the island for this week and also for your willingness to be good humoured in dealing with the passion of our community. But there is –

THE COURT: JUDGE NEWHOOK

Well I think it makes a hearing go rather better I think.

MR WALDEN:

Absolutely but there is a strong sense of passion because I think a lot of have, you know, we sort of live and breathe this sense of responsibility.

THE COURT: JUDGE NEWHOOK

It was important to come to the island.

MR WALDEN:

And just one very last thing before I sign off Sir and that's, I'd just like to observe in my previous capacity of running a construction business on the island where we operated a crane, and just something to park in your mind, we had an incident around 2006 as I recall where there was a spring low tide and a series of storm surges that came through the bay and in that incident the flaps on the pontoons on the wharf dropped down and dismantled themselves and the main wharf was put out of action. We had a series of ferries that were piled up in the bay unable to unload. Before that position for dealing with ferries in these sorts of situations is the old wharf and so you just need to be parking this thought in the back of your mind as you're considering alternatives, in times of emergency such as that.

THE COURT: JUDGE NEWHOOK

Thank you very much for your participation Mr Walden, coming to speak to us today.

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

Now that brings us to the end of the list of local people that Mr Littlejohn so kindly helped to compile, and I thank you again for that.

MR LITTLEJOHN:

You may wish to canvass the crowd to see if anyone wants to –

THE COURT: JUDGE NEWHOOK

Yes, yes. Is there anybody else who is registered as a party under s 274 and who didn't file evidence, or who did, who wants to come forward?

JUDITH ANNE MARY MADARASZ:

May I?

THE COURT: JUDGE NEWHOOK

Q. Yes, would you like to come forward? Can you just spell your surname for us?

A. I'm annexed to a 274 party, Judith Anne Mary M-A-D-A-R-A-S-Z. And I submitted on the traffic issues down there.

Q. Yes.

A. I'm concerned that, you seem to be asking questions of some people and not getting answer about traffic down there.

Q. Well some people are better at answering questions than others and some people are a bit more willing than others.

A. I'm very conscious of the fact that time is money and especially for the people of Waiheke, so I'll just you that I have lived permanently on the island since, well for 14 years. I started the first courier company, working off Fullers, 20 years ago. I have worked as a shuttle taxi driver and I currently work as a tour bus driver so my experience down there covers everything from freight through, and through to the present day. I have three major concerns; one is that the private developers should not be permitted to completely undermine the future capacity of the public to use public space. The second is that private developments

should not cost the tax payer money by having to maintain things in the future, so sort of putting dibs on money for the future out of the public purse in order to support the thing.

Q. Did you have a particular feature of the marina proposal in mind when you make that general comment?

A. Just the fact that they're taking up a lot of space on land and on sea that is going to curtail our ability to have multiple shipping companies and to operate in an environment where we're going to have increasing weather problems, I think most people would acknowledge. And the future of Waiheke, which you've acknowledged before, is going to be one of growth and the harbour has constraints, the cliff is there, those sorts of things. So those are my major concerns. And I really just wanted to be available to answer any of the questions that you've had difficulty getting answers on. Well, I'll tell you a story.

Q. Okay.

A. Last summer (inaudible 15:12:58) put on a party one night and they brought over I think it was 17 busses from Auckland. And there's so little room in that space already, the company I've worked for has four busses and there are at least four other tour companies that have nothing to do with the city, with Fullers or anybody like that. And there's only room for half a dozen busses down there. These 17 busses were lined up all the way up the Matiatia hill on the south side where we have yellow dotted lines and no parking because it's so "dangerous". As a bus filled up and started off up the hill, the next bus would come down and take that spot in the keyhole, fill up, turn around, go up, the driver would see it and would go back and fill that space. That's what I call congestion. I know that you've asked about gridlock. It's not –

Q. Can I ask you about that queueing system? We have heard that there is this informal but quite constructive sort of queueing system of busses waiting up the hill to save all piling down at once. Is that something that's really sort of word of mouth operation undertaken amongst the bus drivers? Self-help?

- A. I think it's more courtesy and commonsense than any arrangement as such. I'm not aware of any formal arrangement for that.
- Q. No, no, I said informal. Informal constructive self-help, altruistic perhaps too.
- A. There have been fisticuffs down there between drivers as I'm sure you're aware, and it's just not a desirable situation.
- Q. Can you help me with this too, there has been talk about gridlock and chaos, but gridlock in particular and you heard me asking some questions of other witnesses about gridlock which I defined for the moment as the traffic absolutely just jammed in there and stopped and unable to go anywhere. And I've had varying estimates as to how long that situation might go on for at a busy ferry time on a busy summer day. Can you give us a feel for it?
- A. My estimate would be somewhere between five and 10 minutes, relatively frequently, that it can get up to a full 20 minutes depending on who the driver is, where they'd gone, what the problem is up the front and how much road rage is involved.
- Q. What size of vehicle are you driving, how many seater?
- A. Twenty, 25 seaters. I have a licence and have driven Fullers busses but didn't like it.
- Q. So with your vehicle are you entitled to go in the keyhole?
- A. At the moment yes, but –
- Q. Yes. Who knows what steps might be taken by the authorities to make further adjustments –
- A. But there is a lot of (inaudible 15:16:15) anxiety about getting down there and parking. There is sort of basic rules, like freight, you have to be down there by half past the hour in order to go on to the wharf, and you get locked on for about 15 minutes before the ferry arrives, and then you get locked on for about 15 minutes after it – no sorry, until it departs. So for freight drivers, they are locked on the wharf for at least half an hour around the ferry sailing and being unproductive. The same sort of situation is happening a bit with the public passenger transport in that you have to get down there relatively early, otherwise some other

company is going to have their bus. And it's not like hiring cars where you can sort of transport somebody to somewhere. When people get off the ferry they're confused enough, the chaos down there is so transparently obviously that they had no idea what they're doing or where they're going. And that increases the dangers.

Q. Can I ask you a question and I hope this doesn't sound (inaudible 15:17:29) unsympathetic but I want to offer you what I think is an analogy with your situation of giving all this wasted downtime, sitting down at the wharf when you're dealing with freight. And the analogy that occurs to me is taxi drivers servicing the Auckland International Airport or the domestic terminal. (inaudible 15:17:50) in a huge queue, I think it's even worse in Wellington than it is in Auckland, before they can pick up a fare back to somewhere in town. It just seems to me there's almost nothing that can be done about that given the numbers of people going through those terminals and the nature of the business. And I'm just wondering but (inaudible 15:28:14) whether your situation of just having this wasted time at the wharf is another sort of fact of life type situation that derives from what is a busy busy place. I'm not quite sure whether the marina proposal actually impacts on this but I'd be interested (inaudible 15:18:33) response from you –

A. The passenger thing is that, it's just part of it because you don't know if the boat will be on time or late, or quite often Fullers put on two boats, don't tell anybody that they've put on two boats, you leave with the first half of the passengers, I think the others haven't turned up, it's suddenly empty, (inaudible 15:18:52) and go back. With freight it's different because with the design of the wharf you actually have to drive down the wharf, through the people waiting, and of course this is going to be a wall problem for the City Council thank goodness, with the new ferries having passengers for the whole hour, not just for half an hour. It's not our problem though.

Q. Look, I asked a general question, I got an interesting answer but, as I've said to other folk, really that's an area that we can't help with because we're not the Council and our interest is in the potential impact of the

marina proposal on the current and future situation at Matiatia. Now, was there any other thoughts that you would like to leave with us on the subject?

- A. No, no, I really just wanted to make myself available to answer questions.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

Now is there anybody else in the same position who is wanting to make a submission this afternoon? No.

MR WALKER:

If I could say one thing. My wife is a school teacher, the good news is, she has refused my request, married to a Dutch bloke 45 years, that's an achievement, she's refused to come and speak to you next week. So you might like to think that's a good sign.

THE COURT: JUDGE NEWHOOK

I don't know how to take that at all Mr Walker, so we'll just leave the thought entirely to one side. It occurred to me that the most of any further business that we might wish to transact this afternoon, might perhaps be to have your submissions Ms Parkinson and then we might call it a day. We've had a fairly eventful day. How do you feel about that, would you like to do that or would you prefer to offer your submissions to tenuously with the calling of your witnesses. And I'm offering you that, if that would be your preference.

MS PARKINSON:

I've just been advised after lunch that there's been a revised set of conditions agreed between the applicant and the Council, so I'm thinking –

THE COURT: JUDGE NEWHOOK

Would you like to perhaps look at those?

MS PARKINSON:

It may be worthwhile to wait until Monday morning.

THE COURT: JUDGE NEWHOOK

And then we can have your input –

MS PARKINSON:

And see those conditions. I think I have a comment on that whether there's anything substantive there, because I do address the conditions in my –

THE COURT:

I think that's a very constructive suggestion Ms Parkinson. In the nature of these hearings we've had material coming forward sometimes way too slowly for my liking, but conditions – there are conditions (inaudible 15:22:02) during a case like this and your opportunity or your best, your main opportunity to comment on that, amongst other things is when you deliver your submissions. So I think your request is a fair one and we should probably ask you to open your case on Monday and call your witnesses. Mr Brabant?

MR BRABANT:

I would say that my co-counsel text me to say he ran and made the ferry about halfway here. He will of course email, but at this stage he's brought 15 copies down. I spoke to Ms Parkinson earlier because I felt it was sensible she know this. There are significant changes, including in relation to monitoring and dealing with anti-fouling that arose out of the meeting we had on Tuesday with the Council.

THE COURT: JUDGE NEWHOOK

Well I think it's even more sensible that we delay hearing from Ms Parkinson.

MR BRABANT:

And I think for her Sir, because otherwise – well she needs to see them, they are our replacement offered conditions.

THE COURT: JUDGE NEWHOOK

No doubt they've been emailed to the Court?

MR BRABANT:

They will be Sir, there was only time to make the ferry because I know there are other people at the back of the hall here who wanted to have copies available.

THE COURT: JUDGE NEWHOOK

The Court's registry staff are going to be a little while striking camp, as it were. And so they would no doubt be here when Jeremy Brabant arrives with the material and those who would like to have this material this afternoon before the weekend are welcome to wait and get it from Jeremy.

MR BRABANT:

I know that this morning he and Matthew Allan were still going over some detail, contacting acoustic experts, getting figures right and I haven't seen them Sir, but they are I think with a few exceptions aligned now with the Council's draft. I think there's been a bit of movement both ways and so we saw it as vital to get those done today after the issues and the facts and everything were completed so that the DMI people had it as well before they start.

THE COURT: JUDGE NEWHOOK

Here's a thought and I invite comment from the parties, that on Monday it might actually be helpful to us to have Mr Brabant and perhaps Mr Allan together, or it might be Mr J Brabant and Mr Allan offer us a summary of the changes that have been made to these materials, so that we can get our heads into them and better understand the submissions starting with Ms Parkinson immediately thereafter.

MR R BRABANT:

And in that regard, and I have been involved, along with other things, but we have been working on a document that as well identifies where there are any differences so that's part of the package hopefully.

THE COURT: JUDGE NEWHOOK

Yes you'll have a red line –

MR R BRABANT:

So he'll be here in about 20, 25 minutes with that material.

THE COURT: JUDGE NEWHOOK

Those of you that are interested, if you wait that period of time you'll get it. It will be available electronically, I'm hoping, including on the website if Jeremy can work with Gemma Carlyon and the registry in Auckland to put it up there. Is there anything that we could usefully deal with now by way of housekeeping before we finish for the week?

MR LITTLEJOHN:

The Council's witnesses and the applicant's witnesses have all been questioned about conditions and although we're told that the conditions come out of meetings between the parties it certainly wasn't the case that the applicant opened with a set of conditions that was fully complete. And I'm just conscious of the fact that while the Council might be able to agree conditions, it might be quite helpful if the persons who gave evidence about the conditions have an opportunity to comment one way or another. Now, I don't want to prolong the length of this hearing but wouldn't the Court be assisted by knowing whether the experts in that field are now all satisfied that the outcome of these further agreements actually reaches an agreed position?

THE COURT: JUDGE NEWHOOK

My immediate response to that, Mr Littlejohn, is not entirely negative but it is to pick up on the point that you make that you don't want to unduly prolong things, my suggestion, I hope a constructive one, is that if counsel will put their heads together and perhaps devise a series of little meetings amongst the relevant experts and there might be some further joint statements so that we can identify whether there's been further levels of agreement or not and what the remaining issues in dispute are in those particular areas rather than

we actually have a parade of all of the witnesses that we've already heard, put in the box and questioned.

MR LITTLEJOHN:

I would not want that to happen, but there is a process by which that can happen and Judge Hassan recently did this in a case where even during the hearing where an issue came live he told the witnesses to go into a room and give him an addendum to their joint witness statement and that may be a way of doing it because otherwise we end up –

THE COURT: JUDGE NEWHOOK

I've done this before and sometimes we make the services of the commissioner available too if that might help. But it's got to be done largely behind the scenes so as not to prolong the hearing.

MR LITTLEJOHN:

That was the one issue I was concerned about is that we will have the position of the parties without a view from the experts who are involved in this matter.

THE COURT: JUDGE NEWHOOK

Thank you for that suggestion.

MR R BRABANT:

And there's people here from the island too so it's appropriate for me to let you know in two key areas you are going to hear from Mr Shumane, the Council's traffic engineer, and so you will be able to hear from him as to whether the conditions in relation to traffic are agreed and that's my position Sir as between us and the Council. Another major shift relates to the antifouling question and dealing with the issue of the release of antifouling into the water and Sir the meeting we had on Tuesday involved Mr Cameron, who is the Council's witness. I've been in touch with Mr Poynter who has been down in Gisborne and there has been alignment about this in communication between those witnesses and I think Mr Allan and I will be able to help for a start on Monday.

THE COURT: JUDGE NEWHOOK

I think it's probably fair for me to respond on that latter point by saying that the Court had been developing a concern that if the applicant was going to continue to take the legal jurisdictional point about allegedly not being able to control the antifouling issue in water, that given that nevertheless some effects on the marine environment at some level, and we don't know yet whether minor or more than minor, were involved that it was taking a risk, the applicant was taking a risk by maintaining that legalistic view. Are you informing the Court that the legal point, the jurisdictional point, has been withdrawn and that now there is work going on amongst the experts?

MR R BRABANT:

Sir, what I'm informing you is that we'd developed through the amended conditions a way of dealing with that matter so that the marina has some obligations and they're clearly spelt out and those obligations relate to what it requires its berth holders to do through its rules and the management plan but the people did not obey those contractual arrangements and they nonetheless discharged the legal responsibility for that is with the boat owner who has not complied with the rules of the marina so we're putting the marina into a obligation position without it being the ultimately, the party ultimately responsible for breaking the law and anyway, so you'll need to see the conditions.

THE COURT: JUDGE NEWHOOK

We won't develop the point anymore but I have not told you and told the world that the members of the Court considered that there was a significant risk for the applicant in taking a legalistic approach to that issue, a legalistic jurisdictional approach and I need say no more.

MR R BRABANT:

And we'll see where things move Sir but you'll see the methodology that's been employed to deal with the issue.

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL -
TIMETABLING**

COURT ADJOURNS: 3.32 PM

COURT RESUMES ON MONDAY, 20 OCTOBER 2014 AT 9.30 AM

MS WEDDE ADDRESSES THE COURT – HOUSEKEEPING

MR ALLAN ADDRESSES THE COURT – HOUSEKEEPING

MR ALLAN CALLS

JOHN KEITH CHARLES CAWLEY (AFFIRMED)

Q. Your full name is John Keith Charles Cawley?

A. That's correct.

Q. And you are an associate with Golder Associates New Zealand Limited and you are a principal acoustic specialist with the company?

A. That's correct.

Q. And for these proceedings you prepared a statement of evidence-in-chief dated 10 June 2014?

A. Yes.

Q. And a rebuttal statement dated 29 September 2014?

A. Yes.

Q. And you've also participated in caucusing with John Styles concerning acoustics and vibration which resulted in a joint expert witness statement dated 28 August 2014?

A. Yes.

Q. And can you please confirm that the contents of those three statements are true and correct to the best of your knowledge?

A. Yes they are.

Q. Just two quick questions, you and Mr Styles obviously discussed your concerns about nighttime noise and ultimately agreed that this could be addressed by the noise management plan and a review condition if need be. Just to make sure the Court understands the nature of that concern, could you please briefly explain the potential nighttime issue?

A. Yes, there are a number of potential noise sources from the marina at night. There are some minor ones such as transformer operation which Mr Styles has addressed in his rebuttal evidence. The other significant,

potentially significant issues are primarily the use of the carpark, particularly vehicles arriving early in the morning before the ferry terminal starts operating when ambient noise levels are low, and perhaps the most potentially significant source of noise which is vessels, engines of vessels during start-up idling and movements within the marina and departing the marina. Mr Styles has identified that the vessel noise levels that he measured would comply with the 45 dB Leq limit for an individual vessel. But there is potential for effects from multiple vessels, two or three vessels starting up or manoeuvring during the same 15 minute nighttime period to exceed the 45 dB limit. Mr Styles and I discussed that and felt that if that were a rare event and unpredictable event and the noise level was only a couple of dB over the limit, then it probably wouldn't constitute a significant adverse effect. But were it to become, from my opinion were it to become a more frequent event or a predictable event, say for instance as an example two or three vessels starting up and leaving the marina between half past five and quarter to six on a Saturday morning during the summer every Saturday morning, then that would in my opinion become a significant source of noise. And that's why I've put forward a recommendation for a controlled condition that would allow for that activity or that potential activity to be controlled if necessary.

- Q. Just to clarify, that control you're talking about, is that in the noise management plan or is that – which control did you have in mind?
- A. There is wording in the noise management plan that I propose that talks about control on vessels entering and leaving the marina. I understand that there are some concerns over whether or not that is legal and I think it would be more appropriate and from my perspective more relevant if that were to be phrased as vessels using the marina. Mr Styles' original evidence identified potentially significant noise effects on receivers to the north of the marina from vessels entering and leaving the marina itself. The potential effects on receivers to the east of the marina are more associated with the activities within the marina itself. So I think if there is a question mark over whether or not there is

any ability to control vessels outside the marina, then that condition could be better phrased as vessels using the marina or whatever is considered an appropriate way of describing the vessels that have got berths within the marina.

- Q. Now I think you're aware that there are two sets of noise limits in two different consent. There is a set of noise limits in the coastal permit and a set of noise limits in the land use consent, and they're the same noise limits in the two different permits. I just wondered if you had any comments on that proposal?

0945

- A. Yes, Mr Styles and I discussed what would be considered as an appropriate noise limit and we concluded that subject to the report that he was going to prepare that it was agreed in the joint witness statement a limit of 45dB LAeq, 15 minute night time would be appropriate and LAeq 55dB a daytime. When we put those – when that was put together my understanding was that there would be a single set of conditions and a single noise limit that would apply to all activities associated with the marina, both on the water and on the land. The applicants propose conditions of consent separated that into two separate consents. One for activities in the water and one for activities on the land. I have a concern with having two separate sets of noise limits in that form because potentially you have a set of noise limits that apply to the activities within the carpark and a set of noise limits that apply to other activities within the marina. The cumulative limit in those combined activities then becomes higher than 45. The original applicant's conditions looked and look at the night time levels, 45 for the marina and 40 for the carpark which weren't combined as two separate activities has the potential to generate 46dB at the closest receiver. The latest version I have seen this morning actually looks at controlling the limits to 45 dB for the marina and 45 dB for the carpark which potentially could result in cumulative levels at the closest receiver of up to 48 dB which would be 3 dB over the 45 limit which is recognised as being the upper limit for residential amenity and sleep protection. So I think that

there's a potential there for excessive noise to be generated as a result of complying activities.

Q. So presumably these are relatively simple solutions to that but what would your recommendation be?

A. My recommendation would be to go to where I looked to be the condition which would be a single noise limit that applies to all activities associated with the marina both on land and water because that provides for the control of noise from all sources in one control and doesn't have an effect where you can have arguments about whether or not the carpark noise is masked by other activities and allows for a clear control that meets the intent of the 45 limit.

Q. Thank you, and just one final question and if you can turn to paragraph 88 of your evidence-in-chief, we're looking in volume 3 tab 6 Sir. Paragraph 88?

A. Yes.

Q. Do you have there? You set out there a recommended condition about cumulative noise levels and you're probably aware that the applicant hasn't taken this in in that set of conditions. Could you explain briefly to the Court why you consider that to be necessary?

A. I originally proposed that condition before the joint witness meeting, at that time I was concerned that there were no, there was no ability to identify the potential noise levels from the operation of the marina through the existing set of consent conditions, proposed conditions as was the case. There's a construction noise management plan, there are construction noise limits, there was a requirement for an assessment to be undertaken before construction work start but there was no such requirement for operational noise. I believe that this is necessary because it provides an opportunity for all parties to be confident but the equipment and plant that is used at the marina which at the moment we don't know what that would be will be evaluated and confirmed compliant before the operations commence. Mr Styles has produced rebuttal evidence in which he addresses a number of the points that were discussed in the joint witness statement and that he was proposed

to deliver as part of the joint witness statement in a report identifying the cumulative noise as it was currently evaluated. My feeling and my opinion is that what is provided in the rebuttal does not go as far as what is required in the report specified in the joint witness statement and therefore I consider that this requirement remains valid, not the least because we still don't have that information and I think it also remains valid because until we have confirmation on the equipment to be used, sewage pumps, transformers, and any other fixed plant. We can't be certain that that equipment has been selected as an appropriate piece of item of plant for instance, if the transformer that actually goes in at the marina does exhibit special audible characteristics or has a significantly higher noise level than the one that Mr Styles has referenced in his rebuttal evidence, then there is potential for that noise source to contribute to cumulative level exceed the 45 night time limit and therefore it's better to get that identified and sorted out prior to operation rather than have a situation after the marina starts operating where there is a problem with for instance transformer noise that could've been resolved beforehand.

CROSS-EXAMINATION: MR R BRABANT

- Q. Mr Cawley have you discussed any of this with Mr Styles, this information you've come up with today?
- A. I believe we discussed it during the joint witness meeting.
- Q. Yes, well I was aware of the discussion of the joint witness statement and I'd like you to refer to that now, do you have it there please?
- A. Yes.
- Q. Paragraph 12 Sir. Paragraph 12 indicates to me Mr Cawley that the only areas that needed to be addressed as outstanding were the use of LAeq metric which Mr Styles addressed and I understand from you not saying a thing today has been resolved in night time vessel movements which you have talked about but not some of the other things you've raised today they aren't identified there as an outstanding area of disagreement are they?

- A. Firstly, I'd say that the use of the LAeq metric has not been resolved to my satisfaction. The report that Mr Styles agreed to produce has not in itself been forthcoming although most of what he was – what I was looking for is in his rebuttal evidence. I don't think that Mr Styles and I went into detail of specific consent conditions during the joint witness meeting. My recollection is that was not something that we were expected to look at at the time because it was something that would be dealt with outside that meeting.
- Q. You might have noted I haven't got Mr Styles here, when his turn came Sir, Mr Allan said he didn't have any questions for him and neither did the Court and so –

THE COURT: JUDGE NEWHOOK

Well the best thing we can probably do with these two witnesses is put them back into conference. That is my suggestion and it may be that we, unless there are other matters that you wish to question Mr Cawley about that don't need to way that we do that before hearing from him any further.

MR R BRABANT:

Yes Sir, well I was prepared today to deal with the question of night time noise from vessels because I could see that Mr Cawley apparently retained some concern about that so it's a question of whether I should do that Sir or whether, as you've suggest, and I do agree Sir because I mean there's a whole – there's some new items come up again today, maybe that would be better Sir and save my cross-examination until late because they may even resolve their issues on it.

THE COURT: JUDGE NEWHOOK

May resolve it, that's right. Mr Allan it looks as though out of the three items that you've supplement your questions on, at least one of them, possibly two of them are in an area that it would have been much helpful if the two witnesses had continued contact because conferencing, of course, doesn't just have to take place within the confines of the formal arrangements made by the Court, we expect it, the practice note to continue at all times.

MR R BRABANT:

Sir, that's a sensible suggestion.

THE COURT: JUDGE NEWHOOK

So, I think we should probably terminate hearing from this witness now and put them together in conference, unless there are other counsel who indicate that they wish to ask some questions that are about something else again.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL**QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN**

Q. Mr Cawley, you mentioned the Leq measure as over a time period of 15 minutes.

A. Yes.

Q. Does that need to be stated in the way that that's recorded in the conditions? It doesn't at present.

A. It doesn't need to be stated in the conditions provided that the conditions reference, the 2008 versions of the NZ standards because the NZ standards specifically require that 15 minute measurement.

Q. I have seen that written in brackets after the measure before and I just –

A. It may be provided. So long as it's covered one way or another it's okay.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL**THE COURT: JUDGE NEWHOOK**

Mr Cawley, we'll need to ask you to go away and to meet up with Mr Styles. If they can gain the services of an environment commissioner to assist with the conferencing that might be a useful thing but if nobody is available we expect them to continue to work on these things and find agreement where ever they can. And to prepare a further joint statement as to the outcomes of their conferencing.

MR R BRABANT:

I could or I could ask Mr Wardale because my co-counsel is not here, to contact Mr Styles. If he was available Sir I'd just assume they went in a room down the end there and got on with it.

THE COURT: JUDGE NEWHOOK

Yes I think we can probably make premises available either on this floor or one floor down, there are rooms.

MR R BRABANT:

I have no idea whether he can go down, but if he can we can otherwise he's just holding things up.

THE COURT: JUDGE NEWHOOK

We'll see whether it can happen today. If we have to take this witness out of order a little bit later in the week well so be it. It's not a very good thing but one way or the other I think it would be more efficient if we get them to conference again.

THE COURT: COMMISSIONER HOWIE

He's not under embargo is he?

THE COURT: JUDGE NEWHOOK

No he won't be under embargo yet, we haven't asked him anything controversial other than, "Why didn't you go and talk to Mr Styles." Mr Allan if you could please, for the future that this situation is much better covered by further conferencing, voluntary, amongst the witnesses than extracting three quite major points in supplementary material at this late stage of the hearing.

MR ALLAN:

The implications are the difference between having two conditions and two consents is actually something that was only just brought to my attention perhaps five or 10 minutes before we reconvened, the potential implication of that so I fully understand Sir.

THE COURT: JUDGE NEWHOOK

Well Mr Cawley's heard what I've said too, so my remarks are addressed equally to you Mr Cawley. In future if you would just keep working with your opposite number. If we have concerns, rather than spring them on us or the courtroom. That's rather an old fashioned way to do it.

MR CAWLEY:

My apologies Sir –

THE COURT: JUDGE NEWHOOK

I deal with it more scientifically these days.

WITNESS STOOD DOWN

DISCUSSION – RE-CALLING OF MR MITCHELL**MR ALLAN:**

Sir, so you should have before you, still hopefully the bylaw or a copy of that floating around, you may not have it in your immediate possession and I'm not sure of the extent to which we'll get into the detail of it and attached to this set of further submissions, as I've noted, two further documents are attached as follows. The standard form mooring permit under the former 2008 bylaw and the draft standard form of mooring licence under the 2014 bylaw. And Sir, as I've noted in paragraph 1 that new bylaw comes into force on 25 October.

MR ALLAN READS OPENING SUBMISSION

"The term licence... be reissued annually."

THE COURT: JUDGE NEWHOOK

Can you just pause there while we have a look at clause 42, the non-exhaustive list of (inaudible 10:06:59) –

MR ALLAN:

Yes Sir, I didn't set that out in detail but it's page 20 of the bylaw, Sir. Technical matters the thing specified I suppose you'd say.

THE COURT: JUDGE NEWHOOK

The opening words, "When considering an application for mooring licences," is that the initial application or does that also include an application for a renewal?

MR ALLAN CONTINUES READING SUBMISSIONS:

In my submission that appears to be dealing with the initial application. The clause potentially takes on some significance when we return to a transitional clause later in the bylaw though Sir.

Paragraph 7, "Clause 44 is entitled... by the harbourmaster."

THE COURT: JUDGE NEWHOOK

(C) would appear to take renewals under section 42 – would appear to take the procedures for renewals back into the same field as for initial (inaudible 10:11:13).

MR ALLAN CONTINUES READING SUBMISSIONS:

It would appear to Sir. So it's an interesting clause buried at the end of the bylaw, one worth taking note of.

"Moving to the... harbourmaster's office," and Sir I'm straying a little bit into some evidence here and I apologise for that, if you feel the need for a witness to be re-called, Mr Moss, but perhaps –

THE COURT: JUDGE NEWHOOK

Well we'll see what counsel think of what you're raising, I remember that there was a bit of incomplete business as to whether Mr Moss would benefit from any of this anyway.

MR ALLAN:

So Mr Moss is in the Harbourmaster's office at present there's a gentleman by the name of Bruce Goff who's most familiar with the permitting system, he's been there for 25 years so if the Court felt a need to hear from somebody more, better acquainted. I haven't talked to him about this so I'm volunteering him but he's probably the man to talk to and so what I'm –

THE COURT: JUDGE NEWHOOK

Well you're giving us a heads up but it's sailing close to being evidence from the bar.

MR ALLAN:

It is Sir and I'm very conscious of that.

THE COURT: JUDGE NEWHOOK

Let's see where it takes us.

MR ALLAN:

Yes, absolutely Sir.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

"From discussions with...the Court's information."

MR ALLAN:

And I understand that 14 moorings are being moved under that condition thus far, gain more evidence from me. Sir I won't read that condition but I've just set it out there for your information.

THE COURT: JUDGE NEWHOOK

Thank you for that Mr Allan we'll just see where it gets us. It may or may not be slightly off to one side of our enquiry but we'll see how it plays out. Mr Brabant?

MR R BRABANT:

No issues that arise for us Sir in relation to that submission, I think it's a respective fair summary of the position and the condition that's replicated at the end, as I understand it, on all fours with what we've proposed.

DISCUSSION – RE-CALLING OF MR MITCHELL

1025

MR ALLAN CALLS**WISSAM AHMAD SHUMANE (SWORN)**

- Q. Your full name is Wissam Ahmad Shumane?
- A. Yes.
- Q. And you're a traffic engineer with the Shumane Consultancy?
- A. Yes correct.
- Q. And for these proceedings you've prepared a statement of evidence-in-chief dated 11 July 2014?
- A. Yes.
- Q. A rebuttal statement dated 23 September 2014?
- A. Yes.
- Q. And a supplementary statement dated 3 October 2014?
- A. Yes.
- Q. And you've also participated in caucusing with the other traffic witnesses which resulted in a joint expert witness statement dated 28 August 2014?
- A. Correct.
- Q. Can you please confirm to the Court that the contents of those four statements are true and correct to the best of your knowledge?
- A. I confirm.

CROSS-EXAMINATION: MR R BRABANT

- Q. Good morning Mr Shumane.
- A. Good morning.
- Q. If I can just look at the joint witness statement first. It appears if you go to the end of it that the issue that remained amongst the signatories was how to control access.
- A. That's how I see it too, yes.
- Q. Since then matters have progressed and I take it that you have seen – well they've progressed because some further evidence was produced, but you've also seen the latest version of the applicant's condition of consent with provisions for controlling marina traffic?

- A. It wasn't necessary further evidence, there was additional analysis prepared by Mr Apeldoorn and not the conditions.
- Q. Right, well I'll come back to the conditions later in that case. What I'd like to ask you first of all, and it takes me back to your original evidence, and if I could go to that and paragraph 14.
- A. Do you mean evidence-in-chief of the –
- Q. Yes your original evidence, that's right.

WITNESS REFERRED TO EVIDENCE-IN-CHIEF

- Q. It can be seen from the evidence produced by Mr Mitchell and Mr Apeldoorn the amount of time they've spent there, whether it's surveys or observations, and I was interested in that with traffic engineers. So can you help the Court please, you talk about visiting on three occasions prior to your completing the report for the counsel, 87F report. Do you happen to have a record or can you remember what times of the day, what months – if it's too hard say so – and how long you were there?
- A. Yes that is hard. In fact I have visited the ferry terminal a lot more than three times in the past two years or since I've been involved with this project. Prior to completing my previous report which was November last year I only made three visit. Well I made a lot more than that three visit now. The times were May – I can look at my diary and tell you exactly the days, but May, which was quiet period in the middle of the day, and November again of last year. And there was a weekend. I can't really the third time. But the intention of going there on a weekend, we were there Friday afternoon and I came back home on Sunday afternoon, the intention was just to look at the situation on a weekend. It wasn't the peak summer break, it was just starting to be the peak summer holiday. And since then of course I've been to the island during the summer holiday, in the December to February period.
- Q. And you were able to get over there then?
- A. Well, few times yes.
- Q. And you saw some more what you'd consider to be busy activity?
- A. Correct.

Q. Well that's very helpful, and you were there for periods of time to enable you to make observations maybe over one or more bus arrivals and departures?

A. At least during two ferry arrivals.

Q. Very good, okay. So last week, Mr Shumane, we heard from individuals and people who live and more particularly work on the island, and have an involvement in actually using what's been called the keyhole area. Now, I'm assuming that you haven't had a chance to – I don't recall seeing you there, I don't suppose you've had a chance to look at the transcript.

A. No.

Q. So what I'd like if you could is if you could go to the Auckland Transport material and there is a plan produced as an appendix to Mr Karndacharuk's evidence.

THE COURT: JUDGE NEWHOOK

The evidence-in-chief?

MR R BRABANT:

Yes it is Sir.

WITNESS:

The rebuttal you mean?

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. It's this one Mr Shumane.

A. Yes the rebuttal.

WITNESS REFERRED TO EVIDENCE

Q. It's appendix B to his primary evidence, his first statement. Have you managed to locate his first statement? Yes it's right at the back of that folder.

A. Yes.

- Q. And it's under tab 2. His evidence is under tab 2 and – yes that's it. Should have been A3 but that's all right. So Ms Gisby is a person who runs a shuttle service and therefore uses the keyhole, and I asked her about the accuracy of what's shown there in terms of parking. Does that appear to you to represent the current arrangements that you saw in your visits in terms of what kind of vehicles park there and how much room is provided for them?
- A. Yes I actually took that same picture with me one time to check because I didn't get chance to draw my own, so I used Auckland Transport's picture for my analysis.
- Q. I asked a number of the witnesses who appeared from the island and had an actual involvement in the keyhole about the characteristics of the use of the keyhole leaving marina traffic aside for one minute, and put it to them that what happens with those who are authorised to enter the keyhole is that they go in there and stop, and they stop to disembark or they stop to embark passengers. So all the vehicles working in that keyhole are stopping and starting again with different periods of interval periods of interval between when they leave. Does that seem accurate to you?
- A. That is my understanding, yes.
- Q. And I also asked them about two types of traffic that are authorised in there but they don't stop and one, and tell me if you need to refer to a plan is some provision for motorbikes and scooters through the other end and the other of course is the mooring holders who have a parking area but also can access the boat ramp. So did you – when you were there Mr Shumane did you see any people going through that appeared to you to be going out on their boats and went straight through?
- A. I can't say I have Sir.
- Q. Yes.
- A. Either in my visits I was paying attention to taxis and buses and how they operate, they then put those things on how they operate within a keyhole. There might've been a vehicle going through to use the

mooring or the dinghy's but I certainly didn't notice any during my visit or even a motorbike.

Q. Right.

A. I didn't notice there in my visits, no.

Q. So I just want to read to you a question and answer exchange I had with Ms Gisby about the situation in the keyhole. So the question is, "If you're a bus or a taxi or a shuttle, I'm just looking at the different varieties. The purpose of going into that keyhole area is to stop in the parking designated for that particular vehicle for the purpose of either letting passengers off or picking passengers up, that's the purpose of going in there." And the answer was, "Yes." And Sir, just for the record this is at page 792.

A. Okay.

Q. And then the next question Mr Shumane was, "And the congestion that you speak about that occurs in the keyhole is when that activity of parking or leaving before or after becomes so busy that there can be hold ups." Answer, "Yes." "And that's the situation that's occurring now as you very clearly explained to us," Answer again, "Yes." "And are there some periods of the year when it's a lot worse than other times?" Answer, "Yes." " And it's also true isn't it that even in say December or February, I'm only leaving January out because I'm not sure, that's just me speaking, I don't have a clear understanding of that at the moment. If you were to go down outside the period that people have given evidence about from when the build up starts or a ferry arriving and then it'll leave, and then at the other end of that period and the buses have gone, the taxis and the shuttles have gone and there aren't any more arriving because the next ferry hasn't arrived yet, it's very quiet." And the answer was, "Yes." So you get these kind of little patches of activity and congestion that are directly linked to ferry arrivals and departures right at the moment you do. Now so that's what an operator told the Court last week. Because you've taken the time and trouble to go down and make these observations, I want to ask you Mr Shumane if that squares with to you observed?

- A. Based on only several visits and observations of the keyhole, a lot of that is actually correct. Now one thing I can say is that following the departure of the ferry and we are dealing with only one ferry an hour currently, not every half hour or the second operator there. After the departure of the ferry, the keyhole, the whole place is basically empty. It's very quiet, but not for very long. For about half an hour perhaps and after that it starts to build up. Yes, there were times when I actually saw cars double parked, not frequently but I observed that. Again, this is mostly, these observations are from my holiday visit, not the May visit, the May visit showed very little congestion, showed some congestion but well, it is a ferry terminal you expect some congestion there but probably not too bad.
- Q. Right, now I want to take you now to your rebuttal evidence please – oh sorry, your supplementary statement.
- A. Okay.
- Q. And if you're using your Court file it's got a tab 12(b) on it.
- A. I brought my own. Sorry I thought I had everything put in order in my folder.
- Q. Can I just help Sir the witness just to locate?

THE COURT: JUDGE NEWHOOK

Yes.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. And I'd like you to go to 7 and 8 where as I read it, you've carefully considered the detail in Mr Apeldoorn's rebuttal evidence and are satisfied with his conclusions.
- A. Correct.
- Q. Now I'm going to ask you to go to Mr Apeldoorn's rebuttal now, do you have that there? Now there are some things I just want to ask you about, the conclusion in terms of the information that Mr Apeldoorn provided, by reference to his paragraph 8, is one of the reasons you're satisfied with his conclusions, the amount of data that was available?

A. It's more like the way how the data was analysed more than anything else. Prior to caucusing sir, we – I at least did not think that Mr Apeldoorn had demonstrated that the marina traffic would not impact on public transport. He clearly demonstrated that marina vehicles 56, 57 an hour will travel through the keyhole without being hindered by anyone else and this is evident from his original evidence-in-chief but we, I did not think that he demonstrated that he, the marina traffic would enter the marina would now affect them buses and that was a subject of debate at caucusing of course however, following this, Mr Apeldoorn provided in his rebuttal evidence, and the conclusion is paragraph 8, additional analysis and information to show that in fact these vehicles would not impact greatly on buses and I agree with him with minimal impact on buses, not detrimental impact and that's what I agreed with and that was the conclusion I agreed with .

Q. So if I can take you to paragraph 15 of his rebuttal is the reasoning that you're referring to there? Let's look at that. He's got a number of sub paragraphs where he talks about detail.

A. Yes more or less and if you look at paragraph 7 of my supplementary statement without engaging in a debate, I do have question marks about some of the analysis he did but ultimately I agreed with the conclusion, I don't wish to enter into a debate about how he analysed I know the information is there and then the conclusion is the same.

Q. Can you looking at his paragraph 16 where he says, "The survey evidence shows two things," do you see that?

A. Yes.

1045

Q. The first is about frequency isn't it, and the second about duration of the event.

A. Yes.

Q. Yes.

A. Sorry, was there a question there?

Q. Yes it was.

A. Sorry.

- Q. Is the first there about frequency, based on his analysis of the survey and secondly, if there is an event, how long it might happen.
- A. No that is correct, this is the additional analysis I was referring to earlier. He did that analysis based on his own surveys and I'm not disputing the survey results.
- Q. Now there's one more thing I'd like to ask you about and it is maybe implied in some of what I've read in the traffic evidence. A marina carpark provides a parking facility for people taking a discretionary trip, would you agree with that?
- A. Yes it's a luxury asset. It's a destination but it is what we refer to as a luxury destination. You can afford to be late if you want to, or if you have to.
- Q. And so we've got another carpark right by it, the carpark for ferry users and if they're wanting to catch the ferry, different considerations apply don't they?
- A. Yes because they have to stick to a timetable.
- Q. Yes.
- A. It's not a luxury destination. It's actually a must destination.
- Q. So if the marina is used by people or has boats on it that people use for recreation, it's an important consideration, do you agree Mr Shumane that they are able to manage their recreational outings. That would appear to be reasonable wouldn't it?
- A. I can't really speak on behalf of the berth holders and I'm not really an expert on human behaviour so I can't really answer you.
- Q. I'm just more interested in your experience at looking at different kinds of trips that happen to carparking and compare them and then ask the question, "Is this a different carpark from some others?" That's really the –
- A. I can give you a better answer than just a park and I can explain the effect of peak spreading. When traffic so congested people avoid leaving home or work at a certain hour to avoid a certain section of road so they leave half an hour or half an hour late to avoid it and that's what we refer to as peak spreading. You can apply that to the marina parking

if it is congested, well try to avoid it. So it is a common thing you do in rush hours.

Q. I was going to ask about people choosing different to local roads but I won't go there. So we've got that discretionary thing and so that's relevant, isn't it, where you've got this arrivals and then quietness for someone who lived on the island.

A. On the understanding that we still have one ferry every hour.

Q. Yes.

A. Things might change when we have a second operator with ferries arriving every half hour.

Q. Now the other thing with people making discretionary trips, what's your experience of the situation where that is the case, there is a discretion and they drive into a congested situation. Has it been your experience that that results in change?

A. I'm afraid sir I haven't done enough research to answer this question. I have my personal views but not based on any research.

Q. I was wondering from practical experience because you've got so much of dealing with environments where there's congestion and what do people do about it?

A. From a practical experience I go back to the peak spreading. When it is congested, people avoid it and they go half an hour later or earlier, depending on whether they can actually accommodate the delay, the lateness or the early arrival. That's as much as I'm going to say, sorry.

CROSS-EXAMINATION: MS WEDDE

Q. Good morning Mr Shumane my name is Ms Wedde and I'm here for Auckland Transport.

A. Good morning.

Q. First of all if you could look at your supplementary statement of evidence.

WITNESS REFERRED TO SUPPLEMENTARY STATEMENT OF EVIDENCE

- Q. And in paragraphs 15, 18 and 19 you refer to the recommended conditions. And I understand at the time of preparing this supplementary statement you hadn't seen the applicant's conditions that were attached to the opening submissions, is that correct?
- A. No that is correct, I only received the first set on the first day on the 6th of October and then again last night, a revised revision.
- Q. So when you're referring to the recommended conditions in your supplementary statement you are not referring to the applicant's conditions, is that correct?
- A. No I'm actually referring to my old recommendations by my evidence-in-chief.
- Q. And staying with this supplementary statement, if we turn to page 4 where you discuss the possibility of a second ferry operator at Waiheke. Now you've identified two scenarios that could result from the commencement of a second ferry operation at Waiheke, is that correct?
- A. Two are possible scenarios.
- Q. Two possible scenarios, and you set those out at paragraph 12?
- A. Yes.
- Q. But just to be clear, in both of those scenarios you assume that the number of passengers will remain generally the same, that's correct isn't it?
- A. That is the general perception based on, having no other information to suggest there will be more and that's a debate for, well it's an answer for another question. I looked at the two scenarios based on no increases in ferry passengers, or passengers in general.
- Q. But would you accept that it's possible that increased competition could lead to more comfortable ferries, for example?
- A. I think there's a very strong reason creating more passenger demand as a result of the second ferry is a very real possibility. We can't really ignore it, I can't ignore it. But I don't have any information to suggest to me there will be and what the increase in demand will be so at this point in time I would say that this is the number of passengers, that's how many people the ferries are ferrying across from Auckland to Waiheke

and if we look at Mr Apeldoorn's evidence-in-chief there is a description of what the numbers are. I don't have any other evidence to suggest that there will be more demand but there is a strong reason to believe that there is suppressed demand and there will be more demand, I just don't know what it is. Ten, 20, 30, 100%, I don't know.

Q. So with the first scenario that you discuss which is set out at 12(a), this is the scenario where bus services continue to operate as at present. So that is they service the wharf area every hour as they do at present. So in that scenario you've assumed that some of the vehicles currently using the keyhole during that current busy period will reschedule their movements, is that correct?

A. Most likely. Are we talking about taxis, not busses? Because buses, if we have this scenario, no changes to bus timetables regardless of what the ferries are doing, they will arrive as they do today. But taxis on the other hand, they're not really bound by any timetable, they'll arrive whenever there are customers. So they will continue to come in that extra half hour or the half hour when the other ferry arrives. And they would be there when the second ferry or the following ferry will arrive. So what will happen is that some vehicles that are there now during the peak period won't be there or at least we will have pretty much the same situation, because we're still talking about the same number of vehicles in the keyhole regardless of how many ferries are transporting people to the island. Currently the Fuller ferries carry 100% of passengers and they arrive on a certain hour or at certain time, and then they depart for 20 minutes later. And they are carried or they are transported across the island by a number of busses. And I'm not talking about people who park there because they can come any time they want and walk any time they want to their carpark and take their car. When we have a second ferry terminal – ah, second ferry operator, some of them will arrive when there are no busses and they will sit and wait. I don't really think they're the ones – I don't think these people will actually arrive anyway, they will probably catch the taxi or they're most likely to be the

people who have their cars already there waiting or someone waiting for them.

1055

Q. So just, sorry I don't want to cut you off –

A. No no, that's okay, it's a little bit confusing because we don't actually know what the condition will be. These are hypothetical scenarios because we don't really know what will happen.

Q. Yes, there's a lot of uncertainty isn't there?

A. Exactly.

Q. A lot of variables.

A. They are just two possible scenarios.

Q. So sticking with the example of taxis, would you agree that it's also possible that a taxi that arrives for a certain ferry and doesn't manage to catch a passenger may simply wait there for another half hour for the next ferry?

A. Yes they might do that and they might take a passenger or a customer up to a nearby destination and then turn around and come back within 10 minutes before the next ferry arrives too.

Q. That's right. And with the tourist shuttles, it's possible that some of those may rearrange their schedule so that they arrive to meet every ferry sailing, would you agree that that's possible?

A. I'm sure they will rearrange their timetables to catch the ferries.

Q. And with the second scenario that you've discussed in your supplementary evidence, you've acknowledged that there is a possibility that for busses they may double in frequency in order to service the new ferry crossings, is that right?

A. That is a possibility, Yes.

Q. So when discussing that scenario at paragraph 16 you state, "As the number of passengers will remain largely unchanged, the intensity of the busses will be half of the current intensities but all of the time." Do you see that? At paragraph 16?

A. Yes I think, I think this was –

Q. I'd just like to explain what you mean by "intensities"?

- A. That was probably incorrectly, my apologies Sir. What I meant to say was the capacities of busses will be split in half rather than the number of busses. I think I probably missed a word in there.

THE COURT: JUDGE NEWHOOK

- Q. So what word would you like put where?
- A. The intensity of bus capacities will be half of the current intensities," not the number of busses. Because there will continue to be three, talking about public busses, three at any given time, whether they come every hour or half hour, that's a different story. My apologies.

CROSS-EXAMINATION CONTINUES: MS WEDDE

- Q. So just so we're clear, are you saying there would be no increase in the number of busses in this scenario?
- A. There are bus, sorry, four bus routes on the island now, two of them are practically the same, so there are three routes in a way and three busses. Whether they arrive every half or one hour, I don't really know what Auckland Transport will do eventually, but whether they arrive every half or one hour, we still have the same three busses arriving and departing from the keyhole. And it's the number of passengers they will take with them will be less if we have them coming every half hour, so they won't be taking 40, 50 and there won't be any people standing perhaps. I don't really know what will happen but they will be able to pick up their passengers and leave at the same time, quite quickly or a lot quicker than they do now.
- Q. So just –
- A. So the busses will be the same, that's what I – yeah.
- Q. Right so just to be clear, you're saying there will be the same number of busses?
- A. Yes.
- Q. But they would be spread over a different timetable?
- A. Yes.

- Q. But isn't it also possible that the number of busses may increase to meet this new ferry schedule?
- A. I'm not Auckland Transport.
- Q. But you accept that's a possibility as well?
- A. It is a possibility.
- Q. Now at paragraph 17 you say in your scenario of the busses being spread over more times that this would result in the keyhole being a continuously semi-busy environment, and you would accept that that's a change from the current traffic environment?
- A. Slightly better than the current busy environment.
- Q. You'd say slightly better than –
- A. We have two half hours currently. One half hour when it's quite busy, busses, people, cars, taxis et cetera, and we have one half hour very quiet period. In the second scenario Sir, I predict, and I don't really know what will happen but I predict that the condition will be semi-busy all the time. So there won't be half hour of quiet period, half hour busy period, it will be all the time semi-busy or slightly busy. Busier than the quiet period now, but quieter than the busy period now. An average of some sort.
- Q. Now in the current situation in the busy periods do you accept that the parking wardens have an important role in monitoring traffic and parking in the keyhole?
- A. Absolutely. I spoke with one of them. Without them I don't think the keyhole would work.
- Q. And so if the keyhole is to become continuously semi-busy then the parking wardens will have more to do, isn't that right?
- A. I don't work for Auckland Transport and I'm not really sure what Auckland Transport will do in that situation. Of course AT is the current service provider and they need to provide some kind of control over their assets. Having a continuously semi-busy environment will almost require the presence of a parking warden all the time. I know at this point – I spoke with one of the wardens and I was told that most of the time there's one, occasionally two but not always, sometimes there are

no wardens down there. And this is when – and things go wrong even when the wardens are there anyway. But we have a semi-busy environment all the time, it's almost a full-time job. I would say AT might have to employ someone to be sitting there just watching cars all the time and making sure that they don't park illegally. Not only the keyhole, the keyhole is not the only problem. It's the roundabout as well, it's people pulling out, dropping off their friends or guests or picking them up. So we're talking two bits of road that are equally busy and they do require some kind of a management or some kind of control. And it is a little bit of a problem because parking wardens aren't allowed to stop people in the middle of the road unless it is a moving violation such as driving in a clearway zone.

Q. Yes. And in your evidence-in-chief, if I could ask you to look at that at paragraph 64(b), there you state that in your opinion, "more frequent sailings will increase the parking warden's task and an access restriction is in my view necessary to ensure that the warden's ability to maintain order is not compromised at least during the busy periods."

A. That's correct.

Q. So coming back to your supplementary evidence, from paragraph 5 where you discuss your response to Mr Apeldoorn's rebuttal, so you've said that you're now generally satisfied with the results of the simulation that Mr Apeldoorn has carried out, and that's at paragraph 7. But just to be clear you would accept that the simulation he carried out did not specifically study the effects on public transport, is that correct?

A. No, that's not entirely correct. We agreed at caucusing, Sir, that the modelling was undertaken correctly, we agreed that the method employed by Mr Apeldoorn were correct and the survey was correct regardless of the disagreement I understand by some residents about the date. At the caucusing we agreed that the surveys or the analysis or the work Mr Apeldoorn did demonstrated that vehicles going to the marina would be able to drive through the keyhole without being hindered. The only question remaining was, as Mr Brabant said earlier today, whether these vehicles would impact on public transport. Until

caucus, in my view, was that he did not demonstrate that vehicles going to the marina would impact on buses. And Auckland Transport had similar views as well. After reading the rebuttal evidence by Mr – I don't know which one it is, after reading the additional analysis provided by Mr Apeldoorn I now say that he used the information he collected at the survey, or by survey, to demonstrate that the impact would be minimal. There would be impact but minimal. And this is based on the additional information provided in the rebuttal evidence.

Q. So just to be clear though, that simulation hasn't specifically modelled what happens for buses in that scenario, that's correct isn't it?

A. That is correct, the simulation basically looked at what the travel time would be for marina vehicles through the keyhole.

Q. So it focuses on travel time but do you accept for public transport, reliability is also an important consideration?

A. Absolutely.

Q. And would you accept also that Mr Apeldoorn's simulation did not look specifically at safety issues?

A. So there was no mention of any safety element in the survey results. It wasn't discussed, so yes.

Q. Sticking with that topic if I could ask you to look at Mr Mitchell's evidence in reply at paragraph 28.

WITNESS REFERRED TO REBUATTAL EVIDENCE OF MR MITCHELL

Q. So Mr Mitchell has said that the introduction of, this is from about the middle of that paragraph, "The introduction of additional traffic will increase the potential number of crashes, based on simple statistical occurrence." Do you accept that statement?

A. Correct, it is a correct statement, yes. Can I just add to this? It is correct because Mr Mitchell is referring to the correct procedures of how we establish the crash rates using the economic evaluation manual, of NZTA. That's why it is statistically correct that crashes may increase mathematically speaking.

Q. And so in this case where there will be increased traffic it's statistically correct to say there is an increased probability in crashes, do you agree with that?

A. Yes.

THE COURT: JUDGE NEWHOOK

There is, of course, the final sentence in that paragraph Ms Wedde. As part of the overall package of information in that paragraph.

MS WEDDE:

Yes, "This does not however make the area less safe as the rate of occurrences does not increase."

THE COURT: JUDGE NEWHOOK

That sentence, yes.

CROSS-EXAMINATION CONTINUES: MS WEDDE

Q. So there may be an increase in the number of crashes but not an increase in the relative safety, is that a fair summary?

A. The economic evaluation manual of NZTA which we traffic engineers rely on to assess anything has a very big section, section 6, about crashes and I can't stay here all day and actually debate how we can use it, but mathematically what the increase is likely to be but if we add more traffic to any section of road you automatically increase the chances of having a crash or the severity of the crashes, there could be a safety problem already there and then the additional traffic will just increase the severity of it. And if there is no crash safety the additional traffic might introduce in your crash problem. Mathematically speaking I agree, yes, with more traffic you'll always have a chance of more accidents, more crashes and with more traffic you'll always have the possibility of increasing the severity of a safety problem if it is already there.

- Q. Okay so returning to your supplementary evidence, if I could ask you to look at paragraph 9 please and you say that you maintain the view that the use of access restrictions during the busy periods so late December through to mid February is an appropriate measure but you're satisfied that this restriction can be applied following reviews?
- A. Yes, I maintain this view.
- Q. And this is the main change really in your supplementary evidence? Well one of the main changes from your original evidence?
- A. It's not really a change in view it's more an evolution and look in at the proposal.
- Q. So in a situation where there was a review, do you accept that one of the outcome would be a restriction of access to the keyhole area from 20 minutes prior to a ferry sailing to 10 minutes after? So 30 minute periods? Do you accept that's a possible response?
- A. As I said earlier Sir, I only managed to looking at the draft or the revised conditions of consent this morning so I can't really make a lot of comments about that, I'll probably confer with my counsel about this later on. There's something in the draft conditions about what to do if there is a problem. Unfortunately, the conditions as they are or the proposed conditions as they're written now basically say if marina vehicles contribute to a problem and this is a wording I do not agree with, I'll come back to the question now if I'm allowed, I needed to do an introduction.
- A. So it sounds like you have a –

THE COURT: JUDGE NEWHOOK

Now he's coming to answer the question.

MS WEDDE:

Oh okay, sorry.

THE COURT: JUDGE NEWHOOK

Just let him do that.

MS WEDDE:

Okay that's alright, I'll follow up to his clarification, I'll come back to it.

WITNESS:

The introduction was necessary Sir to put things into perspective because you know I just don't want anyone to take any comments out of context. It is, I do expect some changes if there are problems. I don't really know what the changes will be, I don't know what the restrictions will be. Initially I looked at the situation and I said before I reviewed a lot of the – for a review of the surveys by Mr Apeldoorn, before I reviewed Auckland Transport submission, before I even reviewed the locals statements, my first reaction or my first recommendation was, "It's okay, just make sure you don't get traffic through the keyhole area in that our busy period." In time, after review and monitoring, you might find that yes will need to restrict access there on certain hours or certain periods. I don't know what that period will be, 10 minutes before ferry arrival and 10 minutes after departure, I don't really know. This work can only be determined by surveys or monitoring that's why we have a CCTV, that's why the client is recommending or proposing a CCTV camera to identify the problem, or what the problem is so we can find a solution. Now yes there will be controls, I don't know what the controls will be. The controls may be just 10 minute access restriction, marina traffic, please park somewhere else and wait until after that 10 minute. Restriction might be no access for the whole day on the 2nd of January, I don't really know what restrictions will be. Now, will there be restrictions? Yes, absolutely, I expect restrictions to happen, well we don't really know what they are. At this stage, right now based on today's information, based on surveys undertaken by Mr Apeldoorn in January, February of this year, I don't really see any reason to have any strong restrictions now but I do see the need to have a monitoring condition saying that if there is a problem caused by the marina traffic or there is a problem that is there, not necessarily marina traffic; AT might have six buses there in the keyhole and we won't be able to get any traffic at all so this isn't a problem caused by marina traffic, it's just a problem or Auckland Transport needs the road reserve to get more buses to pick up more passengers. If the situation

calls for the marina traffic to be stopped at certain times, my recommendation Sir is to give this power to Council to make that call. Okay, we have no problem now; all cars can actually get through. A year from now we have two ferries, one every half hour carrying five, 600 passengers in there, the busy period and we need six, eight, 10 buses and plus another four, five coach buses. We can't really allow any traffic to go through, they have to be able to make that determination but today we don't have any evidence to suggest that we need to do it right now, we – I just don't have that evidence before me.

THE COURT: JUDGE NEWHOOK

Try and keep your answers a little more concise if you don't mind Mr Shumane.

WITNESS:

Sorry Sir.

THE COURT: JUDGE NEWHOOK

You're offering us quite a bit of information but you are a bit, little bit repetitive with it too. Try and keep it just a little bit crisper.

CROSS-EXAMINATION CONTINUES: MS WEDDE

Q. So if I can just pick up on one point there, it sounds like you do think that in a situation where – sorry, you do think that the Council should have the ability to restrict access perhaps for the whole time if the area is required for buses, that's one possible outcome that you would accept?

A. Yes.

Q. But you've also said that the conditions are very vague really about what would happen in a review that identifies a problem.

A. Correct.

Q. There's no certainty about what would happen.

A. There isn't anything in the condition to tell us what can happen or what can be done if there is a problem.

Q. All right just turning to a different topic of vehicle messaging systems, or is it variable messaging systems. Now in your evidence-in-chief you supported the use of these systems didn't you?

A. Yes.

Q. And you indicated that these systems could be useful even if there wasn't an access restriction, so for example it may be used to indicate to marina users that the carpark is full for example?

A. Yes.

Q. So do you still support the use of these systems?

A. I think a VMS 500 metres from the terminal is a very good idea and yes it can be very useful for marina as well as ferries, or ferry users.

Q. Thank you. The final topic that I have some questions for you relates to Mr Karndacharuk's supplementary statement of evidence do you have that in front of you? So there he refers to some access control principles that were discussed, it looks like an expert expert caucusing.

A. Yes.

Q. Are you familiar with those?

A. Can you just point out the exact paragraph?

Q. Sorry paragraph 11.

A. Yes, we discussed these at caucusing.

Q. Are you comfortable that these vehicle access control principles are still a reasonable approach to the issue?

A. The principle or the intent of these bullet points or recommendations I agree with, yes.

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CROSS-EXAMINATION: MR CASEY

Q. Mr Shumane, can I refer you please to your supplementary statement of evidence and as I understand it your change in position or evolution as you say is largely the result of the analysis that Mr Apeldoorn produced in his rebuttal evidence.

A. Correct.

- Q. And in paragraph 7 of your supplementary statement you refer to paragraphs 10 to 13 of Mr Apeldoorn's rebuttal, correct?
- A. Yes.
- Q. And you say that it's on the basis of that section of his evidence that you have – or you are now generally satisfied that the results of the simulation can determine the potential impact that additional vehicles will have on busses in the keyhole area.
- A. Yes.
- Q. And in paragraph 8 you refer to paragraph 11(d) of Mr Apeldoorn's rebuttal evidence, right?
- A. Yes.
- Q. If I take you to Mr Apeldoorn's rebuttal evidence, you'll see that – well perhaps before I do that, your concern was that while Mr Apeldoorn's earlier analyses had focused on marina traffic not being impeded, it had not addressed the question of busses not being impeded.
- A. That was largely the problem, yes.
- Q. And so he responds to that issue in his paragraphs 10 to 13, and I'm just taking you there. Now, he says that, "On the basis of his assessment there's a high degree of confidence," this is paragraph 13, "that marina generated vehicle movements will have a negligible effect on traffic," which he says, "including public transport and tourism vehicles moving through and around within the keyhole area." That's what he says.
- A. Yes.
- Q. And that's the basis upon which your position has evolved.
- A. No, it's on a basis of all the analysis provided at his paragraphs 11 to 13, not just one statement.
- Q. I'm sorry yes, but that's his conclusion and you –
- A. Yes.
- Q. Right, thank you. Now, do you accept that it's not just the busses that are important, it's the other vehicles that use the keyhole as well, that is the taxis and the tour operator vehicles?

- A. All vehicles that use the keyhole are important because they're transporting people. So yes.
- Q. They're transporting people who are using the ferry.
- A. Yes.
- Q. And there are also a number of vehicles outside the keyhole that are there to transport people using the ferry?
- A. Yes.
- Q. And they will be other tour operators who can't get into the keyhole and have to wait outside?
- A. I understand that not all tour operators have permits, so they have to wait outside, yes.
- Q. And also private vehicles who are either dropping off familiar members or guests, or picking them up off the ferry?
- A. Correct.
- Q. And I think you talk about the roundabout or the turnaround area before you get into the keyhole?
- A. Yes.
- Q. And you would consider that those people are also important because they are also providing transport for the passengers who use the ferry?
- A. If I may answer your question in a simple word, everybody is important regardless of who they are. But yes, all public – all people who come to that point, whether it's a roundabout or the keyhole, have something to do with the public transport, have something to do with transport public or private. So yes, all of them are important and all have to be catered for.
- Q. But they're important particularly because what they're providing transport for is for passengers using the ferry that leaves from or arrives into Matiatia.
- A. Well in the context of that locality yes.
- Q. Now, as I read Mr Apeldoorn's evidence in the paragraphs that you've relied upon, he's talking there about the travel times experienced within the keyhole area. You see that?
- A. Yes.

- Q. And he says all vehicles in the system including public transport, so maybe or maybe not he's intending to include taxis and tourist vehicles, apparently he is?
- A. Well what I think Mr Apeldoorn is referring to, and you'd have to ask him the question, all vehicles within the keyhole.
- Q. Yes. But he's talking about their travel times?
- A. That is correct, that's the measure he used to do his simulation. Or one of the measures.
- Q. But of course most of the vehicles using the keyhole are not using it to travel through and around and out, they're using it for another purpose aren't they?
- A. Vehicles that use the keyhole, well they park there to pick up passengers. And yes they end up leaving ultimately, they don't stay there.
- Q. True.
- A. It's not a carpark.
- Q. But for those vehicles travel time through the carpark is not such an issue as their ability to find somewhere to pull over and park to let their passengers off and perhaps to wait and to take on their passengers, and then to get back into the traffic flow and finish their manoeuvre.
- A. I think vehicles that use the keyhole have two important tasks to perform. One to park, pick up passengers or drop off passengers, and two to exit. And you're right Mr Casey, travel time is probably not the most important part of the equation as the ability to park, drop off passengers, pick up passengers and then pull out safely. Actually finding carpark is probably the most important thing for them because it is difficult sometimes.
- Q. But Mr Apeldoorn's paragraphs 11 to 13 that you've relied on don't refer to that second function, do they?
- A. Mr Apeldoorn's analysis in 11 to 13 of his rebuttal talks about the ability or the probability of marina vehicles affecting the ability of public tra – all vehicles in the keyhole to park or unpark. And that's basically the

conclusion that I have – well I'm adopting, or not adopting more like I'm agreeing with.

Q. Well he doesn't refer to that in the paragraphs of his evidence that you say you've relied upon. He refers to that particular issue from paragraph 14 of his rebuttal evidence.

A. More specifically paragraph 16.

Q. Yes.

A. Yes.

Q. But you don't rely on his paragraph 16 or his paragraph 14 to 19.

A. No, the mentioning paragraphs 11 to 13 was just to identify one location in the rebuttal that the information came or was valid. But I have reviewed the entire rebuttal in the conclusion of that, not necessarily one or two paragraphs.

Q. Can I ask you, Mr Shumane, to go back to your supplementary evidence, and can I put it or suggest to you that you are quite specific in your evidence as to which paragraphs of Mr Apeldoorn's evidence are the cause of your change or evolution and what now leads you to be satisfied about the restriction to be applied following reviews and monitoring.

A. Well that is true I refer to only few paragraphs.

Q. Now, you don't refer to his paragraphs 14 to 19 but you were asked questions about those by my learned friend Mr Brabant. Can we take it that you've also considered what he says in those paragraphs? That is the paragraphs of his rebuttal evidence.

A. Paragraphs 15 and 16, yes I have considered these.

Q. But have you done an independent analysis yourself, I think you told us that you haven't.

A. No I haven't. I don't have the raw data, I only have pdfs.

Q. Now, in those paragraphs he is referring, or appears to be referring, only to, oh no sorry not only to public transport because at the end he says, "Public transport and tourism traffic. Parking or unparking within the keyhole area." Do you know whether that includes taxis?

A. No sir but I take that to mean all vehicles in a keyhole.

- Q. So his evidence shows that there is the potential for interference with the parking and unparking of those vehicles in the keyhole?
- A. Yes. His analysis shows that, yes.
- Q. Now you'll be aware of evidence that as well as vehicles, that is vehicles permitted to be in the keyhole, parking and unparking, there's often a situation where there's double parking?
- A. I have actually witnessed it yes and the parking warden told me about it but I haven't, I've only seen it once. So I don't know how frequent that is.
- Q. And those would be at times of congestion that we've heard about, both from your evidence and other evidence?
- A. Yes, only during these periods.
- Q. Mr Apeldoorn has not in his evidence addressed the area before the keyhole, the turn around area has he?
- A. No. As far as all of the analysis provided by Mr Apeldoorn, he concentrated on the keyhole and the impact on the keyhole. But not the roundabout area. I did, on the other hand, look at this in my evidence-in-chief briefly.
- Q. You did?
- A. Briefly.
- Q. And in your evidence-in-chief at paragraph 56, you state that the condition of the roadway outside the terminal during busy periods can therefore be considered to emulate a bottleneck condition.
- A. Yes.
- Q. And you give us a nice diagram of what you call an approach crawl area.
- A. Yes. That is the roundabout area and at the keyhole.
- Q. This is in the roundabout area you're talking about?
- A. Yes.

COURT ADJOURNS: 11.34 AM

COURT RESUMES: 11.57 AM

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Mr Shumane, I'd ask you to bring back up the plan which is at the back of, I think it's Mr Karndacharuk's evidence, his evidence-in-chief.

WITNESS REFERRED TO EVIDENCE OF MR KARNDACHARUK

Q. Just to be clear about the date and purpose of that particular plan, that was to alter the parking restrictions that operated within the keyhole.

A. The date on the plan is October 2011 and that is a resolution plan which basically defines the parking restrictions.

Q. It doesn't tell us though, when the current layout of that section of road was put in place does it?

A. No just the parking restrictions.

Q. From the evidence of Mr Apeldoorn and from his analysis he tells us that in terms of travel time through the keyhole, the keyhole can accommodate a lot more traffic than just the buses and the taxis and can therefore easily accommodate the marina traffic.

THE COURT: JUDGE NEWHOOK

Sorry, is that his rebuttal?

MR CASEY:

I think that's his analysis Sir, I just want to check.

THE COURT: JUDGE NEWHOOK

His evidence-in-chief analysis?

MR CASEY:

Evidence-in-chief, yes.

WITNESS:

Mr Apeldoorn actually refers to that again in his rebuttal and that's probably the more relevant analysis to the keyhole. Yes, this is what he says, I don't

agree with him entirely, I think based on the information provided to us by surveys there is some capacity in the keyhole to accommodate some extra traffic and the marina traffic is estimated to be 55 or 56 vehicles an hour during the peak periods, a lot less than that in the not peak period and there is enough capacity to accommodate that but not a lot more capacity. I think Mr Apeldoorn implies in his, at least rebuttal statement, that there's plenty of spare capacity and this is the point where, the reason why I said in my rebuttal, sorry my supplementary statement, that I don't wish to enter into a debate with Mr Apeldoorn because I think there is capacity, it's just not a lot of spare capacity and I have good reasons to say that.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Well I'll ask you to perhaps give us those reasons.

A. Well it's actually a very simple analysis and I'm glad you've pointed out the part of my evidence-in-chief because I wasn't sure if I needed to refer to it. Just give me one second, I need to look up a statement here. I'm sorry sir I can't find it right at this minute but I know there is a statement in the rebuttal by Mr Apeldoorn using the value of 1500 vehicles per hour as a maximum capacity of a lane. If we look at my evidence-in-chief I am refuting the use of 1800 vehicles per hour however Mr Apeldoorn replied or responded to that in his rebuttal that he wasn't referring to the keyhole or the roundabout area, he was referring to the other part of Ocean View Road that is closer to the roundabout, about a kilometre away or 900 metres away. Having said that, if we look at the table I have in my evidence-in-chief for follow on paragraph 59. Sir, this table is taken from Austroad, which is a reference document we refer to and it kind of indicates the level of maximum capacities different lanes have. It's not all, there are other tables for main arterials, for motorways, but this is for just roads. If I were to pick a number from this table for either the keyhole or the roundabout area or Ocean View Road in general at this location, I would go for the 900 vehicles an hour. Now adjacent to parking lane this is the number, I'm sure, because that's exactly what we have, we have a

through lane in one direction next to a parking lane. Now based on, this is the maximum capacity. If you have absolutely no hindrance whatsoever. Vehicles are actually travelling through and there's a car parking or unparking every now and then. Now we have 900 vehicles per hour capacity in one direction, this is one lane. Well we look at the roundabout there, not the keyhole, just the roundabout area and we'll look at the analysis I provided in my evidence-in-chief about the bottleneck, that happens when we have a lot more side road frictions, a lot of cars actually parking or unparking because there are no side roads there, and the capacity starts to reduce to a point where you can't actually fit all the traffic and that's where bottlenecks occur. Now we'll look at the keyhole, the occurrence of parking and unparking is even greater because we have buses as well as cars. Buses require a lot more time to enter and exit a space as we know and the capacity reduces even further. Now, while the initial maximum capacity is 900 in my submission based on the Austroad information, the reduced capacity in the keyhole could be probably about three to 400 vehicles an hour. I haven't done real analysis but that's based on my experience. And that's why I say another 50 or 60 vehicles an hour would be just about enough to take the available spare capacity in that keyhole, so, and that's why I don't agree with Mr Apeldoorn when he says there's ample spare capacity. There is capacity but it's ample.

1205

- Q. You say there is capacity but it's not ample?
- A. No sorry, not ample, sorry yes, thank you.
- Q. And Mr Shumane, I take it you weren't involved in any of the planning or decision-making that resulted in the separation of the keyhole from the turnaround area?
- A. No.
- Q. Did you investigate through Council records when that was done?
- A. I actually Sir checked with the parking warden and he couldn't give me a straight answer when it was done and why. But I can speculate?

- Q. Well I don't want you to speculate if it's outside your area of expertise, but if it is within your area of expertise then it's appropriate that you do so.
- A. It is within my expertise. When I look at the design overall what I see is a cul-de-sac, a standard cul-de-sac at the end of the keyhole. This is also where the old wharf is. Potentially that was the end of the road many years ago and this is where the ferries used to park initially before the new wharf was built, I don't know when it was built. And at some stage somebody decided that we needed to isolate the public from the private – not the public, sorry, permitted vehicles, the 77 vehicles that have permission to enter the keyhole from the rest of the vehicles, and the only way to do it is to creating a turnaround area for them, and that's where the roundabout might have been created for. If you look at the actual (inaudible 12:06:38) you will find I actually have investigated that, Mr Casey, since the question was put to Mr Apeldoorn two weeks ago, I did that last week. I went to, as you know I went to Waiheke last week and I actually looked at the pavement. And I did notice something, that there is a difference a slight difference. It's not a very big difference but a slight difference, I'm just going to point to display it, to the northern bit in the kerb line along the northern end of the roundabout. It's slightly different than the other roundabout which would indicate to me that it was built later, not at the same time as the rest of the road or the keyhole. And it's possible that this was actually the road at that time and then a roundabout was installed at one stage and the road was widened a little bit. Not a lot because you couldn't, there's a very nasty bank there so you couldn't really widen the road too much, just enough for a bus or two bus I guess to turn around with a couple of manoeuvres.
- Q. And the purpose, Mr Shumane, I put to you is so that private vehicles, largely private vehicles, that is vehicles that were not permitted, would (a) be prevented or could be prevented from entering the keyhole and (b) would have somewhere else to turn ahead of the keyhole.

- A. The roundabout to me looks like a terminal point for other vehicles, all vehicles except the 77 permitted vehicles.
- Q. And would it be also safe to assume that it was done so because the other vehicles, that is the non-permitted vehicles entering the keyhole caused congestion within the keyhole and therefore obstructed the permitted type vehicle?
- A. I can't really answer that, I don't know.
- Q. So if we come back then to the question of the turnaround area, do you call that a roundabout or a turnaround?
- A. Roundabout.
- Q. Roundabout, I'll call it roundabout. And the bottlenecks that occur there, there's no analysis that I've seen of the effect of the marina traffic on that area, that is the turnaround around and the area leading to it.
- A. No.
- Q. That is correct?
- A. That is correct, there is no analysis. At least not by Mr Apeldoorn or Mitchell.
- Q. But we're told that the access to the marina carpark will be controlled such that only vehicles that have a marina-related purpose will be able to enter the carpark.
- A. That's my understanding, yes.
- Q. And in turn they need to have a permit?
- A. To enter the keyhole, yes.
- Q. And also a card of some description to activate the barrier control in the carpark?
- A. I'm not really sure how they will manage the carpark, but my understanding is that there will be a barrier arm and there will be a security arm, so yes they will need some kind of a card or a swipe card to enter.
- Q. Now, we're told that only one such permit and card will be issued to each berth holder?
- A. That's my understanding.

- Q. And we're also told that in some of the other marinas where the parking demand and traffic generation analysis has been derived there are more than one permit per berth holder and the issuing of guest permits, for example Westhaven.
- A. I'm not really aware of how they manage Westhaven, but at Matiatia my understanding is that every berth holder will have one card, one access card or one – I don't know how the card will be, whether they'll put –
- Q. But one card only?
- A. That's my understanding, yes.
- Q. And no guest cards we're told?
- A. That's correct.
- Q. And some of the marinas in fact I understand the Whitianga Marina, part of the carparking that's available there is uncontrolled, there's no –
- A. That is correct, yes.
- Q. We're also told that at this marina, that is the Matiatia Marina, the maximum parking time permitted in the marina carpark is 48 hours, two days.
- A. I'll have to refer to the schedule but yes, that's probably correct. I'll take your word for it.
- Q. So that if somebody wants to go take their boat out for a longer period, they can't park there?
- A. Well they're allowed 48 hours, if they want to stay any longer, this is not an unusual case in a carpark, if some – in town you have a lot of commuter parking where you have the whole day or reserved space for yourself, but you can only use it during the day, say from six to six and after that it becomes a public short-term parking. And the arrangement parking spaces holders have with the management is if they want to keep it overnight for some reason, then they tell the management beforehand. So it is possible that the berth holders might want to stay a little longer than two days and they will have to probably arrange some kind of an agreement with the marina management. It is a possibility. Or if I can say, Sir, if someone wants to go away for more than two

days, they probably wouldn't want to bring their car anyway to the marina.

Q. You need to be careful about that Mr Shumane, are you familiar with the way marina users –

A. No, that was just a comment, you can disregard it.

Q. Thank you. And we also have the prospect here according to you that controls may be required, which would restrict marina vehicles accessing the carpark and therefore accessing the keyhole at busy periods.

A. If found to be the case by monitoring.

Q. Now, I suggest to you that those three events, and maybe not all three but at least some of them, will result in marina vehicles coming down Ocean View Road to the roundabout area and either then dropping off passengers or gear, because they can't access the marina carpark themselves or because they can't stay longer than 48 hours in the marina carpark, or because they eventually, if these conditions kick in, can't access the marina carpark because it's the wrong time. And so they will take up space that currently is used by people dropping off or picking up passengers from the ferry.

A. Yes in two cases, not in a third. If access controls don't apply, they can enter the marina or the carpark and drop off and pick up gear or passengers and then exit, so they don't necessarily have to do it at the roundabout. But in the other two cases I agree with you, the – well, the other one case I guess. If the access controls are in place and they can't access the marina, that's exactly what they'll do. They'll pull up at the roundabout and drop off their gear and passengers, and then turn around and go somewhere else.

Q. But if they're a guest without a permit?

A. Yes.

Q. Then they'll have to do the same, won't they?

A. Absolutely.

- Q. And also if they are a permitted marina berth parker if I can call it that but there are access controls in place, they might just wait until 10 minutes, 20 minutes, 30 minutes is up?
- A. I can't really tell what they will do.
- Q. You mentioned just before that Mr Apeldoorn's view was that marina traffic, when I say marina traffic we're now meaning traffic that would access carpark, would not be affected in terms of travel time through the keyhole by the buses and other transport vehicles that are in the keyhole in the busy periods?
- A. Generally speaking, yes.
- Q. So when you spoke to my learned friend about what you called I think peak spreading, was the word you can –
- A. Yes.
- Q. Peak spreading that, if I leave home and my journey time is slow because of congestion and then I'll adjust my time I leave home.
- A. Yes.
- Q. But from Mr Apeldoorn's evidence which I think you said you agree with, the marina users themselves won't be impeded in their access to the marina so they won't have to resort to what you'd call peak spreading for their own reasons?
- A. No, no I agree.
- Q. Now if I can take you back to your supplementary evidence at paragraph 9, you say there that you maintain the view that access restrictions during the busy periods are appropriate but you say that this restriction can be applied following reviews and monitoring of the effects?
- A. Yes.
- Q. Now you refer there to the period late December through to mid February, evidence has been given that Waiheke is becoming increasingly popular for longer periods than just that December to February periods. So would you contemplate that those access restrictions might actually have to go for more of the year than just December through to mid February?

A. Yes I would but with monitoring.

Q. You mean follow monitoring?

A. Following monitoring.

Q. Now we've only just see the latest iteration of the proposed conditions and I'm not sure that you've had much chance to look at them yet but it seems from what I can understand that this cannot happen until six years after the marina gets up and running.

THE COURT: JUDGE NEWHOOK

Which condition number in the –

MR CASEY:

Condition 44.

THE COURT: JUDGE NEWHOOK

In the land use consent.

MR CASEY:

In the land use consent, oh sorry 42, I beg your pardon and then you go back to condition 4(d) –

MR ALLAN ADDRESSES THE COURT – IF WITNESS HAS COPY

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. 4(d) you see that? 4(d) says that, "On receipt of the report under condition under 42 and 42 says that after six years, Council can require presumably report.

MR R BRABANT:

Sorry Sir, I'm sorry that had a highlighter on it and I think it's something that my co-counsel hadn't got around to correcting before he got sick and it's meant to reference to 45. I'm sorry Mr Casey, it's obviously meant to reference to 45.

THE COURT: JUDGE NEWHOOK

So the reference to 45 is in which clause?

MR R BRABANT:

Well that's the vehicle access review Sir.

THE COURT: JUDGE NEWHOOK

In 4(d)?

MR R BRABANT:

Yes 4(d) is mean to reference to 45. I'm sorry Sir.

THE COURT: JUDGE NEWHOOK

Okay.

MR R BRABANT:

The others are, they're sort of standard monitoring that is to be done anyway and that 45 is the trigger mechanism.

THE COURT: JUDGE NEWHOOK

Well thank you for that, that might short circuit matters a bit.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Now Mr Shumane, as I understand your evidence, you contemplate although you can't be certain that the restrictions that may need to be imposed to address adverse affects will be that vehicles accessing the marina will have to be prevented for periods either side of the ferry arrival and departure.

A. That is correct.

Q. Because that's what you originally recommended and as I understand it you still hold that view, it's just that you think it's a bit of a, I might use the term suck and see situation?

A. It's a little bit too early. Yes that is still my view and the inspection if found necessary should apply to the time when the ferry arrive. I hate to

be cautious about this because all of the work we've done so far is about one ferry arrival and hour. Now we have the prospect of one ferry arriving every half hour. It might be a bit difficult to implement any condition that suggests 10 minutes before, 20 minutes after because that practically means all the time so –

Q. But if that –

A. That was the intent of my original recommendation, yes no access during the busy period of arrival and departure and access only should be allowed during the quiet period. That was my original recommendation.

Q. Yes but I think in answering that question you've just confirmed that if there are more ferry sailings, then that 30 minute period could become the whole hour?

A. I said that earlier yes –

Q. At busy periods.

A. Yes I said that earlier.

Q. Yes that's right. And if that was so for a substantial part of the holiday, or the busy period that we're talking about which is December to February and possibly longer where for much of the day there could not be any vehicular access to the marina, do you think that's an important consideration?

A. It is an important consideration but at this stage in my supplementary assessment Sir I looked at two possible scenarios and in two scenarios I'm suggesting that the evidence or the analysis provided by Mr Apeldoorn's will still hold and marina traffic can actually go through. However, monitoring or future monitoring may prove that analysis wrong and then restrictions may need to apply during certain hours. If the congested period is practically all day, than this is where Council should have the authority to say, "Stop access at certain hours, certain days, maybe even certain months," and that's precisely why I said earlier that while I only have a brief chance to review the conditions so I'm not, I said the conditions are still a little bit vague in that regard.

Q. Well if that were to happen and you've indicated that in your view it could, then there would not be the ability for the marina traffic to go through the keyhole to access the carpark?

A. That's a possibility, yes.

Q. Yes, and that would mean that they would have to park elsewhere, correct?

A. Or pull up at the roundabout and drop off their gear and go and park somewhere else.

1225

Q. Yes, park somewhere else. And the only other parking that we have is the commuter parking?

A. Correct.

Q. And do you agree that that would then impact on everyone's assessment of the effects of the marina on the parking availability within that system?

A. Not substantially, no, because our analysis if you look at the caucusing statement, I have to look it up just give me a second, at paragraph 10, of the caucusing statement, 10(a), "We identified the maximum demand by the marina during three specific periods," and these are all holiday periods I must add, 66, this is the 2nd January type of period, and then the 55 and 48. Now if there is no parking available by access restriction, then all these vehicles will go and park somewhere else. Parking surveys undertaken by Mr Mitchell during the holiday period show that apart from the commuter period there is a little bit of parking capacity still around, in fact 100 parking spaces if I'm not mistaken. But during commuter period there isn't any parking. There's none. Practically it's full. All spaces are full. And yes, if there are any marina vehicles that aren't able to access the marina at that time, well they'll be taken – I don't know if they'll be able to take up anybody else's parking because if you're not there by 7.30 you don't find parking on Waiheke near the marina – near the terminal sorry. If they come during the day they won't be able to park anyway.

Q. But Mr Shumane, do you agree that they will be in competition with the commuter carparks?

A. They will be, yes.

Q. Now do you have your –

THE COURT: JUDGE NEWHOOK

Sorry Mr Casey, do you mind if I just ask the witness to refer to another aspect of the joint statement?

MR CASEY:

Yes Sir.

THE COURT: JUDGE NEWHOOK

Q. In paragraph 10 again, 10(c), I just want him to consider 10(c) in relation to (inaudible 12:27:55). Do you see that Mr Shumane?

A. Yes.

Q. “Experts agreed the internal carpark design is appropriate and that at peak times when demand exceeds onsite parking there is adequate spare capacity within the public parking area to accommodate the overspill when it is expected to occur.” Now that’s what you all agreed.

A. Yes.

Q. How does that sit with your last answer about peak times?

A. In the statement Sir we’re referring to the peak holiday period when the peak demand by the marina will occur, weekend, holidays. And there is ample parking outside or on approach to the terminal where marina traffic or marina vehicles can park.

Q. So is that what you mean by “peak times”, peak holiday parking, not peak commuter parking?

A. This statement was written on the understanding that there was always 55 or 53 spaces available, and the overspill would be accommodated. So I would –

Q. You see in 10(a) you’ve talked about both, you’ve talked about peak holiday time or peak marina demand and then you’ve talked about

weekday peak demand in two places. So I had interpreted that phrase "peak times" at the end of the first line in (c) as relating back to what you had just been discussing and I'd assumed that it covered off peak commuter times, weekday peak demand.

- A. I would say Sir that this was probably not written exactly the way it should have been written and that was our fault as experts. Because when we talk about "peak times" in this statement and then the other experts might disagree with me. So when we talk about peak times we are referring to the holiday period when the marina is generating the most parking demand but as written it basically refers to peak times, commuter peak times as well as any other peak times.

1230

- Q. Are you now saying that you had intended that C referred to peak recreational times or holiday times not peak commuter times?
- A. That is correct.
- Q. Well we're going to have to explore this with the other witnesses.

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. Mr Shumane, I'm not sure if you were here but there was discussion about the fact that you were talking here about the ability or the times at which the carpark would be available to accommodate most of the marina traffic and there would be overspill at peak times.
- A. Yes.
- Q. The questions I put to you before were premised on a situation arising where the marina carpark was not able to be used at peak times and therefore there would be more than that traffic having to park elsewhere.
- A. That is so. On the understanding that it's 53 spaces available at the marina site, the overspill would be accommodated. If we didn't have the carpark and for the 53 spaces at the marina then I would say there might be some competition. The truth is I haven't actually don't that analysis in full because we were always under the understanding that there would be 53 parking spaces but during the week yes there might be some competition with other users of the parking areas.

Q. I hope that assists Your Honour's understanding and there are other witnesses, and I can put it to Mr Shumane as well that the 53 car parks would not be enough to meet the 55 car parks that are identified as the peak week day demand.

A. Correct.

Q. So there'd need to be two spaces found elsewhere in that scenario.

A. In my very first report, November 11.

THE COURT: JUDGE NEWHOOK

Q. Is that evidence-in-chief or something earlier?

A. That's the previous report Sir, which was before the evidence-in-chief.

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. That's your report that was part of the s 87(f) Council report?

A. Yes

Q. I've got it as November 2013.

A. Sorry, November '13. My fault. Conclusion 111(f) I have to go back to that statement because now we're looking at the actual demand and I say in that statement, or recommend or conclusion, "On a typical summer week the big parking demand at the marina will be 56 spaces and 66 spaces during the holidays. And this is what we've written in our caucusing statement. However on average the weekly parking and demand. And this is the weekly, this is all year round.

THE COURT: JUDGE NEWHOOK

Q. Week days?

A. Week days, yes, weekly parking demand is estimate to be 41 spaces and this is throughout the year, not necessarily during the busy marina period I guess. And based on that Sir I say during the week up to 40 vehicles will need parking if the carpark is not available and they will need to find parking elsewhere. And if they arrive at a time when there is some parking available, they will compete with someone else.

THE COURT:

- Q. You've told us what you said in your report for the section 87F Council report.
- A. Yes.
- Q. Have subsequent statements by you altered that expression of view?
- A. No Sir, with regard to parking my conclusion's been the same.

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. If we stay with your November 2013 report for a minute, at your paragraph 108 of that report you say that no analysis or discussion with regard to future-proofing of the ferry terminal have been included and any document submitted in support of the application. You strongly advise that this issue be considered as the placement of the proposed marina immediately next to the ferry terminal may compromise Auckland Transport's ability to provide any necessary upgrades in the future and Auckland Transport does not discuss this matter in its submission. Do you still see that – and sorry if I can take you to your last comment on the next page which is your paragraph 111(j), "The applicant has not demonstrated that the placement of the proposed marina next to the ferry terminal is unlikely to compromise Auckland Transport's ability to upgrade the terminal to increase passenger carrying capacities if necessary in the future." Is that still your position?
- A. That is still the position except since then I have had few discussions with Auckland Transport about this possibility and Auckland Transport has assured me that at least a wharf or the platforms are capable of taking more ferries. But there hasn't been any discussion about the keyhole or the roundabout area itself. So if we separate the statement into two, one with regard to the waterways, the ability to accommodate more ferries which I'm not really qualified to discuss, AT assured me there is enough room to accommodate more ferries. But we never discussed the keyhole area, the upgrading of the keyhole – well we have discussed it but I don't think the applicant has actually

demonstrated that they can accommodate any upgrade because we don't know what the upgrades are.

Q. But do you agree that just because we don't know what the upgrades are, it shouldn't be ignored should it?

A. Absolutely. There's always going to be growth. We all agreed in the caucusing statement that there is growth and we all agreed that the existing configuration is not ideal and upgrade are highly likely or very likely. Unfortunately we don't really know what the upgrade will look like. We don't know the marina traffic or access will impact on the upgrade, and that's why I continue to say that we should monitor the access and handwriting the vehicles will enter and exit. Not necessarily because they will cause a problem, because there could be other problems there that may be resolved without marina traffic.

Q. But without that analysis of what the future might require in terms of the public transport requirements of that section of road, it's very hard isn't it to say what effect the marina carpark and traffic will have on the options that may be available in the future.

A. Correct.

Q. And in your evidence-in-chief at paragraph 22, if I can ask you to go there, you refer to the uncertainties with regard to the future planning. And you give that as a reason for counsel retaining an ongoing power or review to manage the risks.

A. Yes.

Q. But you don't there address the question as to whether that future planning will involve options that would be significantly – or be impacted I guess I should say by the marina and the marina traffic?

A. I'm not in a position to decide what the upgrade will be and it's not included in my brief anyway. But I consider that Auckland Council should have the authority to watch – not to only, to control the access as it sees fit to manage the keyhole. Now if the upgrade require changes to the access, then this is probably what Auckland Council and its subsidiary Auckland Transport will have to do to manage the keyhole or to provide more public transport. I don't know what the upgrades are, I

don't know when they will be needed and I don't know the extent of the upgrades.

- Q. Do you accept that if the marina is allowed to take place, is allowed to be developed, then in that future planning provision will have to be made for the marina traffic?
- A. Yes. once a vehicle cross is created, and that is a vehicle crossing on any road, then the authorities must reinstate it no matter what they do unless they provide an alternative access to the property.
- Q. And do you accept that that requirement, to take into account, to provide for the marina traffic, could impact on the options that would be available in the future planning for the ferry terminal?
- A. I honestly don't know the answer because I don't know what the options are.
- Q. What if, and this is hypothetical because we don't know, what if the future planning options when they are developed demonstrate that the best option is for a solution that does not allow private vehicles accessing the marina to go through it?
- A. Then Auckland Transport or Auckland Council would be required to provide an alternative access.
- Q. They would be required to provide the alternative access?
- A. Yes because the access by then will be part of the existing environment.
- Q. And that could mean and in fact would be likely to mean on the hypothesis that I've advanced to you that a less than optimum option would be chosen.
- A. If the optimum option requires no non-permitted traffic, marina traffic, to go through the keyhole then yes.
- Q. In paragraph 66 of your evidence-in-chief, or paragraph 64 you say that access restrictions should be considered as part of a review condition and not dismissed.
- A. Paragraph 64?
- Q. That's of your evidence-in-chief, yes.
- A. Yes.

Q. And then at 66 you say that while restricting access movements is feasible as berth holders can wait in the parking area, restricting entry movements will be more difficult to control. Is that still the view you hold?

A. Yes.

Q. And then there's reference in the following paragraph to what you call a "changeable message sign" which I think has been described in other terms.

A. VMS.

Q. A variable message sign.

A. Yes.

1245

Q. And you say the only drawback which is in paragraph 68 is that, "Someone needs to constantly change the message to suit the condition." Can I suggest that's perhaps not the only drawback but that certainly is a significant one?

A. That's an important one, I mean to manage the sign, you can't manage the sign by actually flicking the buttons all the time, you might as well not have a sign but that's the only drawback. The other drawback would be if the sign says, "Traffic congestion don't go through to the marina," and then they can't really park anywhere else so that would be another drawback.

Q. Now in your rebuttal evidence at paragraph 13, you refer to the evidence of some of the lay witnesses?

A. Give me one second please. I can't find it right at this very moment.

Q. I'm sorry –

A. I'll try to assist.

Q. Your rebuttal evidence at paragraph 13 referred to photo discussions and video clips included in statements of Greve and Lewis and Gisby?

A. Yes.

Q. And then at the end you say while you have no issue with the surveys undertaken by Mr Apeldoorn, you consider that the snapshots included

in the evidence of those witnesses provide a very good representation of the existing situation at the keyhole at busy times?

A. Yes, that's still my view.

Q. And then you refer at paragraph 15 to the evidence of Pemberton and Davies who are bus drivers.

A. Yes.

Q. And that's consistent with your observation as well?

A. Yes.

Q. Now following that evidence you come to a conclusion at 19 where you say that after reviewing the traffic related discussions of those parties, the section 274 parties' evidence, you maintain the view that access restrictions to the keyhole are essential to accommodate marina traffic? Correct?

A. Yes.

Q. And then at 20 you repeat the view expressed in your evidence-in-chief that the accommodation of future growth and there's a risk in installing a vehicular access in this very sensitive location. I take it you mean by risk, you mean a risk to the efficient and safe operation of the public transport that is a ferry passenger?

A. No, not necessarily. A risk to future upgrade of the terminal area.

Q. A risk of a future upgrade to provide the –

A. Public transport and taxis.

Q. Now when you say that your view has evolved from that expressed in paragraph 19 about the essentiality of access restrictions, you don't appear to have gone back to the evidence of the lay witnesses, am I right?

A. No.

Q. Now have you given thought as to how the proposed review conditions would operate?

A. I have and I've written some comments about how the review will happen. The way this condition should be written is, it will monitor the situation then, at least the busiest period December to February and perhaps extend it to cover other period. On a daily basis to see what

the situation is, now the evidence suggests that vehicles or marina vehicles can actually enter and exit the marina creating very little impact on public transport and this is based only on one or two days surveys but we have no choice but to look at that because it is comprehensive surveys. Now the monitoring using video surveillance or even counting, you know people sitting there counting and looking to see what traffic is doing. If the monitoring finds or their team leader compliance find that there is a serious congestion of problems at certain times, maybe not every single day but at certain times, then Council should be given the authority to stop access to the marina during these times and that can only be done by full practically monitoring all the time, a camera monitoring, CCTV monitoring and that should be in the hand of Council and its subsidiary Auckland Transport the Council has provided.

- Q. You see if I look at the proposed condition 45, the review is only triggered if we have more than 30 movements to or from the marina carpark in a 30 minute period over three consecutive such periods. Do you regard that as a satisfactory trigger?
- A. No not necessarily. At one point in time I thought that was but now having thought about it carefully I don't think it's really enough because we – Mr Mitchell demonstrated to us by surveying Whitianga that the traffic volume will be about 56 vehicles an hour so there's 30, I say 60 vehicles an hour, close to that, round number. We will never exceed that because this is what the actual generations going to be like, so this would actually mean that at any given time, the marina traffic will never trigger the need to monitor or to do something about the access point and that's why in my submissions Sir the conditions should read, should there be a problem that access controls need to be implemented? Not necessarily 30 vehicles, 40 vehicles an hour.
- Q. Mr Shumane there's nothing in here that tells us how to measure the problem is there?
- A. No.
- Q. And what triggers the problems – what problem might trigger an imposition of conditions.

- A. No, and that's really subjective of that.
- Q. I put it to you that any condition you tried to frame would be simply unworkable.
- A. I wouldn't say that but I haven't seen any other conditions other than the one before me.
- Q. And would you agree that these conditions are unworkable?
- A. I would say that these conditions still need to be worked through.
- Q. Thank you Mr Shumane, thank you Your Honour.

THE COURT: JUDGE NEWHOOK

Just pause for a moment everybody. Mr King-Turner, you indicated a wish to question this witness. We're needing it at lunch time so we'll probably take a break before you undertake your questioning.

MR KING-TURNER:

Mr Casey's covered everything that I was going to question.

THE COURT: JUDGE NEWHOOK

That was going to be my next question, I was going to invite you to reflect on that over lunch time but, that's often the case when you get experienced counsel cross-examining. So, I'll take that indication that you're going to rely on what Mr Casey has achieved.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. There is a plan in the set and I just can't find it at the moment that shows the land ownership down in this area of Matiatia. I found the structure plan which might be helpful. But I think there was one that showed the ownership. Figure 24 on the 2013 set. I just wanted to really explore with you the sorts of constraints in this area in terms of this future proofing or future planning concept that you were being asked about and my first question is that, is the land that's under the control of the Council, which I would take to be the road, the public

carpark C and D and area A, as I understood it, was Water Care. And I don't know if that's under the water or the Council or not, I don't know how that works but I suspect there's a different objective with that land holding. Is that a fair –

A. Oh yeah. Your Honour I don't really know who owns which part or which land. I know the road reserve is owned by Council and is managed by Auckland Transport and Auckland Transport currently also monitors or manages the parking areas as well.

Q. And you're not sure if that's owned by the Council?

A. No I'm not.

Q. We heard in cross-examination for the applicant that there was really no additional land in this area available due to the topographical constraints in terms of provision of additional parking.

A. To the north of the road or to the north-east we have steep banks and it's almost impossible to widen the road or put in any new parking areas without great expense but to the south or the south-west there's some potential.

Q. Depending on the ownership and agreement.

A. Depending on ownership, yeah.

Q. If you were designing a solution it seems to me that you're constrained by that cul-de-sac that's located at the wharf. You can't make that any bigger.

A. Well that is a constraint but it doesn't have to be a constraint. I mean I have looked at different options. It's not really my job to look at options, upgrade options, that's for Auckland Transport to deal with but if we were to say provide for buses, more buses, and more tour buses and taxis and all that, I could very easily move this ramp out from its current location to the old ramp area or not – if you look at this map that would be the western edge of area C. Of course that would also mean losing some of that parking and then turned the roundabout, that they just move the roundabout there and turn the entire area into just public transport, a restricted area and then by doing that you provide more than enough pavement to provide for more buses without having to cut

into the steep banks. Of course there's a lot of effects, or a lot of things one will have to consider. One of them is losing some of the P30 parking spaces so they'd have to go somewhere else. Access to the ramp, to the boat ramp, the public boat ramp. That would have to be replaced or relocated. These would be the two biggest impacts, I guess, from such a solution.

Q. So it's really a fixed area, you'd just be pushing and pulling around inside that –

A. Not much room to do a lot, not.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR ALLAN

Q. Towards the end of his cross-examination, my learned friend Mr Casey asked you questions about condition 45. And I think you said that that would still need to be worked through, it wasn't quite there in your view. And that's obviously based on three consecutive ferries at the moment with involving 30 movements and that that's the trigger point. You may not be able to offer the Court any assistance right now with this but can you think of another way that could be cracked. Is there some suggestion you could offer to the Court in terms of an alternative or a way of tweaking or modifying what's in condition 45 at the moment that would satisfy you?

A. Your Honour I would say a mention there of the problems at the terminal area or the keyhole should be the trigger. There is a problem, let's do something about it instead of counting cars, 30 cars in half an hour as the trigger. So no I don't really have an answer right now to you, no. I only reviewed that this morning.

Q. So it's something you'd like to reflect upon, okay.

WITNESS EXCUSED

COURT ADJOURNS: 1.04 PM

COURT RESUMES: 2.22 PM

MR ALLAN CALLS

NICOLE MEGAN BREMNER (SWORN)

Q. Your full name is Nicole Megan Bremner?

A. Yes.

Q. And you're a planning consultant and sole practitioner and director of Planorama Consulting Limited?

A. Yes.

Q. And for these proceedings you have prepared a statement of evidence-in-chief dated 11 July 2014?

A. Yes.

Q. And a rebuttal statement dated 24 September 2014?

A. Yes.

Q. And you've also participated in caucusing with the other planning witnesses which resulted in a joint expert witness statement dated 3 September 2014?

A. Yes.

Q. Now I understand you have a correction you wish to make to one of your statements?

A. Yes, in my rebuttal evidence, paragraph 91 I've stated that, "If consent were to be granted the reclaimed land will vest in Council." I'd like to correct that to read, "the reclaimed land will vest in the Crown."

Q. Thank you and subject to that amendment can you please confirm to the Court that the contents of your three statements are true and correct to the best of your knowledge?

A. Yes.

CROSS-EXAMINATION: MR R BRABANT

Q. Good afternoon. Can we start please, and this is in your primary evidence, by going to paragraph 17 dealing with landscape, natural character, visual and amenity effects. Now, you refer to the construction phase as well as after the marina is completed. So are you saying that

the Court should regard the construction effects as more than minor. Looking at the sequence of constructing, building and the marina then being in operation, what elements of the construction are you identifying as more than minor?

1425

A. That comment reflects the opinion of Mr Brown who he had come to the view that the construction effects would be, he didn't give an opinion as to the scale of the effect but he felt that in the context of the completed marina they would be less but over the course of a 22 month construction period, noting a break in the middle, I would regard the effects as being of some consequence. There I have come to the conclusion that the effects of the construction will also be more than minor but I do note that that will be a confined period of time.

Q. So are you relying on his evidence or do you have something else in addition to the matters that a landscape architect would cover in mind.

A. No I have simply interpreted his opinion.

Q. You talk about the dominance and imposition of the marina on reserve land. Is that a reference to the historic reserve we've heard about, that sort of wraps around that northern area.

A. Yes.

Q. Is there any evidence that you're aware of as to how much use that area gets, in other words how many people go there?

A. I'm not aware of any information other than what is available in pamphlets and the like.

Q. Even where pamphlets are being produced about walkways is, have you read any information to say how many people would walk through that area?

A. No.

Q. If the reserve is regarded by you, and if I'm wrong about that you can say so, as a way of reaching the walkways that we know are available. There's two, I think, walkways that you can reach from that reserve. Is it correct that the effect of the marina, if there is one, on people going to

those walkways is transitory. In other words it's for a short period until they reach the walkways and disappear up the hill.

A. Part of the reserve is not, I wouldn't regard all of the reserve as being a transitory use.

Q. Have you observed people yourself, apart from at the tidal grid, using it?

A. Infrequently, but yes.

Q. Now the other thing you refer to is immediate residential locations. Could we just have a look at the plans please and I think figure 1 will do fine. That's the 2013.

WITNESS REFERRED TO DOCUMENT

Q. Could you please identify for the Court which residential locations fall within your phrase "immediate residential locations"? In relation to what part of the bay perhaps or what road their driveways come off or some other way.

A. The sites that I've identified in that paragraph relate to the sites identified by Stephen Brown and they are 120, 122 and 124 Delamore Drive and 7 Ocean View Road.

Q. 120, 122, 124, is that right?

A. Yes

Q. Delamore. And what was the other one please?

A. 7 Ocean View Road.

Q. And which ones are those that you can then see on – can you see all of those on this aerial?

A. So that's the – are we looking at figure 1 did you say?

Q. So we'll start with Ocean View Road, would that be the building right above the ferry terminal?

A. Yes, are you referring to figure 1?

Q. Yes.

A. So the houses would be the one immediately above the wharf.

Q. Yes.

A. The one where there's no, I don't believe it's shown on this aerial photo...

- Q. But we can see two that have an access off Delamore Drive that share an access. There's two there, sitting above the northern bay.
- A. Yes.
- Q. So that's maybe 120 and 122 is it? And the next one is the building with the white roof, or are you not sure?
- A. That would be 120, I can't tell because of the lack of cadastral boundaries on this plan.
- Q. It wouldn't include Mr Alexander's house would it, because that's on the other side.
- A. No it does not.
- Q. Have you given consideration to the question of what the people who own these houses, what their view themselves might be rather than what the landscape architects have said?
- A. Sorry, can you repeat the question?
- Q. Well the landscape architects have, or Mr Brown if you like or Ms Gilbert, have formed a view as to how people might be affected. But it's right isn't it, that only Mr Alexander came to the Court and gave evidence expressing a concern about a view effect on his property. Do you remember his evidence?
- A. Yes I do, I recall that the owners of all of those four properties that Mr Brown identified were submitters in opposition.
- Q. Yes, but they haven't followed that up and come along to the Court to express a concern have they?
- A. No.
- Q. Paragraph 20 you raise the question of cultural and spiritual effects. Would it be fair to suggest to you that in the end whether this is an effect that you would take into account is really going to depend on the Court's findings?
- A. Correct.
- Q. Can I take you to paragraph 45. And can I ask first, have you had an opportunity to look at the revised conditions of consent the applicant's produced?
- A. Yes although not in great detail.

Q. Have you been able to discuss them with Mr Allan and the changes that were made following the meeting last Tuesday?

A. Yes.

Q. Do you accept that subparagraph (c) has now been dealt with satisfactorily? Following that meeting and the change of conditions.

A. It's not clear to me whether the conditions are structured in a way that we would perceive a measureable effect in ecological terms and that effect would be more than minor and then the action would be taken that the conditions describes. So in my mind it suggests that there would be an effect resulting in exceedance of the thresholds and then action taken so if that's the correct understanding then I would regard that as being a more than minor effect but one that would be addressed through conditions.

Q. Have you relied on advice from Marcus Cameron about this matter?

A. I'm aware that Marcus has been involved in the drafting of conditions.

Q. In relation to this potential effect, does your view of the matter rely on his expert advice?

A. Yes, definitely.

Q. So the Council had a set of draft conditions proposed previously to deal with this matter of copper accumulation and heavy metals didn't it?

A. Yes.

Q. And is it not correct if you've read them that those conditions are now to be found in the applicant's proposed conditions?

A. I believe so.

Q. Do you have a copy of these with you?

WITNESS REFERRED TO DOCUMENT

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MR R BRABANT ADDRESSES THE COURT – HOUSEKEEPING

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. When the experts previously met there was a set of monitoring conditions which I think you would agree are now in there and just for

reference Sir their condition 14 or the detail of the monitoring and there and do you recall Mr Cameron and the other ecologist had a differing of options or alternatives as to what they considered would be appropriate and that Mr Cameron's view was that if the TEL, that trigger level was reached the right alternative was to look to different types of anti-fouling paint that would remove contaminants?

A. Yes.

Q. Now if you go to condition 41 on page 16 and you look at item (c), have you had a chance to read that before giving evidence today?

A. Yes briefly.

Q. So what's actually happened here isn't it is that instead of waiting until that trigger level might be reached the marina is going to require berth holders not to use anti-fouling with diuron in it, that's right isn't it?

A. Yes.

Q. And secondly, it's going to require from day 1 that the recommended paint that Mr Cameron referred to in his evidence be applied before any boat goes in the marina from day 1, that's what that reads isn't it?

A. Yes.

Q. So would that satisfy your concerns now?

A. Again I would be reliant on the expert advice on that.

Q. Okay. Now just by way of clarification, in paragraph 84 still in your main evidence, you refer to the proposal being contrary to the last part of part 13, Transport Policy. Is that last part you referred to to be found set out in your evidence under 89 or is it not?

A. Can you repeat the question?

Q. Well the last sentence says, "Flowing on from the conclusions reached in respect of Part 13 – Transport (below), I found the Proposal is similarly contrary to the last part of this policy." So I just wanted to check what was the last part of the policy you were referring to?

A. It's the italicised font and transport linkages on the island in that same paragraph.

- Q. And is that found in the – well you're referring there to policy 7 aren't you?
- A. I'm referring to policy 7 within part 3, Strategic Management Areas. And that's under objective 3.3.4.
- Q. So would we find it set out in paragraph 89?
- A. No, it's actually a part three of the plan policy that sits under objective 3.3.4 in that part.
- Q. In relation to –

THE COURT: JUDGE NEWHOOK

- Q. Mr Brabant, I could probably just get some clarification from Ms Bremner on this, Ms Bremner your paragraph 84 mightn't be all that elegantly worded but am I understanding it that policy 7 in part 3 is transgressed as is for the same reasons as you say that part 13 transport is transgressed?
- A. Yes. May I just add another comment, Sir?
- Q. Yes.
- A. That this was my previous assessment undertaken, basically a record of the section 87F recommendation.
- Q. Yes.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. So you've gone on after setting out the part 13 ones to raise a concern about the use of the existing road to create an access through to the marina carpark would constrain future options, haven't you? For example, in paragraph 94 and 95 you talk about that? So creating private access might constrain future options?
- A. Yes and that was in the context at the time of having traffic advice that the marina traffic could not coincide with ferry sailings without resulting in more than minor effects.
- Q. But in terms of the concerns for example raised by Auckland Transport as to what the future might hold and whether there could be alterations, it is the case isn't it that whatever changes are made, Ocean View Road

will need to extend through to the keyhole to provide access to the old wharf which includes the refuelling facility and pontoon that's used by commercial as well as private traffic? That will always be necessary?

A. I have accepted in my evidence that based on Mr Apeldoorn's information some form of access would still be required for operational reasons to the wharf, yes.

Q. And just to be a little bit more concise about that and accepting that the boat ramp may be a more minor portion, but the old wharf, that accommodates at times commercial traffic doesn't it?

A. I'm not aware of that.

Q. You haven't noticed some of the time you've gone backwards and forwards onto the island that it's used for that purpose?

A. Are you referring to water services?

Q. No, no, I'm referring to vehicles that might go onto the wharf.

A. Onto the old wharf?

Q. Yes.

A. I'm not familiar with that I'm sorry.

Q. Can you look at page 25, Resource Management Issues under 10(a).18.2?

A. Sorry what document, page 25?

Q. Of your evidence under paragraph 108? Do you have that?

A. Yes I have paragraph 108.

Q. Yes so if we look at the issues there, so the second issue, how to develop Matiatia so it provides activities and services that will better meet the needs of residents and visitors. There's no reason why that issue can't embrace the provision of a marina, is there?

A. To the extent that this is a land-based issue no.

Q. Well, the marina proposal is generated fundamentally by people on the island wanting a marina berth so they can move off a mooring, isn't it? And they're residents of the island.

A. So I'm agreeing that to the extent that this is a land-based issue I would agree with your statement.

Q. And under item 6, "As public access to public areas that are a part of the marina design including around the reclamation and the boardwalk," do you agree?

A. What's your question exactly?

Q. Well, issue 6, "How to ensure there will be open space in public areas included with any future development at Matiatia." I'm referring to the access arrangements that are attached to the reclamation and also the ability to go out on the marina.

A. Yes I don't disagree with you.

Q. Can you go now to your rebuttal evidence, the first sentence of paragraph 9?

A. Yes.

Q. Where you refer to Mr Sargent's concerns with the need for car parking as opposed to the marina itself to be located in the coastal marina area. Do you agree that that concern is resolved by proceeding with a reclamation rather than a suspended deck?

A. I'd just like to refer to the wording of that policy. I consider that that policy poses a similar question to the points that I'd raised under policy 10 in respect of the reclamation and I think that this policy, I would have the same view on that policy as I would on my recommendations under policy 10.

1450

Q. Can you go to paragraph 64 of your rebuttal?

A. Yes?

Q. That's where you referred to some evidence from Mr Monin and his paragraph 28 so that is no longer a consideration is it because last week he withdrew that statement from his evidence, you were there when that happened?

A. Yes.

Q. Thank you. I have no further questions thank you Sir.

CROSS-EXAMINATION: MR CASEY

Q. Good afternoon Ms Bremner.

A. Good afternoon.

Q. Can I first ask you about the question of landscape and visual amenity, as I read your rebuttal evidence you acknowledge that the section 274 parties' and Ms Gilbert have raised some valid issues there. If I take you to paragraph 39 of your rebuttal evidence.

A. Yes.

Q. Would you say that you queried them with Mr Brown or most of them at least?

A. Yes.

Q. And that Mr Brown provided a reasoned response.

A. Yes.

Q. Do you accept that Mr Brown's response was from the point of view of, if I can call it, an expert influenced as he is by his focus on natural landscape issues?

A. Yes.

Q. And do you accept that in a case such as this where there is a large element of amenity and community values attaching to the landscape and to the amenity that the expressions by those in that community should be considered?

A. Yes and I believe that Mr Brown has taken an approach that does include those considerations.

Q. And is it your view that he give those considerations sufficient weight?

A. Without being an expert I felt that his analysis was robust.

Q. But at paragraph 40 you move on to accept that the issue are more finally balanced?

A. Yes.

Q. And I think that you say that on balance, you prefer Mr Brown to Ms Gilbert?

A. Yes.

Q. Now in paragraph 32 of your rebuttal you referred to Mr Brown's views about the marina's appears, the linear rock face, breakwaters and so on having a much more structured profile and intensity and you say

inevitably this also means that some of the bays natural character values will be diminished.

A. Yes I'm quoting Mr Brown there, yes.

Q. Yes, of course. In paragraph 33, you talk about similar concerns raised by Ms Gilbert.

A. Yes.

Q. And then you say they are mitigated by the factors that Mr Brown has identified.

A. Yes.

Q. Can you just explain to us what those factors are that mitigate the effects that Mr Brown discusses and that Ms Gilbert also raises?

A. They are affects that Mr Brown has explained come with the siting and scale of the marina in that part of the bay particularly his comments around the positioning of the marina within a modified area and noting the maritime and commercial activities within the bay.

Q. Along the first of those it's the effects of that particular marina that we're looking at and then you saying that the effects of the marina are mitigated by the marina.

A. I'm accepting Mr Brown's analysis that the siting and scale of the marina in that part of the bay that he has analysed is mitigation, I have accepted his opinion of that.

Q. But doesn't he really mean that it could've been a much bigger and worse located marina than the one that we've got, isn't that what he's saying?

A. I couldn't comment on that.

Q. But those are the points of mitigation that you've identified as ones advanced by Mr Brown?

A. Yes having considered Ms Gilbert's position and Mr Brown's rebuttal of that, I've accepted the mitigation that Mr Brown has described.

Q. Although it's correct to say that the District Plan Provisions are land based as you've pointed out in answers to my learned friend, would you accept that the section or the part that relates to the Matiatia area

places a strong emphasis on maintaining the landscape character of Matiatia?

A. Yes.

Q. And would you accept that in the assessment of the marina proposal, not just the land based aspects of it that that emphasis should be taken into account?

A. Yes as part of a number of considerations, yes.

Q. Talking about landscape in particular?

A. Yes.

Q. And would you accept that because of the several mentions, the emphasis even of the landscape character of Matiatia in that planning document that people must've identified that it has a landscape character?

A. Yes.

Q. And as a community document that the District Plan Provision should be given significant weight, that is the District Plans recognition of the landscape character of Matiatia should be giving significant weight.

A. Sorry can you just repeat the question?

Q. As a community based document, that is a document that's been arrived at through a public process, the District Plan Provisions which emphasise and focus on the landscape character of Matiatia should be given significant weight.

A. Yes.

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Q. Now, if I can come back to paragraph 17 of your evidence-in-chief that my learned friend Mr Brabant asked you about?

A. Yes.

Q. I understand your evidence is still that the adverse visual landscape, natural character and amenity effects will all be more than minor?

A. Yes.

Q. When you say that the expert advice remains that in overall terms the effects will be acceptable, are you there referring to what Mr Brown says?

- A. Yes, this is a summary of my section 87F report.
- Q. Yes but talking now about these particular matters, landscape natural character, visual and amenity, when you say that the expert advice remains are you talking about the advice of Mr Brown?
- A. Yes.
- Q. Because of course that was before we had the advice of Ms Gilbert?
- A. Yes.
- Q. And as I understand the answers you gave me before and based on your rebuttal evidence you'd now agree that the acceptability, if we can call it that, is more finely balanced?
- A. Yes.
- Q. On the matter of traffic and such, if I can take you to your rebuttal evidence at paragraph 24, you talk there about the functioning of the transport hub and the efficient operation of the infrastructure?
- A. Yes.
- Q. And you say that, 24, you agree that providing for the operation and growth of the strategic transport hub is a critical consideration.
- A. Yes.
- Q. And that's still your position?
- A. Yes.
- Q. And at the end of that paragraph you say that you were concerned that in the absence of a more detailed development framework there is a risk that the proposal precludes options for comprehensive planning of this strategically important area.
- A. Yes.
- Q. Is that still your position?
- A. Yes.
- Q. And then at paragraph 25 you say you've considered the evidence of various witnesses including those from Auckland Transport and say that you repeat what you've said in your evidence-in-chief, that it's important to have a high level of confidence that these assumptions are correct.
- A. Yes.
- Q. And that's still your position?

A. Yes.

Q. In your discussion about the objectives and policies, I think if I'm right you talk in your evidence-in-chief at 109, paragraph 109, about objective 10(a)18.3.1?

A. Yes.

Q. And in relation to that you say that you considered it would not be contrary to the second part of the objective, that is the part that relates to the landscape character, as overall landscape character outcome is in the opinion of experts acceptable.

A. Yes.

Q. The objective says "maintaining the landscape character of Matiatia."

A. Yes.

Q. If I understand the evidence of the experts, and we're talking here about Mr Brown mainly, he says it's acceptable but he does not say that the landscape character would be maintained, does he?

A. I would need to check his evidence and the joint witness statement.

Q. Yes well we can do that. Go to the joint witness statement first? Perhaps I can put to you, Ms Bremner, that all of the experts, that is the landscape and visual experts, agreed that there would be adverse effects on the landscape, but that Mr Brown said that they would be acceptable.

A. Whereabouts are you quoting from?

Q. I'll take you to Mr Brown's evidence on that – oh no, in the joint witness statement, do you have a copy of that available?

WITNESS REFERRED TO JOINT WITNESS STATEMENT

A. Yes.

Q. Paragraph 22.

A. Yes I see that.

Q. You'll read under 22(a), "Mr Pryor found that the effects are acceptable overall, Mr Stephen Brown generally agrees. It's a higher impact rating for amenity effects, et cetera, but considered the marina proposal to be acceptable."

A. Yes.

Q. You see that?

A. Yes.

Q. By my reading none of them or neither of those I guess I should say opined that the landscape character of Matiatia would be maintained. And in your evidence at 109 you only refer to them stating that the effects, or one of them at least stating that the effects would be acceptable.

A. I would regard an acceptable outcome as having met that objective, but I agree with you that from my quick scan I can't see that they've used the terminology "maintaining landscape character".

Q. So to your way of thinking even if there are adverse effects, as long as they're acceptable then the landscape character is maintained?

A. Well I would expect there to be quite some change in that environment allowed for by the mixed use zone, which may result in changes which may not maintain landscape character. Well which would, sorry, which would maintain landscape character but wouldn't necessarily result in no adverse effects.

1510

Q. Do you accept though that the for the effects, the adverse effects, to be acceptable they would have to not detract from the landscape character of Matiatia?

A. As an overall assessment I think that would be a fair comment.

Q. Now in your paragraph 109 you reached the view that the proposal would be contrary to the first part of the objective, that is 10a.18.3.1 and that is about developing a safe and efficient transport network.

A. Yes, that was based on an earlier analysis.

Q. And do you now say you've changed your – I'm sorry if I take you through, at paragraph 111 you give reasons as to why the proposal was considered contrary to policy 1 by saying that it relies on that area as a thoroughfare for private occupancy vehicles in a manner that would not retain priority for those other activities.

A. Yes, that's what it says.

Q. And is that still your position?

- A. Well as I say I have re-analysed my earlier findings in the 87F report based on the new information from Auckland Transport and Mr Shumane's updated advice to me so I've provided a further analysis in Annexure B at the end of my evidence.
- Q. At the end of your rebuttal evidence?
- A. No, at the end of the evidence-in-chief.
- Q. I'm sorry, I beg your pardon. Sorry, is that Annexure B you're telling me about?
- A. Yes.
- Q. So the policy that we're talking about Ms Bremner is the one that requires the identification of a specific area for wharf associated activities and passenger transport so that they have priority over single occupancy vehicles?
- A. Yes.
- Q. And you would have heard a traffic witness agree that by single occupancy vehicles we were really talking about private cars?
- A. Yes.
- Q. And there's another policy in part 13 which is policy 13.3.6. Policy 3. Are you familiar with that too?
- A. Which policy sorry?
- Q. Policy 13.3.6.
- A. Yes.
- Q. Do you have that with you?
- A. Objectives – sorry can you repeat it sorry.
- Q. It's policy 13.3.63.
- A. Yes I have that.
- Q. And the objective is to recognise and provide for passenger transport to from and around the islands.
- A. Yes.
- Q. And under policy 3 it's by giving priority to public passenger transport where appropriate.
- A. Yes.

Q. And I think you'd agree that the area that we're talking about here is an area where it is appropriate to give that priority.

A. Are you referring to the keyhole?

Q. I'm referring to not just the keyhole but to the section of Ocean View Road that leads into the keyhole as well.

A. Yes, where that's appropriate.

Q. But do you agree that that is an appropriate place where priority should be given to public passenger transport?

A. Certainly within the keyhole. I think there's a balance of considerations required for the portion of Ocean View Road that's public.

Q. That's public?

A. Yes.

Q. Well the keyhole's public too of course.

A. I'm referring to the part of Ocean View Road that doesn't have the access restriction imposed with the permitted vehicles only.

Q. Now again, is it your position that your concerns that the proposal might conflict with this policy were resolved following Mr Shumane's reassessment of the evidence?

A. Essentially yes.

Q. Were you here when Mr Apeldoorn was giving his evidence?

A. Yes.

Q. And so you were here when I put to him the question, I said, "So there's nothing about your proposal that gives priority to passenger transport?" And his answer was, "There's nothing about the proposal that gives a greater priority to public transport. It's fair to say that there will be a small deterioration, if you like, or small change, incremental change in the operation of public transport in the keyhole." Do you recall that? For the record that's at page 226.

A. Yes I do recall that.

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Q. And I also put to him that there would not be priority to passenger transport entering or leaving the keyhole and he said no he believed that passenger transport would still have priority and that was before my

question that I've just put to you. So I just wanted to be clear that there was a bit more to the discussion than what I just put to you. But do you agree that what's proposed by the applicant would allow marina traffic just as much access into the keyhole as buses and other transport associated with the ferry will have.

A. I think it depends to some extent on the nature of the conditions that are being discussed at the moment in terms of potential access restrictions but certainly the current position, as I understand it, is if there was no access restriction at the present time then there would be an equal right for marina traffic to enter the keyhole as any other traffic that's authorised to do so.

Q. And the other traffic that's authorised to do so is public passenger related transport traffic.

A. Correct.

Q. So there's no priority being given to that traffic over the marina traffic, correct?

A. Not priority in the sense of some sort of exclusive right to enter but to the extent that it would not interfere with the operation of the public transport then I would regard priority as being maintained.

Q. In your evidence you say, and I think you've agreed with my questions, that there's a risk that the proposal will preclude options in the future. That may be developed for public passenger transport solutions in this area.

A. There's a risk inherent given that the work is yet to be done to develop those plans, yes.

Q. And as Mr Shumane said, when I asked him questions about this earlier today, that provision would have to be made for the marina traffic and any solution that was devised.

A. Yes if it were existing it would be a factor to always be in the mix.

Q. And if that resulted in a less than optimum solution for passenger transport then that would not be giving the priority that the policies require, do you agree?

A. Yes that's correct, yeah.

- Q. In paragraph 12 of your rebuttal evidence you, I think, take issue with Mr Sargent's view about the question of efficiency. And you say that the marina will result in a net increase of 125 vessels within the bay and that you consider that this represents an efficient use of occupied space within the CMA.
- A. Yes.
- Q. But do you accept that the question of efficient use of space within the CMA has to be considered in the light of what particular area of the CMA you're proposing to occupy?
- A. No I think when I considered efficiency I was looking at a region-wide efficiency.
- Q. So it's efficient for the coastal marine area of the region to have another 125 vessels located in Matiatia Bay?
- A. It's an efficient use of water space by increasing the amount of boats you can have in one location and you're therefore using that space efficiently and that is a benefit, it's a region-wide consideration.
- Q. So if one was to take that logic further, it would be even more efficient to have a 500 berth marina in Matiatia Bay. Apparently it's a really good place for a marina. Would that be the consequence of that approach?
- A. I think other factors would have come into consideration at that point but here I was simply looking at an efficiency in the number of boats that could be achieved within the existing space of Matiatia Bay.
- Q. Yes but perhaps what that policy is perhaps more directed at is to find a way in which the existing number of vessels in Matiatia Bay could be more efficiently accommodated rather than introducing vessels that aren't accommodated there at the moment.
- A. Can you refer me to which policy?
- Q. I was looking for that before and I'm just struggling at the moment. It's objective 24.3.3 of the Regional Coastal Plan I think. 24.3.3 the objective to ensure that efficient use is made of the coastal marine area.
- A. Can you repeat your question please?

- Q. Yes. I put it to you that what that's more directed at is making more efficient the boats that are currently housed in Matiatia rather than introducing more boats from outside Matiatia.
- A. That's not the meaning I take from the policy.
- Q. That's actually an objective.
- A. Yes, sorry about that.
- Q. That's all right, I might have put it to you as a policy. But that objective is actually in the moorings section of the Regional Coastal Plan isn't it?
- A. Yes.
- Q. And what we're proposing here is, with the exception of perhaps 17, is not moorings, it's a marina.
- A. Yes but the policy is written in quite general terms describing efficient use so...
- Q. I'm sorry, I should have taken you then to 23.3.3 where the same objective is in the marina's chapter and that's my mistake and I apologise.
- A. Well I would have the same view because I had assessed that both of those provisions similarly, they're both objectives relating to efficient use of the coastal marine area and I took that to mean that there would be a net increase of the number of boats being able to be accommodated within that area, therefore that would be what I would have regarded as efficient use that the objectives were referring to.

1530

- Q. All right well then let's just talk about the fact that the efficiency that's being measures is under both section 23 or part 23, which is the marina part, and part 24 which is the moorings part.
- A. Yes.
- Q. You'd accept that in the marina context that objective is also alongside an objective which is 23.3.1, that is to concentrate marina activities in marina management areas. 23.3.1, objective?
- A. Yes I see the objective what was your question?
- Q. Yes, sorry, that 23.3.3 sits alongside that?
- A. Well it's in the same section of the plan.

Q. Now, objective 23.3.1 is not being met here is it?

A. Can I just have a minute to think about that?

Q. Yes.

A. I agree that the proposal does not meet the part of the objective relating to concentrating marina activities in marina management areas, but I've read that in conjunction with the following objective 23.3.2, which contemplates the development of new marinas.

Q. Yes, there are a number of objectives there, but in respect of objective 23.3.1 you agree that it does not satisfy that objective?

A. I agree.

Q. And the second objective is dependent or whether it meets that objective is dependent upon whether the adverse effects are avoided, remedied or mitigated.

A. Yes correct.

Q. And we know that a number of the adverse effects here will not be avoided, remedied or mitigated, don't we?

A. There are still some questions around certain effects, yes.

COURT ADJOURNS: 3.34 PM

COURT RESUMES: 3.55 PM

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Mr Bremner, in your evidence you express the opinion that the proposal is generally in accordance with the New Zealand coastal policy statement? Have I got that right?

A. I would qualify that by noting that I had questions about the alternatives that might exist to a reclamation and parking within the coastal marina area.

Q. You refer in your evidence and your rebuttal evidence to policy 6, policy 13, policy 15. Have you also done an assessment against policy 10?

A. Yes.

Q. Policy 10 speaks about reclamation. Do you have it with you?

A. Yes. Yes I have that.

Q. And at paragraph 1 of policy 10 clause 1 says, "Avoid reclamation of land in the coastal marina area unless," and it lists four qualifications.

A. Yes.

Q. And you'd know that those qualifications are expressed cumulatively?

A. Yes.

Q. So all of them would have to be satisfied?

A. Yes.

Q. The first one is whether or not land outside the CMA is available for the proposed activity?

A. Yes.

Q. And we've had evidence about that that I won't ask you to comment on. The activity that requires reclamation can only occur in or adjacent to the coastal marina area?

A. Yes.

Q. Now an activity that is parking can occur other than in or adjacent to the coastal marine area, can't it?

A. If there is land available, yes.

Q. Well that's under (a) so you've got to satisfy (a) and you've got to satisfy (b).

- A. Oh yes yes, sorry yes.
- Q. So parking is an activity that doesn't need to occur only in or adjacent to the CMA.
- A. Correct, correct.
- Q. Now (c) we've had evidence about that I won't ask you to comment on, and then (d) the reclamation will provide significant regional or national benefit. Now I haven't read in any of the evidence that this, the carpark to service marina will provide any regional or national benefit. Are you familiar with any evidence that says that?
- A. No.
- Q. So I put it to you that the reclamation aspect of this proposal is contrary to policy 10.1.
- A. Yes I agree.
- Q. Now so far as policy 13 is concerned, which is to preserve the natural character of the coastal environment, clause 1(b) says to avoid significant adverse effects on natural character and areas of the coastal environment that are not of outstanding natural character.
- A. Yes.
- Q. It says that? It says a few other things as well but it says that to begin with.
- A. This is in policy 13.1(a)?
- Q. 13.1(b).
- A. 1(b) yes, I have that.
- Q. "Avoid significant adverse effects of activities on natural character in all areas other than outstanding."
- A. There's also wording in there, "Avoid, remedy and mitigate."
- Q. Yes it says, "Avoid significant adverse effects," and then it says, "Avoid, remedy or mitigate other adverse effects," I'm breaking it down into the two component parts if you follow that.
- A. Yes.
- Q. So there's a policy there that adverse effects have to be avoided if they are significant adverse effects on natural character, do you agree with that?

- A. Yes.
- Q. And they have to be avoided, remedied or mitigated if they are less than significant but still adverse.
- A. Yes.
- Q. Now, you may not agree that the adverse effects will be significant, do you consider they will be significant? That is the adverse effects on natural character?
- A. Based on the expert evidence of Mr Brown I don't consider that he would regard those as significant effects.
- Q. But as I understand his evidence and correct me if you think I'm wrong, he does say that there are other adverse effects on natural character? Less than significant?
- A. Yes there's other adverse effects, yes.
- Q. So this policy would require that those adverse effects be avoided, remedied or mitigated, and because there are – these adverse effects are obviously not being avoided so they have to be remedied or mitigated.
- A. Yes.
- Q. Would that be right?
- A. Yes.
- Q. Now lastly, this marina if it were to be applied for today under the – because the proposed unitary plan has now been notified would require non-complying consent.
- A. I believe there was a question about section 88A and its application.
- Q. That's right, there is, but I'm saying if it was applied for now since notification it being non-compliant.
- A. Yes yes it would.
- Q. So the direction of the unitary plan, the direction it's heading in is to make marinas outside of marina management zones or marina zones, to make them non-complying?
- A. Yes in its current form yes.

CROSS-EXAMINATION: MR ENRIGHT

- Q. Good afternoon Ms Bremner. Just in terms of section 6(e) RMA, do you agree that the cultural evidence has established that Matiatia Bay contains the ancestral lands, water, sites, wāhi tapu and other taonga of Ngāti Paoa?
- A. Could you please repeat the question?
- Q. Sure, if you think of section 6(e) RMA, the question is whether you agree that the cultural evidence has established that Matiatia Bay contains the ancestral lands, water, sites, wāhi tapu, other taonga of Ngāti Paoa?
- A. I believe that there are some disagreement about some of the details of that.
- Q. The Gulf District Plan operative plan though does recognise Waiheke as the ancestral home of Ngāti Paoa, doesn't it?
- A. Yes.
- Q. Now could I please take you to your primary evidence at paragraph 20, volume 3, tab 2? Do you have that?
- A. I have my primary evidence.
- Q. Paragraph 20.
- A. Yes I have that.
- Q. In your evidence you stated there that you remained in some doubt as to whether some parts of the bay would be regarded as wāhi tapu, and I'd just like to read to you from transcript page 661 what Mr Wilson said on that, Mr Morehu Wilson, "We're saying that the whole bay is wāhi tapu and it's difficult to segregate out which is tapu and which is not of wāhi tapu, so from their perspective, from the Ngāti Paoa perspective, the whole of the bay is wāhi tapu."
- A. I remember hearing that.
- Q. So would you agree that in terms of, having heard the Ngāti Paoa evidence at least there is no doubt that it's perceived by Ngāti Paoa – sorry the whole bay is perceived as wāhi tapu?
- A. I'm not an expert in cultural matters and I'm aware that there are two quite conflicting points of view on that. But in terms of your question, it

regarded the perception of wāhi tapu and I accept that is the perception that they have expressed.

CROSS-EXAMINATION: MS WEDDE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. I see that from time to time you've worked on Waiheke Island. Are you still working there?

A. Yes I live and work there.

Q. Ah, that was my next question, thank you. Just in terms of numbers of people using the Matiatia Historic Reserve track, you answered Mr Brabant to the effect that that appeared to be infrequent. Have you conducted any survey of the numbers using that track?

A. I believe his question was regarding the reserve leading up to the track.

Q. Yes, but doesn't the track pass over significant parts of the reserve?

A. Yes it does.

Q. And it passes along the beach immediately adjacent to the mean high water springs where the reserve I think starts?

A. Yes it does, yes.

1605

Q. Yes. Do you still say that the use of that area is infrequent by people walking?

A. No certainly not by the people walking, I took his question to something other than transitory use.

Q. Yes. So it's your evidence is it that there is quite a bit of pedestrian use of the beach, the lower the reserve on the eastern end of the bay around past the red wool shed?

A. Yes.

Q. And then on up the track that leads up towards the Mokemoke Pa.

A. Yes certainly, yes.

- Q. All of which at that point is through the historic reserve?
- A. Yes.
- Q. That's quite significantly used isn't it by people walking that, around the headlands?
- A. I don't have facts and figures but my general perception is that it's a popular track.
- Q. Yes.

RE-EXAMINATION: MR ALLAN

- Q. Ms Bremner, my learned friend Mr Casey took you to paragraph 17 of your evidence-in-chief if we could just have a quick look at that paragraph again. Page 5 of your evidence-in-chief paragraph 17.
- A. Yes.
- Q. And my notes record that he asked you whether your opinion remains that the, "Landscape, natural character, visual and amenity affects more than minor," and you answered, "Yes." Could you please read paragraph 17 and inform the Court what kind of effects you concluded would be more than minor?
- A. I concluded that, "There will be more than minor localised amenity effects."
- Q. Thank you. You were also asked questions about paragraph 12 of your rebuttal evidence and that's where you're responding to Mr Serjeant's concerns about the proliferation of moorings and I record that you say there you're satisfied that the proposal, "Represents an efficient use of occupied space within the coastal marine area," and I think you expressed the view that you'd approach that consideration, efficiency on a regional basis and my friend Mr Casey took you to objectives in both chapter 23 and 24 in the context of that discussion. Do you recall that toing and froing?
- A. Yes.
- Q. Do you have a copy of the Regional Coastal Plan there?
- A. Yes.

- Q. I just want to take you to two issues. The first of which is in chapter 23, it's 23.2.2. So I'll just take you to both of the issues first and then put the question to you to give you an opportunity to read.
- A. Sorry could you give me the reference in the common bundle?
- Q. Common bundle volume 5 I think it should be the first tab which is probably tab 3 there, is that Coastal Plan? And then CB83?
- A. Yes I have that.
- Q. So it's at page 23.2 of that chapter, it's the second page issue 23.2.2?
- A. Yes.
- Q. If you just have a read over that and particularly when we get to the third sentence you'll see there, I want you to have a read of the full issue that, "Marinas can however concentrate the effects of vessel berthage maintenance and other associated marina activities into a defined area, this may have the effect of preventing a proliferation of these activities and along the coastal marina area." Have a read of the full issue and let me know when you've been through that one and I'll take you to the next one.
- A. Yes I've read that.
- Q. So that's in our chapter about marinas, 23.
- A. Yes.
- Q. And then if we can move to chapter 24 which should be immediately after that, and it's issue 24.2.1, have you found that issue?
- A. Yes.
- Q. So have a read of that, "There are a large number of both recreational, commercial issues in the Auckland region. (Inaudible 16:10:02) these are permanently stored in the coastal marine area either on moorings or in marinas, individual and groups of moored vessels can have an effect in the environment particular in respect to natural character landscape visual amenity values, other users of the coastal marine and navigational safety. These effects may be both adverse, positive to the environment. Accordingly, this plan attempts to concentrate the effect of moorings into the fine locations and to prevent a proliferation of moorings throughout the coastal marine area."

A. Yes.

Q. So having reads those two issues, are you able to assist the Court with any further comments on those issues in the context of your discussion with Mr Casey?

A. I think this links to the objectives relating to efficiency it kind of gives an outline as to efficiency in terms of use of water space and in the context of avoiding the spreading out of vessels or proliferation throughout the coastal marine area. There's also a general comment in the introduction at 23.1 which states that, "Marina's also concentrate vessels and their associated defects into defined areas and provide for a more efficient use of harbour space than other methods of securing vessels." So when I was considering efficiency, I was considering it in those terms.

WITNESS EXCUSED

AUCKLAND COUNCIL CASE CONCLUDES

MR ALLAN:

Sir, subject to the need to recall Mr Cawley at some stage and I actually am hopefully that that won't be necessary, that completes the Council's case.

THE COURT: JUDGE NEWHOOK

They might've (inaudible 16:11:55).

MR ALLAN:

Mr Brabant may have a different take on the world, but having had a quick chat with Mr Cawley it seemed like there was a positive outcome, they're both going away doing further work and will come together and hopefully within the next day or so we'll have something for you.

MR R BRABANT:

See my instructions from Mr Styles afterwards is that they'd met, that some issues had been resolved, that there was a remaining issue that Mr Cawley had raised where I don't know if there was agreement and I asked him to go away and please write up a supplementary joint witness statement for submission to you Sir because that's the, seemed to me –

THE COURT: JUDGE NEWHOOK

That's what I was asking for.

MR R BRABANT:

– the way to move it forward.

THE COURT: JUDGE NEWHOOK

Yes.

MR R BRABANT:

I'm not so sure they've resolved everything and I won't go into the details Sir.

THE COURT: JUDGE NEWHOOK

No, we'll see what's in the statement.

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

When do you think we might get that?

MR R BRABANT:

Well of course I'm sort of out of action to, I didn't have any time at lunchtime either so I haven't been able to check and I did speak to my co-counsel who is doing some work at home but I didn't raise that particular issue with him because I was trying to deal with some other issues relating to finalising the consent conditions so I'll have to tell you later Sir.

THE COURT: JUDGE NEWHOOK

Mr Allan might know.

MR ALLAN:

My understanding from Mr Cawley is that he's hopeful that they'll have a joint document dealing with all matters hopefully by tomorrow afternoon.

THE COURT: JUDGE NEWHOOK

Okay. We'll keep it under review but if you wouldn't mind, and report on progress with it. We need to hear from them or one of them or both of them, we'll do that if we have to.

MR R BRABANT:

So I'm not quite sure what the plan was next Sir but I know Mr Mitchell can be got down here when you wished to have him down there. I've obviously not kept him waiting Sir and he needs 15 minutes to get here so I have no idea what the plan is but –

THE COURT: JUDGE NEWHOOK

Yes, now when you indicated that Ms McIndoe had some questions for Mr Mitchell, is that right or are you in a position to put those questions to him?

MS WEDDE:

No I'm not I'm sorry, I do have legal submissions and in a position to deliver those but not to ask questions to Mr Mitchell.

THE COURT: JUDGE NEWHOOK

All right, is Ms McIndoe available today?

MS WEDDE:

She was hoping to be but appears not so she will be back tomorrow.

THE COURT: JUDGE NEWHOOK

Looks like another of those things that we've got to park. Mr King Turner had some questions for Mr Mitchell too and he's gone, everybody's gone, we're failing to catch people's attention. Well then I guess we just have to deal with Mr Mitchell in the morning and perhaps have your opening submissions for Auckland Transport now Ms Wedde if you're able to deliver those, good use of our time I imagine.

1615

MS WEDDE ADDRESS THE COURT – HANDING OUT SUBMISSION

MS WEDDE READS OPENING SUBMISSIONS:

So Sir, these submissions are relatively short, 10 pages and I propose to read them in full unless you tell me that anything can be taken as read. And just a note at the outset, these submissions do not address the new draft of conditions which were only received yesterday.

THE COURT: JUDGE NEWHOOK

Yes, engaged in some discussion with Ms McIndoe about the timing of the delivery of opening submissions for Auckland Transport and agreed to defer

them from Friday to today on the basis that it would give her an opportunity to (inaudible 16:16:46) new draft conditions of consent. And it may TV be that we should call upon her to do that part of it in the morning in addition to what you're about to deliver now, because I thought that was the deal. All right, if you convey that to her?

MS WEDDE:

Thank you Sir, that sounds a good way forward and apologies for that, we just only received them yesterday afternoon I believe.

THE COURT: JUDGE NEWHOOK

Yes, we're all running fairly hard with this one but it's a big case, quite a complex case, it's a direct referral, and members of the Court are pouring (inaudible 16:17:27) significant time into it as well to keep it moving, so we're all going to need a bit of a lie-down when it's finished I think. Mr Brabant's junior already is, poor thing. We do have a lot of sympathy for Jeremy, Richard, but he's been pushing along very hard I know. Convey our wishes for a speedy recovery. Okay Ms Wedde.

MS WEDDE MAKES OPENING SUBMISSIONS:

Thank you Sir, I'll pass that message on to Ms McIndoe. "Auckland Transport, AT, is... peak levels and greater overall." Sir, I've just made a small correction to the final sentence there.

THE COURT: JUDGE NEWHOOK

Sorry, what's the correction?

MS WEDDE:

I've just replaced "is" with "are" in the final line.

MS WEDDE CONTINUES READING OPENING SUBMISSIONS

“Mr Karndacharuk considers...monitoring and enforcement.” And Sir, I apologise, I’ve just made another small correction there to paragraph 19.

THE COURT: JUDGE NEWHOOK

What was that?

MS WEDDE:

I’ve removed the apostrophe S from Mr Karndacharuk.

MS WEDDE CONTINUES READING OPENING SUBMISSIONS

MR R BRABANT ADDRESSES THE COURT – EVIDENCE OF MR MITCHELL

THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL – HOUSEKEEPING

1645

MS WEDDE CALLS

ANTHONY WILLIAM BLOM (AFFIRMED)

Q. Good afternoon, is your full name Anthony William Blom?

A. Yes.

Q. And have you prepared for this hearing a statement of evidence-in-chief of 11 June 2014, a statement of evidence in reply of 23rd September 2014.

A. That's correct.

Q. And also an affidavit affirmed on 1 October 2014?

A. That's correct.

Q. And in your evidence-in-chief you set out your qualifications and experience. So you are currently employed by Auckland Transport as an account manager?

A. Yes I am.

Q. And do you have authority to give this evidence on behalf of Auckland Transport?

A. I do.

Q. Do you have any corrections that you would like to make to your evidence?

A. I do not.

Q. Do you confirm that your evidence is true and correct to the best of your knowledge and ability?

A. I do.

THE COURT: JUDGE NEWHOOK

Q. And you participated in the joint witness caucus didn't you?

A. Yes I did Sir.

CROSS-EXAMINATION: MR CASEY

Q. Good afternoon Mr Blom. Now the role of Auckland Transport, as has been described by you in your evidence and also by counsel in opening, is to manage the local roading network and also the public transport network in the Auckland region.

A. That's correct, amongst other things as well.

- Q. And the concern that's been expressed is the impact on public transport of added congestion in the area of Ocean View Road that serves the ferry.
- A. That's almost correct, the main concern is whether or not public transport or the impacts of the application will cause worse impacts on an already congested area.
- Q. There's an additional concern that it also reduces opportunities for improvements to the area.
- A. That's correct.
- Q. And again, those improvements are the ones that would be required to assist or improve the public transport function.
- A. That's correct.
- Q. I know that in your evidence and in submissions there's particular emphasis on the bus service that meets the ferry but do you accept that also a large number of the ferry passengers are served by other vehicles apart from buses?
- A. They certainly are.
- Q. And they include the taxi service?
- A. Yes.
- Q. I'm not quite sure what Auckland Transports' attitude is to taxis, as to whether they're part of the public transport network or not.
- A. They provide part of the transport network that we have to support.
- Q. And the tour operators clearly have an important part to play as well.
- A. They certainly do, they provide a good transport option as well as providing economic value to the island.
- Q. So that in any future development that was to serve the wharf gateway function, you'd be providing not just for the buses but for taxis and for tour operators.
- A. We would, in any future development we'd have to look at the balance between all of the different modes that need to use that area.
- Q. And that would include private cars dropping off or collecting passengers?
- A. We certainly would need to include those as well.

Q. And given the parking constraints at Matiatia the, if I can call it, is the “kiss and ride” model is a good one to have there rather than for people to go there and park and not to pay parking all day?

A. My view would be that the best model would be that more people would use the public bus rather than a kiss and ride because typically a kiss and ride is another vehicle dropping off, and just one person off. Whereas a bus is a vehicle which can drop up to 50-odd people off.

Q. Now do you have conveniently a diagram of the area or an overhead of the area? If you go to one of the bundles in front of you that’s –

A. I think there’s a useful diagram in the back of Mr Karndacharuk’s evidence.

Q. Yes perhaps if you just go to one of the bundles in front of you, Mr Blom, if you would?

WITNESS REFERRED TO BUNDLE

Q. And the volume that’s got the date March 2013 on it?

A. Yes.

Q. And figure 2 for convenience, it’s nothing particular.

A. Figure 2, yes.

Q. I’m wanting to ask you questions about the area that we call the keyhole and the roundabout, and you identify those on figure 2.

A. I can yes.

Q. Now the Court has seen the typography, and there’s really no room to expand that area in the direction of the cliff or the hillside, is there?

A. Not and I think as Mr Shumane put it without considerable expense.

Q. Conceivably there is room to expand it in the direction of the carpark?

A. Conceivably yes.

Q. Conceivably, but the other area for expansion would be in the direction of the proposed marina?

A. I suppose that’s conceivable, however not being an expert I’d struggle to see how you’d maintain a turnaround area for large vehicles like busses because the land area available there becomes more and more constrained.

- Q. You see what we have here, Mr Blom, is a proposal that some of that land in the direction that I've just been describing will be reclaimed.
- A. Yes.
- Q. Do you know whether Auckland Transport has considered the reclamation of land in that area to increase the available area to serve the public transport needs?
- A. I'm not aware of any such option.
- Q. Do you think it's an option that Auckland Transport might consider?
- A. I think when Auckland Transport put its mind to what needs to be done there, they'll consider every conceivably option, whether or not that one gets any legs or not would be up to planners and others to decide.
- Q. But that option will presumably not be available if that land is being reclaimed for a carpark for the marina?
- A. That would be correct.
- Q. Now I take it I should be asking Mr Karndacharuk about the specifics of the conditions that are being proposed or suggested for the management of traffic?
- A. Certain technical aspects of that certainly should be put to Mr Karndacharuk.
- Q. So I should ask you then about the higher level issues. You see in his evidence he says well, there may be a difficulty with those conditions meaning that the marina would be unable to function. Sorry, the original conditions that were suggested by him.
- A. You're referring to the 10 minute before 20 minute after effectively half hour restriction?
- Q. Yes.
- A. Yes there would be difficulty with those conditions.
- Q. There would be difficulties in the sense that if that was the situation and there were increasing numbers of ferries, it might be that there would be no access to the marina.
- A. That's my view if there are a number of occasions, some planned and some not necessarily so well planned where there are multiple ferry sailings per hour and it's not just at the busy times, there can be times

during quiet times when the operator has a fault with the vessel, as happened recently, and they will put on more than one smaller vessel. So potentially with multiple sailings during the hour, if we had a 30 minute restriction we effectively could say there are two 30 minute restrictions every hour so that would make access to the marina impossible.

Q. And we've heard evidence from the locals that sometimes the numbers of ferries per hour exceed two, there can be three, four, even five at very busy times?

A. Indeed, then we would potentially have two and a half hours per hour of restrictions.

Q. Yes. well, Continuous restrictions let say.

A. That's it, I think my point is it would make it almost impossible to, if that restriction were in place it would make it impossible for anyone to get access into the marina carpark.

Q. Why I ask you about that is it seems to be premised on an assumption that there should be a marina and there should be a carpark. Isn't the better solution to that issue to have no marina at all?

A. Having no marina is one option and I think that's what the Court is here to decide. We have taken the view that should the marina be given consent, how could that possibly be managed?

Q. I understand that but the starting point for Auckland Transport ought to be what needs to be done to protect the public transport function rather than what needs to be done to provide for the marina, would you agree?

A. The starting point certainly is to protect public transport.

Q. And you'll have heard me ask other witnesses about the policy requirement that public transport is given priority?

A. Yes.

Q. And if what you and Auckland Transport describe occurs or is likely to occur, that is that the increase in conflict and the increase in congestion will entail the loss of that priority, then what you are suggesting, which is that there may be continuous periods where access to the marina is not possible, that that might arise correct?

- A. If the condition requiring a 30 minute or a large timescale restriction were imposed, then that would not be possible.

COURT ADJOURNS: 5.02 PM

COURT RESUMES ON TUESDAY, 21 OCTOBER 2014 AT 9.30 AM

MS WEDDE RE-CALLS

ANTHONY WILLIAM BLOM (ON FORMER OATH)

CROSS-EXAMINATION: MR R BRABANT

Q. Mr Blom, I understand from the beginning introduction to your evidence that your role in Auckland Transport is to look after operational and contractual matters with bus operations.

A. That's my current role. If I just add my role just previous to this and it's just prior to being involved in this hearing, I'd spent probably the best part of nine years managing the Northern Busway operations and also managing in the late part of that all of the bus facility infrastructure for the Auckland region.

Q. So you say a number of bus operators, by that do you mean private companies that provide services?

A. Yes, Auckland Transport have 12 or 13 separate contracting companies like New Zealand bus or Ritchies et cetera who provide services to us.

Q. And you look after all of those?

A. I look after eight of those.

Q. And are they all on the mainland as it were?

A. About a month ago I inherited the relationship with Waiheke Bus.

Q. Right okay, it wasn't clear from that so I thought I should find out. Now you haven't sought, have you to, to qualify yourself as an expert for the purpose of this hearing?

A. That's correct.

Q. Can you go to paragraph 9 please?

A. Yes.

Q. I take it for the point of that paragraph that you are familiar with the arrangements whereby Auckland Transport has a parking warden on duty over at Matiatia ferry terminal?

A. I am.

Q. Are you responsible for that person as part of your work?

- A. No I'm not, that comes under our parking and enforcement department which is a separate part of Auckland Transport.
- Q. Are you at least able to inform the Court whether the legal obligations and responsibilities or rights of that person, colloquially known on the island as Parking Paul I believe, relate to parking? So they have the legal capacity to actually issue directions about use of parking areas, is that a right understanding?
- A. The parking officers or the parking wardens have a number of roles, one is to enforce parking restrictions. They also effectively have an ambassadorial role which is to help them inform people in terms of what they should be doing. I think it's Auckland Transport's intention is not to have to issue tickets, rather to allow people to know what to do and encourage them to do the right thing.
- Q. I just want to focus on the parking side of it. You're aware and can you confirm to the Court that the person or persons that you have over there exercising that function have the ability legally to enforce the parking restrictions and specifications that have been erected by the ferry terminal and in the keyhole?
- A. Parking wardens and I don't mean to be vague but I'm not entirely sure, I'm not the expert on the legal side of it but the parking wardens are able to enforce all resolved parking resolutions.
- Q. And an example of those resolutions is found, isn't it, as an attachment to your evidence?
- A. To Mr Karndacharuk's evidence.
- Q. Was it?
- A. Yes.
- Q. Oh yes sorry, it was, appendix A is a resolution of an appropriate committee – oh sorry appendix B and deals with parking restrictions?
- A. That's correct.
- Q. Now so that would then apply to the drop-off parking area for private vehicles outside the terminal, the two minute drop-off, wouldn't it?
- A. Yes.

- Q. And you understand that the person there from Auckland Transport can enforce that restriction?
- A. Yes he can.
- Q. And then there is a restriction that's signposted at the keyhole entrance which is a restriction on who can enter to park there.
- A. There is a sign, yes.
- Q. Yes and he is legally able to enforce that?
- A. My understanding is that is not a legally enforceable sign.
- Q. So do you mean by that that although there is a sign there saying that the entry in there is restricted to authorised vehicles, there's no resolution of a committee of Auckland Transport to that effect, is that what you're saying?
- A. Mr Karndacharuk and myself both investigated that sign and we were unable to find any resolution relating to it.
- Q. Inside the keyhole, and I'm referring now to the plan, you'll remember I've had witnesses looking at that plan?
- A. Yes.
- Q. And it shows parking for busses and parking for taxis and shuttles?
- A. Yes.
- Q. Those parking provisions and who uses those areas, that would be something that can be enforced by the parking warden wouldn't it?
- A. Yes the resolution as attachment B is legally enforceable.
- Q. So you'll have heard, I think you were on the island last week when evidence was given by locals?
- A. I was on the island for one of the days.
- Q. Yes and yesterday I asked some questions about Ms Gisby's evidence in relation to what the actual issues are in the keyhole, do you remember that?
- A. You might need to clarify that to me.
- Q. I'll read the questions answer answers again, "If you're a bus or a taxi or a shuttle, I'm just looking at the different varieties, the purpose of going into that keyhole area is to stop in the parking designated for that particular vehicle for the purpose of either letting passengers off or

picking passengers up, that's the purpose of going in there?" And her answer was yes. "And the congestion that you speak about that occurs in the keyhole is when that activity of parking or leaving before or after passengers get in or out become so busy that there can be holdups?" And she said yes.

A. Yes I do recall that evidence.

Q. Now the parking that takes place in there with the taxis and shuttles is legally controllable by the parking warden.

A. That's correct.

0945

Q. So there's no question of him being in there, if he's in there, dealing with that in some sort of informal role is there?

A. There's no question of him doing that, not at all. In fact I would add that as other experts have said, without the parking warden the degree of chaos in that keyhole would likely to be significantly worse than it currently gets.

Q. But Auckland Transport is responsible, isn't it Mr Blom, for the road and the layout and the signage and the restrictions.

A. That's correct.

Q. So it's an expectation, isn't it then, that Auckland Transport would make sure that those restrictions are complied with.

A. Auckland Transport's responsible in that regard to ensure that the resolutions are complied with.

Q. So, this talk about if the warden wasn't there things would be worse, I suggest to you is beside the point. If Auckland Transport is aware that there is a problem controlling the parking activity in areas where specified arrangements are in place then I put it to you Auckland Transport are responsible to have someone there to make sure that the restrictions are complied with.

A. I'm not sure I'll take, Your Honour, the word "we're responsible for that". The road code requires every driver to comply with the rules as set out and there is an expectation that everybody would comply with those rules. So every driver is responsible for complying. If there are

situations where people do not comply, and we accept that that does happen, then we will put people like a parking enforcement person in there to either help educate or if need be provide enforcement action.

Q. And apart from the evidence, which I presume you've seen, Auckland Transport would have reports from its current warden and would know that there are ongoing issues with people abusing the parking arrangements outside the keyhole and inside the keyhole, is that right?

A. Indeed nobody is arguing with that statement. There is definitely a degree of chaos that the locals have raised quite, might have been quite accurately in that area.

Q. And in fact, and maybe particularly in the peak periods and the tourist times, weekends in the summer, Auckland Transport may have to put another parking warden in there so one can look after the parking restrictions as we heard was being done outside the keyhole with private cars and another parking warden making sure the shuttles and taxis behave themselves inside the keyhole, does that sound reasonable?

A. I understand that happens from time to time.

Q. And if the parking warden was so busy looking after one area that he couldn't give attention to the other and there's hold-ups do you accept that Auckland Transport has a responsibility to do something about that?

A. I think in the wider picture Auckland Transport and Council and other bodies who have an interest in that area need to look at the overall layout of that keyhole area I think. It's been obvious from a number of the experts that what's there is not ideal.

Q. I'll put the question to you again. An identified cause of congestion is problems with parking, both outside the keyhole in relation to the two minute parking arrangements and people also double parking and inside the keyhole with the same thing happening. There were witnesses talking about shuttles popping into bus stop parks, double parking of shuttles, clogging up that area. Auckland Transport put those parking restrictions in place didn't they?

- A. Yes they did.
- Q. And they are therefore responsible for making sure they're complied with, isn't Auckland Transport?
- A. Auckland Transport is the enforcement agency for that, so yes.
- Q. Can you go to paragraph 16. Just as a matter of clarification you've given a description there in the second sentence of your understanding of the current ferry arrangements or services that Fullers run. You say, "With a 30 minute frequency at some peak periods." Are you able to be more specific, if you have the knowledge, what peak periods will the frequency change for 30 minutes please?

0950

- A. As I understand it during the summer peak time the ferry timetable either formally or sometimes informally changes from being an hourly to a half hourly service.
- Q. And what do you call the summer peak period can you tell s what that period is?
- A. Well –
- Q. If you don't know that's fine.
- A. The exact dates I don't know but effectively when the busy tourist season is and as I understand it from other evidence that is December through to February but I understand that could be a little bit longer at times as well.
- Q. Can we go to bus network which is your area of expertise I think?
- A. Yes.
- Q. Paragraph 18 you talked about the number of buses. Can I ask first of all, before you prepared this evidence, did you do a site visit or visits to the island to have a look at the situation?
- A. Not specifically for this evidence but I've been to the island on a few occasions prior, one of my previous roles where I made observations around the keyhole area at that time.
- Q. And were those during the week, those visits?
- A. During the week, yes.
- Q. You haven't been on a weekend?

- A. I have been, personally I've been there on a weekend I was actually there for the last sculpture exhibition and one of the – apparently the busiest day according to the evidence, I was there –
- Q. Right.
- A. – and saw how congested that area was.
- Q. So in 18, “Any disruption to buses will disrupt the ferry timetables.” When you talk first of all about a disruption to buses, do you mean the bus not arriving on time? I'm just trying to understand what you mean by disruption to buses.
- A. Well a disruption to buses can be all sorts of things but effectively the outcome is it doesn't meet its timetable.
- Q. Right, okay. And why does that disrupt the ferry timetable? Let's say the bus arrived, there was a blockage in Oneroa village and it couldn't get through and arrived five minutes or 10 minutes late, why does that disrupt the ferry timetable?
- A. As I understand it there is a degree of communication between the bus and the ferry operator who are the same overall company and if there is a busload of passengers the ferry will wait for them on occasions.
- Q. Right, so they would be in touch and the ferry might hold off until the bus gets down there?
- A. Yes, within reason.
- Q. Now, let's talk about a disruption closer to the terminal. If a bus or buses were arriving and were blocked by double parkers at the two minute time restriction, that would have to be cleared or they'd get into the keyhole and some shuttles are occupying the space for the bus. That wouldn't disrupt the ferry timetable would it because a disruption or the delay period would be so small?
- A. I can't comment on how long the delay would be. There could be situations where that may disrupt the ferry and that would depend on how delayed the bus is from other things as well which could be a previous disruption getting away from the wharf which compounds delays going forward because obviously one bus on one bus route has

to link to the next bus route coming back so if it's late leaving one then those delays can compound.

Q. Is the bus scheduled to arrive before the ferry leaves?

A. It is.

Q. All right, what period, how long before?

A. I think it's in the order of five or 10 minutes.

Q. Right, now I put it to you on the evidence that the Court has from people who have looked potential delays that could occur to buses at the keyhole or approaching the keyhole, that margin would accommodate delays at that area.

A. That's correct assuming that that is the only delay the bus has suffered.

Q. And with the assistance of the parking warden if the bus got held up to get into the keyhole because of errant private drivers who weren't moving a decision could be made to allow the passengers to alight at that point to make the ferry couldn't you? With the help of the parking warden.

A. That technically is an illegal move so we would not support it.

Q. They have to stay on the bus?

A. Yes.

Q. Okay.

A. I'm not suggesting that in practice different things might occur.

Q. Now you've referred in your paragraph 29 to some policies and the Matiatia Gateway land unit provisions.

A. I have.

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Q. Policy one is you identify an area for safe and efficient operation of wharf-associated activities and passengers transport. At present that's the keyhole area isn't it Mr Blom?

A. It is yes.

Q. And the object of that policy is that passengers transport, if I can just focus on that, has priority over single occupancy vehicles. Now one way of interpreting that is it means a vehicle with one person in it, but I think that the commonsense approach like allowing people to alight from

busses I must say is that we're looking at that as being a private vehicle. So you would include a taxi or a shuttle in that description when you look at that?

A. I look at that, and I'm not claiming to be a planner so I'm not going to have an exact interpretation of that, but I look at that as setting a series of priorities where public passenger transport, which would be the busses, would have a higher priority over other modes, and then you would look at other passengers transport vehicles such as shuttles and potentially taxis as having a secondary priority, and then the private car having a lower priority or probably the lowest priority. And in the mix in there you have to include pedestrian and cyclists and motorcyclists as well.

Q. So I understand that your responsibility is looking after these busses and that's where you would see this, so we have a situation at the moment I suggest to you where the priority that Auckland Transport would seek to secure for public transport, and we're talking busses, obviously not trains unless Len gets a new idea. That's already been put into effect first of all by excluding non-authorized vehicles from the keyhole hasn't it? That's one way that already steps have been taken to make sure busses have priority?

A. The purpose of the restrictions in the keyhole are to give busses and the other modes identified with parking areas a priority over other vehicles.

Q. And then another way of establishing priority is making sure there's enough spaces for busses to park within the keyhole if necessary at the expense of taxis and shuttles, would you agree with that?

A. That becomes a very delicate balancing act because all of those modes provide a very important service.

Q. Well Ms Gisby told the Court that this year in the 2014 tourist season Auckland Transport have advised her and others who have vehicles that are eight seats or less that they're not going in the keyhole during the tourist season. Are you familiar with that?

- A. I heard Ms Gisby's evidence, and just for clarification as I understand it a large passengers service vehicle includes a PSV, so a P endorsed vehicle which is nine seats or greater.
- Q. But you're hear authorised as I understand it to give evidence for Auckland Transport. That's what she said in evidence. Do you have any knowledge that she's incorrect?
- A. I have no knowledge of that particular statement.
- Q. And if she is correct then again that's a step taken to reduce the amount of vehicle interaction in that keyhole I suggest to you to ensure that the busses have priority in there?
- A. I accept your assurance.
- Q. Well if we think about it the notion is we've got to take some of those types of vehicles out because we're having problems.
- A. Yes that certainly is an outcome, if there are more vehicles, if there is more demand than supply the one has to throttle back the flow.
- Q. And if because for example of increased passengers ferries, which we've heard some evidence about, more busses end up coming to the terminal, then to give that policy effect Auckland Transport will if necessary take more space in the keyhole for busses at the expense of taxis and shuttles, won't they?
- A. As I actually read the plan and if you were to overlay that on the typography of this site, it would be difficult to find another appropriate place to put busses. In terms of the only other place you could technically put a bus in the keyhole would be against the cliff, and there would not be suitable or it would be highly unsuitable to have people trying to board and alight from busses against that cliff because there's insufficient room. So whilst it would be nice to have more room for busses in there, it would be problematic achieving that.
- Q. Well I don't quite understand that Mr Blom, if you look at this plan it talks –
- A. You're referring to?
- Q. "Identifies an area saying remove bus stop."

THE COURT: JUDGE NEWHOOK

The exhibit is that on the rebuttal evidence of Mr Karndacharuk is it?

MR R BRABANT:

No it's the primary evidence Sir, it's appendix B and it's the fold-out – well I've got an A3.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Have you got it there?

A. I do yes.

Q. And on that site where you say it can't happen, this latest plan refers to having removed some bus parking.

A. Yes I'm not sure if the reason for removing that bus parking, however I still stand by my view that that would be an inappropriate or difficult place to have passengers alight or board busses due to the physical constraints with the cliff.

Q. Yes, so in red we have some signs that say "Remove bus stop", but in blue do you see the sign, the blue?

A. Yes.

Q. Which is if you look at the legend new road marking and it says, "Proposed bus parking 30 minutes maximum," and it has an arrow in one direction and then there's another arrow heading in the other direction. So –

A. Yes sir that, just to clarify, proposed bus parking is where the bus will park as opposed to where it stops to pick up and alight. So it's not a passengers manoeuvring area, it's a bus holding place, so a layover area is the word.

Q. And then would it leave that and go out and around the roundabout and come back in to pick people up?

A. I am not sure how easy it would be for a bus to make that manoeuvre that you suggest.

Q. So are you not sure really of what the purpose for that is but you say it's not for passengers to board?

- A. Bus parking is a bus layover area where busses wait. So if they have dead time in the schedule then they have to wait for the next service, and that could be waiting and doing an turning manoeuvre in the carpark or around the roundabout, or it could be waiting to go onto another service.
- Q. In 31 you say by reference to policy 4 that, "It may be necessary to relocate Ocean View Road in the future but there are no plans," and you say that, "If the marina proceeds relying on the current location of Ocean View Road to access the marina, this would make the stopping of this road very difficult." Can you go to the folio of figures please, the 2013 one?

WITNESS REFERRED TO DOCUMENTS

- Q. Can you go to figure 72.
- A. Yes. Figure 72, the aerial photograph of the ferry terminal and Ocean View Road.
- Q. Yes. So I know that you look after busses but I think you'll be able to answer this, if you can't say so, am I correct that Auckland Transport has a responsibility for what is labelled "Old Wharf"? Does it have any responsibility for that or is that another arm of Council?
- A. I believe our wharf team manage that.
- Q. And there's some evidence before the Court that refers to goods service vehicles going onto that wharf, do you recall that?
- A. I do recall that, yes.
- Q. And there's a pontoon each side isn't there, and the one on the northern side has got a refuelling facility?
- A. Yes.
- Q. Have you had a look at that?
- A. Yes.
- Q. And have you seen where the tank for that needs to be refuelled by a tanker?
- A. I haven't specifically looked at that aspect.

- Q. Do you appreciate though that in order to maintain that refuelling facility there has to be tanker access to refurbish the fuel supplies?
- A. I would imagine that's how it's done, yes.
- Q. And there's also a boat ramp over that side isn't there?
- A. There is.
- Q. But in particular I suggest to you that it is not possible to stop Ocean View Road in the way you suggest if it had the effect of closing off access to the old wharf. Do you agree with me?
- A. I think the overall aspect of stopping Ocean View Road, one of the meanings of that as I understand it can be stopping Ocean View Road to general traffic and making it a special vehicle lane such as a bus only or a transit lane or some other variant of that and that would then restrict anything other than specific classes of vehicle.
- Q. From the way your evidence is pitched though, you postulate that there could be a difficulty in stopping the road if the marina used that road for access to its parking.
- A. That's correct.
- Q. But I put it to you that the road through there is going to have to be kept open for other reasons independently of the marina, isn't it?
- A. Yes it would, however, as I said, if it was stopped for the purposes of becoming a special vehicle lane that's restricted to classes and therefore marina traffic is not a class of vehicle, it is a private motor car so it becomes problematic in providing an enforceable special vehicle lane that then would allow certain vehicles through.
- Q. But right now you'd have to allow for certain authorised vehicles because there are authorised vehicles that are going through to parking for the disabled and mooring holders aren't there?
- A. That's correct, Your Honour, however right now the operation down there as many people have said, is chaotic and not ideal so as changes were to occur one of the likely outcomes would be to restrict the number of vehicles that would get into that area.
- Q. Ms Gisby has described the reason for the chaos and it's not got anything to do with those vehicles going through has it?

- A. I think the reason for the chaos is the number of vehicles going through.
- Q. No, do you want me to read out her questions and answers again? She identifies the problem as being the difficulties with the interaction between taxis and shuttles and buses.
- A. I don't think that's inconsistent with my answer but I do accept that that's what she said.
- Q. When that activity of parking or leaving before our passengers get in or out become so busy there can be hold-ups. That's the congestion she spoke of isn't it?
- A. Yes.
- Q. And she's there regularly because she has a business being in there.
- A. Indeed.
- Q. No reference to other vehicles passing through in her evidence is there?

THE COURT: JUDGE NEWHOOK

Just pause for a moment both of you please. You're going around in circles a bit Mr Brabant and I just want to try and get some focus if you don't mind. The witness spoke of the potential, no decision taken yet, for a road to be stopped for the creation of access for particular classes of vehicles. And then you started asking him about the current chaos and putting it to him that the small number of vehicles that are required to get through for access to moorings and handicapped parking spaces, and I presume motor bikes and motor scooters as well is unlikely to be contributing to the current chaos. I want to come back to his answer about a creation of a special class of access. Mr Blom if the authority was to stop the road and create a special class of access, akin to a bus way or a bus lane as we see in Central Auckland and beyond, is there provision in the law about that to create exemptions, for instance for particular vehicles or types of vehicles, thinking about the mooring holders or the motor scooters. I imagine the motor scooters and motor bikes is reasonably easy, you just authorise them to use the bus lane. What about particular vehicles who traditionally have got through like the mooring holders. Is it possible to exempt people from those controls?

WITNESS:

As I understand it, it could be possible to do so. I'm not entirely sure on the mechanism by which we would do it. I can concede that it can be done Your Honour, but it creates a significant administrative burden – it creates an administrative burden for Auckland Transport to ensure how that is managed, going forward. But the creation of it I don't believe is impossible. But I don't know of a situation –

THE COURT: JUDGE NEWHOOK

I doubt whether an administrative burden on AT is something that's going to trouble us under Part 2 of the RMA is it?

WITNESS:

I think probably Your Honour, I'm not aware of a special vehicle lane in Auckland that has that sort of exemption at the moment.

THE COURT: JUDGE NEWHOOK

All right, well that's the practical answer but my question was more focussed on the law. In case 18 were to get to the point where it wanted to do this, make this change. So perhaps I should throw the onus on your counsel to advise the Court whether there would be the power to do this.

WITNESS:

I think that might be more suitable, I wouldn't want to inadvertently mislead the Court.

THE COURT: JUDGE NEWHOOK

Yes, well it actually becomes a legal matter I think.

MR R BRABANT:

Getting back, perhaps to the practical and something within your field of –

THE COURT: JUDGE NEWHOOK

Just let me finish Mr Brabant, Ms McIndoe would you undertake that research please and advise the Court about it?

MS MCINDOE:

Yes, just to be clear I understand your question, it was about restricting or allowing exemptions for classes of vehicles such as motorcycles and things –

THE COURT: JUDGE NEWHOOK

If the road is stopped and then created –

MS MCINDOE:

Special lanes.

THE COURT: JUDGE NEWHOOK

– a special lane category. Is it legally permissible to create exemptions. I think we know that it's permissible to create, you just authorise motorbikes to go through there and cycles as we see on the bus lane on Quay Street.

MS MCINDOE:

Yes, that's probably the easy one.

THE COURT: JUDGE NEWHOOK

But I think my question is to whether it is permissible for a much smaller class of vehicles or even for individual vehicles to be authorised. No doubt emergency vehicles are authorised but this is perhaps a different point again. Because I think this might help to provide us with the answer to whether or not realistically AT could actually do this change if there are rights held by other people. Equally it may be within AT's powers to just exclude the mooring holders and the motorbikes and work with the Council to make arrangements to put them somewhere else. Who knows? They may not have an indelible right, (I don't think that's the right adjective) an inalienable right to get to where they presently get to.

MS MCINDOE:

I will undertake that research. My initial thoughts on the matter are, based on other work I've done elsewhere in the country, that if a restriction on lane access is not enforceable then it's legality can be questioned and partly the reasonableness of that enforcement relates to how well you can tell who's using it and how well they're authorised, whether they're authorised to be there or not. For example I've been involved where vehicles have used bus lanes to access private properties, driveways, and whether that bus lane can be maintained given the use of it for private property access.

THE COURT: JUDGE NEWHOOK

There may be an analogy open to you there, I don't know.

MS MCINDOE:

But I'll see what I can find out.

THE COURT: JUDGE NEWHOOK

Sorry to interrupt Mr Brabant but I just wanted to try and focus.

MR R BRABANT:

That's fine Sir, that's helpful.

WITNESS:

Sorry Your Honour, just to possibly give some assistance with that, there's discussion at the moment I know from a political level as to whether or not power company maintenance vehicles in a storm, as we had recently, are able to use bus lanes and I know that discussion is ongoing and I'm not sure what the resolution is but that might be a useful place to start that search.

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THE COURT: JUDGE NEWHOOK

It might be an analogy. One of my colleagues has placed an analogist question before me that you and/or Ms McIndoe might like to answer and I'm sorry I'm interrupting further Mr Brabant. We're just trying to sort of drill down

here. Commissioner Leijnen asks whether it might not be possible just to stop the road and for the council to own it and to control it as owner and fee simple and ordain who can come into it and who can't like , its' probably again more for you Ms McIndoe than for Mr Blom.

MS MCINDOE:

Yes, I can address that. There is a procedure for road stopping, in fact I think appeals for road stopping come before the Environment Court but I can address that.

MR R BRABANT:

I think that's what would happen.

MS MCINDOE:

Yes, well that's the concern anyway.

THE COURT: JUDGE NEWHOOK

Well we hear about road stops from time to time. They're usually quite small cases with small numbers of parties and hugely contentious, so there's another question for you Ms McIndoe.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So just getting to the practicalities and relevant to buses which is your area of involvement, an example maybe is the bus lane on Onewa Road on the North Shore. Now that has a provision and I don't think it's unusual where cars with three occupants can travel down that bus lane, you know what I mean?

A. I'm very familiar with that, I travel on it regularly.

Q. So these arrangements can be made can't they by the looks of it?

A. That as I understand it becomes a class of vehicle.

Q. But they're private vehicles?

A. Yes.

Q. So in paragraph 39 you assert that, "Other activities that would require general traffic to pass through the keyhole area or access to the area

would make a bus only restriction difficult to operate and potentially impossible to enforce.” Now, what is the evidence for that in relation to traffic that merely passes through and doesn’t stop there? What’s the evidence that supports that proposition?

- A. The, and I think I need to go back on my experience in managing public transport infrastructure. When you, as an example I think, when you have one vehicle say a car that for whatever reason chooses to drive on a bus lane or in particular as I’ve experienced on the and Northern Busway which is a very restricted area. For whatever reason you tend to get a whole lot of what we call sheep following it so one vehicle will turn up out of the blue and you’ll have four or five in its tail and if people stop and ask they go, “Oh, he was there so I thought I was allowed to.” So if we have an example like marina traffic being able to travel through driving their private car, the person behind them in a private car does not necessarily know that that individual has permission or authority to do so and by inference thinks that it’s okay for them to follow and they would not necessarily know that it’s wrong and then you end up with an equitable situation where somebody thought, “I thought it was okay,” and our experience in the Courts with parking and bus lane and transit lane cases is that typically those cases are harder to prosecute when there are uncertainties such as that in play.
- Q. Well if someone goes on the Northern Busway in the way you described they are expecting to be able to arrive at their chosen destination further down the motorway presumably quicker or more conveniently, that would be the reason they’d go in there?
- A. That’s the reason some do. Unfortunately, and I’ve been involved with talking to quite a number of people who have been on there, there is a lot of very inadvertent access on there, “I just got it wrong,” and it’s people that you actually do believe rather than people who are typically honing down.

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- Q. But here, this is a small 55 park facility dedicated with barrier arms so it’s not the analogy is it that you suggest?

- A. I think in that analogy, Your Honour, one probably has to look at where the decision is made to enter the keyhole, and that is effectively back at the roundabout or at the speed hump, at the jutterbar. And a person travelling in there is probably unlikely to have visibility especially on a busy time through to know that there is a marina carpark or a barrier arm, whatever distance ahead, that's 70, 80, 90, 100 metres ahead. So they're unlikely to see that, so I don't think that the fact that there's a marina carpark or a barrier is going to be part of their decision.
- Q. But Mr Blom, this is the end of the road. So following someone through to arrive at the end of the road isn't the same as someone going on a bus way that has another exit further down. This is the end of the road.
- A. That is the end of the road, I'd agree.
- Q. And then also there's a restriction isn't there, which is in place at the moment, so the marina people wouldn't be going through there like the tanker driver to refuel without permit authorisation. There's a permit system. And so unauthorised vehicles are stopped at the entry to the keyhole.
- A. They'll be stopped if there is a mechanism to stop them such as the parking officer.
- Q. No, they read the sign.
- A. I think I've –
- Q. Are you suggesting people don't obey signs?
- A. I think Your Honour some of the evidence shown is that there are a large number of vehicles that don't obey that sign at the moment, which is one of the reasons why the parking officer has such a difficult job there, and even in Mr Apeldoorn's survey he noted that one of the holdups was because of the parking officer having to stop a vehicle trying to go through the area. So it does happen.
- Q. But if they do get in there inadvertently they drive around the keyhole and out again, don't they?
- A. They do.

Q. Well, one would hope they do. And there are mooring owners at the moment who go down there through there, aren't there, and go out to their moorings, and they park or they drop stuff off?

A. Yes I understand there's –

Q. And is there any evidence that you can point to that they get followed by a (inaudible 10:22:44) as you put it?

A. I haven't observed that but in my times there and I think other witnesses recently also, Mr Shumane was asked the question yesterday and he has spent a lot more time there observing that. He did not observe anyone going through to those mooring carparks, so from that I can only conclude that they are used infrequently.

Q. In paragraph 40 you provide the Court with an opinion, in the sentence starting, "While busses arrive at the wharf, outside of ferry arrival and departure times the combination of public transport ferry-related traffic and private marina traffic all in the ferry terminal area at the same time will impact upon the experience for public transport users, pedestrians and cyclists." What expertise are you relying on to give that opinion?

A. I think I'm calling on my years of experience managing public transport facilities.

Q. So you are wishing to qualify yourself as an expert in that regard, are you?

A. I have nine years experience managing some complex public transport facilities so that gives me a degree of expertise, yes.

Q. So are you aware that when you give advice as an expert to the Court, it's expected that there is some data, disclosed data or information that you are relying on to form that opinion and provide it, are you aware of that?

A. I'm aware that an expert does have to have data to –

Q. Can you turn up Mr Apeldoorn's rebuttal evidence please?

WITNESS REFERRED TO REBUTTAL EVIDENCE

Q. It's in volume 1 of the WML evidence, tab 1.1(a).

THE COURT: JUDGE NEWHOOK

Mr R Brabant, if we need t we'll come back to the duties of an expert, I'm not sure that you've explained it in enough detail, but carry on with your question about Mr Apeldoorn's evidence.

No, I'll finish what I had in mind so that everybody is aware, yes there is generally an expectation that an expert will provide data where data is available, but this witness having quite openly conceded that he did not set out to qualify himself as an expert, so we place information that he brings us the appropriate amount of weight, nevertheless said to you that that sentence that you drew to his attention was borne of his experience managing transport infrastructure for nine years. Now, there is no prohibition in the Court's practice note on expert witnesses or to the extent that he might be regarded as a quasi-expert witness or whatever, bringing experience of operating things within their field to the Court. So you put the full-stop way too early on that sentence that you put to him.

MR R BRABANT:

Well I've accepted that his answer is that he's thought to be as experienced managing bus services. So if we look at Mr –

WITNESS:

Sorry if I could just clarify, my thought to be my experience in managing bus infrastructure.

THE COURT: JUDGE NEWHOOK

Bus infrastructure, yes, did I say transport infrastructure? It's pretty much the same thing?

WITNESS:

Yes, thank you Your Honour.

THE COURT: JUDGE NEWHOOK

Or one is a part of the other.

WITNESS:

One is certainly a part of the other.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Now if we start with his paragraph 8 – can I just ask because it'll speed things up Mr Blom, do you recall reading this evidence?

A. I do.

Q. So this is just by way of a reminder, so paragraph 8 tells us what Mr Apeldoorn did in the way of collecting information, and then he's got a heading "Measuring effects on public transport", and in the succeeding paragraphs starting with 11, he then carries out an analysis based on the information doesn't he?

A. He does.

Q. And moving on to 14 he looks at delay effects due to parking and unparking in the keyhole, do you agree?

A. Yes does yes.

Q. And then in 15 he makes some practical assessments and summarises them before he reaches 16, which is an opinion isn't it about frequency of an effect and, secondly, and opinion about expected duration of effect, do you see that?

A. I do see that.

Q. Now, you've given an opinion that's contrary to Mr Apeldoorn's and my question is what data or information have you relied on to arrive at that opinion?

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A. One of the concerns, and I think Mr Karndacharuk will be able to expand on that in his evidence, is the way that Mr Apeldoorn's surveys were carried out. And whilst they did a lot of measurements, they effectively drove as I understand it vehicles through the keyhole area repeatedly. In effect though at any one time, as I read their methodology, they only ever had one vehicle in the keyhole at any one time. So they were carefully metered through there. My experience with how vehicles

arrive is they typically won't arrive in even spread out units, they will typically, due to traffic conditions well outside that area will bunch and you will potentially end up with multiple vehicles at any one time. And so Mr Apeldoorn's results from what I can read do not relate to multiple vehicles in the keyhole, they relate to only one vehicle in the keyhole at any one time. So my experience, and I might Your Honour if I can illustrate an example of that, and unfortunately I will go back to busses, we have a bus service running in the city, it's called the City Link, it runs every seven and a half minutes. Auckland Transport and the bus operator have put in a massive amount of time and effort in schedules, timetables, communication between bus drivers, bus priorities, traffic light signal pre-emption for buses to try and ensure that that seven and a half minute headway is maintained. Now with all of that effort we still find from time to time that you get two and even occasionally unfortunately three of those buses turning up at once. Now the marina traffic, the individuals driving are unlikely to have much communication or pre-planning in terms of when they are going to arrive or not and so potentially they will be looking for the same tide or whatever it is, the right wind or whatever it is the boaties do look for but with all the other traffic conditions that occur you are more likely to see bunching of vehicles turning up so therefore my concern about the surveys is that it is not necessarily providing as realistic an outcome as we would find in reality.

Q. Can you answer my question please?

A. Could you repeat the question then if I haven't answered that question?

Q. I showed you how Mr Apeldoorn had set out the date that he collected and then he did an analysis of it and came to a conclusion and my question was, in relation to the opinion that you provided in your evidence, what data, surveys or other information do you rely on to arrive at your opinion? I didn't ask you about whether Mr Apeldoorn was right or not, what did you rely on?

THE COURT: JUDGE NEWHOOK

Well Mr Brabant to be fair to the witness, what he did was whether by implication he consented that he didn't bring data or not in that answer, he had prior to that indicated that he didn't bring particular data. He was relying on his experience and his answer to the first part, quite a long answer. He then offered a criticism of the methodology of the survey. That was his answer. We know that he doesn't bring his own survey, his own data, we know that. Unless he's about to tell us that he did but I don't think he is.

WITNESS:

I do not, yes.

THE COURT: JUDGE NEWHOOK

He criticized the methodology of the survey and he also said that the next witness might be able to elaborate.

MR R BRABANT:

Well that may be so Sir but if, of course, Mr Apeldoorn's evidence wasn't available to him when he wrote his material.

THE COURT: JUDGE NEWHOOK

Mr Brabant just simply, we got the answer to your question, he's not bringing survey data himself, we know that.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So are you saying that there were no instances where actually during the course of the survey Mr Apeldoorn and for that matter Mr Mitchell didn't observe some marina vehicles arriving bunched?

A. I haven't said that at all.

Q. Because that was the case wasn't it during the survey from time to time?

A. I'm not aware of that.

Q. So if we look at paragraph 15(f).

A. Of?

Q. Mr Apeldoorn's evidence I just referred you to?

A. His rebuttal evidence?

Q. Yes, the one I just referred you to.

A. Thank you, I just clarify.

THE COURT: JUDGE NEWHOOK

While it's in my mind I'm going to exert because I think it's most unfortunate in the way that we transact our business that this line of questioning is emerging before Mr Mitchell has given his evidence. Mr Mitchell has been with us this morning, for various reasons he wasn't able to be here yesterday. He is now here, I have it in mind that he is going to be required to give evidence before Mr Karndacharuk.

MR R BRABANT:

I understood that was going to happen Sir.

THE COURT: JUDGE NEWHOOK

Well I'm just reinforcing that. I wasn't aware that you were going to get into this level of detail with this witness Mr Brabant but you have but in the presence of Mr Mitchell so things are getting really out of whack because of the unusual situation that we found ourselves in with Mr Mitchell so he is going to be required for questioning before Mr Karndacharuk gives evidence.

MR R BRABANT:

Yes I understood that and that's why I asked him to be here Sir.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So 15(f) and 19(a) actually address traffic bunching don't they?

A. They do yes.

1035

Q. Item 45, the permit scheme.

A. Sorry item 45 in?

- Q. In your evidence, sorry. The permit scheme. This is putting a scheme in place so there's authorisation like the mooring holders have at the moment. You'd have a reasonable expectation that if there are management costs to establish and administer that permit scheme that you could look to the marina owner and management to cover those costs off.
- A. I understand that costs can be –
- Q. Yes, it seems reasonable doesn't it?
- A. Can be negotiated or rewarded for items.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

- Q. Just putting the marina proposal to one side, it seems that the activity in the keyhole and in the roundabout is what you might call close to saturation now. Would you agree with that?
- A. I certainly would Sir.
- Q. And we heard that, I think the passenger numbers were something like 1.8 million passengers a year and growing.
- A. I believe that's correct, yes, although I'm not sure that includes tourist numbers in terms of charter vessels coming in.
- Q. Well that would be addition to that presumably.
- A. Yes.
- Q. And I've noticed since being up here for this case that Auckland City promote Waiheke as a significant tourist destination.
- A. Yes they do.
- Q. So that's likely to grow as well is it?
- A. I think that is their expectation, yes.
- Q. And what are the sort of typical rates of growth?
- A. Sorry Sir I don't have those figures and I'm sure I could find them if the Court needs them but it would take –
- Q. Well, do you have an order of magnitude understanding? Is it 2% or 5% or something per year?

- A. I have an understanding of the overall ferry numbers for the region but that's tainted by multiple other ferry trips, some of which aren't doing as well as the Waiheke service, so no I can't answer that question Sir.
- Q. Well, if I assume it's 2% a year which is probably pretty low and you run on a, local bodies seem to run on a 10 year plan, in the next planning period there's at least 20% increase predicted?
- A. Yes.
- Q. And that's probably a minimum.
- A. I think that would be a reasonable assumption to make.
- Q. What sort of conditions is that going to lead to? Ignoring the marina issue, what sort of conditions is that going to lead to at this location?
- A. I would imagine that that would get to the point where the saturation that you described before would probably be super saturation and therefore I mean it would be unsustainable to keep that growth with the existing layout so my understanding would be at some point there would need to be a modification or improvement or a complete change to the entire keyhole parking area. I know there are discussions between various Council bodies on options and preliminary ideas and things like that but there are – I'm probably pre-empting another question as I have not been made aware of any firm plans to do anything and certainly haven't been able to identify any budget to do anything physical to make any changes as yet.
- Q. I wasn't really going to ask about whether there were plans or budgets, I was going to ask about whose job that would be. Is it the Council, is it Auckland Transport, who bears the responsibility of providing this infrastructure for that demand?
- A. That I think is an interesting question. I was going to say I'm pleased you asked me that question so I could think, but my understanding is that it's a multi-agency group that needs to address that so there will be parts of Council and parts of transport and potentially ATEED, the tourism part and others who would have a significant interest in that.
- Q. Who would stump up with the money?
- A. Ultimately Council would.

Q. Just looking at the physical nature of the site and the possible solution to this super saturation, have you any thoughts on that?

A. Putting my bus operator's hat on, a simple solution would be having more buses and less cars and having everybody using the bus. But that balance would need to change and certainly Auckland Transport have requirements under our statement of intent with Council and other documents to significantly grow public passenger transport across the region and Waiheke is part of the region, it's certainly not exempt from that. So we, at Auckland Transport, need to be looking at how we can shift the balance from cars that need to be parked into buses that can be used and that would alleviate a number of the problems. It would create its own problems in terms of where to put the buses but it's easier to park one bus than it is to park 50 cars.

Q. But the demand that you're trying to satisfy is more than just bus demand isn't it?

A. Oh most definitely Sir. There's demand from taxis and shuttles and motorcycles and pedestrians and every other mode as well and they all need to be in that mix at some – it's a very complex solution to a very tight problem.

Q. And you would need a bit of area or several floors, either way, to accommodate all of that presumably.

A. Personally I would hope that we wouldn't need several floors to accommodate that, I'm not sure, I'm not a landscape expert but I'm not sure that would fit in the environment.

Q. But it's square metres you're after.

A. I think if we are able to do a significant mode shift from private vehicle into public bus then the square metres that are needed overall could potentially be argued as being less.

Q. Just introducing the marina into that mix, and correct me if my understanding is wrong, but as I understand it the marina demand is not for a parking demand in that area but a flow demand in that area.

A. That's correct, that's my understanding. There are a couple of situations where there is overflow parking demand and the experts have

agreed that that can be accommodated in the existing carpark at the appropriate times.

1045

Q. Yes, no, but introducing the proposal with a marina carpark through the keyhole loads the flow through the keyhole –

A. Yes it does.

Q. – but doesn't affect the parking in the keyhole.

A. Oh that's correct, yes.

Q. And as I understand the evidence, the effect on traffic flow in the keyhole is quite small? It's under 10% anyway, in terms of delay or time of travel.

A. The potential for delay has been well surveyed by Mr Apeldoorn, and I have qualified by concerns with how that was done. However there is one example, and I did have a flag somewhere and I'm struggling to find the right flag, where there typical flow through the keyhole I think is 20 seconds. And due to a delay that changed to 90 seconds. Now whilst the averages are down at seven or eight seconds I think for delay, a 90 travel time compared to a 20 second travel time I think you could argue is quite a large difference. And so –

Q. You're saying that was caused by the increased flow due to marina traffic?

A. I think it was caused by something else, but the impact was that that keyhole area had, it took 70 seconds, over a minute longer to get through that very short piece of road, so to me that says that that keyhole area at that point in time was heavily congested, to go from 20 seconds to 90 seconds. And that I think talks to the fragility or the lack of resilience in that area. So applying additional flow through a very fragile area, and I'll probably be argued that I'm trying to be an expert by saying that, I'll use that term carefully, but I think it is fragile. Effectively you're at a tipping point, and so putting too much more in can tip the balance quite – could tip the balance quite badly. And I think Auckland Transport's concern is that if that balance is tripped, we need to have appropriate tools to be able to rectify it. And if the marina traffic causes

or is part of that tripping, then through this process all we can hope to do is impose controls on the marina traffic to enable us to get back to a steady if not fragile state.

Q. Just a final point of interest is the philosophy that you hold about the purpose of infrastructure, should we constrain development because infrastructure is insufficient or should we view it as saying that the necessary development ought to be followed by appropriate infrastructure as servicing the demands made on it? Do you have a view on that in a philosophical sort of way?

A. I need to be careful not to be writing Auckland Transport's policy here. My view, and I will state this as my personal view which I think is backed up to a degree with Auckland Transport, however is that if there is development it needs to occur in an area where there is appropriate infrastructure. And if you need more infrastructure and improvement to that, then you need to look at the mechanisms of how to improve it. However as a responsible holder of the public purse, I don't think it's reasonable to expect Auckland Transport to do what would be a significantly expensive upgrade there for the purposes to suit a private development. Having said all of that, my view is that it makes more sense to use existing infrastructure to the best of its ability to allow development if it were appropriate, and I'm not going to predict the Court's outcome on that, but if the infrastructure is there you should use what is there to service development where at all possible. So my view is not that development shouldn't happen, but it should happen with the right control so as not to damage or constrain the infrastructure that exists. I hope that answers –

Q. Well it sort of went around the buoy a wee bit.

A. Apologies for that.

Q. Because in my mind a case that I've been involved in in the Auckland region some while ago was the, I think it was the Pak'nSave in Wairau Road, which was set to overload Tristram Ave intersection, and put in broadly speaking the development was obviously desirable so the intersection had to cope with it or be made to cope with it, whatever was

required. So it's a chicken and egg kind of – that was the purpose of my question as to see –

- A. I think however that particular thing there was a lot of commercial interest in whether it went ahead or not that may or may not have pushed the limits of what was there.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- Q. There are two or three prefaces to my first question, I note that you're not approaching your task today claiming to be an independent expert witness albeit that however Mr Brabant in particular has tested you on some matters in that area and that's his right, but we see it all against the backdrop of your express approach to your task. Now I note also that you in telling us of your qualifications and experience in your work, saying that you're a traffic or transport infrastructure expert – or not expert but – well yes in a sense, and also that you hold a Bachelor of Engineering degree.

- A. Yes.

- Q. Looking at a couple of the paragraphs of your evidence, starting with paragraph 34, you say, "It is important to protect the existing Wharf as a strategic piece of transport infrastructure. If new activities surrounding the Wharf constrain its operation and future growth, a new Wharf and ferry terminal may be required. This would be a much less efficient use of resources." I take it that when you say that a new wharf and ferry terminal might be required, you're meaning completely new terminal at another part of the island potentially?

- A. Potentially yes. But I think that was a reference, and I can't recall exactly where there was one of the options that was suggested somewhere that a remedy to the problem might be for a new wharf to need to be built somewhere.

1055

- Q. Yes and you've gone on to say that, "the cost of building a second wharf in a less convenient location but also because of efficiencies and bus networks." So I think that probably explains the first part of the

paragraph. In your paragraph 31 you discuss the possible need to relocate Ocean View Road although there are no current plans to do this,” and you made that very clear including in an answer that you gave to Mr Casey. But you say, “Nonetheless, if the Marina proceeds and relies on the current location of Ocean View Road to access the Marina, this would make the stopping of this road very difficult. Private vehicle use of the Ferry Terminal Area will constrain AT’s ability to achieve the best outcomes for public transport, pedestrians and cyclists in this area.” Now acknowledging that AT has currently no plans and no budget to do anything in particular but choosing a different possible scenario to that placed before you by Mr Casey and perhaps drawing on your experience of the creation of transport terminals and perhaps an understanding that terminals are established, they can change they can grow whether they are bus or airport or wharf facilities, if there were to be a continuing increase in passengers numbers through this ferry terminal in coming years and I’ll come back to whether we can get some historical figures and some projections and any planning at the moment, if there were to be, just assuming for the moment, there might be increase in passenger numbers through this terminal to the point where Auckland Transport and Auckland Council were forced to deal with the saturation situation as you describe it around the keyhole and Ocean View Road and perhaps addressing your concern that to allow private vehicle use of the area might provide some constraints. Might the following scenario be just a possibility, just one of perhaps of many options that recognising that it’s been said in evidence that it would be extremely expensive to burrow back into the cliff or remove the cliff and the greenery that’s hanging off and around it. Might a possible scenario be that the – one might proceed to demolish the eastern end of the ferry terminal buildings and expand the keyhole facilities out there and then replace the lost terminal facilities say northwards in the direction of the current parking for motor scooters and motorcycles, dinghy lockers and dinghy stands. Might that just be one possible approach to it of maybe many that could crop up during an assessment of plans?

- A. I would imagine that would be one of the options looking up, there are probably many options that could be considered and potentially one of the options is actually putting buses into the carpark area as opposed to having to have them outside the wharf area and that may be –
- Q. Yes.
- A. – an easier or resilient option.
- Q. Yes.
- A. But certainly reclaiming that eastern end of the wharf is a possibility.
- Q. Okay that's probably about as far as I can take that matter with you in the absence of plans and budgets on the part of Auckland Transport and Auckland Council. Now you may or may not be able to answer the following question if you can't then Auckland Council or Auckland Transport through counsel or another witness might be able to provide answers. Can we find in evidence that's before us, and remembering because of the enormous volume of material so it might be, figures that tell us the increases year by year over say the last decade of passenger numbers across the wharf in Matiatia? There's been mention of figures I'm not sure whether we've actually had the detail of it year by year and if we don't have it in evidence already, is such information within your control as part of your job of planning transport infrastructure at Matiatia?
- A. I certainly work closely with people who would have that information however given the ferry service run by Fullers is an exempt service under the Regional Land Transport Plan, there is a high degree of confidentiality in terms of them providing us those figures so whether I'm allowed to give them out or not is a question that would need to probably be discussed carefully.
- Q. There might be ways and means for us as a Court to obtain the information and in a confidential way.
- A. Yes.
- Q. My second question is about forecasting, do you have access to forecasting figures within Auckland Transport's records or from council's

records, Fullers or anybody else that assist you in your planning for infrastructure at Matiatia?

A. Once again I know the right people to ask for those figures.

Q. Yes.

A. So I should be able to get them.

Q. I know they the sort of thing that might be found in a 10 year plan or might they be buried in some other plan amongst a myriad of plans that local authorities and other agencies create these days?

A. I fear the latter scenario was more likely.

Q. Yes, I thought you'd say that. With McIndoe and Mr Allan, you've heard my last couple of questions, one about historical information and one about forward information, I'd like you to turn your minds please to whether such information unless you can identify it already in the evidence and it sounds like you may not.

MS MCINDOE:

I haven't seen in the evidence and I'm aware.

THE COURT: JUDGE NEWHOOK

Can be brought to us because a lot of evidence that's come to us has been built on certain assumptions, one that there has been significant growth in passenger numbers across that wharf in recently; secondly, that there's some kind of saturation or chaos or whatever going on in the rating system immediately adjacent to the terminal; and thirdly, I think there would've been some assumptions made by some witnesses that this growth will just continue but I'm not sure we've got sufficient, clear answers about any of those, well we've heard a lot about the current alleged saturation situation but it's the historical growth and projections for growth that could impact on the future saturation or chaos or resolution of it and is to whether consented marina here might in some way impede dealing with its factors is what I'm interested in so if you could put your heads together –

MS MCINDOE:

We can do our best to find any information to do with

MR ALLAN:

Yes, I can make some inquiries. I suspect that Auckland Transport may be more likely to hold some of that data, the only information that I'm aware of in the evidence that I'm aware of in the evidence, I know Mr Shumane talks about briefly about growth and the number of residents on the island, that's a different point entirely.

THE COURT: JUDGE NEWHOOK

It's a different point but it's not irrelevant.

MR ALLAN:

No it's not irrelevant but there is some evidence there concerning that which I can probably direct you to if that's of interest.

THE COURT: JUDGE NEWHOOK

Yes I actually had a note about that aspect too and I'd be pleased if you would follow that up and see whether that information should be brought to us. It might be that these pieces of information should be brought to us via a witness who can then be tested on them.

MR ALLAN:

So Mr Shumane has some basic details based on the GHD report it's at paragraph 91 of his evidence-in-chief and then on from there there's a little bit of evidence about that but there may be superior data out there, he's found some information which he's included in paragraph 91 onwards which deals with the period between 1996 and 2007, a growth of 6300 population to 7900 in that time. He's extrapolated that out to 2020 11,800. Then he's referred to the 2013 National Census Data with a population figure of 8344 so not less than GHD's predicted growth but still represents a positive growth he notes. So there is some discussion there about that. There may be better data than that, I'll make some enquiries again.

1105

THE COURT: JUDGE NEWHOOK

I wonder if you would do that and then because it just occurs to me as we're working this through that there may be two times that we're considering the population growth impact is likely to be of more relevance to week day commuter transport than other times. And the other feature of sheer numbers through the terminal at non-commuter times, for instance at high holidays and weekends and festivals and so on during the summer, might be a separate question but at the end of the day it may be relevant to focus on those two pieces of information amalgamated, brought together.

MR ALLAN:

The Matiatia ferry through input, historical and future and residential growth and forecast growth.

THE COURT: JUDGE NEWHOOK

Ms McIndoe, Mr Blom has mentioned that there may be sensitivity in getting information from the best source, which is the existing ferry company, Fullers.

MS MCINDOE:

I understand that that information –

THE COURT: JUDGE NEWHOOK

We did strike some issues of sensitivity with Fullers' information before.

MS MCINDOE:

With other ferry information, yes. I understand some of it was given on a confidential basis to the applicant and that helped them decide which days to choose to run their simulations on. But whether they are able to then pass that information on will be for them to determine. If there are issues of confidentiality I could make an application for the Court to treat it in a confidential manner.

THE COURT: JUDGE NEWHOOK

Yes, we'd prefer not to have to go to the lengths of issuing a subpoena to somebody from Fullers to bring the information, we would hope that it might come voluntarily, at least as to the historical growth pattern. The first of my two questions.

MS MCINDOE:

Well I'll see what I can do, of course I have a lot less influence with Fullers, I'm not their solicitor, but I will make the request and I understand they have been working with applicant so they may have, they're quite willing to provide that evidence. I'll see what I can do.

THE COURT: JUDGE NEWHOOK

Well the applicant might make it for you, or you might jointly approach them and see whether any assistance can be gained.

MS MCINDOE:

I'll do my best.

THE COURT: JUDGE NEWHOOK

Now as to forecasts, they may have some information but I suspect that it might be more important for us to be focussing on forecasting by Auckland Transport and/or Auckland Council and likely volumes of business through that ferry terminal. I'll throw out the questions as whether it's in the 10 year plan or somewhere else, Mr Brabant?

MS MCINDOE:

And that information, would you prefer that that information came by way of a statement of evidence and the witness could be tested on it or...? Rather than an affidavit.

THE COURT: JUDGE NEWHOOK

I think that should be the way I would. And I'll hear from the other counsel in the front row. Mr Brabant first.

MR R BRABANT:

Just to be helpful Sir, there is information of a profile for January in Mr Apeldoorn's primary evidence. And he does recount obtaining the information in order to create those profiles. But that Fullers asked that the information remain confidential. More useful Sir is Mr Wardale informs me, and he's got knowledge in these areas, that a) Auckland Transport receives a levy on the basis of each passenger that crosses the wharf. So I think that, as far as he knows Sir there is a way in which Auckland Transport can ascertain information.

MR WARDALE:

That Sir is correct, however that is given confidential to Auckland Transport and that's where the issue would arise.

THE COURT: JUDGE NEWHOOK

Thanks for that information Mr Wardale, that might help us put the pieces into the jig-saw for now but I think there's some detailed work to be done. So the applicant may well be able to help to persuade Fullers to co-operate with this.

1110

MR R BRABANT:

The other thing is Sir that in terms of projections, and this may not be up to date now but when I was doing the Bayswater application some years ago to develop apartments a key part of that was the strategy for ferries and the ability to use the potential for Bayswater terminal to provide, obviously, public transport across the harbour for the people who had lived there and at that stage Sir I remember Mr Wardale had an involvement in that, he may remember better than me. There was, and I was working with Craig Shearer and we were looking at a ferry strategy, I mean there was various strategies in place for different types of transport.

THE COURT: JUDGE NEWHOOK

All these plans as Mr Blom and I have just exchanged.

MR R BRABANT:

I do recall that there was definitely a kind of a forward planning strategy for ferries, Bayswater, Waiheke, all the others and I would have thought that would be a reasonable starting point and to see whether there's a more recent version than the one I remember we were dealing with at the time.

THE COURT: JUDGE NEWHOOK

Well Mr Blom, I kind of would have imagined that you might be a person who would have knowledge about that kind of forward planning or have an ability to get hold of it.

WITNESS:

I certainly will, should be able to get hold of that Your Honour. I'll attempt to do that this afternoon.

THE COURT: JUDGE NEWHOOK

Thank you all for that, Mr Casey did you have any thoughts on this?

MR CASEY:

I just wanted to remind the Court that some of the DMI witnesses have actually sought to address this, like Ms McCann in particular who does provide as much accuracy in the information that she can, given the constraints on what information that is able to be provided by Fullers and –

THE COURT: JUDGE NEWHOOK

Do I take it that you express an interest in knowing about this some more too?

MR CASEY:

Oh very much, but I'd like the Court not to overlook that there actually is some source information that provides some assistance and both she and I think Mr Greenaway, who we're yet to hear from, refer to a study that was done in 2010 by someone I think called Baragwanath. That's more about tourist numbers.

THE COURT: JUDGE NEWHOOK

I'm sorry that's under Mr Greenaway and Ms?

MR CASEY:

McCann. So there is some evidence already Sir but I'm very much in favour of getting it from the horse's mouth if it can be.

THE COURT: JUDGE NEWHOOK

Well that's the best source usually, we hope.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. Mr Blom, if you wouldn't mind turning to figure 24 in the 2013 plan set.
- A. Figure 24, yes.
- Q. And it's got the parking areas shown there. Is that area C and D is that under the control of Auckland Transport or Auckland Council? The public parking that's shown on this.
- A. As I understand it, Auckland Transport administer and enforce those areas.
- Q. Then if you wouldn't mind turning to figure 79. This is the Matiatia Gateway land unit map and it sets out the transport area in a hatched area which seems to include the roadway and when I look at the aerial photograph it seems to come down over where the boat ramp is and part of perhaps the parking area for the boat ramp, I'm not sure how far that line comes to. Would you know where that might come to?
- A. I'm not familiar, I'm sorry.

THE COURT: JUDGE NEWHOOK

You've got some cadastral information on figure 24 and on figure 79, so you should be able to relate to it.

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER LEIJNEN

- Q. So it would be fair to say that the constraint, the area available to Auckland Transport in terms of the land unit, the expectation in terms of the transport area is that piece that's hatched. It seems to include a

little bit more than the current roadway at present. I'm really thinking about the discussion you were having with Mr Brabant about that policy 1 and the reference to closing the roadway and the future planning of the area. And I would have thought that this particular land use map is setting some of the thoughts around that, would you agree? It's a District Plan map.

A. I imagine it certainly will form that, I'm not going to suggest for a second I'm familiar with this plan or the implications of it.

Q. You haven't seen this map before, the District Plan map before?

A. I've flicked through the drawings but I didn't put any particular significance on that particular plan.

Q. One of the things I notice on that is that it's carried the activity area descriptions over the road. It seems to include the road and land within the activity areas.

A. You mean the mixed use area?

Q. Yes it does, sorry with the transport area as well, it seems to include part road, part land. Free hold land.

A. I think that area to, I imagine it's the north, that triangle shaped area is area F referred to in figure 24.

Q. So in terms of future planning and looking at what is anticipated by this map from the plan, the District Plan, would you agree that the transport area seems to be confined by that hatched diagram.

A. It seems very confined according to that, yes.

Q. I wanted to explore the nature of vehicles that have to get through to the end of the road currently. If you were to think about options for future development and Mr Brabant raised the issue of a fuel berth and needing to fill that. We've heard from one of the lay witnesses that she provides a courier service which meets the ferry, so there's some cargo service vehicles.

A. Yes.

Q. One assumes there'd be some servicing of the little restaurant or whatever is on the wharf itself.

A. Yes.

Q. In terms of the parking of the motorbikes and the cyclists, is there a necessity for that to be at the wharf?

A. There's certainly a convenience for those users for it to be there, however if you look at the size of a carpark and somebody who turns up late in the day and has to go to the very back of the carpark and has a long walk in, one might argue that, why would the motorcyclists have better parking than a car. There's arguments that they should because they take up less road space and are less polluting and all the rest of that so they should get some advantage but there's not overall need. Auckland Transport certainly for cyclists has a, well I'm not sure it's a policy but certainly an expectation and in the latest designs for major transport infrastructure includes cycle parking as close as possible to the transfer of the main transfer point, so certainly having cyclists in there is, it's something that's consistent with what Auckland Transport's trying to achieve for those users.

Q. But they've got legs, they can walk like the car drivers really is, is really what you're saying.

A. One could argue that they're probably a little bit fitter than some of the car drivers.

Q. The motorcycle drivers I'm thinking of.

A. Oh yes.

Q. Because there's some cyclists that take their, I noticed they take their bikes on the ferry and they use them at the other end and vice versa.

A. Yes.

1120

Q. So then the other thing down there is the boat ramp and we were told in evidence that that's not used really as a boat ramp, it's just used more to launch the dinghies that are in the locker there, it's very steep, it's not very practical as a trailer boat ramp.

A. That's what I understand, yes.

Q. So we're left with the operation of the moorings and the dingy, the use of the dinghies.

A. Yes.

- Q. Do you think it's critical that people can drive to their dingy?
- A. I don't think it is, I suggest that an example that I'm familiar with is dinghy lockers at the Birkenhead Wharf are, the lockers are a significant way away from the carpark. And whilst there's not a lot of moorings there are boats moored there and people seem to cope getting to their dinghies and getting their gear there. So whether it's essentially that there is parking there for mooring holders for dinghies I'd probably be happy to debate the need for that.
- Q. So now putting in the (inaudible 11:21:29) the marina, or the carpark at the end, the issue then is I think is that you've come to that once you create the carpark there there is an ongoing requirement to provide for that access, whereas the other ones that we've talked about are more of a service nature rather than a – and something that can be managed perhaps.
- A. When you say "the other ones", in the service –
- Q. The other ones that I've gone through in terms of the fuel berth, the cargo access for vehicles.
- A. Yes.
- Q. They seem to be essential ones.
- A. They certainly are –
- Q. They need to be accommodated.
- A. The operation and maintenance of a wharf will always require vehicles to bring goods, you know, a mechanic with a toolbox or a carpenter with a hammer or something like that, they will always need to get close with their vehicles to get in there to service and maintain and operate.
- Q. So the position of the marina carpark at the end creates an obligation to then provide an access to it I think we heard?
- A. I understand from previous experts that once it is in place it becomes part of the environment and therefore I understand we're then obliged to maintain that access.
- Q. And one of the laypeople that spoke to us last week said that marina owners have legs. I think he actually said four legs, I'm not sure that was intentional, so what makes the marina owner different to the

mooring person in terms of being able to walk in? Do you see that as an essential need to have your car close to the...

- A. I admit that I have never owned a large boat so I can't actually comment, but I know from other marinas around there seems to be an expectation that the carpark is very close and that you can get your gear from your car to your boat with great ease. However I think what you're basically saying is the boat that's currently on a mooring is no different to the boat that will be in the marina. And if somebody has to walk to get their gear to their moored boat, then there's no issue getting that same gear to the marina vessel. So I probably to a degree agree with that.
- Q. The other just as a point of clarification you were asked about the sailing frequency and referred to the on the hour sailing I think at the moment, and you said that there was some 30 minute sailings and you referred to holiday seasons and so forth. I did notice when we were commuting last week that they seemed to have 30 minute sailings in the peak hour as well, is that – like we missed one ferry, we waited half an hour and the next one came when we were going back to Auckland. I can't remember how it worked going there.
- A. Yes, I understand that that does happen. I have heard but informally, and I don't necessarily disagree with what I've heard, that if there is a load of passengers waiting to go that Fullers may put an additional boat on as and when required and there is nothing effectively stopping them doing that. Auckland Transport controls access to the berths, but currently at Matiatia there is effectively one operator there even though a second one has started and is due to commence operation shortly. That situation means that there will be more coordination needed between operators. But in effect there can be at any time more than one sailing per hour and you've obviously experienced that. I know that recently Fullers have had some difficulty with some of their boats and have had to put smaller vessels on to service that. I understand they may have put multiple smaller vessels on.

Q. Are these two operators vying for the same berth or will they use different berths?

A. We have I understand allocated and it's in my affidavit, Fullers will have pier 1 and then Explorer Group pier 2. But there will be flexibility around that in terms of potentially there could be the wrong boat at the wrong pier and they may swap around.

Q. So more than one can berth at the same time?

A. Oh no, one boat at one berth at any one time I understand.

Q. Yes, so there's two boats –

A. So there's two piers so two boats, yes. And potentially I understand occasionally pier 3 on the old wharf has been used when there is a very large number of boats on.

RE-EXAMINATION: MS MCINDOE – NIL

WITNESS EXCUSED

COURT ADJOURNS: 11.27 AM

COURT RESUMES: 11.51 AM

MR J BRABANT ADDRESSES THE COURT – CORRECTIONS MADE TO DOCUMENT

THE COURT: JUDGE NEWHOOK

Just a question for you please quickly, what's now condition 43 of the Land Use Consent review that's not changed since the one we were looking at yesterday that Mr Shumane commented on which was then 45? Just transferring a note over from my copy of yesterdays version to the new one.

MR J BRABANT:

Forty, so that's the one headed, "Vehicle Access Review."

THE COURT: JUDGE NEWHOOK

Yes.

MR J BRABANT:

That has not changed Sir other than the cross reference may have been updated.

THE COURT: JUDGE NEWHOOK

Yes.

MR J BRABANT:

But otherwise no that has not changed.

THE COURT: JUDGE NEWHOOK

Thanks for that Mr Brabant. While we're dishing out homework, you can sit down I'm going to talk to Mr Allan. Yesterday Ms Bremner informed us that four submitters had lodged submissions in opposition to the marina who owned houses surrounding the bay. I wonder if you would have her extract the situation for us please and I'd rather imagine it could come to us by consent

as it's contentious who those four are and as to whether they became section 274 parties? She acknowledged that nobody other than Mr Alexander gave evidence but she said there were four people who submitted who owned houses around the bay so we'd like to know who those are and whether (inaudible 11:58:57).

MR ALLAN:

Other than Mr Alexander, yes, okay. Would you like me to fish out the submissions as well and provide those separately or to the number?

THE COURT: JUDGE NEWHOOK

Just give us a cross reference to them we've got them all provided on the website.

MR ALLAN:

Right, will get that for you Sir.

THE COURT: JUDGE NEWHOOK

Thank you.

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MS MCINDOE (RE-CALLS)

DAVID FORRESTER MITCHELL (RE-SWORN)

THE COURT: JUDGE NEWHOOK ADDRESSES MS MCINDOE

THE COURT: JUDGE NEWHOOK

I have a note from one of my colleagues at the time that that took place to this effect that if an item of Mr Mitchell's evidence was challenged by questions to Mr Apeldoorn and he, Mr Apeldoorn, conceded something in answer, then that would change Mr Mitchell's evidence, that was Mr Apeldoorn's take on things. But Mr Brabant, do I understand it that it's still your stance that anything not challenged with the witness now that he's available would be regarded by you as unchallenged?

MR R BRABANT:

Sir, I think I'm not taking that on myself Sir, with (inaudible 12:02:23) respect, I mean Mr Mitchell was being cross-examined and it's his evidence, and it really isn't for me to say Sir.

THE COURT: JUDGE NEWHOOK

You did make that assertion though didn't you?

MR R BRABANT:

Yes that if there was something Mr Mitchell had said. Now I can imagine Sir that if exactly the same thing was put to Mr Apeldoorn then Mr Mitchell can now be asked along that point Mr Apeldoorn was asked and his answer was, "And do you agree?" I mean there's a way of dealing with it but I don't know, I mean I don't know what Mr Mitchell's answers are to anything Sir.

THE COURT: JUDGE NEWHOOK

Okay well I think you're leaving us in the position though that Ms McIndoe and anybody else who is in this boat is just now going to go back to square one with this witness.

MR R BRABANT:

Well there is, I mean – the witness has got a lot of –

THE COURT: JUDGE NEWHOOK

If that's your position, that's your position, we'll just get on with it.

MR R BRABANT:

Yes.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

Q. Mr Mitchell.

A. Good morning.

Q. And I'm going to begin with the questions which I was asking you a few weeks ago, and to do that you will need your traffic and transportation assessment report which was appended to the AEE, it's appendix H and I understand it's in the common bundle as common bundle 3.

WITNESS REFERRED TO REPORT

A. That's the 2013, March 2013?

Q. Yes, approved on 12 March 2013.

A. Yes.

Q. And I'm also going to be asking you questions which relate to the joint witness statement on traffic and transportation.

A. I have that.

Q. Now where we were a few weeks ago, my recollection is that I had asked questions in your evidence, your rebuttal evidence, evidence in reply, and there was a sat in there that if the traffic numbers go up then we can expect the number of safety incidents or crashes to go up just by a simple measure of statistics.

A. Mhm.

Q. Then I took you to the traffic and parking assessment, appendix H and table 6(1) to 6(3), and in particular if I can take you to table – I'm trying to find the table, you can probably assist me here.

A. I think it was 6(1) we were talking about.

Q. Right, 6(1). What I want to do is to be able to compare these numbers with the trip generation numbers in paragraph 7 of the joint witness statement.

THE COURT: JUDGE NEWHOOK

Just pause for a moment, can you give us a page number for this Ms McIndoe?

MS MCINDOE:

It's on page 21 of the appendix.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

Q. So table 6(1) is the weekday traffic counts at the cul-de-sac.

A. Mhm.

THE COURT: JUDGE NEWHOOK

Sorry just pause, attachment H in my records is the ecology report.

MS MCINDOE:

it's common bundle 3 if that assists.

MR R BRABANT:

Volume 1, then document 3, Sir, of the common bundle.

THE COURT: JUDGE NEWHOOK

Volume 1?

MR R BRABANT:

Volume 1 of the common bundle and then CB3, Sir, you should find appendix H.

THE COURT: JUDGE NEWHOOK

Yes got it.

MS MCINDOE:

And it's page 21.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

Q. So table 6(1) weekday traffic counts, now just to confirm you say in the paragraph above that these weekdays were actually during November and January, is that correct?

A. Yes that's correct.

Q. Would they then equate to the regular summer day demand which is one of the categories in paragraph 7 of the joint witness statement?

A. The summer ones would relate to table 6(3), the normal weekday and a normal weekend would relate to table 6(1) and 6(2).

Q. Table 3 is holiday traffic counts?

A. Yes.

Q. Wouldn't that equate to the summer holiday weekend demand?

A. Yeah essentially, that's the period that we surveyed over January, late January.

Q. Sorry, can you just repeat which one do you think that one would equate to again?

A. Well we haven't got I guess what you would call a regular summer day demand. The survey days that we had were in November, which is I would call – well I guess you could call it a summer day, I've just called it a normal weekday in that sense, because it's not in what I would term the peak summer period which tends to be based on the Whitianga Marina surveys about 27th December through to about 10th of February, with the sort of absolute peak from 27th December through to about 5th of January, 6th of January.

Q. Okay so if we take just the normal weekday and it's the second column down, "Survey peak hourly volume in the cul-de-sac," that's 38 traffic movements.

A. Mhm.

- Q. And if we were to compare that to the, well I was going to say regular summer day demand but is there no comparison? Is there no document number we can compare this against?
- A. Well that compares to the figures I think I've given in para 6(3) which is the normal, I guess what I would call the normal weekday demand of 34, where I have in the third paragraph there that talks about the maximum expected hourly volume of 34 movements per weekday, so I would be comparing that 34 to the figures in table 6(1).
- Q. To 38?
- A. Yes, to the peak volume, assuming that the peak times coincide.
- Q. And so in that sense would you agree that the marina traffic will approximately double the existing traffic through the cul-de-sac, through the keyhole?
- A. No I wouldn't and that's just simply because the 38 is the volume entering, so there is effectively the same volume exiting, so there's 68 movements. And that compares to the 34 which is the total movements entering and exiting. So effectively you have 68 – or sorry 76 movements if you double that 38, and 34 additional movements. Because that 34 is effectively 17 entering and 17 leaving if you assume a 50/50 split.

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- Q. Thank you. The next question relates to Mr Karndacharuk's evidence-in-chief, paragraph 26. He gives his view that –
- A. Paragraph 26 was it?
- Q. Yes paragraph 26.
- A. Yes.
- Q. He gives his view that, "A relatively small increase in vehicle numbers will increase the chance of converting many of the current 'near misses' into crashes." Would you agree that that is a possibility?
- A. I think statistically speaking the increase in the number of vehicles will result in an increase in a number of crashes and therefore near misses. I don't think there's any reason why there would necessarily be any more crashes other than the simple proportional increase in traffic I

don't think there's any change in the risk factors that would potentially cause a crash.

Q. As I understand it Mr Karndacharuk is saying that there's this underlying level of unreported crashes for example that might be a tipping point if you like, that if you add more vehicles, the number of crashes might be greater than the proportion of the added vehicles, do you accept that that could be a possibility?

A. It's possibility but then again statistically speaking and we look to documents like the New Zealand Transport Agency Economic Evaluation Manual which has trend lines and calculations for crashes which, while they're not linear, they're certainly relatively consistent so a small change given that we have a small number of vehicles anyway in that sense wouldn't result in a significant change in the crash numbers.

Q. Following his paragraph 26 he has this sort of pyramid diagram.

A. Yes.

Q. And do you not accept that that pyramid diagram could apply so that this could be the tip of the iceberg if you like?

A. Oh certainly that pyramid diagram is a typical sort of a representation I suppose of the relatively of fatal serious non-injury crashes, yes.

Q. Now on the expert witness conferencing statement there's been an agreement that passenger transport in the keyhole area should be paramount and a couple of weeks ago when I first started the questioning, we discussed that the passengers, the impacts on passenger transport or the impacts of the marina on passenger transport hadn't been particularly assessed by the applicant is that correct? No particular assessment.

A. In the surveys, yes, certainly the public transport or the effects specifically on public transport vehicles weren't assessed, no.

Q. And there'd been no particular assessment of the impacts on cyclists either?

A. No.

Q. Or pedestrians?

A. No there hadn't been.

- Q. Given that, wouldn't it be a precautionary approach for the Court to take to impose a condition if the marina was consented which restricted traffic from the time the marina was first operational rather than delaying it?
- A. Well no I don't think so particularly the surveys that Mr Apeldoorn undertook looked at the peak marina volume on the peak day and all of the general operational times the normal weekday, normal weekends have both lower flows in terms of the keyhole and lower flows in terms of the marina so I think the assumption is if it works okay at a much much higher level, it's going to work at a lower level.
- Q. But we don't know whether it would work okay for pedestrians or whether it would work okay for cyclists or whether it would work okay for bus travel times?
- A. Well in theory there would be very little to no change in terms what's happening with pedestrians. Obviously pedestrians are going to walk down the footpath if they've parked in a public area and walking to the wharf itself there's not going to be any change there. The only time you'd obviously have any effect is if you've got buses or taxis that are parked in the keyhole area, people have to walk across and I think that the point I made there was that it's a slow speed area, obviously you have a speed hump at one end, you have a relatively short section between that and the marina entrance and in low speed areas they tend to operate pretty safely where you get a lot of vehicle and pedestrian interaction and I mean, Auckland transport's been building examples of shared spaces all around the city so clearly there's not a fundamental desire to ensure everybody is completely separated.
- Q. The conditions which have been put forward for the applicant and here it doesn't matter which version you have this has effectively remained the same. They don't look to introduce a restriction on access to the marina from commencement do they?
- A. No they don't.

- Q. They provide a process where a review of conditions could take place and as a result of that review there may be some changes to vehicle movements to the marina, is that your understanding?
- A. Yes it is.
- Q. And if that review of conditions resulted in restrictions on access to the marina, what do you think the vehicles – where would they go?
- A. It would depend on what measures were actually taken at that stage, there was – we had talk about a variable message sign to advise people to wait and in that situation it may be you know in the example that say there needs to be a restriction for 10 minutes prior to the ferry arriving that vehicles would go into the main carpark and into the 30 minute parks there and have to wait in there.
- Q. And what if there was a restriction introduced that prevented access to the marina for a long period of time so for example two or three hours during an event or something where there was a restriction for two or three hours, more than just waiting in your car, where do you expect vehicles would go?
- A. Well I suspect in that sort of situation if the marina management knew that say a restriction of that sort of length was coming on board that they would have to send messages out to everybody advising that they couldn't access the marina to that point so if anybody was to come down at that point they'd simply have to turn around at the roundabout and head away again.
- Q. Now if I could ask you to look at the plan at the back of Mr Karndacharuk's evidence, the one that shows the various signs, what's been removed, part of the resolution?
- A. Yes.
- Q. That's the one, yes. And on the right-hand side or the western side of the keyhole, right-hand side of the plan, there's an area which is marked, "Proposed taxi and shuttle sign," it says, "Remove mobility parking sign." Can you see that area? It's on the left-hand side of the page.
- A. Yes.

- Q. And then just above that or just to the north of that there's a break, am I right in saying that that's where the access to the marina would be?
- A. Yes and that's where the existing access into the mooring parking is.
- Q. But that access way is not currently wide enough to service the marina is it?
- A. No, it's really, it's wider than perhaps the normal one-way access but it's certainly not wide enough to provide for two-way movement at that point.

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- Q. How much wider would you need to make it?
- A. Somewhere between two and four metres, we've talked about two metres in the joint witness statement. I went back and had a look at my initial report which talked about two metres either side. It's in that sort of an order.
- Q. So overall, how wide would that access way be in total?
- A. It would be around six metres clearance at the, effectively at the outside of the painted markings on the road, effectively.
- Q. That would require some shortening of the existing taxi and shuttle parking areas either side of it wouldn't it?
- A. Yes it would, at the moment the area where you've got the mobility parking I think is 14 metres long. That may need to shorten to 12 metres which is essentially still two car lengths either way. On the other side I think that first section I measured it something like 47 metres so that may reduce to 46 or 45 metres in a sort of a worst case situation.
- Q. Would you accept that be shortening those areas there would be a change in priority from passenger transport over to marina traffic?
- A. No I wouldn't.
- Q. In that there would be less parking area available for taxis and shuttles wouldn't there?
- A. No, essentially not, I mean 14, say 14 metres as I say for example is two car lengths and it's going to accommodate most buses, mostly even the larger buses you've got at the moment are sort of 12 and a half metres. So I suspect a lot of the ones that use that area are shorter

than that. So shortening it to 12 metres is still two car lengths and will still accommodate well within, I guess without knowing the dimensions of the buses that actually use the area I would say almost all of the buses that currently use that area, so they need to use that space.

Q. Have you looked at whether there would be an opportunity to provide access to the marina without reducing those parking spaces?

A. No, essentially we've looked to provide two-way access at that point so anything less than that small amount of widening would result in an essentially a one-way access so you're either coming in or out. The desire is to provide two-way movement there so that there's effectively no effect on that turn around area. So you don't get into the situation where if a marina vehicle is, vehicles are entering and exiting at the same point that one has to wait for the other.

Q. Are you aware of what the standard Auckland Transport bus stop length is?

A. Yes at the moment it's 15 metres.

Q. And that's three metres more than the 12 metres that would be provided in this reduced taxi and shuttle parking area?

A. Yes, and in fact longer than what you've got at the moment. That doesn't mean that the buses are 15 metres long. Most of the buses are 12 and a half metres and some of the longer ones are now going to 13 and a half metres.

Q. But aren't you suggesting that in order to provide an optimum solution for the marina the taxi and shuttle parking areas should be further reduced so that they are even less, meeting the standard than they are now?

A. I think you've got to look at where they are, that taxi and shuttle area is right at the head of the cul-de-sac and buses will not park there, buses are simply too long, it's not going to be able to get into a position relative to the curb to actually pick up or drop off people. So the areas where you have tight curvature, which you have at the end of that area, need to only be used by smaller vehicles. So reducing it from 14 metres to 12 metres, still gives you two cars able to park there and I would

anticipate that a bus could actually physically get in a position where it could sort of park there and then sort of turn around from that point. Basically buses will park in a straight line if they can.

1225

Q. In your rebuttal evidence, paragraph 14, I actually can't remember if I asked you this question or not so if it sounds familiar if you could stop me in my tracks.

A. That's all right, I'll just get my rebuttal. Para 14?

Q. Para 14 yes.

A. Yes.

Q. And in the middle of that paragraph you say, "The applicant proposes to have clear intervention thresholds and escalation procedures to assess any regular safety or operational issues created by the marina traffic." Now if we look at the conditions, even the latest conditions which were presented for the applicant, they don't allow the conditions to be reviewed to address safety concerns, do they?

A. Not specifically, although I imagine safety issues could be dealt with if the threshold is exceeded. The issue raised I guess between the experts has been more about capacity and really hasn't identified any specific safety concerns that needed to be addressed through a specific condition.

Q. Do you think that the conditions could be amended so as to allow the review of access arrangements if there were any safety concerns?

A. That's probably more a question for the planners. I mean there is the review condition in there anyway, so I mean I would assume that that would be sufficient to be able to be used in that situation.

THE COURT: JUDGE NEWHOOK

Q. Never mind about that Mr Mitchell, would you answer the substantive part of the question as to whether there might be a desirability to have a review, never mind who expresses it and in what terms?

- A. I'd certainly have no issue if there was a safety review in there. Obviously it would need to run in a similar sort of vein to the proposed condition on capacity.

CROSS-EXAMINATION CONTINUES: MS MCINDOE

- Q. Because the review conditions allow for the or require the provision of CCTV footage, don't they?
- A. Yes, yes they do.
- Q. So any safety concerns or crashes could be reviewed using that footage, couldn't they?
- A. Depending on where the footage actually covered possibly. If the footage essentially only covers the front part of the marina and the turnaround, then it may not go far enough back depending on where the safety concerns have actually been identified.
- Q. But if there were safety concerns in the keyhole, do you not think that the conditions require footage to be taken of the keyhole and would capture those crashes?
- A. Yeah, if it's in that area yes.
- Q. Perhaps that could be one method of addressing the lack of assessment for pedestrians and cyclists by including them in the matters that would be reviewed using the footage?
- A. Well again I can understand pedestrians in that sense because some pedestrians will have to cross the road to get to vehicles. I couldn't understand bringing cyclists into that given that they would be on road running parallel with any marina traffic and then getting off. I guess –
- Q. Well they'll be going to use the cycle parking won't they?
- A. Yes if they stayed on the road. I guess there is a very very small potential for cyclists to be involved right at the marina entrance, but it would be an extremely small chance.
- Q. Couldn't vehicles travelling to the marina through the keyhole while they're in the keyhole, they could potentially have some kind of crash with a cyclist couldn't they?
- A. Potentially yes.

1230

Q. You mentioned before the variable messaging sign. Do you not think that there would be some value in having that sign available right from the commencement of marina operations so that both the marina and others can provide guidance to marina traffic moving towards the marina?

A. Not initially and I base that on effectively the survey results which shows that there was no problem with getting vehicles through that area, and in fact getting a lot more vehicles through the keyhole area at a time when there was very heavy public transport usage.

Q. But the survey put vehicles through at a constant rate didn't it?

A. Yes it did.

Q. And that might not in fact be what occurs in practice, is that right?

A. Well no in fact it probably won't be, if you look at the expected volumes. We're talking about 280 peak, absolute peak summer day movements, which is 140 vehicles in and 140 out. This survey's undertaken on the 2nd, put through something like 400 vehicles into the keyhole area and 400 out so in fact what was put through was substantially more than we would ever expect.

Q. But they were put through at a constant rate weren't they?

A. Yes they were.

Q. And I think you were here this morning when Mr Blom said that his experience was that vehicles don't arrive at a constant rate but that there's some bunching, do you agree that there would be bunching of vehicles going to the marina?

A. There can be bunching, yes, but equally so a seasoned marina berth holder will know that if the 11 o'clock ferry is coming in then they'll sit down and have a cup of tea and come in in 15 minutes when there's nobody there so I would expect that if there is bunching to occur, the much higher likelihood is that it actually occurs at a low time in terms of what's happening in the keyhole.

- Q. There might be bunching for example at the start of the day when people are wanting to head down to the marina and then a bunch of people leaving the marina at the end of the day, do you accept that?
- A. As I say, bunching is likely but you've still got to think of the number that we're actually talking about here in the peak hour on a normal weekend, you're talking about 17 vehicles coming in over a 60 minute period so really bunching is likely to be possibly be two cars. We're certainly not talking a group of 10 cars all coming in at the same time I would say that is extra ordinarily unlikely.
- Q. If that's the case, then why is the threshold in proposed condition 43 set at 30 movements during a 30 minute period, so if you say that the more likely scenario is going to be sort of 17 vehicles or less an hour, then why should conditions only be reviewed if there are more than 30 movements in 30 minutes?
- A. Because essentially that was the level that was surveyed on the second land on the 25th of January. That was at the absolute peaks in the period which was I think 56 movements per hour so we've effectively rounded that to say one movement per minute. The discussions that we had particularly from Auckland Transport side was that they were concerned for the period, the 10 minutes prior to the arrival to 20 minutes after, over that 30 minute period so we simply pro rata that 60 to say 30 movements over 30 minutes.
- Q. And do you think it's acceptable that we should only be reviewing impacts on passenger transport and possibly pedestrians and cyclists if more than the peak demand, peak predicted demand occurs, do you think that's acceptable?
- A. Well that's the demand rate that we've surveyed and shown very little effect on it and that was certainly my observations as well so essentially what we've said is, we've calculated that that's going to be the peak generation. We then surveyed that. If our numbers are substantially wrong which I don't believe they are then that is the threshold at which above that we should at least review and examine the situation to see if in fact the marina traffic is at that point having any effect or not.

- Q. So you see the threshold as equating to as you said, "If our numbers are wrong," as a sort of cheque against the work that you've done?
- A. Well almost, yes, I mean as I say that's the number that's actually been surveyed so we know what will happen at that level obviously if it gets higher which as I say I don't believe will be the case at all.
- Q. And the reviews not there in your view to address any passenger transport, safety pedestrian or cyclist in incidents that might in fact occur?
- A. It's not written in that way, no.
- Q. Thank you.

CROSS-EXAMINATION: MR CASEY

- Q. Morning Mr Mitchell.
- A. Morning.
- Q. I understand that you were involved at an early stage in the Developing a Marina Proposal?
- A. Yes I was.
- Q. And that the parking provision that's proposed would've been as a result of your parking surveys and advice?
- A. Yes there was an early design which looked at the size of the reclamation but once we did the parking surveys we confirmed the parking numbers from that.
- Q. And can I be clear that the reason that you've proposed a parking area is because of a realisation that without parking specific to the marina there would be a significant impact on the parking that is otherwise in that area?
- A. Certainly during the weekdays when we surveyed the existing parking areas and it showed typically five to 8% vacant during the weekdays so there was a very low requirement there. There's never been discussions of not having a parking area there and I think that comes back to the, as much the expectations of the marina users as actually addressing the effects of the development there.

- Q. So it's as much about the fact the fact that the marina users will expect to have parking at their marina than it is about imposition of affects on other parking capacity.
- A. Well that's one of the aspects obviously dealing with the effects of the marina.
- Q. I'm just wanting to be clear about your answer, you said one of the issues was the effects of the marina and the other was because the marina or berth holders I guess I should say would want to have parking next to where the marina is?
- A. I think all activities, people would like to have parking convenient to their ultimate destination –
- Q. Yes I'm asking you specifically about "this" proposal and your input into it. So for "this" proposal, a reason for providing the carparking where it's proposed was for the convenience of the berth holders or the expectation I think you said of the berth holders?
- A. No, the primary reason as far as I am aware and I am concerned for providing that parking was to deal with the effects of the additional parking requirement from the marina.
- Q. And those are the effects on the parking that is otherwise in the locality?
- A. If the marina parking spaces weren't provided, yes it would be.
- Q. Now there are a number of public parking areas which at the moment are predominantly used by ferry passengers, commuters?
- A. Yes.
- Q. As I understood and I think your report perhaps more than your evidence, the proposal for the marina carparking is to have time restrictions within the marina?
- A. Yes that's correct.
- Q. And up to a maximum of 48 hours?
- A. Yes.
- Q. And the public parking that's provided already also has time restrictions?
- A. Yes it does.
- Q. Up to 48 hours?

- A. I believe some of it goes to 48 hours yes there's a range in there.
- Q. And of course that other parking is available to the public at large?
- A. The public areas you mean?
- Q. Yes.
- A. Yes.
- Q. And there's nothing that would prevent a marina user parking there is there?
- A. No there's not.

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- Q. And while it might be a little inconvenient, it's still quite practicable for someone wanting to use the marina to park in one of those areas and walk to the marina?
- A. They're certainly close enough, yeah, that it wouldn't be particularly impracticable.
- Q. And if the marina user was wanting to use one of those parking areas, they would need to compete with the ferry commuters, wouldn't they?
- A. If they're parking during the week and there was no marina parking area yes they would.
- Q. And so it's the effect on the ferry commuter during the week that is the concern that's given rise to one of the reasons at least for parking at the marina.
- A. I think that's certainly the primary time of concern because , and yes partially because of the lack of available parking in those public areas.
- Q. My learned friend Ms McIndoe asked you some questions about paragraph 14 of your rebuttal evidence, and you talk there about, at the end of that paragraph about the proposed conditions. Now, this evidence as I understand it was written about a month ago?
- A. Yes.
- Q. I take it you were talking about the conditions that were then being proposed, would they be the ones that were presented at the commencement of the hearing?
- A. No, they probably were almost a version before that.

- Q. So the conditions that you are referring to, which you say in your opinion are robust, we don't know what conditions you're talking about really, do we?
- A. Well certainly those relate to the conditions at that stage. I mean most of that has carried through into the conditions we have now.
- Q. Have you been involved in the revisions of the conditions including up to the point that we've got them now?
- A. Yes.
- Q. So you've had input into the conditions?
- A. Yes.
- Q. And I'm talking about the 21st of October version, the ones that were circulated.
- A. I haven't had direct input into the changes between the 17th and the 21st, no.
- Q. You say that they've got sensible measure to monitor and manage potential effects of marina traffic, is that your evidence?
- A. Yes.
- Q. And you still say that's the case?
- A. Yes I believe so.
- Q. So at the moment the only proposal in the conditions that would manage the potential effects of marina traffic is the requirement to limit access to the marina carpark to berth holders holding a parking permit.
- A. There would be the parking permit, I think there's the condition on the expected use of the marina carpark area, that it should only be for marina activities, and then the threshold as well that's set in condition 43.
- Q. I'm talking about the conditions to manage potential effects, and the only management conditions at the moment are access will be by permit and electronic card, and there's a condition that says that the parking will only be used by berth holders or marina users I think is the word that's used.
- A. Yes.

Q. While the condition says it's only to be used by marina users, there's nothing about how that will be managed, is there?

A. Not specifically, no.

Q. And the conditions include a marina management plan, are you familiar with that?

A. Which particular condition –

Q. It's in the coastal permit set of conditions, condition 40.

A. I don't have the coastal permit conditions with me.

WITNESS REFERRED TO COASTAL PERMIT CONDITIONS

Q. Have that with you?

A. Yes I do.

Q. If you go to condition 40 it talks there about a marina management plan?

A. Yes.

Q. And it says that a management plan is to be submitted and that's to include or it's to address under (i) over the page management of marina car parking.

A. Yes.

Q. But it doesn't tell us what that management will be does it?

A. No, looking at this it doesn't.

Q. And then it says also implementation of marina rules as the next item?

A. Yes.

Q. And then it sets out under condition 41 the marina rules.

A. I haven't had direct input with those but that's certainly what the heading is.

Q. You'll take it from me that there's nothing in the marina rules about access to or use of the carpark?

A. I'll take your advice on that.

Q. Now, you'll be aware and it's recorded in the joint witness statement that all the experts have agreed that there is a need for control of access to the marina carpark, but as I understand it they don't agree on what that method of control should be.

A. Yes that was certainly where the position at the time of writing that, yes.

Q. And you're aware of course that some of the experts were of the view then and are of the view now that if there was to be a marina developed in the place that we're talking, that there should be a control on access between about 10 minutes to some period after the ferry sailings.

A. Yes I'm certainly aware of that.

Q. Now, I take it you don't agree that that's a sensible measure?

A. I don't believe that it's an essential measure from the outset, no.

Q. Okay, you don't agree it's an essential measure from the outset was the answer, sorry?

A. Yes.

Q. But depending on what happens and the experience of marina traffic in the keyhole, you'd acknowledge that could become a control at some point in the future?

A. There is that potential, yes.

Q. Do you agree that that also is not provided for in the conditions, that method of control?

A. Well the threshold is set in the land use conditions.

Q. The threshold that's set in the land use conditions is a threshold for review.

A. Yes.

Q. And then that triggers the potential for review?

A. Yes.

Q. But it does not suggest what the outcome of that review might be?

A. No, it leaves that essentially open at that point to consider what the effects actually were, whether the effects were even related to marina traffic or in fact growth in public transport traffic or whatever else was happening in that keyhole area.

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Q. So are we to take it that the way that these conditions have been structured is that if a review is triggered then it's for somebody who wants to impose controls to prove that those controls are necessary because of the effect of marina traffic, correct?

- A. Can you just say that again please. I just want to make sure I've got it right.
- Q. If the review process is triggered, then it will be for somebody to prove that the marina traffic is causing or contributing to problems in the keyhole before any additional control measures are implemented.
- A. Yes, that's certainly the underlying, I think, aspiration of that condition, yes. Because it may well not be.
- Q. But it won't be for the marina owner to prove it's not, it will be for someone else to prove that it is a cause of the problem.
- A. Well it will be up to the marina owner to examine the footage and to provide a report on that and then for Council to review it at that stage.
- Q. And that review will be open to challenge by the marina holder won't it?
- A. I'll have to have a look.
- Q. It's probably a matter of law Sir, I'm not sure the witness can answer.
- A. Yeah.
- Q. Sorry Mr Mitchell I wasn't trying to trip you up on issues of law. Now I'm not sure, you may have been here yesterday when Mr Shumane was giving evidence?
- A. For some of his, yes.
- Q. And the possibility arises, or it was put to him, that if the measure that I've described to you, which is a bar on access by marina vehicles either side of a ferry arriving and departing, that at the peak periods, at peak periods, and that could be for some time of the year, not just once or twice, that could involve periods of time when there was no access at all through the keyhole to the marina carpark. Were you here when he was asked about that?
- A. Yes, I believe I was.
- Q. And he agreed that that was a possibility.
- A. Yes.
- Q. And you'd agree that's a possibility?
- A. Ultimately that is a possibility, yes.
- Q. And that would mean that marina users who wished to access the marina would have to park elsewhere.

- A. Yes, if they wanted to access the marina at that point, yes.
- Q. And the only elsewhere that we have, of course, is the commuter carparking.
- A. Correct.
- Q. And unless it was at a time of the week that there was other parking available, I mean a surplus of parking, then that would impose an adverse effect on the commuter carparking, do you agree?
- A. It certainly has that potential. It could well be that people are dropped off in the carpark area as well but yes, that has potential.
- Q. Can I take you back to your evidence-in-chief please. At paragraph 12 you say in the second sentence, "Any congestion tends to be quite localised around the roundabout area and disperses quickly once the ferry has discharged or has departed."
- A. Yes.
- Q. Now can I take it from that that you observed congestion?
- A. Yes.
- Q. Or are you just surmising?
- A. No, no, I certainly made some observations, particularly around the roundabout area. The congestion tended to be caused by people that were parked on double yellow lines or needed to do a three point turn around the roundabout but that in itself created some congestion, some very localised congestion there.
- Q. And when you talk about the turn around you're talking about the section of road before the keyhole entrance?
- A. Correct.
- Q. Now those people that were causing that congestion or were affected by it would all be ferry commuter traffic?
- A. Yes I would expect so, yes.
- Q. And did you also observe congestion within the keyhole?
- A. I certainly observed times when there were difficulties with vehicles getting out of parking spaces and manoeuvring around the very end of the keyhole. Again, it tended to be because of poor parking in some of

the other areas. Vehicles either parking away from curbs or outside of the designated areas.

Q. So you've observed congestion both within the keyhole and in the area of roadway leading into the keyhole or before the keyhole.

A. Relative to the parking activities, yes.

Q. Now I haven't seen in your work or in the work of Mr Apeldoorn, any analysis of that congestion. There's just observation.

A. Yes, that would be a fair comment.

Q. Now we don't know when the current road layout was constructed. Put in place. For some reason we just don't seem to have the records of that. Are you able to help us at all?

A. I'm afraid I'm not, no.

Q. Based on your evidence and the evidence of Mr Apeldoorn, you tell us the keyhole could accommodate a lot more through traffic than it currently does.

A. Yes, and that comes back to the issue of looking at congestion related to parking activities and what can actually go through the keyhole and that was essentially the point of the surveys. There are times when public transport vehicles are either parking or more likely leaving when they can be held up by, as I say by perhaps errant parking in that area but there's actually still quite a lot of through capacity in the road. It's exactly the same as any two-lane road that has no parking on it and then it has a lot of parking on it. The capacity does go down but there's still capacity to get vehicles through the area.

Q. Well if you're right and there is capacity for vehicles to pass through the area that don't seek to park in the area then there would be capacity for vehicles that now turn around at the turn around to go through the keyhole and out, correct?

A. I guess in theory yes there would be.

Q. In theory there would be.

A. Yes.

- Q. I put it to you that while that theory's well and good, there was a reason why the road was developed in the way that it is now, to provide for vehicles that don't need to be in the keyhole to stay out of it.
- A. Oh I completely agree with that and that's the difference between an "in theory" and "in practice" situation.
- Q. My learned friend asked you some questions about the table 6.1 to 6.3 in your original report.
- A. Yes.
- Q. And I'm sorry I might have missed something and I'm asking for your help here. If I look at any of those surveys, and it doesn't particularly matter which one, you've surveyed the number of vehicles entering the cul-de-sac at the entry point and this is presumably over an hour or over the whole day?
- A. It was both, I think we surveyed 7.00 am to 6.00 pm in that sort of order.
- Q. We have in the first instance, 54 vehicles entering the cul-de-sac in that hour and only 38 of them managing to get as far as the turn around and turn around.
- A. That's always the joys of surveying with different people in different locations, the effects of when the survey period actually starts and finishes. Particularly in an area like that where there's quite a lot of on-street parking. You may find that in fact the survey period at the start had no vehicles just because of the time that that peak hour was taken and at the end in fact had a lot of parked vehicles in there.
- Q. So, the difference of that order between the start time and finish time of the hourly survey would not be uncommon?
- A. Well, it's a fairly unique sort of a situation down there so I don't think I would describe it as perhaps a common type survey. It certainly shows that there were some vehicles that didn't go right down to the turn around area and turned around before the very end of the keyhole.
- Q. So they just haven't just disappeared into thin air, they've come out some other way?
- A. Yes they would've, as I say, would have turned around before the end of the keyhole.

- Q. What about the other situation where only 40 have gone in and 51 have turned around? Does that mean that there were 11 waiting?
- A. Again, I think that relates to the peak hours and the effect of the parking in the area, that it's probably a situation where in fact at the start of the peak hour there were a lot of vehicles already parked in there so in that situation you can get more vehicles leaving than entering because you already have the vehicles in that system.
- Q. But the vehicles that would have been parked in that system at the beginning of the period would all have to have been parked in the area before you get to the turn around. If there are 11 more vehicles come out than go in –
- A. They would have been parked in the keyhole area.
- Q. Yes but that would have been before they turned at the end of the cul-de-sac.
- A. No, I don't think I follow.
- Q. Well if I can –
- A. Oh no sorry I see what you mean. Depending on the exact time it was taken, it may have actually had some of the vehicles that did park on the other side that may have entered the keyhole area but hadn't actually quite got around the end when the survey started but yes, that would be a relatively low number.
- Q. You mentioned that against the numbers that you've got there, there would only be 17 vehicles entering at any particular peak period.
- A. Well we base the numbers on 34 movements, so assuming half enter and half leave during that period then it would be 17, yes.
- Q. Well is that assumption a fair one? I mean at the morning one assumes more vehicles would be entering than leaving and in the evening more vehicles would leaving than entering.
- A. Yes I'd expect that.
- Q. So the whole 34 could be arriving at the peak hour, perhaps in the morning, when the tide's in or out, whatever suits.
- A. I'd certainly, I would expect yes, more to be arriving in the morning and more to be leaving in the afternoon, yes.

COURT ADJOURNS: 1.02 PM

COURT RESUMES: 2.18 PM

CROSS-EXAMINATION CONTINUES: MR CASEY

Q. Mr Mitchell, I was asking you questions before the break about the method that's proposed by a number of the witnesses which would be to restrict access by marina vehicles at busy periods?

A. Yes.

Q. In your evidence at paragraph 58 of your evidence-in-chief you reject that proposal and say that vehicles that would either wait on the road or would be forced to drop off people and supplies within the restricted area would create unnecessary congestion. And you say that would create the very issue that's been raised by those witnesses rather than solve it.

A. I think what I was talking about there was if the restrictions were actually made at the barrier arms, so say if the barrier arms didn't go up when a vehicle entered then yes it could create issues there.

Q. You haven't done any analysis of the traffic before it reaches the keyhole in terms of causes of congestion and things like that, have you?

A. No, no I haven't.

Q. You see if the solution or if the methodology, if I can call it that, was to refuse access into the keyhole area by those vehicles, then that would overcome the problem that you've identified about further congestion within the keyhole?

A. Yes it probably would, vehicles would just have to turn around at the roundabout and go back out.

Q. Yes, it would move it back up the way or along the road a bit so that would now affect the turnaround area currently used by ferry passengers traffic.

A. Yes.

Q. So there's no real solution that won't cause congestion somewhere, do you agree?

A. Well no I don't because having done the surveys I don't believe that there's going to be congestion.

- Q. If there is a need to restrict or if the solution I guess I should say is to restrict marina vehicle access to the carpark, then I'm saying to you that there's no solution that won't cause congestion somewhere.
- A. There's no solution that wouldn't require people to either park somewhere else or to make alternative arrangements to actually get to the marina, ie being dropped off, taking the bus, something like That. That wouldn't necessarily create congestion anywhere, it would depend very much on the time of day. If that was at the weekend for instance then there's lots of extra parking spaces in public areas and they could just park there.
- Q. Bit we're talking about the busy periods which is the likely period when marina traffic would be prevented from accessing the marina carpark?
- A. More likely to I guess in terms of the volumes.
- Q. And it's those times where the congestion is observed mainly?
- A. Well not on weekends as I say, it's more – sorry, in terms of the congestion or the parking?
- Q. The congestion.
- A. Yes it is, yes.
- Q. Now as I understand it the proposal is that there would be controlled access into the marina carpark through an electronic card system, but also that the marina berth holder who has one of those cards would have a permit to enter the keyhole.
- A. That's my understanding, yes.
- Q. That's your understanding? I thought that's what was proposed.
- A. Well that they would have an access card into the marina carpark. I guess they would need to have a permit to get into the restricted area, yes.
- Q. When you talk about the restricted area, its only restriction is as to parking in that area, do you agree?
- A. I don't know the exact details of it to be honest, I don't know if it's an access restriction. I thought that it was only access to vehicles with a pass. So that would include say mooring holders, service vehicles et cetera.

- Q. If you're right on that I'll come back in a minute but I think you may be wrong, it's a public road, the keyhole we're talking about?
- A. The keyhole is a public road, yes.
- Q. And we heard before that there is a parking warden who operates a de factor traffic management role by stopping vehicles entering the keyhole?
- A. Yes.
- Q. But that he's got no legal authority to do that.
- A. Yes I heard that.
- Q. Is that something that you're not familiar with?
- A. No I am.
- Q. I understood from an earlier answer you weren't sure about whether it was legal to actually sop the traffic.
- A. Sorry I meant in terms of the signage that was there, I certainly understand that there's no legal ability for the parking warden to stop people from entering the keyhole area.
- Q. So anybody who wants to enter that keyhole is entitled to do that?
- A. With the current rules apparently yes they are.
- Q. And anyone who wants to enter that keyhole for access to the marina is entitled to do that?
- A. Yes.
- Q. And the parking warden can't stop them?
- A. Well under the rules as they stand at the moment legally, I guess based on the answers that Mr Blom gave earlier no, they're not.
- Q. But you're suggesting that there be a permit system where – well when I say “you” I mean the applicant, I'm not sure whether it's you or not, but you said you had a part to play in the conditions, that there's a permit system by which people, this is marina vehicles display a permit which will give them a right to access the keyhole?
- A. Yes and would have a card to allow them into the barrier or allow them through the barrier arm.

- Q. And as I understand that that permit's to be issued by the marina manager?
- A. Yes.
- Q. And the only requirement in the proposed consent conditions is that the parking permit system is to be, or details of which are to be provided for approval.
- A. Which consent?
- Q. That's condition 37.
- A. Thank you. Yes correct.
- Q. So there's nothing in the conditions that limits the permits to the number of berth holders or limits anything about the permits is there?
- A. There's nothing in the conditions and Mr Wardale I think during his evidence talked about having on permit per berth holder. I think that the issuing of the permits depends very much potentially on how that carpark is actually used, I mean the ideal is that it's utilised as well as the berth holders need that parking area but having one permit per berth holder certainly helps to manage the number of vehicles that would park in there.
- Q. And Mr Wardale told us, I think it was Mr Wardale, there's no intention to have guest permits for berth holders guests who might be going out on the boat with them that day?
- A. Yes I believe that was what he said.
- Q. And there's also the fact that people may want to go out for longer than the 48 hours that the parking's allowed in the marina?
- A. Well no the marina parking's limited to 48 hours. Anybody going out longer would have to come down and be dropped off or drop their gear off, drive the cars away and then come down on bus or be dropped off.
- Q. So there'd be a lot of other traffic associated with the marina, potentially a lot of other traffic associated with the marina that's not accounted for in your marina carpark usage figures. Correct?
- A. No I wouldn't think so. There would be the occasional one as you say for people that are going out for longer than 48 hours but I don't anticipate that that's going to be a large number.

- Q. Or guests of marina berth holders?
- A. Yes but they're all included as well in the Whitianga surveys, in fact that includes some commercial use in that area as well so all those types of figures, the marina manager as well for instance is all included in those parking figures as well.
- Q. Now in your evidence-in-chief at paragraph 100, you state that the marina traffic will require access to the transport area but you say it won't affect the priority with respect to passenger transport and taxi operations as there's spare capacity through the restricted area for vehicles to pass with minimal effects. You see that? That's your evidence?
- A. Yes.
- Q. Since you prepared that evidence, Mr Apeldoorn provided some analysis of the likely effect on marina traffic within the keyhole exposing public transport to interruption. You familiar with that evidence?
- A. Is that his supplementary?
- Q. In his rebuttal evidence at paragraphs 14 to 19.
- A. Yes, yes.
- Q. Are you familiar with that?
- A. Yes.
- Q. So we now know that although the marina traffic is expected not to alter the through travel time of other vehicles it is likely to interrupt at least public transport within the keyhole area?
- A. Um, and I think I've said that in my rebuttal as well that there are effectively four situations and the times when public transport could be affected by a marina vehicle or essentially when they're departing the parking areas if there is a marina vehicle coming in at that time they'd have to wait for them.
- Q. But there would be more vehicles in the keyhole because on account of the marina vehicles?
- A. Yes.
- Q. And there's no proposal as far as I know for the buses to be given any priority over those marina vehicles in the keyhole?

- A. No, no there's not.
- Q. At your paragraph 103 you say that you, "Consider that access to the proposed marina could be incorporated into any redesign of the ferry terminal?" That's your evidence?
- A. Yes it is.
- Q. And that ties in with your rebuttal evidence well from paragraph 40 onwards and particularly at 43?
- A. Yes.
- Q. Where you say that, "The Marina, and its related traffic would be part of the existing environment when or if AT redevelops the transport area."
- A. Well yes only insomuch as given the lack of any defined project by AT to actually do anything there the timing is such that it's likely that if the marina were to proceed it would be in place prior to any redevelopment being.
- Q. And be part of the existing environment and as you say would need to be incorporated into any redesign?
- A. Yes it would certainly need to be.
- Q. And you reinforce that in your paragraph 44 of your rebuttal where you say that, "The marina will be part of the consideration of any changes at that time."
- A. Yes, yes I do.
- Q. Then you go on in your paragraph 45 to say an increase in passengers but I would assume any such redevelopment that may occur, that it could result in a conclusion that it's necessary or advantageous for taxis, shuttle and tourist buses to be removed to a more suitable location?
- A. I think that there are a number of potential options for redevelopment of the area and yes potentially that is one of them.
- Q. And there are a number of options presumably also for resolving congestion if it continues to incur or increases?
- A. Yes I believe there is.

Q. And one of those options would be to relocate more of the taxis and shuttles and tourist buses out of the keyhole and put them somewhere else.

A. That would be one of the options, yes.

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Q. And all the time having to take into account the fact that the marina is established and should still enjoy access.

A. Well I think that the congestion is more around the number of vehicles coming in the available parking area rather than having more through vehicles on the road. And it's as much about looking at Auckland Transport's long-term objective through the Auckland plan to actually grow public transport, and if, I think as I've said, if they actually do manage to double the public transport usage and there needs to be twice as many busses down there, then you have a lot of options because you simply don't need as much car parking. So there's a balancing act between I think the public transport requirements in that area.

Q. We're not talking so much about the public transport requirements as the need to respond to increasing passengers numbers and congestion, and as I understand your evidence you're saying that it may result in it being necessary or advantageous for taxis, shuttles and tourist busses to be relocated.

A. Yes, as I say that's certainly one option, yes.

Q. But you would say at that point when those decisions were being made, the presence of the marina would have to be taken into account s part of the existing environment and be provided for?

A. Yes I would say that.

Q. And would you say that the obligation or the requirement is what I mean for the marina traffic to be taken into account and be provided for would rank ahead of the relocation of taxis, shuttles and tourist busses in terms of resolving those congestion conflicts?

A. I don't know that I can necessarily answer that at the moment because we don't know necessarily enough about what the demand for public

transport or the potential redesign options that might be considered for that area actually are.

Q. Fair comment, but you remain of the view though that the marina traffic has to be provided for?

A. It would be part of the existing environment at that time yes.

Q. And it would be necessary to provide for it?

A. Yes.

Q. In your paragraph 108, this is in your evidence-in-chief, at the end of that paragraph you say, "A reclamation in particular offers additional land area that could in fact create other options not previously considered." Do you mean by that that the reclamation could actually be used for public transport-related purposes?

A. Effectively yes because it would create additional land in that area. Obviously that land's required for now for the marina traffic, but again it is simply extra land in that area and would likely I guess be considered in possibly a range of options to look at public transport reconfiguration in that area.

Q. It's conveniently located to the ferry terminal on the wharf isn't it?

A. Yes it is.

Q. So perhaps not even just for parking for ferry passengers and ferry-related vehicles, but could be used for other purposes relating to the ferry too couldn't it?

A. It could be, yes. And that may not even be single level and you might be talking multi-level development there.

Q. So if there is to be a reclamation then, as I understand your position is that that should be to provide carpark for the marina?

A. Yes, as it stands at the moment yes.

Q. And not for public transport-related purposes?

A. No.

Q. Do you accept, Mr Mitchell, that the policies both in part 10(a) and part 13 of the plan that you refer to in your evidence from paragraphs 100 onwards provide that priority should be given to public passengers transport over private vehicles?

- A. Yes, well that's certainly the statement in policy 1 which carries through in different forms in the policies, but yes in general I would agree with that.
- Q. And do you accept that there's nothing about the proposal as it's been put forward in the conditions that are proposed that gives priority to the public passengers transport function of this area of the Ocean View Road that we're talking about?
- A. I don't think there's any, let me think, there's nothing that specifically gives priority to public transport but there's also no requirements for the marina traffic to use any of the public transport facilities in terms of the parking anyway. They simply, they're using the legal road at that point.
- Q. But whether legally or de facto, priority is given within the keyhole currently to passengers transport, and I'm meaning in a broader sense including taxis and tourist busses and shuttles associated with the ferry.
- A. Yes that's correct, yes.
- Q. So priority is currently being given to those vehicles?
- A. In that de facto way with the signage and the rules as it is, yes. And the parking requirements which are (inaudible 14:42:10).
- Q. But you're saying that marina vehicles should have equal access?
- A. On the road network yes, in terms of being able to get through that area yes, but certainly not in terms of using any of the existing parking facilities for the public transport.
- Q. And that even with the prediction that marina vehicles will interrupt at times the public passengers transport vehicles in that keyhole, you're saying well that's just going to be a consequence?
- A. That is the potential consequence with having additional vehicles in that area, yes.
- Q. And you accept in that case it's not giving priority to public passenger transport.
- A. Well I accept that, as I say it's not taking away any of the priority for public transport parking in that keyhole but, yes, it will potentially affect the times for public transport vehicles when they're leaving their parking spaces if a marina vehicle coincides with that.

Q. And in relation to the proposal to use the reclamation for marina parking and not for public passengers transport related uses, that's certainly not giving priority to public passengers transport, do you agree?

A. Well I think there's enough capacity on the roadway such that there's no particular need to give additional priority to public transport vehicles coming into or out of that keyhole. As I say there's certainly no desire and no proposal to affect any of the public transport parking priority that there is in the keyhole, and that's the most important thing really for that area.

Q. Well we're told for example that some of the tourist vehicles, the smaller ones, aren't allowed in the keyhole now because there's not enough room. But if the marina proposed reclamation was available, then that would give them priority, wouldn't it, over private cars?

A. Well as I say I think that that additional area is probably, and I think if Auckland Transport was doing a comprehensive look at that hole Matiatia area including public parking areas and how that area would be developed, they would probably look at that area as well in terms of options that it might consider. I don't think it would necessarily give priority to taxis or busses or leave it as it is, it's simply another area that would probably come into consideration.

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Q. But do you accept that in accordance or in terms of the policies in the plan it's an area where priority should be given to the public passenger transport function of the wharf and ferry?

A. The keyhole area you mean?

Q. No the reclamation area.

A. I think the policies certainly talk about the keyhole area and the transport area, I don't know that the reclamation would actually come into the existing identified transport area, so I'm not really sure I can give you an answer on that one.

Q. In your paragraph 23 of your rebuttal evidence you say at the end of that paragraph that, "Any increase in public transport usage will conversely result in a reduction in private car trips." Do you say that?

- A. Yes.
- Q. But if, as is predicted, there will be increases in passenger numbers then there can be both an increase in public transport usage and an increase in private car trips can't there?
- A. Yes that is a potential, what I was talking about was more of the snapshot as it sits at the moment. I think the fact is that Auckland Transport's objective is to double the public transport use and based on the, certainly the population growth increased figures out of, I think it was para 91 of Mr Shumane's evidence, that's looking to grow at around 2.7% I think it is per annum so effectively doubling the public transport numbers provides you with a lot of extra capacity there.
- Q. That's their objective, is to double the number of passenger transport trips. But that's not to say it will be achieved is it?
- A. No.
- Q. But your evidence is that any increase in public transport usage will conversely result in a reduction in private car trips, is that really what you mean?
- A. Well as I say, really what I'm talking about there is a snapshot. If we looked at the numbers as we have them now. If we were to increase public transport trips tomorrow, there would be a reduction in the carparking requirements. And that obviously changes over time, as you say, depending on the percentage growth and tourism figures and the growth on the island and the average occupancy and the public transport as well.
- Q. In your paragraph 33 of your rebuttal, which you just mentioned before, you set out a number of scenarios, and you say there are four of which only two would have an effect on public transport.
- A. Yes, correct.
- Q. Do you agree that those scenarios are limited to activities within the keyhole area?
- A. In terms of those scenarios, yes.
- Q. And they don't consider the effects of the additional marina traffic outside the keyhole area but in the turn around area do they?

A. No they don't.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

Q. Just one question and that was, is a dedicated carpark essential for the marina?

A. I think it's essential to mitigate the effects of the additional parking that would be expected by the marina and particularly during weekdays. The Matiatia area obviously has a large parking demand during weekdays but not so much on the weekends or at the holiday periods. So there's less of a necessity on it for the weekends, but certainly during the weekdays there is definitely a requirement to have a parking area there. And the way we size that parking area was so that it was a minimum to serve that weekday demand.

1450

Q. In that location?

A. Yes in that location. Well that's the location that's been proposed as part of the application.

Q. Could it be elsewhere?

A. It could be elsewhere but physically you're so constrained in that area, there's probably not many other options around there.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Just picking up on the last of Commissioner Howie's questions, do I understand from your evidence that the consideration of locations in which parking could be undertaken for marina berth holders was confined essentially to the Matiatia end of Ocean View Road?

A. In terms of my assessment yes it was.

Q. So there was no thought given for instance to finding parking facilities around Oneroa or anywhere else and providing for alternative transport in and out of the Matiatia wharf area?

A. No Sir there wasn't.

RE-EXAMINATION: MR R BRABANT

Q. If I just take the most recent question of Mr Casey's, just taking you back to your paragraphs 33 and 34?

A. Is that the rebuttal?

Q. Of your rebuttal, yes. That was the scenario of a delay being caused by a marina vehicle in the keyhole?

A. Yes.

Q. And then you said as to whether you'd consider the further back (inaudible 14:52:37) Ocean View Road, is there a succeeding paragraph in your rebuttal that addresses that?

A. The only I think additional thing that I talk about was the possible delay of vehicles leaving the keyhole, which was something that Mr Langwell raised. But I don't think we deal with what happens beyond the keyhole because essentially we're focused on what's happening with the public transport.

Q. That 35 deals with the –

A. Yes, that 35 certainly deals with the potential delays of vehicles leaving the keyhole, yes.

Q. Have you got the latest set of land use consent conditions there please?

A. Yes I do.

Q. You were asked some questions about management by the marina of marina traffic. Have you had a chance to look at the section under the heading "Operating marina" that starts at 39?

A. Yes I have.

Q. And is there something in there about managing traffic?

A. There's various things in there, certainly condition 39 does that. And yes 40 certainly does because that's about actively discouraging use or people coming to the parking area during the heaviest movements, times of heaviest movements.

WITNESS EXCUSED

MR ALLAN:

Sir, I do have the first bit of homework, I don't know if you want to take it now or later I won't interrupt Ms McIndoe's flow.

THE COURT: JUDGE NEWHOOK

Oh yes.

MR ALLAN:

This is a plan showing the submitters in 274 as in dealing with those four properties in particular and their statuses as 274s.

THE COURT: JUDGE NEWHOOK

Yes, I thought that might be the biggest part of the homework that could be achieved so if you can past that up through the Registrar now thank you very much Mr Allan.

MR ALLAN:

It is the easiest bit so I thought I'd knock that on the head. Hopefully reasonably self-explanatory it goes a little further than you'd asked for that whole area identified on the plan, lists all submitters in support and opposition and the four whom Ms Bremner was referring to are the ones with the orange dots on the plan and address, that paragraph 2 with the addresses there. Something to note that the Briggs who were a submitter in opposition and a section 274 party have apparently sold their property to a family called the Sloan's. Hopefully that's the information you were after.

THE COURT: JUDGE NEWHOOK

Yes, there's one consequential inquiry I think as to how many of those coloured properties get a view of the marina? For instance I imagine that Mr Guthrie doesn't?

MR ALLAN:

No, he wouldn't. I may need to come back to you on exactly how many of those.

THE COURT: JUDGE NEWHOOK

You might need to tackle that and except for the most obvious cases I'm considering a typography landform on a couple of the properties. There might be a question like for instance on the Marshall and the (inaudible 14:57:15) Anderson property, each of those two properties.

MR ALLAN:

I wonder –

THE COURT: JUDGE NEWHOOK

Because as a spur comes down into that Auckland Council local purpose reserve to the east of them.

MR ALLAN:

And Ms Bremner and Mr Brown between them might have a fair idea although I doubt whether they've been onto each and every property and therefore can say hand on heart that there are or are not necessarily views but perhaps I can refer to Ms Bremner.

THE COURT: JUDGE NEWHOOK

I assume that Mr Brown might grace us with his presence when Ms Gilbert and Mr Scott are giving their evidence a little bit later in the week, perhaps tomorrow?

MR ALLAN:

I will ascertain whether –

THE COURT: JUDGE NEWHOOK

And he can be consulted by you and Ms Bremner at that time?

MR ALLAN:

Yes, and then just return to this plan and perhaps mark it up with those which we – deceived our views.

THE COURT: JUDGE NEWHOOK

Yes.

MR ALLAN:

Okay.

THE COURT: JUDGE NEWHOOK

Sorry to distract you, keep drilling into this –

MR ALLAN:

No, no that's fine Sir. Happy to help.

THE COURT: JUDGE NEWHOOK

A little bit inquisitorial at times, thank you very much for the start.

MS MCINDOE CALLS

AUTTAPONE KARNDACHARUCK (AFFIRMED)

Q. Can you please confirm for the Court that your full name is Auttapone Karndacharuck?

A. Yes that's correct.

Q. And that you have prepared three statements of evidence for this hearing?

A. Yes.

Q. The first being a statement of evidence-in-chief dated the 11th of June?

A. Yes.

Q. Then a statement of evidence in reply dated the 23rd of September?

A. That's right, yes.

Q. And also supplementary statement of evidence dated the 6th of October?

A. Yes.

Q. Do you have any corrections which you'd like to make to any of those statements?

A. No not really, those are minor points really but –

Q. I think if there are any corrections we should make them.

A. There's one reference to my evidence in reply that referred to a condition, it's supposed to be condition 65?

Q. I understand this is paragraph 10 of Mr Karndacharuk's evidence in reply.

1500

A. And right at that condition 55.1 is supposed to be 65.1.

Q. I understand as well that since you prepared your evidence-in-chief your job title has changed. Can you now explain what your current job title is?

A. That job title is still the same which is principal consent specialist in the traffic operation unit but the department name has changed from road corridor operations to network operation and safety department but the function and core responsibility that I've been performing in relation to regulatory review of traffic and transportation matters still remain the same.

Q. You also took place in expert witness conferencing, can you confirm that you did that and that you have signed the joint witness statement dated the 28th of August?

A. That's right, yes I have.

Q. Now all of that evidence combined, can you please confirm to the Court that it's true and correct to the best of your knowledge?

A. Yes, yes I do.

CROSS-EXAMINATION: MR CASEY

Q. I apologise in advance for my pronunciation of your name, I think I've managed to mistake it several times already this hearing. Karndacharuk is it?

A. Yeah, any pronunciation is fine really.

- Q. Very gracious of you, thank you. Mr Karndacharuk, would I be correct in saying that Auckland Transport seeks to be neutral as to whether consent should be granted or refused?
- A. So we actually conditionally opposed the marina and has always been our position, only until we have a level of confidence that the effect of the marina can be appropriately (inaudible 15:02:41) and that include the access, control and restrictions.
- Q. You've recommended in your evidence that there should be access control –
- A. That's right, yes I have.
- Q. – restrictions. And you remain of that view don't you?
- A. So the position changed a little bit and as described in my supplementary evidence because the original proposal is to prohibit access to the marina for 30 minutes and then with the secondary ferry operator then that means it is most likely that the marina will be prohibited access for the whole, pretty much the whole day and that's not actually practical for the marina.
- Q. Well it may not be practical for the marina but isn't the question for you what should be acceptable?
- A. That's right and I actually explained that –

THE COURT: JUDGE NEWHOOK

Hold on, it's counsel who interrupts. No, I'm not pointing the finger at you Mr Casey, it's a common fault but Mr Karndacharuk you need to let counsel finish the question and then answer the whole question so you know what it is.

CROSS-EXAMINATION CONTINUES: MR CASEY

- Q. I'm sorry, the question was whether your position should be what's best for Auckland Transport and the transport system, not what's best for the marina.
- A. And exactly that, the same view already is placed in my primary evidence where the conflicting purposes of the trip should be discouraged. At the moment we have the keyhole area that been located and decide for public transport and the primary function is for

access and to a lesser degree a place function. I.e; the place for buses and either passenger vehicles to park and to stay as the place function for pedestrian and either road user to actually go well within the space and those are the key primary function of the keyhole. And even though we already have the existing use (inaudible 15:04:50) for mooring vehicle and quite a few people for the boat ramp and that's what we're trying to limit really in terms of the vehicle that used the area for the mobility function and to answer your question then that would be yes, if the policy and the land use objective prohibit the creation or the initiation of the marina in the first place, we would support that position because that from the planning and policy perspective.

Q. Now in your supplementary evidence at paragraph 11 – sorry paragraph 9 you make it clear that appropriate marina access controls are necessary and in fact you say their importance can't be overemphasised.

A. That's right.

Q. And then at paragraph 11 you set out what you say are vehicular access control principles.

A. Yes.

Q. And would it be your position that if these principles can't be applied and made to work, then consent should be refused?

A. My professional view would be the impact from the marina would be more than minor and other mitigation measure is required.

Q. Other mitigation measures are required.

A. And those are actually listed now in my six access control principles.

Q. What I'm putting to you is that if those access control principles were not to be applied or were found not to be workable, what would your position be then in relation to the consent itself?

A. Because the original position is conditionally opposite and if the condition cannot be met then it will be an opposition.

CROSS-EXAMINATION: MR R BRABANT

- Q. You refer in the beginning of your evidence to being a principle consent specialist.
- A. That's right.
- Q. Do I understand that means that the work you do for Auckland Transport is looking at applications for consent?
- A. That's right yes.
- Q. And are they resource consent applications or do they include those?
- A. The role, because I am employed in the operation teams, I actually looking after from the pre-application of the all resource consent engineering plan approval (inaudible 15:07:50) the monitoring process in relation to coordinating and provide a review feedback back to Auckland Council in relation to all resource consent. But again I also being involved in the master planning of the plan change application in terms of providing operational input.
- Q. So are these applications that Auckland Transport is making or are they applications by third parties wanting to do something and you look at their applications?
- A. That's right, that's correct, by private developers. Or in some instances, sorry, there are quite a few application that have been made by the like of (inaudible 15:08:35) or different part of Auckland Transport as well.
- Q. If you look at paragraph 9 – I'm sorry, I'm dealing with your primary evidence at the moment, that tells us that you visited the roading network at Matiatia on the 4th of June 2014. Do you remember what day of the week that was?
- A. It is a weekday.
- Q. A weekday?
- A. Yes.
- Q. And what time of the day were you there?
- A. 2 o'clock in the afternoon, 2 to 4 o'clock.
- Q. So two ferry cycles?
- A. Yes pretty much yes.
- Q. And have you been there since?

- A. Yes to attend the last week – oh in terms of the site visit. I mean I've been there as part of the last week –
- Q. When the hearing was on?
- A. That's right yes.
- Q. You went backwards and forwards?
- A. Yes.
- Q. And you say that there was a number of occasions over the last three years, so apart from the 4th of June you had a look, have you been there previously?
- A. Yes.
- Q. Was that specifically about this project?
- A. That's right yes. Because I actually made the submission as part of the Council hearing on behalf of Auckland Transport at the time, before it got referred to the Court.
- Q. And can you remember those other occasions, were they a weekday? Were they during the week?
- A. It must have been probably a weekday.
- Q. Okay we'll turn the question around the other way now, have you been there on a weekend?
- A. Yes I have on a few occasion as a tourist.
- Q. As a tourist.
- A. Yeah.
- Q. Paragraph 13, still with your main evidence, let's have a look at the summary here, "I agree with the evidence for the applicant that the existing traffic environment functions adequately if not ideally." Now when you were there on the 4th of June 2014 that between 2 and 4 o'clock, can you remember whether the traffic conditions that you saw on Ocean View Road and outside the terminal were what you might describe as free flow?
- A. Because of the period that outside of the summer period so it's not congested.
- Q. Yes, and have you been there in the summer when the commuter peaks are not on, in other words there's a commuter peak when everyone

goes to work and then another one when they come home, have you been there outside the commuter peaks?

A. That probably quite a few years back, quite some time ago.

Q. And it'd be very quiet then, wouldn't it?

A. For a certain period of time yes.

Q. I said outside the commuter peaks, so I'm talking about the days when commuters are travelling?

A. That's right.

Q. So Monday to Friday.

A. Yeah.

Q. So when you talk about the existing traffic environment functions adequately if not ideally, are you actually there attempting to describe a situation where there could be congestion or things are busy?

A. That's right, the environment function would cover congestion (inaudible 15:13:16) and operation in –

Q. Yes so adequately but not ideally is a reference to when things are busy because of ferries in, would that be right?

A. Yeah that's right, adequately in relation to the context of the environment ie quite a restricted area for the busses and other activities.

Q. But you wouldn't apply that description, "adequately if not ideally" to the area as you may have seen it in between the ferry arrivals and departures, you wouldn't say it was only adequate then would you? I mean...

A. It is only adequate.

Q. You mean when there's no ferry and all the people have left on the busses and the cars have gone, is it only adequate?

A. Yeah that's right and that's probably leading to the reason why we provide a physical traffic management measure of that keyhole area in the first place as well as the vehicular restriction for the area.

Q. You went over on the ferry to be there when the Court started at 9.30 in the morning, right?

A. That's right.

Q. So you would have been there at the same time as a lot of others of us.

- A. Yeah.
- Q. And get off that ferry at about 9 o'clock, and if you imagine a car driving down Ocean View Road and wanting to go out to where the little places for mooring people to park, they just drive straight through wouldn't they?
- A. That's right yes.
- Q. And if you were being picked up by someone, they'd just park there in the parking area for two minute park and you'd just walk across and hop in the car don't you?
- A. That's right for a certain period of time.

1515

- Q. Now just so I understand, because you may have your own way of putting things, you would say that that situation functions adequately?
- A. That's right, yes.
- Q. And then if there is busyness and there are ferries in and there are more shuttles and taxis and movement, that's still adequate?
- A. No it's not.
- Q. Now, in 14, and you may have heard some questions I asked Mr Blom about this morning. In terms of the parking officers and your reference to informal enforcement, do you accept that when it comes to the parking restrictions, whether they're at the round about for private vehicles for two minute pick-up or in the keyhole for taxis and shuttles, the enforcement by parking wardens of that is not informal is it? They have a legal right.
- A. That's right.
- Q. Do you accept that?
- A. They have a legal right to control and enforce the parking restrictions.
- Q. In relation to your recommendation in paragraph 15, that conditions be imposed now restricting vehicle access if the marina were approved and traffic to the marina carpark were passing through the keyhole. You have a different point of view from Mr Mitchell, Mr Apeldoorn and Mr Shumane don't you?
- A. That's right, yes.

- Q. Is there congestion in busy times in the keyhole now?
- A. Yes.
- Q. And there's no marina traffic going through at the moment is there?
That's trite.
- A. That's right, I mean there's only say their data that Mr Apeldoorn produced. It actually show congestions.
- Q. At the moment the potential for marina traffic to go through the keyhole hasn't arisen because there's no consent but there is congestion now.
- A. For a certain period of time, yes.
- Q. So that means, doesn't it, that the congestion is something that's happening now and it's got something to do with the interaction of vehicles in that keyhole. Do you agree?
- A. Yes. To a certain degree, yes.
- Q. Have you been down and studied that interaction between the taxis and the shuttles and the buses in that keyhole for any period of time?
- A. That would have been the applicant role in terms of doing that.
- Q. I'm asking please, have you been down there when it's busy and congested and spent time observing the interaction between the taxis and the shuttles and the buses in the keyhole?
- A. I did that on the 4th of June.
- Q. On the 4th of June?
- A. That's right.
- Q. But that was during the week wasn't it, between two and 4 o'clock?
- A. That's right, yes.
- Q. Do you believe that's given you an understanding of what can happen in a congested period such as when Mr Mitchell and Mr Apeldoorn were doing surveys in January?
- A. I believe I have different interpretation of the information that Mr Apeldoorn produced in terms of congestion and safety as well as the operation in the keyhole.
- Q. If there is congestion now in the keyhole during busy times what, in your opinion, is the cause of that?
- A. Without the marina proposal?

- Q. I said now, meaning at present.
- A. I understand, we actually been doing the investigation for a number of years now and the attachment including in a number of witnesses already included and I actually listed those including transport, Matiatia direction plan in 2009, draft Matiatia transport plan 2010, ACP (inaudible 15:19:53) user analysis, that's probably not for the transport element but the, Essentially Waiheke adopted by Auckland Council in 2000, also looking at a number improvement in the area.
- Q. Now I'll just ask the question again, please tell me if you don't understand the question. What, in your view, is the reason for why there is congestion in the keyhole now as between taxis and shuttles and buses. What is the reason, in your view, why there is existing congestion?
- A. So the reason is because of the restricted area that we provided or located for public transport and passenger transport in the area.
- Q. What is it about the interaction of the different vehicles in that keyhole that causes what you describe as congestion, or we could term hold-ups, delays, what is the reason in your opinion?
- A. The reason would have been the demand really.
- Q. The what?
- A. The demand.
- Q. The demand?
- A. For the area, for the different user, for the area.
- Q. The demand for what?
- A. For the keyhole usage.
- Q. Now are you referring to the parking?
- A. I'm referring to the need for vehicle to enter, park, manoeuvre, interact, circulating and travelling and using that keyhole area.
- Q. It's the purpose of the keyhole area, as shown on that plan that's attached to your evidence that I've been asking everyone about, you know the plan. To provide different areas within the keyhole for parking of different kinds of vehicles isn't it?
- A. That's right, yes.

- Q. So would you agree with me that a classic hold up would be a bus is wanting to leave with its passengers on board and a shuttle is trying to get into a parking space in the shuttle parking area and they're waiting for a shuttle to leave and so they're blocking the way out.
- A. That could be one of the options and the other scenario would have been unauthorised vehicle trying to access the keyhole and that parking warden trying to stop him.
- Q. Have you observed that happening, yourself?
- A. No.
- Q. Can you go to paragraph 23 of your evidence-in-chief.
- A. Yes.
- Q. If the congestion, as we've just discussed, is to do with people accessing parking for vehicles within the keyhole then that is a matter that does not come under your description of informal enforcement does it?
- A. Because the reason why I'm saying that because, like what I explained in my evidence, the parking officer also informally performing the role of traffic management role and by controlling parking restriction you need to eventually control traffic in the area as well.
- Q. If there are shuttles double parked or otherwise delaying through attempting to park in the keyhole in the shuttle parking area, the parking warden, do you agree, is entitled to enforce a requirement to move on or to deal with that parking arrangement. There's nothing informal about it is there?
- A. If a shuttle actually park on the circulating lane the parking officer wouldn't have legally or officially the role or ability to move them along because they are not the police.
- Q. That's your understanding?
- A. That's right.
- Q. All right. Can you go to paragraph 31 of your main evidence please?
- A. Yes.
- Q. Are you familiar with the applicant's conditions of consent relating to parking and traffic?

A. Yes I have, I actually reviewed it last night.

Q. In relation to the matter of carparks in the marina being used by ferry commuters, do you agree that matters have effectively been dealt with by condition 39?

A. Yes.

Q. And Mr Mitchell told the Court today that the carpark is being sized to provide the minimum number of parks he assessed were necessary during weekdays, in other words when the commuters are filling up the main carpark. Do you remember that evidence?

A. Yes I do.

Q. So it would be actually in the interest of the marina management to make sure that condition is complied with wouldn't it?

A. That's right, if there's an appropriate mechanism to really making sure that happen.

Q. Go to paragraph 36 please.

A. Of my evidence?

Q. Yes same thing, I'll tell you when I move to another section.

COURT ADJOURNS: 3.27 PM

COURT RESUMES: 3.49 PM

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Now in your main evidence can you go to paragraph 36 where you give an opinion?

A. Yes.

Q. And you say, "It is not desirable to mix through traffic for the marina with the transport movements currently using the Ferry Terminal Area," which is your expression for what other people have called the keyhole is it?

A. As well as the turnaround area.

Q. As well as the turnaround area.

A. I actually show that on my figure.

Q. Yes.

A. As part of my evidence later on it's in the diagram.

Q. Right.

A. Yes.

Q. Now so because the marina is not there and so the traffic doesn't exist. At the moment we've got no way of judging from actually seeing what happens with marina traffic going through there have we?

A. Are you talking about the assimilation survey?

Q. Well you've expressed a view that it's not desirable to mix and what I'm saying is because the traffic, that mixed traffic if we can call that doesn't exist, then we need to use some other methodology of arriving at a conclusion as to whether there would be a problem don't we?

A. In my primary evidence discussing the safety risk concern and that he's actually in paragraph 25 to 26 I believe. So besides a number of crashes goes unreported, the one incident – because effectively Mr Mitchell actually done the five year crash analysis survey which is typical as part of the transport impact assessment so he hasn't actually picked up the 2013 crash, one particular crash so even though it is minor in a sense that when you compare it to the NZTA Evaluation Manual, the rate is really really but what I'm trying to highlight by looking

at their in detail internal investigation, that particular non (inaudible 15:51:45) is actually a good example of the conflict that we've been talking about in relation to one vehicle trying to manoeuvre and park, even though he's not, it's actually outside the keyhole area but one vehicle trying to park and the other vehicle trying to turn and circulating around and that's exactly the conflict situation that might, could have happen if we were to allow uncontrolled, unrestricted access for the marina traffic.

Q. Where something is yet to be permitted or is under consideration as to whether it could be permitted, do you agree that it is a conventional approach that can be taken is to do a survey in which the proposed new introduction of traffic is simulated, do you agree that that's a methodology that can be used?

A. I agree on principle and the best way would be to use a video survey data and in the literature as part of conflict analysis, we actually have that already in the international review in terms of how you actually classify different type of conflict between vehicle and vehicle, and vehicle and pedestrian and there is a certain method that's normally accepted in the transport, traffic engineering principle.

Q. Anyway I think your answer is yes.

A. That's right.

Q. Okay so have you got the joint witness statement there?

A. Yes.

Q. And if you look at paragraph 8(f) which is on page 4 at the top.

A. That's right, yes.

Q. You were one of the experts weren't you that agreed that the survey that was one by Mr Apeldoorn in which Mr Mitchell was present at for some of the time provides an appropriate representation of travel time through these areas by marina traffic with a note that it did not record public transport service times.

A. That's right, yes.

Q. And then if we then turn to paragraph 14(g) which is on page 6, you were one of the experts weren't you that agreed that the simulated

traffic surveys undertaken demonstrated that marina traffic can readily move through the keyhole area. You agreed with that?

A. That's right, however, I actually challenged the integrity of the survey design in the first place.

Q. The what?

A. The integrity of the survey design as I listed in my supplementary evidence there are a number of discrepancies and shortcomings of whether the simulation survey is actually a good method in terms of assessing the marina parking. I agree in terms of the statement saying that the simulation survey actually demonstrates a certain element but only within the context of the survey itself but I actually challenged the integrity of the survey. Would I be able, allowed to be able to expand that Sir?

THE COURT: JUDGE NEWHOOK

Yes I think you better, can you do it succinctly?

WITNESS:

Definitely, yes. So those discrepancies and shortcomings can be classified in two areas. One is the survey design methodology and the second is survey data analysis. For the survey design methodology, as I highlighted in my supplementary evidence those two survey actually are or were independent to each other so effectively you decide pumping the vehicle during off-peak and peak and the off-peak actually being compromised already by tripling that so when I move on to discuss that (inaudible 15:56:06) in terms of the comparison it actually not appropriate and it doesn't actually mean anything much so first is the two independent data test, the second is both peak and off peak actually been compromised by the marina traffic. So the normal conventional process would be you do before and after looking at the impact from the before and after. If you're wanting to compare peak you compare before and after peak scenario and the off peak before and after. So moving on from there to the principle, there is no way in Mr Apeldoorn's evidence in terms of survey instruction and methodology in terms of giving the (inaudible

15:56:44) and actually confident in terms of the consistency of the survey to be able to undertake the survey in appropriate manner so I normally would expect to see the brief and the instruction procedure and how the survey actually be familiar with the objective survey and then you're moving on in terms of what's the expectation of the survey procedure, whether any certain action can be allow or not allow, for example undertaking if some vehicle parking there or you could actually instruct the surveyor to actually wait there and that effectively increase the travel time outcome of the data. And there are a number of minor points around the issue of the type of vehicle, the weather conditions, and how do we actually capture the parking occupancy or the vehicle, number of vehicle travelling because effectively Mr Apeldoorn showing in there not only the travel time across the whole day he actually summarising the occupancy of the number of parked vehicles as the number of vehicle travelling through in and out of the keyhole area. So those are the survey design methodology and the more important element is the uniformly distribution of the marina traffic and Mr Brom actually touch on that already in term of traffic bunching. Even though Mr Apeldoorn highlighted the uniformly distribute of the number of simulated survey actually reduced the frequency of the marina impact but again it actually increased the intensity of the impact itself. Imagine you have two vehicle queuing at the speed hump area and then the next second vehicle actually blocking people circulating through and imagine if you don't actually have any control allowing 20 or 10 plus vehicle to come all at the same time, it actually block up the whole keyhole area and we already acknowledge it is already congested already. So I'm going to move on to the area 2 in term of survey data analysis. Mr Apeldoorn –

THE COURT: JUDGE NEWHOOK

No, no, just stop for a moment please. I thought you'd covered the two points but you seem to be going on to a third.

WITNESS:

No I haven't actually touched on the second part yet.

THE COURT: JUDGE NEWHOOK

Just stop for a moment. Ms McIndoe.

MS MCINDOE:

Yes Sir.

1600

THE COURT: JUDGE NEWHOOK

I don't know quite what I've unleashed with allowing the witness to qualify the previous answer. But we were treated to a long oral treatise that clearly he understood and was even slightly passionate about. My colleague, Commissioner Howie, who is an engineer, had some but I think limited understanding of what was being said. Just watching Mr Brabant and Mr Mitchell while that long answer, very long answer was being given, I discerned that they might be slightly mystified about it and what I want to know for my own benefit and those of others of us in the room who are not expert traffic engineers, is why was this material not put into the rebuttal.

WITNESS:

Can I actually answer...

MS MCINDOE:

My...

THE COURT: JUDGE NEWHOOK

Perhaps you don't know but you were presumably in charge of briefing the witness.

MS MCINDOE:

Yes I was in charge of briefing the witness.

THE COURT: JUDGE NEWHOOK

Q. Maybe you're at something of a loss as well, so maybe I should ask him directly. Why is this material, in great detail as I perceive it, only forthcoming now. Why was it not in your rebuttal?

A. That is actually a good question, really sorry Sir. But I actually only fully understand the methodology that Mr Apeldoorn has done that only after the expert caucusing and the last element of the travel time Sir where he actually clarify at the time of the clause examination. So I actually questioning –

Q. Which cross-examination? The cross-examination of who?

A. Of Mr Apeldoorn, cross-examination in turn –

Q. If you had some further information arising out of that did you not think to put that in writing and show it to your counsel?

A. Previously you mean?

Q. Before today.

A. Because, I mean in part I would accept that, admit that I should have worked harder in term of trying to understand Mr Apeldoorn survey methodology but in a way the how the information being presented is actually difficult to understand.

Q. Yes but you see on the face of it Mr Karndacharuk you signed the joint witness statement didn't you?

A. That's right, yes I have.

Q. Agreeing to these various things that Mr Brabant has been pointing out to you and no doubt some others as well. If you had subsequent doubts why did you not think to put them in writing and talk to Ms McIndoe about them? This is a hugely inefficient way for us to deal with what sounds to me like a very complex matter and one which I would have expected Mr Mitchell and Mr Apeldoorn and Mr Langwell to be able to think about and also talk about amongst themselves, amongst yourselves rather than that we have a huge technical scrap played out for us.

A. Because –

Q. And by surprise.

- A. I'm sorry Sir, the, my primary evidence actually mention that I did not accept the survey design in the first place.
- Q. Yes but subsequently you signed the joint witness statement.
- A. But to the extent that the survey demonstrate certain element that I didn't actually accept the survey in the first place. The survey –
- Q. And do you say that in the joint witness statement?
- A. Because I only agreed to the extent of the survey outcome that represent the pattern of the existing traffic environment. But not the impact of the marina traffic onto the existing environment and there is no such thing in the joint witness, expert witness statement that actually say I agree to that because we, let's say for example this statement of paragraph 14(g) saying that the marina traffic can readily move through the keyhole area. From my professional experience the marina traffic can move through but to what extent of the delay or travel time. The information present here is the average that I oppose in many times in my evidence already and it, in some instance that the marina traffic can move through but at two minutes delay or travel times. And on average it could be 18/19 so there is nothing wrong with that particular statement but it actually not specific in terms of whether the marina traffic actually having more than minor impact or not to the existing environment.

1605

- Q. At the end of the day is the impact that you see on this traffic environment from the difficulties arising out of the survey work that you started to describe, minor or more than minor?
- A. Because what I'm trying to say is the data that presented here in terms of the difference between peak and off-peak doesn't actually meaningful or it cannot be used to translate into the actual quantifiable impact of the marina. And I can actually go to the table here and try to highlight –
- Q. No, no, I want you to answer my question. If you can. Perhaps you're unable to answer the question. My enquiry is as to whether the defects that you allege in the survey work have the result of demonstrating in your professional opinion that there are effects on the traffic environment that are either minor or more than minor. But if you don't

know because you haven't conducted your own survey work, what's the outcome that you want us to understand?

A. I would like to take you to slide number 3 of the – would I be able to elaborate more in terms of the reason why I arrived with the –

Q. Can you answer my question please?

A. Yes.

Q. Is your opinion that the two difficulties with the survey work that you've just been telling – started to tell us about at great length have the consequence of us being advised that there are effects on the traffic environment that are minor or more than minor? Alternatively if you don't know because you haven't done your own survey work, where does this lead us? I just want you to answer the question. I don't want to go to tables and get examples, I want a straight answer.

A. So with the uniforming distribution of the marina traffic one vehicle per, as per Mr Apeldoorn there would be a combination of – I mean my intention is to lead the Court to the expectation or mitigation measure than trying to suggest is that the marina should be limited to one vehicle per minute without traffic managing.

Q. And are you saying in answer to my question, because I'm still not hearing an answer, that anything above that is a more than minor traffic effect?

A. That's right yes.

MS MCINDOE:

Sir if I can assist Mr Karndacharuk, I think it's his evidence in reply which does give his opinion that it's more than minor, but what I was going to take you to is his supplementary evidence at paragraph 7 where he does set out some concerns about the survey. Now I'm not sure whether what he was talking about before is exactly the same, I have to say I was struggling to follow myself, is exactly the same as these concerns, but he has raised his concerns about the survey in the past.

WITNESS:

And if I would like to add to that, yes, the thing that I just explained passionately is actually captured in those part A and B of my supplementary evidence as well as C.

THE COURT: JUDGE NEWHOOK

Q. Is that paragraph 6 is it, of your –

A. Paragraph 7.

1610

Q. Just pause for a moment while I re-read this. A and B capture the two matters of criticism that you sought to raise in answer to Mr Brabant's questions do they? Or is there something else also recorded in the supplementary statement?

A. There is another key issue in the data analysis around these statistically significance of the data itself because they haven't – there is no analysis done in relation to that so effectively what I'm trying to say is data set 1 and data set 2 when you're doing the comparison or correlation if there is no, if there those two, the difference between the two data set is not statistically significant, the difference that Mr Apeldoorn show in those table there in terms of travel time different is only due to the sampling of the data, it's not the significant or the actual different of the two data set itself.

Q. Now is that the second of the two concerns that you were starting out to express?

A. That's right, that's the second of the two concerns, yes.

Q. And am I hearing that there is a third concern or is it those two things? You have two essential concerns about the survey work?

A. Yep, and the data analysis issue is also captured in my paragraphs 7(c) in terms of, before and after data analysis, yes.

Q. But you're telling me that the criticisms of the survey work are fully captured in your supplementary statement in paragraph 7?

A. Yes. Except that statistical test.

Q. So where do you accept that that statistical test –

A. Statistical test.

Q. And where do we, do we find anything in the supplementary statement about that criticism?

A. No sorry.

Q. We don't?

A. No.

THE COURT: JUDGE NEWHOOK

I'm going to address all counsel. I think I now have some understanding of where the witness is coming from in relation to two out of three apparent criticisms of the survey work and I append that two of those three are enunciated in his paragraph 7 in the supplementary statement which of course was created after the conferencing. It seems to me that due process in relation to two of the three criticisms has probably been followed and that if we needed to we could have had other witnesses including Mr Mitchell, if tested by Ms McIndoe during cross-examination earlier this afternoon, assist to advance these matters but I don't think that happened Ms McIndoe.

MS MCINDOE:

No I didn't and the reason I actually put questions about the survey to Mr Apeldoorn, who I understood was the primary witness in relation to the survey.

THE COURT: JUDGE NEWHOOK

And I think you may be right in that. And it's unfortunate that we've had major time disconnects between the various witnesses. I'm going to float the idea with counsel that on this issue of this witness' criticisms of the survey work be the subject of a further (inaudible 16:13:59) amongst the traffic witnesses. Inclusive of the third point that Mr Karndacharuk raises, if he'll enunciate it now for us succinctly for the record, so that we can understand what we're sending them off to talk about, and then see if we can actually make some progress, at least by narrowing the issues down so that we're not going to spend hours in this room engaged in highly technical material. Alongside that

concern I perceive that the witness is approaching the criticisms from a technical, almost academic point of view, rather than from having undertaken any observations of his own on the site or conducted a survey but that may not be. At the end of the day I've had a criticism but I'd like the witnesses to see if they could, you know, put this set of issues into better shape for us and then we'll come back to the questioning of course if we have Mr Langwell at a later time in the week anyway. So Mr Karndacharuk would you tell us please a succinctly as you can what your third criticism of the survey work is that isn't described in your supplementary statement and then we'll consider whether or not that comes as too much of a surprise this late in the proceedings or whether the three issues should be tackled together or just the two that are embodied in the supplementary statement. So Mr Karndacharuk, your third criticism of the survey is?

1615

MR KARNDACHARUK:

Whether that – given that – so, because the reason I actually challenged the peak and off-peak different travel time in the first place as a measure of the impact of the marina traffic so if we accept that the notion of the difference of travel time is acceptable, I just need to make a note that I don't see it as actually appropriate so if you accept that as –

THE COURT: JUDGE NEWHOOK

Can you tell us why you don't see it as appropriate and succinctly?

MR KARNDACHARUK:

Because it will lead back to my paragraph 7 of the survey metrology that should be done between before and after travel time, not peak and off-peak travel time and Mr Apeldoorn should have done the survey of the bus travel time by looking at number plate manually or using a video survey to capture that. I recall Mr Apeldoorn saying that it is difficult to capture the before and after travel time but it's not a straightforward method in term of collecting travel time particular for the buses and passenger vehicle. So the reason of

my third concern is assuming all those are acceptable is that the two data set between peak sample data set and off-peak sample data set I don't believe because there is no statistical test that's showing that those two different actual information on Mr Apeldoorn's primary evidence table 1 and 2 and that could lead to an assumption that those differences is only due to data sampling not the actual difference between data set itself and if that's the case, then it would lead to a meaningful interpretation of travel time difference and it would lead to untested conclusion of the impact of the marina traffic onto the existing environment.

**THE COURT: JUDGE NEWHOOK ADDRESSES THE COURT –
TRANSCRIPTION OF MR KARNDACHARUK EVIDENCE**

THE COURT: JUDGE NEWHOOK

My suggestion is that we cease the questioning of this witness for the moment, have that transcription done, supplied to counsel and all four traffic witnesses and we ask them to get together to talk about these matters and see whether they can at the very least marry the issues if not, come to an understanding about the criticisms, the validity or otherwise of the criticisms. Now if at the end of the day we are still miles apart, that is the traffic witnesses are still miles apart and/or if there is inadequate understanding of the criticisms that are being made by Mr Karndacharuk, we may need to contemplate swearing them in all together and conducting a structured hot tub but that would need preparation by the counsel, by the Court, and by the witnesses. They don't work unless the subject is in fairly careful procedural preparation. I hope it doesn't come to that but I see an issue of fairness to all of the traffic witnesses and to counsel and to us and ultimately therefore for the parties unless we can get to the bottom of this. I think we will let that process go forwarding, the conferencing and see whether it can assist to elucidate matters somewhat. The other thought that I had was that the witnesses and counsel might be assisted embarking on this process if they go back to the cross-examination of Mr Apeldoorn way back on day one or day two or whatever it was and get that material firmly in their minds. I'm saying that particularly because I think it's more Mr Apeldoorn's area than Mr Mitchell

by the sound of it although they were both involved, the survey worked to some degree so I commend them to go over the cross-examination of Mr Apeldoorn again as well on this subject matter.

MR R BRABANT:

In that regard Sir and looking ahead to a caucusing session which I definitely would support Sir because otherwise I'm going to be getting some very detailed advice step by step to try and deal with this.

THE COURT: JUDGE NEWHOOK

The cross-examination could be very long I perceive otherwise.

MR R BRABANT:

Yes, it's fair to say the last communications I had with Mr Apeldoorn because Mr Mitchell wasn't available to me he was in Australia, I don't know whether he's around but Mr Mitchell has been giving me the advice I need right now Sir so he'll tell me if he thinks that Mr Apeldoorn needs to be involved but I'm starting to get an understanding of what the witness is saying and what the response is so I think at the moment I can say Sir and Mr Mitchell would tell me otherwise that we could get this moving forward even if Mr Apeldoorn isn't available.

THE COURT: JUDGE NEWHOOK

Yes, alright. Well I recommend that you play that one by ear but it does seem as though the questions and the answers of Mr Apeldoorn from the beginning of the hearing may have some importance and it may be that he should be involved but if it is absolutely not and you and Mr Mitchell are confident that Mr Mitchell can deal with it in the absence of Mr Apeldoorn then try and proceed in the interests of moving the thing forward, I just have to leave that to you.

MR R BRABANT:

I'll do that Sir, I will yes. I obviously wouldn't want to find some situation where Mr Mitchell can't be of assistance and ultimately to the Court because

that's what they have to do and I'm sure he'll tell me Sir. I am grateful because otherwise this is just going to be quite difficult.

THE COURT: JUDGE NEWHOOK

Yes, it could've stretched out. Now the other thing we need to cover off is that clearly Mr Karndacharuk is technically under an embargo not able to talk to other people but I'm now directing of course that he talk to the other traffic witnesses about this issue. Are there other topics that you are able to question him on to finish the rest of his involvement here this afternoon subject only to the problem that's cropped up.

MR R BRABANT:

As you can imagine Sir, this was key because I was going to take him to those very paragraphs when Mr Apeldoorn describes it, the paragraphs that have been discussed with him but there is another discretion matter Sir that would be perhaps useful for me to deal with now.

THE COURT: JUDGE NEWHOOK

Could you deal with that now?

1625

MR R BRABANT:

Just give me a second Sir and I'll find it. I'll need to hand up, I've copied a certain number of these, I've got to find them now in all the paper here. But just while I try and find copies of this report that I've done Sir, it's in the last statement of evidence, paragraph 10, and there's a reference to –

THE COURT: JUDGE NEWHOOK

Is it supplementary?

MR R BRABANT:

Paragraph 10 in the supplementary in a reference to a NZTA research report and I've made some copies Sir.

THE COURT: JUDGE NEWHOOK

NZTA research report 489?

MR R BRABANT:

Yes, that's it Sir.

WITNESS:

I have a copy of that.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Now, you have the report there.

A. That's right, yes.

Q. Now, in your paragraph 10 you say, "With respect to congestion at the keyhole." And then you refer to this report and you've taken, haven't you, a partial quote out of page 14 of the report?

A. That's right, yes.

Q. So let's go to page 14 for a start. And it's found under s 2.1 isn't it?

A. That's right, yes.

Q. And it's the very end of that quote that you've got in, that's in italics there. You've started at the second to last line. "With traffic flows too close to the capacity of the network when any of these transient accidents will have a disproportionate effect." That's what you quoted isn't it?

A. Yes, that's right, yes.

Q. Let's just have a look at what this report's about please. This report was done in relation to, if we go to the beginning.

THE COURT: JUDGE NEWHOOK

Just before you do. We better record this an exhibit number I think. I think we're up to, would this be 4 Madam Registrar?

MADAM REGISTRAR:

Four.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Does the first sentence under the executive summary objective describe, please, the area of interest of the author's of this report?

A. Sorry?

Q. I'll put the question to you again. Does the first sentence in the executive summary on page 7 under the heading "Objective" describe the purpose which the author's were pursuing in this report?

A. Do you mean the providing additional road capacity and public transport alternatives?

Q. The case for providing is based in part on the high perceived costs of congested roads.

A. That's right, yes.

Q. And then it says, "The objective of this research project was to develop an improved approach to assessing the costs of urban traffic congestion." That's what it says doesn't it?

A. That's right, yes.

Q. You agree?

A. Yeah.

Q. And later on, if we would take the Court to some examples in this report, if we went to page 34. If we start there. North-western motorway, southern motorway and motorway provisions and then Mt Wellington, again on the motorway isn't it?

A. Yes.

Q. If we stick with the executive summary and on that first page "concepts and definitions". And the authors pose the question, don't they, about what can happen with more traffic entering a traffic stream and they identify three ways of defining congestion, do you see that?

A. Yes.

Q. And the third one is the one that they adopt isn't it?

A. That's right, yes, in the context of urban highway road environment, high volume, high speed.

- Q. "Engineers classify a road as congested when more vehicles are attempting to use the road than it has capacity to carry."
- A. That's right, and my professional view on that is because of the unique keyhole function that not provide in addition to movement function is the excess and public transport so the base definition for in this particular case actually number 2. The perceived congestion.
- Q. I want to ask a question if I can please before you give me an answer. That's the definition they've adopted, so they've focussed on the capacity of the roads haven't they?
- A. That's right, yes.
- Q. Now, if we go back to the joint witness statement that you were a party to, can you tell the Court where in that there was an identification that there was a capacity problem on Ocean View Road including the keyhole. A capacity problem.
- A. And that could have been related to paragraph 14(b).
- Q. 14(b)?
- A. Yes.
- Q. It doesn't say anything about capacity does it?
- A. Capacity and efficiency is quite similar and we're focussing on public transport efficiency.
- Q. I put it to you, not according to this report, it isn't the way this report deals with the matter at all.
- A. I disagree and –
- Q. Let's look at –

THE COURT: JUDGE NEWHOOK

He was still adding.

WITNESS:

And the reason of my disagreement is because when you're wanting to assess a certain element you need to really build up in terms of the literature review in order to be able to determine cause of congestion and how you determine capacity and demand of congestion. And the (inaudible 16:33:57)

that I refer to is actually sitting in the literature review section in order to actually set out the building block in terms of how do you define congestion in the first place. So you have the economists here, the engineers here and I'm saying that those two are probably not appropriate for this (inaudible 16:34:16) of the keyhole capacity and congestion area is probably more for the perceived road user perspective and ie; for this particular case it is the public transport user and providers.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Let's go to your paragraph 10. After the quote –

THE COURT: JUDGE NEWHOOK

This is in his supplementary?

MR R BRABANT:

That's right Sir, the quote that led me to the report to read it and ask some questions.

1635

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So you use the quote which starts, "With traffic flows too close to the capacity of the network." That's the qualification at the beginning isn't it? "The traffic flows are too close to the capacity of the network." Do you agree? That's the quote you've used.

A. That's right.

Q. Then you say, "This congestion situation is evident in a number of occasions based on the travel time results of the surveys, where the transient incidents generated a disproportionate effect." Now those transient incidents, you refer to what they were, relating to parking officers and traffic and parking manoeuvres and pedestrian activities. In other words they were interruptions to the flow, weren't they, caused by parking manoeuvres or pedestrians?

A. That's right.

- Q. That's right, that has nothing to do, does it, with traffic flows too close to the capacity of the network?
- A. That's exactly the point in terms of those incidents, minor incidents actually causing the (inaudible 16:36:59) effect to the system.
- Q. But not because the keyhole without those incidents of people parking wrongly or slowly or badly, without those things happening, the keyhole has got capacity for the public transport that uses it, hasn't it?
- A. And that's probably called for the critique of the capacity of the congestion in the first place, isn't it? Should I elaborate that?
- Q. You tell the Court your evidence that says that public transport going through there, and the busses and shuttles, are at a flow rate that is close to the capacity of the keyhole. Where is that evidence?
- A. And we can actually observe the travel time that Mr Apeldoorn has done in (inaudible 16:37:00) simulation survey.
- Q. Yes, but it's a steady state in the off-peak, and then there's some peaks –
- A. That's right.
- Q. – where incidents happen?
- A. That's right.
- Q. Yeah, so that's not a capacity of the, that is not a capacity of the network issue in relation to traffic flows, is it? It's an interruption because of parking incidents, isn't that right?
- A. Because if you look at the consultation report, there is a fundamental flow, on page 16, (inaudible 16:37:37) and flow diagram and travel time can be translated to speed and speed will determine the flow and if you look at the free-flow capacity, that's what Mr Apeldoorn is trying to say, the off-peak is equal to free-flow capacity but I'm saying it's not and effectively travel time can be translated to speed and speed can determine the flow so effectively this diagram here that he showed actually, we can actually use them to determine the capacity or the appropriate capacity of the keyhole.
- Q. Can you tell me without reference to someone else's survey, can you tell me please what in your opinion is the capacity of the keyhole section

of the road to take the vehicles that are authorised to go through it?
What's its capacity, numbers, have you got some numbers?

A. So, I mean based on that, I can actually derive with a certain number and my number at the moment, looking at 200 vehicle per hour but, again, there would need to be a combination of traffic flows and the parking capacity.

Q. So is your evidence that the keyhole has a capacity of 200 vehicles an hour?

A. Approximately.

Q. Did you raise that in the joint witness statement and discuss it with the others?

A. No.

MS McINDOE:

Sir, I wonder if I could just raise one further matter before the witnesses go off and do the further conferencing and it relates to paragraph 8(e) of the joint witness statement, where the experts did in fact record they were unable to agree on the extent to which the simulation –

THE COURT: JUDGE NEWHOOK

Just pause, I'll just find that document. Clause 8?

MS McINDOE:

Eight, subparagraph (e).

THE COURT: JUDGE NEWHOOK

Yes. "Unable to agree on the extent to which the simulation represents what will happen in practice and this is," it goes further than section 14, that one?

MS McINDOE:

Yes, yes.

THE COURT: JUDGE NEWHOOK

Mhm.

MS McINDOE:

I only raise it because I perceived a suggestion that perhaps this had been raised unfairly and I think it was foreshadowed through this subparagraph and Mr Karndacharuk's evidence. I support the need for further conferencing but I wouldn't want any criticism of Mr Karndacharuk for not having raised his concerns given the joint witness statement.

THE COURT: JUDGE NEWHOOK

Mmm, what do you say about the last, I don't know whether it was a criticism or not, but what do you say about the last answer from Mr Karndacharuk that he didn't raise in the conference, the last conference, this view that he has, and I don't know if it's based on calculation or quite what, that the capacity of the keyhole is approximately 200 vehicles an hour, what do you say to the proposition that that would be a matter that is the subject of the next conference as well?

MS McINDOE:

Well it seems to me, that's the first I've heard that suggestion, so it would seem to me that that would also be a useful matter for the witnesses to conference on.

THE COURT: JUDGE NEWHOOK

Yes.

MS McINDOE:

If there's a difference of view amongst them on that.

THE COURT: JUDGE NEWHOOK

There's probably a consequential matter flowing from that as to what it means, in terms of effects on the traffic environment, that the witnesses should consider, it seems to me.

MS McINDOE:

Yes, that would be useful.

THE COURT: JUDGE NEWHOOK

I think I take your point as being that there was a loose end left at the end of the last conference.

MS McINDOE:

Yes, that's right, Sir.

THE COURT: JUDGE NEWHOOK

In this area.

MR R BRABANT:

Well I'm sorry, Sir, but I mean there are things to be explored, I agree, but well if you go from (e) to section 14, then you end up at (g), which is the very point I've put to the witness where this all started, where they all agreed that the simulated surveys demonstrated that marina traffic can readily move through the keyhole area. So, yes, I agree that it was discussed in 14 and, of course, that was a starting point that we ran into trouble.

THE COURT: JUDGE NEWHOOK

Well I think it's all a bit bound up, isn't it?

MR R BRABANT:

Yeah.

THE COURT: JUDGE NEWHOOK

So it should be the subject of the conference as well.

MS McINDOE:

I think it would be useful, Sir.

THE COURT: JUDGE NEWHOOK

Any comment on that Mr Allan? No, you don't want to get involved further.

MR ALLAN:

(inaudible 16:42:16), Sir.

THE COURT: JUDGE NEWHOOK

Fair enough, well Mr Shumane will need to be involved obviously in the caucusing as well.

MR R BRABANT:

Absolutely, yes, yes and no doubt Mr Langwell.

THE COURT: JUDGE NEWHOOK

All right, now Mr Brabant I've essentially got to lift the embargo on this witness to allow him to participate in a free flow discussion.

MR R BRABANT:

I wasn't, of course not going to make an issue about it, Sir, and it may even be that he needs to talk to his counsel for some advice where appropriate.

THE COURT: JUDGE NEWHOOK

Well that was going to be my next suggestion as to, particularly as to the meets and bounds of the jurisdiction and what it is the Court is actually wanting to know

MR R BRABANT:

We're all here...

THE COURT: JUDGE NEWHOOK

Which is about effects on the traffic environment at the end of the day.

MR R BRABANT:

Yes, mmm, well we're all here to make sure the Court can function properly, so I mean us here, so to the extent that my friend needs to help the witness to be able to caucus effectively, I would certainly not have any problem with that, Sir. I rely on her integrity.

THE COURT: JUDGE NEWHOOK

And as you all have seen from the new practice note that we've issued, counsel have a major role in assisting to prepare witnesses, expert witnesses, ahead of conferencing, so clearly that has to be done, so thank you for that concession Mr Brabant. All right, Mr Karndacharuk, if you could stand down for now and somebody will be in touch with you to talk about a time and some preparation for this further conference. Thank you for your evidence in the meantime.

WITNESS STOOD DOWN

MS McINDOE:

Sir, it occurs to me that we may not be able to conclude the conferencing and the recalling of witnesses and the rest of the case by the end of this week and I'm not sure if the Court has given any –

THE COURT: JUDGE NEWHOOK

Well we're just going to have to feel our way through this, Ms McIndoe.

MS McINDOE:

Okay.

THE COURT: JUDGE NEWHOOK

And I would like the witnesses and counsel to endeavour to assist us to achieve that because I'm not quite sure when I can get this panel back together and some of you may have some other things, other cases to move onto from time to time, never mind that (inaudible 16:44:19) down the road.

MR R BRABANT:

Well Sir I can already see, I can see our reply disappearing into a written form at this rate, whether you will just –

THE COURT: JUDGE NEWHOOK

It might be.

MR R BRABANT:

But I would prefer that we just keep doing the best we can, Sir, and see how it all pans out.

THE COURT: JUDGE NEWHOOK

So do I.

MR R BRABANT:

Yeah.

THE COURT: JUDGE NEWHOOK

All right, now there was another caucusing that was going on, another conferencing, Mr Cawley and Mr Styles were meeting, I hope.

MR ALLAN:

Yes Sir, and I've had an email from Mr Cawley who advises that they're going to do their best to get it to us by tomorrow. Initially it was Thursday and I said, no, you should try and get it to us tomorrow.

THE COURT: JUDGE NEWHOOK

Thank you.

1645

MR ALLAN:

So I'm aware that they're both in and out of other hearings and other (inaudible 16:45:06) but of course this should take priority so I'll be the bane of their existence and try and I'm sure Mr Brabant would do the same at his end with Mr Styles.

THE COURT: JUDGE NEWHOOK

Thank you for that perhaps if you can give us a report in the morning about progress with that one.

MR ALLAN:

Perhaps I can touch on another couple of prosaic matters before the end of the day. This memorandum and plan I handed up earlier, I'm happy to take that back and Ms Bremner has volunteered to have a whip around the various properties as best she can in terms of now taking into account that it's private property and try identify the ones that have some sort of view and I can get her to mark that on the plans, return it to you and the benefit of doing that

would be that I can also update the plans reflect the fact that Rural Forest and Bird are a party, a 274 party and admitted to capture.

THE COURT: JUDGE NEWHOOK

I guess that should be put on here too.

MR ALLAN:

That should be put on there too.

THE COURT: JUDGE NEWHOOK

Are they 274?

MR ALLAN:

They're a 274, yes Sir and I understand, I need to just check this but on the southern headland there's a property there with a long list of parties.

THE COURT: JUDGE NEWHOOK

Yes.

MR ALLAN:

Jane Newton I think may be a 274 and we're just going to (inaudible 16:46:23) that out and update that as well.

THE COURT: JUDGE NEWHOOK

If you could, hopefully we haven't scribbled, I've not scribbled on my copy – my colleagues?

THE COURT: COMMISSIONER LEIJNEN:

No, nothing that's –

THE COURT: JUDGE NEWHOOK

Nothing too controversial?

THE COURT: COMMISSIONER LEIJNEN:

No.

THE COURT: JUDGE NEWHOOK

You haven't defamed anyone Commissioner Leijnen?

THE COURT: COMMISSIONER LEIJNEN:

No.

MR ALLAN:

So we'll just make manuscript amendments to those if that's okay when we hand them back?

THE COURT: JUDGE NEWHOOK

Yes.

MR ALLAN:

So that's one matter. The other was the information about census figures and so on, population of Waiheke. I just want to clear with you that what I was proposing to do which was to have Ms Bremner prepare a supplementary, just attaching the information and setting out very factually, well pointing you to the relevant bits but not providing any interpretation as such.

THE COURT: JUDGE NEWHOOK

Sure, just straight statistical information?

MR ALLAN:

Straight information and no analysis. One bit of information I understand is a model that's being run by a growth analyst at the council not proposing to have that person come and present evidence unless you see any value in that, I'm simply proposing that Ms Bremner attach the outcome of running that model to her brief and I think it should all make sense.

THE COURT: JUDGE NEWHOOK

We'll see where it leads shall we? Let's start with that.

MR ALLAN:

Yes, and if there's a need for more than obviously we'll do our best to provide it.

THE COURT: JUDGE NEWHOOK

Keep it as uncontroversial as possible in the early stages but in the context of providing the Court with information to answer the questions that I raised with the witness earlier this afternoon.

MR ALLAN:

So what we have, I think we will have for you projected figures out to 2045 and that's based on this model and you'll also have the 2013 census figures and a 2006 census document.

THE COURT: JUDGE NEWHOOK

We might be in a fortunate position that there is a very recent census and the previous census Mr Allan?

MR ALLAN:

The 2006 I think and I think we'll have that information for you.

THE COURT: JUDGE NEWHOOK

Yes we missed a census didn't we? Nationally.

MR ALLAN:

So we're gonna have 2001, 2006, 2013.

THE COURT: JUDGE NEWHOOK

Yes.

MR ALLAN:

This model that I've referred to for some reason doesn't capture the 2013 census data, it draws on other sources but interestingly the figures appear to be kind of in line with each other.

THE COURT: JUDGE NEWHOOK

In the right bull park?

MR ALLAN:

Perhaps a test of the census figures anyway. So hopefully it will make sense when I present it to you.

THE COURT: JUDGE NEWHOOK

Yes, alright, thank you for that. Now Ms Parkinson, so patiently waiting in the wings.

MS PARKINSON:

Yes Sir.

THE COURT: JUDGE NEWHOOK

Now it's been indicated that Mr Brabant has a few questions for your witnesses, how long do you think you would be wanting to be questioning Ms Parkinson's witnesses Mr Brabant? Give us a bull park.

MR R BRABANT:

If the interchangers are succinct Sir and you always need to say that, now there's a joint witness statement but I'd assumed I was only questioning one witness and I don't mind which it is of the lay people.

THE COURT: JUDGE NEWHOOK

You will need to talk to Ms Parkinson about that.

MR R BRABANT:

I did have a talk to her about that, I don't mind which I questioned but I wasn't anticipating questioning both of them so maybe 20 minutes and probably about the same for their expert.

THE COURT: JUDGE NEWHOOK

Yes, how long would your opening take to deliver Ms Parkinson?

MS PARKINSON:

I have just over 11 pages Sir so 30 minutes, 35 minutes?

THE COURT: JUDGE NEWHOOK

Well I wonder if we might hear you this evening and then hear the questioning of your witnesses in the morning, are they able to return tomorrow? I think your clients will be – they've attended pretty much the whole hearing I think and they're expert?

MS PARKINSON:

Yes Sir he's just given me a little nod.

THE COURT: JUDGE NEWHOOK

All right, let's hear your opening.

MS PARKINSON READS OPENING SUBMISSIONS

"...of marina life," and I should add Sir that's within the period of approximately five to 10 years as in accordance with the joint witness statement.

"Mr Poynter accepted... discharge of contaminants."

THE COURT: JUDGE NEWHOOK

Just a question for you Ms Parkinson, your paragraph 18 lists what you say are the issues in contention. Are those four issues, have they all found their way into the statement of issues that Mr Brabant has recently sent to us?

MS PARKINSON:

Yes Sir, they're word for word the four issues that are listed under "Ecology"

THE COURT: JUDGE NEWHOOK

Yes, thank you.

MS PARKINSON CONTINUES MAKING SUBMISSIONS:

"Assessment of environmental... adaptive management approach." Sir, I'll just record here I know I'm heading into a very big topic with adaptive management and I've tried to keep it relatively brief, being aware of the Supreme Court decision sitting in the background, I've largely referred to Environment Court decisions but I am cognisant of that.

THE COURT: JUDGE NEWHOOK

Yes, well that's essentially what the Supreme Court did too, it analysed a bunch of Environment Court and some High Court decisions on adaptive management. It didn't really tell us what it thought of those decisions in the end. I was left wondering whether my (inaudible 17:19:07) decision got a tick or a cross or a bit of both, or quite what.

MS PARKINSON:

I suspect a tick, Sir.

THE COURT: JUDGE NEWHOOK

Well sort of, but I was hoping that, but I wasn't entirely sure, I have to say, but do carry on and let's see how you've come to it in summary form.

MS PARKINSON CONTINUES READING SUBMISSIONS:

"So I refer ... they become irreversible," and Sir I note there that the road show has called, or termed that the acid test for adaptive management.

"I submit that... on marine life."

THE COURT: JUDGE NEWHOOK

Just a quick question for you about Clifford Bay and the so-called acid test as you expressed by one of my co-presenters in the road show, underpinning that sentiment is of course, has to be an analysis of the degree of the effects that are involved, doesn't it?

MS PARKINSON:

Yes, Sir.

THE COURT: JUDGE NEWHOOK

More than minor at the very least?

MS PARKINSON:

Yes, Sir. So in the context of this case, I am proceeding on the basis that the experts have agreed in their joint witness statement that there is a more than minor effect in time on the water column and sediment and therefore on the biota within the marina footprint, there's still, I would submit a great deal of uncertainty whether those effects are addressed by adopting these low impact paints and I'm mindful, Sir, that we have to assume that those marina rules will be applied and observed by the berth holders as we're directed by –

THE COURT: JUDGE NEWHOOK

Well that's pretty much what –

MS PARKINSON:

– Barry and Auckland City Council.

THE COURT: JUDGE NEWHOOK

– the High Court is telling us we have to do, as you'll see in the conditions of consent, if adequately phrased and within jurisdiction will be observed, monitored and enforced.

MS PARKINSON:

So I'm making my submission in, being mindful of those requirements. We have to assume that condition 41 will be observed, that low impact paints will be applied to the bottoms of all the boats within the marina. However, Sir, I submit that there's not evidence before the Court as to whether those low impact anti-fouling paints will effectively mitigate the adverse effects on the water column and sediment and they're essentially untested, Sir, there's no examples of marinas, around the Auckland region, where this methodology has been applied and shown to be successful.

THE COURT: JUDGE NEWHOOK

Yes, I'm not sure that in any of the marinas that have come before this Court, there has been quite the level of debate about these effects –

MS PARKINSON:

Certainly not, Sir.

THE COURT: JUDGE NEWHOOK

– that's been raised here.

MS PARKINSON:

I was tempted in my submissions to say that this is something of a test case given that anti-fouling paints were raised in the Tairua Marina litigation but didn't get much consideration and decision, that the evidence on those points was referred to, but didn't make its way into the findings with any sort of force and I think Mr Cameron has perhaps suggested that this is the first time that the council has been applying the same sort of spotlight on these adverse effects.

1725

THE COURT: JUDGE NEWHOOK

Do you want to take us through the witnesses and the conclusion quickly?

MS PARKINSON:

Yes Sir, this is, in terms of witnesses to be called tomorrow.

MS PARKINSON CONTINUES READING OPENING SUBMISSIONS**THE COURT: JUDGE NEWHOOK**

I did have a question for you but have a good slug of water and we'll see whether you're able to deal with it now or whether we'll have you deal with it in the morning. I might be able to find the answer for myself, I'm hunting in the – I'll tell you what it is. You don't have to speak unless you're able to. Your submissions focus heavily on antifouling paints on the bottoms of boats but at the bottom of the first page, page 2, paragraph 6 of your submissions you mention that the primary (inaudible 17:30:32) shall be addressed by the Court decision. The potential effects of contaminants from the marina structure, the treated piles and boats moored at the marina is addressed in both the ecological evidence and the joint witness statement. My question is, and it's a few days since I've read the joint witness statement, as to the structure, the treated piles, where do we find mention in the joint witness statement about that by the experts?

MS PARKINSON:

I believe Sir that didn't get direct, and I perhaps shouldn't have bundled the two together in that respect. I don't think it got direct consideration in the joint witness statement. It is addressed in Mr Poynter's rebuttal statement which was a response to the lay evidence.

MR R BRABANT

And Mr Reinen-Hamill's.

THE COURT: JUDGE NEWHOOK

Right, so Poynter and Reinen-Hamill's came along.

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

And both rebuttals are they, Poynter and Reinen-Hamill's? I'll have a look at that.

MR ALLAN:

Reinen-Hamill's rebuttal paragraph 16 onwards talked about cremated copper (inaudible 17:31:47) treated timber piles and the risk of leeching. CCA.

THE COURT: JUDGE NEWHOOK

Does he – I mean I can look this up for myself but something of a slightly practical nature occurs to me on this subject that I'm aware of marina's including the Outboard Boating Club marina inside Tamaki Drive in Auckland where some sleeving of all piles has recently occurred with black plastic piping, significant piping, in respect of which my understand is that the timber piles become shielded from the leaching seawater. So I'll have a look at Poynter's and Reinen-Hamill's statements, but I will be interested to have Mr Waters consider this if he hasn't already and I'll have a look back at the Poynter and Reinen-Hamill's statements and see whether we're getting enough of a message about this practice, (a) this practice, (b) whether it would be applicable in the Matiatia situation, (c) whether it could be thought to be successful in cutting down this leeching effect.

MS PARKINSON:

I know that Mr Waters didn't address it in his primary evidence which was partially due to time constraints –

THE COURT: JUDGE NEWHOOK

Oh well you might like to mention to him that it's in my mind and I'll be asking him about it.

MS PARKINSON:

But he certainly is aware of the issue and can provide evidence in that respect.

MR ALLAN:

Just to mention Sir, just to advance that, there's one alternative referred to by Mr Reinen-Hamill in his rebuttal which is if alternatives to treated timber piles are required, this is likely to be in the form of pre-stressed concrete piles is what he suggests.

THE COURT: JUDGE NEWHOOK

Yes I can remember that, I just didn't remember mention of this I think quite recent practice of in the case of the oversea marina re-sleeving or sleeving of the timber that I hadn't previously noticed in marinas.

COURT ADJOURNS: 5.34 PM

COURT RESUMES ON WEDNESDAY 22 OCTOBER 2014 AT 9.35 AM

MS PARKINSON CALLS

KRISTEN LEWIS (AFFIRMED)

Q. Is your full name Kristin Lewis?

A. Yes that's correct.

Q. And have you prepared a statement of evidence in these proceedings dated 5 August 2014?

A. Yes I have.

Q. And having read through that in preparation for the hearing do you have any corrections or omissions to correct?

A. No.

Q. So do you confirm that the contents of that statement are true and correct?

A. Yes.

MS PARKINSON:

Sir, yesterday I signalled that I would be seeking to produce two items, one is the stills of attachment 7 which is a video.

THE COURT: JUDGE NEWHOOK

That was the video which I think we've got posted on the Court's website.

MS PARKINSON:

Yes that's correct, and the second is the latest state of the Gulf report.

THE COURT: JUDGE NEWHOOK

Yes, you were going to put the executive summary forward I think weren't you?

MS PARKINSON:

Yes, that's correct.

THE COURT: JUDGE NEWHOOK

And I haven't heard from the other parties as to whether they would expect more than the executive summary to be produced but they didn't speak up when you said that yesterday so we'll see how we go.

EXAMINATION CONTINUES: MS PARKINSON

Q. So Ms Lewis, attachment 7 to your statement is a video of underwater footage taken at Matiatia Bay on and around the main ferry wharf and also some footage taken at the Gulf Harbour Marina and you've printed four stills from that video. Can you just explain to the Court where the video footage was taken on Matiatia Wharf?

A. Thomas might be, Thomas is in a better position to answer that actually because he was the one that took the footage. Would I be able to throw that one into Thomas?

Q. I think we can probably – does the Court wish to hear how Mr Greve –

THE COURT: JUDGE NEWHOOK

Yes my preference, counsel having agreed on the approach from what is a bit unusual, the joint statement, that one of the two of them will be questioned. Nevertheless if, when we get to the end of Ms Lewis' testimony if Mr Greve could step up, be briefly sworn and tell us where the pictures were taken or which part of the video from.

MS PARKINSON:

I'll leave attachment 7 then.

EXAMINATION CONTINUES: MS PARKINSON

Q. Attachment 8 to your statement is the Hauraki Gulf Forum, State of our Gulf, from 2011 and you have a copy of the executive summary from the 2014 State of our Gulf. And do you now produce that as an exhibit?

A. Yes.

EXHIBIT 5 PRODUCED – STATE OF OUR GULF

THE COURT: JUDGE NEWHOOK

The stills from the video, the four sheets 2 from Matiatia Wharf and 2 from the Gulf Harbour Marina will be exhibit 6, might as well catalogue them now and simply have Mr Greve tell us where those shots were taken.

EXHIBIT 6 PRODUCED – STILLS FROM VIDEO (MATIATIA WHARF & GULF HARBOUR MARINA)**CROSS-EXAMINATION: MR R BRABANT**

Q. So can we first of all go please to paragraph 12 and under the heading “Construction Materials.” Yes?

A. Is that in my evidence-in-chief?

Q. It’s in your joint evidence, yes. Do you see that?

A. Yes.

Q. This is about using treated piles in the construction?

A. Mhm.

Q. Do you know anything about this topic? I’m not being rude but I just wondered if it’s your area in this evidence or Mr Greve’s.

A. No I’m certainly not claiming to be an expert on it but we have presented –

Q. Yes.

A. – research and documents which I’m sure the authors of those could be considered expert and I know that our expert Mr Waters could speak to that topic.

Q. Right, so you’ve referred to – the statement should I say refers to some literature and then makes a statement in paragraph 15 doesn’t it about existing levels of copper in the water. Do you see that in 15?

A. Yes? Just in relation to existing CCA timber?

Q. Mhm.

A. Yes.

Q. So paragraph 15, so I’m going to ask you some questions and if you don’t know the answer and your partner needs to answer can you just indicate that.

A. Certainly.

Q. So it says here, "The Poynter report shows on Table one, that the current copper levels are 198mg/Keaghan which puts it in the red zone."

THE COURT: JUDGE NEWHOOK

Sorry which paragraph?

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. This is 15 Sir. And there's a reference to Mr Poynter's evidence, "In relation to those values it is clue the sediments at the boat grid and its immediate vicinity exceed ERC 'red mode' for copper and led."

A. Mhm.

Q. Do you know where the boat grid is?

A. Yes I do.

Q. It's not near the wharf is it?

A. No.

Q. No, so the statement by Mr Poynter is in relation to the boat grid where people you know haul out their boats, you will know where that is and clean them and its immediate vicinity isn't it?

A. Yes.

Q. Yes. So your evidence tends to suggest that there's a broader area of copper exceedance than in the vicinity of the boat grid. Is that what you're meant to say?

A. Well I would say if you use the CCA treated timber throughout the marina footprint then it would be distributing copper throughout a much greater area of the bay.

Q. Yes but I thought your statement in here or your joint statement is talking about the current situation isn't it?

A. Well the pointing out, we actually don't know precisely what the current situation is because there really hasn't been adequate sampling done and I think even the other experts acknowledge that there was some questions regarding the findings, but yes, if at that location some of the thresholds have already been exceeded then I think that's a concern if

we're going to be adding any additional copper into that environment from any sources.

Q. Isn't Mr Poynter's evidence that there's a localised issue because the boat grid's been used for years and years by people to haul out their boats, clean and re-antifoul. Isn't that –

A. I'm not sure that it is a localised issue until we've really got some more quantitative data and more rigorous sampling I'm not sure that, I certainly couldn't make that statement.

Q. Okay. So paragraph 16.

A. Yes?

Q. Where you then raise the question of treatment of piles of wood that goes into the water if we can put it that way.

A. Yes?

Q. Have you read the rebuttal evidence of Mr Poynter and that of Mr Reinen-Hamill?

A. Yes I have read Mr Poynter's rebuttal.

Q. And those – and what about Mr Reinen-Hamill's?

A. No you'll have to clarify me on that one.

Q. Well if you haven't read it I won't ask you any questions about it that's straightforward enough. Now, as I indicated to your counsel this morning, the intention is going to be to add a condition into the draft conditions of consent the applicant's producing and I've got a copy of some information to it which I've given to counsel and the other parties as well and it might be, this is just so you can understand what the condition's about. Are you familiar with the use of polyethylene sleeves on timber piles and marinas?

A. No, this is totally new to me.

Q. And you would also be unaware as to how that could affect the leaching of chemicals from the piles wouldn't you?

A. Yes, I certainly can't speak to how that's going to influence that.

Q. Now you've got in your joint statement a lengthy statement about antifouling and what detrimental effects on the environment that could have.

- A. Yes.
- Q. I'm asking you now about it because you're the first in the witness box, is your knowledge about this, your personal knowledge about this derived from what you've read in publications and research papers?
- A. Yes that's correct.
- Q. Yes. Now the attachments that you've produced include a decision by the New Zealand Environmental Protection Agency?
- A. Yes.
- Q. And that starts, now Sir this is attachment 3 but if you're using the Court paper record there it's at GL276.
- A. Sorry can you –
- Q. Sure. If you look for volume 5?
- A. Yes.
- Q. And if you go under tab 1 you should find your evidence and it's got attachments.
- A. Mhm.
- Q. So if you look at the page numbers at the top, GL276.
- A. Mhm, yes I've got it.
- Q. Do you accept that this statutory body is the one in New Zealand tasked with deciding these sorts of issues should we have in this instance antifouling on boats? And if so, what's an acceptable regime and what chemicals are acceptable? Do you accept that they are the correct statutory authority to undertake that evaluation?
- A. I can't answer that question I don't know.
- Q. So you don't know what the environmental protection authority does?
- A. Yes I understand what they are there for.
- Q. Yes okay, and have you –
- A. I don't have enough understanding of planning and policy and strategy.

THE COURT: JUDGE NEWHOOK

It's probably a legal question Mr Brabant.

MR BRABANT

It was really in the nature to know what the extent of her understanding was Sir about the report before I asked any questions.

THE COURT: JUDGE NEWHOOK

Well I think we know now.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. You've read the report?

A. Yes.

Q. And do you understand that the committee considered in detail the sort of chemicals and biocides that can be in antifouling paint?

A. The committee being the Environmental Protection Authority?

Q. Yes.

A. Yes.

Q. You understand from reading the report? Have a look at page 2, the Chair's introduction.

A. Yes.

Q. And the second to last paragraph that starts, "This reassessment process is now complete?"

A. Yes.

Q. And do you see that starting in the second line, the Chairman is indicating that the decision says that antifouling paints containing those particular chemicals that are listed there won't be able to be manufactured or imported as approvals have declined, do you see that?

A. Yes.

0950

Q. So that means doesn't it that by the time this marina, if it was consented, was occupied there wouldn't be any boats with antifouling on them containing those chemicals?

A. No that's – well those particular ones but certainly there'd be other biocides that are still available and have not been indicated that they're going to be banned.

Q. If we just stick with the – I'm just asking you step by step about this. And then the next sentence identifies diuron, octhilinone and ziram as a time limited approval of four years for two of them – or sorry for those three, and thiram for 10, do you see that?

A. Yes I do.

Q. Are you familiar with the latest version of the applicant's offered consent conditions?

A. Yes I believe so.

Q. Do you have a copy there?

A. No.

WITNESS REFERRED TO OFFERED CONSENT CONDITIONS

Q. So can you go to page 16 and proposed condition 41(c)?

A. Yes.

Q. Do you recall that the Council's expert, Marcus Cameron who has been specifically studying this issue in Auckland identified Diuron as a particular issue that needed to be addressed?

A. Yes.

Q. And have you read what's now written in this condition 41(c) or have you not read it before?

A. Yes no, I am familiar with it, I have seen it. If I could just maybe re-read it quickly now. Yes, I'm familiar with all of that.

Q. So it starts off with there is to be a rule saying to berth holders, "You shall not use antifouling products incorporating Diuron." And then it also says in (3) that the marina people, the management will on an ongoing basis provide information and advice regarding all NZEPA directions," which of this would be an example, do you understand that?

A. Yes.

Q. And those directions actually are targeted to boat owners aren't they, telling them what products they have to stop using, do you agree with that?

A. Yes.

Q. You go to page 15 of the report?

A. This is the conditions report?

- Q. Yes the same report, so if you look at GL290 at the top, the EPA report.
- A. Oh the EPA report?
- Q. Yes those are conditions.
- A. Yes. Sorry what page?
- Q. Page GL290.
- A. Yes.
- Q. Do you remember reading there the committee balancing up on the one hand the adverse effects that antifouling products can cause and the need for boats to be antifouled and the situation with bio-security?
- A. Yes.
- Q. So you got there in 3.48, haven't you, the committee saying, "The lack of alternatives at the moment and the bio-security need for antifouling paints means that the positive effects outweigh the adverse effects."
- A. Yes, yes I would – but having said that I think in terms of bio-security when marinas are being identified as high risk areas and certainly it seems that the invasive species can become the dominant biota within the marina, and marinas facilitate the spread of invasive species, I'm not sure that there's actually much of a correlation between having high concentrations of antifouling and producing the risk of bio-security effects.
- Q. Right so go then to 7. 4 of the report which is GL297.
- A. Yes.
- Q. Remember reading that?
- A. Not specifically. As I said in practice it doesn't seem to be working. And I mean it sounds like most marinas do have bio-security management plans, and if what's being proposed for this application in terms of bio-security then I can't see that it's really going to be all that effective.

**THE COURT: JUDGE NEWHOOK ADDRESSES MR R BRABANT –
QUESTION FOR EXPERT**

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. If we go back to your evidence, please, under the heading "Bilge Water" which is at paragraph 31.

A. Yes I have it.

Q. Do you understand that the marina operational rules which establish a contract between the boat owner and the marina will require berth holders to avoid discharging contaminants of the sort you describe in bilge water into the marina waters?

A. I'm not sure how that's all that practical. It's my understanding, and actually Thomas might be better to answer this question in terms of automatic bilge pumps, there's actually no way of being able to prevent the bilge water being discharged into the water column.

Q. And the stills which have been produced coming out of the video, those questions need to be of Thomas don't they because he actually took them?

A. I think in terms of wanting to know the exact location or technical specifications around the photography itself yes, but I think anything to do with the species present and the implications of that would be best put towards our expert Mr Waters.

Q. Yes but there's another issue in here under paragraph 38. So you've got underwater footage from Matiatia Wharf and Gulf Harbour Marina which your evidence says do not support the statement made by Poynter that a wider range of marine organisms will colonise the Matiatia marina. So are you saying that he's wrong about that because of the comparison between what you can see in the photos?

A. Well that's just one piece of evidence that we're putting forward, but I think visually it's quite striking.

Q. Do you know anything about Gulf Harbour Marina?

A. Not a lot, no, except –

Q. Okay well I'll ask the other –

A. Thomas, yes Thomas would be more familiar with that.

Q. Okay I'll ask him.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL**QUESTIONS FROM THE COURT – NIL****WITNESS:**

Am I allowed to just make one more comment, it was based on –

THE COURT: JUDGE NEWHOOK

In answering one of Mr Brabant's questions?

WITNESS:

Yes, it was related to one of the questions that Mr Brabant was asking me in regard to section 41(c) of the proposed conditions. I would just sort of like the opportunity to perhaps comment on that because he didn't really allow me to expand there. Even though diuron is going to be phased out and they're proposing that they don't use it from day one I'm assuming. It's still only one of a whole spectrum of toxic co-biocides and we've listed a number of those in our evidence-in-chief that are in the NZEPA and another document, the ARC literature review which has a very, very long title to it, but it does identify chemicals of emerging concern in use in Auckland and it lists these co-biocides so diuron is only one of them. I also, in terms of the low impact antifouling products I accept that there is one available, it's this Pettit Vivid product but it still contains copper and I think even Marcus Cameron said that it will still be leaching copper into the environment. It does contain zinc pyrithione, I think that's the correct pronunciation, and that is a toxic co-biocide listed in the ARC lit review. And also I think, I know that in the opening submission for the marina they said that placing conditions like this on the marina operators would impose, I think it was something like potentially impossible obligations so I'd like to know how they propose to impose this on boat owners and also even if some of these co-biocides do get phased out in the future I think it's a little bit of a gamble to be relying on the NZEPA doing so when we know that the effects will be more than minor within five to 10 years. It's a short, I think that's a fairly short timeframe to come up with non-biocidal products. So I'm not content that these conditions are going to

mitigate the impact and in the meantime they're still accumulating within the marina with no way of actually, no remedial action proposed.

THE COURT: JUDGE NEWHOOK

Ms Lewis, I'm driven to comment on a couple of matters that you've just spoken about, the first, for the purpose of the present proceedings it's us who have to be satisfied about certain things, not you. You may retain worries, you may retain anxiety, depending on whether you like our decision or not when it ultimately comes, but in the context of the present proceedings it's for us to work out what the level effects on the environment will be and what the consequence of that is. Secondly, I do hear what you say about your concerns about whether the EPA can be relied upon. We can't direct the EPA in any way, particularly in the context of these proceedings or indeed at all so I can't help you with that. But, what I think you're doing is urging us to factor into our overall decision making your anxiety that maybe they don't do their job adequately and I think it's a bit limited the extent to which we can do that. We have to focus on the effects on the environment is what I'm saying. That all leads to a question, so I do now have a question for you and I don't want this to sound pejorative but having listened to your last answer I actually do have to ask you, or feel I need to ask you this. Are you and your partner in fact committed to the notion that there should never be a marina consented in, well let's confine it to the Hauraki Gulf for the moment, it maybe beyond but let's confine it to the Hauraki Gulf, in the context of the current line of antifouling paints available on the market and the limited controls that you perceive the EPA would be able to wield?

WITNESS:

Yeah, and a lot of that concern also comes from reading the State of our Gulf when marinas have been highlighted as contamination hotspots and also areas of high bio-security risk so based on the State of our Gulf yes I do have concerns about marinas in general, just in terms of the ecology and it's not just contaminants it's also the physical structures of the marina themselves change the hydrology and well I know that Mr Waters will be able to speak to

that so they can have an impact just by restricting water flow so yes I would have concerns about marinas in general.

THE COURT: JUDGE NEWHOOK

Okay, well you've answered the question. And do you also understand that in a case like this where many issues are brought to us; landscape, engineering, economic issues, social, Māori culture issues and the like that we actually have to weigh each and every aspect so that we're unlikely to seize upon one issue when making a decision with whether to consent the marina or refuse consent. You do understand that's our function.

WITNESS:

Absolutely, and ecology was one that we're particularly concerned about that as you'll see from our evidence-in-chief we have other concerns as well which we have highlighted so we know it's not just a single issue topic.

FURTHER CROSS-EXAMINATION: MR ALLAN

Q. Just in terms of your more fulsome answer and you referred to the fact that low copper paints still have copper in them. Mr Cameron, since he gave his evidence, has been entering into further discussions with EPA and in an email he refers to the possibility of not only low copper but non-copper paints and producing a list which could feed its way into conditions of consent. If non copper paints were in the mix potentially, would that give you any greater comfort as to outcomes?

A. No because the co-biocides are still, the toxicity levels of the co-biocides are particularly high so the effects of those, that would still be unmitigated.

Q. Okay, I thought I'd just give you an opportunity to respond to that as a possibility.

A. Thank you.

RE-EXAMINATION: MS PARKINSON – NIL

WITNESS EXCUSED

MR LITTLEJOHN:

Before my friend's next witness, can I address you on a brief matter?

THE COURT: JUDGE NEWHOOK

Yes.

MR LITTLEJOHN:

I wish to express some initial disquiet at this recent notion of sleeving the piles in the marina.

THE COURT: JUDGE NEWHOOK

Well you can blame me, I raised it.

MR LITTLEJOHN:

Well I'm not blaming you Sir, I mean you put it out there and it now appears from, if I understand my friend's questions correctly, that it's going to be seized upon. I perceive two issues from that. One, if my friend is going to propose this now as some sort of technique to address concerns of leeching from CCA and the piles, then there's effectively no evidence before the Court that would enable that conclusion to be drawn, and I perceive he's going to endeavour to make out that case from an opposing parties witness, which may or may not be appropriate and may or may not provide him with any assistance.

THE COURT: JUDGE NEWHOOK

Well he's entitled to cross-examine a relevant expert on that sort of thing isn't he?

MR LITTLEJOHN:

I accept that's the case but the bigger issue I have though is that if the piles that we've been presented are to be in stark black with lovely white caps and of a volume of some 180 then that's not the basis on which the visual simulations have been presented.

1010

THE COURT: JUDGE NEWHOOK

Don't worry your head too much about this Mr Littlejohn because –

MR LITTLEJOHN:

I'm good Sir I just want to –

THE COURT: JUDGE NEWHOOK

– when I raised it I perceived that it might throw up other issues, and as you're aware in the iterative nature of our enquiries, it can get quite inquisitory and new information can arise during the course of the hearing, and that one came out of my head last night based on an experience of mine knowing a particular marina in Auckland who had just been retrofitted, then yes it can throw up other issues. And in the landscape area I have a suggestion that I'm going to make when we've heard from the two landscape witnesses that you're going to be calling.

MR LITTLEJOHN:

Very well Sir, thank you, I just wanted to raise it.

MR R BRABANT:

It might just help if I say Sir that I mean the reality is that from discussion with Mr Wardale these sleeves were going to go on because that's what happens now when marinas are put in.

THE COURT: JUDGE NEWHOOK

I don't think we knew about that from evidence though did we?

MR R BRABANT:

No no but anyway, if I could just say that – I mean people as you know are going around retrofitting them at the moment in existing marinas.

THE COURT: JUDGE NEWHOOK

That's why I raised it when I recalled.

MR R BRABANT:

So it just seemed helpful at this stage to clarify and we can put a condition of consent in or not. But Sir the other thing is my friend's suggesting there's some issue about the visuals but the visuals already shore these piles in black. So –

THE COURT: JUDGE NEWHOOK

Let's ask the landscape witnesses about this. I've already indicated that this is in my mind so let's do that. Let's ask the experts. I think they're all going to grace us with their presence.

MR ALLAN ADDRESSES THE COURT – HOUSEKEEPING

MS PARKINSON ADDRESSES THE COURT – RE EVIDENCE

MS PARKINSON CALLS

THOMAS RAINER GREVE (SWORN)

THE COURT: JUDGE NEWHOOK

Q. Yes Mr Greve, welcome to you.

A. Thank you. Being lay can I just add to my partner's comment, just so that we don't appear as extremists when we say we're not interested in having marinas anywhere in the Hauraki Gulf. I think it's fair to say that there are alternatives to marinas ie dry air hall-out, so it's not that we want to say no more boating facilities.

Q. Okay, all right, I hear what you're saying. Now let's just approach what you're going to help us with in a structured way, Mr Greve.

EXAMINATION CONTINUES: MS PARKINSON

Q. Is your full name Thomas Rainer Greve?

A. Correct.

Q. And have you prepared a joint statement in these proceedings dated 5 August 2014?

A. I have, we have.

Q. And do you have any corrections to make to that statement?

A. No thank you.

Q. And do you confirm that the contents of that statement are true and correct?

A. I do.

Q. Mr Greve, attachment 7 to your statement is a video of underwater footage taken at Matiatia Wharf and at Gulf Harbour Marina, can you just briefly explain to the Court how you took that footage and the location that the footage was taken?

A. The two Matiatia pictures taken from the video footage, they were taken at the very end of pier 2 – sorry the very end of the main pier between pier 1 and 2, they were on an underwater camera positioned approximately a metre and a half under the surface. The Gulf Harbour

footage was taken via a scuba diving expedition using the same camera equipment on pier H60 which is the pier that my family owns.

Q. Do you produce those four stills as exhibit 6?

A. I do thank you.

EXHIBIT 6 PRODUCED – PHOTOGRAPH STILLS

THE COURT: JUDGE NEWHOOK

Q. A quick question in relation to the Gulf Harbour ones, you say that the pictures were taken on H60, judging by the number is that out towards the end of H pier is it?

A. Correct, yes, there's approximately 20 berths more, 10 on each side, so it's towards the end of the pier.

CROSS-EXAMINATION: MR ALLAN – NIL

CROSS-EXAMINATION: MR LITTLEJOHN – NIL

CROSS-EXAMINATION: MR R BRABANT

Q. Can we go to paragraph 4 please. So you've referred to your extensive sailing experience there, what you've done.

A. Yes.

Q. Do you or your family still own a yacht or a launch?

A. No.

Q. So you used to have one on the berth, now someone else uses it?

A. No, the berth was purchased for investment purposes. The boat we had was on a swing mooring at Waiheke beach in Torbay.

Q. And during the time you had your boat did you have antifouling on it all the time?

A. Yes.

Q. Did you regularly replace the antifouling so it didn't get fouled?

A. Yes.

Q. And did you ever take it out of the water when you weren't using it as you suggest other people could?

A. No, however I have seen quite a number of not only trailer sailors but also kielers being taken out of the water so it is possible. But did we do it? No we didn't.

Q. Well there's a hardstand yard that we can see, we drove past it every day while we were going to the hearing. There are boats out there but they're being – at Ostend, they're being maintained and then they go back in the water again don't they?

A. That is also correct, yes.

Q. With new antifouling paint on them, correct?

A. Yes.

1020

Q. Now let's talk about the photograph at Gulf Harbour Marina.

A. Yes.

Q. H60?

A. Yes.

Q. So just remind me because I can't remember exactly, how many piers are there altogether? What's the numbering "A" to what?

A. The number of the berths or the lettering of the piers?

Q. Not numbering sorry, lettering I should've said to be correct.

A. So the lettering of the piers?

Q. Yes, do you know how many?

A. I think "M" is the last one. "M" or "L", "M", somewhere in that vicinity.

Q. So does that mean that the pier you own is somewhere in the centre of the whole lot?

A. Alphabetically, I guess yes.

Q. And your family leased a berth at Westhaven and then moved to Gulf Harbour upon opening in the late 1980's.

A. Correct.

Q. Has your family had a boat on that marina at some stage? Because that's quite a while.

A. When the marina berth was first purchased.

Q. Yes.

- A. When it was constructed and then we purchased a berth, yes, we put our boat there for six months and then removed it, put it back into Waiheke for convenience purposes.
- Q. Okay so I just want to check because you said investment purposes, I want to ask you some questions about the marina, I want to make sure you had some familiarity with it.
- A. Yes.
- Q. So do you know how many berths there are at Gulf Harbour? How many boats are there?
- A. Exactly no, approximately 280ish?
- Q. Two hundred and eighty?
- A. I think around, yes, around the 280 mark.
- Q. Are you sure?
- A. No I'm not sure.
- Q. Well do you know how many boats are on each pier?
- A. More than 60.
- Q. Yes, there's a bit of arithmetic you can do to know that your number is right out of line isn't it? Isn't there over 1000 boats in there?
- A. That is also possible.

**THE COURT: JUDGE NEWHOOK ADDRESSES THE COURT –
CALCULATING NUMBER OF BOATS**

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. Are you happy with the information that there's over 1000 berths?
- A. Yes that's correct, yes.
- Q. And this proposed marina is 170 isn't it?
- A. Correct.
- Q. Yes.
- A. A hundred and seventy eight, yes.
- Q. Well if you include the pole moorings?
- A. Correct.
- Q. Yes.
- A. Or 160 if you don't include them.

- Q. Oh let's include them, I don't mind.
- A. Okay.
- Q. Now the other thing is, the design of the marina that's proposed the Court's hearing about, and you've heard the evidence that it has good tidal flows through it doesn't it? It's got –
- A. I don't think there's sufficient hydrological information to be able to say "good" but there is tidal flow, yes.
- Q. There is two breakwaters facing the entrance to the bay but then the southern access pier down the side, the water can flow underneath it can't it right?
- A. The lower one and a half metres of water can, yes.
- Q. Yes.
- A. The top surface does get trapped to some extent by that floating southern access pier but yes.
- Q. The Gulf Harbour on the other hand has got a fairway entrance and it is entirely enclosed isn't it?
- A. Correct.
- Q. Are you, this is, you've got photos that you say show different assemblages as Mr Poynter described them to me on the different photos, one lot at the wharf, and the other at Gulf Harbour Marina?
- A. Yes.
- Q. The question of why those assemblages are different is that a question that you would want your expert to answer?
- A. To some extent I guess one consideration we need to keep in mind is that Gulf Harbour also is adjacent to a marine reserve so one would expect there to be some overflow of biota and fauna into Gulf Harbour however, that clearly doesn't seem to be happening.
- Q. Yes.

THE COURT: JUDGE NEWHOOK

Question for his expert, Mr Brabant.

MR R BRABANT

That's right Sir, I just wanted to be careful and ask. Thank you Sir I have no further questions.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Having closed you down but when you wanted to speak to us when you were first installed in the box Mr Greve.

A. Yes.

Q. We've now got the structure back into your presentation and I should now give you the opportunity to complete that statement that you were offering us when you arrived in the box.

A. In relation to my extremism?

Q. Well, I didn't use that word.

A. No I did, I did that's fine. Now just for example Orams, they have a dry haul out facility for –

Q. Dry stack.

A. A dry stack, thank you. So not that I'm proposing that we, that the applicant construct a dry stack at Matiatia but I think there should be some movement away from things that are creating negative effects to the environment for example marinas et cetera to facilities that allow the everyday person to use their boats but maybe not necessarily with permanent antifouling i.e. haul the boat out of the water.

Q. Do you know what the biggest size boat that can be accommodated in the two Auckland dry stacks is?

A. Yes, they're not super yacht size I acknowledge that.

Q. Would 10 metres ring true?

A. Yes, 10 –

Q. Possibly 11 for (inaudible 10:26:46) –

A. Yes, some in that vicinity, mhm.

Q. And only for powerboats not boats with keels and masts?

- A. At this stage I agree with everything you've said, yes, at this stage.
- Q. I see.
- A. Other technology, sorry if I'm permitted to continue, other technologies are maybe just around the corner, just like these super low toxic antifouling paints that are – or it's a hypothetical.
- Q. Well you'll keep badgering the EPA would you?
- A. Absolutely, absolutely.

RE-EXAMINATION: MS PARKINSON – NIL

WITNESS EXCUSED

MS PARKINSON CALLS

CHARLES WATERS (AFFIRMED)

Q. Is your full name Mr Charles Waters?

A. Yes.

Q. And have you prepared a statement of evidence in these proceedings dated 30 July 2014?

A. Yes.

Q. And also participated in the first day of the expert caucusing with the ecological witnesses?

A. Correct.

Q. And reviewed and provided comments on the joint witness statement dated 27 August 2014?

A. Correct.

Q. And do you hold the qualifications and have the experience that are set out in paragraph 1 and 2 of your statement of evidence?

A. Yes.

Q. Do you have any corrections to make to that statement of evidence?

A. A couple of minor ones.

Q. On page 4 paragraph 13, midway through the paragraph is a phrase that reads, "Toxic then two other biocides," I'd like to insert the word "the".

1030

THE COURT: JUDGE NEWHOOK

Where does the inserted word go? Between which two words?

WITNESS:

Between "them" and "to". The line that begins, "Toxic then too."

THE COURT: JUDGE NEWHOOK

What's the other one Mr Waters?

WITNESS:

On page 5, the very last sentence in paragraph 16, if we could kindly insert the word “are” between “research” and “required”.

EXAMINATION CONTINUES: MS PARKINSON

Q. Thank you, with those corrections, can you confirm that your statement of evidence is true and correct?

A. I have two more corrections, I’m sorry, they’re small. On page 7, in paragraph 28 may I please insert the word “some” following “in addition” in the third line. And finally replace the term “each” in the sixth line with “representative”.

Q. And with those corrections can you confirm that the contents of your statement are true and correct?

A. Yes.

Q. I just had one question, clarification. Have you got the joint witness statement for coastal ecology and antifouling?

A. Yes I do.

Q. Sir, for the record I recall that this is tab 3 of the joint witness statement folder. It’s dated 27 August 2014 and on the second page of that statement there is a, I’ll call it a preamble which sets out comments that you provided to Commissioner Hodges who facilitated the expert conferencing, confirming that you’d reviewed the signed joint witness statement and accepted the statement subject to the following change which was under point 15, Key Facts and Assumptions, inserting the text that, “CW considered that a great deal more quantitative information is required before fully informed decisions regarding the potential environmental impacts of the proposed marina on Matiatia Bay can be reached.” Mr Waters can you just clarify for the Court what you mean by “a great deal more of quantitative information”. Just give a short explanation of what information you consider needs to be provided.

A. My understanding is that the Court was looking for quantitative information to make a very important decision. My experience in assessing ecological systems or other scientific enquiries is to ask about

measurements with respect to just about everything within the system including water quality parameters, biological communities, external factors such as hydrology in addition to the immediate system under review. I think that it's also important to think about possible and relevant extensions such as bird life or in certain cases even terrestrial fauna.

CROSS-EXAMINATION: MR LITTLEJOHN

Q. I take it from your accent that you're not from around here?

A. Correct.

Q. Where is it that you hail from?

A. I live on Bainbridge Island which is a small island about 35 minutes by ferry west of Seattle, Washington in the States.

Q. And how long have you been in New Zealand for?

A. Four years now.

Q. And do you live on Waiheke Island?

A. Yes sir.

Q. Now you've got qualifications as a, well you've been studying marine biology, can you explain to me the difference between the skills or knowledge-base of a marine biologist versus, for example a zoologist?

A. A zoologist would probably be, would examine processes on a larger scale. They would look at any animal for behaviours, foraging behaviours, reproduction and so on and so forth. As a biologist I'm looking more at the granular level which would be primarily at the molecular or cellular level so it's just a little bit more of a level of detail.

Q. And tell me, the other experts that you caucused with, do you know whether they were zoologists or biologists? Marine biologists.

A. To the best of my knowledge they described themselves as ecologists and I don't know much about their experience beyond that.

Q. Well we can check in their evidence about that. Now, have you got Mr Poynter's rebuttal evidence easily accessible to you?

A. Yes sir I do.

WITNESS REFERRED TO REBUTTAL EVIDENCE OF MR POYNTER

- Q. There's just a few things I wanted to clarify from you based on some of the comments in Mr Poynter's rebuttal evidence. One of the first ones Ms Parkinson asked you about and that was paragraph 7 of Mr Poynter's evidence. I wanted to then ask you, if I can, about paragraph 11. Now, are you familiar with the ANZECC 2000 water quality guidelines and thresholds?
- A. Yeah sir, I have looked at it. Some parts are more detailed than others but yes I am familiar with it.
- Q. Are you able to offer a view on whether the undertaking of the analysis in this case, with reference to those guidelines is appropriate?
- A. Could you kindly walk me through that again sir.
- Q. Well as I understand the evidence about assessment of effects, it has been focussed on the ANZECC water quality thresholds and I wanted to ask you whether you thought that was an appropriate way to approach the analysis of potential water quality effects here.
- A. The parts that I've read I would say yes. Particularly –
- Q. Okay, thank you. Paragraph 16 of Mr Poynter's rebuttal. He's referring there to the NIWA modelling that was done and comments by reference to that report that most of the variables and hydrodynamic processes have been accounted for. Are you familiar with that modelling report?
- A. Yes sir.
- Q. Do you agree with the proposition that the variables and hydrodynamic processes referred to in that report are sufficient for the purposes of relying on that model?
- A. No sir.
- Q. Could you explain from that answer what other variables or processes might have been relevant to that model?
- A. I can speak specifically to the water characteristics and I feel that from my opinion is that the Court would be best informed if it had data from Matiatia Bay. Whereas this data is admittedly I believe admittedly proxy data from elsewhere. In addition to that I think that the water characteristics evaluated here omit at least four additional parameters that are critical to marine health, those being any of the nitrogens,

dissolved oxygens, E. coli and phosphorous. And again I mention that particularly the nitrogens and dissolved oxygens because they are critical to the health of a marine habitat.

1040

- Q. At paragraph 1 of Mr Pryor's rebuttal he says that you largely repeat what he acknowledged in his report, that the likely outcome would be some suppression of sensitive marine life within the marina due to a level of reduction of water quality confined to within the marina. Is that an accurate summation of your opinion of the effects of this proposal would be?
- A. Let me look at paragraph 20 to make sure for you. I believe my reservation here was the statement, I was curious as to how the effect in a change in water quality would be confined to the marina. So I think that there are two points that he's raising or I interpret that, one of them is whether or not there would be I would call it "mortality", and the second point being again my reservation that how would it be confined to the marina given the flushing and tidal exchange rates that he reports in other locations in the documentation.
- Q. Thank you for that. Paragraph 23 of Mr Pryor's evidence, rebuttal evidence, he refers to a code of practice for the environmental management of the South Australian oyster farming industry. Are you familiar with that code?
- A. To the extent that part of it is attached, is that the –
- Q. Yes?
- A. Yes.
- Q. Do you think it's relevant to any of the issues that Mr Pryor raises in his evidence?
- A. I believe that my reservation about this paragraph was the instruction that it be reviewed in a particular perspective. And based on that perspective or in support of that perspective was the literature review of ecological effects of aquaculture. And in addition to the fact that structures such as these posts coated or are treated with CCA was acceptable practices elsewhere, in my opinion it also, this paragraph

overlooked the description of effects in the document that he attached that alludes to, "Accumulations by organisations and elevated concentrations of copper can quickly interrupt the normal cell metabolic processes causing growth rate reductions, loss of osmoregulatory functions, weight and biomass loss, dysfunctional sensory responses, shortened lifespan and/or reduced resistance to infectious diseases." I thought that that was an alternate perspective to Mr Pryor's perspective.

Q. Now, one final matter, has Ms Parkinson for Mr Greve and Ms Louis, been providing you a copy of the applicant's revisions to the conditions of consent?

A. Is that what I just got? Yes.

Q. Have you studied those at all?

A. Yes.

Q. Have you any comment you want to make on the proposals not put forward in respect of monitoring of water quality by the applicant?

A. Could you repeat the question please?

Q. You've got the revised conditions there in front of you?

A. Yes.

Q. And I'm focusing particularly on the conditions around the monitoring for detection of contamination levels in the water column and in the sediments.

A. Yes.

Q. So you're familiar with those?

A. Yes.

Q. Are you able to comment on whether you think both the parameters and techniques for monitoring are appropriate for this location?

A. I would have to qualify that a little bit in that first of all it was my understanding that the data provided to the Court would facilitate a decision on whether or not a marina should be constructed, not what would happen after a marina had been constructed.

Q. I understand that. But you understand that that's not what we're doing to a certain extent. We are looking at the conditions. On the basis of

those conditions do you have a view on the matters they are proposing to monitor for, the parameters?

A. I'm not familiar with it enough to say one way or the other.

Q. Are you aware from your experience and studies of any ability to remedy water and sediment quality contamination after it has been detected?

A. I have some case study experience but no personal experience.

Q. And what does the case study experience suggest to you?

A. That it is extraordinarily difficult to undo harm and damage. The United States EPA tried to cap a deposit of arsenic in Eagle Harbour, the island where I'm from, at considerable expense and many years of work, and as it turned out after putting a cap on this arsenic deposit, the repeated tidal flows moved the cap off of the arsenic and we are back to where we are now. I also have experience in Pleasant Harbour, Washington with respect to bioinvasive and how difficult it is to get rid of that, and those are examples of what I'm talking about. It's exponentially more difficult to get rid of things rather than prevent it from happening to begin with.

1050

CROSS-EXAMINATION: MR ALLAN

Q. Good morning Mr Waters.

A. Good morning.

Q. Mr Littlejohn took you there to an extent, I'm not sure whether you'll be able to answer this but you've raised a concern about the adequacy of the baseline information.

A. Correct.

Q. If the Court regards the baseline information as adequate and decides to grant consent, do you agree that the set of conditions now proposed by the applicant represents a robust set of measures to address sediment effects?

A. Could you please repeat the question?

- Q. So in the event that the Court decides that there is adequate baseline information and decides to grant consent, do you agree that the set of conditions now put forward by the applicant as a whole, so for instance including the requirement to use low impact paints, prohibiting diuron et cetera, do you agree that these represent a robust set of measures to address sediment effects?
- A. I would have to review these more in detail before answering correctly.
- Q. Okay. And –
- A. Unless there's a specific, is there something very specific or?
- Q. I've given you a couple of examples for instance the requirements to use low impact paints you may not be familiar enough with the position with marinas in New Zealand but are you aware of consents and conditions on consents for other marinas around the country going as far as that in terms of imposing that requirement from the outset and prohibiting diuron, requiring the monitoring that's required and enabling a section 128 review of conditions. You may not know what a section 128 review of conditions is so please say so if you don't. Are you familiar enough with other marinas and consents around the country to comment on that at all?
- A. No.
- Q. The only other thing that I wanted to just, to assist the Court to get some clarity about was the joint witness statement, obviously you didn't sign it and I think you were away overseas or something like that? Were you in Borneo or somewhere when – that's a question, you weren't able to sign it for that because you were overseas?
- A. The question was because I couldn't physically sign it. I agreed with Mr Hodges that if incorporating that change would constitute an approval and an endorsement of the –
- Q. There were just a couple of areas where I was uncertain as to whether you regarded them as within your expertise and therefore you weren't commenting. I just want to just quickly go to those two points in the joint witness statement, have you got a copy of that there?
- A. Yes.

- Q. So we get into the nitty-gritty at section 6 there, now obviously there's a comment at the end on methodology and I think we understand your position on methodology and likewise at 7 I think you've got some concerns in relation to the statement ecological values is that right?
- A. Yes.
- Q. Okay so where I wasn't so clear, so when we move to 8 and 9, are these matters, little blue penguins and conditions relating to that and the marine biosecurity and plant pest management, are those things where you're contempt to leave those issues to the other ecologists?
- A. I would with little blue penguins, not for contaminants or water quality.
- Q. So in terms of the agreement that was reached amongst the other experts, and see this is where it's not very clear, it says the experts agreed that the revised set of conditions and marine biosecurity management were appropriate, do you disagree with that?
- A. Correct.
- Q. How do you think they should be amended?
- A. In paragraph 6 we alluded to an ecological assessment as an appropriate starting point and I understood that where we were in the assessment process we were at the starting point given that there seemed to me quite a bit more additional information particularly with respect to the biota and the water quality in the marina before we would satisfy the Court's requirement for information.
- Q. And that ties in with you're answers earlier, if however the Court is in a position of deciding it's going to grant consent and it's trying to resolve the matter of conditions and what conditions should be imposed, are you able to assist the Court with any suggestions as to how the biosecurity management conditions should be worded, what matters they should encompass, what requirements should be imposed? If you're not familiar enough with the conditions or you don't have any particular ideas, that's fine, just say so.
- A. I'm not familiar enough with what you're asking to say anything. I'm just the biologist.

CROSS-EXAMINATION: MR R BRABANT

Q. If I just return to this joint witness statement for a minute please. At the beginning I read the words, "Mr Waters confirmed he had reviewed the signed joint witness statement."

A. That's correct.

Q. "And accepted this statement subject to the following change." Is that the copy you've got in front of you?

A. I believe so.

Q. And then you asked for a change which is set out at the end of that page.

A. Yes.

Q. Under 7 with ecological values, are you included in the phrase or the words, "The experts agree," in (a), (b) and (c)?

A. Yes sir.

Q. Oh sorry, I was waiting for you to say.

A. Okay, sure.

Q. You just need to, partly for the transcript, and that's why I wasn't looking either.

A. Sorry.

Q. A yes or a no or you can say it in Māori, we've had that as well during this hearing. So looking at the Little Blue Penguins there are areas there like under a(ii), (vi) and (vii) where it says, "The experts agree or the experts have agreed."

A. Correct.

Q. That includes you?

A. No.

THE COURT: JUDGE NEWHOOK

Q. Is that simply because you weren't involved with the Little Blue Penguin issue?

A. No Sir that is because I felt that the Little Blue Penguin issue had been adequately researched and quantified.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Had been?

A. Sufficiently researched and addressed as far as an assessment goes.

Q. So then you agreed to these things. I'm just trying to understand because when I read the beginning of this I do know that you had expressed a qualification and you got that added in in 15 but otherwise you said you'd reviewed it and accepted the statement. So I'm just wanting to get a clarity on this. I read 8, "Little blue penguins" where it says "the experts agree" in (ii), in (vi) and in (vii) as including you. You're one of the people who – and you've told us that with that qualification you accepted it as if you'd signed it.

A. That's correct.

1100

Q. Okay. And in 9, "The experts experienced in this matter appears in 1 and 2." Are you an expert experienced in this matter for the purposes of those statements?

A. Yes.

Q. You are?

A. Yes.

Q. And the same with marine bio-security, "the experts experienced in this matter," does that include you?

A. Yes.

Q. So you agreed on those matters didn't you?

A. Yes.

Q. And if we look at 10, "Contaminants", are you there with that?

A. Yes.

Q. Look under (a), the second sentence, that includes you doesn't it?

A. Yes.

Q. Thank you. And you're also one of the experts in the statement found in subparagraph (c)?

A. Yes.

Q. And (d)?

A. Yes.

Q. And (e)?

- A. Yes.
- Q. And (f).
- A. Yes.
- Q. And (g).
- A. Correct.
- Q. And if we turn to (m) on the page 6, do you see that there?
- A. Yes.
- Q. You're one of the people who agreed there with the main findings of the study?
- A. Yes.
- Q. Let's turn to "Sediment quality" now on page 7, (p)?
- A. Yes.
- Q. You're one of those experts?
- A. Yes.
- Q. And you also join with the others in what is said out in (s)?
- A. Correct.
- Q. And under (t) also in respect of the third and fourth sentence?
- A. Yes.
- Q. And under an 11 you agreed didn't you that the primary contaminant of concern is copper?
- A. Yes.
- Q. You see under (ii) there it refers to "leaching from treated timber"?
- A. Yes.
- Q. Have you any working experience with the use of treated timber piles in marinas?
- A. No, just the biology.
- Q. Are you familiar with any modern marinas in New Zealand in terms of how they manage this question of treated timber piles?
- A. No sir.
- Q. And you're one of the experts that signed off in the way that we know about, subparagraph (e) in 11?
- A. Could you repeat the question please?

Q. You're one of the experts, because it doesn't note an exclusion, that signed off what's in 11(e)?

A. Yes.

Q. Do you agree, and if you haven't had an opportunity to read them carefully please say so, do you agree that the conditions now found in the revised conditions of the applicant which have the date on them 21st October now align with those that are referred to in that subparagraph?

A. My apologies, could you please put that together for me?

Q. There's a revised set of conditions the applicant has produced dated the 21st of September in consultation with the Council people –

THE COURT: JUDGE NEWHOOK

21st of October and that date was actually written by hand on the top of the first page on them. Have you got that document there Mr –

WITNESS:

Yes Sir.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Now if you haven't had a chance to study them and compare them please say so.

A. I have not.

Q. Now, can I go back to the beginning of your evidence where you say you've been studying marine biology and coral reef ecology for the past 12 years.

A. Yes sir.

Q. And you've told us you've been here for four years and refer to working with associate professor Dr Mark Costello at Auckland University?

A. Correct.

Q. Is that a full-time occupation as it were?

A. Yes sir.

- Q. And so there's eight years of study before that, was taking place elsewhere or were you kind of doing it at a distance?
- A. A good question, it's not a straightforward answer. Three of those years were studied, the remaining years were independent studies and curiosity.
- Q. And before the 12 years of study, were you doing other kind of study or were you in some kind of employment or consultant work?
- A. I was working in computer science.
- Q. And would that take us really back through your working life, computer science, or not right back?
- A. For the most part I was working in that field for 25, 30 years.
- Q. So it would be fair to say wouldn't it that you actually have no working experience as a consultant in the field of study that you're doing?
- A. I would say that's incorrect sir, I have quite a bit of experience conducting studies on a consulting basis.
- Q. Let me phrase it differently then. You've had an opportunity to not only read evidence but you've also had an opportunity to caucus and therefore meet, and I'll just mention two of the consultants, there's Mark Poynter?
- A. Yes.
- Q. And then there's Mr White, Stephen White?
- A. Yes.
- Q. And you'll know these people are practicing marine biologists or ecologists who work sometimes I guess for an applicant, sometimes for other people or maybe the Council looking at particular process, and assessing and providing advice?
- A. Yes.
- Q. Do you know what I mean?
- A. Yes.
- Q. You haven't done any of that have you?
- A. I thought that I just said that I did. Maybe I'm misunderstanding the question but certain a organisations and Government agencies has asked me to assess environmental conditions in lagoons or bays or

areas both in the United States and in the South Pacific and so in my opinion that qualifies as at least some experience conducting these things.

1110

Q. That's what I was trying to ask you, sorry. Now, and there's a folio of documents and they should be behind you and there's a front page that has March 2013 on them.

A. Yes sir.

WITNESS REFERRED TO DOCUMENT

Q. Can you turn up please figure 43. So if you look at the bottom, if you've maybe used these before you'll know how it works, they're numbered through.

A. I'm looking at a page with two photographs, one upper left, bottom right.

Q. Yes, and the figure's entitled, isn't it, Plan of Ecological Sampling Sites.

A. Correct.

Q. And you're able to understand what that is depicting by reference to the evidence of Mr Poynter.

A. These are the sampling sites?

Q. Yes. So in other words this is showing us, pictorially if you like, where he did this.

A. Yes.

Q. Where he took samples.

A. Yes.

Q. Where he did investigations, would you agree?

A. Yes.

Q. When were you instructed to provide advice and potentially give evidence Mr Waters?

A. Good question. My best guess would be some time in June.

Q. Of this year?

A. Yes.

Q. And so you read the material that was available from Mr Poynter?

A. As much as I could, yes.

Q. Well?

- A. Not all of it, no. Not all.
- Q. And there was a Council report by then? Did you know that? Were you provided with what's called a s 87(f) report?
- A. Yes.
- Q. And you could see what the Council's own people had investigated and their views about this particular matter and Mr Poynter's work?
- A. Correct.
- Q. So I can't find in your evidence, Mr Waters, any information about your having undertaken some sampling yourself. Is that because you have and didn't tell us or because you haven't done any?
- A. I didn't understand that the question was relevant only to Matiatia. Is that your...?
- Q. No, my question –
- A. I've conducted no sampling in Matiatia.
- Q. This is a proposal in Matiatia Bay isn't it?
- A. Correct.
- Q. That's the environment we're looking at.
- A. Correct.
- Q. And Mr Poynter's done this work.
- A. Correct.
- Q. That Mr White and Ms Sivaguru are content with, you can read that from their evidence can't you?
- A. Correct, I might back up a little bit there, I remember Mr White expressing reservations about the sampling technique. Is that where we're headed?
- Q. No. We're talking about the extent of it.
- A. The extent?

THE COURT: JUDGE NEWHOOK

Mr Waters you have to listen carefully to the questions and just answer those rather than trying to work out where it might be leading. Just answer the questions.

WITNESS:

Thank you, I'll try.

THE COURT: JUDGE NEWHOOK

Counsel who called you has an opportunity to re-examine if you've been treated unfairly.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. There's a methodology section in the joint witness statement under 6, which records you as considering that more quantitative information is required, that was your recorded view.

A. Yes.

Q. But doesn't it indicate the other two experts were content with what had been done? That's what it says in 6 doesn't it?

A. We are under "Existing Methodology"?

Q. Mmm.

A. Is that correct?

Q. Yes.

A. And it says that the other ecologists agreed.

Q. Well exactly what they said is recorded there so I should have been more precise and I will be. You can read what they said but at the bottom it's got your initials and what your view was that some quantitative information was required. It says that, it records your view, that is your position isn't it?

A. Yes sir.

Q. Now, was that your position before you all met and signed this off at the end of August?

A. Yes sir.

Q. So if you thought more information was required and that Mr Poynter's sampling, if he'd done more, might have turned up some other information, why didn't you go out and do any?

A. My sincere apologies, but could you ask that one more time, I'm not sure that I'm understanding if I was responsible for collecting data for the applicant's ecological assessment.

THE COURT: JUDGE NEWHOOK

I don't think that was Mr Brabant's suggestion to you Mr Waters. Put the question one more time please Mr Brabant. Try and encapsulate it succinctly if you wouldn't mind.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. I use these photographs to demonstrate the work that Mr Poynter did.

A. Yes sir.

Q. Which he considered was satisfactory to reach conclusions. You say in the methodology section of the joint witness statement, and I could find it in your evidence as well, that you think more work should have been done. Presumably because it might have painted a different picture, you know what I mean by that?

A. Yes sir.

Q. So that being so, and you being resident on the island, can you tell the Court why you didn't go and get some samples yourself?

A. No sir.

Q. To be fair to you does that mean you can't explain why you didn't do it?

A. My understanding or my role was to review the evidence presented to the Court and offer an opinion as to whether or not it was good information and sufficient information for the Court to make a decision about constructing a marina. If my reservation was that additional quantitative data was required, in addition to sampling I also would have undertaken a review of biological communities of the hydrology of the water chemistry and I didn't view that as my job.

Q. Now, your brief from your clients wasn't constrained in any way that would affect you making that decision?

A. No sir.

Q. And if you didn't know before, you knew when you met Mr Poynter that he was satisfied, and I'm just reading from what the record is, "That the detail provided is sufficient to define ecological values and undertake an appropriate assessment." So at that point, there was a difference in opinion between Mr Poynter and yourself wasn't there?

A. Yes sir.

1120

Q. And at that point did you turn your mind to taking some samples that you could then go back to Mr Poynter and say look I've got samples which show some different readings from you so maybe we need to talk about this. Did you think about that?

A. Frankly I didn't think that the Court would find that as acceptable information, I'm not chartered to conduct this assessment, no one asked me to and again I just viewed the boundaries of my role which is to look at the information and determine whether or not I felt it was sufficient for the Court.

Q. Mr Poynter's evidence and I can take you to it if need be describes what he did, I think he's even got a picture of the piece of equipment he used.

A. Yes.

Q. Have you done that kind of sampling yourself before?

A. Yes sir.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

Q. Just one question and you may not be able to answer it because you did say you weren't quite familiar with the conditions but just looking at condition 14.3 in the Coastal Permit page 9, 14.3(b), I'm trying to understand what is meant there it says, it's talking about the monitoring

—

A. Excuse me, page?

Q. Page 9 of the Coastal Consent.

A. Page 9?

Q. 14.3.

A. Yes.

Q. Monitoring guidelines and exceedance?

A. Yes.

Q. In (b) it says, it talks about a trigger value, a 95% trigger value and it's got in brackets, "Or the 90% trigger value if that is deemed to be a more appropriate guideline for the waters in the marina."

- A. Yes.
- Q. Now why would it say that? Does that mean we don't know what the appropriate trigger is? How do we determine the "if" it requires? Who determines the "if"?
- A. I'm sorry your question is?
- Q. Well you may not be able to answer it as I say, why does it have that piece in the brackets or the 90 percent trigger if that is deemed to be more appropriate as a guideline for the waters in the marina?
- A. I'm not qualified to answer that Ma'am.
- Q. You don't know why that says that?
- A. No.
- Q. I'm assuming there's a lack of information which is why somebody has to make some judgment.
- A. I would be speculating.
- Q. Thank you.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- Q. I've got one question for you Mr Waters, it's a fairly general question but have you any familiarity with the tidal range in the Hauraki Gulf and in particular at Matiatia?
- A. Not other than what is mentioned in Mr Poynter's documentation.
- Q. It's a fairly significant rise and fall you can see it everytime you go to the fairy no doubt.
- A. Yes Sir.
- Q. And while I'm sure you don't claim to have expertise in hydrological matters, wouldn't it as a matter of some logic be the case that that tidal rise and fall would produce quite significant flushing in Matiatia Bay as we see it today?
- A. I would've thought so until I read Mr Poynter's assessment that two thirds of the bay does not get flushed? Is that correct?
- Q. Well we can look at that for ourselves, I think I'm probably asking you questions beyond your expertise.

A. Likely.

Q. Yes, I will see that no further.

RE-EXAMINATION: MS PARKINSON

Q. Mr Waters, the caucusing that occurred on the 19th of August.

A. Yes.

Q. And then was reconvened on the 27th of August.

A. Yes.

Q. Was the draft joint witness statement circulated at that meeting or prepared at that meeting? Was there a draft similar to the final version?

A. No, it came along a couple of days later.

Q. So that's the version that you reviewed in an email –

A. Correct.

Q. – and that's referred to in the preamble. Now you were asked a question about 11(e) which was that the experts consider that the proposed conditions to be tabled will address any other cumulative effects resulting from the proposed marina.

A. Correct.

Q. Did you see those conditions during the caucusing on the 19th of August?

A. No.

Q. Did you receive a copy of those conditions before you gave your comments back to Commissioner Hodges in an email?

A. Did I see the updated version of this document before I got the final from Mr Hodges, is that –

Q. Sorry, did you see a copy of the draft conditions of consent?

A. No.

WITNESS EXCUSED

MR R BRABANT:

Sorry just one question if I may, Sir, I think I was absent yesterday when there was discussion about traffic caucusing. I just wanted to be clear what organisation I needed to be going about homework as it were in terms of lining people up, I wasn't clear on the timeframes and so on.

THE COURT: JUDGE NEWHOOK

Mr Allan?

MR ALLAN:

I understand that a meeting may be arranged for midday today amongst those experts.

MR R BRABANT:

Okay that's fine Sir, I was obviously out of the loop on that, thank you.

THE COURT: JUDGE NEWHOOK

It was only ASAP Mr Brabant.

MR ALLAN ADDRESSES THE COURT – HOUSEKEEPING

COURT ADJOURNS: 11.27 AM

COURT RESUMES: 11.49 AM

**THE COURT: JUDGE NEWHOOK ADDRESSES MR ALLAN –
RE WITNESS BROWN**

MR CASEY:

I've provided electronically the outline of submissions. The authorities I rely on I've also got in non-paper form and I'm just –

THE COURT: JUDGE NEWHOOK

Yes, that's a good way to approach it.

MR R BRABANT:

I'm not going to start reading your cases right now, it's all right.

THE COURT: JUDGE NEWHOOK

You'll be able to get them off the website anyway because you having supplied them to the registrar they're going to get plugged into the website.

MR CASEY:

Well that's where this is foreign territory Your Honour.

THE COURT: JUDGE NEWHOOK

I think the residents of Waiheke Island will be reading your submissions most carefully and with great interest.

MR CASEY:

In that case I'll pass on responsibility to co-counsel. Thank you Your Honour. I won't read all of this because there some aspects that have already been covered by other counsel and we'll see that by and large I adopt the Auckland Council's submissions, legal submissions, and those of my learned friend Ms Parkinson as well.

THE COURT: JUDGE NEWHOOK

Just indicate to us where you invite us to take some things as read.

MR CASEY:

I shall do, thank you.

MR CASEY BEGINS OPENING SUBMISSIONS:

As I start with, the motto is, "Slow down, you're here now. For the majority... 104 and 104B."

I want to talk a little bit about Direction Matiatia Incorporated and I've set out there its core purposes. I'd invite the Court to read those but I won't take you through them.

But from them, at 1.9 I say, "It is clear... avoid unnecessary repetition." That's why you haven't heard from all of them and I'm not sure if you would have expressed much appreciation if you had.

THE COURT: JUDGE NEWHOOK

There was a bit of a flavour arose during the proceedings yesterday as to whether certain residents around the Matiatia Bay should be thought to be less than interested at this stage through not having given evidence, so I imagine that this sentence of yours addresses that point.

MR CASEY:

Yes.

THE COURT: JUDGE NEWHOOK

Just one other thing about this paragraph, Mr Casey, in the first line there you talk about 69% opposing it, you and I know but I hope your client appreciates that at the end of the day our work doesn't involve a numbers game.

MR CASEY:

Perhaps I should have said only 31% supported it.

THE COURT: JUDGE NEWHOOK

Good response.

MR CASEY:

I'll come back to the relevance of the fact that there is a strong community feeling as you've probably picked up given that there are a large number of submissions.

THE COURT: JUDGE NEWHOOK

Fairly aware of that.

MR CASEY CONTINUES MAKING SUBMISSIONS:

"DMI's case involves... evidence before you." And I've set out there Sir the experts who will be called hopefully in the order in which they will be called. I'm assuming that by now you've had the opportunity at least to understand what each is giving evidence about and hopefully having even read their evidence.

THE COURT: JUDGE NEWHOOK

We've read all the statements of evidence lodged in the case.

1200

MR CASEY:

So I don't need to go through what each one's talking about in that case?

THE COURT: JUDGE NEWHOOK

Correct.

MR CASEY READS OPENING SUBMISSION

"This is a...required by s 104D," and I've given some cases there but I come onto that in more detail later in my submissions Sir.

“The adverse effects...diminishes that conclusion.”

THE COURT: JUDGE NEWHOOK

Can you just tell me whether you’re going to come to an issue around s 104D without presently remembering whether there were any other features of the marina that were non-complying if the – given that the applicant has put before us reclamation on the one hand and the deck on the other for a carpark, if we were minded to follow the deck provision route and discard the reclamation, are you going to tell us whether that would excise the 104B issue?

MR CASEY:

I am and I’ll tell you, I’ll be telling you that it won’t.

THE COURT: JUDGE NEWHOOK

All right, you’ll come to it in other words?

MR CASEY:

Yes, yes, it’s coming in detail.

THE COURT: JUDGE NEWHOOK

That’s fine I’m not asking you to take it out of the water, I just wondered if it was going to be covered.

MR CASEY:

Thank you Your Honour it will be.

MR CASEY CONTINUES READING OPENING SUBMISSION

“The adverse effects...and reasonably necessary,” I don’t deal with those in submissions I just refer to the evidence that you’ve heard on those.

“Section 105 specifies...conditions under s 108.” I won’t be making submissions here about the conditions it’s been difficult to keep up with them but really they’re matters for the experts as I said Your Honour, except I will

be saying about the efficacy, I'll be submitting about the efficacy and enforceability of some of the conditions that are proposed.

"The status for... restrictive activity status," and that's the – do you want me to explain the *Tairua marine* saga now? Because it needs a bit of an explanation and because I was involved I may be able to provide some help.

1210

THE COURT: JUDGE NEWHOOK

Yes if you want to (inaudible 12:10:51) it was addressed to a certain extent by Mr Allan and we are familiar, some of us, with –

MR CASEY:

I know that Commissioner Howie will be familiar with part of it.

THE COURT: JUDGE NEWHOOK

Yes, with the cycle through the various Courts. But if you'd just like to expand on that for the record.

MR CASEY:

I will. Originally there was a proposal for – sorry, I'll go back in time a little bit, I think Your Honour was involved in a plan change –

THE COURT: JUDGE NEWHOOK

I was involved in the beginning with the plan change wherefore a very small area of seabed and water column in the corner of the bay, I decided that a discretionary activity status was appropriate and then it went all over the place after that.

MR CASEY:

Yes, well I won't tell you how far over the place it went, but what came back and was the subject of a determination of the Environment Court in 2005, was an application for a 155 berth marina which took up more of the bay than that

small proportion. And that went to hearing and it was – well I should say the Environment Court and the decision in 2005 refused consent. Now that refusal went on appeal, or aspects of it I should say went on appeal to the High Court before Justice Asher. And so the first High Court judgment was of Justice Asher and he rejected the grounds of appeal, and so that decision remained. The Tairua Marine Limited company came back with a revised proposal which reduced it to 95 I'm pretty sure berths which would be largely contained within that small area –

THE COURT: JUDGE NEWHOOK

Not entirely but largely.

MR CASEY:

Not entirely but sufficiently. And again despite opposition from the local community, consent was granted. And that's the what I call 2010 decision, and then that was taken on appeal to the High Court again on grounds of law and was unsuccessful, and that was Justice Wiley was the Judge in that case. So hopefully that provides a little bit of a snapshot of that.

THE COURT: JUDGE NEWHOOK

Yes, it's useful to have it in the record, some of us know it and some of us don't.

MR CASEY:

And I've provided in my casebook the 2005 decision because I'll be referring to aspects of it shortly.

THE COURT: JUDGE NEWHOOK

That's the Environment Court decision?

MR CASEY:

The Environment Court decision. The decision I refer to there is the, at the top of page 9, is the decision of Judge Asher on appeal. Oddly there were

two decisions, one was about costs which has been reported and this one hasn't, this one is probably the more interesting.

MR CASEY CONTINUES READING SUBMISSIONS:

So the issue which is about this bundling question, "requires consideration of... integral to the marina." I'm not sure that page reference is right Sir, I'm working off a version that might not be the same as yours, it might be a few pages earlier than that.

THE COURT: JUDGE NEWHOOK

I'm not sure quite how that would work because there should just be the one record.

MR CASEY:

I know and I was working off an earlier one when I prepared the submissions and it was one that didn't have page numbers on it so –

THE COURT: JUDGE NEWHOOK

The Court posts one version of the transcript and then another?

MR CASEY:

Earlier on it posted one which didn't have page numbering.

THE COURT: JUDGE NEWHOOK

Can you just check, we'll have Mr Littlejohn check that reference.

MR CASEY CONTINUES READING SUBMISSIONS:

Thank you Sir. "If the deck... into the future."

THE COURT: JUDGE NEWHOOK

Mr Casey, just looking at your paragraph 5.7 and considering as well the submissions that you've made in 5.5 and 5.6, aren't you guilty of mixing up

permitted baseline with existing environment? It's a trap that players quite regularly fall into and I just wonder whether you've done so.

MR CASEY:

Well what I've done in 5.7 Sir is try and summarise rather than –

THE COURT: JUDGE NEWHOOK

You've tried to summarise two parts of the submission.

MR CASEY:

And I've fallen into error there and I apologise for that.

THE COURT: JUDGE NEWHOOK

With that clarification we'll read, when we come back through it we'll read it in that light. Read both parts in that light.

MR CASEY:

So I've discussed both the permitted baseline and likely changes to the environment in that sentence.

MR CASEY CONTINUES READING SUBMISSIONS.

"What effects are relevant... into the future."

THE COURT: JUDGE NEWHOOK

Mr Casey, just looking at your paragraph 5.7 and considering as well the submissions that you've made in 5.5 and 5.6, aren't you guilty of mixing up permitted baseline with existing environment? It's a trap that players quite regularly fall into and I just wonder whether you've done so.

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With that clarification we'll read, when we come back through it we'll read it in that light. Read both parts in that light.

MR CASEY:

So I've discussed both the permitted baseline and likely changes to the environment in that sentence.

MR CASEY CONTINUES READING OPENING SUBMISSIONS.

"What effects are relevant...of this location." So it's saying it's also inconsistent.

"Displaced use of...coastal area. Regardless," for that matter.

THE COURT: JUDGE NEWHOOK

Pause there for a moment please?

MR CASEY:

Yes Sir.

THE COURT: JUDGE NEWHOOK

I just want to call up section 12(2) of the RMA to gain a full understanding of your submission. Now that amendment was the 2009 amendment is it Mr Casey?

MR CASEY:

Yes Sir, yes. And if I can just identify what I'm referring to there on it.

THE COURT: JUDGE NEWHOOK

Yes.

MR CASEY:

That is in subsection 2 which is the section that deal with the occupation, the common marine area sorry, the coastal marine area is now being changed to common marine and coastal area?

THE COURT: JUDGE NEWHOOK

Yes, I see that.

MR CASEY:

Whereas 12(1) which are the other activities, that change wasn't made it's still the costal marine area. And as you –

THE COURT: JUDGE NEWHOOK

You talk – 12(2)(a) talks about both the common marine and coastal area. Was a definition inserted by that amendment of “common area”?

MR CASEY:

Yes, well “common marina and coastal area”, the whole term Your Honour.

THE COURT: JUDGE NEWHOOK

The whole term, right.

MR CASEY:

The whole term. The definition section says, “Has the meaning given in section 91 of the Marine and Coastal Area Takutai Moana Act 2011 so it brings it back to that Act.

THE COURT: JUDGE NEWHOOK

Yes, I do remember seeing this. Yes thank you for that elucidation.

1240

MR CASEY:

Your Honour. So as I say, “Regardless of the... deems that acceptable.” Now I want to deal specifically with the mooring permits and rights given.

THE COURT: JUDGE NEWHOOK

Just before you do, can you help me with one more aspect from the TMA and the amendment in 2009 to the RMA as to whether the amendment to the RMA gives any guidance through the provisions that we looked at or elsewhere to the weight that we should apply to this issue in relation to other RMA matters including those under Part 2?

MR CASEY:

No, there's nothing that we've been able to find that would take it any further than I've been able to there Sir.

THE COURT: JUDGE NEWHOOK

So it's a matter that's there and your submission would be then that we should accord it appropriate weight in the context of the case?

MR CASEY:

Yes, I'm not advancing it as a prohibition on the grant of occupation rights of course but given the changes that have been made to the section that deals with occupation rights it must mean something.

MR CASEY CONTINUES READING OPENING SUBMISSIONS FROM PARAGRAPH 6.17

"It is extraordinary... mooring at Matiatia."

THE COURT: JUDGE NEWHOOK

Mr Casey, is not the problem that you describe in paragraphs 6.17 through to 6.24 a bit of a red herring in the context of the present proceedings under the Resource Management Act? Is it not perhaps the case that those difficulties might be something that the present applicant might have to surmount if we were to grant consent in the present application but not something that should affect the exercise of our discretion as to whether to grant consent to this application?

MR CASEY:

I agree with Your Honour. Well, with respect, a red herring in some context. The concern I have that's obviously driven the Court to want to see what's in these licences and in the bylaw.

THE COURT: JUDGE NEWHOOK

Well we didn't pursue it, I'm just sort of offering an advance in thinking particularly after hearing from Mr Allan.

MR CASEY:

And it really is put forward on the basis that you have a number of mooring owners who have so far at least not indicated or confirmed any desire to be part of the marina. You'll recall that when I asked Mr Wardale I think it was about the mooring holders – sorry, the aspirants on the waiting list, he told me there'd be I think he said 11 or 14 moorings in the southern mooring area and they could be taken up – well even by my arithmetic that doesn't add up to 80. But then we heard I think from another witness, I think it was Mr Dunn who did the numbers and said well those moorings that might be vacated in the southern area but actually be taken up from moorings in the northern area, so we've got a real mishmash of what's supposed to happen. But what you're left with is in my respectful submission clear evidence that there will be a number of disappointed, was the term I put to one of the witnesses and he agreed, persons, and their disappointed or the lack of ability for them to realise on their expectation their enjoyment and their access to the coastal marine area and all those sorts of issues that we talk about is a relevant factor to be weighed significantly in the balance against the claim that 177 –

THE COURT: JUDGE NEWHOOK

So it really does come down to the point that you address in 6.25 about an adverse effect. You're not advancing, I'm fairly sure I'm now getting clarification from you, tell me if I'm wrong, you're not advancing any proposition that for us to consider granting the application for the marina under the Resource Management Act would be an exercise in futility and therefore we shouldn't, you're not taking it that far.

MR CASEY:

I guess you're right Your Honour, I'm not, but we still don't have evidence that it won't be. But I think this case is going to be decided on matters other than that and it's those matters that I'd rather address. But one of them is the displacement and the effect on those who will be displaced one way or the other.

THE COURT: JUDGE NEWHOOK

So we can focus really on 6.25.

MR CASEY:

Yes.

THE COURT: JUDGE NEWHOOK

Yes all right.

MR CASEY:

If, on the other hand if I might just add this point Your Honour, and this is where it could become relevant, if there is an argument that there is a power to force the marina holders out, then that would be an adverse effect as well, and I don't know what my learned friend for the applicant's position is on that, I'm saying I don't think there is but if there was then that would be a further adverse effect.

THE COURT: JUDGE NEWHOOK

Let's definitely get a note of that, so you say there's another adverse effect of?

MR CASEY:

Of if there is the power for the harbourmaster or whoever it may be to forcibly dispossess the mooring holders in the northern area, then that would be a further adverse effect. And I'm not sure whether my learned friend is arguing that he can force the position, or his client can force the position.

THE COURT: JUDGE NEWHOOK

All right, I'll make a note of that, thank you.

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL – EARLY
LUNCH BREAK**

COURT ADJOURNS: 12.53 PM

COURT RESUMES: 2.07 PM

MR CASEY:

The footnote on page 10 of my submission, footnote 28 where I wasn't sure about the page in the notes of evidence, the transcript, I've put page 404, it's actually page 409 of the official, at the top of page 409.

THE COURT: JUDGE NEWHOOK ADDRESSES MR ALLAN REGARDING MR BROWN

MR CASEY CONTINUES READING SUBMISSIONS FROM PARAGRAPH 7

"The Environment Court... the coastal environment," and by "other" it means other than areas of outstanding natural character. 15(b) says the same in respect of other that is not outstanding natural features and natural landscapes in the coastal environment.

"These directives are also reflected," perhaps if I just backtrack "avoid significant" which is the same as "avoid any" in 13(1)(a) and 15(a), avoid remedy and mitigate less than significant.

"These directives are...will be affected."

THE COURT: JUDGE NEWHOOK

It's quite interesting to see that you've offered that argument, it's something that's been going around in my head since the submission was made by WML and if you hadn't offered or prepared a submission about it I was going to ask you about it if you'd done it.

MR CASEY:

I will (inaudible 14:10:17) later Sir, there is case there about the overall effect but it's not about how when you're looking at something discrete like visual effects you can use distant views to cancel out near views is my point.

THE COURT: JUDGE NEWHOOK

Let along across several categories like noise.

MR CASEY:

Yes.

THE COURT: JUDGE NEWHOOK

Water contamination, landscape et cetera.

MR CASEY:

Yes.

MS CASEY CONTINUES READING OPEN SUBMISSION

“The approach mandated...the ferry experience.” And that’s referred to before it’s paragraph 12 of the JWS.

“There are many...Drive stopping point.” If you’ve been there you’ll realise it’s a no stopping point that’s had no stopping lines painted out.

THE COURT: JUDGE NEWHOOK

I don’t think we observed that detail, what we will did observe was a lot of vegetative screaming there growing up I actually got the impression that you’d have to be in Robbie’s double decker bus on the top deck to be able to see that view without going to private property, it’s a small thing I want to raise with the landscape witnesses and their particularly viewpoints, it’s not the main thing I want to raise.

MR CASEY:

Yes I think the landscape witnesses could appropriately answer it. But that’s the area that’s being spoken of when we speak of that stopping point, view point.

MR CASEY CONTINUES READING OPENING SUBMISSION

“And the Rocky...increasing this popularity,” and I referred earlier to the evidence of Ms McCann, evidence of Mr Greenaway, both of them cover these aspects.

THE COURT: JUDGE NEWHOOK

Yes I was thinking about your paragraph 7.25 that of course won't always be the case will it? I've sometimes wondered about people who go on holiday at Omaha for instance as to whether that is a true escape from civility. Pauanui is another one that comes mind but –

MR CASEY:

Perhaps I can make the observation they don't get along?

MR R BRABANT:

Like somewhere else, you mean.

THE COURT: JUDGE NEWHOOK

We could list them out Mr Brabant I'm sure but in 7.26 you're draw it back to the evidence about Waiheke which is after all what this case is about.

MR CASEY CONTINUES READING OPENING SUBMISSIONS

“The primary drivers... by the gifting of land.”

THE COURT: JUDGE NEWHOOK

Mr Chapple's work was with the vegetating of the forest and bird reserve.

MR CASEY:

Oh it was Mr Delamore, it was the Delamore family.

THE COURT: JUDGE NEWHOOK

It was Mr Delamore who gifted land.

MR CASEY:

Yes I'm sorry, that's right, that's what I thought.

MR CASEY CONTINUES READING SUBMISSIONS

"There is irrefutable...add to the problems." Now in that passage Sir I use the word 'theoretical' and you'll remember Mr Mitchell yesterday gave an answer, which I don't have the record of, about theory and reality often not matching and that's a strong point that I want to make here because we have a lot of theory from the experts but actually they weren't able to match that with the reality.

THE COURT: JUDGE NEWHOOK

Yes well of course they've gone away to conference further about criticisms of the modelling from yesterday's witness, Mr Karndacharuk.

MR CASEY:

But I would have to say that I don't think any modelling is actually going to tell you the answer unless you know what's causing the problem and no one's sought to analyse the problem, I asked that, I think, of Mr Shumane or someone and they said, "Well we've observed these problems but we haven't actually don't any analysis of what's causing them." And you'll also have picked up my questions about, well someone must have had a bright idea which was to keep the traffic out of there. Why, based on the evidence we've heard, was that ever necessary. I mean I don't need to repeat that, you've heard those questions and the answers given but that's the position of DMI.

MR CASEY CONTINUES READING SUBMISSIONS FROM PARA 8.4

"There is no... of the proposal."

THE COURT: JUDGE NEWHOOK

Mr Casey, is there another aspect of this loss of priority thing where there may be a problem, may be a difficulty for the application and that is in relation to cutting off or potentially, I should be careful with this because I don't think the evidence is abundantly clear at the moment. Potentially limiting future –

MR CASEY:

Options.

THE COURT: JUDGE NEWHOOK

Design of options for handling the traffic around and near the keyhole?

MR CASEY:

There is and I tried to cover that, perhaps not quite so explicitly Your Honour when I said about how the applicant expects that in any future solution it will have to be provided for and of course that means that if a solution has to be devised which is less than optimal and I put that to one of the witnesses.

THE COURT: JUDGE NEWHOOK

Mr Mitchell answered on that point.

MR CASEY:

Yes. I think Mr Shumane was the one I might've put it to first Sir.

THE COURT: JUDGE NEWHOOK

Yes, yesterday Mr Mitchell consented that the presence of the marina carpark and access both vehicles to and from it would need to be taking account of in the design of future options. That's why I used the phrase potentially limiting.

MR CASEY:

Yes, that's my submission and I might even place it stronger than potentially because it will limit the options and I think one of the Court members I'm not sure if it was Your Honour might've been Commissioner Howie said –

THE COURT: JUDGE NEWHOOK

Yes it was, it was me.

MR CASEY:

Well what if the best solution is to put something smack in the middle of the access to the marina? Well we won't be able to do that for a start. Yes so I pick up on your points Sir. I'm meant to cover it perhaps more explicitly than I have –

THE COURT: JUDGE NEWHOOK

You covered it in terms of effects but not so much in relation to where you (inaudible 14:51:09).

MR CASEY:

I think Mr Shumane's point is once it accesses there we can't take it away.

THE COURT: JUDGE NEWHOOK

And Mr Mitchell consented that.

MR CASEY CONUES READING OPENING SUBMISSION

"Policy issues relevant...in that area." And I've given you the transcript reference there which is the up to date transcript and I just made that observation because I think a question from one of the members of the Court might have misunderstood that Mr Dunn had said it was because of access difficulties or topography, you know what Mr Dunn had said.

THE COURT: JUDGE NEWHOOK

I think both things were explored. I think there was mention of the cliff in this deep topography closest to the wharf and then there was discussion about zoning aspects of Hansen and Watercare properties I think.

MR CASEY:

Yes.

THE COURT: JUDGE NEWHOOK

Both covered in questions by the Court.

MR CASEY:

That's right but specifically in relation to the Watercare and the Hansen property, the issues there were about planning, or the answer given I should say was about planning –

MR CASEY CONTINUES READING OPENING SUBMISSION

“Of course, the...considered more compelling,” than the non-complying activity status of carparking in the rural zone.

THE COURT: JUDGE NEWHOOK

I asked Mr Mitchell yesterday whether consideration had been given to having some parking in, around the Oneroa village whereby implication, I didn't express whereby implication there might be an appropriate zoning for conducting parking activity. That might leave open the question of whether it's practical to shuttle people up and down between that parking area and Matiatia, but I think it's relevant to whether or not there should be parking in the CMA.

1455

MR CASEY:

Yes.

THE COURT: JUDGE NEWHOOK

That was why I floated it. I don't know where it leads at this stage.

MR CASEY:

Well from the DMI's point of view, having been told we were going to be given evidence about the practicability or whatever, the availability, all we get is evidence of some conversations with only two land owners which get nowhere and a statement from Mr Dunn that other areas were dismissed because of the policy director.

MR CASEY CONTINUES READING SUBMISSIONS:

“There’s no claim... for ferry-related usage.” So the land is practicable for parking, it’s available for parking, the only problem is it creates another adverse effect. But in my respectful submission as I come onto creating another adverse effect or creating an adverse effect for another activity is not a reason resorting to the coastal marine area.

“Mr Mitchell of course acknowledge... impracticable and unenforceable.” So I come back to the discussion you had yesterday with my learned friend Ms Parkinson, yes there is to be an assumption that conditions will be complied with, but in the first instance they have to be conditions that will work and can be enforced. And in my submissions, “There is simply... also expressly discouraged.”

I want to then move on to transport Your Honour but observe the time and am just wondering shall I carry on or?

THE COURT: JUDGE NEWHOOK

Yes I think we’ll take a short break at this stage.

COURT ADJOURNS: 3.31 PM

COURT RESUMES: 3.46 PM

MR CASEY CONTINUES READING SUBMISSIONS FROM PARA 14.1

“WML has submitted... and visual effects.”

THE COURT: JUDGE NEWHOOK

Can I ask you about a possibly slightly related point, I'm not sure there's any case law on it but you'll tell me if you're aware of some. Section 104D, in contrast to s 104, and the question relates to, it's not a bundling issue. Let's just say for argument's sake, and nobody should take anything from this question at all, but if we were to feel the need in relation to both parts of 104D gateway to reject one element of the proposal, say the carpark for argument's sake, but if we felt in relation to another element, the marina say, that it could pass one or both of the gateway tests, what impact would that have in terms of s 104D? Could we proceed, do you think, to consider under 104 whether to grant consent and then ultimately Part 2 to grant consent to the remaining piece or would the whole lot be shot down in flames at that point? It's a bundling question.

MR CASEY:

I think ultimately Your Honour it is a bundling question, if I can maybe cut that in a different way, you could not certainly, for example, say well if we ignore the carpark the rest of it's okay in terms of 104D, so we get into the 104 and we bring the carpark back in. We clearly couldn't do that.

THE COURT: JUDGE NEWHOOK

Yes, I doubt whether there'd be any call to do that.

MR CASEY:

But the other part of it is I guess that here is a consent which, because it can't be unbundled, you cannot separately assess the different components of it in that way. If it could be unbundled, as with the Body Corporate case.

THE COURT: JUDGE NEWHOOK

I'm not sure if anybody has ever applied a bundling or unbundling argument to 104D precisely.

MR CASEY:

No, but 104D does talk about the effects of the activity and presumably that is the activity in the whole, in the round for which consent's been sought. That would have to be the answer, I mean at the moment the activity is the whole activity. Whether if that was severable into separate activities as in Body Corporate it might be a different consideration.

1555

MR CASEY CONTINUES READING SUBMISSIONS FROM PARA 14.7

"The second limb...in Queenstown Central." Now this is actually the Crossroads decision not the Foodstuffs one and if you could also change the footnote that should be 817 not 815.

MR CASEY CONTINUES READING SUBMISSIONS FROM PARA 14.10

"The test in...pass this test." My learned co-counsel reminds me then in Cookson it was said that the Queenstown Central cases were under appeal, we've checked and they have not or the appeals have been withdrawn I think.

THE COURT: JUDGE NEWHOOK

The appeals have been withdrawn on those two cases.

MR CASEY:

I made that inquiry yesterday.

THE COURT: JUDGE NEWHOOK

I'm given to understand that that is the case.

MR CASEY CONTINUES READING SUBMISSIONS FROM PARA 14.13

"The adverse effects...marina on the –"

THE COURT: JUDGE NEWHOOK

And then of course it became a bit academic because an application was made and heard by an independent hearing commission with consents granted. I've got this theory everybody there's two places in New Zealand where resource management is a sport, Queenstown and Waiheke Island. There you go just thought we needed a bit of light to relieve now let's get back to business.

MR CASEY CONTINUES READING SUBMISSIONS FROM PARA 14.13

"The adverse effects...at this point." In Cookson one of the observations the Court made there was that often the Court proceeds from, if it passed the gateway test then consent is automatic. Well Court knows that's not the case but some of the considerations are different or slightly different –

THE COURT: JUDGE NEWHOOK

There are some nuances as 104D and 104

MR CASEY:

And there are some additional factors –

THE COURT: JUDGE NEWHOOK

And of course you've got to get back to part 2.

MR CASEY:

And also I'll come onto the coastal policy statement in the Hauraki Gulf here.

MR CASEY CONTINUES READING SUBMISSIONS FROM PARA 15.2

"If the Court...of Waiheke Island." Now Your Honour I've got a reasonably detailed discussion of the Hauraki Gulf Marine Park Act. In the interests of time I might if it's in order just skip through that. That's not to say that it's not important or that its importance ought to be relegated, but it's just –

THE COURT: JUDGE NEWHOOK

It's often regarded as fairly close in its scheme to part 2.

MR CASEY:

We do develop points of difference with part 2 and also that because this is a particularly Hauraki Gulf marine activity that the provisions of the Act should be given significant weight.

THE COURT: JUDGE NEWHOOK

Would you like to leave us to read that afterwards and we might do that at the end of the day when we retire.

MR CASEY:

Yes, I don't think it needs me to take you through it word by word because it's pretty fulsome.

THE COURT: JUDGE NEWHOOK

Yes, thank you, we'll take you up on that.

MR CASEY:

That brings me then onto the NZCPS, and I've covered some of these as I've gone through because for some of the effects for example we've looked at it through the lens of the NZCPS as well. But it does, "contain objectives and policies that must be considered under section 104(1)(b)((inaudible). A number of these have been addressed in more detail above and others follow on from the matters already addressed." So all I intend to do here is just identify the key policies, the objectives and policies and the way in which they're not achieved.

MR CASEY CONTINUES READING SUBMISSIONS FROM PARAGRAPH 18.2

"On the evidence... terms of policy 10(3)..."

THE COURT: JUDGE NEWHOOK

That seems to properly be in the last point (g).

MR CASEY:

Yes I'm sorry, that's been transposed.

THE COURT: JUDGE NEWHOOK

Yes, we can fix that.

MR CASEY:

No I'm sorry, that should be, "In terms of policy 13(1)(b)."

THE COURT: JUDGE NEWHOOK

Okay so we add (b) after "13.1" and then the second sentence, "In terms of policy 10(3)(b) we transfer that back up to the end of (g).

MR CASEY:

I'll just check that Sir.

THE COURT: JUDGE NEWHOOK

I think that's what you...

MR CASEY:

I'm sorry about this. It should be 13(1)(b) I'm sorry.

THE COURT: JUDGE NEWHOOK

13(1)(b), okay. Somebody might have been getting tired by the time they wrote that.

MR R BRABANT:

Easy mistake at that time of night.

MR CASEY CONTINUES READING SUBMISSIONS FROM PARA 13.3(F)

THE COURT: JUDGE NEWHOOK

Mr Casey. I've personally badgered you enough along the way and obtained some constructive answers from you, and others that we'll need to think about.

Now, before we embark on your first witness I'm going to provide the parties with an indication of the matters that we want help on from the landscape witnesses. And I'm proposing that it be done by way of a mini hot tub which I think will be the quickest way through it, and I'll outline the procedure to you that I think might work because I think one needs structure in hot tubs. We're not going to do an Australian one where they all sit there and argue. I don't believe in those.

My thinking started and has subsequently been with the subject of quite some deliberation amongst the three of us so this is the three of us speaking, it started with an answer from Mr Brown to me when I questioned him about viewpoints 4 and 5, and we talked about the extent to which the proposed marina would march across the water view in comparison to the existing built form of the wharf. And we established that there's a significant increase (inaudible 16:13:11) water spaces.

MR R BRABANT:

Can I just, sorry can I just check Sir, that was the ruler test if I could call it that?

THE COURT: JUDGE NEWHOOK

Yes, yes, we applied some rules and –

MR R BRABANT:

Yes, so just so I –

THE COURT: JUDGE NEWHOOK

It actually didn't develop very efficiently but we got to the right place in the end. And I was a little surprised and still thinking about his answer that if one were to modify the marina by shortening some of the piers, maybe taking out pier A, perhaps straightening the marina up to line it up on the other side with the edge of the ferry channel, that wouldn't make a heck of a lot of difference. And so I figured at that stage that I would like to ask all of the landscape witnesses about this and I'm pleased to see you're taking notes because Mr Pryor and Mr Brown aren't here and they should be told what I'm about to say. So we want some help with those issues around viewpoints 4 and 5 from all the witnesses.

Our attention then turned to viewpoint 7 up on the hill and it started with a concern that about a third of the view in that photograph was obscured on its left side by a great big pohutukawa tree. And that didn't seem to be terribly helpful and it didn't seem to be terribly representative of views from along the track that runs out onto the west from the Rocky Bay sculpture before you get to a spur and it dives back around towards a couple of house properties. And indeed the Court went and sat on the big seat, I think there's a big couple of slabs of macrocarpa or something rather comfortable big seat, and looked from there down into the bay and for another reason that view seemed to be more representative of the quality of the views from along that track because from Viewpoint 7 there's quite a bit of ground obscuring one's view down into the water whereas from the seat the land form drops away much more quickly and opens up a much more significant water view. Now, we're not going to ask anybody to go and model the view from the seat, we think that the witnesses can help us to grapple with these issues by us asking some reasonably well placed questions of them. We've all been there and I think we can all talk intelligently about it. The next one I want to –

MR R BRABANT:

I'm sorry Sir, because I'm having to take notes, I'm just trying to find, there's a locational page. 47. Can you just help me Sir so I can describe this.

THE COURT: JUDGE NEWHOOK

I'll tell you where you can see this seat. If you look at Viewpoint 5 you can actually see it in the photograph. If you look at Viewpoint 5 and you can see up on the hill, you know where the Rocky Bay Sculpture is in that (inaudible 16:16:34) and then to the right of it is that big Pohutukawa tree that we think does some damage to the view model from 7, and then if you look further to the right you'll see a pale splotch, a tiny pale splotch, I think that's the seat. If you go back to sheet 47, you don't actually see it quite so well but on 47 you've got Viewpoint 07 and then you've got the big Pohutukawa tree and then if carry on around that trail it reaches the end of a spur above the interesting rock formations in the water, the seat is back about half way between the bottom of that spur and the Pohutukawa tree. It doesn't quite show up in that aerial shot, it's a bit distant, but that's where that seat is. It seemed to us to be a pretty spectacular view from that seat.

Now, next I come to the view from Mr Alexander's house. That's not really been discussed very much in any of the evidence but we were expressly invited to go there and we did on Friday afternoon before we caught the ferry and that's a view that you might like to take of our thoughts about, from the ground floor of his house which is his sort of family room/lounge room/kitchen arrangement from memory. A fair bit of the southern half of the bay is obscured by landform and his lawn, so the main part of his water view in Matiatia is actually the northern half of the bay. And we formed some views about the quality of that view that we want to test the witnesses on.

MR R BRABANT:

I don't know if any of them have been there have they?

THE COURT: JUDGE NEWHOOK

Well that may be a difficulty, we can go by that if we have to. It's almost probably the least important of these ones because the others are all public viewing locations. But if they've been to the Alexander property we're fine, if they haven't, we'll focus on the public ones. Given the time constraints we're probably not going to have time to send them back out there.

Now, the next one, I've got two more, the next one is I was left with a concern, and it's shared by my colleagues that the photography and visual simulations which commenced, of course, with Mr Pryor's work and Buildmedia, you don't really ever in any of the shots give us a good look at the proposed carpark, whether it be a reclamation or a deck. The best you get is taken from the main wharf looking north, because the view of the carpark and the marina is Viewpoint 6. The view of the carpark and the marina is substantially obscured in the simulation by the north wharf. And I immediately thought well what about the people on the north wharf, the people who have come to fuel their boats, people who have come to unload and load, small ferries that occasionally go to pontoons or Piers 3 and 4, people going out there fishing, and we saw a number of those. They will, we think, have an eyeful of the carpark and the marina but the carpark in particular because they'll be right beside it and we, short of actually having that one modelled, and I did have that in the back of my mind for a while, certainly we want the landscape architects to talk about the view from that public location and I'll say it again, there's just nothing in the visuals that we've got that adequately model that kind of view and I think from the north wharf that's probably a fair choice of viewpoint.

And then finally the point raised by Mr Littlejohn this morning is that in having sprung the surprise last night while we were starting into the ecology evidence that one of the marinas in town here has had its wooden piles sleeved with black polyethylene pipes, for want of a better noun, that if that's done what might be the effects be on the landscape. Now I don't know whether, you said you had some material on this Mr Brabant. Have you shown that to the others?

MR R BRABANT:

Yes I have, I just stopped because I seem to be getting some opposition to it Sir. If I might say that this material was introduced during a hearing I did in August for the Opuia Marina extension and I think it's been treated at the

moment by all the operators and installers as something that they're sort of going around fitting, mainly because it stops the wood being drilled into if you use ordinary poles. But I have got some photos here Sir and also a description of what is done.

THE COURT: JUDGE NEWHOOK

Well perhaps overnight the other parties could consider and perhaps confer on the question of whether that material should be provided to us. I've not seen it anywhere, I've just got personal experience of having seen the sleeving done on one of the marinas in town where it was said to be done for purposes of prolonging the life of the poles. It said we weren't given reasons about contaminants entering the water from the treated timber.

MR R BRABANT:

Well that's addressed in this material Sir as well.

THE COURT: JUDGE NEWHOOK

If counsel confer overnight please and see whether we can receive that material by consent but if it's a part of this proposal, and Mr Brabant is now saying that it is, then I suppose the next question is whether this stuff only comes in black and/or what the effects visually in the environment might be of 180 of these piles erected there. I think Mr Brabant was endeavouring to persuade us from the bar this morning that in the photos there's dark poles but I'm not sure they're actually modelled.

MR R BRABANT:

Sir, as I say, I didn't know that this was a controversial or difficult issue and I remember when we were doing the work at Buildmedia, we already knew from Mr Wardale that he was going to use steel and I wasn't exactly sure at that stage about the sleeves, but we directed that the poles be done in dark and I can get Buildmedia, Sir, to provide that information if need be.

THE COURT: JUDGE NEWHOOK

I'm just not sure that any of that's come through into the evidence Mr Brabant and indeed my impression, without being able to say to anybody where one goes to in the evidence was the timber poles were (inaudible 16:24:05) and that seems to have been the understanding of the parties who've, some of whom have gone on and presented some evidence about contaminants leeching from treated timber piles.

MR R BRABANT:

I hadn't given particular attention to the leeching part because Mr Poynter had given me advice about that and it's in his rebuttal but it turns out that if you put these sleeves on you sink them below the, anyway –

THE COURT: JUDGE NEWHOOK

All I'm saying Mr Brabant is I don't think any of that information, particularly the use of the polyethylene material got into the evidence.

MR R BRABANT:

No, I wasn't aware of polyethylene but certainly I did know of something else.

THE COURT: JUDGE NEWHOOK

All I'm saying is that if it is now a part of the proposal and that is if it's within the jurisdiction of the case, and there maybe an argument about that still, I don't know, then the landscape architects should in fairness all be able to consider visual effects. I encapsulate the issue as, in the two simple words "visual effect".

1625

MR R BRABANT:

Yes I'd only seen it overnight as a mitigation condition because of this leaching thing but I understand your point Sir.

THE COURT: JUDGE NEWHOOK

Well it was in the back of my mind and Mr Littlejohn wasn't slowly (inaudible 16:23:20). Now those are the points that we want to put before the four.

MR R BRABANT:

That's the fifth point then isn't it Sir?

THE COURT: JUDGE NEWHOOK

Oh fifth is it? Yes. No you're right, you're right. Now what I had in mind in order not to have a lengthy process, any of you involved in the Redvale Quarry case where I ran a hot tub with landscape architects? No. I wrote about it reasonably extensively, I published an article about it and it featured in the Court's decision in that case, it's the first time I'd done a major one. I don't think we need a long and complex one where in a structured way all counsel get to ask certain questions of certain witnesses in a certain order. My proposal on this occasion is that by the time we do this process we'll have all the landscape architects give evidence and I think it can simply be covered off by the Court asking questions of the witnesses sworn in together, then in turn and then each counsel have then the opportunity to re-examine any of those witnesses not just their own of course after we've asked our questions of them, that's my proposal I think it's probably quite a simple thing to do and I don't think there's any unfairness in it unless somebody has thought something (inaudible 16:26:53) and wants to persuade (inaudible 16:26:55) ask. Think about it overnight not needing an instant response.

THE COURT ADDRESSES THE COURT – TIMETABLING**MR CASEY:**

Sir our landscape witness has got a problem after one o'clock tomorrow too Sir, it's Ms Gilbert.

THE COURT: JUDGE NEWHOOK

Is it a problem in respect of which I can't pull rank? If it's the (inaudible 16:28:06) plan bear in mind that I do have an agreement with the Chairman about priority.

MR CASEY:

Given the time Sir I was proposing to call Mr Greenaway who's come from a distance if we can dispose of his evidence and he has in some of evidence some aspects that are relevant to landscape as well although obviously not for that.

THE COURT: JUDGE NEWHOOK

Yes, but not leave it to the hot tub?

MR CASEY:

No.

THE COURT: JUDGE NEWHOOK

How long do people think they might want to question Mr Greenaway?

MR CASEY:

Well I think I can get through by five Sir.

THE COURT: JUDGE NEWHOOK

Mr Allan?

MR ALLAN:

About a dozen questions sitting in that order.

THE COURT: JUDGE NEWHOOK

And did you have another point you were bobbing up to?

MR ALLAN:

Yes I did Sir this is the update plan that Ms Bremner prepared about views so it sort of feeds in to what you're talking about and you may want to take that now.

THE COURT: JUDGE NEWHOOK

Yes I think that's a good idea thank you for raising that at this juncture. Everybody else has seen the updated plan of the houses around the bay?

MR ALLAN:

I've given copies to my friends in the front here. So Sir just very quickly at 4C Ms Bremner just went back to the (inaudible 16:29:52) submission and it's actually sort of more of a conditional support, it's support but with concerns. So it's one of those ones, they don't always fit neatly into one category as the other. And then at the end after the Guthries I've added in Royal Forest and Bird Protection Society who are opposed (inaudible 16:30:12) section 274. I think I said that on the southern headland there might be another party, we checked, it's a different party, they live in the middle of the island, so that's that. And then on the plan itself, so Ms Bremner drove around, she didn't go onto any of the properties, she also went down to the beach to look back at them and tried to work out as best she can whether there are views to the marina or part of it from the various properties, and she put a little "V" there. The only –

THE COURT: JUDGE NEWHOOK

So it's an educated guess.

MR ALLAN:

An educated guess Sir, and I think to one that she is cautious about is Royal Forest and Bird, she didn't have an opportunity yet to go and have a look, so that's her suspicion that there will be a view but she can confirm that in the morning obviously, she lives on the island.

THE COURT: JUDGE NEWHOOK

Okay that's helpful, and while you've been speaking, Mr Allan, one of my colleagues has asked me to add a sixth viewpoint in an area where he remains troubled by lack of information provided to us and I agree with him, and I'm fairly sure my other colleague will too, and that is that, coming back to viewpoint 1 where we've got this very very distant view of the head of the bay or really the whole of the bay from the back ferry, with the ferry wake far more dominant than anything else in the vista, he considers that it would be useful for us to ask the witnesses questions about entering the bay on a ferry through which one can see through front windows, and I know not all of them do but some do, we had one last week that allowed that, and we'd like some help with this entry and to a degree exit but particularly the entry to the bay as the ferry heads towards the wharf from much closer in that viewpoint 1. If you can add that to the list (inaudible 16:32:22) to them please.

Now, shall we hear from Mr Greenaway? You've heard enough from me.

MR ALLAN:

I was going to say it's unfortunate (inaudible 16:32:32) go upstairs, it's much more fun

THE COURT: JUDGE NEWHOOK

Yes there was a ferry that we went upstairs, it's not the SuperFlight, it's the other Flight, what's the one that you can see forward through from upstairs? Anyway, we did it.

MR ALLAN CALLS**ROBERT JAMES GREENAWAY (AFFIRMED)**

Q. Your name is Robert James Greenaway?

A. It is.

Q. And you have the qualifications and experience in your statement of evidence?

A. I do.

Q. Even though it's described as a draft statement it is actually the statement?

A. Yes.

Q. And do you confirm the contents of your statement are true and correct?

A. I do.

Q. And you also participated in the joint witness statement with a number of other landscape and amenity experts?

A. Landscape I did, yes.

Q. And you're a party to the joint witness statement?

A. I was yes.

Q. Just one question if I may ask you, Mr Greenaway, in the rebuttal evidence by Mr Wardale I think there's reference to marinas at locations such as Hamilton Island, and I think you have some experience of that?

A. Yes, well not experience of Hamilton Island but just in terms of using it as a comparison for Waiheke Island there's the potential to develop marinas in a gateway to a significant tourism destination. Hamilton Island is a privately owned – well, essentially a privately owned island in the (inaudible 16:34:35) with three and a half thousand beds. It's a resort, it has a significant airport with direct flights from Sydney, Brisbane and Melbourne, and it's really incomparable to the Waiheke situation. It doesn't have the residential establishment so I just don't see it as being a relevant comparison in this case.

CROSS-EXAMINATION: MR ALLAN

Q. You've got a copy of your evidence there obviously, do you also have the common bundle volume 5 at hand?

WITNESS REFERRED TO COMMON BUNDLE VOLUME 5

- A. I do yes.
- Q. And I'm not sure whether we'll need to go there or not but (inaudible 16:35:30) go to Nicole Bremner's rebuttal, have you –
- A. Sorry?
- Q. Nicole Bremner's rebuttal evidence, have you read that previously?
- A. It would have been a while ago.
- Q. We'll see how we go.
- A. I'll have to reacquaint myself with it.
- Q. Have you got it there?
- A. Could you point me to which number it is?
- Q. It's at, and I may be able to read you the passages and you might be happy with that, but just if we need to go to its "Briefs", volume 3, tab 2A.

WITNESS REFERRED TO DOCUMENTS

- Q. You've now got that at hand so that'll be convenient. But we're actually going to start with your evidence when you found that and paragraph 48.
- A. Of my evidence?
- Q. Of your evidence yes. Sorry there's going to be a tiny bit of jumping around but not too much.
- A. Yes.
- Q. So you provide a review of literature relating to tourism and recreation planning in the Hauraki Gulf and particularly at this paragraph onwards?
- A. Yes.
- Q. And in the final sentence you refer to section 7 of the Hauraki Gulf Marine Park Act and you properly refer to both section 7(2)(a) and (b). But in your text there I see that you only paraphrase I think that's section 7(2)(a) where you say, "The gulf's ability to provide for," you say, "amongst other things," I acknowledge that, "economic and recreational wellbeing." If we can just have a quick look at section 7(b) and this is where we go into that volume 5 document, and there should be numbers, CB111, are there little tabs with numbers?

- A. Yes. Sorry was that 111?
- Q. 111 will hopefully take you straight to section 7. So with an ounce of luck that'll be section 7.
- A. Yes, 7(1) and (2).
- Q. And so your evidence there paraphrases subsection 2(a)(ii) where you refer to the economic and recreational wellbeing, it also talks about social and cultural, that's the one you're paraphrasing?
- A. Yes.
- Q. You've referred to (b) but you didn't paraphrase that, presumably you accept that that's a relevant consideration, an important consideration for the Court, to use the resources of the gulf by the people and communities of the gulf and New Zealand for economic activities and recreation?
- A. Yes, yes.
- Q. Now returning to your evidence-in-chief at paragraph 51, you're talking about work currently underway to prepare a Hauraki Gulf marina spatial plan under the Sea Change project?
- A. Yes.
- Q. And you've recorded that that's due to be delivered in September 2015.
- A. Yes I understand that's the case, yes.
- Q. Now this is where I just want to mention something in Ms Bremner's evidence and I can take you to the paragraph if you want, it's paragraph 59 if you just want to have it before you, it's quite brief.
- A. I did check that, yes.
- Q. She notes there her understand that once completed the plan will have some relevance in policy planning terms but will be a non-statutory and non RMA document.
- A. Yes.
- Q. Do you accept that?
- A. Yes.
- 1640
- Q. And if we move now to paragraph 76(h) of your evidence, do you have that?

- A. "Spatial planning", yes.
- Q. So you're actually talking about the same thing there. Now you don't say this explicitly so I just want to work out what you are saying I suppose, you hinted the proposal being premature pending completion of the spatial planning exercise. I'm just wondering you're not suggesting that an application such as this should be delayed or even refused because of what a future non-RMA plan may or may not say are you?
- A. No, when I was first asked to do the sort of preliminary review for deciding whether I'd be able to support the DMI case, I just went through the literature that was available which described the values and preferences for development in the gulf, and it was clear that there was a lack of data. And considering this is you know clearly a nationally significant recreation and tourism setting, my first impression was that it would be difficult for either the applicant or I to say that it was a good or bad idea based on the fact that there was (inaudible 16:41:11) of good planning of the scale that I would like to refer to. And I'm reiterating that in that statement. But certainly I'm not saying that it's, you know, you can't proceed based on –
- Q. It's just something that's on the way and you're acknowledging that and you're putting it no higher than that.
- A. Yes.
- Q. Now finally you picked out various other documents for attention in your literature review, you've mentioned the Hauraki Gulf Marine Park Act for instance, and I couldn't see any discussion of others such as the Auckland Regional Policy Statement. I may have missed that, did you deal with that anywhere in your evidence? I don't think so.
- A. Not that I recall. I'm reasonably cautious about not stepping into the role of a statutory planner in my work so I try not to go too far into statutory planning areas but –
- Q. Very wise I'm sure. No the only reason I ask is you did stray into it obviously with the Hauraki Gulf Marine Park Act, you started off with discussion of that.

- A. Yes, yes and I do try to keep that light, yes.
- Q. Okay so you'd acknowledge – well you've got volume 5 there of the common bundle still I believe, if we go to one of those other tabs, it's CB100 and that's chapter 7 of the ARPS about the coastal environment.

WITNESS REFERRED TO COMMON BUNDLE 5

- A. "Water quality"? CB101 sorry?
- Q. "Coastal environment"? Hopefully CB100 is "Coastal environment", chapter 7.
- A. Yes, introduction yes.
- Q. And it's page 4 of that document. There's a policy there 7.3.7, do you see that, "To enable an appropriate range of recreational opportunities to be undertaken in the coastal environment."
- A. Yes.
- Q. I know you're cautious about straying into planning too much but that's – an objective sorry I think I said it was a policy, that would be relevant to the Court's consideration wouldn't it?
- A. It would be and in fact it's the sort of broad scale statement that I would normally refer to yes.
- Q. So there may be other things that could have been compassed by your literature review, you're not proposing that it's comprehensive?
- A. No, no, and also it is, there's so much scope within some of those objectives to go in lots of different direction so it doesn't actually provide you with a firm statement as to what's a priority (inaudible 16:43:40).

CROSS-EXAMINATION: MR R BRABANT

- Q. Mr Greenaway, I want to go first to your paragraph 11. And you say there the way in which your evidence is put together, and you refer to a preliminary review and then you say, "A site visit and discussions with DMI members." When did that site visit happen please?
- A. Very difficult with dates, it would have been June, July somewhere at that stage, June July.
- Q. You can't be more specific than that?
- A. I could go to my diary and give you a specific day?

- Q. Well let's just leave that for a minute and we'll just see how we go. So you came up, you flew up I guess from Nelson?
- A. Nelson, that's where I'm based. Nelson did you say?
- Q. Yes.
- A. Yes.
- Q. Yes I knew you were based in Nelson. And what day of the week was it?
- A. I would have to refer to my diary sorry, to check.
- Q. Have you got that on your iPhone?
- A. It's Android actually but.
- Q. Okay same thing. Well not as good but the same thing.
- A. I'm going to do a search for... It's only coming up with the evidence deadline 22 July so it was before then and conferencing in August.
- Q. Was it during the week?
- A. I suspect it was.
- Q. And did you go out and back in a day?
- A. Look I would have to go back to the diary and check it out, these are very specific questions. There's a good chance I hung around.
- Q. So there was a site visit and it was in June or July?
- A. Might have even been May if that was the deadline.
- Q. And when you say a "site visit", what does that mean Mr Greenaway?
- A. Visiting the site, walking the tracks, driving to the visitor, the tour points. My diary has actually archived anything after May so there you go, and Android might not be as good as an iPad.
- Q. Well we already knew that. You just confirmed it.
- A. Yes and spending time at the site, going in and across on the ferry clearly. No sorry, it is archived before July so the site visit would have been in May or June.
- Q. So you went across on the ferry and who did you meet, who were the DMI members you met?
- A. I'm hopeless at names I'm afraid, when I came in I had to google John Hawkesby's name when I was sitting beside him without him noticing,
- Q. Does he look familiar as someone you met?

- A. He does, that's – I'm just trying to make that as a case in point as to how my memory for names is. But other member of DMI –
- Q. So was it a couple of people or?
- A. Yes, yes. Well there was a team of five or six of us in total, including counsel Kit Littlejohn.
- Q. And can you tell the Court what was your brief? And I don't need to pick out any particular people, there was a group there. What was your brief, what were you asked to do?
- A. To review the effects of a marina on recreation tourism on Waiheke and on Matiatia. And I mean in this case it was, I quite like the fact that I was asked to do a review before I was asked to actually take on the case, so I wasn't just called in at a fait accompli.
- Q. And do you remember at that stage how much material there was available in relation to the marina proposal?
- A. No, not off the top of my head, no.
- Q. Well, so you had that visit and you had that discussion, and you went away and did a review?
- A. Well I did a review of information I had at the time before the site visit to work out whether it was worthwhile me coming at all, and I've done work previously where I've not taken on the case because I've not been able to support the applicant's position.
- Q. So you had the site visit and the discussion and then you went away back to Nelson, and after that did you tell them that you would write evidence?
- A. No, prior to the site visit looking at the data and the background information I felt that it was worthwhile me coming up to look at the case and then perhaps write evidence, yes.

1650

- Q. And when you wrote the evidence you had the application, the AEE, these documents here. You had the application and the accompanying volumes?
- A. I had the graphics, I mean I can't specifically remember which pieces of paper I was referring to at the time, this is going back to July, June/July

so sorry I'm a bit vague. It's just specifically what documents I have in front of me.

Q. And I understand from your answers that you did not return and make another visit.

A. No.

Q. In paragraph 12 you say, "My preliminary review identified the applicant had not, in my opinion, considered in adequate detail the role of Matiatia Bay as a component of the Hauraki Gulf recreation and tourism scene."

A. Yes.

Q. That's what you said. And it's correct, isn't it, that the rest of your evidence actually concentrates on that whole issue of tourism and recreational opportunities on the island.

A. Yes.

Q. And do you agree with me that the extent to which, and I take you now to paragraph 40 of your evidence. Do you have that section starting there?

A. Paragraph 40, "There are limited data."

Q. Yes. "There are limited data available to describe the relative popularity of the Matiatia Bay area for boating." And you go on to talk about a recreational boating study don't you? Yes? In paragraph 41.

A. Yes, yes.

Q. And in 43 in a 2012 study you make some references to the number of keeler yachts and launches and potential growth and conclude in 45, "There will be considerable growth and demand in the Auckland region for facilities to cater for trailerable craft." And mention about the question of, in 47, "Launching facilities for small craft at Matiatia Bay."

A. Yes.

Q. Now, that's all we can find in your evidence about the issue here which is providing a marina at Matiatia isn't it? That's all we can find in your evidence.

A. Sorry, you've lost me there, in terms of describing demand for a marina or we're talking about the effects of a marina.

Q. Given your background and experience Mr Greenaway, I would have thought that one apparent issue here is that an application's been made to establish a marina at Matiatia and so the application proceeds on the basis there is a demand for one.

A. Yes.

Q. And this is referred to in the assessment of environmental effects is it not?

A. Yes, well I don't disagree that there's a demand for a marina.

Q. You've got experience in assessing the reasons why there might be a need to establish a new marina haven't you?

A. Yes.

Q. And you've referred to it in your statement at the beginning haven't you?

A. Yes, I'm currently working on one in Christchurch.

Q. Paragraph 8 refers to a survey of marina users for Port Marlborough and you provided information in relation to the Waikawa Marina.

A. Yes.

WITNESS REFERRED TO DOCUMENT

Q. Is that a copy of the report you did?

A. It is, yes.

Q. In that report which is written in that case, we'll look at the introduction. Port Marlborough were seeking a plan change there to provide for an expansion of the marinas at Waikawa Bay. This report identifies the scale of demand for additional marina berths in Waikawa and assesses recreational effects.

A. Yes.

Q. And you went in that report, didn't you, into the question of the problem with trying to cater for the number of recreational boats down there on moorings.

A. Yes.

Q. You gave a whole lot of information starting in 4.1 referring to marine recreation in New Zealand and regional recreational craft and berths available didn't you?

A. Yes.

- Q. And went into berth occupation and considered that?
- A. Yes, some of that was, I can't remember, some of it was based on the survey of Waikawa Marina per se as opposed to being generic national data.
- Q. Now, volume 1 in the common bundle. CB1.
- A. Which one?
- Q. CB1.
- A. I don't have a CB1, I've just got 11A.

WITNESS REFERRED TO DOCUMENT

- Q. If you'd like to go to page 8, section 2.2 Matiatia Bay.
- A. Yes.
- Q. And it gives, first of all the information about the mooring situation in Matiatia Bay doesn't it? And then it gives the total registered moorings.
- A. The table 1, yes.
- Q. And mooring area capacity, and then it moves into the Regional Coastal Plan provisions and benefits of marinas.
- A. Yes.
- Q. When you were doing your review and when you prepared your evidence, did you read that?
- A. I'm sure I did.
- Q. And you have expertise, as we've just established in considering these matters and weighing them up in the total mix.
- A. Yes, well that's a general statement yeah.
- Q. In the other work, for Port of Marlborough, you looked first of all at why there was an apparent need for a marina expansion and the mooring capacity couldn't cope and then you looked at recreational issues and how they were to be counterbalanced didn't you ?
- A. Yes.
- Q. Why didn't you do that here Mr Greenaway?
- A. Well I have no beef with the demand analysis for the marina, that's not my issue, I'm not concerned in this case if there is or is not demand for the marina. My assessment has been, is this an appropriate location for a marina? In the Waikawa example the proposal was an expansion to

an existing marina so quite a different setting to this particular application which is a new marina in an area that doesn't actually have one. So I don't see a great deal of comparison between my assessment for Waikawa that, yes there is demand for a marina and yes there is a demand for a marina here. In terms of the setting for which the two marinas are applied are considerably different. And my assessment has been, what is the effect of a marina in this situation, not whether a marina is a good idea per se.

1700

Q. Is a marina making provision for boats, recreational boats, and the way it's discussed in this AEE and in the Regional Policy Statement, part of the whole recreational picture for Auckland in the Hauraki Gulf.

A. Yes and in my evidence I've tried to head off this issue saying that I do well understand the benefits of the marina, I have a boat on the marina, I was brought up rowing out to a mooring in Tauranga for 15 odd years although for probably 10 of those I wasn't doing much rowing but I have no doubt about the benefits of the marina to recreation. My assessment is, is this the right location for it?

Q. Hang on; are you referring to your paragraph 9? Is that what you're referring to? When you're talking about, "I understand the benefits of a marina," are you talking about your paragraph 9?

A. Yes.

Q. Well I'm not asking you about paragraph 9 Mr Greenaway, I'm asking you when you were writing your evidence as an expert for the Court and weighing up the different considerations that apply to a proposal to put a marina at Matiatia, I'm asking you where in your evidence does a recognition of the benefits of a marina where there is a demand that is exceeding the capacity of moorings which you would've read in the AE. Where do you recognise that?

A. That is not part of my assessment.

Q. No.

A. And one interesting thing is not assessing alternatives in this case I mean that would've been an interesting piece of work to do but that is

not being my brief. It has been to look at what is the effect in this location of a marina development and I've stuck to that so, that assessment.

Q. Sure, and you've approached it from one aspect only haven't you? That the marina in your view creates a negative outcome for recreation and a negative outcome for tourism.

A. In this setting, yes.

Q. Yes, but as part of assessing the proposal in the round there nothing in here is there about a marina, the need for a marina at Waiheke and why Matiatia Bay could be an appropriate location but there may be other reasons to take account of as well. You haven't done that have you?

A. No, well to complete that work I would need to do an assessment of alternative locations and go through and say well what are the potential adverse effects and alternative sites of a development of this scale? In this particular setting I've determined that considering it is a gateway for recreation and tourism on Waiheke Island, that it's an inappropriate place for this type of development considering the tourism product and the recreation experience that's being promoted in this setting.

Q. Now can I take you back into this document 2.2. It's part of the information that you had available in order you can write some material for the Court to give in some expert advice. So it says in 2.2, "Matiatia Bay is one of the main boat mooring areas for people on the island and if you look there, the capacity arrangements in Matiatia exceed any other location don't they in the table 1?"

A. Uh –

Q. There's 98 maximum, existing moorings 93.

A. Yes I can see that.

Q. And then if you look at Matiatia Bay on page 10 and the site investigation parameters where the applicant's consultant sets out the situation starting with the mooring areas in Matiatia Bay under the heading, "Mooring waiting list and nearest marinas are full and no new moorings are being issued." Did you read the evidence as a waiting list of 80?

- A. For?
- Q. For Matiatia.
- A. For moorings?
- Q. Yes.
- A. At the time, I mean I can only reiterate that my assessment is not on the nett benefit to marina holders of a marina, it is an assessment of the effect of a marina in Matiatia.
- Q. Yes.
- A. Yes.
- Q. Could you look under, "Matiatia Site Investigation Parameters," do you remember reading that?
- A. Which page are you on at the moment?
- Q. On page 10.
- A. Yes, I do recall that.
- Q. And then under Matiatia Bay, the author said, "Matiatia Bay is a good location for a marina because it contains the main wharf on the island and has complimentary coastguard, fuel supply, parking and other facilities; it also has good natural water depths close to the shore, thereby minimising dredging." Now based on your experience in giving advice for people who are contemplating a marina proposal, do you agree those are valid considerations?
- A. They are valid considerations but I mean in terms of that assessment, it doesn't actually review the information that I have provided which is why I have said in my evidence that the assessment that I have carried out is lacking. There is not any assessment in any of these alternatives, that whole recreation and tourism benefits package to the island, so if you're going through and saying, well what is the experiential outcome that you're trying to deliver to tourists and recreational visitors to the island, how do these developments stack up?
- Q. In terms of your expertise, and you indicated in your evidence that it included assessing marina proposals, did you consider it relevant to recognise the advantages that this bay brought for a marina to be developed, as a part of your overall advice and evaluation?

- A. No, no, I did not go through and complete a, you know, a full comparative analysis.
- Q. No, a recognition was what I asked you about of the virtues of this location and why it was indicated as a good place for the marina. I've just read to you those elements, right, and they are part of the weighing exercise, aren't they, for the Court?
- A. For the Court, yes, yes.
- Q. And why not for you as someone who has done work evaluating marinas before, why were they not for you?
- A. Well I mean it could have included it, it was not part of my analysis in terms of looking at the appropriateness in this setting. If it proves that this is the only place that you could put a marina on Waiheke Island, considering a whole lot of costs and benefits, the adverse effects on tourism would still remain in this particular setting.
- Q. It was your brief when you came up and met with the direction Matiatia people to look at the effects of a marina on tourism and recreation, right?
- A. In Matiatia.
- Q. Yes.
- A. This specific application.
- Q. Yes.
- A. Yes.
- Q. And as someone experienced in evaluating marinas, the pros and the cons, did you tell them I do have to recognise that the benefits that a marina could bring in this location, did you tell them that?
- A. Ah, well I stated in the beginning of my evidence, at that paragraph 9, that I do recognise that there are benefits but I have not gone through and quantified those, no.
- Q. Now let's go to item 13(c).
- A. In my evidence?
- Q. In your evidence now please. You've talked about the marina setting in your paragraph 13(c) as being visible from key vantage points and you

say, "The proposed marina would substantially alter the existing view of moored yachts." In fact it would replace the view of moored yachts.

A. Yes.

Q. With a view of a marina, wouldn't it?

A. Yes.

Q. And then you say, "These are important adverse effects on tourism values." Now once again, given that you have done this kind of assessment before, including an assessment of a marina expansion on recreational values, on what do you base your advice to the Court that putting boats in a marina in place of boats on a mooring would have important adverse effects on tourism values?

A. Well in terms of –

Q. What do you rely on in providing that opinion?

A. Well it's my opinion and in terms of creating a tourism experience on Waiheke Island that seeks to differentiate itself from Auckland, as being a more highly developed setting, to an island that features a very low level of development and sells itself on that slow down, you've come to a completely different experience setting. Having structures that are similar to that which they have just left in that gateway setting is inappropriate.

Q. What structures have they just left at the ferry terminal?

A. In Auckland?

Q. In Auckland. What structures?

A. Well a highly developed port area, wharves, jetties, they will have experienced potentially the Viaduct Basin. They might have walked down to West Haven, they would have experienced that, and also considering that a significant percentage and I think it's about 80% of the visitors, according to the study that I've quoted here, are Auckland residents, they are well aware of the facilities and services that they have in Auckland and they are going to seek an alternative experience on an island setting.

- Q. Yes and a marina in an island setting. The marina is in an island setting isn't it?
- A. Yes.
- Q. You're not su –
- A. If it was there it would be on the island, yes.
- Q. No, the marina would be in an island setting specifically in the setting of Matiatia Bay.
- A. And it would have an effect on the quality of that island setting, yes.
- Q. But you're saying they're going to see something different, you're not suggesting this marina would look like viaduct marina are you?
- A. No but it's a bit like if you were wandering along on Great Barrier Island and you came across I don't know, (inaudible 17:10:51) and a couple of Cortinas sitting in a field with grass growing around them versus turning up and seeing a row of new Toyota Corollas in that setting, it changes your expectation for what that setting is. The whole thing of having swinging boats on moorings is a step back in time, it's a setback in experience, it's giving you an expectation that you are moving into a different recreational and tourism experience setting. And if one of the key things that you see when you arrive is a strong structural device, a marina, then you are saying, "Oh, this is not so far back in time, this is actually a more developed setting than certainly it was previously," and considering the marketing and expectations that the marketing grows for Waiheke, the high level of repeat visits to Waiheke from Auckland residents, which implies that that experience is actually successfully being delivered to them, and the scale of importance of tourism to Waiheke Island, risking denigrating that value is important to consider.

MR R BRABANT ADDRESSES THE COURT – LENGTH OF ANSWERS

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. So you're talking about people wanting a different and expecting a different experience when they go to Waiheke.
- A. Yes.

- Q. And arriving there and seeing a marina as proposed instead of some moored boats, aren't you?
- A. Yes.
- Q. But if tourists are leaving Auckland City their experience, if they've had it, of a marina in the middle of the city is not the same as the marina that they would see at Matiatia is it?
- A. No, no.
- Q. Marinas are in different settings and different places in the country, aren't they?
- A. yes, yes.
- Q. For example the one on the front page here.
- A. Yes.
- Q. That setting is a complete backdrop of bush-clad hills isn't it?
- A. Yes and that's the departure point, not the arrival point in Waikawa, that's quite a different settings.
- Q. I mean there are marinas in the North Island at least at places like Tutukaka or Whangaroa or Opua, which you may not have seen them, but those are different settings and they are settings where tourists go, aren't they?
- A. Yes they are and if I was going to go and compare those I would like to understand more about the tourism profile for each of those settings based on things like the business (inaudible 17:13:48) data. Waiheke has a very strong focus on tourism.
- Q. Yes but going to a place like Matiatia as a tourist, are you saying that the very change of experience from leaving the middle of Auckland from the ferry terminal there necessarily precludes a marina as being appropriate because tourists are not going to expect it and their values are not going to accept it, is that your proposition?
- A. I think that's what I've said, yes.
- Q. And what's that based on in terms of how a marina would look? Is it based on the marinas that you find in the middle of Auckland?
- A. No, it's based on moving away from a very free formed setting, it's got the wharf, it's got the boats at moorings to a structured, developed,

strongly developed component to that setting that is unavoidable to notice.

Q. And anything that departs from that and has a more, what, urban feel to it is out of step for the tourists, is that your proposition?

A. Well I wouldn't go and say "anything" broadly, I mean it depends on what the "anything" is.

Q. And so on the other side of the wharf where the carpark is now, a mixed use urban development there would be out of step too?

A. I would be interested to see what that was and how it looked from the various vantage points.

Q. Now in (d) of 13, the end of (d) where you talk about the beach?

A. Yes.

Q. From which we understand you mean that northern side beach?

A. Near the historic reserve area, yes.

Q. The beach you say offers a natural play and relaxation area for ferry users and locals. Is that an opinion you were able to derive from your site visit?

A. Yes, yes. It's just an opportunity-based analysis.

Q. Rather than knowing anything about how much use it actually gets.

A. Yes, there is a great lack of data in terms of track counters for example on the tracks.

Q. When it comes to a marina having value or not value for tourists, do you accept that some tourists value marinas and enjoy looking at them and take an interest in them?

A. Yes they do.

Q. They do don't they?

A. Yep.

Q. And marinas can provide public access. Do you know the arrangements at Orakei with the new marina there where people can go out on the breakwater.

A. It's on the finger.

Q. Are you familiar with that one?

A. Yes, yes I've walked on that.

- Q. And you've seen the access arrangements that have been proposed here haven't you?
- A. Yes.
- Q. So people who arrived at the ferry with half an hour to spare or 20 minutes would have that opportunity to go out on the marina and experience that view?
- A. Yes they would.
- Q. Is it reasonable to take that into account in the whole mix?
- A. Well in my analysis looking at how Waiheke is marketed, the beaches, the natural settings are the primary focuses for marketing and the survey results that I've quoted as being important. So I don't think that having an alternative to the historic reserve and the predominantly setting that's there now compared to walking on a rubble breakwater is easily compared.
- Q. I just asked if it was something that tourists could do if they had some time to spare.
- A. Oh absolutely, yes.
- Q. But in relation to that tourist experience, Mr Greenaway, and if you investigated and had a look at what people did, they arrive at the ferry and they straight away look for a bus, a taxi or a shuttle, or someone picks them up and they leave there to go and have their tourist experience, don't they?
- A. I would say a significant number do. However you have important events in that particular setting like the sculpture on the headland, which encourages people to stay in that particular setting, and they also come back to that setting and have a less structured –
- Q. Yes. The sculpture on the bay starts at Matiatia and it goes up the hill, and have you had a look at where all the sculptures are but there are some up on the hill towards the headland?
- A. Yes I put some photographs in my evidence of those.
- Q. And then people go over the top and disappear over the other side for the rest of the walk, don't they?
- A. Yes. It's a component of the walk, yes.

Q. But the standard tourist experience if you're talking about beaches vineyards, that sort of thing. I mean the beaches, do you know the beaches, did you get to look at any of them where people would go, the high quality beaches?

A. I did run a couple of mountain bike events on the island in the past, yes.

Q. Oneroa, Onetangi, Palm Beach?

A. Yes, yes.

Q. They're the tourist draw cards for beaches aren't they?

A. Yes, and we said that this is the gateway and that is what I've described the setting as in my evidence.

Q. The gateway to a tourist experience that by and large involves people getting on some transport at Matiatia and going up Ocean View Road and coming back again when they want to catch the ferry to leave, that's what happens isn't it?

A. Well there's a variety of things that happen, there are people who are taken along Dalemore Drive and to the viewpoints in that particular setting, as other evidence has presented. I mean there's a whole range of things that happen.

Q. So you feel unable to accept the proposition that I put to you that the substantial tourist experience in relation to Waiheke is you arrive at Matiatia, you get in a vehicle and you drive away from it and you come back when your day or whatever has ended, don't you agree that that's –

A. No I would say that is – I mean, I find it hard saying words like substantial without coming up with some sort of quantitative backing to it but that would be a large chunk of it. But having said that, the gateway issue remains, this is their first experience of Matiatia as they come in for those people who do not then experience the setting any further.

1720

Q. And the proposition is that when they arrive and they arrive and they see a modest marina because it is by Auckland standards a modest marina isn't it Mr Greenaway?

- A. By Auckland standards, considering we've got the largest one in the Southern Hemisphere, yes.
- Q. But if you look at it across the whole range of marinas that we've got evidence that this is the second smallest after Bucklands Beach.
- A. Yes.
- Q. And you concluded that that is necessarily a negative experience for tourists who are coming to visit those beaches we've talked about and the vineyards or to go to (inaudible 17:20:47).
- A. I've concluded that considering the key marketing messages that are repeated for Waiheke are the natural settings, the coasts, the beaches, the – stepping back in time and I'm repeating myself now that maintaining that experience is very important on Waiheke.
- Q. And did you get consideration to how the marina has an opportunity to provide for visitors who come using their own boats? Did you give that any thought?
- A. Oh I did, yes I didn't put it in evidence.
- Q. So where have you got that in your evidence?
- A. I haven't put it in evidence I haven't considered it to be an important numbers wise issue considering the many millions of trips that come across on the Fullers Ferry, the numbers who'll be accessing the marina, a very small percentage.
- Q. And is that a reason to leave it out?
- A. Yes, I mean I just, I mean I haven't considered it to be an important description of tourism value for the island. Considering you know the vast number of people who come across via that ferry.
- Q. People who have boats in Auckland that want to come down for the day bring people with them and if they can get a berth for a day or people who have come overseas come into the Bay of Islands and then bring their boats on the way down, the opportunity to spend the week over there with a berth to visit the island, these are valid considerations aren't they?
- A. Yes, but compared to the prime tourism product for the island is in the noise, possibly below the noise.

Q. And with the walkways that you've referred to we've already discussed the one that is used when they had the sculpture on.

A. Sculpture, yes.

Q. And then there's the other one that heads up at the Mokemoke Pa and then it heads away doesn't it on the other side to Owhanake.

A. The historic reserve, yes.

Q. So the part of the track that is affected in the way you've described by the marina is the commencement of that walk where you go around the bay, that northern I think you said gravelly or shingle I think another witness said and then you go up the hill and you're walking towards the Pa and off you go.

A. Yes.

Q. So that's the transitory effect isn't it of the marina seeing the marina?

A. Yes.

Q. In the total walk experience.

A. Yes.

Q. And the same thing coming back?

A. Yes.

Q. And the same applies if you go up through the historic reserve you take that turn off to the left. Were you taken uphill on that walk at all?

A. So you're still on the northern side?

Q. Yes. When you were there did you go from the wharf down and then you go along the shorter distance and you can go up straight towards Delamore Drive, did they take you up there?

A. Oh no I haven't walked up that, no.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR CASEY – NIL

WITNESS EXCUSED

DISCUSSION – TIMETABLING

COURT ADJOURNS: 5.27 PM

COURT RESUMES ON THURSDAY, 23 OCTOBER 2014 AT 9.33 AM**MR CASEY CALLS****DENNIS JOHN SCOTT (SWORN)**

Q. Your full name is Dennis John Scott?

A. That's correct.

Q. You've prepared a statement of evidence for the purpose of this proceeding.

A. Yes. I have.

Q. The version that has been circulated was a draft and there are one or two changes or corrections that you want to make to it.

A. That's correct.

Q. And I'll just take the Court through that. If we go to paragraph 13, to insert after the word "Waiheke" the word "County". Where it says "District" it should be "County". In paragraph 15 delete the words, "Auckland City Council" through to "appeal" and insert the words "the communities and people of Waiheke" (inaudible 09:35:34), a reference to the Auckland City Council/Waitemata Infrastructure Limited appeal. Pick up plan change 38. So that paragraph should read in its full, "In 2004 I was also," "was", so that reads, "In 2004, I also prepared and produced landscape evidence and attended the Environment Court hearing on behalf of the communities and people of Waiheke (inaudible 09:36:34) in reference to the Auckland City Council/Waitemata Infrastructure Ltd appeal (inaudible 09:36:43) in relation to the then proposed Matiatia Village development." Is that right?

A. That's correct.

Q. And then at paragraph 23, after the word "island" that appears about halfway down the paragraph put in bracket "western landscape." And then at paragraph 39 after the word "relatively" is the word "recent", change that to "current". And then at paragraph 53, four lines from the bottom (inaudible 09:38:30) correct spelling of "village". And then at 58 take the "s" off "graphics". And then at 73 add the words after the last –

at the end of that paragraph, “(the RMA part 2 section 5 promise).” Nor Mr Scott, with those changes do you confirm your evidence?

A. That's correct, thank you.

Q. And you were also a participant in the expert conferencing and a party to the joint expert witness statement?

A. That's correct.

0940

Q. Dated the 22nd of August 2014.

A. That's correct.

CROSS-EXAMINATION: MR ENRIGHT – NIL

CROSS-EXAMINATION: MR ALLAN

Q. Good morning Mr Scott.

A. Good morning Mr Allan.

Q. Just starting with the JWS quickly, paragraph 22(d) of that document, describe for us what you've done for these proceedings, I think quite neatly encapsulates that, it says, you have assessed the proposal from a strategic perspective –

A. Sorry.

Q. – and did not consider –

A. Could you speak into the microphone, I am a bit deaf I'm sorry.

Q. Oh no, that's okay, I'll try and move a bit closer to it.

A. I've had that problem before.

Q. Yes, so paragraph 22(d) of the joint witness statement, and that paragraph, when you get to it, that neatly encapsulates what you've done.

A. Yes.

Q. In preparing your evidence. You haven't assessed the landscape, natural character and visual effects in detail, you've focussed on the strategic perspective?

A. That's correct.

Q. And planning instruments?

A. Yes, yes.

- Q. And particularly the district plan?
- A. Yes.
- Q. If we can go to your evidence just quickly, at paragraph 58, let me know if I need to speak up, I'll do my best.
- A. Yes, sorry about that.
- Q. So paragraph 58, there's a subheading there and you're talking about the planning strategy and you introduce your exhibits 5 to 14?
- A. That's correct.
- Q. And you say in the last sentence that the graphic exhibits underpin my entire analysis.
- A. That's correct.
- Q. And those exhibits focus entirely on the district plan framework as far as I could tell, and I just wanted to make sure that that's, that I'm right in my understanding?
- A. Yes they do and in addition the implementation of what the district plan had promoted.
- Q. And likewise your text at paragraph 59 onwards focuses on district planning instruments, both historic and current?
- A. That's correct, it shows a progression of thinking over time.
- Q. Yes.
- A. Which has been refined through the district plans.
- Q. Now you'd accept presumably that to the extent that the proposed development lies in the CMA, the coastal marine area.
- A. Yes.
- Q. The Court needs to consider the proposal against the regional coastal plan framework, doesn't it?
- A. Yes.
- Q. Including the new unitary plan provisions?
- A. Yes.
- Q. So for instance the coastal plans and unitary plans, identification of mooring management areas within the bay.
- A. Yes it does.

- Q. That's equally part of the planning background which the Court needs to consider as part of the landscape context?
- A. That's correct.
- Q. Now I may be wrong but I don't think your plans show for instance the mooring management areas, do they?
- A. No.
- Q. I think they show those parts of the bay blank.
- A. No, they haven't.
- Q. Yep, thank you. Moving onto paragraph 74, I just want to stop off there very briefly.
- A. Mmm.
- Q. You may not have intended it to read this way, but if you look at the text in brackets, you say, "Wharves, carparks, other minor public service structures." That seems to suggest to me that you regard the wharves and carparks as minor elements in the landscape, but I'm not sure whether that was your intention?
- A. Oh, no, no, no.
- Q. I just wanted to make sure of that.
- A. No.
- Q. Okay, thank you, and then moving down to your discussion of the planning strategy briefly, at paragraph 82 and then 83, you're talking about fairly old planning instruments; the 1987 scheme and the 1991 district scheme as part of –
- A. That's correct.
- Q. And it's fair to say things have moved on since 1991?
- A. They have. The purpose of my analysis was to demonstrate that this has been a true planning process where the original concepts have continued, yet with refinement, but those underpinning constructs essentially still drive the framework.
- Q. Thank you, and just to assist the Court in terms of how it needs to approach your evidence in those matters, would you agree with the point that Ms Bremner makes in her rebuttal and for the transcript it's paragraph 49, that these documents have no statutory relevance to the

assessment of the application under the Act except to the extent that they might be regarded as a relevant matter under s 104(1)(c), do you think that's a fair –

A. Yes.

Q. At paragraph 97 you're talking about the public accessway which you've described as awkward and that's obviously your view, so I don't challenge you on that. But would you acknowledge that providing that accessway offers access to the reserve at high tide via the boardwalk and that that's an enhancement in terms of access potentially?

A. I do have mixed views about that, it would only be an enhancement if it actually understood the sensitivities of that particular coastal edge and that's my whole point with that particular paragraph. There's a better design solution, that's what I'm essentially saying.

Q. The fact of enhanced access can't overcome that –

A. Yes.

Q. Moving on to the next paragraph, paragraph 98, you say, "Irrespective, the siting of carparks and such a structure is contrary to Land Unit 10.a.18," and you mention a particular rule, a setback rule.

A. Yes that's correct, 100 metres from mean high water.

Q. Now Ms Bremner notes in her rebuttal, and I can take you there if need be, but it's at paragraph 53 for the transcript, that in her view that rule is not strictly applicable as it applies to land in the mixed use area, in the southern part of the bay and would not be applicable to reclaimed land that is without zoning.

A. I understand that in a planning sense, yes.

Q. Oh you do understand, thank you.

A. yes.

Q. And paragraph 100, I suppose it's a similar point, you're saying the transport area does not provide for carparking. Ms Bremner just notes in rebuttal that the transport area does in fact provide for carparking as a permitted activity. Do you acknowledge –

A. Yes. I acknowledge that in a planning sense, I guess what I'm bringing to the forum is that there is also a planning and design matter here that

one would think that if one was designing a marina then some cognisance would be taken of the provisions of the land based units in order to at least reflect their intention.

Q. Yes but of course these are rules applying to very particular parts of the land unit.

A. That's right.

Q. They're not objectives and policies are they, which perhaps could be approached in a broader way that you suggest. We need to be a bit careful about how we treat rules perhaps.

A. That's correct, but the policy also talk about carparking for example Policy 6 at 10.18.3.1, quite an important policy. It says, "By ensuring that medium to large scale carparking areas are (inaudible 9.49.06) are not located adjoining the Esplanade Reserve were highly visible to those arriving at Matiatia, to avoid adverse adverse effects on the landscape character of Matiatia." That's a policy driver.

Q. That's right, there's been some discussion about the fact that perhaps the Esplanade Reserve where they're talking about that is in the southern part of the bay but Ms Bremner, I think, has also observed the spirit of that policy and she, and regarding there as perhaps an arguably an element of inconsistency with that. And you'd agree with that from what I'm hearing.

A. In a strict planning sense I'd have to agree with her, yes.

Q. But again in focussing on rules at the moment I just want to just cover off a few technical points with you. The final one is at paragraph 103 of your evidence, it's a very similar point....

0950

A. Yes.

Q. You talk about the application being, "Contrary to the Land Unit's threshold controls and rules," it would suggest that?

A. Yes.

Q. And again Ms Bremner makes the point that those threshold rules apply to activities in the mixed –

A. Yes.

- Q. – use areas, same point do you accept that?
- A. Yes that's correct.
- Q. Did you want to elaborate?
- A. Well I mean I go back to where my expertise lies and that's more in a general planning and design sense and looking at this space holistically so that's why I think that there is some interactions of the philosophy that underpins the future of this whole area so it's very difficult to separate the land and water when one is looking at design opportunity.

CROSS-EXAMINATION: MR R BRABANT

- Q. Morning Mr Scott.
- A. Morning Mr Brabant.
- Q. Can I start, just to get some stuff on the record with you as it were, in paragraph 15 you refer to your involvement in that area on plan change 38.
- A. Yes that's right.
- Q. Which we both remember, and then you say in paragraph 16 as a follow up to that as I understand it, you did some design work in 2006.
- A. Oh yes the design work was for the – yes.
- Q. Yes, and that design work followed the Courts decision to implement a plan change out of that appeal?
- A. Yes that's correct.

WITNESS REFERRED TO ANNEXURE 10

- Q. Now these were sent through by your office and they represent in plan format and elevation the design that you referred to in that paragraph?
- A. Yes one of the plans.
- Q. Sorry one of the plans.
- A. Well there's six of them.
- Q. This is a series, yes.
- A. Yes a series.
- Q. But as I said there's like a site plan and there's a elevation plan there.
- A. Yes.

Q. So when you did that design work and I think at least some of it was done in conjunction with Richard Priest Architects.

A. Yes the second stage was.

Q. The team doing that design work would've worked then with the new plan prohibitions that have been inserted into the 1996 Operative District Plan?

A. Yes.

Q. Yes.

A. It was some licence I think.

Q. Okay.

A. Because it was a competition.

Q. Well we'll get to that in a minute. I'm not quite sure what that means but anyway.

WITNESS REFERRED TO LAND UNIT MATIATIA DOCUMENT

Q. Mr Scott do you recognise these as the land unit Matiatia provisions that you would've worked with?

A. Yes.

EXHIBIT 8 PRODUCED – LAND UNIT MATIATIA PROVISIONS

0955

Q. So we'll just have a little look at this, Mr Scott, because of your methodologies and the way you work, as I understand it, when you were doing the design work, you would have had regard to the relevant objectives and policies in here?

A. Yes.

Q. To give you a guide?

A. Yes.

Q. And so if we can look at page 95, this is the page numbering on the document, of course, the plan, there's an objective of a built environment, providing for a built environment with a mix of land use activities and defined open spaces available for public use and enjoyment while protecting natural character of the wetland area and the coastal environment and it talks about public access being enhanced.

- A. That is correct.
- Q. So your design work that you did would have aimed to meet that objective, wouldn't it?
- A. Oh absolutely.
- Q. Yeah, and then policy B actually talks about what's going to go, what was going to go there.
- A. Yes.
- Q. Recreational, retail, commercial, conference, educational, service-related activities.
- A. Yes.
- Q. And your design accommodated all of those?
- A. Most of them, yes.
- Q. Yeah, so if you go to the key on the buildings, you can identify, you know, that different uses are to be found in there?
- A. Mmm.
- Q. Right, and policy E refers, doesn't it, to protecting visual form and character of Matiatia by applying development controls and building design criteria.
- A. Yes.
- Q. And again you would have referenced those and used those development controls when you were doing the design?
- A. Mmm, presumably yes.
- Q. Now maybe we'll just, can we have a look at those, just the key ones, if you go over to page 98.
- A. Mhm.
- Q. So we've got building coverage, controls and the different precincts, haven't we?
- A. Yes.
- Q. That you would have had regard to?
- A. Yes, I think by then we had, we had somewhat ignored some of the precinct boundaries.
- Q. Right.
- A. Yes.

- Q. Okay, no, that's fine, and then there's maximum height there on the same page, isn't it, and you had that to work with?
- A. Yes.
- Q. So there was an opportunity to go higher than eight metres and I think some of your buildings do that?
- A. Yes, not by much, though. Yeah, we were quite conservative.
- Q. This isn't a criticism of your work.
- A. No, no, no.
- Q. It's just identifying –
- A. Yes.
- Q. – the references you might have had when you did the work to the controls.
- A. Yes.
- Q. And then there are threshold activities in F and so you've got your three and a half thousand in roman two for retail, restaurant, bar, tavern?
- A. Mhm.
- Q. And then some controls within that and then in roman three, another threshold activity control in relation to residential and visitor activities?
- A. That's correct.
- Q. Now did you work within those controls or, again, did you mix around?
- A. We mixed some of the uses in order to create a sort of spatial relationships with certain parts of the open space because the open space and the circulation patterns were also driving this design pattern quite strongly.
- Q. Now that's very helpful, Mr Scott.
- A. Yes.
- Q. So we understand the context of this.
- A. Yes, that's right, sir.
- Q. Now what I wanted to ask you next, if we go to annexure 11, and I know it's a perspective but we can see in that some busses.
- A. Yes.
- Q. And we can see a roundabout.

- A. Yep.
- Q. Is that roundabout that you've got in there more or less where the roundabout is at the moment or is it in a different place, do you recall?
- A. No, I think it's in a different place.
- Q. Right, so and I guess I, yeah, and I guess we can see that if we look at the previous one, the site plan.
- A. Yes.
- Q. And you can just see the edge of the wharf on the top left-hand corner, can't you?
- A. Yes.
- Q. Now correct me if I'm wrong but I seem to remember your evidence at that hearing, and I think another landscape architect whose name I can't recall, talking about needing to bring the buildings forward and get the car parking behind, was that an important aspect for you?
- A. Yes it was.
- 1000
- Q. And I don't know whether it was the jargon in those days Mr Scott, but was the reference to activating the space behind the Esplanade Reserve by bringing buildings and activity in there?
- A. That's correct.
- Q. That's what I thought. Sometimes my memory doesn't fail me. Okay so you're familiar with the new controls –
- A. Yes.
- Q. – in the land unit?
- A. Yes.
- Q. So this is a general question and if you need to provide some detail of course you will. If you were working now with these land unit controls that are in the new plan, do you envisage that if you did this design again it would be fundamentally different or essentially much the same in terms of layout and the way things were done, are you able to say?
- A. It is actually quite difficult to know, 60 years forward. There were a lot of very high-end analysed components to this which for me personally would be difficult to change. There were some very special constraints

that we considered to be important, like view shafts down Oneroa Road that could open up. Like spaces that met people off the ferry which allowed for milling and better space to make their way to busses or cars, spaces that could be used at all times, day and night. So some of those arrangements in this plan I think are quite solid in the way they're being thought through.

Q. So you put a lot of work into this with Richard Priest's office.

A. I did.

Q. And you thought you did a real good job.

A. Well we did, we won it.

Q. Exactly yes. I'm just going to refer to the latest provisions and I'll get Jeremy to tell me where you find them, CB54 which is in common bundle volume 4, so 4 please, common bundle, and then CB54. Would that be under tab 54?

WITNESS REFERRED TO VOLUME 4, COMMON BUNDLE 54, TAB 54

Q. We're looking specifically at 10(a).18 Land Unit Matiatia. In the HIT plan.

A. The 213 Operative?

Q. Yes. So Mr Scott, just in terms of some key rules and development controls, would you accept that the permitted activities, things like, let's include the important ones, dwellings, entertainment facilities, offices, restaurants, cafes, retail premises, taverns, visitor accommodation, visitor information centre, they're still there as they were originally?

A. Oh yes, they're permitted activities.

Q. And if we go to the development controls, if you could turn to page 74, that's the page on the district plan?

A. Mhm.

Q. Do you have that?

A. Yes.

Q. Of the new one?

A. Yes.

Q. In the common bundle. So we've got the same height, eight metres up to 13.

- A. Yes, eight and 13, yes.
- Q. And down the bottom you'll see at the bottom of the page those threshold controls pretty much repeating themselves?
- A. Yes, capped at 10,000, 12,000 square metres.
- Q. And you'd – if someone was doing – well they could actually use your lovely design but if they chose to do another one for some reason instead of using what you've done, you would consider with your expertise and the work you did on this that the buildings are coming towards the Esplanade Reserve, bringing the people and the activities forward, the parking back, would still be a primary goal of what you did there?

1005

- A. Yes.
- Q. And I asked a question of Mr Brown about the finished product and I don't know whether you were here but he told the Court that he would consider the finished product in a design like yours to be urban development. Do you accept that?
- A. Well, it is urban development in the definition of the ARPS, I mean any area that's urban, whether it's in the rural or coastal zones, settlement zones is considered to be urban. Of course there are complexities and grades of urbanity.
- Q. Of course.
- A. Central cities don't look like rural or coastal villages and I would have to say that one would have to put Matiatia at that lower end of density and say that it's an urban coastal village of low intensity.
- Q. You'd say it's of low intensity looking at your site plan?
- A. Yes it is very low intensity.
- Q. Oh if you take it across the whole area available?
- A. Yes.
- Q. I understand what you mean. But then we'd talk, wouldn't we, about Oneroa Village as being urban.
- A. Yes it is.
- Q. As we would about Blackpool and Ostend and stuff.

- A. Blackpool, the whole lot.
- Q. It's got it's own particular island character as this would too.
- A. Yes, that's correct.
- Q. Now, the type of activities that are provided for here are intended not just to cater for people who live on the island but they're there for people who arrive as tourists aren't they?
- A. That's correct, it's to increase vitality of the space.
- Q. And the concept and the permitted uses means that many of those activities would be expected to match, particularly on weekends, the hours that the ferries operate, that is at night.
- A. Yes.
- Q. Yes they would.
- A. And it was also intended that it was an all day, all night space. That was one of the sustainable drivers behind the idea.
- Q. So, can you go to March 2013 and figure 67 please.

WITNESS REFERRED TO DOCUMENT

- Q. So there's a photo there that Mr Pryor organised, and it's taken from one of the residences, but it shows what it's like at night with the existing ferry terminal operation. And it's fair, isn't it Mr Scott, to say that with this development involving as it does tourism and cafes and restaurants and the activation that you're talking about, there will be an increased amount of lighting and activity will be very visible at night time from around the bay.
- A. Yes there will be more, yes.
- Q. Now I want to go back to your evidence now thank you. And we'll have a look at paragraph 35. Again, your work is focussed on this broader conceptual framework stuff and I wanted just to ask you a bit about that because Mr Brown talked a little bit about the scene over there as tourists or other people go through and you've started off by talking about a series of villages and you've got there; Oneroa, Blackpool, Surfdale, Ostend, Onetangi, Rocky Bay.

1010

- A. Mmm.

- Q. Now I know how well you know the island and so when you talk about the villages of Oneroa, Blackpool, Surfdale, Ostend, if you're driving down the main road heading out that way, and you could carry to Onetangi if you chose to, you've described them as villages, but there's really a continuum there, isn't there? I mean there's no significant breaks between those places that you described?
- A. No, not really, no, that's correct.
- Q. No.
- A. Yes.
- Q. And this is just a description –
- A. Yes.
- Q. – to ask if you, would you, if we put the word, "island," in inverted commas first because Waiheke is an island and it's distinctively different as you've said from the mainland. Island traditional suburban in nature with small section sizes, baches and small house, would that be a reasonable characterisation?
- A. Yes.
- Q. Then you've gone on to talk about the work that you were so deeply involved in, transforming out the western end there, and you've described it in some detail and you talk about the planted and regenerating bush.
- A. Mmm.
- Q. You say to integrate buildings and a diverse range of productive recreational and tourism activities.
- A. That's correct.
- Q. Around Matiatia, the activities are essentially residential and houses, aren't they?
- A. No.
- Q. I mean if you're in Matiatia Bay itself, there's very little of the, it's mainly the bush and the houses, rather than seeing a vineyard or something else, would that be...
- A. There's some olive groves but, no, you're correct, most of the buildings on the church bay side are residents. I think there is one, there was one

tourist development overlooking Matiatia Bay and it has, yeah, accommodation.

Q. But if you were down there in the bay, it would look like a large house?

A. Yes.

Q. So then we're looking at the buildings, I understand about the bush helping houses to integrate but do you accept, and there are various views in here, and the Court has been on many site visits now.

A. Yes.

Q. The buildings that surround and overlook the bay, Matiatia, and then of course they have a much wider view, they are prominent, aren't they, Mr Scott?

A. Well, they are visible. I would say that they are, they are prominent, but they are getting less prominent. There is definitely a transition period happening right now.

Q. Okay, so let's just talk about dimensions for a start.

A. Yes.

Q. And you can tell me if you're not familiar with these essential dimensions and I can take you to the development controls.

A. Mmm.

Q. So it's now called rural 2, but it had another name before. You can build to eight metres height, can't you?

A. That's correct.

Q. So you can get a good two-storeys in there?

A. Yep.

Q. And you've got an available building coverage of 500 square metres.

A. That's correct.

Q. Well those of us who are old-fashioned say 5000 square feet.

A. Mmm.

Q. And if we looked at, and if I could take you to, I'll take you to a viewpoint that we could use to understand that. Just let me, and it's going to be in the old folio, Mr Scott.

A. Yep.

Q. So if we go to the very first one, figure 1.

A. 214 folio?

Q. No, the early one, the 213, thanks. Yep, mainly I'll refer you to those ones. They're the sort of essential ones. If you just go to figure 1 and we're looking down.

A. Yes.

Q. From the helicopter, as it were.

A. Yep.

Q. And if we look around the outside and particularly focus on that northern side and you've got the arrow that indicates the proposed marina site.

A. Mhm.

Q. Would it be fair to say that the people who have constructed houses there have utilised the opportunity to build to those dimensions?

A. Yes, they have.

Q. Yes, and they're continuing to do so right now up on the, up pretty close to the headland, there's a big new construction going in?

A. Yes that's correct.

1015

Q. Yes now the bush is grown and all of that but each of the houses has got a curtilage around it hasn't it?

A. Yes.

Q. And that enables the owners and you're familiar with this whole process of planning and what people have actually done. That enables the owners to maintain their panoramic fantastic views out.

A. Yes it does.

Q. By ensuring vegetation doesn't obscure the front the house aren't they?

A. Yes.

WITNESS REFERRED TO FIGURE 59 VIEWPOINT 06

Q. So you can see on the top picture there, you can see the historic wool shed?

A. Yes.

Q. And I guess you know this property and how it was all done I guess.

- A. Mhm.
- Q. And then there's an area of open space and that's the curtilage waiting for the new house isn't it?
- A. That's correct.
- Q. Do you accept it's a reasonable expectation that a house is going to be built more or less to eight metres high and 500 square metres in size in that space?
- A. Quite potentially yes.
- Q. Can you go to paragraph 55 please? Now this is where you raised the question of the location of the wharf.
- A. Mhm.
- Q. That, "The mid-point of the inner shoreline and how that you say physically and visually reinforces and integrates the truncated central ridgelines that demarcates the two Matiatia Bays b) beaches, terraces and drainage (inaudible 10:18:02).
- A. That's correct.
- Q. Now in addition to the wharf, it is fair isn't it to refer to the buildings that sit right above it because they're big and they're quiet close down over the wharf so as you come in they're part of that central picture of built development?
- A. They are but they're in the curved hill slope of that catchment.
- Q. Yes.
- A. Whereas the wharf actually reinforces the end of the ridgeline and I have to say it's a critical ridgeline.
- Q. So –
- A. Because it is the ridgeline that separates the land units and this is quite important so I just need to add that.
- Q. But if you just go to 64 for me.
- A. Yes.
- Q. And I'm not going to use the photo at the top but the little viewpoint one at the bottom there, its' in the same folio. So you see the photo at the bottom which used as an indication of where the photo was taken from?
- A. Yes.

Q. So I'm referring to that, there's two houses there but particularly the nearest one to the wharf sitting almost directly above it.

A. Yes.

Q. That's prominent as above the wharf and becomes part of what you see on that headland doesn't it?

A. Yes? I just want to check something on that. Yes I don't think that house, or in my opinion that house is not that prominent as you look at it from the bay. It is quite tucked into the vegetation. Compared to the ones which are on the slopes of the northern embayment.

1020

Q. If we return to your paragraph 55 and I understand that you refer to a duality, one on the north, one on the south, and you refer to them being low density and totally permeable in that sentence there.

A. That's correct.

Q. Now, that's first of all recognising the presence and the continued and future construction of those large dwellings that I've just talked to you about isn't it?

A. Yes it does.

Q. Do you accept, Mr Scott, that what you say there about this appearance as you approach has not taken into account the reality of the opportunity to now be realised in the district plan for a development like you designed. That will change that southern side as you approach, won't it?

A. It will but interestingly in my opinion the Matiatia coastal terrace is in fact relatively discrete when one approaches the terminal. And because I believe the heights, the limitation of the heights even to eight and 13 metres with buildings set back creating open space will be quite discrete and recessive in my opinion.

Q. The buildings looking at your plan annexure 10 as a guide and as we discussed before have been deliberately brought forward right onto the edge of the esplanade reserve in the design, haven't they? If you look at annexure 10 there, that's in the newer one. You can see the pohutukawa trees and the faint line of the –

- A. No. No the buildings are not on the esplanade reserve.
- Q. No I didn't say that. For example you numbered 7 as the urupa, the sacred site.
- A. Yes.
- Q. And then there's that sort of pale-washed green.
- A. Yes.
- Q. And then you've got these buildings that are marked through there, there's four of them.
- A. Yes.
- Q. And they're brought right forward with a footpath in front of them to the edge of where the esplanade reserve ends, haven't they?
- A. Yes they would end about where the edge of the carpark would be now.
- Q. And am I correct in understanding that those are those buildings that you anticipated would be used for tourism and cafes and things like that?
- A. Yeah cafes and more office-type related activities.
- Q. That brings a form of urban and active visible development forward right up to as you say where the front of the carpark is now, doesn't it Mr Scott?
- A. Yes it does and it's on purpose that it's actually, they're actually sited in the context of the surrounding landforms because this is quite important too. Because the width of the coastal terrace, which is the zone which is going to take the buildings essentially the land unit 18, the buildings are purposefully kept to the edges as well due to the quite dominant typography. And in addition to that one has got to remember that the typography of the ridgeline itself that forms the junction to the wharf is actually quite prominent in that it actually protrudes slightly to the south. And therefore that part of the site is actually quite screened from most views from the water.

1025

- Q. Now in your paragraphs 55 and 56, when you discussed this, you've referred also to some exhibits, 15 to 20, and 21 to 25.

- A. Mhm, hang on, I'll just bring those up. My screen's gone to sleep, sorry. Sorry exhibits?
- Q. Well let's talk about the photos first.
- A. Mhm.
- Q. 21 and 22.
- A. Hang on, I'll just to them on my machine. Sorry about that.
- Q. That's all right. They're also in the hardcopy as well.
- A. Oh okay.
- Q. Over to you.
- A. Okay.
- Q. You've got them?
- A. 21?
- Q. Yes, 21 and 22, so there's two photos on 21.
- A. Yes.
- Q. And you've got three on 22, haven't you?
- A. Yes.
- Q. And is this meant to assist the Court in understanding what you've said in paragraphs 55 and 56?
- A. Yes, they're shots, general shots, that show the bay and the horseshoe shape, yes.
- Q. Well first of all, can I suggest to you, Mr Scott, they're a bit historical.
- A. Yes they are.
- Q. I mean they're kind of eight years ago, aren't they?
- A. Yes.
- Q. And secondly can I put it to you, out of five photographs, the only one that gives us and then a glimpse of the southern side of this duality that you talk about, is photo A on 22. That's right, isn't it?
- A. Yes. There's also exhibit 24.
- Q. Well I'm sorry I was, yep, so that's...
- A. Because I think that's quite an important one.
- Q. And 23 is the same, it doesn't give a view of the foreshore or anything –
- A. No.

- Q. – of the southern side, does it? So you have to get to 24 and then you look at B and C?
- A. Yes, 23.
- Q. Yeah.
- A. A.
- Q. Yep, I see that and so this is the one then that brings those two sides in, isn't it?
- A. Yes.
- Q. Yeah, so could we, can I ask then, you've asked the Court to imagine, haven't you, effectively the marina going in the left-hand side and it puts everything out of balance, is that a sort of a colloquial way of putting it?
- A. Yeah, a colloquial way, yes.
- Q. Does the balance that you are asking the Court to consider at the moment in your evidence, in photographs, or the evidence, because the photographs are a representation, exclude any reference to the development and intentions in the Matiatia mixed use zone? Well it does, doesn't it, your evidence doesn't refer to what can occur in the future under the objectives, policies and development controls in this mixed use zone?
- A. I have explained the development in quite, some detail.
- Q. In paragraphs 55 and 56.
- A. Oh, not in 55 or 56, no.
- Q. And if you go back to the 2014 folio, and go right to the very back, so three pages in from the back, do you see annexure 12?
- A. Yes, mhm.
- Q. So that's, Mr Pryor's had the people who did the other visuals provide some sort of indication using your plan and using the, and having the marina in there as well, of an outcome that it has both, it has the potential marina and it has an indication of what your design would, how your design would sit in the southern bay.
- A. That's correct.

- Q. Do you think that's a fairer way of looking at the situation rather than your paragraphs 55 and 56?
- A. I think it's an acceptable way of looking at it but in my opinion in a sense it actually demonstrates how well integrated the potential village will be.
- Q. No one is criticising your design Mr Scott.
- A. No, it's not about the design.
- Q. I'm just asking whether it is fair to put both elements into the picture.
- A. It's fair.
- Q. Can you go to paragraph 102 in your evidence? Now, given as you know from the many appearances and involvements you've had in hearings of this nature, Mr Scott, if consent is granted by the Court it can require changes to a development proposal.
- A. Yes it can.
- Q. I mean you're only too aware of that. And so viewing the marina as a proposal which for example could be at the invitation of the Court (inaudible 10:32:16) could be made different in some way. But recognising nevertheless the locational context, do you think it is fair to say that the proposal as currently presented, and as I say it could possibly be changed as a possible outcome, has a contextual connection with the Maritime facilities of the wharf? It has that going for it?
- A. Marinas have contextual characteristics, that where they are silent in the water. It's just –
- Q. Not the water, the wharf I said. I didn't say water, I said the wharf.
- A. The wharf, adjacent to the wharf.
- Q. Do you accept there's a contextual connection between that busy wharf facility and the maritime activity associated with it and the location proposed for the marina whatever size it could turn out to be?
- A. Yes.
- Q. And is it also fair to say that if it went there the people who utilise it can have the benefit like other people, whether they be visitors or residents who come down to the new village that we've been talking about, that

marina can – the people who use the marina have the benefit of the cafes, the facilities, so there is a connection there isn't there?

A. There could well be in the future, yes.

Q. So I mean like instead of getting off the ferry or anchoring out in the bay or being on a mooring and then you have to get in the car unless you want to use the, I don't want to be too critical but the reasonably average food facilities, and you'd only have to go up to Oneroa Village, there'll be something really nice there.

A. That's correct.

Q. And that would work for the marina occupants as well wouldn't it?

A. Yes that's correct. Yes, I mean I think what I'm talking about there, I think we kind of missed the point here because I'm talking about the character and amenity, and the spatial functions and aesthetics of the place. That paragraph in my opinion is particularly focused on those aspects.

THE COURT: JUDGE NEWHOOK

Q. Just remind me which paragraph of your evidence we're talking about?

A. 102.

Q. 102, thank you yes.

A. And that's really what I'm referring to.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Yes I know.

A. Yes. So and that's, yeah, that's where I talk about high end design aesthetics, sense of place, that's what my major concern here is.

1035

Q. Now let's go to 109. Now you've kind of combined together Waiheke Island and Matiatia.

A. Yes.

Q. And talking about it being predominantly a cultural landscape.

A. Yes it is.

- Q. By which I think you mean it has elements to it and buildings and changes which would include the bush re-vegetation.
- A. 'Till people place them.
- Q. Yes. Now although you've said Waiheke Island and Matiatia; if we just focus on Matiatia for a minute.
- A. Yes.
- Q. Is it fair to add that that's a maritime influenced landscape?
- A. Yes.
- Q. I mean this is the busiest kind of comings and goings place isn't it?
- A. It sure is.
- Q. So it would be fair to add that element into what you say in 109?
- A. Yes.
- Q. Can we got to 116 right at the end and we've had a discussion about his Mr Scott already and you've given some answers but you've come to some conclusions now and you've identified the marina as bringing a strong element of urbanisation?
- A. Yes.
- Q. To the setting?
- A. Mmm.
- Q. It's fair to add the mixed use zone development as you for example perceived it in your design work, it should be in that paragraph shouldn't it? Or that sentence?
- A. It does but remember I had – that didn't come unfettered that statement because I was talking about different levels of intensity to urbanisation whereas I believe the marina is very urban in its nature.
- Q. And would –
- A. It's intense.
- Q. Sorry, would you characterise all marinas in that way Mr Scott?
- A. Yes.
- Q. Regardless of where they are?
- A. Yes and most of them are part of an urban –
- Q. Have you seen the one at Whangaroa?
- A. Yes.

- Q. And you call that an urban marina? Whangaroa?
- A. Well it's coastal village marina, yeah, and I guess Opito Bay would be too, the northland ones, oh not Opito.
- Q. Are you talking about Opuia?
- A. Opuia.
- Q. Yes but that's got a –

THE COURT: JUDGE NEWHOOK

Doves Bay.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- Q. Doves Bay might be –
- A. Doves Bay sorry.
- Q. Yes you mean Doves not Opuia because that's got an industrial zone behind it and are you familiar with the marina at Tutukaka would you? You wouldn't call that an urban marina would you?
- A. No I wouldn't, no.
- Q. No. I mean it's fair to reflect that marinas are not just a city thing they can be outliers.
- A. Oh absolutely but in those situations, yeah those coastal villages are quite restrained and recessive aren't they?
- Q. But the marina is in that context, it's not Viaduct Harbour or Westhaven.
- A. Yes I understand what you're saying.
- Q. That's what I'm trying to say, yes.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- Q. Perhaps just looking at the Annexure 10 in the design that you did for the mixed use development as part of a competition I understand. Is it, just understanding your part of your design thought and the relationship with the topography that you mention.
- A. Yes.
- Q. Is the angle of those buildings at the front a critical feature of that design?

A. They are because they are the buildings which actually create the division between two important open spaces which are designed to have quite different functions.

Q. This was the open space that's created by the development?

A. Yes.

Q. And the natural –

A. There's that open space which is internalised which is a hard courtyard which is associated with the transport circulation and then to the south of that, those buildings, is an open space which is designed for recreation.

1040

Q. And in terms of its, the relationship with the topography you were talking about...

A. Oh, the relationship with the topography is that what we were attempting to do was keep the buildings to the edge, to relate them more to the rising topography which does contain that coastal terrace very strongly at that point. So it was to keep the open space fairly and more in the centre where possible.

Q. And that, the first building closest to the road –

A. Yes.

Q. – I think you were asked by Mr Brabant, is that at the, is that right up hard against the esplanade reserve or is there...

A. Well it's hard to tell, I think it's closer to the existing carpark so one, I guess if one extended the coastal reserve through it would be quite close the edge of the reserve, yes.

Q. Yes, just looking at, for instance I have in front of me, figure 79, which must be the 2013 bundle.

A. Yes. I'll have a look at that, sorry. Plan 70?

Q. Figure 79, proposed district plan, Matiatia gateway, land unit map A.

A. Yes.

Q. And that seems to show the esplanade reserve in white?

A. Yes.

Q. As the transport area and then the mixed use area under that.

- A. Yes, yes, but building, yes, it would be sitting on the, what would be termed the, well it's the existing carpark.
- Q. Right, and then the development is angled inwards so that the open space is greater than what the esplanade reserve would be, by the look of...
- A. The esplanade reserve would be extended essentially, because 4000 square metres of the 35% open space has to be adjacent to that esplanade reserve.
- Q. Right.
- A. Mmm, and that's quite a large area.
- Q. It is, yes.
- A. Yes.
- Q. And do you know whether that's the area shown –
- A. Yes, that area.
- Q. That's it, is it?
- A. That fits that criteria, yes.

THE COURT: COMMISSIONER HOWIE

- Q. Is there any alteration to the proposed marina that you think would improve it or allow it to be acceptable in your view?
- A. Hmm, that's a hard – I think that it is fundamentally the use and the scale of it. A smaller marina may be but I just feel that intensification of marina activities there is essentially boat parking and, more particularly, the associated car parking, I think will have an adverse effect on that, on the entryway, the gateway experience to Matiatia. I have to say that I did try playing with some designs, to curve it, and I did play around with it a bit and I think it takes the economics out of it personally, but I'm probably not qualified to talk about that, but it would reduce the number of berths quite exceptionally, because I think it also needs to come further back off the beach and essentially it simply doesn't work, in my opinion, mmm.
- Q. For economic reasons?

A. Yes. It's, and also it still visually is quite a difficult element to accommodate in that bay without destroying the integrity of that overall scene and setting, in my opinion.

1045

THE COURT: JUDGE NEWHOOK

Q. Mr Scott, Mr Brabant asked you quite a lot of questions about the part 10(a) Land Unit provisions that are in volume 4 of the common bundle.

A. Yes.

Q. I just want you to go back to those provisions, have you got them handy?

A. Yes I've got them.

Q. 10(a).18.8.2, Buildings in the mixed use area, we've got clause 1, "Matters of discretion", then we've got 2, "Assessment criteria," and I want to look through those. There's a part of it that he didn't place in front of you that I'd like you to think about and give us some advice on, and that's (c).

A. Sorry, can you take me to the numbers again?

Q. Yes, on page 80. Turn to page 80. We'll start with 79.

A. Okay.

Q. Have you got page 79 there?

A. Yes.

Q. This is under 10(a).18.8.2 about buildings in the mixed use area, subclause 2 is bottom half of the page, "Assessment criteria." If you turn over the assessment criteria continue down page 80 and indeed go over to 81.

A. That's right.

Q. Bottom part of page 80, "Landscaping open space and pedestrian walkways" wasn't drawn to your attention in his questions.

A. Mhm.

- Q. If you would just quietly have a read of the what's on that part of page 80, little roman (i) and it's bullet points and little roman (ii), and it's bullet points, and then I'll ask you about them.
- A. Yes. Yes I'm familiar with these.
- Q. If you were providing advice to say a developer of this mixed use area or advice to the Council about a proposal, what would your advice be concerning some of these bullet points, particularly the fourth bullet point under "Landscaping" and the third under "Open Spaces." What would they drive?
- A. They would drive comprehensiveness up front, because the (inaudible 10:47:43) it says, "Landscaping, open space and pedestrian walkways and the extent to which landscaping will be put in place concurrently."
- Q. Yes no go down to the fourth bullet point, what's that about?
- A. "Mitigate the adverse effects of the development on the landscape character of Matiatia, particularly the coastal landscape."
- Q. And then the third bullet point under "Open spaces", what would those drive, what would you be advising a developer or the Council?
- A. In terms of plant form?
- Q. In terms of the overall visual experience.
- A. In terms of the open space?
- Q. Open space and landscaping.
- A. What would drive my advice would be that this is obviously a very heavily landscape-driven set of rules essentially or assessment criteria. The landscape is fundamental to the outcome which is envisaged in this place. It's quite clear that landscape becomes a dominant element of the overall comprehensive plan.
- Q. Okay well at that point we could probably leave the rest to lawyers and/or planners, but I just wanted your prospective advice if you were involved in something being put there, thank you for that.

1050

RE-EXAMINATION: MR CASEY

- Q. Mr Scott, as I understand the answers you gave to my learned friend Mr Brabant, the planning provisions that are in exhibit 8, that is the Land Unit 27 Matiatia, were the applicable provisions at the time of the contest that resulted in the designs that we see...
- A. Yes.
- Q. So to the extent that the provisions of part 10A, well part 10A would be the provisions that would apply now?
- A. Yes.
- Q. And so to the extent that part 10A has provisions that are different to those in exhibit 8, it's 10A that would dictate the outcomes?
- A. That's correct, yeah.
- Q. Well again, because I haven't had a chance to look at it, I'm not sure, but provisions such as those that His Honour referred you to, I haven't been able to see equivalent provisions in exhibit 8.
- A. No, that's correct. Yeah, 10, part 10A, the land unit 18 has been quite highly refined in the '96 to 2006 review and, therefore, the 2013 operative plan.
- Q. Right, and His Honour referred you to a number of the discretionary assessment criteria at page 80 of part 10.
- A. Yes.
- Q. And not just those ones that he referred you to but the others under building form and materials; building location, as well as landscaping.
- A. That's right.
- Q. And again perhaps I don't need to ask you specifically whether all of these feature in exhibit 8.
- A. No, they're additional.
- Q. They're additional?
- A. Yes.
- Q. Thank you.
- A. They're new, yeah.
- Q. Well under criteria B, building location –
- A. Mhm.

Q. – sub-criteria paragraph 1 talks about the buildings achieving an integrated and cohesive form of development, particularly when viewed by those arriving on the ferry.

A. That's correct.

THE COURT: JUDGE NEWHOOK

You're looking at 10A now, are you?

MR CASEY:

Q. I'm looking at 10A, yes.

A. And three, B3.

Q. Yep, now my learned friend Mr Brabant suggested to you that there were a number of permitted activities and he read through the list; residential, office, cafes and things of that sort. Can I just be clear that those would only now be able to become permitted if the buildings in which they were housed were obviously constructed.

A. Yeah.

Q. Am I right there?

A. Mmm.

Q. What he didn't put to you was that those buildings would require –

A. Restricted discretion.

Q. You're aware of that, of course?

A. Yes.

Q. Thank you, and was that the case also in the previous regime under exhibit 8?

A. I have to say I'm not sure.

Q. If I take you perhaps to page 96, activity table. I think the answer is –

A. Activities, activities, buildings. I can't remember back that long.

Q. That's all right, no if –

MR R BRABANT:

No, I don't see it, the point's trite, I mean I accept that building consent is required in both sets, there's no argument about that.

THE COURT: JUDGE NEWHOOK

Yes, you can lead on this, it's right here in front of us in black and white, Mr Casey.

RE-EXAMINATION CONTINUES: MR CASEY

Q. Sorry, at page 96 of exhibit 8 you'll see the activity table on the right-hand side.

A. That's correct yeah.

Q. And it states that all new buildings and alterations to existing buildings require a restricted discretionary activity consent.

A. Yes.

Q. My learned friend asked you to look at figure 67 which is in the March 2013 bundle. Do you have that with you? Figure number 67.

A. (inaudible 56:00).

Q. Have you got that?

A. Yes.

Q. And I think he said to you that that was taken from one of the residences and it's a residence apparently located to the south of and overlooking the wharf, terminal and carpark area?

A. That's correct.

Q. And the question that he put to you suggested that there would be increased activity if there was a development.

A. Yes.

Q. And that it would be visible from nighttime he said around the bay, and do you agree with that?

A. Yes, the visibility would be more to the south of the bay rather than the north of the bay.

Q. In terms of the visibility for those arriving, or for that matter departing, on the ferry what would you say about that?

A. Yes, there will be some cognisance that there will be the presence of building and lighting in that part of the bay which may not exist at this point in time, that's a reality of the placement of a village there, I have to agree with that.

Q. But if I take it back to the part of now part 10(a) and the sections that His Honour and I both referred to at page 80, do you have any comment about the view or the visibility for those entering or leaving by ferry of development in the mixed use zone?

A. I'm sorry, could you repeat that question? I'm sorry but –

Q. Having regard now to the criteria at page 80 in particular, that is of the current – well 79 and 80 I guess I should say.

A. Yes.

Q. Do you have any view about the aspects of the development when viewed from those arriving or departing on the ferry?

A. Yes there are assessment criteria that does draw ones attention to the issue of external lighting which is to be used to enhance public safety within the development without creating adverse effects on surrounding sites.

Q. And if I can take you to whether it's daytime or nighttime, do you have any comment about what would now be required in terms of the views of the development for people arriving or leaving by ferry?

A. I'm not quite sure –

Q. Perhaps I can ask it in a different way because my learned friend also asked you about annexure 12, which is in the second bundle, the October 2014 bundle, do you have that?

1100

A. Yes.

Q. And he asked you, I think, questions about whether that was acceptable or accurate and I think you said it was acceptable, it demonstrates how well it's integrated.

A. Yes.

Q. But can you tell us where that viewpoint is, roughly?

A. That viewpoint is on the reserve walkway to the south.

Q. Now we don't have a viewpoint of the proposed development from out in the bay, do we?

A. No, we don't, no.

Q. Do you have any comment on how a viewpoint or a view from out in the bay might see that development?

A. In my opinion, the development would be quite recessive and discrete from out in the bay.

Q. And why do you say that?

A. Because there are two elements that are quite important and I think His Honour really drew the attention to that and it's the open space and landscape issue. There is a high expectation of open space and landscape in the immediate foreshore of this development; it's specifically required by the provisions. What isn't modelled, in fact, in annexure 12 is the foreshore landscaping, for example.

WITNESS EXCUSED

COURT ADJOURNS: 11.02 AM

COURT RESUMES: 11.26 AM

MR CASEY ADDRESSES THE COURT – ALEXANDER HOUSE

LEGAL DISCUSSION – TIMING

MR CASEY CALLS

BRIDGET MARY GILBERT (AFFIRMED)

Q. Right Ms Gilbert, your full name is Bridget Mary Gilbert?

A. Correct.

Q. And you have the qualifications and experience set out in your statement of evidence?

A. Yes.

Q. You've prepared a statement of evidence for these proceedings?

A. Yes.

Q. And you have also signed the joint witness statement?

A. Yes.

Q. Of the 22nd of August 2014 and you confirm that your statement of evidence is true and correct?

A. Yes.

CROSS-EXAMINATION: MR ENRIGHT

Q. Good morning Ms Gilbert, just taking you to paragraph 38 please of your written evidence.

WITNESS REFERRED TO STATEMENT OF EVIDENCE

A. Yes.

Q. Now you refer there to the evidence of essentially the Piritahi Marae witnesses and I think nowhere in your written evidence do you refer to the cultural evidence given by Ngāti Paoa Iwi Trust, I'm just trying to clarify to what extent you've had regard to their evidence?

1135

A. At the time of writing my evidence I hadn't had a chance to read their evidence, I cannot recall the exact timing of the sequence of filing those

statements but I have read that evidence since then and heard at least some of the cultural evidence on the island.

Q. And having heard that Ngāti Paoa evidence how does that influence your views on the cultural landscape issues?

A. Well it reinforces the understanding that I took from the Piritahi Marae.

Q. And now just as my second question topic, again on the subject of cultural landscapes, just the issue of Mokemoke Pa, now Mr Morehu Wilson in his evidence referred to it as a sacred sentinel that watches over the bay and its environment and my question to you is simply, if you can give your evidence on the extent to which views to and from Mokemoke Pa site may be affected by the proposed marina from the north-eastern bay area.

A. Certainly I'll try. I just have to sort of caveat that with, I'm not a cultural expert I'm a landscape architect.

Q. And that's a fair point, this is about the viewshafts if you'd like.

A. Certainly.

WITNESS REFERRED TO FIGURE 47 MARCH 2013 BUNDLE

Q. Figure 47 is the bird's eye view aerial.

A. Correct.

Q. And that may assist you in terms of your answer.

A. Certainly, so in my work with iwi groups and volcanic viewshafts it's usually important that the issues that we're looking at is the legibility of the landform feature and that's usually around visibility, are there things in the way if you like and also the dominance of elements in the foreground or flanking the landform. So viewpoint 6 is of, I think, of some help in understanding that.

Q. Yes, and that would be figure 60 I think.

A. So in that view from the wharf there is I think a relatively clear view of the Mokemoke Pa and you can actually understand the transverse ditch as well in that view. Going back to – so at the moment there's clear visibility. With the marina in place there will be a distraction to the visibility of that landform, the legibility of the landform. I think that

distraction effect if you like will increase as you move northwards from viewpoint 6, so referencing figure 47 from the north wharf and then moving north along the coastal frontage but not as far as say viewpoint 5 because there's actually intervening landform and vegetation which would screen the view but certainly throughout the southern end of the Matietie Historic Reserve beach area or rocky shoals you would have a similar view to the Mokemoke Pa and the marina would have an increased distraction and dominance effect on that view.

CROSS-EXAMINATION: MR ALLAN

- Q. Just really a question or two of the clarification, if we can quickly have a look at paragraph 9 of your statement and you say there, "My evidence will explain why (in contrast to the evidence of Mr Pryor and Mr Brown) it is my opinion that the landscape and visual effects of the proposed marina at Matiatia will be more than minor," unless there be any confusion I assume you'd agree that this statement doesn't quite encapsulate Mr Browns position accurately does it?
- A. That's probably fair because Mr Brown has found more than minor effects in relation to some viewing audiences.

1140

- Q. That's right, from the northern beach, the historic reserve and from residences up behind the ferry terminal.
- A. That's correct.
- Q. But obviously he's otherwise of the view that the proposal is acceptable in the context of the broader bay and that's where you part ways?
- A. That's correct.

CROSS-EXAMINATION: MR R BRABANT

- Q. I'm going to start actually with the same paragraph you were just asked a question about, where you given an opinion of the proposed marina at Matiatia. And I take it that – well, I need to ask you, are you meaning by that what I might say is the whole package, that is the marina and the reclamation?

- A. Yes, I've assessed the two together.
- Q. I mean they're two separate elements in one sense. So what would your opinion be if the reclamation wasn't included?
- A. That's an interesting question. The reclamation – removing the reclamation would be beneficial in terms of visual effects and natural character effects. I'm not convinced it would tip me over to being comfortable with the marina in the bay.
- Q. Can we go to the top of your page numbers 5 and it's in paragraph 22.
- A. Yes.
- Q. I've just got a few questions here about the what's now called "Rural 2" landscape, this is the area here. So we've got the reference to, as Dennis Scott would put it, restoring the original vegetation through the replanting in exchange for rural residential subdivision. And it is of course the case isn't it that the subdivision itself that's creating the titles doesn't give rise to any effects, it's the opportunity that's created then to do some development on it.
- A. That's correct.
- Q. So then we need to consider the outcome in relation to what has happened and what can continue to happen, and were you here this morning when I asked Mr Scott some questions?
- A. I was.
- Q. So we'll just try and short-circuit this, you're familiar with those controls, eight metres in height, 500 square metres of size?
- A. Yes I am and as I understand it or my experience of it is any buildings are restricted discretionary subject to a whole series of assessment criteria which focus on landscape, character, visual amenity and actually natural character within that land unit.
- Q. We can see that the outcome of that consenting process hasn't meant that buildings aren't out there that are large and prominent.
- A. I would agree with you that there are buildings in the bay that are large and prominent. I think in my experience more recently it might be fair to say that there is closer attention paid to those assessment criteria.

- Q. I guess we'll wait and see about the one that's going up on the headland at the moment.
- A. Yes.
- Q. Now look in that regard in 25, you've given an example of maturing plantings and the building sits more comfortably, and I just had a question I thought I needed to ask you about that because you've provided a photo, and you're more expert and I know the Judge is more expert about photographs than me as well, so just if we can go to appendix B and it just seems to me that the photo has been taken at a time of the day when it's sort of getting shadowed on that hill. Because I'm looking right in front of the house you can see the darkness on the bush on this face and also maybe off to the left. Is that fair? It's sort of taken –
- A. Yes I think that's a fair criticism, it's not an ideal shot at all. The point that I was trying to make in that shot is that particular house to my mind has been quite prominent, and as planting has established and matured, it's benefitted. I'm not sure it's entirely integrated yet but, yes, I accept the criticism of that photograph.
- Q. It's not really in a way a criticism, I'm just wanting to check first of all that I was maybe right because I looked down on the wharf at the car and then there's a building up the hill where the sun's still hitting it and I thought well just maybe it turns out that house is started to get into the shade a bit and, if there had been the sun behind you more when you took the photo, the building would actually –

THE COURT: JUDGE NEWHOOK ADDRESSES MR R BRABANT
(11:45:35)

CROSS-EXAMINATION CONTINUES: MR BRABANT

- Q. Now in 28 you say, and you talk about the Matiatia gateway unit, you refer to the land unit as focussed on delivering safe and efficient transport objectives. It actually by reference to the land unit provisions has two key elements to it, doesn't it? One being under one set of

headings, the transport network, and the other under another set of headings to create a safe and attractive mixed use development.

A. Yes that's correct.

Q. And you haven't mentioned that, though, in that paragraph, have you, you only referred to the transport side of things?

A. No I haven't mentioned that in that paragraph and on reflection it would have been helpful if I had included those words.

Q. Okay.

A. What I can assure the Court is that I had regard to the full provisions in my evaluation.

Q. Right, well let's move on in that context then to 34(c), sorry, not (c), but (d), which is on the top of your page 7. This seems to be similar to a vision or an appreciation of the bay that Mr Scott had put in his evidence with the transport hub, as you've described it, and all the buildings that go with it, being in the base or centre and then you've got the simple, relatively uncluttered and legible shoreline sort of on each side and I just want to put to you and without pulling all these diagrams up again, if it's acceptable, but we can go to them, that if we look to what the objective clearly intends happens, there is going to be an urbanisation on that side?

A. Yes, that's correct and perhaps if I can expand on that, building on conversations along that line with other landscape experts, I take it from the policy context, starting right at the top if you like in the district plan, which talks to a village-style development at Waiheke, that it would be reasonable to expect that there's going to be some sort of limitation, if you like, imposed on scale and intensity so, whilst it's urban, kind of not all urban is equal, we have quite a range of urban characters throughout the city and throughout Waiheke and then coming down to the Matiatia land unit provisions, the objectives and policies point towards, well emphasise the need to give careful consideration to landscape character values and maintaining those values within Matiatia and then, dropping down, you've got the buildings, any new building is restricted discretionary with a whole raft of assessment criteria.

- Q. Sure.
- A. So in terms of the final development outcome that happens in the gateway land unit, I would expect it to be relatively recessive and sympathetic to the landscape character of Matiatia.
- Q. Yes, and Mr Casey went back over that quite apparent point that no building development is going to go there without consenting and without careful design and locational considerations.
- A. Yep.
- Q. And we can all understand that but, nonetheless, the purpose of the objective and the policies is to create this new village activity in place of a carpark, isn't it?
- A. Yes, that's correct.
- Q. Essentially?
- A. Yes.
- Q. And there's a range of activities that once the buildings are in place, to an appropriate and acceptable consented standard, are going to provide for visitors, for residential, retail, I mean I won't go through the list again.
- A. That's correct.

1150

- Q. And I was going to bring the nighttime issue up with you but I may as well do it in a package, it's fair isn't it that you haven't made any specific reference to the night?
- A. That's fair.
- Q. In terms of what you see at the moment with the blazing lights of the terminal and they're on until about midnight or later sometimes, and there'll be more lighting activity on that right-hand side inevitably, even with recessive well designed buildings.
- A. Yes.
- Q. Now just with paragraph 38 –
- A. Sorry Mr Brabant, can I add to that? Because there was some questions that were put to Mr Scott, am I able to do that? Which was the, and I can't remember the viewpoint – sorry not the viewpoint, the

appendix reference of that nighttime shot, which is an elevated shot looking down on the wharf and the ferry terminal and the coastal plan.

THE COURT: JUDGE NEWHOOK

Let's all find that and have it in front of us, it's towards the back of 2014 –

MR R BRABANT:

It's 67.

THE COURT: JUDGE NEWHOOK

Oh 67 in the 2013 bundle?

MR R BRABANT:

Yes Sir.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. We can see where it's taken from with a little photo.

A. Absolutely and I think Mr Brown, I think I took it he was saying well yes, it's a fair representation, there's probably a few bits and pieces that might be different such as starts and what have you, but I tend to agree with him, it's a fair representation. But I guess the point I'd like to make is that that relates to residential viewing audiences. I doubt whether there'd be too many people wandering the tracks at night. Of course the other important nighttime view would be people coming in or going out on the ferry. And I probably disagree with the answer Mr Scott gave on that in that it's my expectation and from memory having done it that you see the ferry and terminal at the base of the bay lit up, but the flanking bay is actually relatively unlit. So it's once you have the lighting of the marina sort of extending across the northern portion of the bay, that would be quite a change.

Q. Well let's go to, and I know that there's been a reference, in fact it's one of the issues, about how far out this photo was taken, but viewpoint 1 is figure 48.

A. Yes.

Q. You'll know that the lighting experts have looked at the whole lighting design issue and have you read their evidence for the proposed marina?

A. I haven't read it in any detail.

Q. Have you seen any modern marina lighting? I don't mean old school Westhaven, I mean the latest with the low bollards?

A. Yes.

Q. And I suggest to you, looking at the lower one which incorporates the marina, the lighting being low on the fingers will not show above those breakwaters.

A. Well I can't comment on that in terms of being a lighting expert.

Q. You included some photos didn't you, you went down to Orakei Marina?

A. I did.

Q. Took some photos down there? I just thought that you would have maybe seen the type of lighting when you were there. Oh well I can't – oh, there you are on your photo 3. I think you should be able to see the little bollard lights?

THE COURT: JUDGE NEWHOOK

Her appendix F, photo 3?

MR R BRABANT:

Yes I think so Sir.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Right on the corner there that might be a...

A. Yes, I don't have it in front of me but I can recall bollard lights.

Q. Anyway –

A. And I accepted, if you're putting it to me, that there would only be low level lighting and that will diffuse the nighttime effect.

Q. Well maybe you haven't read the evidence so it's not an area I want to go to if you haven't read it, because that wouldn't be fair. But just

looking at the top viewpoint that's existing at the moment, going back to the existing view in viewpoint 1, I appreciate the lighting photo at the moment is taken from that McGee house up near Mr Alexander's, but imagining travelling away, as this one is, or in at 10 o'clock, or half past 10 or 11 at night, that wharf structure there is going to be a brightly lit centre?

1155

A. It is, yes.

Q. And am I not correct that the houses that are on the flanks here are also, their lights will be on, they will be visible at night? I mean the bush doesn't hide this sort of thing at night, does it?

A. They will be visible but they won't be the same intensity as we're seeing looking down onto the...

Q. No, and then if we imagine a mixed use development utilising Mr Scott's work, and/or the build media to give us an idea of where the building's spacing and location, it is correct, isn't it, that on the, from this shot, which is coming straight out from the ferry, you will see lit buildings and also there will be public space where people are walking around, that will have lighting as well, that will be visible on the right-hand side, won't it?

A. Well it will be lit but a little bit like your marina example down at Orakei, it may be a design feature of that development to be relatively subtle in its lighting.

Q. Are you talking then about the public lighting outside?

A. Yes, yes.

Q. But you can't control, for example, a café or a tavern open late at night –

A. Certainly, so –

Q. – or even the people in their apartments, they could turn all the lights on if they want.

A. That's a fair point.

Q. Yeah, okay, now under a heading, "Values to Tangata Whenua," 38, and just so I understand what you're saying here, in the fourth line, you

say the reasons why the landscape, as you understand from reading the evidence –

MR R BRABANT ADDRESSES THE COURT: JUDGE NEWHOOK
(11:57:03)

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So there's a consequence of the urupa in the bay, are you referring there to the identified urupa that is in Mica Plowman's figure 3 of the various sites around the bay, is that what you're referring to there?

A. Yes, I mean I would need to check back in those various statements of evidence because I'm not entirely sure that there were not other urupa mentioned in those statements.

Q. You may not remember but we've got the picket fence –

A. Yes, yes.

Q. – with the grave and then next to it, there was another burial.

A. Yes.

Q. On the south side and then there's two places on the northern bay identified up above the...

A. Yeah.

Q. Are those what you mean by the urupa in the bay?

A. Yes, but I guess the point I'm making is I'd need to, I'm aware of those urupa.

Q. Yes.

A. I am just not sure if some of those experts were talking to some other matters as well.

Q. Right, okay, and when you say, "And it's overall wahi tapu status as a result," is that a reference to the evidence of the witnesses that were asked to give evidence by direction of Matiatia to the whole of the bay being wahi tapu, is that what you're referring to?

A. Yes, that's correct, yes.

Q. And you're aware that that matter will have to be determined by the Court because there's a difference of viewpoint?

- A. Absolutely.
- Q. Thank you. Paragraph 60, and you're referring to the transport hub and how it reads and I'm asking you now and you may not be able to answer this but we'll see. We have this viewpoint that you might still have open of the ferry leaving and I know that there's an interest in what you see as you come in but, of course, you can stand on the stern and get the same view. So for the purpose of my question, it doesn't matter whether you observe this leaving or arriving, do you, can you recall leaving the bay and then coming outside those two outer headlands to the point where they close off the northern and southern side and you're left looking at the centre? Can you remember that view coming in or out?

1200

- A. So sorry, the view where you get –
- Q. Imagine going further out.
- A. Yes.
- Q. And you actually end up going outside the bay and the ferry is still going straight out.
- A. Yes.
- Q. And the headlands close in at that entrance.
- A. Yeah.
- Q. And what happens is that your view back or could be the view in, the headlands close so the two inner sides.
- A. Yes.
- Q. And what you're left with is looking at the centre.
- A. Yes.
- Q. Can you recall that view?
- A. I think I can.
- Q. Yes, I mean I noticed it when we were going backwards and forwards and I just wanted to put it to you if you can remember it but not if you can't.
- A. I'm not sure I can remember it with enough confidence to answer detailed questions on it.

- Q. All right, well let me try this question and I know you will say it if you can't help. If you're leaving or arriving, there's a point at which you approach the bay which I'm suggesting the headlands close the view, have a closed view and then you come through the bay and then it opens out. But before you get to that point and you're looking in with the headlands on each side, you actually end up looking through a gap in which the transport structure actually dominates the view at water level, do you understand?
- A. Yes I do, yes I think that probably does occur. Sorry can I just add to that because something that always impressed me approaching Matiatia is you have quiet an awareness of all the houses on either side so that's kind of, um, Alan Murray Lane and some of the houses accessed off Alan Murray Lane and there's a real feeling of proximity so you have – yeah, just an observation.
- Q. So can we go to 70; so you have acknowledged that for some people, I mean there's that old adage about beauty in the eye of the beholder I suppose and for some people marinas can be interesting, I don't need to put attractive to you but interesting and I asked Mr Scott before and you may not be familiar with other marinas other than the ones in Auckland City so I need to ask you first, have you seen marinas at places like Whangaroa or Tutukaka?
- A. Tutukaka yes.
- Q. Yes. I want to put the same proposition to you, to label all marinas regardless of their location as urban, isn't that putting to one side particular contexts?
- A. Yes, I listened carefully to Mr Scott's answer on that. Context is always important. I would actually rate Tutukaka as a coastal village in appearance, it may not have the proliferation of other coastal villages but the combination of the built form there and the marina in my opinion does read as urban. I'm trying to think of an example –
- Q. So as urban in combination.

- A. Yes in combination. My difficulty in helping you with that is I can't bring to mind a marina that I've seen that's kind of in the middle of nowhere with, you know, no built development associated with it.
- Q. If we just stay with Tutukaka for a minute a major aspect of it is the quite large hotel complex I guess but a marina associated with a village development puts it in a similar context in that sense to a marina, a wharf and a mixed use zone development that we've been talking about doesn't it?
- A. Well I'm not sure you can just simply say one situation there is the same as another situation over there without giving careful consideration to the planning context and the landscape values. I can't talk to what the landscape values are of that Tutukaka Bay and coastline. I guess what I can do is talk to Matiatia and I don't see that, if you like fit, working well there.

1205

- Q. So in another context, remote from the middle of Auckland we could look at say Gulf Harbour and maybe a slightly smaller scale, Pine Harbour, but these are larger marinas but they've got a focus of urbanisation around them.
- A. That's correct.
- Q. In the Matiatia context it could be a question in the end of the way something is located and also how big it is, is a consideration.
- A. I'm not entirely sure I understand the question that you're putting to me.
- Q. The starting point then is, and Mr Brown and Mr Pryor have referenced this, is that location in the context of attachment, if you like, to the wharf and the ferry terminal, that's the first thing.
- A. Yes.
- Q. And the second thing is a question of what sized marina could be acceptable.
- A. Yes, well we probably part company on the first one because I don't regard the land-based development, so the carpark, the mixed use et cetera as, if you like, anchoring or contextualising the marina as such.

- Q. I understand that, but that question I just asked connected, as I think Mr Brown and Mr Pryor did, the, if you like, the maritime aspect of the marina to the wharf and the comings and goings of craft.
- A. Sure, I think I'm getting more where you're heading. Yes, there is a certain compatibility in terms of you're talking about activities on the water and you're talking about boats and similar materials, timber, piles et cetera. I'm not convinced about the, if you like, the synergy between the two. To my mind the wharf doesn't need the marina to operate, they're not, they don't need each other to co-exist. And the carpark, the land-based carpark doesn't need the marina but there is a connection between the land-based carpark and the wharf. So, it's more of a one way relationship, I think, with the marina.
- Q. There is, however, a connection of the marina to the existing facilities. There's water and fuel.
- A. Yes, there is.
- Q. And then people using the marina have ready access to the key transportation that gets them to the rest of the island.
- A. That's fair and it's also potentially with the mixed use development there will be a relationship.
- Q. Just turning to the view points. Now I'm not sure now because when I'm up here it's hard to know whether people are here or not here. But I wanted to talk about the Rocky Bay Store Sculpture as it's called, or just the location will do because I understand that may not be there forever but it's certainly a location where people go and the Delamore Drive, what's called informal viewing point there, people are inclined to pull over and look.
- A. Yes.
- 1210
- Q. Now there were some photographs of those and Mr Pryor went up and took some more and it's in his rebuttal and produced something which he said gave a better impression of the breadth of view; could I say vertically as well as horizontally.
- A. Yes.

- Q. Do you find his photographic images acceptable in that respect? If you need to look at them again, they'll be attached to his rebuttal evidence, which is in volume 12, under 12(a).
- A. Yes. So starting with his annexure 4, which is the view from the Rocky Bay store.
- Q. Yes, and he's indicated on a little photo where that came from.
- A. Sure, I guess the only comment I'd make about that view is, I'm not quite sure what's happened, but it appears that he's cropped out the foreground of the view, so that when you're standing up there you have an appreciation of the landform rolling down in front of you and it's kikuyu and, you know, sort of regen –
- Q. So could I describe that as a shortened vertical component?
- A. Yes.
- Q. Right.
- A. Cropped, yeah, and then I think the same goes for the view from Delamore Drive, so –
- Q. Is that five?
- A. Five, six, and seven, so, well not so much seven. Yes, and seven, so what you're missing in the view is the land dropping away and you've got, from memory, phormium cookianum mountain flax in the foreground which is quite a low flax and the taller vegetation is further down the slope.
- Q. Yes, I had the understanding that, and he may have said it in his evidence, that below that line, as it were, vegetation actually screened the view.
- A. Yes, it's simply my comment that it's not the, you know, full expansive view.
- Q. Okay, thank you.
- A. And actually just going back to the annexure 4, that foreground context is quite important because I think Mr Pryor is relying on it, vegetation within that context, to provide a partial screening and filtering effect and, you know, there really isn't that vegetation in the foreground that's going

to do that, but you're not aware of that in his image, do you follow, do you follow what I mean?

Q. Can we go to 159 of your evidence please, and this is under a heading of, "Natural Character," so first of all this reference to land-based development generally, in the context that we're dealing with here, would that be development in the rural 2 land unit and also the Matiatia land unit?

A. It's to do with development in the rural 2 and the, I think it's an open space zone of some sort, but natural character is not mentioned as per se in the Matiatia gateway land unit.

Q. Well that's why I asked because –

A. Yep.

Q. – I mean it may be that you weren't intending to include the Matiatia mixed use area in that and, as you say, it doesn't include natural character, it refers to landscape character.

A. Although I would comment that usually under landscape character we give consideration to natural character.

1215

Q. On the last thing that I should have included in a previous series of questions where I dealt with the sort of relationship that Mr Brown and Mr Pryor referred to between a marina alongside the wharf structure, in your paragraph 91 you accepted the marina would be seen visibly within the context of that area and moored vessels and that there is a degree of visual compatibility.

A. And by that I mean what I was talking about in terms of, you're talking about the same sorts of elements, boats and timber pilings and that sort of thing, you're not for example talking about a salmon farm or agriculture so there is sort of...

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

Q. You were taken to a view or Mr Brabant talked to you about a view as you enter the bay through the headland and the view which is closed

and tends to focus on the ferry wharf and then opens. Now, I wonder whether you could look at figure 1 which has a view of –

A. Yes.

Q. You can actually seeing a ferry coming in, I think, on the left-hand side there.

A. Yes.

Q. And the ferry would, I would assume, it's entering through the ferry lane. It's lining up to come through the ferry lane so it's coming dead centre into the bay as Mr Brabant described. If you're entering the bay from a different angle, how would it appear then? What sort of –

A. I think you could have quite a varied outlook where the coming in at an oblique angle, the wharf and the terminal are going to be peripheral to the view and you may be focussing on the south coastline depending on your angle of entry or on the Mokemoke Point and the north coastline so it will be more peripheral, or could be more peripheral.

1220

Q. Also I think this illustrates my next question quite well, when you come into the bay, and assuming that you're entering in the middle on the ferry, in terms of your perception of the bay is it fair to say that the, what I would call the right-hand side because you're entering, that's sort of where the action is, and the left-hand side has a more tranquil, would that be a –

A. Yes I would agree with that, and I think there's the number of elements that contribute to that. The right-hand side is where the carpark and the kayak hire and the, if you like, the discharge point from the ferry terminal and all of that activity is going on, whereas the north side of the bay which, you know, is perhaps less accessible particularly at high tide, has a more tranquil quality. You've got the woolshed sitting in there, it's kind of old school New Zealand, and you've got the swing moorings. Yes I think it is more peaceful.

Q. So to superimpose the marina into that setting, does the marina have a tranquil – I mean the boats are moving for the most part there, they're at anchor or tied up, how does that compare?

- A. For me the problem is the concentration of boats and the structures associated with the marina, being the breakwaters. So yes, I think it will disturb that sense of open relatively spacious and peaceful atmosphere.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR CASEY

- Q. You were asked by my learned friend Mr Brabant about the view outside the heads as you come towards the heads, and he said in his question to you that the transport structure would dominate that view and you agreed with that description.
- A. Well, it's difficult because it's a transitory view, it's a point in time as you're passaging into or out of the bay. It doesn't dominate that experience without sort of fixing on a particular viewpoint I'm not sure I can answer that with any –
- Q. Well that's why maybe you had answered that in the answers you gave to Commissioner Leijnen's question about the view as you enter the bay through the headland. This is perhaps before you get to the headlands.
- A. Yes. I think when you're getting pretty close to the headland, the headlands dominate your experience and your view because of the drama and their proximity. So I'm not convinced the ferry and terminal would be the dominant element.

WITNESS EXCUSED

**THE COURT: JUDGE NEWHOOK ADDRESSES THE COURT –
ORGANISING HOTTUBBING**

1225

DENNIS JOHN SCOTT (ON FORMER OATH)
BRIDGET MARY GILBERT (ON FORMER OATH)
STEPHEN KENNETH BROWN (AFFIRMED)
ROBERT JAMES PRYOR (SWORN)

**EXHIBIT 9A PRODUCED – PHOTOGRAPH INSIDE ALEXANDER
RESIDENCE**

**EXHIBIT 9B PRODUCED – PHOTOGRAPH OUTSIDE ALEXANDER
RESIDENCE**

1230

THE COURT: JUDGE NEWHOOK TO MR BROWN

Q. Now if can lead off and deal with the first topic and I think it might be most efficient if I place the Court's questions about each topic and then counsel can question the witnesses on that topic and then we'll move onto another topic. If we just keep them, keep it altogether as a set of, well topic by topic. Witnesses, I invite you when considering these matters to approach them from whatever perspective is, recommends itself to you in answering, whether it be from the point of view of landscape values, or visual effects or landscape effects or natural character effects, so the questions might range somewhere amongst any of those or all of those, although I suspect we might find we get a bit of a focus into landscape effects and natural character effects but I don't know, that's for you, so I'm not confining it down to just one of those aspects of your work. Coming first to viewpoints 4 and 5, have we got two sets of these images available in the large witness box? Viewpoint 4 is a view of figure 55 and viewpoint 5, we produced figure 51 and I suspect that we could take these two viewpoints together at the same time and you might sort of move between the two of them rather than ask a set of questions about one of them and then the same set of questions about the other. This issue harks back to answers that Mr Brown provided me when I questioned him about these viewpoints. We started out by, if you look at for instance, viewpoint 5 on figure 51,

we started with a ruler approach to the extent to which the visual simulation would extend built form in a regular fashion across the bay and we established I think that it was going to, that the, that it would be about three times the existing extent of built form stretching across the water when you take the wharf and the marina as viewed in the visual simulation of viewpoint 5. Mr Brown agreed with me that the top photograph and he'll tell me if I get any of this wrong, the top photograph exhibited some tranquillity or peacefulness of boats floating on moorings. This is something that was touched on from Ms Gilbert just a little while ago and that the bottom view showed a more condensed or regular approach, amassing the craft into the built form of the marina. If it were to be the view taken by the Court that the effects were, to use 104D language, more than minor and then in the section 104 frame, of an extent that did not find favour with us, I asked Mr Brown whether it might be possible to mitigate or lessen the effects by doing any one of a number of things. I postulated removing pier A which was the closest one to the shoreline. I postulated clipping the ends off pier B, C and D, I postulated curving the breakwaters, and there seems to have been quite a high level of agreement during the hearing about curving the breakwaters for some preference in visual terms, and also that doesn't show up so much in viewpoint 5 straightening or re-angling the southern access pier so that it followed the side of the ferry lane rather than veering out into it. And Mr Brown's response to me was that he didn't think one would achieve a great deal by doing those things. He didn't think there would be anything much to be gained and, yes, I'm going to come to you first Mr Brown, in attempting these things. Now either – I'm not reading from the transcript, I mightn't have reported particularly the last answer correctly Mr Brown, I'd quite like you to kick off if you wouldn't mind by either reminding of what your answer was and/or telling us whether you've had any opportunity to reflect on those answers and as to whether you have any different advice now.

A. Yes Your Honour, and I have had the benefit of looking at the transcript again just to remind myself of what I did say.

1235

Q. Oh good, I should have probably pulled that up but you have.

A. But fortunately it largely accords with what I thought I had said at the time and I said you need to look at both viewpoints 4 and 5. And if we look first at viewpoint 4 which was from a much lower viewing angle, I think I said at that time that I felt that the benefits would be less apparent in terms of taking off pier A, but there would be benefit in taking out some of the mooring structures that were proposed closer to the beach.

Q. The pile moorings.

A. Pile moorings, sorry. Now the reason I said that was that when you're looking from that view or a lower viewing angle near the beach, the boats tend to get compacted together anyway so that there's less benefit in terms of removing pier A. However I then made the point that from higher elevation from viewpoints like viewpoint 5 it would have an effect. But I wasn't convinced that it would reduce the level of effect from say high or moderate to high down to a low level. And part of my reason for reaching that determination was that I still felt the marina would still sit there in the middle of the bay and that it would create a slightly removing that pier, pier A in particular, that it would create a slightly incongruous form, the sort of massing of boats and structures in the middle of the bay slightly divorced from its margins.

Q. I think you were indicating that that might be slightly unusual for a marina –

A. That's right.

Q. Mr Scott expressed a slightly different view when he was questioned this morning and we'll come to him in a moment, but that was your view I remember quite clearly. Do you hold to that view still?

A. Yes and so that – and my view on that really hasn't changed significantly, I think it's a fairly big jump from the level of certainly

amenity effects that I ascribed to this quarter down to a low level, and that was the reason I said what I did.

Q. Yes, it was in the context of amenity effects I think, yes.

THE COURT: JUDGE NEWHOOK TO MR PRYOR

Q. Mr Pryor, would you like to express a view about these things?

A. Yes Sir, I wasn't here when Mr Brown was being cross-examined but in a similar vein, and perhaps if we can refer to that viewpoint 4, in terms of the ruler test, similar to Mr Brown my impressions are that it's the pile mooring or the moored ones boats on the piles that are exacerbating that spread across that particular viewpoint. I think it is worth noting that this is just one particular viewpoint and as one moves further around towards the barn, more of that vista is opened up. In terms of, and I was unaware of the removal or potential removal of the pier A, but particularly when you look, I don't think it would make much of a difference from that viewpoint 4, because you're looking on that plain, I would have concerns like Mr Brown does in that if pier A was removed, and particularly when viewed from elevated locations –

1240

Q. Like viewpoint 5.

A. – it would be from viewpoint 5, it would feel very removed and almost sort of stuck out in the middle of the bay and not sort of relating to that coastal edge and visually I think that would, it would look quite strange.

Q. Yes, so you don't see any advantages in doing that, what about shortening the other piers or all of the piers?

A. In visual terms, obviously shortening the piers would assist mitigating some of those adverse effects and I think harking back to that same subject as we've all agreed in terms of the breakwater, and softening of the linearity of that.

Q. Yes, okay, thank you.

THE COURT: JUDGE NEWHOOK TO MR SCOTT

Q. Mr Scott, some views, I know you came more from the policy angle –

- A. Yes.
- Q. – but you did express some views during the course of your evidence about particular aspects.
- A. Yes, I guess for me there is the, there's the big picture issue for me which is the one that I will still reinforce because, in my view, attempting to reduce parts of the marina in that way, I don't think gives enough solidarity to, you know, the balance and in a way it just remains as another quite constrained, or compacted is a better word, element which will in my opinion still significantly disturb that shape, character, form of that northern bay and I guess that's my bottom line in terms of the marina location in itself.
- Q. Mmm, yes, okay, thank you.

THE COURT: JUDGE NEWHOOK TO MS GILBERT

- Q. Ms Gilbert?
- A. Sure. Yes, so looking at viewpoint 4, I agree with, I think Mr Brown was saying that the pile mooring removal would improve the sense of spaciousness but you would get a more, actually a more open view of the breakwaters if you took the pile moorings out, so I'm not sure it's, in a sense, that helpful in terms of the idea of severance from the wider bay and then taking out pier A, again that would improve the spaciousness in the foreground of the view, but in fact you've got the north wharf, that you can it in the view, that little red shed and the north wharf would run along where pier A sits in that view partly, so there would still be that continuity of modification across the bay.
- Q. Mhm.
- A. And then for viewpoint 5, again I tend to agree with Mr Brown and Mr Pryor in that the idea of a concentration or an island of boats out in the bay would read as quite incongruous and usually marinas are tucked into the landform for shelter so I don't think it would significantly change my effects rating.
- Q. Yes, none of you have touched on tangata whenua issues. Pier A is, of course, closest to the historic reserve and is in the area where the

greatest amount of excavation or dredging would take place. Any views? From, yes, Ms Gilbert, you did talk about it in your evidence-in-chief

A. Well I think that increased spaciousness could assist with that but I would be very guarded in giving comments on that matter.

Q. Of course.

A. Yeah.

Q. Yes.

THE COURT: JUDGE NEWHOOK TO MR BROWN

Q. Mr Brown.

A. Oh, I'm reluctant to say anything about this matter, I really think that it's really outside my area of expertise.

Q. Fine.

THE COURT: JUDGE NEWHOOK TO MR PRYOR

Q. Mr Pryor.

A. So it's, as I explained in my evidence-in-chief.

THE COURT: JUDGE NEWHOOK

The same for you Mr Scott? Right, now counsel it occurred to me that the fair order questioning might be that Mr Brabant you go last as the proponent, so that you can question on anything that arises from the questioning from the other parties. Mr Allan, do you have any questions?

CROSS-EXAMINATION: MR ALLAN TO MR BROWN

Q. Mr Brown, I'm not sure whether you were specifically asked to consider in relation to viewpoint 5, the scenario of leaving pier A in play, as it were, but shortening it and the other three piers, so you obviously expressed that concern about, if pier A is taken out and having it sort of sitting up there by itself in the middle of the bay, if pier A remains but is shortened, and the other three are shortened, what are your views on that in looking at viewpoint 5?

- A. Oh, I think that in conjunction with some reconfiguration of the breakwaters would certainly help to create a stronger sense of flow between the beach area and the bay immediately in the foreground and the rest of Matiatia. So, yes, I think it would help. It would certainly result in a more compact form and I suppose from this particular vantage point, it would result in a form that's more strongly linked to the ferry terminal and wharf facilities.
- Q. Okay, thank you.

CROSS-EXAMINATION CONTINUES: MR ALAN TO MS GILBERT

- Q. I just have one more question, Sir, for Ms Gilbert. I think you were talking about viewpoint 4 and if the moored boats were removed, you thought that that would open views to the breakwaters, I think that was the comment you made.
- A. Yes.
- Q. But it would provide slightly clearer views to the headland beyond, near the mouth of the bay, wouldn't it? You'd have the, I suppose the obscuring of the masts wouldn't be the same so, yes, you would have views to the breakwater but it would open up that view beyond the more distant view a little more, is that a fair comment?
- A. Well, I'm not convinced it would be that much of an improvement over, you've already got swing moorings in that view.
- Q. Mmm.
- A. So the existing photo above in viewpoint 4 shows that you're looking out to the southern headland and there are masts in that view.
- Q. Okay, yep.

CROSS-EXAMINATION: MR ENRIGHT – NIL

CROSS-EXAMINATION: MR CASEY – NIL

THE COURT: JUDGE NEWHOOK

Did any of the other witnesses want to provide an answer to Mr Allan's first question?

MR CASEY:

Just if that was about the trimming of the ends of the piers.

MS GILBERT:

Well the only comment I'd make, Your Honour, is that the trimmings, trimming the ends of the piers, presumably that would result in a different breakwater arrangement so it's quite hard to comment on that.

THE COURT: JUDGE NEWHOOK

Mmm, okay. Mr Brabant, any questions?

MR R BRABANT:

So we've been looking at, and I guess, Sir, probably it would be fair if any of the landscape architects who wanted to ask this question do, rather than me going on and asking each of them. The other aspect that's been presented and I'm not quite sure what plan we should use, Sir, but I think it was in the, was it the navigation witness statement where you brought this matter up about the ferry channel? There's a plan behind theirs with a marked line, was that, am I remembering rightly that's what you used?

THE COURT: JUDGE NEWHOOK

Yes I think so. Can you find that for us?

MR R BRABANT:

Yes, I think it was map 4, but I may, I mean my memory may not be right now, Sir.

THE COURT: JUDGE NEWHOOK

Yes, and it might not have been entirely helpful for me to raise that aspect in relation to viewpoints 4 and 5 because –

MR R BRABANT:

Yes, well that's what I was thinking I needed to bring up.

THE COURT: JUDGE NEWHOOK

Because I imagine that they will fairly quickly agree that a change of that sort is hardly likely to show up at all in viewpoints 4 and 5.

MR R BRABANT:

Yes, so I was wondering, Sir, but I'm in your hands about this, I mean really to deal with that maybe we need another viewpoint.

THE COURT: JUDGE NEWHOOK

Mmm.

MR R BRABANT:

Or we deal with it as a separate issue later, so I'm in your hands because you did introduce it as one of the questions.

1250

THE COURT: JUDGE NEWHOOK

I only introduced it in visual terms and I think I've seen four heads nod that that possible change is really irrelevant in viewpoints 4 and 5. I probably shouldn't have actually (inaudible 12:50:20) the question –

MR R BRABANT:

Will there be an opportunity, Sir, to go to some other viewpoints and explore that, is that your intention?

THE COURT: JUDGE NEWHOOK

As I sit here I will say that the idea of moving that side of the marina a bit is more to do with navigation issues in my mind and I think in our minds than it is in visual terms.

MR R BRABANT:

But it's still going to reduce and make the marina more compact and introduce a curve into the breakwater. I've never done this before Sir and maybe you

wanted to do this as a separate issue, so maybe I'll leave it at the moment and stick with –

THE COURT: JUDGE NEWHOOK

Let's park that, yes. I think it was probably not wise of me to raise that particular shift of the southern side in the context of viewpoints 4 and 5, so let's focus on the issues that (inaudible 12:51:07) at the end of it we'll see whether anybody wants to talk about that from another angle, another (inaudible 12:51:13).

CROSS-EXAMINATION CONTINUES: MR R BRABANT TO MR BROWN

Q. Yes I just don't want to leave that behind. All right, so that doesn't matter, I guess I can start from the left in some sort of traditional way and ask Mr Brown. So Mr Brown, maybe I'll use 5 for a start, so there's the question of whether pier A goes or not and then there's taking volume off the outside, which addresses the Judge's dimensioning proposition that he put to you, I think where this all started from. Just hypothetically another issue, looking at viewpoint 5, I guess could be what the position would be and what opportunities would open up if the reclamation were to be removed. Have you given that some thought, Mr Brown? In terms of connecting the whole thing more to the wharf?

THE COURT: JUDGE NEWHOOK

Was your question about the reclamation and/or the deck or are you just focusing on the reclamation?

MR R BRABANT:

Yes, the deck Sir covers the same, I mean I thought we got to that point before in visual terms it doesn't –

THE COURT: JUDGE NEWHOOK

Well I just want Mr Brown to know whether he's addressing both or just the one, so he's addressing both.

MR R BRABANT:

Yes because visually I thought they were the same.

MR BROWN:

I mean I've given some thought to that and I think –

MR CASEY:

Just if I may interrupt, I'm not quite sure how this arises out of what you asked the witnesses to comment on.

THE COURT: JUDGE NEWHOOK

I guess in a way Mr Casey the presence of the reclamation and/or deck in viewpoint 5 could be said to be part of built forms stretching across the vista.

MR CASEY:

Well I'm in the Court's hands, if you think you're assisted by it then go, but it just doesn't seem to me to be one of the items on the shopping list if you can call it that.

THE COURT: JUDGE NEWHOOK

It's a bit peripheral but I'm going to let it run.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Maybe I can explain, Sir, but I understood the previous questions we ended up with the marina sort of sitting out into the bay. So it seemed to me sensible if you were going to make it smaller whether there was merit in being able to move it in so you didn't have that outcome.

A. I have to say that I think the real focus is the marina, the main body of the marina, its piers and boats. I think that to a certain extent anyway the issue of the reclamation is a little bit peripheral. I mean it's still

something that is visible but I don't think it commands the same degree of attention or focus as the piers and the boats.

MR PRYOR:

Yes, I think in terms of that viewpoint 5, and I'll just (inaudible 12:53:57), if you put your hand over the marina and compare just the reclamation or the wharf deck and the structure, there's not a huge reduction in the visual impact. So it's the marina itself that obviously has the greatest impact in that coastal view.

THE COURT: JUDGE NEWHOOK TO MR SCOTT

Q. Mr Scott?

A. Yes I'd concur with that. However I did address in detail if the Court can be reminded that I did think that the marina was – ah, the reclamation itself and the arrangement with the coastline was quite ungainly and not particularly sensitive to its location, so in that sense there would be benefits from a specific design perspective. But my biggest concern still remains with the compactness of the marina itself.

Q. Okay thank you.

1255

THE COURT: JUDGE NEWHOOK TO MS GILBERT

Q. Ms Gilbert?

A. And I agree basically, I –

Q. With Mr Scott or the others?

A. With Mr Scott in terms of the removal of the carpark would be of some benefit but it's a very limited benefit within that context –

Q. In these views.

A. And it's the concentration.

CROSS-EXAMINATION CONTINUES: MR R BRABANT TO MR BROWN

Q. Some questions have been asked about actually reducing the number of berths so if we put it in simple terms and a question about taking them off the end so I guess there's various ways of making the marina if you were looking down on it and then you take a view more compact,

you know, taking pieces off in different places, the side or the front or the back or both. Mr Brown, in terms of achieving less occupation of space in this location, now you've been asked questions about removing or reducing the link of the fingers can I put it that way or the piers, is there another way in which you would consider doing that or is that the only way if you were going to reduce it, you would make it not so wide in that dimension?

A. Sorry do you mean the marina as a whole?

Q. Well –

A. You mean by taking off the ends of the piers and removing the mooring points?

Q. Well the removing of Pier A is reducing the –

A. Yes.

Q. – it front to back if I can put it that way and the other option of taking berths off the end is making it not so wide. Is one a favoured option over another for you if that was to happen?

A. If I was to take into account, I mean it's very easy to get fixated with the one view and that's the danger that we're running into but I think if I was to try and take into account the sort of multiplicity of views from this quarter, I would probably opt for removing the piled moorings and taking a number of berths off the ends of the piers rather than taking off Pier A. I think that would be my preferred approach; and I know that we've been talking about this whole issue of trying to somehow reintroduce permeability into views and of the water surface but I think, you know, we've got to be a bit careful here. We start to run the danger of pretending that we haven't got a marina anymore and pretending that we haven't got a ferry terminal anymore and we end up in a bit of a muddle over what we have got. I think to a certain extent there is a question of whether or not there should be a marina here at all that has to be addressed first and obviously that's a very big issue. What we're talking about now will help, or might help but it's not going to obviate the fact that you've still got a substantial structure and you've got a

substantial number of moored boats or, sorry, berthed boats at this location. So I just don't want to lose sight of that.

ROBERT PRYOR:

Yes I think in terms of pier A, or the potential removal of it, as I'd previously said visually I think that would be quite an uncomfortable situation and I think if we can perhaps refer to viewpoint 3 which is from the north-western slopes, and if pier A was to be removed from there, visually it would look as though the marinas sort of quite separated from the coastal edged and just sort of floating in the middle of the bay. Also from that particular viewpoint in visual terms while we're talking about maybe a reduction in the lengths of the fingers, obviously the reduction of those fingers would assist in visual terms but I think what needs to be looked at is particularly the plan view of the marina and there may be different ways of – perhaps if I can refer to, I haven't got the exact exhibit here but any one of those marina plans.

CROSS-EXAMINATION CONTINUES: MR R BRABANT TO MR PRYOR

Q. Figure 2 on the aerial?

A. Figure 2? For example there may be different ways of reducing those fingers that result in lesser visual effects rather than just say, "Let's take x metres of the end or a number of berths," so I think really it needs to be looked at almost in a technical form just rather than saying a reduction in the links of the fingers.

1300

THE COURT: JUDGE NEWHOOK TO MR SCOTT

Q. Mr Scott?

A. In some ways I have to return to an answer I gave, I think to Commissioner Howie because I did actually attempt to design a different marina, a different form in this bay. I gave it quite a bit of time actually. And I ended up trying to align something with the western coast, or the northern coast actually and in fact trying to actually stretch it out, virtually out to the headlands. Just to try and get a form that was reflecting my primary concern and that is intensifying this bay and the

critical form that I see, the structural form of this bay has absolute integrity as it is. And that's what is the disturbing part so for me it's the big picture. I think it's a very different bay to accommodate a marina in without some high effect, visual effect so I did actually attempt to solve the problem.

THE COURT: JUDGE NEWHOOK TO MS GILBERT

Q. Ms Gilbert?

A. I agree with the points expressed by Mr Brown that really we're sort of tweaking with the edges and the detail and the reality is we've got a marina and it might be slightly smaller. It might be shaped slightly differently but it is what it is and in my opinion it's an inappropriate location.

THE COURT: JUDGE NEWHOOK

Anymore questions on this viewpoint or these viewpoints Mr Brabant?

MR R BRABANT:

No thank you Sir.

THE COURT: JUDGE NEWHOOK

Let's move to the second issue which revolves around Viewpoint 7. Figure 57, can be used I think. Figure 58, we'll use 58. As I advised counsel last night this image, this photograph has been taken with an extensive part of the big Pohutukawa tree that's up there to the west of the Rocky Bay Sculpture location. The Court found it more instructive to continue to walk west along that track to a big seat which is like a couple of slabs of macrocarpa, I think it's quite an interesting piece of furniture, and look at this sort of view from along there. One of the interesting differences we found between this image and the view from the seat was that this image not only has that tree in it but also quite a lot of foreground, whereas if you go along to the seat the landfill drops much more steeply away down towards Matiatia Bay and so the sea view, we thought, opened out and became much more important than features in

Viewpoint 7. And Ms Gilbert made a similar comment this afternoon about the photographs in Mr Pryor's rebuttal, annexure 4, I think she said that there was a cropping of the lower part of that photo from over on this side of the bay that didn't give one the whole picture. So the Court felt more of a whole picture from the seat to the west of Viewpoint 7 and that that was a more important view. Do the witnesses have any comment about those comparisons and about whether there might be any change in terms of conclusions about low, moderate, high or moderate to high, or whatever of the proposed marina in the view from the seat as opposed to viewpoint 7. Mr Brown?

1305

THE COURT: JUDGE NEWHOOK TO MR PRYOR

- Q. Oh yeah, Mr Pryor you could go first, yes. That's the logical order.
- A. Just referring to that, the viewpoint 7, from the coastal walkway, in my opinion the tree itself almost frames the views towards the marina and then we have the landform going up on the other side so I would actually say it focuses the view on the marina itself.
- Q. It's a nice view but it's one snapshot, isn't it?
- A. Yes. In terms of annexure 4, which is taken from another very similar location to where viewpoint 7 was, but slightly around further, and I think that gives a much more realistic view just of that wider panoramic view that is gained from that location and obviously we see there that we're not just focussing in on the right-hand side and the proposed marina location; we have that extensive view. Just in relation to that extensive view, and with Ms Gilbert's cross-examination, that panorama is in fact made up of around about 10 photographic shots taken with a 50 mm lens so that is in fact the full extent of the view that each frame took.
- Q. Except for the view down that steep slope to the bay. There's a lot of water missing in that panorama.
- A. Yes Sir, but to do that, you would need some very technical camera to actually be able to, rather than taking a panorama, you'd also have to take another series of –

- Q. The human eye is a much more sophisticated beast, isn't it?
- A. Exactly.
- Q. Yes.

THE COURT: JUDGE NEWHOOK TO MR BROWN

- Q. Mr Brown?
- A. Oh, I was hoping I might go last on this one, but I'm happy to answer.
- Q. Off you go.
- A. I think that what you've just said is absolutely correct, I mean the human eye is more like a very complex computer than a lens and camera. Cameras are pretty simple devices but the thing that's interesting to me is my recollections of this viewpoint are mostly from before the Rocky Bay store sculpture went in place there and I remember there was seat there and the seat used to be oriented so that you were looking more towards Pauanui, out across the headland, and out towards Pauanui and then the Hauraki Gulf and to me that reflects a lot of the essence of the view from this quarter, that it's not just of Matiatia, it tends to be focussed towards the entry of the, the mouth of Matiatia, up the coast, and across towards Pauanui, Motutapu and out into the water of the Hauraki Gulf.
- Q. But by the time you get around to that seat, if you know it, you're actually faced more back into the bay?
- A. That's absolutely correct and, of course, that's part of the appeal of the walkway, it keeps on revealing, continually changing perspectives of Matiatia and its surrounds and so I agree with you and I think, in a sense, you have to take all of those perspectives into account and I think this just reinforces that viewpoints are a snapshot and they help us to depict what something might look like, but they're a very imperfect way of assessing effects, you really have to go to the sites, you have to walk tracks and around them, and so it's a more complex business than just comparing before and after images.
- Q. Okay.

A. But it doesn't ultimately change my perception of the relationship that the marina would have with Matiatia Bay, or the effects that I've identified in relation to it.

Q. So you would ascribe the same values and levels of effect to the view from the seat as you would from viewpoint 7 and/or the Rocky Bay sculpture?

A. Fundamentally, yes, and I still think that in this instance the sort of views that you gain from this site aren't just of that one corner of Matiatia Bay. They reveal it, they reveal the ferry terminal and walls. They reveal the Matiatia land unit, not always, but quite often and so I feel that any sort of, any perspective has to be contextualised – or sorry any analysis has to be contextualised by seeing all of that.

Q. The big picture, all right.

1310

THE COURT: JUDGE NEWHOOK TO MR SCOTT

Q. Mr Scott?

A. Yes well just going back to the Rocky Store perspective, I did revisit that last week while we were doing the marae work and yes I found that quite interesting to reconsider that view. In the light that there were comments that it was more oriented to the broader inner Hauraki Gulf that's outside of Matiatia Bay, but when you're actually standing in that sculpture that it is the whole view, the foreground is quite dominant as well as the background, the backdrop view. Now I haven't walked to the west more recently –

Q. To the seat, out to the seat.

A. – to the seat, but I suspect that because the contour actually starts to wrap around, that the view would then be more focused back to the head of the bay. But that's only my vague assumption now because I haven't done that little part of the walk for a while so I can't comment.

THE COURT: JUDGE NEWHOOK OF MS GILBERT

Q. Ms Gilbert?

- A. Okay, what I can add to the comments that have come before is I think I assessed the Rocky Bay store is I think I assessed the Rocky Bay Store sculpture as high. As you move around, as it's been explained and you get to that seat, you are sort of directed to look back into the bay and you will, unlike the Rocky Bay Store sculpture view you will be able to see the carpark and the Matiatia gateway land unit as part of that view. However my recollection of walking around there is it's far more exposed and there's far more of a sense of proximity if you like to the cliff and the coastal edge, and it's a more dramatic experience of that view. So I would, because of if you like the quality of the existing view, I wouldn't downgrade my rating in terms of effects. Even though you are seeing the carpark and the gateway.
- Q. So you would describe the same levels of effect to the view from the seat area as you would from viewpoint 7 and the Rocky Bay Sculpture?
- A. Yes that's correct.

CROSS-EXAMINATION: ALL COUNSEL – NIL

THE COURT: JUDGE NEWHOOK TO MR PRYOR

- Q. All right, we've done viewpoint 7 and related views. Moving along to the view from the Alexander residence where by consent we've been provided with two photos, and I think common agreement by all involved that these are somewhat zoomed shots and probably bring the north side of the bay closer to the eye than is the case when you stand in the house or on the lawn to the north of it. The impression that the Court had from visiting this residence and standing inside and going out onto the lawn is reasonably well reflected in these two photos, subject only to my comment about the zoom effect. The thing that struck us about this view was that particularly from inside the house but also to a higher degree out on the lawn in front of the house the available vista from those places is predominantly of the north side of the bay, there's not much of the southern side of the bay to be seen, so that the effect of the marina in that part of the bay that is visible probably becomes the higher in comparison to views where you can take in more of the bay, in particular

the north and south sector. So we would value comments perhaps again starting with you Mr Pryor?

A. Yes I think it's important as you have outlined that obviously these photographs have been zoomed and it does give a different impression than what would be seen in reality. I think 9A is probably more of a realistic one than 9B. And I think it's useful to refer to Viewpoint D from the McGee residence which is immediately to the –

Q. It's not figure 67 it's a night time shot.

A. No, there's a daytime one as well.

Q. Where else do we find D in the book? Figure 65.

A. So the McGee residence is immediately to the west of these photographs and I think, well personally I haven't been to either the McGee or the Alexander residence so I can't comment on the Alexander residence but I think the viewpoint, that Viewpoint D does clearly illustrate once again the panoramic views that are available from those elevated slopes and so while 9(a) again focuses in on the head of the bay there is, we do need to consider that those views are extensive and the view wouldn't, the viewer's eye wouldn't just be drawn to the marina per se.

Q. I understand the point that you make about the extensive nature of the view beyond Matiatia and out Ponui and the other islands in the Gulf but just looking again at the views from the Alexander property and comparing them with the views from the McGee property, they are different, aren't they, in the sense that from the McGee property you start to pick up a decent part of the southern half of the bay in comparison to the view from the Alexander property where you get very little of it.

A. Yes certainly from the Alexander property you are seeing a lot less of that southern coastline.

Q. What would your rating of the effect on the visual or landscape aspects be Mr Pryor from the Alexander property?

A. Well I can only go from these photographs as opposed to having being out on site.

- Q. With that important qualification.
- A. But I would rate them as moderate in my scale.

THE COURT: JUDGE NEWHOOK TO MR BROWN

Q. Mr Brown, would you like to go next please. It's the logical order from the various parties.

A. Yes I see that now. Yes I haven't been to this property either. I mean it's an interesting, this is an interesting perspective because you have the appeal of the foreground lawn area, the flax and cabbage trees marking the edge of its open curtilage and then you have the emerging bush on the far shoreline, some of the Pohutukawas, open space. Contrasting that with that you start to see, you see some of the development which is still going on. The open area where another house could go in the foreseeable future. The barn, and of course the ferry terminal and existing moored boats. So it's an appealing scene but there's quite a mixture of elements found within it. I don't think the effect would be high but I do think it would be probably in the region of moderate. I don't think the marina would have quite the proximity that for instance image 9(b) suggests but I think it would certainly be a prominent element in the view and it would change certainly the character of the water area of the bay. But I do, I also, as Mr Pryor has mentioned I do apprehend that there are other things in View 2 beyond what we're just seeing here. You do have the views extending out towards Ponui and the rest of the Gulf and I suspect, though I don't know it, that they would also extend to the left, more towards Motutapu and perhaps even towards Rangitoto and so on. So I think that there would still be considerable appeal in terms of that outlook even with the modification to it.

Q. But with a moderately less effect?

A. Yes.

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Q. Could you just look at figure 2 in the 2013 book and have you got that in front of you?

- A. Yes I have that, I have that Your Honour.
- Q. So just using that to guide your eye, can we go back to exhibit 9B, you see where the outer left or western parts of the marina are, particularly the main breakwater.
- A. Yes.
- Q. The primary breakwater, pretty much off that bushy headland.
- A. Yes.
- Q. Minor headland to the north, if you go back to exhibit 9B, would that appear to bring the whole shooting box out roughly to that quite big, quite launch with, "Game Rig," on it?
- A. That's what I had anticipated.
- Q. And it would be about the extent of the proposal as it marches west?
- A. Yes, I think so.
- Q. Yep, okay, thank you.

THE COURT: JUDGE NEWHOOK TO MR SCOTT

- Q. Mr Scott?
- A. Yes, I mean both the views, can I have that one back, because they're quite important, the viewpoint D from McGee residence, in my opinion, does just reinforce my point that while there is the expansive views, the foreground view of the bay and the shape of the bay is quite critical. Despite the future possibility of other elements being built on the terrestrial landscape, let's put it that way, the marina will undoubtedly, it's undoubted in my mind create a higher visual effect from these viewpoints.
- Q. So that's from viewpoint D and from –
- A. Yes.
- Q. – the Alexander residence?
- A. Yes.
- Q. Okay.

THE COURT: JUDGE NEWHOOK TO MS GILBERT

- Q. Ms Gilbert.

A. Sir, yes, and of course the comments, like the other witnesses, are made on the basis that I haven't actually seen the view.

Q. Yes.

A. But just judging by the exhibits, it would appear to me that the marina is going to pretty much take up most of the water in the bay and, yes, as Mr Brown was talking about, the breakwaters will be out towards that large launch. I'm not persuaded that the wider panorama necessarily overcomes that problem and that's partly because I think in a view like this, your eye is drawn to, it's certainly drawn to the long range panorama but it's also drawn to the close range view where you can see the detail of the water movement the, you know, different light conditions in the water, but it's also where you've got the activity occurring so it's a very important part of the view. You've got boats moving around people, et cetera, you know, ferries arriving, so that doesn't, if you like, give me a great deal of comfort that it's, you know, simply in the foreground but has this wonderful larger panorama.

Q. And your rating of the adverse effect –

A. Well it would be –

Q. – in either visual or landscape terms, or however you classify them?

A. Yes, for both, moderate-to-high to high but again, without seeing it –

Q. Yes, yes, that's an important qualification for all of you I think.

A. Yes.

THE COURT: JUDGE NEWHOOK

Okay, questions from counsel, Mr Casey.

MR CASEY:

Yes, just one point if I may, if you go to 9B and figure 2, as was indicated, I just want to clarify that the large launch would mark the location of the inner breakwater, have I got that right?

THE COURT: JUDGE NEWHOOK

That's I think what we established with Mr Brown.

CROSS-EXAMINATION: MR CASEY TO MS GILBERT

Q. But it wouldn't indicate the position or the extent of the southern end of that breakwater?

A. That's correct. That's right, it would extend further into the foreground, the footprint of the marina.

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THE COURT: JUDGE NEWHOOK

Any disagreement from the other three?

MR SCOTT:

Yes, I concur with that.

CROSS-EXAMINATION: MR R BRABANT – NIL

MR BROWN:

Your Honour, I didn't comment on the view from the McGee residence apart from the issue of the panorama.

THE COURT: JUDGE NEWHOOK

Would you like to?

MR BROWN:

But I think there is a fundamental difference between the two and that is that one, essentially because the way in which the foreground or the southern part of Matiatia Bay is cut off, focuses the eye to a considerable extent on the area that's in question.

THE COURT: JUDGE NEWHOOK

This is from Alexander as opposed to McGee?

MR BROWN:

That's right. I think with the McGee residence you're looking at a quite different situation because suddenly you are exposed to the Matiatia land unit land and I think that does create quite a different contextual situation.

THE COURT: JUDGE NEWHOOK

Yes.

MR BROWN:

So I just wanted to clarify that.

THE COURT: JUDGE NEWHOOK

So I higher level of effect from Alexander in comparison to McGee?

MR BROWN:

I would say so, I would've thought the effect in relation to the McGee property would be quite a bit lower.

THE COURT: JUDGE NEWHOOK

Yes, at about what level, moderate?

MR BROWN:

Well I've said moderate for Alexander and I also have to make the point that just because something is visible even if it's clearly visible, it doesn't in its own right mean that it's going to have a high level of effect. I think you have to have regard to the elements and the patterns that are found within that landscape so I'm just prefacing –

THE COURT: JUDGE NEWHOOK

You can do the whole contextualising.

MR BROWN:

That's exactly right.

THE COURT: JUDGE NEWHOOK TO MR PRYOR

Q. Thank you for that further clarification. Let's box on and deal with the other points as expeditiously as we can. We need to finish this work. Viewpoint 6 sort of sets the scene for the Courts next batch of questions, if you look at sheet 60, figure 60 in the 2013 book. Now it only sets the scene and then leads us into territory where frankly we do not have a viewpoint and that is at the heart of the Courts concern about this. As I said last night, figure 60 the visual simulation shows some of the marina out to the left, stretching out across the face of Mokemoke Pa and then the, then a bunch of masts and then to the right of the image you can see some of the cars that I'm assuming they should be parked on the end of the reclamation or the deck. What we don't have in this view or frankly any view and the Courts worried about this is a view for instance that I received last night from the north wharf, some say somewhere up on the main deck, up behind the fuel jetty or from the fisherman's perspective is that fishing off the northern side of the north wharf out towards the end, that in the direction of the proposed carpark coming out over that rocky reef arrangements to the north of the boat ramp and then of course the access ramp down onto the southern access pier, then the access pier and then the boats as you go on out to the left, it's just not modelled and we felt little or not commented on by you people in evidence. We formed the view that the north wharf, while it might be used less than the south wharf because that's the main wharf for picking up and dropping of large number of ferry passengers, it's nevertheless will be used and probably more recreationally used than the transport operation takes place on the main wharf, the new wharf. Sorry, we don't have an image, it's not our fault but we are going to have to ask you to use the mind's eye and help to paint the picture of the view of these people on the north wharf looking particularly at the carpark but also on out to the left onto the marina, starting with you Mr Pryor.

- A. The viewpoint 6 was selected as an indicative view for people waiting for the ferry or heading off for the ferry which obviously represents the view of thousands of commuters or visitors. Certainly from the north wharf the visual impact of the marina will be considerably more than from the main wharf. However I consider that the users of the wharf where the people are refuelling or fishing off the end, while the marina will be in closer proximity there will also be that level of interest, you'll be able to see the boats at reasonably close quarter. Because they are actually out on the wharf using it for recreational use I don't consider that the presence of a marina would be incongruous in that particular –
- Q. And in relation to the northern beach and the historic reserve, if you lift your eye that far and to the pohutukawa-clad edge, and in fairness then on up to a large dwelling and a couple of other smaller dwellings, would you care to comment on that?
- A. Yes if you were on the end of the wharf looking back across the reclamation or the deck, there would be adverse special effects on that coastal edge.
- Q. Would that be classified as high for those viewers?
- A. For those viewers I would say moderate to high.
- Q. Yes okay.

THE COURT: JUDGE NEWHOOK TO MR BROWN

- Q. Yes Brown next?
- A. Yes Your Honour, Commissioners, I actually had the opportunity to spend a bit of time standing there watching some very large sting rays after the last time I appeared at this hearing.
- Q. There's a resident family apparently.
- A. Yes, they're quite sizable. And I actually pondered the very issue that we're now discussing, and I think I reached the conclusion that I had identified the close-up views in relation to the sort of bay area and its immediate surrounds as being in the range of moderate to high in terms of amenity effects anyway. And I think that applies to the vantage point that you're talking about on the north wharf as well. I mean to a certain

extent people are sort of conditioned to accepting more structures, more maritime activity and so on simply because they're probably coming from a wharf that's full of, you know, ferry passengers, vessels, there are vehicles turning around and moving and so on and there are a lot of people, so that creates a certain preconditioning. But there is also a significant contrast between that environment and the sort of environment that opens up to you as you step out onto the wharf and look across the bay. So balancing those I would also say that the effects would be in the order of moderate to high, I think they will be appreciable.

Q. Okay.

THE COURT: JUDGE NEWHOOK TO MR SCOTT

Q. Mr Scott?

A. I think that this view is obviously the immediate and high effect, high impact view. It will significantly disturb any views back to the beach and the character of that beach which you do get from that viewpoint at this point in time. You will be looking at cars and I think that's a significant issue. The other point, and I am assuming here but I'm pretty sure of my ground here, that it may also close off the view of the entrance to the bay in its entirety.

Q. As you look out to the west.

A. Yes, as you look out. If you compare it to viewpoint 6, I think the breakwaters and that part of the marina may well close that view completely.

Q. Okay.

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THE COURT: JUDGE NEWHOOK TO MS GILBERT

Q. Ms Gilbert?

A. Your Honour, Yes, I tend to share that concern about the view from the north wharf to the entrance to the bay and I guess my concerns also are in terms of a change to the visual character of the coastline which I think

would be significant and the natural character effects of the carpark and the reclamation sitting out over, basically obliterating a rocky shoal. Yes, it's a very urban form and that development footprint extending across into a side of the bay which is the more peaceful and uncluttered.

Q. And then swivelling westwards again, is there a natural character issue as you're looking out to the headlands and the opening of the bay?

A. I believe so.

Q. And so your feelings about the extent of the effects, these effects on a rating scale?

A. Would be high.

Q. High?

A. Because of proximity.

Q. Yes, yeah, okay.

THE COURT: JUDGE NEWHOOK

Counsel? Mr Allan?

CROSS-EXAMINATION: MR ALLAN TO MR SCOTT

Q. I was just interested in the answers I think from Mr Scott and Ms Gilbert about whether the view, from the end of that north wharf would, to the mouth of the bay, wouldn't that be completely impeded? It's difficult obviously to say without a photo, isn't it?

A. It is.

Q. But comparing figures 1 and 2, does that provide any assistance in terms of getting to the bottom of that?

A. No, that's what I was meaning.

Q. Yeah, yeah, and I don't have a ruler either which makes it tricky to sort of work out, but if you refer to those two in conjunction with one another, does that help you sort of reach a view as to, and I know it's difficult, but I thought that might be a helpful stopping off point just to try and resolve that.

THE COURT: JUDGE NEWHOOK

It may be, if I can test you a bit on that, that looking at figure 2, it happens conveniently to have the line of the leading light marked on it, that runs out from the north wharf through the southern end of the main breakwater, that one might perceive that the whole of the mouth of the bay wouldn't be obscured by the marina and breakwater from the north wharf.

MS GILBERT:

Shall I talk to that, Your Honour?

THE COURT: JUDGE NEWHOOK TO MS GILBERT

Q. Yes Ms Gilbert, please.

A. I think you're right.

Q. Yes.

A. I think what, depending on where you're standing on the wharf, the view to the northern headland and that side of the entrance would be obscured, could be obscured.

Q. Yes. Does that change the rating issue for you?

A. Not for me.

Q. Okay. Anybody else on this point? Mr Allan? No. Okay, thank you for that.

CROSS-EXAMINATION: MR ALLAN – NIL

CROSS-EXAMINATION: MR CASEY – NIL

CROSS-EXAMINATION: MR R BRABANT – NIL

THE COURT: JUDGE NEWHOOK

Coming next to viewpoint 1.

MR CASEY:

Sir, just perhaps one point, if you're looking at viewpoint C, which is at figure 64, you're looking at it from above the north wharf.

THE COURT: JUDGE NEWHOOK

And a little to the north of the line is the north wharf, isn't it?

MR CASEY:

Yes.

THE COURT: JUDGE NEWHOOK

Yes.

MR CASEY:

And I'm just wondering whether that assists in answering the question about how much of the entranceway might be obscured.

THE COURT: JUDGE NEWHOOK

Well we can see what the witnesses think, I think that's an awkward perspective from judging that point. Mr Allan queried, but see what they think. Does figure 64 help on that last question?

MR BROWN:

I don't find it as useful as just putting basically a sheet of paper over the, from the north wharf past the edge of the proposed...

THE COURT: JUDGE NEWHOOK

On figure 2?

MR BROWN:

Yes.

MR CASEY:

Yes, Sir, I did the same in approximately half of the bay is still open.

THE COURT: JUDGE NEWHOOK

Mr Casey. Now viewpoint 1, some aspects of this were covered in the questioning of Ms Gilbert in particular this morning. The viewpoint is taken

from a ferry departing Matiatia and the viewpoint map would have it that it's out exactly between the two headlands. I'm not quite so sure about that looking at Viewpoint 1 itself but it won't be far off so I don't think we need to spend time on that. The concern of the members of the Court is there's a real focus in this photograph on the wake of the ferry departing Matiatia. We wondered whether there might be some different and important perspectives to be gained, say from a ferry entering Matiatia, one of the ones that you can look through some front windows from one or other of the cabins. I think (inaudible 13:41:06) was the one that we were on last week so we could see forward through the windows and considering the view as one moved from this location towards the wharf until you were close and as to whether there was more information to be gained from seeing things in that way, in video as it were.

THE COURT: JUDGE NEWHOOK TO MR PRYOR

Q. Mr Pryor?

A. Sir, the photo montage for that one and just for clarification this was a photo montage as opposed to a visual simulation because as it was a moving ferry –

Q. It is so labelled, yes.

A. – they couldn't ascertain the exact pinpointing of it. I don't consider that certainly my view would change if one was entering into the bay obviously this was taken leaving the bay as you get more un-obstructive views from the open deck of the ferry. Certainly my experiences of entering into the bay unless you're actually on that top deck, views are very difficult to obtain or un-obstructive views whether you're sitting down in the seats or standing up there's a tendency as you're entering into the bay that there's a mass exodus of people towards the exits about to disembark. Certainly there would be a higher visual impact if you were, had retained – seated on the upper deck but then again as you enter into that bay there's so much happening and there's that sense of enclosure as the hill slopes as you come towards the head of the bay there's a lot happening in that area.

THE COURT: JUDGE NEWHOOK TO MR BROWN

Q. Thank you. Mr Brown?

A. Yes Your Honour, Commissioners, my sense is that if you take out the wake that what actually tends to draw your eyes is the colour of the ferry terminal, the colour and the profile of the ferry terminal and I think also the quite symmetrical relationship between the ferry terminal and the bay and the hills flanking it, the ridges flanking it tends to reinforce that, there's a natural sort of focus on that middle part of the head of the bay and I don't really see the effect of the marina or its impact on the sense of arrival changing regardless of whether there is a wake there or not.

Q. There might be another issue that was raised by Commissioner Leijnen this morning in questioning either Mr Scott or Ms Gilbert or both about a ferry not coming straight down that leading light approach but angling in and they often do in stormier conditions, come in around the north head so that you'd be facing the southern side of the bay.

A. Yes –

Q. Would that alter anything?

A. Yes, well it would marginally I mean even in this view you see the full extent of the head of the bay, you see the marina site, you see the houses and bush on the slopes above, you certainly see the Matiatia Land Unit site and if anything with vessels coming in around the northern headland there might be a slightly stronger focus on a combination of the ferry terminal and that Matiatia Land Unit. It might slightly diminish their presence, the visual presence of the marina at least initially but overall I don't think it greatly changes appreciation of the bay or the sense of arrival because as I've said when I was first questioned about the issue of the gateway experience it's a very dynamic experience, it's not just a static snapshot like these photos, it's the experience the accumulates as you move into the bay and then through it.

Q. And that's very much behind our question today.

A. Exactly and I think that means that you are exposed to all of the things that we've been talking about this morning so I don't think you can just

say that you've focussed just on the marina site, I don't think that's the case at all or just even on the ferry terminal. While it is very prominent for instance in the view that we're looking at now, ultimately the experience is one of going past the marina, arriving at the ferry terminal wharf and seeing the land unit and going past it.

THE COURT: JUDGE NEWHOOK TO MR SCOTT

Q. Mr Scott?

A. Yes Your Honour. Yes, unless you're on the top deck of the boat, on arrival one actually – if you're in the other part of the boat, on arrival really you're more aware of either side of the bay. One is not actually focussed on where you're going strangely enough, I have to agree. But if you are on the top deck then then there's a different perspective because it is slightly more elevated and then I do think you get the appreciation of the whole and your eye does tend to focus then on the ferry terminal. But one is also then aware of the activities either side, the hill slopes, the houses and also the moored boats. So it is very much a complexity of views from this viewpoint. So it is one about, more about leaving rather than arriving in a sense. And it's a lower to moderate effect in my view, from this perspective out this far in the bay. I would have to agree with that.

THE COURT: JUDGE NEWHOOK TO MS GILBERT

Q. Ms Gilbert?

A. Your Honour, I think what I can add to the discussion on this is that whole idea of focussing on one viewpoint and how difficult or problematic that can be and the interesting thing about this view is in a sense it exaggerates, perhaps, the importance of the ferry terminal in the view and I think it's partly because of the light so if you look at the top view, the existing view, the moored boats are pretty much in shade and hence in the modelled view, the marina and the breakwater are also in shade which assists to make them more recessive in the view and the terminal is catching the light. Certainly in my experience last week on some of those really gorgeous days the light was quite different in the

view and so there was a different hierarchy of importance in the view of elements and the ferry terminal wasn't nearly as prominent. I'd also agree with Mr Scott that there's very much an immediacy of the headlands and the coastal cliffs as you're passing through that entrance that are quite dominant.

- Q. And so a rating, bearing in mind that we've departed from one fixed view and we're either heading in or heading out. So there might be a sliding scale.
- A. Yes Sir, I think I talked about this in my evidence and I found that as you got more distant the effects were reduced, but closer in they were definitely high.

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CROSS-EXAMINATION CONTINUES: MR CASEY TO MR SCOTT

- Q. Mr Scott, you were talking about the view from this viewpoint rather than the change of the view coming in.
- A. Well the view from the ferry is a moving view and for most people, unless you're on that top deck, the immediate awareness is really the flanking headlands and the slopes. That's what most people are aware of. However if you are on the top deck then the two bows and, well, that entire view basically opens up and there is a focus on where you are actually headed. You're arriving at Matiatia and the wharf, and that does become quite important.
- Q. Can I just ask you though about your point of if you're not on the top deck then you're looking at it either on one side or the other.
- A. That's correct.
- Q. And let's just pick the side that is looking to the north, as you move and entering the bay rather than leaving it, just for the sake of argument, as you get further into the bay from viewpoint 1, I understand your evidence is you see more of the features of the bay.
- A. That's correct.
- Q. You referred though to the hillsides, the slopes and the houses. What about the water and the shoreline and those things?

- A. Yes, they become part of that overall scene. I mean one's taking in the – I believe that one is taking in the whole scene and that the water edge, the water itself, the bay is obviously part of the experience. But I think the dominant part of that whole experience of coming in really is the enclosing land forms, and that's your first – and almost lasting, if that's the memorable impression that I get coming in to Matiatia anyway.
- Q. Thank you.

CROSS-EXAMINATION CONTINUES: MR CASEY TO MS GILBERT

- Q. Perhaps not so much Mr Scott I'll ask Ms Gilbert first, as you get close, and again from the left-hand side of the boat or at the front, whichever, as you get closer to the marina, assuming there's a marina there, what is the effect of the proximity to the ferry of the built structure, the breakwater and things?
- A. I think it would be overwhelmingly negative and detract from that depreciation of the coastline, of the rocky shore and (inaudible 13:53:17) is distinctly incongruous.
- Q. Any sense of how close the boat will be or how close it will seem to be?
- A. I would expect there to be a foreshortening almost along the lines of what we were talking about with Mr Alexander's house. Yes, there would be an immediacy and something that does strike me when I enter the bay is there is a real feeling of you're there and it's not a very big bay. Plus it's the shape of the landform that contains it so I think that goes towards that proximity problem that I think you'd have.

CROSS-EXAMINATION CONTINUES: MR CASEY TO MR PRYOR

- Q. Mr Pryor?
- A. Yes I consider as you are getting closer into the head of the bay again there is that overpowering enclosing nature of the landform. But also as you get closer there's also going to be the strong characteristics of the ferry terminal itself and that north wharf which will all be seen in conjunction with that overall mood.
- Q. Mr Pryor, can I suggest that if you're coming in and you're on the left-hand side of the boat, you'll get that impression which you're talking

about of the north wharf several hundred metres before you get to the north wharf because you'll be seeing a breakwater and a pier and a wharf-like structure several hundred metres before you get to your destination?

- A. If you were looking immediately north, then certainly that breakwater would be the first thing that you would see but then, of course, the peripheral view takes into consideration much wider than just that north aspect.

1355

- Q. You would have a peripheral view when you get to the wharf as well, I'm talking now about the view or the impression that you get when you come up to the breakwater and you follow along the line of the breakwater and the piers. It will give you the impression of already being at a wharf or a wharf-like structure.
- A. There will be that sense of arrival at the gateway.

CROSS-EXAMINATION CONTINUES: MR CASEY TO MR BROWN

- Q. So Mr Brown.
- A. Hmm, last man standing. Yeah, it's interesting, I was thinking about this issue that Dennis has raised about passing the two headlands and I think he's quite right, it's a very, it is a very important experience. I was trying to think of other examples like it and I suppose the one that immediately came to mind was flying into Queenstown.
- Q. Mmm.
- A. It's a little bit like that, you're going, so, yes, there is, there's quite a, there is a sense of arrival at that point and it's reinforced by, you know, the appeal of the headlands and the vegetation and to a certain extent nowadays even the houses that sit there too. I mean I never thought I'd say that, Your Honour, but it changes and, you know, we've been discussing so far the sort of symmetry and the approach towards the ferry terminal, and I was just contemplating the very issue of looking just from one side or the other of the boat that's arriving, and is it such a bad thing to suddenly be going past a marina when you know that you're

arriving at the entrance to an island? And you know I know we're not on the road to Port Finau here but I can't quite help but feel that that could well be, you know, not an adverse effect at all, it could be part of that sense of we're here and we're in a different part of the bay from the outer bay and the headlands that we've just been talking about. And so I suspect that – I don't see that as being quite adverse as you're presenting it. And I think that change, that transition is already reflected when you come into the bay when you see some other houses that don't have quite as much appeal sitting up on the southern ridge line, and then you start to see the head of the bay itself as the ferry swings around, you see the car parking area or bits of it, you see the terminal itself, you see vehicles moving, you see the car rental yards and so on. So I know there's a long answer Your Honour but it's a complex issue. And so I don't see it as being, you know, it's not something that you can encapsulate and say, "That's the answer, that's the experience," I think that a lot of people will actually enjoy that experience, they won't see anything adverse about it because if they're new to the island they've never experienced anything else. And so this is their, this is what they might – this could be one of the many things that they anticipate seeing as they arrive at somewhere like Matiatia.

THE COURT: JUDGE NEWHOOK

Okay well there's a range of views.

CROSS-EXAMINATION CONTINUES: MR CASEY TO MR BROWN

Q. I just want to explore that a bit more with Mr Brown if I may. Again if you're on the left-hand side of the ferry and as you come in through the headland, you tell us about how it opens up again.

A. Yes.

Q. But do you agree that what you're then met with is a sudden closing when you come up to the breakwater. Suddenly you're closed in again.

A. No, I don't think that's going to be quite the case. I mean the ferries provide a pretty elevated platform so I don't think it's the same as being

enclosed by headlands. I think what you'll see is the superstructure of vessels that are at the jetties and in the berths, you'll see masts and you might see activity and so on associated with that, but I don't think you're going to see the same or have the same sense of enclosure.

Q. I'm interested also in the comparison with arriving at Queenstown, I'm assuming you're talking about arriving from the Kawarau end rather than the Franklin end?

A. Yes I am.

Q. And the sensation as you're coming in to land, you can almost reach out and touch the Remarkables?

A. Yes, or the (inaudible 14:00:17) on the right-hand side.

Q. Yes. Now, I put it to you that when you come and pass the breakwater and the marina pier and boat structures you'd have that same feeling that you could almost reach out and touch them?

A. I don't know whether they would be that close but even if they were you're expecting to arrive at a transport facility, a port facility of some kind. We can call it whatever we like but I don't see suddenly coming in past the breakwater as necessarily being something that you wouldn't expect if you were a visitor and this was the first time you were coming here. And if you know Matiatia well, you know Waiheke well, then it's part of the familiar sense of arrival there.

Q. The other question for you is that when you do come in even now and if you're on the right-hand side of the ferry, as you get past the headlands the boats that are currently on the moorings seem to loom quite quickly in your view, would you agree?

A. Yes, they stretch out across quite a lot of the bay.

Q. And that what you would be seeing when you came in if you were looking forward on that side of the bay would be the breakwaters looking quite quickly, would you agree?

A. On the right-hand side?

Q. On the left-hand side.

A. Oh on the left-hand side, yes.

CROSS-EXAMINATION CONTINUES: MR R BRABANT TO MR PRYOR

Q. So we're now being put to someone that you're on the ferry looking out to the left as you're coming in, and I'd like to ask you to look at viewpoint 2 and viewpoint 7 because we need to kind of understand what the view is in case that people got the impression that the breakwater or the breakwaters run down the bay when in fact they run across the bay, don't they Mr Pryor?

A. Yes certainly you'd be looking at those breakwaters end-on when you're (inaudible 14:02:26) –

Q. Even before that it's an oblique consideration of the breakwater isn't it, and as you go past it you're looking down its narrow end?

A. Yes you are.

Q. And I think if we go over to the other side, what you actually run down the side of, and I know it's a fair way away, is that southern access pier if you look at viewpoint 7. You know if you remember the marina design, so the long continuum that you run by is that walkway close to the water isn't it?

A. Yes, it's that low-lying walkway.

Q. And aren't you then also looking down the fingers of water between the boats?

A. Yes you are.

CROSS-EXAMINATION CONTINUES: MR R BRABANT TO MR BROWN

Q. So Mr Brown, you've heard my questions about that, it seemed to me that the breakwaters aren't kind of square across, they're end-on or oblique.

A. Yes that's true. And I don't think – I mean I've already given a fairly lengthy answer to this issue, I don't really want to say any more.

CROSS-EXAMINATION CONTINUES: MR R BRABANT TO MR SCOTT

Q. Mr Scott?

A. Yes no, I'd have to agree with that as well. I mean I stay with my answer that it is a typography, it is the most memorable part of this whole entryway, but at the same time the marina will definitely block off

views of the northern bay as you get close to the wharf structure, that's a fact.

Q. But as you run down past that southern access pier and you look out, you'll see the –

A. You will see glimpses through if you're looking left, yes I'd agree with that –

Q. Yes because if you look at figure 2, there's quite big gaps aren't there, there have to be for manoeuvring between the boats on the piers.

A. I'd agree with that.

CROSS-EXAMINATION CONTINUES: MR R BRABANT TO MS GILBERT

A. Yes, when you're immediately adjacent from that marina you will have some transitory views down the water passages or, you know, where the boats manoeuvre, but I would agree with Mr Scott that in other locations in that approach the breakwaters will be a dominant element.

1405

THE COURT: JUDGE NEWHOOK

All right, we've got one topic left. Where did counsel get to in discussions about the material that Mr Brabant was holding last night about the black polyethylene sleeves on the piles? Was there agreement that that could be brought to us or not? You had about three sheets that included, I think, some technical specifications and some photographs of –

MR ALLAN:

No objection from the Council.

THE COURT: JUDGE NEWHOOK

Mr Casey, do you have a view about that?

MR CASEY:

Well there's no objection in terms of what's been proposed before you. The only concern is there's an assertion that it will inhibit the release of the

treatment and I don't know what the qualifications are of the person to assert that it's...

THE COURT: JUDGE NEWHOOK

I don't think the idea of our receiving this material at this moment was to do with that aspect of the case. It was about a concern raised by Mr Littlejohn that if the sleeving of the piles was being proposed by the applicant, which Mr Brabant contends it is, then there might be a visual aspect and Mr Brabant was offered these materials so that that question could be examined.

MR CASEY:

I certainly accept that it can be examined from a visual point of view but I heard a statement yesterday that it was also going to somehow or other alter the rate of discharge and I'm just saying from that point of view it's not accepted that this document establishes that but from a visual point of view it's appropriate that it be put to these witnesses.

MR R BRABANT:

Sir it might be helpful, and I'm quite happy for you to ask, but I've told Mr Pryor about this and he was involved Sir with Buildmedia in setting up the computers and the colours and everything and there was a question you'd asked me Sir about the appearance and the visuals and I think Mr Pryor will be able to help you about that Sir before you move –

THE COURT: JUDGE NEWHOOK

Well let's just deal with my question please. Is it agreed amongst counsel that we can receive these materials by consent?

MR CASEY:

Certainly from my –

THE COURT: JUDGE NEWHOOK

We note the reservation that you make about what they say on their face but let's just make use of them for the moment from the visual point of view. So can we have copies. We don't have them yet.

MR BRABANT DISTRIBUTES COPIES TO COUNSEL

THE COURT: JUDGE NEWHOOK

While you're organising that for us, I'm going to ask the witnesses my first question about this. Are all or any of you familiar with the Outboard Boating Club Marina inside Tamaki Drive? To the south of Tamaki Drive as you're heading east from here.

WITNESSES:

Yes Your Honour.

THE COURT: JUDGE NEWHOOK

That's recently been the subject of re-sleeving of the piles, or sleeving of the piles with the black polyethylene tubes as to the majority of the piles, not all of them have been done, but most of them have been done and I'm wondering whether you might have noticed that. Mr Scott hasn't, Ms Gilbert hasn't.

MR PRYOR:

Yes Your Honour, I drive past there every day. And I've certainly, I'm very much aware of the facility that they've got there. From my point of view when they, and I wasn't actually aware that they were being sleeved, I thought they were being painted and I was trying to work out how on earth they could paint them.

THE COURT: JUDGE NEWHOOK

Sleeves, I can tell you.

MR PRYOR:

Certainly the dark colouring of them, in my view, makes them visually recessive and when the visual simulations were prepared and when you zoom in on them you can actually see that they were depicted as black coloured poles as opposed to just naturally weathered poles. So certainly from a visual perspective, black appears far more recessive than just naturally weathered timber.

1410

THE COURT: JUDGE NEWHOOK

All right, well we're probably not going to get very far with this if three out of the four of you aren't familiar with that place and my questions for instance were to extend to a comparison of the high tide view of it and the low tide view of it. The high tide you get the boats floating up and obscuring many of the piers in their totality and at low tide the boats are down, a lot of the poles are poking up above a massive mass of hulls, there are not yachts in that marina its' all tail boats and mostly single storey power boats which would be a point of contrast with the proposed marina in Matiatia but maybe we're not going to get sort of very far. The most we'll probably achieve with the four of you on this issue is probably having called this exhibit 10 madam registrar by consent is to perhaps test Mr Pryor's view using the two photographs on exhibit 10, Mr Pryor's view that to have these black sleeves and just a point of detail I don't think white caps have been placed on outdoor boating club ones I think black caps are being placed there, I think it's all black just to test Mr Pryor's theory that black is more recessive than the timber piles and I wonder about that.

EXHIBIT 10 PRODUCED – TWO PHOTOGRAPHS

No, hang on, hang on just looking at these two images I wonder about that and I wonder whether the different lights, times of the day, degree of sunlight, lack of it whatever might produce different answers at different times. I don't know, I'm wondering whether any of you could help.

THE COURT: JUDGE NEWHOOK TO MR PRYOR

Q. Starting with you Mr Pryor.

- A. Yes Your Honour I think it's very much dependant on the context I think the two photographs we've got on these images. For a start they're not showing any boats or structures around them and particularly the lower one, the poles are actually seen literally against the blue sky line so it's quite a, I consider it's quite a unnatural or can't really be compared to the situation that a marina actually as. Certainly in terms of the Matiatia Marina, for the majority of views whether they were the elevated or the lower ones, the boats and the poles will be seen against the back drop of the surrounding hills so we won't have a situation like we've got in this exhibit and certainly in my experience of the outward boating facility visually I consider that the dark colouration of them has made a huge improvement in the visual aspect of them.

THE COURT: JUDGE NEWHOOK TO MR BROWN

Q. Okay, Mr Brown?

- A. Your Honour I have passed the boating club but I hadn't really appreciated the change. I suppose, I've only got two comments. One is that if we look at images such as the much used viewpoint 5, it's actually the super structures of the boats and the hulls that really stand out especially the white and light greys and so on together with the shadow lines that –

Q. There are two, there are two sheets to viewpoint 5, one's high tide and one's low tide, just to pick up on the valuable points that I've made.

A. Sorry I was looking at the low tide Your Honour.

Q. I think figure 52 gives the Pa's a little more prominence doesn't it?

A. Yes, I was looking at the low tide version.

Q. And viewpoint 4 might add some relevance to both sheets.

A. Yes.

Q. Figure 56 low tide for instance.

- A. Yes, I mean, so the first point I'd make is that I think it's probably more the concentration of boat hulls and super structure and shadow lines that really contributes to the visual presence and effects that people have – that we've been talking about. The second is that I can imagine

over time and I don't know whether it's true or not but there'll be some weathering affects too. Now it could be that the polyethylene or whatever it is is designed to prevent that but still I can see that marine organisms and tidal ranges and so on will ultimately change the appearance of those poles, I might be wrong but that seems to be the case certainly with natural timber poles so I would imagine they might become even more recessive over time.

THE COURT: JUDGE NEWHOOK TO MR SCOTT

Q. Mr Scott?

A. Difficult for me to have a comment really.

Q. Yes, don't feel obliged to.

A. I prefer – if this is the straight gut reaction I actually prefer the natural look sorry if that's of any help Your Honour. I think that the black is a little bit out of detail there.

THE COURT: JUDGE NEWHOOK TO MS GILBERT

Q. Ms Gilbert?

A. I guess all I can add Your Honour is that the existing wharf structure is timber and so in terms of that compatibility the piles of the wharf are timber so maybe natural timber is preferable in that regard but I appreciate black can be recessive.

Q. Yes, okay that's probably about as far as we can take it really.

THE COURT: JUDGE NEWHOOK

Do any counsel with so question? Mr Allan?

MR ALLAN:

Just a question Sir, it's very difficult because we obviously don't have any evidence on this but I suppose we've all made an assumption that this product only comes in black whereas it may well be available –

THE COURT: JUDGE NEWHOOK

Well yes, I did briefly ask last night whether it comes in other colours and I don't know if the applicant has any information about that.

MR ALLAN:

You know for instance you know grey or a more natural colour or something else, I just wondered whether that's something that ought to also be considered and just be commented on by the witnesses in case there are options in the market.

THE COURT: JUDGE NEWHOOK

I think I'm hearing that they don't see this as a particularly big issue in the scheme of things, the overall scheme of things. Mr Brabant any questions?

MR R BRABANT:

I might be wrong here but if you think about a little bit of ageing and the timber will tend to take on a silvery appearance whereas the black might rub off and I, I mean you people are the experts, reflectivity? And is an issue in how things are perceived and I wondered whether that gradation of the timber towards a more silvery hue and the sort of dulling of the black from when it was put in was a factor, I don't know if any of you can comment on that?

MR BROWN:

I just thought it would be part of the weathering that I've already talked about –

MR R BRABANT:

Yes but what's the outcome in terms of visual?

MR BROWN:

I think it would make it slightly more recessive but I just don't see these poles as being as much of an issue or a feature as the concentration of boat hulls and the breakwater, the marine office and so on. Those are the core of the matter from my point of view.

MR PRYOR:

Concerning from what I've seen of the outboard motor, poles, they have very little reflectivity. Obviously they haven't been in there long enough to see how they weather but as Mr Brown said, you know, the poles are just small component of the marina.

THE COURT: JUDGE NEWHOOK

Okay, well that's as far as we can take that one and that's the end of the Court's "shopping list" as somebody called it. You Mr Casey I think. Thank you all very much for participating in that.

COURT ADJOURNS: 2.19 PM

COURT RESUMES: 3.27 PM

MR ALLAN ADDRESSES THE COURT – FURTHER JOINT WITNESS STATEMENT

DISCUSSION – FURTHER WITNESSES

MR LITTLEJOHN CALLS

HANS-DIETER BADER (AFFIRMED)

Q. Is your full name Hans-Dieter Bader?

A. Correct.

Q. And do you confirm that you have prepared a written statement of evidence in these proceedings dated the 25th of July 2014?

A. Correct.

Q. Are there any typographical errors you wish to correct in that statement before I have you affirm it?

A. No.

Q. And Doctor, you participated in joint witness conferencing on the 20th of August 2014.

A. Correct.

Q. And you and your colleagues signed a joint witness statement, did you not, on the 20th of August 2013?

A. Correct.

Q. Now, in respect of both your evidence in that joint witness statement do you confirm that their contents are true and correct?

A. Correct.

CROSS-EXAMINATION: MR ALLAN

Q. Following your caucusing Ms Plowman prepared an updated plan, figure 3, in her rebuttal. Have you seen that?

A. Yes I have.

Q. I just want to give you an opportunity to confirm, and obviously you are agreed that her original plan was an accurate record of known

archaeological sites and so on in the bay, are you happy that her updated plan is likewise an accurate reflection?

A. From memory it was only that one burial that was moved.

Q. The inland burial in the northern part.

A. Happy with that, yes.

Q. And you're happy with that?

A. Yes.

CROSS-EXAMINATION: MR BRABANT

Q. So Dr Baber, have you got the joint witness statement there please.

A. Yes.

WITNESS REFERRED TO JOINT WITNESS STATEMENT

Q. I'd like to confirm my understanding that three archaeologists, obviously including yourself, reached agreement on all matters apart from s 6 about phenomenology. Everything else was agreed wasn't it?

A. Correct.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT – NIL

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

MR LITTLEJOHN CALLS

NIGEL FRANCIS DRAKE (SWORN)

Q. Is your full name Nigel Francis Drake?

A. Yes that's correct.

Q. And do you confirm that you've prepared a statement of evidence in the proceedings dated the 28th of July 2014?

A. That's correct.

Q. And do you have any corrections of a typographical or such nature that you might like to bring to the attention of the Court?

A. One slight correct, page 5 and paragraph 12. There's a couple of words to add after the word "marina is" and it should be "not able to", changes the context of the statement rather. So, "the plane of the marina is not able to be the same."

Q. Okay thank you for that. Now Mr Drake, did you participate in caucusing with Mr Dilley and Mr Moss?

A. I did on the 21st of August.

Q. And you've prepared a statement, a joint witness statement as a consequence of that caucusing?

A. That's correct.

Q. Do you confirm that the contents of that joint witness statement and the brief of evidence you prepared in these proceedings are true and correct?

A. I do.

QUESTIONS FROM THE COURT: MR ALLAN – NIL

CROSS-EXAMINATION: MR R BRABANT

Q. Mr Drake, are you still based in Tauranga?

A. I am yes.

Q. And your boat is kept down there?

A. It is.

Q. In the marina?

A. In the marina.

Q. You've got a summary of matters covered in your evidence, haven't you, under paragraph 7, and then you expand on them later on?

A. That's correct yes.

Q. So if we use this as a starting point we might start with the kayaks and dinghies issue where you say that access to the north-east corner of Matiatia Bay will be difficult. Were you here when Mr Dilley gave evidence?

A. No I was not.

Q. I haven't got the transcript here, I'll be corrected if I'm wrong but I do remember this evidence, Mr Dilley's advice to the Court was that in terms of a risk assessment of the current environment, the issue that you have to be careful with kayaking is the in-comings and goings of ferry traffic.

A. Yes I'd agree with that.

Q. And he expressed the view that the safe sequence for kayaking would be to go up the southern shore of the bay until you're well clear of the ferry area itself and cross over, and then circumnavigate by coming down the other side. Does that make sense to you?

A. Yes, that's one way of doing it.

Q. I know that witnesses have suggested that ferries are able to go under the wharf. Have you seen any evidence –

A. The kayaks.

Q. The kayaks go under the wharf, have you seen any of that evidence?

A. Not in Matiatia but I have seen it in other places, yes.

1540

Q. And you wouldn't have had a look then as to whether that's feasible?

A. I think that would be feasible with that particular wharf, yes.

Q. When you wrote your evidence at paragraph 28 about, "The craft are able to access the bay and beach to the north of the Old Ferry wharf." You said then that that would be barrier because of the southern access pier. Did you look at the plans in terms of them being able to pass under the gangway that comes down onto that access pier?

A. Yes I did. And it looked to be, it may well be feasible.

- Q. And not only that but if need be the gangway can have a greater radius put on it to make sure that was possible couldn't it?
- A. Yes, but it wasn't what was shown in the drawing.
- Q. But to deal with that issue it's a matter simply of doing a bit of a redesign, do you agree?
- A. I guess that's possible.
- Q. So I want to turn next to loss of anchorages. Do you have any personal knowledge or experience of launches or yachts anchoring in that nor-eastern corner of Matiatia Bay? Personal knowledge?
- A. I have a friend who used to do that in a small trailer sailor, yes.
- Q. In a small trailer sailor?
- A. Yes
- Q. And therefore able to get inside the mooring area.
- A. I think because of the virtue of that particular craft he tried to get into the shallow water, yes.
- Q. Would you accept that it would be not seaman like, particularly in rough weather when your anchor could drag, to seek to shelter by dropping your anchor amongst existing moorings?
- A. I think it's not recommended but if in bad weather and that area was sheltered, the skipper of such a vessel would possibly go in there and take what is a calculated risk and anchor in amongst the moorings.
- Q. When you come up north cruising have you done much around Waiheke?
- A. I have yes.
- Q. So if the wind was piping in from the north or north-east would you feel compelled to go in there to get shelter?
- A. I may well.
- Q. But in terms of other options that are available?
- A. Well if the other options mean going outside the bay into rough weather again I might well take that option, yes.
- Q. So are you postulating that the weather happened so suddenly that you don't have time to go around into Rocky Bay or wherever it might be?

A. Well I'm just thinking of someone who has small kids on board who may have sought shelter in that bay and that is a place where they would choose to anchor, rather than go out and subject them to bad weather again.

Q. Do you accept that if the marina was able, like for example Tutukaka, to offer short-term berthage and there was a storm condition that the marina would provide a very safe situation?

A. If they were able to provide a berth, yes.

Q. You've got a section that deals with the marina footprint and you move on to talk about the channel width for vessels coming in and out of the wharf structure and I'm referring here to, starting at 14 and through those paragraphs. This matter was discussed in the joint witness conference wasn't it?

A. Yes. Yes it was.

Q. And your position remains, does it, as this joint witness statement was done after conferencing that followed the production of your evidence.

A. That's correct, yes.

Q. So your position now is as the Court can find in that joint witness statement on these issues?

A. Yes, that under international guidelines the width of the channel does meet the requirement.

1545

Q. Yes but you all also agreed, "Having said that they accordingly see no navigational safety issues that would not be addressed by ferry companies operational procedures as required by the Maritime Transport Act and the maritime rules," you agreed to that didn't you?

A. That's in relation to the width of the channel.

Q. Yes.

A. But when you factor in some of the other factors with other vessels then that will also say further on that it does raise issues and possible navigational issues and conflict of potential collisions as well.

Q. So can I take you to 6(f) of that joint witness statement.

A. Yes.

- Q. That summarises the position?
- A. Yes it does because those ferries would be subject to their own operating procedures, but it does say the marina will make those procedures more precise and we don't know what those procedures are at the present time or would be.
- Q. And you all agreed that the operation of berthing and departing vessels at the old ferry wharf does not of itself create significant navigational safety issues, didn't you?
- A. Of itself yes.
- Q. So in your paragraph 21 you refer to some evidence from Philip Judd and you say, "If the marina were to be built the only area for these vessels to wait would be in the approach lain for the ferries." Is that what the conclusion was in paragraph 6(k)?
- A. That's correct.
- Q. Leaving the fairway clear?
- A. Yes, well that statement says that the experts do not consider this would be likely to happen in practice. So it's saying that while waiting for a berth at the old ferry wharf they would wait seaward of the proposed marina breakwaters, that's just seaward, that's further out towards the entrance of the bay.
- Q. Yes and Mr Dilley talked to the Court about that being the larger vessels.
- A. Yes.
- Q. And then you dealt with the smaller vessels when you subsequently met after this evidence in (l) and (m) didn't you?
- A. Yes, small vessels being perhaps trailer boats and things like that. And there's a wider range of vessels of course there, charter vessels of 20 metres and private vessels of 10 or 12 metres which wouldn't be qualified as – or you couldn't call them large vessels.
- Q. Now in 41 you talk about the proposed marina potentially putting at risk the bay be considered the safe or preferred place for ferry traffic to and from the island. Are you familiar with the Downtown Ferry Terminal where the ferries come in at the moment?

- A. I'm reasonably familiar, yes.
- Q. You've been in and out of there?
- A. I have.
- Q. That's a far more congested situation with numbers of ferries and the tightness of the manoeuvring areas that we're looking at here isn't it?
- A. There's that whole basin between the two wharfs, between Princes and Queens Wharf, there's a much bigger basin than you're dealing with in Matiatia Bay.
- Q. I know, but it's got multiple pontoons and multiple places that ferries are coming in and out and interacting with each other.
- A. And it's my understanding that private vessels are not allowed into that area as well.
- Q. Yes but I'm just talking about ferries at the moment. There is a range of ferry companies and within those ferry companies like Fullers, a range of vessels coming and going continuously coming in, turning, crossing, and a whole lot of piers, right across the width of it and that's functioning satisfactorily isn't it?
- A. Yes, it does.
- Q. And are you familiar with the situation at Bayswater Marina?
- A. I am.
- Q. And that's got a ferry terminal inside the marina entrance hasn't it?
- A. It's just inside the entrance, yes.
- Q. So there the ferry is coming and going as pleasure boats coming in and out of the marina isn't it?
- A. Yes, the pleasure boats go past that ferry terminal.
- Q. Much closer proximity than in this situation here.
- A. Yes but it's not the same but they do go past it to get to their berths. But they're not waiting around in the entrance for a berth to become available as the ferry's coming in. So it is different.
- Q. Is your reference in paragraph 42 to the marina being a controlling factor to any redevelopment of the ferry terminal to do with the narrowing of the ferry channel in, is that what you're referring to?
- A. Well it's to do with the navigation of ferries to and from that facility, yes.

Q. But if the main ferry terminal is expanded by enlarging it, building it out to get some more berths in, it's not going to change the available widths is it?

A. Well it may well change the design of, the presence of the marina would mean that some of the options for a design of a new facility there wouldn't be able to be considered. If it wasn't there, many more options I would imagine.

Q. But they're not concerns that are shared by either Fullers, are they, or the Harbourmaster.

A. I'm not sure whether the Harbourmaster or Fullers have thought that far ahead, I can't comment on that.

CROSS-EXAMINATION: REMAINING COUNSEL – NIL

QUESTIONS FROM THE COURT – NIL

MR LITTLEJOHN:

I was remiss to deal with paragraph 15 of Mr Drake's evidence where he refers to, this is the wharfingers data, and Mr Anderson who was excused because of his ill wife, was the man who supplied the data so there is a link between the person who collated it and Mr Drake. There's a reference in the joint witness statement to that paragraph of Mr Drakes but the data itself hasn't been produced and that is all available. It's all handwritten sheets and if the Court wanted that then this would be the appropriate witness to produce it through. I don't understand it's in contention but if the Court simply wanted to verify the nature of the data itself then that material is available.

THE COURT: JUDGE NEWHOOK

How extensive is the documentation Mr Littlejohn?

MR LITTLEJOHN:

It's basically spreadsheets and there's maybe a dozen sheets, a dozen or so sheets. I've got them in a pdf pile.

THE COURT: JUDGE NEWHOOK

I think for completeness we should probably have them. Mr Brabant, do you have any comment on this?

MR R BRABANT:

I'm just checking, cross-checking, if you'd like to have all those spreadsheets Sir that's fine.

THE COURT: JUDGE NEWHOOK

I think it might help complete or it might put another piece in the jig-saw about the extent of use of the north wharf, I don't know quite where that would lead us.

MR R BRABANT:

Yes, well I assumed, we've got it all here.

MR LITTLEJOHN:

It's all tabulated and summarised by Mr Drake in his evidence.

THE COURT: JUDGE NEWHOOK

Mr Allan, any comment?

MR ALLAN:

No objection to that.

MR LITTLEJOHN:

I'll make it available to both Madam Registrar in electronic and in hard copy for Court tomorrow Sir if that's possible.

THE COURT: JUDGE NEWHOOK

I'll just note for the record that that material is coming in pdf form.

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

1555

MR LITTLEJOHN CALLS**STEPHEN ERIC WHITE (AFFIRMED)**

Q. Is your full name Stephen Eric White?

A. Yes it is.

Q. And do you, or did you prepare a written brief of evidence in these proceedings dated the 25th of July 2014?

A. Yes I did.

Q. Are there any typographical issues you want to tell us about before I get you to confirm the evidence?

A. No, it's fine.

Q. Mr White, you also participated in joint witness conferencing with other ecologists and antifouling experts?

A. Yes that's correct.

Q. And that conferencing took place on the 19th of August 2014?

A. And on the 27th of August.

Q. And you reconvened on the 27th?

A. Yes.

Q. And two documents were produced, weren't they, one entitled, "Joint Expert Witness Statement: Coastal Ecology and Antifouling"?

A. Yes.

Q. And then a second one dated the 9th of September entitled, "Joint Expert Witness Statement: Recommended Conditions of Consent"?

A. Yes, that's correct.

Q. Now in relation to those three documents, your brief of evidence and the two joint witness statements, do you confirm that the contents of those documents are true and correct?

A. Yes I do.

CROSS-EXAMINATION: MR ALLAN

Q. Good afternoon Mr White. Now you and Mr Cameron and Dr Sivaguru, and Mr Poynter obviously produced a joint witness statement on the conditions that we've just heard dated 9 September?

A. Correct, yeah.

Q. And you and Mr Cameron and Dr Sivaguru were, I think, in complete agreement as to what those conditions should say?

A. Yes.

Q. From my reading.

A. Yes.

Q. There was just that one area of difference between the three of you and Mr Poynter about whether there should be a management response, I think it was called?

A. Yes, yeah.

Q. In the event of guidelines being breached.

A. That's correct.

Q. Have you had a chance to review the latest set of conditions produced by the applicant?

A. I have, yes, yep.

Q. Now I am advised by Mr Cameron and Dr Sivaguru, which subject to one thing which I'll come to, that the revised conditions now appear to generally reflect the agreed position at caucusing. They're a little bit scattered, the conditions, but are you likewise generally content that that's the case?

A. Yes, generally they reflect the position that we took.

Q. I think, and things have moved around a bit.

A. Yes, correct.

Q. And you know bio-security is now scattered across three different conditions, et cetera, but that seems to be the case and, in fact, in relation to antifouling effects, it appears that there's now a requirement from day 1 to use low impact antifouling paints so you'd be in agreement with Dr Sivaguru and Mr Cameron that that's a worthwhile measure?

A. Certainly that's more restrictive than what we had agreed to.

- Q. Yes, which was introducing it at a later date on review?
- A. Yes, yeah, if required, yes, yeah.
- Q. And I think the one additional suggestion that the council's witnesses would wish to make is to ensure that there's at least an annual power of review under section 128, you're familiar with section 128 of the Act vaguely?
- A. Yes, roughly.
- Q. For at least 10 years, so an annual review at least 10 years after completion of construction just to be on the safe side.
- A. Right.
- Q. Would you support that additional suggestion?
- A. I am not opposed to that suggestion, no, no, that's not a problem.
- Q. Okay, and did you have any other suggestions to make in relation to the conditions, or are you, you're now content that things are adequately covered as we discussed?
- A. No, I can't think of anything else that really stands out as being required in the conditions, no.

1600

CROSS-EXAMINATION: MR R BRABANT

- Q. Good afternoon Mr White.
- A. Good afternoon.
- Q. I think it might just be helpful to have a little bit of a look here at your experience in paragraph 2. And it appears that you're certainly an expert in your field that's had a lot to do with development of marinas including some waterway or canal developments as well.
- A. Yes.
- Q. And so in doing that wide range of work has that included assisting applicants to put together ecological studies and formulating proposals and assessments as well as maybe sometimes assisting Councils?
- A. In some cases yes.
- Q. So you've kind of been there on different sides in a range of these applications.

- A. Correct, yes.
- Q. And your position that what has been done in terms of work by Mr Poynter, looking at the circumstances in this particular location and the subsequent work that's been developed and the conditions, obviously you can rely on that wide background of knowledge of not only what you should do to investigate a site but also how things work out in practice.
- A. Correct, as mentioned in the joint witness statement you can always do with more information. There are practical limits as to what can be collected and I have an understanding that the situation as Mr Poynter has described it based on the work that he's done is probably reflective of what is actually there.
- Q. I see in particular, Mr White, that you've had the advantage of not only sort of doing predictive work, but also you've had the subsequent follow-up experience of actually monitoring and seeing how things turn out in coming to a conclusion.
- A. Yes.
- Q. I guess you're probably aware that in the end the applicant has put forward some proposals to move now to introduce what you could call "best practice" in terms of antifouling, rather than waiting until the TL level was reached..
- A. Certainly.
- Q. And Mr Allan mentioned starting now with the best paints that can be found that have the low release of the toxins, in particular copper. Do you think it's equally important,, you would have read this in the conditions, that the marina management proposes to prevent people putting antifouling paints on using co-biocides or other particular ingredients that have been found by NZEPA to be unsuitable, is that an additional important factor?
- A. I believe it is possibly quite important. However EPA are phasing out diuron for instance. It has a timed lifetime for sale much in the same way that TBT was phased out, so that particular issue will disappear. There may be other co-biocides or other elements of antifouling paints

that arise that may pop to the top of the list of nasties to be dealt with, but yeah.

Q. Have you seen that latest report that was done by the EPA about antifouling which was actually an attachment to Mr Greve's evidence?

A. Yes I have.

Q. And there were some other particular chemicals or additives that were included as well?

A. Yes correct.

Q. And do you agree it would be appropriate for management and marinas to ensure that the boat owners are informed of those and the need to be aware of avoiding those?

A. I guess at the end of the day each individual boat owner is responsible for their own vessel and there's an element of free will there as to what products they use, but certainly education as to the adverse effects of these chemicals is no bad thing.

Q. But if as here it's proposed that the rules, which will be a form of contract between the berth holder and the boat owner, require certain types of product not to be used, whether immediately like the diuron provision or as the date runs out according to EPA, then that provides some certainty doesn't it?

A. Yes it does, yes.

1605

Q. Just in relation to the little blue penguins, because I think this is again something that came up in the subsequent rebuild of conditions that the applicant has been involved in, do you agree with the proposition that if there were to be a reclamation that an opportunity to build nesting places in there, as well as the breakwater, would be wise?

A. If it's feasible, yes, yeah, that's additional habitat space that is available to the penguins.

Q. Have you had experience with little blue penguin populations in or adjoining other marinas you've been involved in?

A. I must admit, I do not have a huge amount of experience with little blue penguins. Certainly I'm not aware of little blue penguins' populations

adjoining any of the marinas that I've worked on, or marine developments.

THE COURT: COMMISSIONER LEIJNEN

Q. I just have one question, which was in relation to a condition on the coastal, recommended condition on the coastal permit on page 9 of that list of conditions and it's 14.3(b).

A. I'm sorry is this the revised...

Q. This is the latest version, 21 October.

A. So 14.3(b), bravo?

Q. Yes.

A. Yep.

Q. And I'll just, it's a monitoring condition and it sets out the trigger values. I just wonder whether you could explain to me why it has an option or the 90% trigger value if that is deemed to be a more appropriate guideline for the waters in the marina, why is that there?

A. During the joint witness conferencing, there was consideration of the ANZECC 95% trigger value, and that's protective of 95% of the species and Mr Poynter raised the point that it may actually be more appropriate to consider the 90% protective guideline rather than the 95% guideline and there was some discussion about that. As I recall we didn't really reach consensus on that point.

Q. And why would he suggest 90%?

A. Those guideline values are applied, I think the 95% is the ANZECC, the description of it is that guideline is appropriate for slightly to moderately disturbed ecosystems whereas the 90% protective guideline is more appropriate for more heavily disturbed ecosystems and there was a, perhaps a difference of view as to whether the marine represented a slightly to moderately modified habitat or a heavily modified habitat.

Q. And what was your view?

A. I believe the 95% guideline is more protective and to be conservative, I would tend to err towards the 95% protection value unless there were

particularly good arguments as to why the 90% would be more appropriate.

Q. And in relation to this particular bay, would you, which way do you think it errs?

A. I, my personal opinion is that the 95% trigger value is more appropriate.

Q. Thank you.

1610

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

THE COURT: JUDGE NEWHOOK

Q. I've got one for you Mr White, in paragraph 44 of your evidence you talked about little blue penguins and the insulation of nesting boxes. Have you got any experience with little blue penguins on Tiritiri Matangi or anywhere else in terms of use of nesting boxes?

A. I am aware that there are nesting boxes or artificial nesting facilities on Tiritiri Matangi and that they have been used by little blue penguin reasonably successfully.

Q. Have you any knowledge of about how long it took for the little blue penguins to decide that they would make use of them?

A. Unfortunately I'm not entirely aware of how long it took for them to take up residence in those artificial nesting –

Q. I'm only asking because somebody raised a doubt as to whether they took to it very fast, but nobody's actually been able to help us to know how quickly...

A. No I don't claim to have knowledge of this. I think there was a statement by Ms Fitchet to suggest that it might take some time before penguins would take up that opportunity to utilise those.

Q. Yes, I had heard some evidence to the contrary but I could be unreliable, I'm placing no weight on it. all right, you can't help. Just another question about the little blue penguins, they're nesting in the seawall under the wharfs, we were shown by a series of red dots on a map where they're to be found. It's probably a fairly rugged

environment at times isn't it? Say if you get westerly gales blowing in and a degree of surf which some of us have seen in there, to say nothing of the wash created by the Jet Raider as it sits strapped to the wharf stern (inaudible 16:12:03) pushing its wash in the directions of wharf, it's a fairly robust sort of environment isn't it?

A. At times it can be quite a high energy environment, yes I should imagine so.

Q. And they seem to hang in there?

A. Yeah, robust animals obviously able to cope with a range of conditions. Presumably they have strategies that have been developed to cope with that sort of thing. Maybe they don't leave their nests if it's particularly rough .

Q. One other question that I've suddenly recalled to mind that arose during an earlier part of the hearing, a witness, and I'm sorry I can't remember who it was, suggested that they might be prone to boat strike even with fairly low boat speeds involved, and that didn't accord with my experience as a boaty in the Hauraki Gulf where whenever I've seen a little blue penguin somewhere in the vicinity of my relatively fast power boat, they seem to have an uncanny ability to duck under the surface and move off at speed. Do you have any knowledge of boat strike problems with little blue penguins in the gulf?

A. I don't have any specific knowledge of boat strike statistics for little blue penguin. Similarly on my vessel, it admittedly travels a bit more modestly than most power boats, little blue penguins have seemingly little problem getting out of my way. Having said that I have a friend with a high speed trailer boat that is partially foil-assisted and he recounted to me an incident where the foil stalled because he'd hit a little blue penguins and it was folded around the foil and created enough turbulence to prevent the hydrofoil effect. So clearly it does happen on occasion, I'm not sure of the...

Q. That sounds like a fairly high-speed encounter that was related to you? What sort of speed do you reckon he would have been travelling at?

- A. I'm unsure but knowing his general characteristic and propensity for speed it was probably somewhere around about 30-odd knots.
- Q. And your vessel would generally be travelling at about what cruising speed in the gulf?
- A. Under motor we're about seven knots, sailing we're sort of seven to eight knots.
- Q. Yes, well I'm sort of somewhere in the middle between those two and I'm not aware that I've struck a little blue penguins. They do seem to have the ability to duck away. The allegation was being made that they might suffer boat strike by vessels travelling under the five knot restriction rule in Matiatia and that surprised me.
- A. I would imagine that little blue penguins would be quite capable of getting out of the way of a vessel travelling at about five knots.

RE-EXAMINATION CONTINUES: MR LITTLEJOHN

- Q. Mr White, both my friends Mr Allan and Mr Brabant asked you questions about antifouling paints and discussed the proposed conditions. I'm just interested to know if there was a boat with normal antifouling paint on it, the full strength, next to a boat with low strength antifouling paint on it, how would you tell the difference?
- A. I think there may be some confusion over the strength of the paints. It is my understanding that a more environmentally friendly antifouling paint does not necessarily contain less active ingredient, it just releases it in a more controlled manner. What tends to happen with a fresh antifouling coating is that there is quite a large release or a higher release rate initially than is required to control fouling on the hull, and that that release rate then changes over time and decreases. And my understanding is that the more advanced paints try to control that release rate and have it more consistent over a longer period so that there may actually be the same concentration of active ingredients in the paint, it's just the way it's released and exposed to the water.

- Q. Thank you for that, and I think the question was probably intended to be a little bit simpler than that, are they a different colour for example or how would you visibly tell the difference?
- A. Physically if you were walking the dogs and looking at boats you would not necessarily be able to tell the difference between different brands or types of antifouling paint. Even between softer blade of paints and hard paints, it's almost impossible to tell just by looking at it.
- Q. But how would you if you wanted to determine what sort of paint someone was using, how would you do that?
- A. You would – presumably the marina would require some sort of documentation to verify the paints being applied to vessels. Failing that you would need to physically sample them and have a look at the makeup and their characteristics.

WITNESS EXCUSED

MR LITTLEJOHN ADDRESSES THE COURT – NO MORE WITNESSES TODAY

MR ALLAN:

Just something else I can hand up in the meantime which are the population growth data (inaudible 16:19:15).

THE COURT: JUDGE NEWHOOK

Yes, thank you very much.

MR ALLAN:

My friends haven't had a chance to have a look at it but hopefully that can just be taken in without needing to re-call Ms Bremner.

THE COURT: JUDGE NEWHOOK

Yes well I suppose something that could occupy our time is for us to actually go away and have a look and see what this tells us. Can you give us a plotted summary or you've actually expressed that, have you, in a memorandum?

1620

MR ALLAN:

No her statement, Ms Bremner's statement actually provides a reasonably good overview, it starts with the 2001 and six, showing a 2001 population of 7269. By 2006 that had increased by 528 to 7797, I'm at paragraph 5. Then we move to a document which provides the 2013 census information showing the count there, 0.5% of Auckland's total population. The table actually, at paragraph 7 is pretty useful in charting the recent growth, 2001, six and 13. Showing annual average change of 1.4% between 2001 and 2006, slowing about 2006 to 2013, 1%. And then the projected population to 2045 for Waiheke, that's, I alluded to a model, it's called the Auckland Regional Transport Model, so it has a transport related function and it doesn't draw on 2013 census data I understand. Tab C you'll find that. And there's a

statement there of its limitations and things it did and didn't take into account and those figures are some of the key ones that are set out in paragraph 9 there and you've got some more detailed figures at attachment C however. Is that the sort of data you had in mind, I think that's the best we've been able to come up with.

THE COURT: JUDGE NEWHOOK

And just at a guess, I don't know if either of you have done this but if we were to plot the historical material and the projections on a graph would it kind of go in a straight line gently upwards or...?

MR ALLAN:

The answer is, we haven't done that particular task. In terms of the recent data since 2001 it's showing a slight slowing but at least 1% annual average change is about all we can say. But no we haven't provided it.

THE COURT: JUDGE NEWHOOK

The projections in paragraph 9 look as though they might have a slightly similar sort of feel about them but Commissioner Howie can probably do a bit of quick mental arithmetic and give us an answer, we'll leave it to him.

MR ALLAN:

I'm conscious also, I probably owe you a brief memorandum or something just closing off conditions from the Council's perspective, would you be assisted by, I mean we're pretty close how with the applicant, they've done a lot of work in that respect.

THE COURT: JUDGE NEWHOOK

I think that would help.

MR ALLAN:

But there are probably just a few, I mean there's the overarching issue as to the structure, we still remain of the view that it would be better to have a single consent.

THE COURT: JUDGE NEWHOOK

Can you do that tomorrow? For tomorrow?

MR ALLAN:

Yes I'll put something together for you.

THE COURT: JUDGE NEWHOOK

A bit of homework. Yes, that would be helpful thank you.

MR ALLAN:

And I should add that I think Auckland Transport –

THE COURT: JUDGE NEWHOOK

Somebody was dragging some information, probably reluctantly out of Fullers.

MR ALLAN:

Yes I think Auckland Transport were covering that off, that was our distribution of the tasks.

THE COURT: JUDGE NEWHOOK

Would you take as an action point, please Mr Allan –

MR ALLAN:

To follow up.

THE COURT: JUDGE NEWHOOK

– to find out from Ms McIndoe how she's going with that. In case we need to deal with it tomorrow by way of some formal procedural mechanism.

MR ALLAN:

Yes and she has, I think, some submissions she still needs to present to you on, traffic regulations that sort of thing.

THE COURT: JUDGE NEWHOOK

Yes that's right. Yes, so if you could find out about that report in the morning.
Mr Brabant?

MR R BRABANT:

Yes Sir, we have been in discussions with the applicant's representatives over lunch time Sir and indeed before that and we have nearly reached a point of being able to speak to you Sir about a proposed amendment to the application and I can assure you it's not an addition to it in case anyone's thinking it was.

THE COURT: JUDGE NEWHOOK

Within envelopes.

MR R BRABANT:

Oh yes, but if I could just have a brief adjournment Sir for an opportunity just to finalise that and then come back and then I can tell the Court and the other parties what that change is.

THE COURT: JUDGE NEWHOOK

All right then.

MR R BRABANT:

I only need five minutes or so.

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL –
TIMETABLING**

COURT ADJOURNS: 4.27 PM

COURT RESUMES: 4.45 PM

THE COURT: JUDGE NEWHOOK

Right now Mr Brabant, do you wish to address?

MR R BRABANT:

Yes I do, thank you, Sir. So this will be quite brief and it may be that there are some issues that arise or matters that you wish to raise, Sir. So I just, I've got some notes here, Sir, that I will refer to and if you wanted me to put it in writing, I could do that too.

THE COURT: JUDGE NEWHOOK

We'll see how we go.

MR R BRABANT:

The applicant has carefully considered the evidence and the opinions put before the Court, including the recent caucusing between the transport witnesses and the evidence that we haven't completed yet and the questions and answers offered as a part of the landscape witness hot tub session. As a result of that reflection, I'm instructed to withdraw that part of the application seeking consent for a reclamation and for the purpose of certainty, Sir, because they cover the same area, the alternative deck structure as well. The application for a marina with breakwaters remains and the southern gangway would connect directly therefore to the land with a slightly longer, with a gangway. Carparking, Sir, and that's condition – oh, I've lost it now, I had it right here – 33, that clause would need to be altered consistent, for example, Sir, with your referencing, the prospect of the marina finding its parking at Oneroa Village, which I remember you saying yesterday or the day before.

THE COURT: JUDGE NEWHOOK

Just something I threw out.

MR R BRABANT:

Exactly, Sir, and we've been listening to all that, as we should. That condition would read, "A condition of consent requiring the applicant to demonstrate prior to the operation of the marina commencing to the satisfaction of the team leader, coastal consent and compliance that 55 carparks have been secured for berth holders." So the – oh, sorry, so what we're proposing instead is to obviously, Sir, look at that option and remain within obligation at this stage for that number of carparks.

THE COURT: JUDGE NEWHOOK

Yes, I couldn't help but hear your learned junior's sotto voce advice to you that the words, "prior to construction commencing," was contemplated.

MR R BRABANT:

That was what I had written, correct Sir. Well I mean I don't think, at this stage, Sir, I mean it could be, as long as the parks are available before the marina is started but it could be prior to construction, that's not the – the critical point is that the applicant is now proposing to proceed on the basis of a marina and seek its parking for the berth holders elsewhere.

THE COURT: JUDGE NEWHOOK

I have two immediate questions for you.

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

And there may be others that come to mind overnight but the first of them is, what does this do to the evidence about construction methodology that deals with land-based approaches to the high tide mark.

MR R BRABANT:

To the?

THE COURT: JUDGE NEWHOOK

To the coastal edge, what does it mean for the evidence that's been given about trucks and marina infrastructure that, to the extent of if they are to be brought by land, say, from Kennedy Point or whatever.

MR R BRABANT:

Well, or maybe by boat, Sir, so there's a construction management and a construction traffic management programme all built in to there, Sir.

THE COURT: JUDGE NEWHOOK

Mhm.

MR R BRABANT:

So the difference you have is that there would no longer be a reclamation on which you could, I guess, store things.

THE COURT: JUDGE NEWHOOK

Hence my question.

MR R BRABANT:

Yes, so –

THE COURT: JUDGE NEWHOOK

And access and turning for trucks and cranes and so on.

MR R BRABANT:

Yeah.

THE COURT: JUDGE NEWHOOK

So I'd just ask where that evidence is as a result of taking away the reclamation? It's a logical question I think.

MR R BRABANT:

Yes and I haven't, we haven't been able to because of the discussion and the nature of the discussion is that we haven't, we've considered a range of things that we thought we needed to look at, but I think that in the conditions that are there at the moment, in relation to managing construction, the essential circumstance now is that the piles and the pontoons that make up the whole structure would be brought in my sea and it would all be assembled off a barge, rather than using the reclamation. And that was certainly covered in the evidence, Sir, as a prospect.

THE COURT: JUDGE NEWHOOK

Well we were certainly aware from the evidence of a certain degree of sea access being utilised, but there was also evidence about truckloads of certain elements for the marina coming in think from Kennedy Point and other places on the island, and using the carpark as a storage area and a turn-around area and the like. So we'd need to know what was happening and I just postulate this, that the other parties, particularly the Council and probably DMI might need to reflect on this news and advise, and that might not be something that can be done in 12 hours, I don't know, as to what the response might be for instance just, I mean just one aspect of it, and I don't know there might be others, is is such a change capable of being addressed through a traffic management plan and should such issues be left to that route or should the consent authority, which is us on this occasion, hear evidence that's exchanged with the other parties. And then I suppose there's a third question and I'm not trying to be difficult, I'm just trying to think what the ramifications of all this are as to whether there is a jurisdictional issue about changes in construction methodology, as to whether that takes you outside the jurisdiction of the application that was originally lodged. I'm just thinking off the top.

MR R BRABANT:

Yes I know, paragraph 33 Sir of Mr Wardale's evidence-in-chief covers this issue, Sir, where he advised in that evidence that his recent discussions with belling and marine with Mr (inaudible 16:52:37) elicited the view that there

was sufficient barge resource in Auckland to enable some assembly of pontoons and (inaudible 16:52:42) in Auckland prior to being barged to the site and lifted straight into the water.

THE COURT: JUDGE NEWHOOK

I just invite reflection by all parties and I'm not quite sure how quickly it's fair to expect them to respond, so I leave that question open overnight and some preliminary views could be offered. It just occurs to me that counsel particularly might want to have advice from officers and/or its consultants, same for the DMI, and maybe other parties, I don't know whether there's Māori cultural issues that might be benefitted, I don't know.

MR R BRABANT:

One thing that'd probably be helpful I can imagine Sir is that we produce some revised plans. I mean not that there's anything complex, in fact removal of the reclamation structure is the obvious one and we need to show a connection to a small footing on the land, but I still think it seems reasonable Sir. And we haven't been able to find out from Mr Leman at this point what his timeframe would be for doing those. We might try and find that overnight.

THE COURT: JUDGE NEWHOOK

Well I honestly think, and I will hear from you in a moment Mr Allan, but I honestly think that it may take the other parties a bit of time. I mean you've just indicated that you might need some more time around just the access design, and the other parties I suspect are going to need more time to get their heads around jurisdiction, methodology and so on, and I rather imagine that the hearing will need to be adjourned for some period of time, I don't know quite what.

Now my second major question, I've asked one question with a number of sub-questions hanging under it, the second one is the breakwaters, I think throughout the case we've assumed that they have discretionary activity status?

MR R BRABANT:

Yes Sir, the reclamation was the only part of the application that was non-compliant.

THE COURT: JUDGE NEWHOOK

Yes, what's the definition of reclamation in the regional planning documents? Commissioner Leijnen has just been looking for it. I'll read it out. I've got it here and I'll read it into the record, it's in the regional coastal plan. "It is a permanent filling of an area previously inundated by coastal water either at or above mean high water spring mark, whether or not it is contiguous with the land so that the filled surface is raised above the natural level of mean high water springs and thus creates dry land removed from the ebb and flow of the tide. For the purposes of this plan, reclamations do not include piles, pylons, ramps, rubble mound breakwaters, filling behind seawalls, unless for the purpose of the seawall, and filling is primarily for the purpose of creating land or beach nourishment where the newly created land is still the subject of ebb and flow of the tide."

MR R BRABANT:

Yes Sir, I did remember Mr Dunn's application, Sir, and the breakwaters were in, within the definition of reclamation.

THE COURT: JUDGE NEWHOOK

Mhm, right, okay. Right, Mr Allan, you wanted to address on some tentative basis no doubt?

MR ALLAN:

Yes Sir, I'm not sure whether it helps you just on that last point as well, I see marina, the definition of marina also expressly encompasses any associated reclamations in the breakwaters.

THE COURT: JUDGE NEWHOOK

Yes.

MR ALLAN:

And it be might be worth just to draw that link to your attention.

THE COURT: JUDGE NEWHOOK

Yes, I seem to remember having looked at this some time, quite a long time ago for some other purpose.

MR ALLAN:

Yes Sir, I mean not of all the council's team of experts will be called into play on this necessarily but there are obviously a few people that we will need to talk to. For instance if one looks at **(inaudible 16:57:15)** services plan, figure 17, in the March 2013 bundle, we have water supply tanks and the wastewater storage tank and showing where the reclamation was and obviously those sorts of things would need to be worked through and we'll need to obviously talk to, yeah, **(inaudible 16:57:33)** Taylor, our man there.

THE COURT: JUDGE NEWHOOK

Which means, really that the applicant, if we grant an adjournment, is then, would then be required to prepare plans dealing with all of these sorts of things.

MR ALLAN:

I think so and then there will, unfortunately there will need to be a peer review of that work by various experts for the council and, as you've indicated, obviously DMI's people will want to have a look as well, but I can see several of the council's team being brought into play and obviously construction management in terms of traffic and so on is one that Mr Shumane will need to consider further. That's about all I can say really at this stage.

THE COURT: JUDGE NEWHOOK

Yes.

MR ALLAN:

But that will take a bit of time, I suspect, even once we've got the revised plans and some idea of exactly how it might look.

THE COURT: JUDGE NEWHOOK

Right, I'm not surprised to hear you say any of that and you're thinking off the cuff Mr Allan, no less than I was, in starting to ask questions. My proposal, subject to responses, or any tested responses from you now, is that in relation to what I think I should candidly call a bit of a bombshell, for all people, for all the parties, and the Court, be the subject of some preliminary consideration by the parties overnight. I don't think we should contemplate hearing further evidence this week because I think there are some core questions to be answered. The first of which is to, whether there is any legal opposition to the adjustment, if I can call it that, and the request for an adjournment. So I think we should reconvene in the morning to hear people's thinking which I recognise may still at that point be tentative and may still be subject to instructions being received and may even, as a wild card, be subject to the parties conferring to see if they can form any common views about any aspects of this or not. I'm not saying that the Court expects that they should, this is a very unusual turn of events. So, how about we convene in the morning at 10.00 for a conference to consider the matters that we have all been discussing. And to see whether it's possible to plot a course or to start to identify matters that will need to be further considered before a course can be plotted if that's how it has to be. (inaudible 17:01:08) views either way. Does anybody else wish to mention anything? Mr Littlejohn you've been quite silent but I'm not demanding that you respond at the moment.

MR LITTLEJOHN:

I'll discuss it with my clients and Mr Casey and be in a position to address you in the morning Sir.

THE COURT: JUDGE NEWHOOK

Mr Allan?

MR ALLAN:

I'll be talking, Ms Weder has sent me an update on her work. May I safely tell her to stand down on legal submissions on road closure issues and, what was the other issue? The supplementary evidence from Mr Blom or does, I think all that stuff is at hand. Would you like to see it anyway?

THE COURT: JUDGE NEWHOOK

Some of that might go out the door, I don't know. So, I think she can park that for the moment.

MR ALLAN:

I'll tell her to park it then. And I'll provide her with an update on what's...

THE COURT: JUDGE NEWHOOK

You have a different view Mr Brabant?

MR R BRABANT:

Well, one of the, I mean we've taken a whole raft of issues into account and one of them was unresolved issues between traffic engineers about access through the keyhole. That was all part of the picture, so obviously Sir without a reclamation or a deck we're not seeking access for cars down to that place and so –

THE COURT: JUDGE NEWHOOK

And so the information that she's to bring us might be redundant.

MR R BRABANT:

Well exactly.

MR ALLAN:

I raise it for no other reason than to save Ms Weder a late night at the office if that's what was otherwise in stall for her.

THE COURT: JUDGE NEWHOOK

I think we can certainly save the people a late night at the office Mr Allan.

MR ALLAN:

So, there was nothing more in it than that. It was just to let her know that perhaps she needn't.

THE COURT: JUDGE NEWHOOK

Without trying to be too funny about a very unusual circumstance, I think various of us might go away and have a reflect of a tippie.

MR ALLAN:

It sounds like an excellent plan Sir.

THE COURT: JUDGE NEWHOOK

I don't think there should be any late nights at the office other than to discuss in a tentative fashion what the responses might be and I will not be unduly surprised if in the morning I'm told by any of the present parties, or those who aren't with us at the moment, that further careful thought is necessary about how to proceed. Including as to whether there might be some legal issues to be dealt with before anything else happens. I just don't know. Anything else ladies and gentlemen? 10 o'clock tomorrow for a conference. No evidence tomorrow.

COURT ADJOURNS: 5.03 PM

COURT RESUMES ON FRIDAY, 24 OCTOBER 2014 AT 10.08 AM**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL –
HOUSEKEEPING****MR ALLAN:**

I think you have some documents there from Auckland Transport but they are the legal submissions and the supplementary statement of evidence of Mr Blom, (inaudible 10:09:02) so those can probably be put to one side for the meanwhile. I've jumped on the dictaphone this morning and just somewhat stream of consciousness prepared a memorandum which can just be a starting point, and I have no doubt that my friend Mr Brabant will wish to comment on aspects.

THE COURT: JUDGE NEWHOOK

Okay well subject to whether Mr Brabant wishes to give us any further advice about that which he announced last night, we could come to you next Mr Allan or Mr Casey. I don't think any of the other counsel –

MR R BRABANT:

I've had the opportunity to read what Mr Allan has very kindly and efficiently produced, and it seems to map out a sensible way forward Sir and I'm very content for him to lead off as he's very kindly done and put a procedure before the Court for consideration. So you know we can if necessary talk at a later stage, but this is some proposals of Mr Allan's that on the face of it seem the sort of thing that you do.

THE COURT: JUDGE NEWHOOK

Mr Casey, are you content for Mr Allan to lead off and then we'll hear from you? All right, Mr Allan, for the benefit of all who are present and interested I'm going to get you to read this out rather than that we sit here and quietly read it to ourselves, and I think it's of wide interest to this matter.

MR ALLAN:

Yes Sir and I will read it in full. So, "This memorandum provides some initial comments from the Council's perspective on the applicant's withdrawal of the reclamation or deck and car parking component of the marina proposal at Matiatia. From the Council's perspective there appear to be two broad aspects to the proposal requiring consideration. First legal implications, for instance whether any jurisdictional issue arises ie is it a permissible change, and how the proposal's activity status might change. Further consideration of section 99A of the RMA is likely to form part of this. It is suggested that the applicant file a memorandum addressing these matters and also outlining the key features of the revised proposal."

THE COURT: JUDGE NEWHOOK

Probably inclusive of plans, drawings.

MR ALLAN:

Yes indeed, I'm coming to that. I've put that under evidential implications but it's all bound up together Sir, I agree. "Secondly evidential implications. The applicant has indicated that revised plans will be prepared. I suggest that the plans should be accompanied by supplementary statements of evidence from relevant witnesses addressing the revised proposal. And as indicated yesterday the revised proposal would require consideration by a number of the Council's experts for instance (inaudible 10:11:41) waste water, traffic and planning.

In terms of a potential process I respectfully offer the following suggestions: (a) that the applicant file and serve a memorandum, revised plans and supplementary evidence as an initial step, (b) that counsel for other parties then file memoranda as to any jurisdictional consenting matters or areas of disagreement. It may be sensible to clarify the nature of any (inaudible 10:12:07) before other parties proceed with evidence in reply, and a judicial conference could be convened for this purpose, (c) subject to the outcome –

THE COURT: JUDGE NEWHOOK

Or even an interlocutory hearing if that were necessary.

MR ALLAN:

To actually resolve the issues with some finality, yes Sir.

THE COURT: JUDGE NEWHOOK

Yes.

MR ALLAN:

Subject to the outcome of (b) other parties could then file supplementary evidence on the revised aspects of the proposal. The order followed to date would appear to be sensible, Auckland Council and Auckland Transport, then other parties, followed by any rebuttal. And at (d) I'm just noting in passing that further caucusing may be desirable and we may need other directions from the Court as the process unfolds.

Finally, while I've not been able to obtain detailed feedback from Council experts on the practical implications of the changes, I'm able to offer the following broad observations from the Council's perspective. The reclamation was to contain a number of services associated with the marina, water supply, electricity, transformer and cables, sewage pump-out storage tank and connections and landing points for the gangways et cetera. Items that were to be houses on the reclamation or deck, sewage pump-out storage tank, transformer, rubbish and recycling including used oil receptacles et cetera will now need to be located on other land. This may require consent under the RMA and/or other legislation depending on the status of the proposed land and will require land owner approval.

There may also be issues around servicing of these facilities, in particular rubbish receptacles and the sewage pump-out storage tank will require regular access for emptying. How this is to be achieved requires consideration. There may also be site-specific construction effects that have

not been considered. Counsel for the applicant touched on the approach that might be taken to construction in the absence of a reclamation briefly yesterday. A construction management methodology will need to be considered further both in terms of the proposed use of barges and any residual need for land-based construction activity or deliveries et cetera.

The gangway landing point will need to be considered. It is understood that generally a small footing is required. However as it appears this will be onto existing land, land owner consent and possibly other related matters will need to be addressed. It would appear that a storm water consent would become unnecessary. As noted the consenting requirements generally will need to be revisited, however arising from the specific proposals and the position in relation to section 88A will also need to be addressed once again.

And finally the proposed alternative carpark I've said is also likely to require separate consent. Mr Brabant has had a quick word with me about that aspect and I'm making an assumption there and there may be other ways of cutting it that I'm not aware of, there may be an existing carpark, so that's just noting that I've we're talking about greenfields land, for lack of a better expression, and a brand new carpark there may be a need for consent for that sitting to one side. But obviously there's a bit of work to be done, I suspect, before we have certainty about those aspect and I've just noted that additional assessment from Mr Mitchell and Mr Apeldoorn of the implications or practicalities that this aspect of the proposal would be useful and that's an indication given to me by Mr Shumane.

1015

THE COURT: JUDGE NEWHOOK

All right. Thank you Mr Allan for very thoughtfully extending the discussion that we commenced to engage in last night after the announcement; that is helpful, thank you. Mr Casey.

MR CASEY:

From DMI's point of view, there are some concerns about what's proposed as you might expect and some of these have been covered in my learned friend Mr Allan's memorandum. I guess the starting point is whether what is proposed is permissible as an amendment at all. The proposal that was presented was for, if I can, for want of a better term, say onsite parking and now it's proposed to have offsite parking and we were told that the parking was an integral part of the application whereas now it seems that it's just intended to be relegated to some sort of a pre-condition without any information about where that parking will be, how it will be controlled, and how access to the marina will otherwise be achieved.

So it's clear that there, as well as the details that my learned friend Mr Allan has referred to in (a) to (f), (g) is a pretty critical part of the process, that is what are to be the offsite parking arrangements and the access arrangements following on from that. That may then of course introduce, well that I expect will introduce out of scope issues. We don't know at this stage what the potential impacts will be on other commuter parking or the take up of land that might otherwise be available for commuter parking and we don't know what different effects it will have at the keyhole or the turnaround area and so I can just signal now that there is likely to be, I can't say there will be, because we don't know the detail, likely to be a significant issue as to whether there is scope to make, well scope to change or whether it just means the whole application (inaudible 10:17:47).

There is also an issue about the ongoing status, and I'm not sure whether that's been put forward by the applicant that this will convert the status from non-complying to discretionary and in line with the argument that was presented in submission by DMI, we would say that it doesn't change the status of the proposal.

THE COURT: JUDGE NEWHOOK

It's one of the issues on which one apprehends that there may be a need for an interlocutory...

MR CASEY:

Yes, that's possibly so. I guess the only other thing is that it's sort of tempting given the other issues that are before you to invite you to put everyone out of their misery and deal with the other matters that we obviously from DMI's side say, well they're also convincing reasons why consent should be refused but there may not be a clear path through to doing it.

THE COURT: JUDGE NEWHOOK

There may not be a clear path but I am going to raise some ideas.

MR CASEY:

Yes but you'll understand that DMI, being a community organisation, is pretty concerned about this change at this point.

THE COURT: JUDGE NEWHOOK

Yes.

MR CASEY:

And while certainly there will be an application for costs further down the track, there are costs issues for the resourcing issues.

THE COURT: JUDGE NEWHOOK

Yes, well I certainly indulged in speculation in my mind as events have unfolded yesterday afternoon about the mixed emotions that your clients might feel, possibly with an initial level of excitement at having landed a fairly major blow to a past proposal but then realising that that might have other implications of a positive end or negative sort and then there's the costs aspect that you mentioned as well. So I well and truly understand how they feel and there will be mixed emotions I am sure and then there's another issue, of course, that in place of the situation in which we were due to conclude a hearing, we hoped today, and I think there was a reasonable prospect of that, they now face this further uncertainty and it will be impossible to get a final result out from the Court this year. Clearly, we might be lucky to

re-engage in a hearing on substantive issues this year in light of things that have been met by Mr Allan and I think underlined by you. And so we recognise that there will be a significant level of disappointment about some of those things.

1020

MR CASEY:

That's probably all I can say at this stage Sir, I don't see a clear path through but if there was one then that would be a lot easier for everybody than having to go through this further tortuous revisiting of matters that could have and should have been dealt with well ahead of time because the issue of the suitability of the carpark in real terms and also in policy terms has been flagged from the get go.

THE COURT: JUDGE NEWHOOK

I'm not in the slightest bit surprised to hear you raise this aspect. I flagged it, at least by implication for counsel yesterday afternoon leaving the door open to, it possibly occurring to you to make some application to us that we refuse the adjournment and complete the hearing and get on with things. You're not quite pitching it at that level?

MR CASEY:

Well without knowing more about it I'm just not in a position to do that.

THE COURT: JUDGE NEWHOOK

That's the problem isn't it? That is the problem.

MR CASEY:

And also, I have to respect the fact that this is a direct referral and the Court would be perhaps more inclined on a direct referral than on a full appeal from a first instance hearing.

THE COURT: JUDGE NEWHOOK

Another analogy when through my mind, those of you who might have seen the first and third pages of *NBR* this morning, the Environment Court's hit the front page as a courtesy of the seven leaders in the RMLA organisation. What they are saying is really positive from the point of view of the Court's work and how it conducts its business these days and it's a criticism of central government moves to boards of inquiry on fast tracking this and dividing up the work amongst various bodies so I can't help but offer the thought to those assembled that under the board of inquiry process, if this has been a matter of national importance which I guess it falls short of, but if it had come under the board of inquiry process there's absolutely no way that a board of inquiry could actually cope with the development that has landed on us because it's got nine months to do its business. It would be unable to cope. So ironically it would actually probably have to finish its process or tell an application to withdraw and start again. So there's an interesting procedural twist that will now be in your minds when you read the *NBR* article.

MR CASEY:

That might end up where this applicant sits anyway because if the proposed amendment is out of scope well then that will be where it goes.

THE COURT: JUDGE NEWHOOK

Yes but it will have the opportunity in the absence of a refusal of an adjournment to explore that avenue by means of preparing plans and engaging with the other parties and if necessary with the Court on the jurisdictional and other interlocutory issues that we've been discussing.

MR CASEY:

I think that's probably all I can assist you with.

THE COURT: JUDGE NEWHOOK

Mr Brabant, do you wish to respond to those two – sorry, Ms Wedde, you're with us. I was looking for Ms McIndoe, I'm sorry.

MS WEDDE:

That's quite all right, thank you Sir.

THE COURT: JUDGE NEWHOOK

My apologies. If you just pause for a moment. I'll make sure that my record adequately reflects your presence. Yes, what would you like to say to us?

MS WEDDE:

Just very briefly, we've read the memorandum from Mr Allan and on behalf of Auckland Transport we're comfortable with the approach that's outlined there. Auckland Transport is interested, of course, about what would be proposed for parking and any implications of that for the keyhole area and so those will be the areas that we'll be looking for further information from. But the process outlined by Mr Allan seemed sensible to us. Thank you. But just also while I'm on my feet –

1025

THE COURT: JUDGE NEWHOOK

Yes.

MS WEDDE:

– to explain some of the further paper that was put before you, we have some homework from I think Tuesday, a supplementary statement from Mr Blom and some supplementary legal submissions and we thought, seeing as the work had been done, we would file that just in case it is relevant further down the line.

THE COURT: JUDGE NEWHOOK

Yes, we discussed that briefly in your absence last night and we thought you might as well do that unless it was going to cause midnight oil to be burnt in which I was suggesting that that might not be necessary but anyway it's done and it's here, thank you.

MS WEDDE:

Okay, thank you, and just one final bit of housekeeping.

THE COURT: JUDGE NEWHOOK

Yes.

MS WEDDE:

When Mr Karndacharuk was excused earlier in the week, he was still under cross-examination rules.

THE COURT: JUDGE NEWHOOK

Yes.

MS WEDDE:

And of course I assumed that that's no longer applying but for his peace of mind if that could be confirmed.

THE COURT: JUDGE NEWHOOK

Well, no, we released him from that embargo for the purposes of the conference.

MS WEDDE:

Yes.

THE COURT: JUDGE NEWHOOK

And I've quickly read the joint statement that's come from that conference and seen that there's still some quite wide gaps. I'm going to put it to all parties that he should be released from the embargo because there are significant changes in the traffic area if we go down the track proposed by the applicant yesterday and I think it's only fair that the other transport and traffic engineers, having, being now outside an embargo, he should actually be on a level playing field with them. Does anybody disagree with that, with reasons? Mr Brabant?

MR R BRABANT:

I've got no reason to disagree with it, Sir.

THE COURT: JUDGE NEWHOOK

Yes. Yep, it's just a matter of fair process really, isn't it?

MR R BRABANT:

Well the issues surrounded his concerns over traffic passing through, going to a carpark and we've withdrawn the carpark so I don't think there's any question about it.

THE COURT: JUDGE NEWHOOK

That's the name of the game. Mr Casey?

MR CASEY:

No opposition to that, Sir.

THE COURT: JUDGE NEWHOOK

Yes, all right, he's released from the embargo. Thank you for raising that, that was very proper of you.

MS WEDDE:

Thank you Sir, that was all.

THE COURT: JUDGE NEWHOOK

Now Mr Brabant, would you like to respond to those submissions before I say any more?

MR R BRABANT:

Oh yes, Sir, I don't propose to say a great deal at this stage, Sir, because Mr Allan has taken initiative to set out a proposal as to how this could be dealt with and subject to directions from you, Sir, that seems a reasonable course. I'm going to refrain, Sir, from saying too much about what Mr Casey has said on instructions from his client, other than to say that it, if you stand back and

look at what has been proposed, which is to remove a reclamation and then follow the, if I choose a witness, the evidence of Mr Sargent, their own planner that, if there are land-based alternatives available, they should be adopted and now to say that there's some measure of disappointment, when actually the local community could say this is a positive step forward to remove a reclamation about which obviously the community had concerns, is hard to follow except that I suppose at this stage the community is not thinking about that and is thinking more about what they may be hoped and anticipated might occur and I move on from that to say, Sir, that I believe and I say this sincerely that counsel for all parties but in particular an applicant has a duty to this Court to narrow issues, to recognise evidence and make judgements and respond to it, and I think it's, with the greatest of respect, quite inappropriate to suggest that the applicant has done anything other than behave responsibly, considered everything, taken advice, aware of the outcome of the caucusing, where no progress was being made by the traffic engineers to be able to put a common position before you and say is there something sensible we can do which responds in fact to concerns people have raised. I mean obviously the marina is still on the table but this, it was always on the table.

THE COURT: JUDGE NEWHOOK

All right, now Mr Brabant you've prefaced these remarks by saying you didn't really want to lock horns with Mr Casey, but now you have.

MR R BRABANT:

Well only on that point, Sir.

THE COURT: JUDGE NEWHOOK

Can we just park all of that there.

MR R BRABANT:

Yeah, mmm, we can.

THE COURT: JUDGE NEWHOOK

The issue will probably come back in the guise foreshadowed by Mr Casey of costs issues and I think we should just park all this right here, right now.

MR R BRABANT:

Yeah, I'm happy to deal with that in due course, Sir.

THE COURT: JUDGE NEWHOOK

And move forward as efficiently as we can with the case. I recognise that there will be mixed emotions on the part of everybody, including your client.

1030

MR R BRABANT:

Yes, but I most importantly wanted to say to you Sir that I think that it's responsible to narrow issues is the Court's expectation that people do that and the next thing I'd say Sir is –

THE COURT: JUDGE NEWHOOK

I'm going to have to say something because you've continued. His comments were often as much in the context of the time at which a change was made as anything. And I'll say no more.

MR R BRABANT:

So Sir, I think some guidance as to plans would be helpful. I mean it's apparent, isn't it, that the engineering drawings by IMC would be redone and Mr Wardale's already talked to Mr Leman about that so those plans have the reclamation removed, they show a connection from the southern access pier addressing the services issues in those plans as well. And there is the question too of whether the Court would find it helpful to have the visual simulations adjusted and I would welcome advice from the Court as to whether they would find that helpful. I'd already anticipated the need to describe the changes and set out any relevant details and if it's going to be done in the way of evidence that's fine too Sir. So all of that seems fine and we just want to be –

THE COURT: JUDGE NEWHOOK

That actually does lead into something I've got on my mind.

MR R BRABANT:

We want to be helpful to everyone in terms of being able to understand the revision and the implications in terms of plans and other material and also a description.

THE COURT: JUDGE NEWHOOK

I can most certainly respond to that latter suggestion but it's actually in the context of leading into something that we want to say to the parties this morning having reflected carefully overnight and deliberated amongst ourselves about the latest turn of events. Just very briefly to answer your last question, yes we considered that there would be a need for plans, you should be illustrating by plans the change and then picking up on Mr Allan's submissions there would need, we're fairly sure of the evidence about various of the infrastructural matters, particularly that he raised and whatever it might now be proposed by way of parking provision would obviously need to be described in words and possibly by plans. We'd need to know whether that would remain, as we thought you foreshadowed, completely outside the application or whether Mr Casey's points about – Mr Brabant's point about the, and Ms Wedde's points about the implications might need to be covered off in the context of the present application.

The next point, I suppose, is as to visual manifestation. We conducted the hot tub yesterday and I suspect that not only did we learn quite a bit by having the landscape architects participate in that exercise but the parties may also have gained some, started to gain some insight into the Court's views about some things or some concerns perhaps that the Court was developing in its mind and as you proceed through one of these hearings, we pre-read all the evidence and we largely get that done before the hearing even gets underway and so we have an ability these days when we're doing that to actually start to wear our heart on our sleeves a little bit when we're questioning witnesses and questioning counsel and by the time we get pretty much to the end of the

hearing, as we almost had, and then do something like run the hot tub on some key issues with some key witnesses, the parties might be able to start to gain a feel for the Court's thinking in certain areas. And I think that's a fair thing because it still allows in, the hearing not having being concluded, it still allows a degree of response from parties, not only through the witnesses involved in the hot tub, and so that's why I did that.

Now, picking up on your point or your questions, Mr Brabant, it would obviously be a (inaudible 10:35:13) for the opportunity to be taken for a visualisation through the eyes of a person standing on the north wharf, looking north with a breadth of view out to the heads and back onto the beach, it won't now model the carpark with you will have discerned was of significant concern to us in the way that we questioned the landscape witnesses. But it would now model what will be drawn by way of an access pier from land to the marina.

1035

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

So that opportunity I consider should be taken.

MR R BRABANT:

Yes Sir. Would it be all right to do it as a photomontage rather than a full –

THE COURT: JUDGE NEWHOOK

I'll leave that to you and your experts, in particular your landscape advisor as to whether that will offer a true or a reliable simulation. I don't think I can say any more in response to that last question.

MR R BRABANT:

That's fine, thank you.

THE COURT: JUDGE NEWHOOK

Now that leads on to something else that I want to say, and at risk of throwing more controversy into the pot I'm going to outline some matters that we have talked about overnight and want to lay before the parties. I'm going to focus my suggestions in this way, that though I've indicated that the parties may have started to be able to get an insight into some of the Court's concerns particularly by the time we got to the hot tub yesterday, that from the following remarks nobody should take anything about whether we have in mind that a marina should be consented or not. But I will say this that, based on all the evidence on all the relevant key factors, we had been getting down to the point of endeavouring to work out in our minds, leaving aside the carpark which you know was troubling us greatly, as to whether we should refuse consent to a marina or grant consent to the marina as applied for, or something in between. So in the following remarks I don't want anybody to get the impression that we have it in mind that there should be a marina or should not. We have not yet got to that point. That's how difficult this case is. But I think it is fair for us to say at this late stage of the hearing that our minds have been coming more to focus, and you will have discerned this from the hot tub again yesterday I suggest, that we started to focus more on whether we would refuse a marina or consider a consent for something smaller and of a different shape within the envelope, somewhere within the envelope proposed, and that our minds had been moving away. And this is subject to them being persuaded back the other way, that is still there, but you just need, Mr Brabant –

MR R BRABANT:

I understand all of this.

THE COURT: JUDGE NEWHOOK

As is only fair I think to your client –

MR R BRABANT:

It is.

THE COURT: JUDGE NEWHOOK

– to know what our thinking is. It's focusing more on the two options of a refusal or a significantly reduced marina.

MR R BRABANT:

That's helpful Sir.

THE COURT: JUDGE NEWHOOK

And by significantly reduced I mean in terms of size and shape. Starting with the obviously, and I think it's probably common ground amongst the relevant witnesses, curved breakwaters rather than straight slabs marching across the bay. And I'm reminded that Commissioner Howie asked one of your witnesses, might have been Mr Wardale, at the early stage of the hearing as to what the design process had been and got the answer that we pretty much knew anyway, that it had been designed by the technical people and then the landscape people had been brought in. And frankly that was obviously.

1040

So if you're going to take up the invitation that I'm working up to, it would be a team effort I'd suggest again to see whether at the end of the day we would refuse a marina or grant something smaller. Now it might be that in terms of talking about something smaller, and I said significantly smaller, that – on our current thinking – that that might kill the golden goose and at that point you might be anxiously trying to work out whether you continued the application. I don't know, some very rough mental arithmetic in our minds suggests that it might not happen but we don't know and we don't have nearly sufficient information to, and it's frankly almost irrelevant expect for perhaps one part of section 5. So not all, no, that's an overstatement, almost relevant. Anyway, let's continue with the description of what might be done.

The next feature having touched on the breakwaters, my colleagues want me to just float the notion that the top of them might not be a straight line, that there might be some articulation. That's probably even more of a detail really than providing some curve to the things in the plan.

The next issue for us at this late-ish stage of the hearing is, we're aware of the attitude of Fullers but they're not a party. We have heard the evidence from some very experienced nautical people. We know what the international guidelines are for the size of ferry lanes but we've heard a lot of detailed evidence from people on the ground and with experience of ferry sized vessels and of Matiatia and we currently have a doubt, subject to being persuaded otherwise, that a marina, if one was to be consented, should stray into the ferry lane. We think it should be straightened out and follow the edge of the current ferry lane and even then, I have to say, we are anxiously considering some of the other evidence about use of the water where the marina is proposed but we think, as a minimum, that should occur.

Turning then to landscape matters, the parties will have gained some insight from the way in which I ran the hot tub to the extent and the length of the piers, the question mark over the existence of pier A, a question mark about the excavation proposed underneath pier A and a little beyond in terms of Māori cultural issues and not expressing any view about where we sit on the Māori cultural issues at this stage, that's, it's a difficult area but it's there.

This is a tricky one because the witnesses didn't really provide a lot of support for the notion of truncating the marina. The views variously seemed to be that not a lot would be achieved and that was Mr Brown's view two weeks ago and remained his view yesterday.

MR R BRABANT:

(inaudible 10:43:49).

THE COURT: JUDGE NEWHOOK

Yeah, starting from my, the simple ruler approach and he maintained that view yesterday and then others, perhaps accepting that something could be achieved in lessening visual impacts to shorten down the analysis, but also expressing some differing views. There was quite a, there was quite a disparity of view amongst them on that. From various viewpoints importantly probably views out along the southern side of the bay and as far as the seat but also views, viewpoints 4 and 5, from the historic reserve again bringing back Māori cultural issues about which the landscape witnesses very appropriately said they just didn't feel it right to get firmly engaged yesterday in viewpoint 4.

The view from the Alexander residence and perhaps therefore also other places at the southern side. So I think that probably – does that adequately describe our deliberations overnight?

1045

THE COURT: COMMISSIONER HOWIE

Yes I was trying to think of any more but I can think of any more.

MR R BRABANT:

Can I just ask, Sir, this last discussion, would that be connected to (d) which I wrote down as the length of the piers, am I understanding that right?

THE COURT: JUDGE NEWHOOK

That would undoubtedly coming into it.

MR R BRABANT:

Yes, I just, I thought that – thank you.

THE COURT: JUDGE NEWHOOK

I'm fairly sure they would be related. And it occurs to me off the cuff particularly in viewpoints 4 and 5. But maybe up on the hill on the southern

side too, I don't know. That one would be more subject to how careful the work was done I suspect in either visual simulation or the alternative approach.

Out of the hot tub yesterday we were also left to think very carefully about the interplay of different lights, daytime light on different elements, and there were questions around night lighting of course as well.

So I think that's probably enough of that. I stress again that floating with the applicant the possibility of drawing up something smaller and reshaped is not to send a signal that the Court has in mind that a compromise is in any way appropriate. I can't stress enough that the options in our minds currently subject to being persuaded back to a full noise marina by the applicant are presently somewhere between refusal and a significantly smaller and reshaped marina.

I'll throw out one other thought that we talked about about shape particularly. We can tell you that we were slightly intrigued by the simple no doubt very quickly prepared conceptual drawing of a proposal that could possibly be put in Kennedy Point. There'd been some attention paid on that to shaping that we thought was a bit interesting, it's still a pretty big marina. But even in that simple drawing there'd been some attention placed and I'd put that in contrast with the knowledge that we gained that the first design work on the Matiatia proposal was done by the engineers' technical people and proponents, and then the landscape people were brought in later. So there you are, in contrast. Something a little more interesting. In shape terms, purely in shape terms (inaudible 10:48:11).

Now, the applicant may be completely unable to respond to the suggestions that we've thrown out now. You probably want to discuss it with the team, Mr Brabant, and provide a response, but we should probably set a date by which the applicant should respond with a preliminary indication at least of drawings that it would be undertaking about the changes, that is the removal

of the carpark and the provision of a longer access gangplank, and the visual work in relation to the view from the north wharf in a broad fashion. And then also as to whether it wishes to take up the opportunity to present a concept for a smaller and reshaped marina.

I'm sorry, I need to add one thing about that too that suddenly comes to mind, we've talked about it a lot behind the scenes, and that is that we were impressed by the landscape witnesses' response in the hot tub yesterday to the fact that they really had had no opportunity to consider what a reshaped or smaller marina might look like, and they were grasping at straws to be honest. And that's why things weren't going to go very far in the hot tub other than just to set some notions in place.

MR R BRABANT:

So if it would be all right so I'd probably wrap a response up on about all of those things that you've raised and then indicate a timeframe as well Sir.

1050

THE COURT: JUDGE NEWHOOK

Yes.

MR R BRABANT:

Because there's a difference between the first section and doing something for that. Particularly with the Buildmedia removing things, it's a lot different. And doing the other work and so that would affect, I would imagine, how much time it would take –

THE COURT: JUDGE NEWHOOK

I'm sure it would affect the timeframe yes.

MR R BRABANT:

So if it would be acceptable Sir, I think the first response is probably, if it's acceptable to you to indicate whether the applicant chooses to do all of that and an indication of time.

THE COURT: JUDGE NEWHOOK

An indication of time that maybe fairly short if it's what you had anticipated doing or it might be somewhat longer if you take up the suggestion. Now, I do have to say to the other parties that in putting this slightly controversial additional material before the parties that you other parties may perceive jurisdictional issues arising, not only in what Mr Brabant has floated but also the notions that I've tossed into the pond this morning. And so we need to recognise that there may be a legal response as much as anything to all of the above Mr Brabant.

MR R BRABANT:

I understand Mr Casey said that and he's got instructions to and I think at the same time though I mean I probably need to produce something in order that they can deal with that. You need to see what the proposal is to be able to say whether you figure it's in scope.

THE COURT: JUDGE NEWHOOK

So I think you're going to have to kick it off by advising the Court and the parties what route you wish to tread. The next step, I think, will be for the other parties to respond, at least, on legal points and indicate whether for instance that s 88A issues remain. And any issues around envelope in jurisdictional terms or – putting it in terms of envelope might simplify it too much in legal terms, I don't know. But that's for them. And then after we've got through those two steps we'll probably need to keep a handle on things in conference mode, fairly close case management. Mr Littlejohn, would you do me a favour?

MR LITTLEJOHN:

Yes.

THE COURT: JUDGE NEWHOOK

Would you pop around the back and have a chat to Mr Hawkesby who has had his hands in the air and find out what it is he'd like. You may be able to convey to us. I don't want too many speakers. Mr Hawkesby –

MR HAWKESBY:

I understand Sir, this is just a brief point and I'll just deal through the proper channel thank you.

MR LITTLEJOHN:

Mr Hawkesby was just reminding me of some of the discussion at the earlier conferences on the island about this being a black and white case and I just advised him that the complexion of these things changes sometimes and they can become grey, and that's the position everyone's in at the moment. So, not to feel that the Court had made absolute statements about the blackness and the whiteness.

1055

THE COURT: JUDGE NEWHOOK

And they can also become multi-headed beasts too and I think actually we've had one of those from the start of this case and been trying to lasso the thing from time to time. Hopefully it's not too far out of the box. So without, we can't actually even set dates for a timetable together. I invite counsel for the big parties, as I've been calling them from time to time, and you obviously Mr Casey and Mr Littlejohn, in consultation with your big party to start with Mr Brabant working out what course they are going to follow and what they consider they should provide the Court and parties and a time for that. That can be advised to the Court and I'll conduct a conference at that point if we need to, but I believe it might perhaps be able to go a second step with advice perhaps from the other parties at that point on Mr Brabant's proposals and as to whether they think that time might be required for some legal processes to be undertaken, albeit that they might need to wait until Mr Brabant has provided the material before they respond and they reply.

MR CASEY:

As I understood it, Sir, there was to be a time for my learned friend to let the Court know how long he needed.

THE COURT: JUDGE NEWHOOK

Yes, that's the very first step.

MR CASEY:

Is the first step and I'm not sure whether we can get an indication of that first preliminary sort of indication of time, for how long will it take for us to have that from him so that we can then participate in a discussion about whether that's too long or not long enough because the second phase will be for him to get that information to us and then for us to determine what the response should be to that.

THE COURT: JUDGE NEWHOOK

That's right, yes, it's a two step thing. A week?

MR R BRABANT:

Yes Sir.

THE COURT: JUDGE NEWHOOK

For that very first step.

MR R BRABANT:

That's a week, Sir, that we can make a call on what you have laid on, and then at the same time, depending on what we say to you, we'll also suggest a timeframe because we've talked to our people.

THE COURT: JUDGE NEWHOOK

For the provision of the information to the Court and parties.

MR R BRABANT:

Yes, and whether it's a smaller or a bigger exercise.

THE COURT: JUDGE NEWHOOK

Yes and then the other parties can comment on that estimate or that proposal, that time proposal.

MR R BRABANT:

Yes, so if I can have, ask, Sir, for five working days because I mean today, I wasn't, you know, planning to start today and then if I could have through to five, which will...

THE COURT: JUDGE NEWHOOK

Yes, by the close of play next Friday.

MR R BRABANT:

Yes thank you, Sir.

THE COURT: JUDGE NEWHOOK

For that first –

MR CASEY:

That will be Monday.

MR R BRABANT:

Oh yeah, that will be Monday, that's what I meant, Sir. Thank you Mr Casey, I'm grateful.

THE COURT: JUDGE NEWHOOK

You don't work at the weekends Mr Casey?

MR CASEY:

No I don't.

THE COURT: JUDGE NEWHOOK

Anyway, yes, by the close of play on Friday.

MR R BRABANT:

Well I can't work the five working days out, but there's an extra day in there, so yes, thank you Sir.

THE COURT: JUDGE NEWHOOK

No, there's the other angle. Monday night, Monday week, 5.00 pm.

MR R BRABANT:

Thank you Sir.

THE COURT: JUDGE NEWHOOK

Right, and that I think is probably as much as we can do today. Thank you all for your considered participation.

COURT ADJOURNS: 10.59 AM

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