
NOTES OF EVIDENCE TAKEN BEFORE THE ENVIRONMENT COURT

**THE COURT: JUDGE NEWHOOK ADDRESSES COUNSEL –
APPEARANCES**

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MR BRABANT:

I think there is the matter of this letter from the chairperson of the Waiheke Local Board, Sir. I've raised a formal issue about that.

THE COURT: JUDGE NEWHOOK:

10 I've deliberately not actually read the letter itself, at this stage. I've seen the argument. Is that something that we should deal with first, before we get into submissions?

MR BRABANT:

15 Mr Littlejohn may have a view, Sir, but I think perhaps, yes, because he did indicate in his email to the Court that he was intending to ask questions of my witness – of other witnesses – about it. So it seemed to me, Sir, that a ruling on whether this material becomes evidence that he can question on does need to be dealt with before my witnesses are called.

THE COURT: JUDGE NEWHOOK:

20 Perhaps I'll see where Mr Littlejohn is with this at the moment. Mr Littlejohn, there's a letter apparently from Mr Walden. I've not read it, as I said a moment ago. Mr Brabant has lodged some submissions about why it is that the board, the local board, is unable to participate in proceedings like this. It didn't lodge a submission. Mr Brabant's point is that it couldn't and he is
25 saying that therefore now it is no better able to participate in this proceeding than then and that there is the further difficulty that the information is second hand, in any event.

MR LITTLEJOHN:

Well, a couple of points, Your Honour. I'm fully aware of the constraints on the local board participating in the hearing and giving any submissions. I think my friend – let's go back a step. In her supplementary brief of evidence –

5 THE COURT: JUDGE NEWHOOK

Can I ask a question first? I haven't read the letter but is the letter an expression of view by the community board or is it an expression of view by Mr Walden.

MR LITTLEJOHN:

10 It's an expression of view by neither. It is a record of information that Mr Walden has by virtue of his involvement with the local board that relates to configuration of carparks and the like and what is happening with Auckland Transport at Matiatia. It is a record of things that are within the knowledge of the board and were conveyed to Ms Gisby, as a ratepayer, following her
15 enquiries from the local board as to what it was doing in relation to the various carparking, ferry movements, buses and those sorts of things. So it is most deliberately, in my submission, a statement of fact and/or information, it is not an expression of view by Mr Walden or the local board about what they think about a marina proposal because that would be inappropriate, I accept that.
20 And, in any event, I'm not sure where it would get us, me putting someone else's view to one of Mr Brabant's witnesses. The issue arose, Sir, because Ms Gisby has, as you know, filed supplementary evidence and she refers in the last paragraphs of her evidence to changes that she was aware of that were occurring at Matiatia, that Mr Mitchell apparently hadn't picked up on and
25 they included additional bus services, changes to the 30 minute carparking configuration, issues with where tour operators now have to be relegated. All of those sorts of things. A lot of that information came from her discussions with the local board. The local board provided her with a record of the information it had provided to her and that is the information in the letter. The
30 purpose of the letter ultimately is to defeat any argument that somehow Ms Gisby doesn't have a sound foundation for the statements she put in her evidence.

THE COURT: JUDGE NEWHOOK

Well is this another angle that I'll run pass you and then I'll run past other counsel, including Ms McIndoe, who I suspect has rightly anticipated that she
5 might be needed. The information – it sounds to me from what you're saying, so the information coming from Ms Gisby is third-hand. That from Mr Walden it's second-hand and that it would only be at first-hand coming from Auckland Transport.

10 MR LITTLEJOHN:

Well I think we're one step removed. I think the information from Mr Walden is definitely first-hand in terms of the changes that he is aware of that have been discussed and agreed with Auckland Transport. Ms Gisby's is second-hand to the extent that he conveyed his knowledge of those things to her. But I
15 don't think it's a third-hand scenario here.

THE COURT: JUDGE NEWHOOK

Well it still seems to me as though it might be, because if Auckland Transport is charged with the parking and traffic circulation arrangements on Waiheke Island, in particular at Matiatia, it's the one that will be designing
20 them. It's the one that will be ordaining them. It's the one that puts up the signs and marks the road.

MR LITTLEJOHN:

I take your point. I take your point, Your Honour.

25 THE COURT: JUDGE NEWHOOK

And marks the road and even creates the carparks. And so it's first-hand. The community board, I suggest may be, while it may be a party that's consulted by AT, it's second-hand when it delivers information about those prospective changes, and Ms Gisby's third hand. Now subject to what others
30 might have to say, including Mr Brabant, wouldn't we be far better if there is a

need for us to have the information to call for it to be supplied to us by Auckland Transport and you could question that witness?

MR LITTLEJOHN:

5 Sir, that is, you've got ahead of where I was going, which is not surprising. The necessity –

THE COURT: JUDGE NEWHOOK

Well it is actually.

10 **MR LITTLEJOHN:**

– the necessity for the letter did arise in part following Auckland Transport's announcement that it no longer wished to participate in the hearing. So details that are within their knowledge, it had been assumed, are effectively not going to be before the Court.

15 **THE COURT: JUDGE NEWHOOK**

Yes. You see what I'm going to put to Ms McIndoe is that with the reorganised local government arrangements in Auckland, Auckland Transport is the kind of party that I usually consider a counsel to be, the regulatory authority; the relevant regulatory authority and one which I always consider should be prepared to offer open and objective communication and information about what it does and what it plans. And who better to get it from than Auckland Transport?

MR LITTLEJOHN:

25 If Your Honour wishes to go down that path then my client has no objection and it may be that the content of – Ms McIndoe I understand has seen the letter and I'm not certain whether she's shown it to anyone at her client, but if the information conveyed in it, but if the information conveyed in it could be confirmed or denied then – Sir, I've only done this because –

30 **THE COURT:**

Or qualified.

MR LITTLEJOHN:

Or qualified. But these are relevant issues, which the transportation organisations at Matiatia had changed remarkably since October last year.

5 And if this Court's now going to make a fully informed assessment of the proposal, then my fundamental submission is that it needs the best information.

THE COURT:

10 Well at this stage, because I haven't read the letter, I don't know if the stuff's relevant. But if it is, even in part, in a small part even, then I would have thought that the most reliable source was Auckland Transport and that anybody else further down the chain is likely, less likely to be able to offer us reliable information about it, let alone answer questions from parties or us.

15 **MR LITTLEJOHN:**

That's true, Sir. And I have no objection to that course.

THE COURT: JUDGE NEWHOOK

Ms McIndoe, I'll come to you next. You've heard what I said, no need to roll that out again, what do you think?

20 **MS MCINDOE:**

Well, it's the reason I attended –

THE COURT: JUDGE NEWHOOK

Have you a witness that has knowledge of this proposal and the material that is described in that letter who could be made available to the Court?

25 **MS MCINDOE:**

Yes, I do. I don't think that that would be Mr Karndacharuk, he's not sort of involved in the management side of it.

THE COURT: JUDGE NEWHOOK

Might be Mr Blom

MS MCINDOE:

But Mr Blom is here today and has read the letter, I've provided that to him. If it was of interest to the Court to have an update on what may or may not be
5 changing at Matiatia we would happily provide that evidence.

THE COURT: JUDGE NEWHOOK

Let's see what the other parties have to say about that but Mr Blom's probably the one?

10 **MS MCINDOE:**

Yes, he would be – unless he's shaking his head as I look over in that direction. He's just advised that he will need to have some discussions with other people but he'd be happy to provide the evidence as well.

THE COURT: JUDGE NEWHOOK

15 Mr Brabant, what's your take on what we've just been rolling around?

MR R BRABANT:

Well, Sir, the fundamental point you make is one that definitely I would respectfully support, Sir. The position with Auckland Transport and its relationship with the controller of parking and roading is the fundamental issue
20 and if, to that extent, Sir, this letter becomes – and I don't mean this wrongly – but side-lined, it's put to one side so that Auckland Transport can provide you with information it will meet my concerns, Sir, because contrary to my friend, Mr Littlejohn's proposition – and I know you haven't read the letter – but there are a series of headings, the first of which is "Decision by Auckland Transport
25 to Withdraw from the Case." The second one is "Parking Situation at Matiatia" and that's something I'm sure that Auckland Transport can help with. The third one is about buses and what could happen about buses and I agree that could assist if the Court could hear the latest position. The next one, Sir, is headed "Other Traffic and Transport Pressures at Matiatia" and it's a

description of complaints or feedback to the board and, in my view, is not in the category of information that you should receive. And the last one is about the Waiheke local board's plan for 2014 in relation to transport and – so there are some issues in there –

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THE COURT: JUDGE NEWHOOK

I'm not going to make a rule right now on that which you say is not relevant. Others might want to ask questions about that topic and other topics and then we might have to make a ruling about whether such questions are relevant but
5 it does seem to me that, by and large, listening to those headings being read out, there is evidence going both ways from your point of view and from the point of view of at least DMI, if not others as well, that makes those topics relevant.

MR R BRABANT:

10 Yes, hearing from the roading authority, if I can put it that way, Sir, in my view, is very appropriate and is an outcome that would, as I say, mean that if Mr Littlejohn is happy with it then this letter can be put to one side, it doesn't become part of the evidence and obviously I'm content about that.

THE COURT: JUDGE NEWHOOK

15 I have to say that I was a bit surprised that Auckland Transport announced that it didn't feel the need to further participate but the other parties weren't grizzling about that at the time but his fresh light appears to have been shone on it and Ms McIndoe, I think, will be seeing quite a bit more of you this week. And, indeed, I believe it would be helpful for you to be present when any of
20 the traffic and transport witnesses are being questioned and/or anybody's giving evidence, including the planners or other people who have filed evidence.

MS MCINDOE:

Just to be clear, Sir, in terms of the evidence that we've just been discussing,
25 that Auckland Transport could provide the Court I'm happy to go away and get that prepared and perhaps lodge it later today, if I could have perhaps just some clarity on the particular matters that people would like evidence on, though, just to make sure we hit the spot and don't miss anything.

THE COURT: JUDGE NEWHOOK

We'll come back to the detail of that in just a moment. Yes, it would be helpful if you were to go and work on that and it probably means that we should avoid hearing from any Transport witnesses until you've had the opportunity to meet
5 with people, brief them and be fully informed, sometime later today. Now, Mr Allan, do you have a view on any of this?

MR ALLAN:

No, Sir, I've sent a couple of emails to the Court indicating that the council would abide the Court's decision on whether to allow in that letter. But what
10 you're proposing seems sensible and I also provided some background information concerning the status of local boards and so on. I'm not sure whether that's found its way through to you.

THE COURT: JUDGE NEWHOOK

Yes, I've seen it – yes, I've seen that.

MR ALLAN:

15 Otherwise I have nothing to add, Sir.

THE COURT: JUDGE NEWHOOK

Any other views before we work on the detail of what it is that Auckland Transport will help with? Mr Littlejohn has indicated already, Ms McIndoe,
20 that the contents of the letter from Mr Walden, that I think we won't now trouble ourselves with reading, is what his client considers should be put before the Court. Mr Brabant has raised a flat about one of the topics and I've indicated to him it sounds as though we wouldn't be able to make a sensible ruling about the relevance or otherwise of that topic unless and until anybody
25 asks questions on it. So my inclination, at the moment, is that the topics, all the topics raised in that letter are the matters that DMI wishes Auckland Transport to be able to inform the Court about and for others to ask questions of AT witnesses. Now, whether that means that Mr Blom, in his managerial role as I recall it, is completely able to assist or whether you do need to have

transport, technical transport, information available to us, I don't know at this stage and you'll need to work that out.

MS MCINDOE:

And I'll talk to Mr Blom about that. There are a number of matters raised in
5 the letter which it seems might've already been covered in evidence – for
example, complaints by various people, which I think Mr Brabant referred to.
Now I could make enquiries and see if AT's aware of those complaints and
the nature of them, things like the state of the footpath and bicycle access, but
it seems to me that those are matters which really could have been addressed
10 and I think were addressed, particularly bicycle movements and things, in the
evidence in October. Are these things which you want new evidence about?

THE COURT: JUDGE NEWHOOK

I'll ask Mr Littlejohn about that. Mr Littlejohn, apparently there's some material
about complaints about the state of footpaths and about bicycle access and
15 so on. Is that really at the core of what we're here to know about?

MR LITTLEJOHN:

If we're moving into the realm of Auckland Transport being able to give
firsthand information about what's happening with carparking configuration
then that doesn't come within it.

20 **THE COURT: JUDGE NEWHOOK**

Are those sorts of things, the state of the footpaths and bicycle access and so
on at the core of what I understand your client's case to be concerns about
the operation of the keyhole?

MR LITTLEJOHN:

25 No, no, these were matters that were simply recorded in Mr Walden's letter to
Ms Gisby so to that extent, and I did hear my friend, Mr Brabant, make the
comment that much of those were things that Auckland Transport probably
wouldn't be able to assist the Court on, quite frankly.

THE COURT: JUDGE NEWHOOK

So can we put that topic aside now?

MR LITTLEJOHN:

Yes.

5 THE COURT: JUDGE NEWHOOK

He said it wasn't relevant, now that I hear a bit more about it, it doesn't sound terribly relevant to me.

MR LITTLEJOHN:

I think, Sir, in terms of the topics in the letter that are not relevant, or Auckland
10 Transport are probably not in a position to comment on, are the first topic
about Mr Walden expressing what, or the local board did or did not know
about Auckland Transport and the case, so those are the first three
paragraphs. There are comments about what's happening with the carparking
15 Transport can properly advise on. There are comments about what's
happening with the buses and what's going to be happening in the future
there, plus what has happened there since October, those are paragraphs 9
to 12. I think paragraphs 13 and 14 can stay out as can paragraph –

THE COURT: JUDGE NEWHOOK

20 What were 13 and 14 about?

MR LITTLEJOHN:

Those were the ones – the specific issues raised to the local board about
Matiatia generally, the footpaths, the bicycle ways, where tourist operators
can and can't park, complaints, that sort of stuff, the general community
25 consultation sort of stuff. So those can go out, as far as I'm concerned. 15
is not relevant and that's about what the local board may or may not be doing for
Matiatia. I would, though, request comment from Auckland Transport on para
on paragraph 16 of the letter, which is concerning what it may or may not

have budgeted for expenditure to improve traffic flows in Matiatia in the next foreseeable future.

THE COURT: JUDGE NEWHOOK

So it's traffic flows?

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MR ALLAN:

Yes. That's paragraph 16.

THE COURT: JUDGE NEWHOOK

All right. Ms McIndoe, that seems to nail it down a bit better?

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MS MCINDOE:

Yes that's much better. Sir, we're happy to provide information on as I heard car parking configuration and changes, buses and any budgeting or improvements. Budgeted expenditure.

15 **THE COURT: JUDGE NEWHOOK**

Yes. All right, well I hoped that the provision of this information, which might usefully be reduced to writing if at all possible, in a succinct way as possible, doesn't have the effect of slowing us down this week, or making it hard for us to finish the hearing in the three to four days that have been suggested.

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MS MCINDOE:

I anticipate, I'll have to talk to Mr Brabant, we'll need to make some calls, but I anticipate it will be quite short and I really don't see why it couldn't be lodged by the end of the day.

25 **THE COURT: JUDGE NEWHOOK**

Yes, we'll we're going to have to put the pressure on you, because you've elected to stand aside in circumstances where evidence was being exchanged on these topics, which should have run some flags up for your client, and it should have taken the view that it could help.

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MS MCINDOE:

We're happy to help, Sir.

THE COURT: JUDGE NEWHOOK

So you're going to have to go and turn the wheels fast and well.

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MS MCINDOE:

I'm sure we'll be able to do that, thank you.

THE COURT: JUDGE NEWHOOK

All right. Does that adequately deal with the matter from your perspective,

10 Mr Brabant?

MR BRABANT:

Yes it does, Sir.

THE COURT: JUDGE NEWHOOK

15 And yours, Mr Littlejohn?

MR LITTLEJOHN:

Yes, Sir (inaudible 10:36:51).

THE COURT: JUDGE NEWHOOK

20 Yes. And you're abiding, Mr Allan?

MR ALLAN:

Thank you.

THE COURT: JUDGE NEWHOOK

25 Right. Okay.

MR ENRIGHT:

Sir, I just have one minor –

THE COURT: JUDGE NEWHOOK

Mr Enright, sorry, I haven't involved you in this because I wasn't sure that your people were concerned with any of this.

5 **MR ENRIGHT:**

No, Sir, there's nothing, no interest from – thank you, Sir, and that's correct.

THE COURT: JUDGE NEWHOOK

Yes.

10 **MR ENRIGHT:**

Sir, just a preliminary matter, I'm expecting most likely I will present my submissions today, they're very short, but unfortunately my witness, Morehu Wilson, is unavailable today. He is available tomorrow. No party wishes to question Mr Wilson and it's simply a question as to whether the

15 Court had questions for him.

THE COURT: JUDGE NEWHOOK

I don't think that we do. We didn't discuss that briefly this morning. Yes, look we'll tell you after the morning adjournment.

20 **MR ENRIGHT:**

Yes, thank you, Sir. Thank you.

THE COURT: JUDGE NEWHOOK

I don't think there will be questions.

25 **MR ENRIGHT:**

Thank you, Sir.

THE COURT: JUDGE NEWHOOK

Any other matters of housekeeping? Okay. Mr Brabant, we should hear from you first then.

30

MR R BRABANT READS OPENING SUBMISSIONS

Just so that you know, Sir, there's a brief introduction to the revision. That's before you, and then I've addressed two specific legal issues that have been foreshadowed, Sir. "These submissions briefly... but nonetheless sensible."

5

We had previously, if I might say, Sir, looked with Mr Allan at making them (inaudible10:42:32) conditions, but when I talked to Mr Wardale about it, it was more sensible to be precautionary in case when construction happened the entire area ends up underlain by an impermeable concrete surface.

10

"The redesigned structure... of the breakwaters."

And I don't know, Sir, whether that it might be just an idea to pause and enable you to refer to those figures.

15 **THE COURT: JUDGE NEWHOOK**

Is this in the 10 July set, or the 20/10 set?

MR R BRABANT:

No, no, Sir. That 10 July set was just to correct –

20 **THE COURT: JUDGE NEWHOOK**

That's just the carpark?

MR R BRABANT:

That was just to correct the shadowing effect that had been got wrong, Sir.

25 **THE COURT: JUDGE NEWHOOK**

Yes.

MR R BRABANT:

So you look in the 22nd of May.

THE COURT: JUDGE NEWHOOK

Yes. It looks –

MR R BRABANT:

- 5 And the figure 140, where Mr Leman's draftsmen have very usefully identified the changes by showing what's been removed or changed in red.

THE COURT: JUDGE NEWHOOK

Yes.

10 **MR R BRABANT:**

And then the cross sections in figure 146 are again a useful overlay so that you can see a long section and a cross-section, the deck structure overlain on top of the reclamation. And you'll recall that the alternative deck option was the same dimension as the reclamation.

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MR BRABANT CONTINUES READING OPENING SUBMISSIONS

- "Figures 151 is... and mean low water." And Sir, in that regard, it's useful to look at a cross-section in figure 146. Now that bottom one is the reclamation section, cc overlaying with the, of the deck overlaying on the reclamation by which you can see that actually it's no higher for certainly from the engineering plans. And the previous page, 145, gives you that cross-section without the reclamation underneath it, and the point is, Sir, that that cross-section view is actually the view that you would see from the shore if you started from, where the old reclamation is and you were walking along the foreshore, that is the view you will see and you will see, Sir, that mean high water spring is marked in there and it's possible by looking at the dimensions that Mr Leman has had inserted, Sir, on 148. Sir, just turn to 148, you will see "Mean High Water". He's marked it plus 2.6 metres above chart data. He's marked "Mean Sea Level" which is the, in my submission, the most useful because it's the midpoint, and "Mean Low Water" and they're all marked there, and you can transpose those onto the cross section as well and understand exactly how much of the pile and decking will be seen above those various stages of the tide. So they're an accurate representation of
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visualisation necessarily is the best that Buildmedia could achieve. The Court has been supplied with an updated and revised set of draft consent conditions and, Sir, my associate, Jeremy Brabant, will produce those along to the registrar in a minute, Sir. And these have been prepared in consultation with
5 the Auckland Council Legal and Planning Advisors as at Friday – my understanding is, and anything in the way of detail Mr Allan has discovered from Friday that we now have an agreed set of conditions with the council and that's certainly what we've been working to achieve, Sir. So those can be handed through, Sir, and I'm not suggesting that I'm going to take you through
10 them now, but I do want to produce them and indicate that that's the position with them.

THE COURT: JUDGE NEWHOOK

Yes, well, there may be questions for various of the witnesses, particularly the planning witnesses as we go along. I noted that there were some suggestions
15 from Mr Serjeant, for instance, that some things had disappeared in the early July set.

MR BRABANT:

So what Mr Dunn had done for us, Sir, is prepare them so that the ones that have been introduced by Auckland Transport are in red, the ones that have
20 been introduced and agreed with the council are in blue, just to make it easier for you, Sir. And there's a schedule that Mr Dunn's prepared which indicates those changes that have been made so that that gives you a ready reference point to what's been done. Hopefully, Sir, we've tried to make it as easy as possible for you to observe the changes that have been made and what's
25 been introduced at the request of those two parties.

THE COURT: JUDGE NEWHOOK

So these further plans, A3 size plans, are referenced into the conditions, yes.

MR BRABANT:

That's correct. So first of all I deal with the question – Is the revised deck
30 structure a permissible alteration?

MR LITTLEJOHN:

Sir, I hesitate to stand during my friend's presentation but I've already written my submissions on this point and if it assists to get the boat faster than I can quite clearly indicate that with the abandonment of the reclamation I'm no longer going to maintain any argument that the revised carpark deck is somehow beyond the scope of the application.

THE COURT: JUDGE NEWHOOK

That will help, Mr Littlejohn.

MR BRABANT:

Well of course, it does, Sir. I mean, it will be interesting to see whether my friend's submission is the same as mine but, in any event, Sir, there's nothing in here that would take you by surprise, Sir.

THE COURT: JUDGE NEWHOOK

Perhaps you can just scoot through it pretty fast.

MR BRABANT:

I will, Sir. The touchstone for me, as I've said at the beginning, Sir, is to simply refer back to this Court's decision earlier this year and operate off the same set of tests that the Court identified previously and I've said in my paragraph 11, I've referenced paragraphs 10 and 11, and pointed out there's a reduction in scale intensity and character and there's no credible evidence from any other party of an increase in scale, intensity or character and I've also dealt with the question of whether there would be any prejudice in the sense of a party being left out because of the change and those are the ultimate tests that are important, Sir, and I've made the point, Sir, that previously Mr Littlejohn and Mr Casey, I think I should say, because they were both here then, had talked about an alternative and of course this is now moot because it's not an alternative, it's a replacement and there's another issue that I've briefly referred to in paragraph 13. So I've confirmed the question of the scope of your jurisdiction by reference, Sir, to the well – well the one that people go back to so often, which is from *Derek v Whangarei District* and I've

underlined the question of how you decide whether or not it's within or beyond scope. And then the other things, Sir, the remaining consideration I refer to in paragraph 18 is whether the amended provision means that the application becomes, in substance, a different application, and I've referenced *Blueskin* there, Sir, but the important thing to note about *Blueskin* is that was a subdivision application and, as Justice Simon France said there, the land use consents were parasitic on the subdivision for access and building platform and what the applicant tried to do in the Environment Court was to abandon the subdivision application and seek a consent to build two houses. And so the Environment Court upheld the High Court on appeal, so that's in substance something different and I'm saying that isn't the case here, Sir. So if I just read 21, Sir –

“The WML marina ... place of reclamation.” And it appears that there's no contention about that, Sir. So then the next matter I deal with, Sir, is whether a non-complying activity consent is still required and that is, Sir, raised, because Mr Serjeant maintains a proposition about that and Mr Dunn, my planner, Sir, has a different point of view as you will have read already. So I move to that point now, Sir.

“When the application ... and water plan.” However, Sir, as I've mentioned previously, the applicant has sought a stormwater discharge consent which is a controlled activity, for the reasons I explained before, Sir, as a precaution in case the construction methodology takes the impermeable area over that threshold.

“In her paragraph...of activity individually.” And I should add to that, sir, the reason that I say that by reference to Section 88(a) is the words in sub-section (b) “the type of activity (being controlled, restricted, discretionary or non-complying for which the application was made.) So in my submission the section intends that you look at each activity separately. And there are, Sir – there is a useful table in the application and AE document that sets them all out and looks at the individual activity status of each one.

“Then in 2013...a controlled activity.” The reason that happened, that that made that change, Sir, is the access lots were treated as separate lots and there was a minimum lot size. So the applicant realised that by turning its access lots into rights of way it didn’t breach the minimum lot size requirement
5 and altered the status.

“But by the... of that section.” Maybe I should add, Sir, that my research has not found a case on all fours for this one. The ones that I looked at and I used the most recent and what I thought in a way summarised things, Sir, were all
10 about an application itself being amended, rather than applications being withdrawn.

THE COURT: JUDGE NEWHOOK

All right, thank you.

15 **MR R BRABANT:**

Now, Sir, can I ask if you, do you want me to go through these amended conditions, or is it better to leave it as things unfold, Sir?

THE COURT: JUDGE NEWHOOK

I think the latter.

20

MR R BRABANT:

Yes. So, Sir, with my witnesses I understand that we will put Mr Mitchell on hold at the moment.

THE COURT: JUDGE NEWHOOK

25 Yes.

MR R BRABANT:

And then I’ve got my other witnesses that people have asked to be here, and I do just refer to the fact, Sir, that there was supplementary evidence obviously
30 lodged when the revised proposal was put in, then they’ve done rebuttal.

THE COURT: JUDGE NEWHOOK

Yes. And that's all been pre-read by us?

MR R BRABANT:

5 Yes. Have you got a preference for the order I call my witnesses at all, Sir?

THE COURT: JUDGE NEWHOOK

No. No.

MR R BRABANT:

Right. So I'll start with Mr Poynter if I may, Sir?

10 **THE COURT: JUDGE NEWHOOK**

Yes.

MR R BRABANT:

15 And, Sir, just while this is being done, I mean the rest of it, Sir, that no questions have been taken on. You will formally record that, Sir, as being taken and by agreement of all the other parties, without my witnesses being formally called?

THE COURT: JUDGE NEWHOOK

Yes, that's understood.

20

MR R BRABANT:

Yes. Thank you, Sir.

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

5 Q. Now your full name is Mark Raymond Poynter and you've previously provided the Court with your qualifications and experience in your evidence-in-chief?

A. Yes I have.

Q. And in this, for this hearing there's the supplementary evidence that you've prepared dated the 22nd of June 2015?

A. Yes.

10 Q. And then there's the rebuttal statement of evidence, let me just open that up. Oh that's right, no – he didn't do it I think.

A. Correct.

15 Q. Sorry, I was making the assumption there's a rebuttal as well, but there isn't. So that's fine. So your supplementary statement of evidence is dated the 22nd of June and can you please confirm for the Court that the contents are true and correct to the best of your knowledge?

A. Yes they are.

Q. Answer any questions please.

20 **THE COURT ADDRESSES WITNESS – PAUSE PLEASE**

(11:13:09)

CROSS-EXAMINATION: MR ALLAN – NIL

CROSS-EXAMINATION: MR LITTLEJOHN – NIL

CROSS-EXAMINATION: MR ENRIGHT – NIL

25 **CROSS-EXAMINATION: MS PARKINSON**

Q. Good morning, Mr Poynter.

A. Yes, good morning.

Q. I just wanted to take you firstly to the joint witness statement which was prepared back in 2014, which is tab 3 in the bundles.

WITNESS REFERRED TO EVIDENCE FOLDERS – JOINT WITNESS STATEMENT

A. Yes.

Q. If you could turn to page 5.

5 A. Yes.

Q. And at paragraph (h) the first sentence identifies that the primary contaminants of actual potential concern are antifouling paints, hydrocarbons and timber treatment chemicals leaching from the piles?

A. Yes.

10 Q. Are those the same primary potential sources of contamination with the revised marina proposal?

A. Yes I think they are.

Q. Now if you could turn over the page to page 7 and at –

THE COURT: JUDGE NEWHOOK

15 Just pause for a moment. I was just looking at a joint witness statement “Coastal Ecology and Antifouling”, but it’s not that? It is?

MS PARKINSON:

It is that, Sir, yes.

20 **THE COURT: JUDGE NEWHOOK**

So you were asking that previous question about the particular contaminants was in which paragraph?

MS PARKINSON:

25 Paragraph (h), Sir, page 5.

WITNESS:

Page 4.

THE COURT: JUDGE NEWHOOK

30 Yes, subparagraph (h) under the heading “Water Chemistry”. Yes I’ve found that now. And so then you are moving to page 6 are you?

CROSS-EXAMINATION CONTINUES: MS PARKINSON:

Q. Moving to page 7, Sir. Under the heading “Sediment Quality”, and paragraph (q). And in that –

5 A. Can I just catch my – I think I’ve been – I’ve got another document here, Your Honour, which was the “Joint Witness Statement – Conditions of Consent”. I’ll just flick to that paragraph. Page 7?

Q. That’s correct, page 7, paragraph (q).

A. Yes.

10 Q. And in the second sentence of that paragraph, “When the existing concentrations of copper are factored in to the NIWA modelling the adverse effects on boat and sediment within the marina may become more than minor after approximately five to 10 years.”

A. Correct.

15 Q. And that was the conclusion of the experts in that joint witness statement. Now for the revised marina NIWA have not revised the modelling of the sediment concentrations, have they?

A. No they haven’t.

Q. And have you considered the rate of accumulation for a marina with 44 fewer berths, based on that NIWA modelling?

20 A. No, not specifically. Just on general principles that fewer boats, less leaching, less accumulation.

Q. And given the period that’s referred to in paragraph (q) five to 10 years, is it possible that levels in the marina could be rising to a similar level of accumulation over a longer period for a smaller marina.

25 A. That makes sense that follows. I would note though that the NIWA modelling in respect of sediment, it was acknowledged in the model that it wasn’t good, it was not a good predictor. It was primarily a model that related to water, but it did make predictions about sediment concentrations and they were to be considered less reliable than the water predictions. But yes a longer period of accumulation would make sense.

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Q. Now at paragraph 18 of your supplementary statement you refer to your earlier evidence-in-chief where you concluded that those elevated concentrations of copper may affect or limit sensitive species. Would

those same conclusions be reached with the slower level of accumulation, smaller marina?

5 A. Yes there's always, there's always species that are sensitive to small concentrations, or low concentrations and they may well be affected in the future.

Q. Would that shift to more contaminant tolerant species be a permanent effect of the marina?

10 A. You could interpret it that way. I suspect that a greater, more correctly to put a greater proportion of the community that would be in the marina wouldn't be affected by the concentrations that are there, whether they're more pollutant-tolerant is another matter. But there is also the reality that there are some species which are particularly sensitive and they may not occur in the marina, or they may not occur anywhere else in Matiatia Bay either, for that matter. So...

15 Q. Now just turning to the third source of contamination, which is the timber piles, and the leaching of, potential leaching of CCA into the water. At the earlier hearing, or earlier proceedings the applicant advised that it was going to be sheathing the piles to resist with preventing that leaching. Is that still the proposal to have the sheathing of the timber piles?

20 A. I'm not aware of what the actual piling method and type is going to be under the revision. I would note that we did look carefully at that earlier concern around leaching of copper associated with timber structures, and by way of an illustration I guess we pointed to the fact that similarly treated timber is used and endorsed and in fact promoted by the oyster industry both here and in Australia, so rates of leaching are very low and particularly in a well, relatively well flushed environment we weren't anticipating that those would be concentrations that would be of environmental concern irrespective. So whether the piles were covered

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30 in some, some material, or whether they were just piles, from an ecologist's point of view it wasn't a particular important question.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

Q. I just wanted to understand the conditions that have now been handed up to us. Are you familiar with those now?

A. Yes I have read through them.

5 Q. Okay. And could you take me to the ones that you're relying on to address the quality of the water issues?

A. Yes. Can I, do I have a copy of those here? It will just take me a minute to scan through to pick those up.

Q. That's all right.

10 A. They primarily relate to the monitoring.

Q. Yes and that's – I had quite a lot of questions around that and I have to now try and balance this parked up copy with the latest copy, which it's very difficult to do very quickly I'm afraid. So I thought I might get you to do some of the hard work.

15 A. The first one is condition 14, which relates to monitoring of turbidity during construction.

Q. Yes.

A. And I just note on that from what I read, and I think it was Mr Reinen-Hamill's evidence, he was suggesting that a geotech style boom might be appropriately used around the breakwater construction. If that were the case turbidity would effectively not be an issue. So you're monitoring, you would effectively have contained the turbidity within a very tight footprint. So – in any event there is a requirement to do some, to prepare a monitoring plan in relation to turbidity, specifically in relation to the construction. But with the dredging dropping out, of course, that now only really relates, the turbidity side of it, relates just to the creation of the breakwaters.

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Q. Would there be – there must be some piling or some way of getting these, the support structures that aren't actually reclamation into the bed. What, would that have?

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A. I'm not sure the method of drilling, because the substrate is different. Some of it's rock, some of it's, well presumably a combination of rock and finer material. I'm not sure of the actual method. It's not normal for, in my experience for piling operations to generate significant turbidity.

Q. One of the, and I have to go back through and read these again, but one of the things that I noted in these conditions is that there isn't a baseline. So there's an assumption through the way they're crafted that some baseline monitoring will take place and then out of that will come some sort of standard and threshold that might be applied, which the monitoring will work on.

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A. Yes.

Q. Is there in the absence of that base information and on the understanding that a condition should really provide those thresholds because of a plan, a management-type plan, isn't the place for the thresholds if you like; it's the method of getting there. Are there thresholds above – is that a sort of a standard threshold above a baseline that you would be going for? Is that, or is it dependent on what the baseline is?

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A. It's dependent on a number of factors. It's, particularly in terms of water quality, you have to be careful about considering a baseline out of context. The best way in my experience anyway to look at a development like this and compare and assess water quality effect that might be occurring at the time, or even over a period of time, is to consider it in relation to, you know, nearby but presumably unaffected localities. And that represents your baseline. It doesn't have to necessarily be a temporal thing; that it's all accumulated prior to the development. You can go out over a period of time, maybe years, if necessary and document water quality chemistry close to the site and at different distances away from the site and you'll get some gradient, which ultimately reflects what the background state is and that enables you to make some comparisons to what it's like within Matiatia Bay, within a marina, taking account, of course, is that Matiatia Bay is also a developed bay and there are other influences, stormwater, other boats. So it's not a true baseline in terms of a developed site versus a pristine site. It's a developed site versus nearby areas, which are also developed but less so, and then other areas a bit further out in the harbour and maybe beyond which represents, if you like, more typical outer or mid-outer Hauraki Gulf water quality. So you have to take all of

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those factors into account. In terms of your question around what's the threshold and, you know, what is the difference that you're looking for; that is very much a function of the particular parameter and the amount of data that you are able, or you have collected. If you're looking at an acute effect, you might just look at a single result. If it's high you can relate it to some international threshold or Ansett New Zealand standards and understand the toxicology implications of that high value. If it's a chronic level it's likely to be lower and manifests itself over a longer period, so you have to take that into account and you would probably be looking for a broader dataset where you might be looking at a medium value or a range of values. So it's not a simple – I'm not sure whether I've answered your question.

Q. You have.

A. It's not a simple exercise, but it is one that always requires focus in relation to what it is you're actually trying to understand; whether it's an acute effect, a chronic effect and there are temporal and spatial elements of that.

Q. Now I think that that is, those sorts of words are used in the post-construction sort of monitoring type conditions.

A. Yes that's right.

Q. I recall those. And there's standards and there seems to be some study that's referred to as well as a reference point.

A. Yes that's right. If, if – I mean I could take you to the condition, but just from my recollection there was a lot time put into discussion by the ecologist and the water quality people around what monitoring might be appropriate here. In my opinion the monitoring is quite intensive. There is quite a lot of monitoring required and there are thresholds that if they exceed – I think the figure's 20% of an accepted guideline value, then that triggers other actions by way of more thorough investigation as to what the significance of that exceedence might be. Or is it a rare event, or is it a typical event? So there is a sort of a hierarchical approach to it, which is sensible, because monitoring is not inexpensive. So there is quite thorough monitoring in my view of what is, of this proposal, for the small size of the marina.

Q. And the bottom line of that, if we have a chronic or we have an over the threshold, what's –

5 A. Well, we have reference values. There is the Anzac New Zealand Marine and Freshwater Guidelines values which provides thresholds to different levels of protection in both the marine and freshwater environment so we can look at a whole raft of contaminants and we know that in a, as the guideline calls it, “a slightly to modified ecosystem” that particular level will protect 95% of the species. So 5% might be affected and normally for out of Gulf or this part of the Hauraki Gulf you would be looking at achieving 95% protection levels. So, if you're getting a departure from that level of protection then you would be looking at sort of amping up your monitoring to understand what's the spacial significance of that exceedence, is it just in the marina, and we would expect there to be some exceedences within the marina, perhaps. But, over time and the evidence from NIWA modelling and other studies that have been done within the Auckland area is that as soon as you get outside of a marina environment you get back to what you might refer to as “background levels” very, very quickly. So you have got an effect within and around the immediate marina.

20 Q. I mightn't have asked that last question quite correctly. Assuming exceedence, what happens – do we just do monitoring or is there some outcomes, there's some action?

25 A. Well there's limited things that you can do, that's the practicality of it. The exercise, I guess, is to have designed the marina with those sorts of considerations in mind, and make sure that it's sufficiently, in this case, open, porous, that the flushing is good and when you take the actual number of boats in it, et cetera, and you look at the NIWA predictions, using the model the effects were predicted to be minor in terms of water quality. So that would require a significant departure from that prediction to go from that level to a level that might concern you. Now that's different to the sediments where you do expect, though, the time to be – to witness an elevation relative to what's there now. And then it probably will tailor off, it'll just – it reaches some sort of dynamic and it doesn't just keep increasing indefinitely, it ends up with a threshold.

But, again, that's material that's locked into the sediments, it's generally not in available form, you're not dredging it, you're not removing it, so it's an indicator that you have a slightly modified environment, it's not an indicator that there's an environmental disaster around the corner.

5 Q. No and obviously you're very comfortable about the techniques and the design of the facility so I'm sort of suggesting worst case scenario and I think what you're suggesting is that perhaps, should the monitoring show a problem, that's perhaps when you're looking at a review of a review condition, or something, where there's something that you need to alter somewhere?

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A. Yes. I recollect that there was quite a bit of discussion around the use of copper in the actual paint used on the boats and there was some innovative ideas around ensuring that the people that have the boats in that marina are using the best practice and applying the most sensible paints as technology evolves, because it is evolving – I mean, the risks associated with boats and antifouling and copper and heavy metals – I mean, these things are right at the forefront of paint companies' views and they are developing applications all the time that are improved and the pressure is on them to do that and this is a case in point. So there are opportunities to reduce that risk again and I think there is something in the marina rules and things around that.

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Q. Just going back to something you said right at the beginning, which was the use of the boom would ensure that there wasn't a problem. I think in the draft I read there was some scope for whether they use a boom or not?

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A. Yes.

Q. Would your recommendation be that they're certain to use a boom?

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A. Well, I think it depends – having a boom available and able to be deployed would be the first thing because it depends on what sort of levels of debility you actually experience once you get started. It may well be that the rock material that comes in is relatively clean and when it's dropped there's a little bit of discolouration, whether it warrants a deployment and management of a boom is another matter but my experience in some quite muddy environments is that they are certainly

effective but they also require some management with vessels having to access within working zones and things like that and you have a – just another structure that's there. But a conservative view, yes – if it's there it's probably going to do the job and you won't have a problem.

5 RE-EXAMINATION: MR BRABANT – NIL

QUESTIONS FROM THE COURT – NIL

WITNESS EXCUSED

THE COURT: JUDGE NEWHOOK

- 5 Q. Mr Brabant, we'll take the break in a moment, but I've got a couple of things that I need to run past you as a result of answers given by this witness. First, he exhibited some uncertainty about whether it was still proposed to sleeve the piles or whether they might have reverted to straight timber. I remember, from the first hearing, that there was quite some discussion about this and it actually became a visual issue with questions about comparative effect on the visual environment of timber piles versus black-sleeved polyethylene sheathing. Are you able to tell us what is currently proposed – has there been a change or is it still black polyethylene sheathing?
- 10
- A. Sir, the sensible thing for me to do is to have a discussion with WML representative, Sir, and give you that advice after the adjournment because I don't want to say something and find that there's been some change of position.
- 15
- Q. Well you can do that – that's why I'm raising it before we adjourn. So you take those instructions and when you come back you should then, hopefully, be able to answer a subsidiary question as to whether that feature is covered in the latest iteration of draft conditions for consent and I'm putting that before you because we read evidence in the last little while, last few days, of conditions coming and going – not just arriving, not just more conditions, but things disappearing in comparison to earlier iterations and I have not gone in with a fine toothed comb, I've only looked at the previous – well the penultimate set and I certainly haven't done anything more than open this newest set out and look quickly at conditions 15 and 16 on the issue of anti-fouling paints. Now that's my second question that you should take instructions on during the break. Is there provision in the latest iteration of the conditions of consent for the marina operator to direct boat owners as to the types of antifouling paint that they can use if the science continues to advance and if there are less toxic paints available in future. There was some anything about this last time as to whether it was possible to control this through conditions of consent and I don't remember the precise
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answers, as I sit here, but I do recall having a feeling of unease about the possibility – I think – emanating from you that it wasn't possible to direct the boat owners in that way.

5 A. I do remember you feeling that, Sir, and we moved on from that point under your tutelage, Sir, and –

Q. Under my guidance was it?

10 A. Yes, it was. And if you go to condition 36, Sir, which you'll see has got a few little additions, but they are to do with parking access, and if you look there, Sir, those marina rules include (c) and so that is an inclusion in the rules and it first of all prohibits – you may recall this has been an evolving picture at the last hearing, Sir. First of all it prohibits Diuron, secondly, it requires the low impact antifouling, and that emerged, Sir, out of the evidence of the council's witness who was engaged by the Auckland Council to focus on that and we adopted his position on that, 15 Sir, and then we added in (iii) and (iv) as well. So those provisions are in there, Sir, and they emerged as an agreed position, my understanding is, with Mr Allen's clients, Sir, before we left the last hearing.

Q. It's all coming back and –

20 A. And I'll –

Q. My guess is that we might hear some more by way of submissions from at least one of the other parties on that score but we'll see what brews.

A. Yes, Sir, thank you. And I'll come back to you on the other matters, Sir.

COURT ADJOURNS: 11.40 AM

25

COURT RESUMES: 12.02 PM

THE COURT: JUDGE NEWHOOK

Q. Help me with that question?

5 A. My instructions are Sir that the options for piles across the total proposed construction are concrete, steel or timber. If they are steel or timber, they will be sleeved in this high density (inaudible 12:03:16) I think it's called, as you've already –

Q. It's called what?

A. It's that (inaudible 12:03:21).

10 Q. It's a black polyurethane or something isn't it?

A. Yes that's it Sir, yes as you've seen I think at Whakatakataka.

Q. Yes.

A. And Sir there isn't –

Q. And is that reflected in the conditions as drafted?

15 A. Well that's my next – I've reviewed it. There isn't actually a condition at the moment but a simple condition could be added, and one is offered Sir.

THE COURT: JUDGE NEWHOOK

Right now, we don't need Mr Wilson for questioning Mr Enright.

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MR ENRIGHT:

Thank you Sir, very good.

THE COURT: JUDGE NEWHOOK

Mr Allan you've something?

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MR ALLAN:

30 While we're on that sort of topic Mr Reinen-Hamill is the one witness who I don't have in Court. He's on standby. I'm not sure whether you've had a chance to talk about whether you might have questions for him. I'm happy to call him in but I just wanted to flag that up.

THE COURT: JUDGE NEWHOOK

We'll review that at lunch-time.

MR ALLAN:

5 Thank you sir.

MR R BRABANT CALLS**ROBERT JAMES PRYOR (SWORN)**

Q. Your full name is Robert James Pryor and your qualifications and experience are set out in your evidence-in-chief dated 29 April 2014?

5 A. That's correct.

Q. For this hearing you've completed a supplementary statement of evidence, dated the 22nd of June 2015 and a supplementary rebuttal statement of evidence, dated the 13th of July 2015?

A. Yes I have.

10 Q. And can you please confirm for the Court that to the best of your knowledge and belief the contents of those are true and correct?

A. Yes they are.

Q. Are there any changes you need to make?

A. No there aren't.

15 Q. Can you answer any questions please?

CROSS-EXAMINATION: MR ALLAN – NIL**CROSS-EXAMINATION: MS PARKINSON – NIL****CROSS-EXAMINATION: MR ENRIGHT – NIL****CROSS-EXAMINATION: MR LITTLEJOHN**

20 Q. Good afternoon, Mr Pryor. Just a few matters mostly of clarification. Now I want to just talk to you a little bit about this Buildmedia shadowing issue and we've read the statement of evidence there and that provides a bit of an explanation as to the Black Magic that is photoshopped, and how there was certain filters that were turned the wrong way. Can I just
25 ask you though to have a look at the July 2015 revised visual simulations, and if you can go there to figure 177?

A. Sorry, which viewpoint's this? I haven't got the –

Q. You don't have the bundle with the numbers in the bottom corner? Sorry, these are the – have you got those Mr Pryor.

30 A. Figure 177?

THE COURT: JUDGE NEWHOOK

Q. Viewpoint 03, figure 177.

A. Yes.

5 Q. Low tide, viewpoint 3.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

10 Q. Now I just want to see whether you agree. If you look at the existing view and I'm really just – I know it's a bit difficult at this scale and there are some others that are a bit closer up that we'll turn to next, but the shadowing that is exhibited under the existing wharf structures; if you have a look at that in the existing view. And then you have a look at it and compare it with the shadowing that is shown under the proposed carpark deck, do you agree that the existing shadowing is slightly darker than the shadowing that's shown under the proposed deck?

15 A. I'd have to say it's a little bit difficult to see in this light. It may have been, it may appear to be slightly, slightly lighter.

20 Q. And if you go to figure 180, this different view; it's viewpoint 5 there, and you do the same exercise, comparative exercise again, do you accept that the shading that's shown in the existing scenario is darker than the shading that's shown in relation to the proposed carpark deck?

A. From that distance the old wharf looks darker.

Q. Yes.

A. It may do, it may have something to do with it being further away and the angle that the sun is shining on it.

25 Q. All right. But you can't immediately explain that anomaly, can you?

A. No I can't, as I didn't prepare the visual simulations.

Q. Would you accept that the darkness of the shadow under a structure influences the impression that one gains of that structure in the landscape?

30 1210

A. You're referring to the darkness under the deck as opposed to a reflection?

Q. No, no, I'm just – I'll repeat the question. The extent of – well, the darkness of the shadowing under coastal structures, just focus on this, can have an effect on the overall visual impact or impression that the structure has in the environment, on the landscape, do you accept that?

5 A. Yes, I would agree with that.

Q. And so would you accept that by having the shading shown as less dark it would tend to make the structure look more lightweight, less dominant?

10 A. I think it would depend on the level of contrast and the viewing angle and elevation that it was seen at.

Q. Your supplementary – not your rebuttal, your primary brief, I'm just looking about paragraph 19 of that – sorry, your rebuttal, I led you astray. Paragraph 19 of your supplementary rebuttal – have you got that there?

15 A. That's on page 5?

Q. Yes, that's right. Now you are, here, responding to a criticism from Ms Gilbert around your use of viewpoint 3 and her criticism that more updated visual simulations were not done from the original viewpoint 2, do you recall this part of her evidence and your response?

20 A. Yes, I do.

Q. Now the difference between the two viewpoints is that viewpoint 3, and if we go to – which is the best one – let's go back to the revised, the thinner folio, the July update and that's figure 176 which is the high tide and 177, which is the low tide. That is a view from a private property, is that right?

25

A. That's correct.

Q. Whereas viewpoint 2 which was not produced in the more recent visual simulations and I'm going to ask you to pull something else up, sorry – if you go to the October 2014 additional figures –

30 **THE COURT: JUDGE NEWHOOK**

That's one I haven't got. Now these figures accompanied which stage of –

MR LITTLEJOHN:

The first hearing, Your Honour.

THE COURT: JUDGE NEWHOOK

5 These came at that hearing?

MR LITTLEJOHN:

Yes.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

10 Q. And I'm referring here to – and these were the ones that unfortunately were not page-numbered. The March 2013 ones were but these weren't. So if I could just you to go to viewpoint 2 there – have you got viewpoint 2 there?

A. Yes.

15 Q. And either the low tide or the high tide – for the purposes of the question it doesn't matter. But that viewpoint 2 was the view from the public coastal walkway to Owhanake Bay, is that right?

A. That's correct.

20 Q. Now Ms Gilbert's – criticism might be too strong a word – but concern was that in not modelling or creating another visual simulation for viewpoint 2 and in choosing viewpoint 3 the full depiction, or extent, of the marina in the bay has been downplayed. Do you accept that?

25 A. No I don't. The reason why we selected viewpoint 3 over viewpoint 2 was because it was from a much closer proximity and although it was from a private viewing location similar views, although slightly lower down, can actually be achieved from that walkway, as you come towards Matiatia. We discounted viewpoint 2 being much further away and also the fact that it would also encompass the Matiatia gateway land unit future development. So we considered it was more useful showing a much closer-up view of the marina than a more distant one.

- Q. But you accept – or do you accept – that in the more distant one the angle of the view and the extent of the visible view of the bay is larger, isn't it?
- A. The extent is larger for the mid to outer part of the bay but when you compare the two, viewpoint 2 and viewpoint 3, you're actually seeing quite a lot of the bay in viewpoint 3.
- Q. But you're seeing more of it in viewpoint 2, aren't you?
- A. More of the overall bay, yes.
- Q. You can put that to one side, I don't need to refer to that anymore. I'll take you back to the July revised folios – let me actually just see if you've done these. Actually, I'll need you to go to the May ones because I want to talk to you about viewpoints 8 and 9 and only 9 has been redone in the July revisions, is that as I understand it? So I'm at the May bundle of figures and I want to talk to you about figure viewpoint 8 and 9. If I could get you up there, there's four sheets of all these figures 165, 66, 167 and 168. Are we all there?
- A. I think so, yes.
- Q. So we're in the May 2015 revision 2 figures 165, 166, 167 and 168, okay?
- A. Yep.
- Q. Now in viewpoint 8 and viewpoint 9 the modellers have chosen two 90 degree frames, haven't they?
- A. That's correct.
- 1220
- Q. And the effect of that technique is that the full impression of the marina from the old wharf is split into two separate views, isn't it?
- A. Yes my understanding of that is to get the entire marina in one view would have required a very panoramic and stretched out image.
- Q. Mmm.
- A. Which is my understanding of why they did them in two.
- Q. Wider than 124 degrees?
- A. I couldn't tell you that.
- Q. Because a number of the other visual simulations have used 124 degree field of view, haven't they, angle of view?

THE COURT: JUDGE NEWHOOK

Give him an example, Mr Littlejohn, or give us an example, and the witness.

MR LITTLEJOHN:

5 For example, 172.

THE COURT: JUDGE NEWHOOK

In which set, in the main set?

10 **MR LITTLEJOHN:**

The one that you've got there, Sir, 172, 124 degrees horizontal. Viewpoint 4, viewpoint 5,

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

15 Q. So are you able, well did you provide any advice to Buildmedia as to the angle of view chosen here, or was this simply a decision they made?

A. We didn't provide advice to them. Just from your question before looking at figure 141, to get the entire marina covered to the extent that those two simulations did, would require approximately 180 degree horizontal, which would totally distort the image. It's even my
20 understanding is that 124 is the big widest extent that you can go.

Q. Well accepting technical limitations of camera angle, do you accept that in using two separate photos and considering the visual effects arising from each of them, that you have effectively diminished the overall effect that would be observed when someone's standing, or again, worry,
25 when someone's standing on the old wharf?

A. The only way that could occur would be someone standing on the wharf and actually swivelling their head around.

Q. Is that unheard of, Mr Pryor?

A. From that one – no it's not. Despite the viewpoints 8 and 9 having been
30 split into two my assessment has undertaken, taken into consideration the overall view from that old wharf.

- Q. Thank you for confirming that. Your overall view has changed as I understand it and you can correct me if I have misread the transcript. I understood that your visual effects ranking of the view from the old wharf was previously moderate-high, whereas your rating now appears to be moderate. Is that right?
- 5 A. Sorry just take me to the reference for that, which comparison are you?
- Q. I don't have your original evidence here. The reference is in the transcript, but let me ask the question a different way. Has your ranking, not ranking, your description of the visual effects of the marina from the location of the old wharf changed from the ranking you gave it in October 2014 to something less now at this hearing?
- 10 1225
- A. Yes that's correct due to the reduced size of the marina and the parking deck.
- 15 Q. By reference to viewpoints 8 and 9, can you point out how the reduced footprint of the marina appears from those viewpoints?
- A. (no audible answer 12:25:56)
- Q. How does one know that the marina has been reduced?
- A. So – sorry in terms of those bundles that we're looking at?
- 20 Q. Mhm?
- A. Can you take me to the dates we're comparing?
- Q. I'm asking you what in those views has changed that has provoked your change of visual effects assessment from moderate-high to moderate?
- A. (no audible answer 12:26:46)
- 25 Q. The reason I ask Mr Pryor is that from this particular location the marina hasn't shifted to any great extent and the immediate vision is of the piers as they previously were. I accept that the carpark deck is now dominant or replacing the reclamation but isn't it the case that for a person standing in this location that the difference between the two proposals is marginal, if any at all. Do you accept that?
- 30 A. No, I don't, because the – there's a combination of factors – the lengths of the piers themselves being reduced, the breakwaters have been curved, we see more of an expansive open water beyond the piers and we also have the architecturally designed marina office.

Q. And it is these wonderful new beaches that have arisen from October 2014 that, in your view, reduced the visual effect of the marina from that location?

5 A. Yes, that's correct. Also, just the reduced number of boats and masts have reduced the visual impact of it.

Q. Now you say – I'm just moving onto another topic now – you say, in your supplementary evidence, that – at paragraph 3 – that since October 2014 you've undertaken further visits to the site and surrounds, most recently on the 14th of June 2015. Were you present with the people from Buildmedia when they visited the site for the purposes of additional photography – to build these simulations?

10 A. No, I wasn't, no.

Q. Now the visual simulations were produced in and circulated in May this year, did you take them with you when you went to the island on the 14th of June 2015?

15 A. Yes, I did.

Q. And did you visit each of the viewpoint simulations with the material?

A. Yes, as I had previously.

Q. And did you endeavour to check the accuracy of their simulations by holding them at the distance recommended by the producers of them?

20 A. No, I didn't.

Q. So the assessment work you have undertaken by reference to these simulations is reliant on their accuracy by that technique, is that right?

25 A. As we've – we're all aware, the visual simulations are just one tool for undertaking an assessment, certainly the Court is well aware of the shortcomings of visual simulations, they are just one tool to assist in assessing the visual impact of proposal.

Q. But you haven't personally checked their accuracy in respect of the actual view by holding them up at 150 mm and looking at them with the view there?

30 A. No, I didn't on that day.

Q. Mr Dunn, in his rebuttal supplementary evidence – I don't need to take you there, I'll just tell you what he says that you said. At paragraph 30 of his evidence he is responding to Mr Brown's evidence for the council

in relation to the new carpark deck and I understand you would've obviously read Mr Brown's evidence and the like – now Mr Dunn responds to that and says that you have set out, in your rebuttal evidence, the reason why you prefer the finger-type design that has the appearance of a wharf and achieves separation from the shoreline. Now I scanned your evidence and it may have been too late at night but I couldn't find any aspect of evidence where you set out reasons why you preferred this location and style of carpark deck versus one that perhaps Mr Brown might've preferred. Are you able to take me there? It may be there, Mr Pryor, but I couldn't find any discrete reasons as to why you thought it was a better outcome than not?

A. I think there are sort of locations throughout the evidence but I mean, the main – and a lot of the design responses have been in relation to concerns raised at the original hearing. I think the key aspect of that parking deck is its reduction in size by 60 percent over the earlier one and just its form and scale and the visual attributes of it to make it more look like the existing walls that are at the head of the bay. There have been quite a number of designed initiatives that have gone into that parking deck to reduce its vision impacts and make it tie in with the suite of wharves that are there. There was also concern at the proximity of the previous one to the foreshore. So by pulling it out from the foreshore we do have that separation and to me it looks more a wharf rather than a timber structure attached to the foreshore.

Q. So if I understand you right you're saying it is as proposed as a response to issues rather than being specifically designed like that?

A. I'd say it's a combination of both. There were certainly some issues raised at the original hearing which were taken into consideration in arriving at this design.

Q. Finally, Mr Pryor, you again maintained the view in your criticism of Ms Gilbert that, in your opinion, she's failed to properly appreciate the future of Matiatia Bay developed in accordance with these District Plan provisions, is that how I understand your criticism?

A. That's correct, yes.

Q. It remains the case that the District Plan does not permit those forms of development to simply occur on the land, though, does it?

A. That's my understanding.

Q. Are you aware of any current proposals by anyone to implement those
5 District Plan provisions by redevelopment of new buildings at Matiatia?

A. I'm not aware of any current plans for that.

CROSS-EXAMINATION: COMMISSIONER HOWIE

Q. I struggle with this landscape evaluation material, Mr Pryor, and can I
10 take you to the visual matrix of your – as an appendix 2 – to your original evidence.

A. So that's dated 29th of April?

Q. The appendix is appendix RP2, Visual Effects Matrix and it's right at the end of your statement.

THE COURT: JUDGE NEWHOOK

15 Yes, I think it's that 29th of April one. Very last sheet.

CROSS-EXAMINATION CONTINUES: COMMISSIONER HOWIE

A. Yes, Sir.

Q. And what took me back to there was your most recent viewpoints in the examination just now of viewpoints 8 and 9 from the old wharf, looking
20 across the bay in the first instance without the marina and the second instance with the marina and to anybody looking at those two photographs there's a bit change?

A. Yes, there is, looking at those two photographs, yes.

Q. But that, to me, didn't correspond to necessarily a big adverse effect – in
25 your view?

A. No, the visibility of a proposal and the extent of visibility of that proposal doesn't necessarily mean that it's an adverse visual effect. One has to take into consideration a number of factors, particularly including the current environment that is there and in this case the viewpoints from
30 the wharf, here we are standing on the end of what is effectively a commercial wharf, if we pan the view to the right we then have the ferry

terminal so it's not solely a matter if something is highly visible then that equates to it having high adverse visual effects. So it may be highly visible but in consideration of the surrounding environment in the context within it, within which it is in, it does not necessarily have an adverse visual effect.

5

1240

Q. Yes and if you go to the – your appendix that I referred you to, to the first paragraph, it talks about using the matrix as a way of evaluating that sort of thing in which the various facets of visual change, qualitative change, visual contrast et cetera, can be pulled together in a way which gives the due weight. And then it goes on and says, “This matrix was designed to measure the scale of no or low visual effect.” So it seems to interchange the word “change” with the word “effect” and that's what confuses me?

10

A. So what it's saying there is that the matrix measures the scale of effects from that low right through to high visual effects so it's that five point scale of effects that we have used.

15

Q. So can you have a major change with a low adverse effect?

A. Yes, you can. And I think that second paragraph there sort of explains it further when it says the first stage looks at the sensitivity of the view and the site and the sensitivity of that present view to change and it's that part of the assessment where you look at what is within that existing environment and what impacts in this case will a new marina have on that existing coastal environment and the transport hub.

20

Q. So are you saying that a marina in this bay where there's a wharf and commercial marine traffic, the sensitivity of that site is less than a bay that has no other development in it?

25

A. Yes, considerably. And that's when we looked at the nine or so alternatives for the marina and probably the closest example is Opunake Bay and when I saw that I just effectively ruled that completely out because there's lack of development there, apart from residential development that Opunake Bay, in my view, was very high in natural character attributes. Whereas Matiatia we have got this transport hub and a lot going on there which reduces its sensitivity to change.

30

CROSS-EXAMINATION: COMMISSIONER LEIJNEN

- Q. Just in relation to, yes, your supplementary statement, where you're looking at the views from the old wharf. And I'm interested in some of those contextual comments that you make in paragraphs – particularly
- 5 48 – where you're saying “not visible in the photograph is the ferry terminal and the wharf.” And then, in 49, you refer to the piles and piers – I'm assuming there's some context of the pile – there's something you say and I can't quite find it – “The piles and the piers of the old wharf” – so that's a context for the setting of this view. But aren't those things
- 10 behind the view – is that not like saying if you're standing on the – on a – right beside the ferry terminal in Auckland that the context for the view is the city behind, isn't the view the one that you're looking to, not the one you're behind?
- A. I think because of the contained nature of Matiatia Bay, when you're
- 15 standing on that wharf you are taking everything into your view, particularly with the – if I can just refer to this figure 142 of the 22nd of May – and then when you're standing on the wharf, the old wharf, figure 142, it's the marina concept plan aerial overlay – the reality is the ferry terminal wharf is almost as close a proximity to you as the proposed
- 20 marina walkway so views towards – unless you're looking, for example, in viewpoint 9, obviously the – it would be harder to pick up the existing ferry terminal and the infrastructure in that one. But certainly with viewpoint 8 you'd be very much aware of the existing ferry terminal and the wharves.
- 25 Q. Is that because you're angled out more?
- A. Yes and its proximity.
- Q. So it's in your peripheral vision?
- A. Peripheral, yes.'

QUESTIONS FROM THE COURT:

- 30 Q. Mr Pryor, I want you to get the latest set of visuals, the July set and go to figure 182.
- A. Viewpoint 9?

- Q. Viewpoint 9 again. Now I want to ask you a question about the proposed deck as shown in the lower visual simulation because, in paragraph 54 of your evidence you have a lot of discussion where you have a discussion of the structure itself, you're talking about parking deck, piles and the like, and in other parts of that section you're talking about the structure but you don't actually really refer to a collection of cars sitting on the deck, and what that might look like from the old wharf. If you look at your figure 182 – and I might say that in contrast to your comparative silence about the visual effect of cars on the deck Ms Gilbert and Mr Scott have brought those into their assessments. Now you may tell me that I've missed something in your evidence and I give you that opportunity – in fact, let's do that first before we look at the visuals. Have I missed something in your statement of evidence about a discussion of the visual impact of cars on the deck?
- 5
- 10
- 15 A. Sir, I haven't specifically made a lot of mention for them.
- Q. Or any?
- A. I've referred to vehicles on both the existing wharves – no, I haven't specifically.
- Q. You haven't actually mentioned cars on the proposed deck at all, have you?
- 20
- A. Not for this one, no.
- Q. Well let's turn to figure 182 then and look at the visual simulation. Why does the simulation only show cars on perhaps the most distant half of the deck from the viewer – any reason or were you not involved in the preparation of this simulation?
- 25
- 1250
- A. No, Sir, I didn't instruct Buildmedia as to which side the vehicles were –
- Q. Again, Buildmedia prepared simulations without, in fact, input from you?
- A. We had advised them on the design materials and everything and provided them with the pallet of materials.
- 30
- Q. So you didn't talk to them about cars, all right. How high is that balustrade around the deck, please?
- A. Sir, it's my understanding that it's 1.4 metres high.

- Q. Is that shown in any of the visual materials to show up in a section, a cross section – I'm not sure that I've actually picked up a dimension on the cross sections. If you're not sufficiently familiar with the cross sections just say so?
- 5 A. Sir, I think 145 indicatively shows –
- Q. Where do we find that?
- A. Sorry Sir, this is in the May 2015 figure 145, parking deck cross section.
- Q. Well, help me some more, whereabouts on 145 is that dimension shown?
- 10 A. The dimension is – it's not actually a dimension but it's indicated with just a single line that there is a balustrade running along.
- Q. There's just a balustrade drawn in lines and there's no dimension provided?
- A. No, Sir, not on these.
- 15 Q. Have you got a scale rule there – would you like to check the dimension from the cross section – are we given a scale?
- A. Sir, these ones –
- Q. No? I'm not even sure we're given a scale. Oh yes, 1 to 250. All right, have you got a scale rule there, Mr Pryor?
- 20 A. Yes, I have, Sir. Those ones are shown at 1 but certainly in our discussions with Buildmedia I was referring to 1.4 which is the standard balustrade height. Buildmedia also sort of modelling it off the existing ones around the ferry terminal but the images that we provided them make it clear that we didn't –
- 25 Q. So was your answer to me then that the balustrade on figure 145 scales at 1 metre high?
- A. That's what it reads, Sir, from those sections.
- Q. With the scale rule. Well, let's go back to the July bundle, to figure 182. You can't tell us what height of balustrade has been depicted there, can you?
- 30 A. Sir, as I've mentioned, there had always been reference to 1.4 metres in height.
- Q. What's the height of an average car, Mr Pryor?

A. Off the top of my head, it will obviously vary considerably, but maybe between 1.4 upwards.

Q. At lunchtime just go and measure a few cars in the street will you? Take a reasonable selection and be able to give us the information after lunch.

5

A. Yes, Sir.

Q. And then I'll continue to ask you my questions about figure 182 then. Commissioner Leijnen advises me that she does have another question for you so we'll get her to put that to you now.

10 **FURTHER CROSS-EXAMINATION: COMMISSIONER LEIJNEN**

Q. Just one I forgot to ask you. There's structures, I believe, that go beneath the deck tanks and paraphernalia to connect stormwater and so forth. Are those modelled in the visual simulation?

A. I wouldn't be sure, sorry.

15 **COURT ADJOURNS: 12.56 PM**

COURT RESUMES: 2.17 PM**THE COURT: JUDGE NEWHOOK**

You do not need to question Mr Reinen-Hamill, Mr Allan.

5

MR ALLAN:

Thank you for that indication, Sir.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

10 Q. Now, Mr Pryor, what's the range of heights of your self-respecting car in the surrounding streets?

A. Sir, I was able to measure a number of vehicles and they range from 1.2 for a Ferrari, through to Sedans, typically 1.4, 1.5, and the big four wheel drive to Alda Prado at 1.8.

Q. Yes.

15 A. Now, Sir, also I had the benefit in the lunch hour of just confirming with Buildmedia the height of the balustrade indicated and that is shown at 1.2 metres high. And the timber batten screen on the rear end is at 1.25 as outlined in my paragraph 20.

20 Q. Your paragraph 20, let's just have a look at that quickly. Yes, okay, I see that, yes.

A. And, Sir, it's probably also **mentioning up (14:19:06)** the benefit of, and just clarification to one of your questions before about the vehicles being on the other side of the deck, the visual simulation is actually as depicted in figure 147, it's exactly the same model. And when you zoom, zooming into that visual simulation there are in fact six vehicles on either side of the gangway parked facing towards the marina and the other five are on the far side. So the model in 147 is exactly the same that has been modelled in the visual simulation.

1420

30 Q. Okay, well thank you for that help. Now back to figure 182 and looking now at the visual simulation and the existing view, in your mind's eye I want you to place cars right across the deck in all of the carparking

spaces, just in your mind's eye, at the range of sizes or heights that you've described. I don't think there are so many Ferraris that I've ever seen on Waiheke Island, so I don't think there will be too many at 1.2, but probably more generally between 1.4 and 1.8-ish; there's plenty of big SUVs on Waiheke Island and vans, to my understanding. So, just mentally place that range of cars right across the deck, the carpark's full, it's a sunny summer Saturday and so it's got all those vehicles. Now because you didn't consider anything like this scenario in your evidence I want you to give us your expert opinion please about the contrast in visual effect between the scenario I've just painted and the top existing view.

5
10
15
A. Just referring or comparing those two views and I've literally sort of drawn a line between the far left-hand vehicle and that SUV on the right-hand side, certainly visually there will be a change. There will be a lot more vehicles.

Q. There'll be a mass of vehicles, won't there?

A. Yes there will, Sir.

Q. We can find out from others how often the carpark might be full, but there'll be in that view that I've painted orally there'll be a mass of vehicles there, won't there? Most of them parking above the balustrade?

20
A. There will, Sir. Yes.

Q. Yes. So what does that do for your assessment of the visual and landscape effects when we complete the bottom picture in that way? Does that do anything to your assessment of "moderate" in your paragraph 56?

25
30
A. No, Sir, my conclusion would remain the same, again through the reasons of the existing landscape context, the proximity of the ferry terminal, just off to the right of the view and just the constant dynamics of what's happening in the area even on the old wharf that we're standing on at the moment, there are a number of vehicle movements that occur on that. So taking all of those factors into consideration my overall assessment wouldn't have altered.

Q. Okay, well I needed to give you that opportunity. I will be asking the others as well, the other landscape witnesses.

RE-EXAMINATION: MR BRABANT – NIL

WITNESS EXCUSED

5

MR R BRABANT CALLS**MAXWELL JOSEPH DUNN (SWORN)**

Q. Is your full name Maxwell Joseph Dunn and do you have the qualifications and experience set out in your evidence-in-chief?

5 A. Yes.

Q. For this hearing you've completed a supplementary rebuttal statement of evidence dated 13 July 2015?

A. Yes.

10 Q. And for the best of your knowledge and belief are the contents of that true and correct?

A. Yes.

Q. And in addition it might be useful, Mr Dunn, just to confirm that you've been involved in the last week or so in working through the revised conditions of consent?

15 A. Yes.

Q. And the documents that have been provided to the Court today, the final document and the summary sheet were prepared by you?

A. Yes.

Q. Thank you, answer questions please.

20 **CROSS-EXAMINATION: MR ALLAN**

Q. Good afternoon, Mr Dunn.

A. Good afternoon.

25 Q. If we can just turn to page 5 of your supplementary, your supplementary rebuttal, and paragraph 20 onwards. Can I just confirm that my understanding's right that your evidence from here through to about 30, 27, that whole section is based on an assumption that section 88(a) applies so as to defeat the lack of a better word, the non-complying activity status of marina structures under the unitary plan? Is that the basis on which you've prepared this. You've got legal advice that 30 s 88(a) defeats the non-complying activity status of marina structures; and that's the basis on which you've prepared this section?

A. Well it covers, it covers more than that. It covers also the coastal plan as well as the unitary plan.

5 Q. Okay, well we'll break it down a little bit. I think paragraph 26 is a good place to go. And you say at paragraph 26, towards the end of the second sentence, "Bundling is in my view no longer a consideration," and then the third sentence, you say, "This is because there's only one consent required; a coastal permit, rather than three. A coastal permit, land use consent and a stormwater diversion/discharge." Oh just a small point, we'll pause there. "Stormwater consent" I understand from
10 my learned friend that in fact as a precautionary measure your client is now seeking a stormwater consent. So that paragraph would need to be amended slightly to that extent. Is that right?

A. Yes, it's a question of whether it's a coastal permit or a stormwater – whether it's an element of the coastal permit because the structure is in
15 the coastal marine area now.

Q. Yes, but it's triggering rules. Your understanding is that it's triggering rules in the Air, Land and Water Plan –

A. Yes.

Q. – et cetera, that give rise to the need for controlled activity consent?

20 A. Yes if it goes above 1000, yes.

Q. The stormwater discharges. Another 1000?

A. Yes.

Q. Yes. And at this stage, just to clarify, make sure we're clear about that, Mr James' evidence states that there's 187 square metres of impervious
25 area; it's obviously below 1000, but there's this possibility of a design coming forward which may just take us over the 1000. Is that the position?

A. I think his figure's 870 square metres.

Q. So you're referring in any event to there being a single coastal permit.
30 While there may be a single set of conditions, would you agree that there is still a number of different aspects of the proposal or activities which trigger the need for resource consent in terms of the various rules in both the legacy coastal plan and the unitary plan? I think for instance

you've got marine infrastructures, deck and viewing platform, moorings; these discrete things that trigger rules?

A. Yes.

5 Q. And still at paragraph 26, you say that the, in the last sentence there, "Also the coastal permit consent is made up of activities that are entirely discretionary in nature." Obviously if non-complying activity consent is required because of the unitary plan for the marina structures, and I acknowledge your position on this based on legal advice, but if it is required then that statement isn't accurate, is it?

10 A. (no audible answer 14:30:02)
1430

Q. Just to clarify, there would then be a non-complying activity in the mix under the unitary plan, if section 88(a) didn't apply?

A. I think I understand what you're saying.

15

THE COURT: JUDGE NEWHOOK

Q. It's probably a point of law as much as anything, Mr Allan.

A. Mmm.

CROSS-EXAMINATION CONTINUES: MR ALLAN

20 Q. Okay well I will move on to the relating questions, because I would like to understand the witness's position on bundling in the event that section 88(a), doesn't apply. So we'll just ask some questions in that regard. So for these next questions just assume again that section 88(a) doesn't apply so as to defeat the non-complying activity
25 status of marina structures. If there is a non-complying consent requirement in place, it's a hypothetical, then the Court would have to consider whether the various discretionary and restricted discretionary elements that we have should be bundled together with the non-complying marina structures element, would you agree with that?

30 A. Yes.

Q. So that the most restrictive activities status applies?

A. Yes.

Q. And the deck, which is a discretionary activity, provides for the marina's parking requirements, doesn't it?

A. Yes.

5 Q. And it will also have various services built into it. I think it will have phone lines, water lines, some of the wastewater facilities, et cetera.

A. That's correct.

Q. And it provides for access for the public via the ramp down onto the southern access pier into the breakwater beyond?

A. Yes.

10 Q. And obviously provides access for berth holders to the piers?

A. Yes.

Q. Would you agree that the deck and the marina structures go hand in hand, in the sense that without the deck the marina wouldn't be able to function?

15 A. Yes.

Q. So you'd agree in that sense that any consent required for the marina structures and any consents required for the deck overlap, don't they?

A. Yes.

CROSS-EXAMINATION: MR ENRIGHT

20 Q. Good afternoon, Mr Dunn.

A. Good afternoon.

25 Q. Just a couple of questions please on your rebuttal evidence just recently filed. It's paragraph 33 of that where you refer to cultural effects. Now just in your second sentence you note Mr Serjeant has a different view on the cultural effects from a obviously planning perspective, but he relied on cultural evidence on the original design of the marina, rather than the amended design. Now you'll appreciate when Mr Serjeant prepared his evidence he hadn't had the benefit of seeing Mr Morehu Wilson's supplementary evidence, so we haven't –
30 Mr Serjeant hasn't yet had that opportunity to comment. You'd accept that point on the amended proposal to the cultural effects?

A. Can you just repeat the question?

- Q. The point you make, you essentially it seems as if it's a criticism, but it may not be, you say, "Mr Serjeant relied on cultural evidence relating to the original proposal, not the amended proposal." Now Mr Saerjeant hasn't had the opportunity yet to comment on Mr Wilson's evidence, which is on the amended proposal.

THE COURT: JUDGE NEWHOOK

You really don't need to ask that question. You can make a submission about it, but it's there. The timing of the various statements is what they are.

10 CROSS-EXAMINATION CONTINUES: MR ENRIGHT

- Q. Yes, very good, Sir. The next point then, Mr Dunn, you say in your last two sentences you disagree that Matiatia Bay is more significant to tangata whenua than many other places. Now I put to you that from the evidence that Ngāti Paoa has put forward they would strongly disagree with that proposition. They would see Matiatia Bay as a highly significant ancestral landscape.
- 15
- A. Yes but my disagreement is with Mr Searjant, because he indicates he's done some sort of comparative assessment of Matiatia as opposed to other places, and I can't find that in his evidence.
- 20
- Q. I see. Okay. So, that's helpful, thank you. Now my second topic is just the new consent conditions and it's condition 26(a).
- A. Sorry, condition?
- Q. 26(a). And this is the condition, "Archaeological Inspection of Parking Deck Area", do you have that?
- 25
- A. Yes.
- Q. Now it just, it may just be a point of clarification, but unlike the rest of condition 26, in condition 26 itself you have agreed to involved Ngāti Paoa in any process where archaeological material is discovered, but it seems as if Ngāti Paoa is not involved on the wording of condition 26(a). And I'm just trying to clarify whether that's perhaps just an oversight?
- 30

A. Yes I mean because 26(a) has come from the council, so, you know, we just really, you know, adopted it. So there is, I'd agree there is, there could be an in, there's inconsistency there, yes.

5 Q. So would you agree that 26(a) should be amended so that the same approach required in 26(c) applies? So in other words Ngāti Paoa would also be notified if archaeological material is discovered for the parking deck area?

10 A. Yeah they are slightly different. And 26(a) is an inspection for archaeology purposes as I see it. And 26 is accidental discovery of archaeological or cultural materials. So it has a wider ambit.

Q. Yes.

A. One's a preconstruction inspection for archaeology and the other is during construction if anything is discovered that is archaeology or cultural.

15 Q. Yes, but do you agree that 26(a) could also refer to –

A. It could, yes, it could.

Q. – involving Ngāti Paoa? Thank you. Thank you, Sir.

CROSS-EXAMINATION: MR LITTLEJOHN

20 Q. Mr Dunn, just a couple of brief questions. If the application that we have before us today was lodged with the council on the 1st day of October 2013, being the day after the unitary plan was notified, 30 September 2013, what status for assessment purposes would it have?

25 A. I would have to go through the unitary plan rules and refer to the original evidence.

Q. You're not familiar with the status of marinas under the proposed Auckland Unitary Plan?

A. Oh Yes I am in terms of the marina, but there's a lot of other activity, so I'd need to check all of those as well.

30 Q. All right. Well just focusing on the marina aspect of the application; it being a marina. On the 1st day of October 2013 what status would it have had in its current configuration with a carpark deck at Matiatia Bay under the, for the purposes of processing?

A. It would be for the marina, I'd need to check the definition of "marina", but "marina" I would assume included the carparking deck, would be a non-complying activity.

5 Q. If the application as it's presented today to the Court were lodged with the Auckland Council today, what status would it have?

A. It would be the same.

10 Q. It would be the same, non-compliant. Thank you. In paragraph 24 of your rebuttal evidence if I could take, sorry, not rebuttal – yes it is rebuttal, isn't it, take you there. Paragraph 24, you have a criticism with one of the paragraphs in Mr Serjeant's evidence, and I just want to clarify this. What is, and I'll do it this way, what do we call the general coastal zone in the operative coastal plan? What's it called in the key on the maps?

15 A. I could check the map, "General Coastal Management Zone"? I'd need to check the actual key. It's got a general terminology, but I might have used the wrong word there.

20 Q. Okay, well I don't – if I put it to you that it's called a different thing, very close, between the operative and the proposed plan, would you accept that? It's called the "General Coastal Area" in the operative plan, but it's now the "General Coastal Zone" in the proposed plan. Are you familiar with those?

A. Yeah, you're right. I think the coastal plan uses the word "area" and the unitary plan uses the word "zone".

25 Q. Okay. If Mr Serjeant had his terminology wrong – I'm not saying it's a criticism, but the terms are very similar, and by reference to his paragraph 7, he's actually referring to the general coastal management zone in the unitary plan, then his statement at paragraph 7 of his supplementary evidence is correct, isn't it?

30 A. Oh I see where you're coming from, yes, you – yes, I could have – between the area and zone may have entirely misread Mr Serjeant's evidence, yeah.

Q. All right, okay, that's all I wanted to clarify. Thank you for that. Now your paragraph 32, you discuss Mr Shumane's traffic evidence for the council. You say at the outset of your evidence that you've read all of

the DMI supplementary evidence. Do I take that to mean you've read Ms Gisby's evidence?

A. I don't recall Ms – no I don't think I have read Ms Gisby's – I printed it off, I don't think I actually read it in detail, no.

5 Q. Well you make no mention of it in the body of your evidence but I assumed you may have because you had that general comment at the start, so you're not familiar with the content of Ms Gisby's evidence?

A. No.

10 Q. In the context of your assessment of the revised proposal then, do – is it correct that your overall assessment of traffic and parking related effects relies solely on the evidence of Mr Mitchell and Mr Shumane?

A. I read Mr Langwell's evidence.

Q. And Mr Langwell?

A. Yes.

15 Q. But you don't rely on that presumably?

A. No.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

RE-EXAMINATION: MR R BRABANT – NIL

20 **QUESTIONS FROM THE COURT – NIL**

WITNESS EXCUSED

**THE COURT: JUDGE NEWHOOK RECALLS
ROBERT JAMES PRYOR (ON FORMER OATH)**

Q. Would you have a look at figure 167, please, in the May bundle and figure 182 in the latest bundle. Got those?

5 A. Yes, Sir.

Q. Now, in the left half of the view in each of those, Mr Pryor, you see a full view of a line of vessels on B Pier, I think, isn't it? No, it's A Pier. Do you see that?

A. The one in the centre of –

10 Q. The line of vessels, it's the only line of vessels in the view?

A. Yes, Sir.

Q. I think it's A Pier. Now right at the left hand end of the visualisations you see a line of piles?

A. Yes, Sir.

15 Q. Now one of my sharp-eyed colleagues who knows a bit about marinas has spotted something that you might be able to explain for us – why does that left hand pier, which I think is B Pier, have a line of outer piles that's visible in that shot but the line of vessels on A Pier does not have a line of piles along, essentially, by their bows. It should have, I think, shouldn't it? Do you know that?

A. Sir, personally, I don't. I'd have to –

20 Q. Well, there are other visualisations in these two bundles. I think in the July bundle if you go to figure 176 – now that's a bit distant, bit hard to pick up and it's a bit hard to pick up in figure 180, too. Anyway, let's
25 make an assumption – we might just get Mr Wardale to tell us about marina design. I think, Commissioner Howie, you're right about this – we think there's a line of piles missing at the ends of the fingers along by the bows of those yachts. Now if you mentally put a line of piles into that view, Mr Pryor, what does that do to the visual on landscape
30 assessment, in your view, with the line of piles pretty much extending away from the eye of this viewer in those visualisations?

A. Sir, it would increase the visual impact from that particular viewpoint as you're effectively looking down the row –

Q. It would quite significantly increase the maxing, wouldn't it, of built structure?

A. Yes, it would, yes.

5 Q. Almost to a ball-like effect as you see at the left hand end of the visualisation – with gaps?

A. Yes, Sir. There certainly would be gaps in between.

Q. Does that change your view from moderate on those assessments?

A. Sir, it would increase it slightly but not – not to a major extent.

10 Q. Well, we'll find out from Mr Wardale whether those piles should have appeared in there.

MR BRABANT:

I will if you don't mind, Sir. I will need to call him. The (inaudible – 14:47:34) is accurate and Mr Wardale will need to explain why. It's something I wasn't aware of, anymore than obviously you and Commissioner Howie were. So,
15 when you're ready, Sir, I'll call Mr Wardale to explain.

MR LITTLEJOHN:

It may assist. I know you don't have this folio but in the earlier folio for October, I think it was, 2014, those earlier visuals did seem to show, to my eye anyway, piles. So I don't know whether it would be useful as a point of
20 reference.

THE COURT: JUDGE NEWHOOK

Would you mind passing that up again, Mr Allan.

MR BRABANT:

25 You almost need a magnifying glass but there are a couple of visuals. There some of the visuals in the October 2014 – you can see it (inaudible – 14:48:25).

THE COURT: JUDGE NEWHOOK

Viewpoint 03 at low tide, Mr Brabant.

MR R BRABANT:

Yes, well, it's a bit hard to tell. I don't have a magnifying glass – that could well be right, Sir but I'll leave Mr Wardale to explain the position.

THE COURT: COMMISSIONER LEIJNEN

5 Q. Mr Pryor, I asked you a question about the services, tanks and bits and paraphernalia that would go underneath the deck which is described in some of the evidence. Did you manage to ask about that in the break or not?

A. No, I didn't.

10 **RE-EXAMINATION: MR BRABANT – NIL**

QUESTIONS FROM THE COURT – NIL

WITNESS EXCUSED

MR R BRABANT CALLS**PHILLIP HARRY WARDALE (SWORN)**

- 5 Q. Mr Wardale, your full name is Phillip Harry Wardale and your qualifications and experience, particularly in relation to marina development, are set out in your evidence-in-chief?
- A. They are.
- Q. And you've completed a statement of evidence dated the 22nd of June 2015?
- A. I did.
- 10 Q. And the contents of that to the best of your knowledge are true and correct?
- A. They are.
- Q. Now there are two issues, I believe, from questions you can assist the Court with. Let's deal first of all with Pier A, it is Pier A, and those are
- 15 the 10 metre berths, Mr Wardale, at the inner end of the marina, the one closest to the shore?
- A. 10 on the landward side, 12 on the seaward side.
- Q. And is it correct that the configuration or the methodology to be employed with those berths has changed from what was shown in the
- 20 earlier visuals?
- A. That's correct.
- Q. And that the berths, indeed, are built differently – and would you please explain to the Court and refer them to the visuals as to where the single row of piles now is?
- 25 A. Possibly best figure 163 in the May, 22 May, which is viewpoint 5, is possibly the most helpful. To go with that the 167 which the Court was just discussing is also helpful. Essentially, what's occurred is, that modern marina design can minimise piles and the potential visual impact of piles that both of the New Zealand manufacturers are
- 30 producing fingers that come from the main walkway as a cantilevered finger, so it no longer has the pile at the end of the finger. In fact, they can go slightly larger than 12 metres but 12 metres is appropriate in this location. Then for finger 163 you can see that the pile arrangement for

the entire pier closest to the viewpoint has the pile that's holding the very end figure which is a longer finger because it's a longer boat on the end of the Pier A and therefore you can see the two piles at either end of that finger. But as you go down the pier there are no longer piles, as the Court's identified, on the end of the fingers or between the boats. However, unlike the rest of the marina, there are, looking at this, I count eight larger central piles that are attached to the actual walkway itself. So, structurally, the marina stays in place – APS stays in place with those eight central piles and the two, what are termed (inaudible – 14:54:23) piles at the far end, therefore removing the need for piles between the berths – both in between the pair of berths and at the end of the finger.

THE COURT: JUDGE NEWHOOK

- Q. Where can we see this in plan, Mr Wardale? Where is the plan showing this?
- A. The piling plan hasn't been included in the plan set, no.
- Q. Well, you see, I've got questions going around in my head because I know a bit about marinas, too – and how do boat owners tie off the outer ends of their boats, be it stern or bow, away from the walkway?
- A. Away from the walkway maybe the finger is your question – they don't tie away from the finger. The difference with the cantilevered finger is they're actually tied to the finger, actually connect to the finger.
- Q. So the finger between every vessel?
- A. No.
- Q. So we've still got the traditional pairing of vessels between two fingers?
- A. Correct.
- Q. How to you tie off the vessels between each other where there's no finger at the outer edge?
- A. No, you don't connect between the two. It's fair to say that this style of berth figure's more seen in Australia. We haven't seen a lot of this. It works in smaller berths and with smaller boats but it is something that is different for the market, absolutely. Different than what we've seen.

Q. I'm troubled about the lack of a plan, Mr Brabant, because if we were to grant consent to this marina what do we tie this sort of stuff back to through conditions of consent – we've got a complete void of information up here?

5 EXAMINATION CONTINUES: MR R BRABANT

A. So you're referring there, Sir, to a limitation on the number of piles?

Q. Yes, amongst other things – goodness only knows what else has changed with the design of the marina now that we've just popped this witness in the box unexpectedly – what could we tie it back to – there's
10 nothing in front of us, nothing in the public domain?

A. I'm just thinking, Sir. Obviously I'd need to review the plans but assuming that – I mean, I've just had a quick look through them, Sir, and –

Q. Well this witness would know these plans pretty well, I imagine and he
15 says we ain't got anything?

A. I mean, there's no question on that visual 102 you can clearly see the single road down the centre, all the way down to the end.

Q. No, I think I see what he describes but I'm asking about plans?

A. Exactly, Sir, and the question is should there be a plan now this matter
20 has come up which actually shows the pile and their locations at the end of each finger, if there is one, or in the middle if there isn't, and I can certainly – (inaudible – 14:57:35) checking again, Sir, right on my feet but working on the basis that the plans that Mr Leman has produced don't have pile locations as such shown and if that's an important issue,
25 which I can understand it is, from a visual point, then there should be a plan produced that has that.

Q. I can be forgiven for using the word “shifting sands” couldn't I, Mr
30 Brabant with this application? You don't have to answer that. I think Commissioner Howie's got some questions about the technicalities of tying up vessels in such a marina because he thinks he might know the answers so let's see what he can elicit from Mr Wardale – never mind that we don't have a plan?

A. Well we have a plan without pile locations and I guess –

Q. We don't?

A. No. Well, none of us do.

Q. No.

MR LITTLEJOHN:

5 We do. Mr Brabant's handed up his typical berth layout plan with the materials this morning which seems to show what you want. Plan H.

EXAMINATION CONTINUES: MR BRABANT

10 Q. But the point remains, Sir, as you were saying – this is the expected layout plan that you had understandably assumed applied on this pier as well and what we don't have is a berthing layout plan like this for this particular pier that Mr Wardale's now referring us to, and that seemed to be the case. Are you familiar with this, Mr Wardale? We have the typical berthing layout plan which is one of the documents?

A. Which figure?

15 Q. Figure 15?

A. Yes.

Q. And there would need to be a further one particular to this finger, would there not?

A. Correct.

20 Q. And we're lacking it at the moment..

A. Correct.

THE COURT: JUDGE NEWHOOK

Commissioner Howie is going to pick up the questioning about the technicalities of tying these boats up when you don't have intervening piles.

25 **CROSS-EXAMINATION: COMMISSIONER HOWIE**

Q. The marina that I use doesn't have that intervening pile and we simply use a spring back to the main walkway from the bow, or stern, depending which way you were in. Is that what you'd expect?

A. Yes absolutely and it's fair to say with Mr Leman's experience in Australia the Australians have been doing this a lot longer than we have in New Zealand, so the rope connection would be as you explained.

5 Q. And if you look at that, just go back to the photos again, if you wouldn't mind, figure 182 in the latest bundle.

A. Yes.

Q. And if you run your finger down the bows of the boats that are depicted in there, there seems to be a pier between each boat and yet if we look at the one you referred us to, figure 163 in the May bundle, figure 163.

10 A. Yes.

Q. And on the iPad I can blow it up and it seems that there are two boats between each finger. And if you have a look at the plan it seems that there are two boats between each finger. So my question really is, is there a finger between each boat as in 183, or are there two boats in each bay?

A. Two boats in each bay.

Q. Yes.

A. I think the illusion that's given in 182 is the fact that in the first six berths two boats are absent.

20 Q. Oh okay.

A. Counting from the walkway, the second boat is absent and the fourth boat is absent.

Q. Yes.

25 A. And if we went further I think there's then two together and then missing, missing an absent boat.

Q. Oh okay. But the idea is to have two boats per bay?

A. Yes.

Q. And to tie the far end off with a spring?

30 A. That's exactly right. And look the idea came predominantly from the change to catamaran berths because it gives you flexibility in width. One really wide vessel, a narrow vessel; you're not restrained with that central pile.

A. No central pile, yes. I understand, thank you.

THE COURT:

Commissioner Leijnen, do you have any questions?

COMMISSIONER LEIJNEN

5 Yes. Just some questions about services that are to be placed underneath the –

THE COURT: JUDGE NEWHOOK

Oh, perhaps, no, perhaps, before you do that I do have a couple more questions about these fingers, so if your questions aren't about the fingers, I'll
10 do those.

THE COURT: JUDGE NEWHOOK

Q. Now understand, Mr Wardale, that I'm pretty familiar with marinas and – are you familiar with powerboat operation?

A. Yes.

15 Q. As well as yacht operation?

A. More so with powerboat.

Q. Right okay, well that's helpful. Now, visualise the following, you've got the configuration shown on this plan H that came up with the conditions of consent this morning, but the central pile is missing. I personally am
20 familiar with 10 metre berths that have the central pile based and an intermediate pile up between the boats as well, which despite the fact that I operate a twin engine vessel that is much easier to control than a single engine keelless powerboat, nevertheless it gets me into situation from time to time, despite what I think is pretty considerable experience,
25 of the vessel, particularly in a high wind, moving sideways, and I make quite regular use of the intervening pile up the middle between the two vessels. Have you any knowledge about the potential for contact between boats say with wind parked and another one manoeuvring in there say under a single engine; what would the insurance companies think about that do you think?
30

A. Absolutely. Well as Commissioner Howie suggested there are examples, there are a lot in Australia. It does require the boat

fendering, it does require boaties to use more fendering than required, but it does provide that versatility of the berth space and –

Q. Or catamarans and the like?

A. Yes.

5 CROSS-EXAMINATION: COMMISSIONER LEIJNEN

Q. The under-deck services; where are they, how big are they, can we see them?

A. The discussion on the under services will come down in my opinion to the detailed design of the structure and the structure that's utilised. The
10 likelihood is, going back to the high density polyethylene pipes that are made into tubes often used for retention tanks in the city, et cetera, being slung tight up underneath the structure, so it would potentially run for a certain length down the centre of the structure itself.

Q. So that performs the holding function?

15 A. There's three functions there. Of course there's some holding, there's some water, and then there's the holding for the discharge of the sewer, et cetera. So there will be multiple tank options there.

Q. Yes. And does that come, can you see that?

A. We believe that subject to the diameter that most of it was going to be
20 tucked up under the main structure, so it could be comparable to the depth of the actual longitudinal beam structure that's used for the deck. Accordingly, we felt it was going to be difficult to see if tucked up inside those beam sets.

Q. But I mean where do those pipes run; back into the, back to shore to the
25 connection, then underground?

A. Yes most services pipes follow the underside of the gangway that leads from the marina and then would tuck in into the main structure; either attached to those if they weren't discharging into there and for the others turning right and then heading into the existing reclamation that's
30 there.

Q. Thank you.

THE COURT: JUDGE NEWHOOK

Q. But no tank involved, Mr Wardale?

A. Yes those tanks – sorry I maybe described it badly. The high density polyethylene larger sizes are used now as a method of storing –

Q. What's the diameter of those?

5 A. Anywhere from 720 to, around the 720 seems to be quite normal and running the length. But of course we can do smaller in multiple. There's very many options. Of course we could do multiple smaller tucked in under there, or the larger option, but that was the initial concept discussion we had with the designers.

10 Q. Does that show up in any of the plans that have been provided to us?

A. In terms of the dimension?

Q. In terms of the dimension, layout or anything?

A. Location is shown, yes let me help.

Q. Take me to that.

15 A. Sure.

MR R BRABANT:

150, Sir, in 22nd of May.

THE COURT:

20 Q. Which sheet?

A. Figure 150 is the Riley Services Plan.

Q. All right.

A. Using icons the square orange is the wastewater storage and then the yellow is the water supply tank which would be indicated somewhere on that access along the parking deck. Not detailed in terms of scale size; just in location.

25

CROSS-EXAMINATION CONTINUES: COMMISSIONER LEIJNEN

Q. Yes, just a diagram really, isn't it, where it's going to end.

30 A. That's right. In Mr Riley's evidence, sorry, in the Riley's report they indicate the quantum of the size of the capacity of each of those devices.

THE COURT: JUDGE NEWHOOK

Q. Yes well the orange squares are labelled “Domestic and Boat Race Water Storage Tank”.

5 A. Yes.

Q. And they don’t look like pipes; they’re big square things.

A. Right.

Q. So what, do they sit on the rocks, or do they hang under the deck, or what?

10 A. The discussion we’ve had is “hanging”. Is “hanging” under the deck for all of the storage, both that storage wastewater and the inbound clean water.

Q. So you’ve got no detailed plans or depiction of these amenities and they don’t show, rightly or wrongly, in any of the visualisations?

15 1510

A. The discussion with Buildmedia in terms of those requirements were that they were going to be in the underside and therefore not viewable from the locations that were chosen on the viewpoints was there, the discussion.

20 Q. So conditions of consent could be imposed to ensure no visibility of the services under the deck?

A. I think so. And I think with many of the services that's the intention of a modern facility to put conduits and ducts in places that aren't seen. With a UV you don't want the UV and things getting to anything that is visible
25 so it is helpful to put it out of sight.

MR LITTLEJOHN:

I had originally indicated I didn’t have any questions or Mr Wardale but while he’s here and is being so helpful I’m wondering whether you would permit me leave to ask him a brief question or to?

30 **THE COURT: JUDGE NEWHOOK**

Why not?

CROSS-EXAMINATION: MR LITTLEJOHN

Q. Plan 140 in the May bundle, please, Mr Wardale. I just want to get a sense of the feasibility of, at some point in the future, constructing the red portions of that plan, if I can. Can you confirm whether the red portions which are essentially additional berths off Piers A, B and C, would require any dredging to be constructed?

THE COURT: JUDGE NEWHOOK

Q. Mr Littlejohn, you need to be aware that Mr Scott appears to have engaged in a little future frolic in his evidence and I was intending to have words with you about whether we could take any of that into account because I think the law is to the effect that you can't and I think your question suffers from the same difficulty.

MR LITTLEJOHN:

Well, I don't intend to ask the witness what may or may not happen in the future, I wanted to ask –

THE COURT: JUDGE NEWHOOK

Yes, but why should we explore potential effects on the environment of an expansion of the marina that's not been applied for?

MR LITTLEJOHN:

Well, because I think it's relevant, with respect, to the nature of this proposal and the practicality of extending it.

THE COURT: JUDGE NEWHOOK

Yes, but we're not listening to an application about extending it.

MR LITTLEJOHN:

I appreciate that, Sir, but I intend to make the submission that the absence of any lawful impediment to constraining this marina to this plan effectively means that any future application has a baseline established by what may or may not be consented here and, at that point, you have a matter that

reasonably, in my submission, respectful submission, can be contemplated by the Court if it gets to the point of evaluating an approval of this proposal.

THE COURT: JUDGE NEWHOOK

Well, we will await such submission with great interest, Mr Littlejohn – might
5 be cutting edge stuff.

MR LITTLEJOHN:

Done a bit of that lately, Sir. But I understand your misgiving, I mean, I was there at di, Your Honour, and I appreciate that –

THE COURT: JUDGE NEWHOOK

10 There's that line of jurisprudence that is fairly clear.

MR LITTLEJOHN:

Let me put it this way. If I am at that point in my submissions and Your Honour says, "Ah, but anyway, Mr Littlejohn, we heard no evidence about whether it could be practically built or not," then where do I go with that?

15 **THE COURT: JUDGE NEWHOOK**

I'm not sure that that's the bit that would be troubling me when we heeded your elegant submission, Mr Littlejohn. Look, I'll allow the questions but, at the moment, this line of questions and possibly the answers and Mr Scott's little frolic aren't quite resonating with me. It's a matter of law.

20

MR LITTLEJOHN:

I understand entirely why Your Honour would have misgivings about that proposition but I simply want to ask the witness whether there are any practical construction or other related aspects of this location that would make
5 it virtually impossible to extend these berths – these piers, I should say.

THE COURT: JUDGE NEWHOOK

Well, let's have it succinctly put and succinctly answered if that's possible. If it becomes a major engineering lecture I might have different views.

MR LITTLEJOHN:

10 And at that point I will regret asking the question, Sir.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

Q. Mr Wardale, what work, what physical construction work would be involved to extend Piers A, B and C to the extent shown as read on plan
140?

15 A. Well Pier A would require dredging for the outermost berths and the balance would require construction works.

Q. And those constructions works would entail?

A. Installation of the –

Q. Piles and piers?

20 A. Yes.

RE-EXAMINATION: MR BRABANT – NIL**QUESTIONS FROM THE COURT – NIL****WITNESS EXCUSED**

MR BRABANT:

So, Sir, I've got my traffic engineer, Mr Mitchell, waiting for tomorrow.

THE COURT: JUDGE NEWHOOK

That's looking like tomorrow, yes.

5 MR J BRABANT:

Perhaps I could help, Sir – sorry, I wasn't meaning to be rude on my phone before but Ms McIndoe had requested a copy of a memo which I sent her from my phone, I took the opportunity to ask her if she could let us know how she was going so as at 2.30 she said, "We still hope to lodge evidence at the
10 end of today, two witnesses, one working on state relating to buses, the other preparing a statement on carparking. They will both be short statements but they need to check some matters."

THE COURT: JUDGE NEWHOOK

I'd hazard a guess, Messrs Brabant, that when the information is available
15 and in everybody's hands that other people's witnesses might need to consider those things. So I query whether we'll be getting underway with Mr Mitchell in the morning, but we'll see.

MR J BRABANT:

Did I say the morning, Sir? I just said he's available when we – I mean, when
20 you get to the traffic material I'll have to call him then.

THE COURT: JUDGE NEWHOOK

Yes. We may have to park all traffic witnesses down to the end of the hearing, might be more likely Wednesday than Tuesday. It depends on how far people want to drill into the information that Auckland Transport is
25 apparently belatedly bringing to us. Not helpful – as I told Ms McIndoe this morning. I'm just looking at the list here – that's your witnesses for the moment, isn't it?

MR J BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

5 So we really are going to have to park the traffic out past the introduction of other people's cases.

MR J BRABANT:

10 Yes, Sir. Well, I understood that, this morning, Sir, that (inaudible – 15:18:20) apparent because I knew how few – I mean, there's very few witnesses being questioned and the questioning isn't long so I see us getting through a good bit today, Sir, and, as you say, dealing with the traffic –

THE COURT: JUDGE NEWHOOK

We need to make use of the time. So Mr Allan, we'd probably be looking to you for an opening shortly. You're ready to go with that now, are you?

MR ALLAN:

15 I am, yes, Sir. And I have here, as I said, all the witnesses who have prepared supplementary evidence except Mr Raymond Hamel who you have kindly excused. Dr Sivaguru, Ms Bremner and Mr Blackburn – nobody had questions for them. I appreciate members of the Court may. Mr Blackburn, for instance, has prepared evidence on stormwater. He may be able to assist.
20 So just working through, Ms Bremner on planning, Dr Sivaguru on ecology and Mr Blackburn on stormwater are here but nobody had any questions for them. Mr Brown on landscape, Mr Shumane we'll set to one side and Ms Plowman on archaeology. There were questions for them and they're both present as well.

25 **THE COURT: JUDGE NEWHOOK**

Yes, well they're up for questioning anyway.

MR ALLAN:

Yes, so I propose starting with –

THE COURT: JUDGE NEWHOOK

So you're asking us to consider whether we will have questions for Sivaguru and Blackburn?

MR ALLAN:

5 And Bremner, the planner.

THE COURT: JUDGE NEWHOOK

And Bremner but she's not in the list of witnesses to be questioned.

MR ALLAN:

She's not, no.

10 **COURT ADJOURNS: 3.20 PM**

COURT RESUMES: 3.41 PM

THE COURT: JUDGE NEWHOOK

(inaudible 15:41:47) three named, we only wish to question Ms Bremner and Sivaguru or Blackburn.

5

MR ALLAN:

Thank you Sir. And over the break I've been talking to my learned friends Mr Enright, and Mr Brabant about Ms Plowman and the need to call her. There was just one or two questions that Mr Enright had concerning that condition 26(a) and I think in light of Mr Dunn's answer there's no need for Mr Enright to put those questions. So I'm not sure whether the Court had any questions for Ms Plowman otherwise, archaeology?

10

THE COURT: JUDGE NEWHOOK

No, no, I didn't.

15

THE COURT: COMMISSIONER HOWIE

No, nor I.

MR ALLAN:

20 Thank you, Sir. Hopefully you have my supplementary submissions there.

THE COURT: JUDGE NEWHOOK

Thank you.

MR ALLAN:

25 As with my friend, Mr Brabant, I addressed the admissible change issue towards the end, so we can probably just take that bit as read when we get there, but I will start at paragraph 2.

THE COURT: JUDGE NEWHOOK

Yes, sure.

MR ALLAN READS OPENING SUBMISSIONS

“The Court will... to appropriate mitigation.” And, Sir, the footnote there notes what those two categories of effect were; the localised visual and amenity effects, and also the effects of copper accumulation.

5

“As matters then... revised consent requirements.” And as I’ve said comment further on two legal issues addressed in opening, and it’s only really one of those that I will take you to if you’re happy, which is concerning the application of section 88(a) of the RMA to the application. And, Sir, I’m going to play devil’s advocate on that issue and take a slightly different view from my learned friend, Mr Brabant, but I’ll come to that shortly.

10

“On conditions Ms Bremner... applicant, the council.” And I’ve added in “Auckland Transport” because it encompasses those red-shaded amendments in the, I think it’s 3 July, 3 July set.

15

“My overview of... at condition 6.” And this probably takes on additional significance in light of the recent discussion about the, whether there’s a need for a plan showing the piles and so on and I’ve suggested that –

20 **THE COURT: JUDGE NEWHOOK**

Piles and services?

MR ALLAN:

Piles and, exactly, Sir. We did have discussions with the council team about whether the, the visuals are really there as evidence, but whether they served a consenting function and we sort of tended to the view probably that it’s the usual situation they wouldn’t, although in this case, of course, they do show this, the absence of piles. So they’re the only visual document that we have, if you like, that shows that change to the proposal. That’s not something that we’d picked up on ourselves, I’d have to admit. It would be far, far better obviously to have a plan showing those matters, rather than relying on I think those simulations in order to achieve that consenting function. So yes it’s suggested that if the Court decides to grant consent there’ll be a close review

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of the plans listed in condition 6 for consenting purposes. We've done our best in recent days to try and identify the relevant ones, but I think there should be a more thorough review.

5 MR ALLAN CONTINUES READING OPENING SUBMISSIONS

"The council has... is put below." Sir, I'd normally perhaps take that as read given that you'll have seen the evidence, but I do deal with conditions and where concerns about conditions have been overtaken, so you may see some value in me going through it, otherwise I'm happy to just skip over it.

10 THE COURT: JUDGE NEWHOOK

Yes, I think we would, because you're going to find that we're actually going to ask Ms Bremner to do an exercise for us probably overnight whereby we have the impression that conditions have been sort of coming and going and coming and going from these various iterations and we just, we're a bit loss really. And so we're going to ask her to provide us with a schedule of what's in and what's in. We've had comment from various of the opposing witnesses saying, "Oh that's gone, oh that's gone, and it shouldn't," sort of thing. Some I believe may have come back in in the later set, probably as a result of negotiation between your client and the applicant, but we just don't have a clear overall picture. So she needs to do two things; one, give us that schedule. And, secondly, provide her professional opinion as to whether anything that remains out should be in. All this is not based on any presupposition that we might have to grant them to this proposal, but the exercise needs to be done.

25

MR ALLAN:

We have I think a, Mr Dunn has endeavoured to go through a similar process with his shading, but I know it's not quite the same thing. We struggled with this ourselves in terms of there being no tracked version –

30 THE COURT: JUDGE NEWHOOK

Well pity us then.

MR ALLAN:

So literally had to sit down with the various iterations of the conditions and try and identify in the May 22 version what had dropped out and that's what lead to our round of supplementary evidence identifying omissions. And then
5 subsequently discussions where we endeavoured to get all those things back in. I think we're pretty confident that we've captured all the important things that had disappeared. For instance in the marina management plan. All the traffic engineers had agreed that there should be a requirement for a carpark management plan within that. That had fallen away. We raised that and now
10 it's back in there. So we have been through that exercise, but it's difficult to prepare I suppose a tracked version given we had three separate sets of conditions and they've now merged into one, which I might add is what the council had always promoted. So I'm pleased at least to see that. But it does make it a little bit difficult to produce a tracked version. Perhaps a version of –

15 **THE COURT: JUDGE NEWHOOK**

We just have the impression that the council's planner is the logical person to prepare us a schedule of what fell out from the October conditions –

MR ALLAN:

20 The 22 May, yeah.

THE COURT: JUDGE NEWHOOK

– and 22 May what's still out as at 24 July and what went back in between either of those – in either of those periods and then you you're professional opinion as to what might still need to have been put back in or not.

25

MR ALLAN:

Yes thank you. Ms Bremner will be getting underway with that I'm sure. So I will take you then through these paragraphs?

THE COURT: JUDGE NEWHOOK

30 Yes it will start to give us a handle on the issue.

MR ALLAN:

Mr Shumane in traffic effects. “With the reduced marina capacity in parking Mr Shumane considers the effects created by a movement of vehicles within the keyhole will be negligible and if necessary can be minimised by imposing time restrictions later. He continues to regard the potential construction traffic effects as potentially more significant but considers that these can be managed by appropriate construction traffic management plan restricting construction access during the busiest summer period and the applicant has now agreed that measure. That hadn’t been agreed in October. It essentially prevents construction vehicles from accessing the keyhole area and beyond from the last week of December and the next four weeks.” So a four-week blackout period essentially, and that’s now accepted and reflected in the conditions.

He notes that, “The provision of 39 spaces will meet demands at most times. During the busiest summer periods there is likely to be an overspill of eight to nine vehicles which he says can be accommodated within the public facilities in Matiatia Bay. Mr Shumane also recommends a number of further amendments to the traffic conditions, all of which have been accepted by the applicant with one exception, that’s a condition relating to active traffic management. However Mr Shumane has confirmed that following further consideration he is content for that condition not to be imposed at this time.”

Mr Brown, landscape and visual effects. “Mr Brown remains of the view that for the bulk of the proposal as revised the effects were acceptable. He does however record a particular concern in relation to the revised design of the deck when seen from viewpoints 5 and 9, and in his opinion, while he appreciates the rationale for this design the new deck design suffers from the loss of the previous anchoring or attachment to the adjoining foreshore when compared to the previous deck proposal.” Again while most of the changes to the proposal have been beneficial from the council’s perspective, this is, as I have said, the most troubling aspect of the amended application.” Ms Bremner addresses this in her planning supplementary statement.

Mr Brown also recommends that a deleted condition requiring a landscape and related amenities plan be reinstated, which the applicant has accepted it and that's condition 17A. There is now a bond condition tying in with that Sir, requiring a bond for the implementation of all aspects of that plan, not just the landscaping, which was the previous iteration of the bond condition only relating to the trees as it were. That's now brought it in that as Ms Bremner had suggested in her original evidence. It ought to cover other public amenities, the pavement and so on.

10 Mr Reinen-Hamill on coastal processes has reviewed Mr Leman's evidence and his modelling for the two breakwater options and confirms that they appear to provide a satisfactory wave climate for vessels moored in the marina. He records that there would appear to be scope for the main breakwater to be extended northwards and the secondary breakwater to be deleted if any concern arose in relation to the secondary breakwater from the landscape perspective.

Mr Blackburn on storm water. Mr Blackburn is satisfied with Mr James' evidence in storm water matters. He notes that with the substitution of a deck, with a reduced impervious area, that's the 870 square metres, there is technically now no need for storm water discharge or diversion consent under the (inaudible 15:54:28) water plan or unitary plan. Obviously the position has moved on slightly today and I noted that Mr Brabant's clarification that storm water consent is sought as a precautionary measure. The council team hadn't understood that to be the case based on Mr James' evidence but there's not really much in it Sir. The storm water effects were judged to be minor under the original scheme provided that appropriate conditions are put in place for the design and so on.

30 Mr Blackburn, is – I've confirmed as content, and so I've noted there that the council and the applicant have since reached agreement on a suite of conditions applying to stormwater discharges. So those would apply whether consents are technically required or not, whether it's below the 1000 square metre threshold for impervious area or not.

Ms Plowman in archaeology, her brief focuses on the need for a condition to be imposed requiring the footprint of the deck area to be inspected prior to construction. Such a condition was contained in the previous land use conditions dated 17 September 2014 but had been deleted by the applicant in the May 2015 version and the applicant agrees with this condition and its reintroduction. And just picking up on Mr Enright's point, there's no difficulty from the council's perspective in amending that condition to make it clear that it's perhaps an additional obligation in addition to condition 26, which has more detailed notification requirements relating to iwi and police et cetera. It's not intended to read down that more general condition, and that's something that we can look at in wording.

Doctor Sivaguru on ecological effects. Doctor Sivaguru's supplementary statement response to one aspect in Mr Poynter's evidence the proposal to delete most of the conditions concerning little blue penguins. She's of the view that two specific conditions should be imposed and proposes wording. Again the applicant agrees with these conditions subject to minor amendments to wording, which are reflected in the suite of conditions we now have, which I've listed there in brackets 17C, D and 55A.

Ms Bremner on planning; her evidence provides an updated summary of the consenting requirements under the various RMA planning instruments and addresses some of the policy implications of the amended application. Her previous concerns as to New Zealand coastal policy statement and the coastal plan provisions relating to reclamation are now resolved, although the tension she previously identified in relation to locating parking in the CMA remains.

In addressing Mr Brown's concern about the deck, she agrees that the redesign deck now lacks connection and integration with the shoreline and coastal back-drop. However in arriving at an overall planning judgement she remains of the view that the more than minor visual and amenity effects arising from the parking aspect proposal will be concentrated on a relatively

small part of the northern bay, while the effects experienced cross the whole of the bay would be lower and acceptable. As noted Ms Bremner also provides a round-up of the council's position in response to the 3 July version of the conditions since overtaken. I just noted there over the page, at page 6,
5 "That her suggestions are generally being adopted by the applicant and, for instance, including her suggestion of a broader bond requirement in condition 17B.

The revised consent requirements; as noted, "Ms Bremner's supplementary
10 evidence provides an update in the consent requirements for the amended proposal. The main changes influencing her reassessment of the consenting requirements are the deletion of capital dredging, the deletion of the proposed reclamation and the substitution of a deck structure which is entirely located in the CMA save for the connection to land for vehicular and pedestrian access
15 to the deck. In short the position is as follows: under the coastal plan the legacy coastal plan, consent is still required for marina structures, the parking deck and viewing platform and moorings. All of these activities are discretionary. Consent is no longer required for dredging and reclamation."

20 "Under the air, land and water plan, consent is again assuming 870 square metres and subject to my earlier comments. In light of Mr Brabant's indication, consent is technically no longer required under this plan for the diversion and discharge of storm water due to the reduced impervious area of the deck, compared with the reclamation," and I've noted that council
25 considers that the provision of storm water treatments should be retained whether or not it falls below the 1000 square metres."

Ms Bremner records that, "While the air, land and water plans provisions are possibly no longer directly relevant, they provide useful and relevant guidance
30 for settling the storm water conditions," and of course given that consent is being sought they are directly relevant Sir. "The unitary plan consent is required for the same activities as under the coastal plan with the addition of consent for earthworks on or within 50 metres of the site or place of value to manu whenua. The activity status is variously non-complying discretionary

and restricted discretionary. Again consent is no longer for dredging and reclamation or for storm water discharges.” Again, that point’s been overtaken by Mr Brabant’s indication.

5 “The District Plan... concerning transporting fill.” And that’s a rule that triggers consent if you’re transporting more than 200 cubic metres of fill. “The applicant has confirmed the consent will not be required as they won’t be reaching that threshold.”

10 But, Sir, I will just pick up a point in my friend’s supplementary at this stage, supplementary submissions from this morning at paragraph 26. I’ll be coming to this in terms of section 88(a), but paragraph 26 on page 8, noted that “The activity status of the consent she considers are now required for the amended application are a discretionary, restricted discretionary, or controlled
15 activities.” I’m not sure whether that’s quite accurate because she also draws attention to the non-complying status of marina structures under the unitary plan, and the question of whether that, of course, applies or not is very much dependent on the application of s 88(a) and I will come to that shortly.

20 Paragraph 19, “The fact that... in the CMA.” Sir, would you like me to read that?

THE COURT: JUDGE NEWHOOK

Yes, if you just pause and we’ll read that to ourselves... Yes

25 **MR ALLAN CONTINUES READING OPENING SUBMISSIONS**

“But if no...no longer appropriate,” and I’ve set out the passage from paragraph 26 of his supplementary evidence. Can I take that as read, Sir?

THE COURT: JUDGE NEWHOOK

Yes.

30

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

“Marina structures are... seen as overlapping.” And Mr Dunn agreed and answered a question that they do in fact overlap.

5 “Is section 88(a)... for marina structures.” And I’ve noted here, Sir, that if the applicant had lodged the presently conceived proposal on 18 March 2013, which was the original date of lodgement, it would have been a discretionary activity overall and section 88(a) would then have been available to the applicant. So there’s no disputing if they’d brought in this current proposal at that time and lodged it, that’s the date when it was first lodged, that they would
10 have been able to take advantage of the provision. However there are some aspects which in my submission mean that it’s not available to them in the present circumstances, and I’ll go into that now.

15 “The basic intent... a new instrument.” And at a footnote there, I’ve just noted that the editors of Brookers Resource Management refer to one of the limitations of the provisions where the opposite’s happening. Where the plan becomes less restrictive. I just note that in passing. So it’s a provision which has its limitations. And I have attached the relevant extract on section 88(a) from the Local Government and Environment Committee Report to the House
20 of, on the Resource Management Amendment Bill 1999, which led ultimately to the Resource Management Amendment Bill number 2, 2003, and in turn to the 2003 Amendment Act, which established the current framework in section 88(a). There have been some little amendments since then, but in terms of how it works now that’s the relevant report still. And I’ve just set out
25 a passage there.

THE COURT: JUDGE NEWHOOK

Let’s just quietly read that to ourselves... Yes.

MR ALLAN CONTINUES READING OPENING SUBMISSIONS

30 “However whether or... subsection 1(a) is engaged”. I’ve attached a copy of the provision should you wish to refer to it as attachment B.

“In opening I... behind the provision.” And Your Honour put a question to me in that respect and I acknowledged that there was no detailed discussion in the case about that.

5 “However it does... was first lodged.” So that’s the temporal aspect that I was referring to. I have endeavoured to locate further case law which may be of assistance to the Court and it uncovered the same case that Mr Brabant referred you to, although as I come to it I’ll perhaps look at it a little differently in certain respects.

10

“The recent High... point to Judge Whiting.” Can I take it as read, Sir?

THE COURT: JUDGE NEWHOOK

Pause.

15 MR ALLAN CONTINUES READING OPENING SUBMISSIONS

“Judge Kenderdine in...activity over all.”

Now, Sir, there was a submission by my learned friend this morning that the language in Section 88(a) referenced to the activity, the type of activity makes
20 it clear that you can look at each activity or component of a proposal distinctly. All I would note in that regard is that, really, the language is no different to the language one finds in, for instance, Section 104, where there’s a reference to the actual potential effects on the environment without the activity at Section
25 104(d). I don't see it as being a provision which approaches the matter of the activity any differently – indeed, Justice Duffy’s confirmed that a bundled approach can be appropriate when one is confronted with Section 88(a) issues.

“Paragraph 35, furthermore...be a consideration.” Sir, the balance of my
30 submission was dealing with permissible change issues so I can probably take that as read, if you're happy?

THE COURT: JUDGE NEWHOOK

Yes.

MR ALLAN:

- 5 88(a) is an issue that I have grappled with and I did have some sympathy, as I think I said in opening, originally, for the applicant's position in argument that it seems to me that just on a plain reading of the provisions and having regard to those cases including High Court authority that there are some constraints.

THE COURT: JUDGE NEWHOOK

- 10 We will look at it all very closely and we have some further submissions to come on the point, no doubt. All right, who are you going to call first?

MR ALLAN:

I was going to call Ms Plowman but, on the basis that nobody has any questions, I'll move to Mr Brown.

15

MR ALLAN CALLS**STEPHEN KENNETH BROWN (AFFIRMED)**

Q. Now your full name is Stephen Kenneth Brown?

A. Yes, it is.

5 Q. And you're a director of Brown New Zealand Limited?

A. Yes.

Q. For the purposes of this reconvened hearing in addition to your earlier statements, you've now prepared a supplementary statement of evidence dated 6 July 2015?

10 A. That's correct.

Q. Could you please confirm the contents of that statement are true and correct to the best of your knowledge?

A. Yes, I do.

CROSS-EXAMINATION: MS PARKINSON – NIL

15 **CROSS-EXAMINATION: MR ENRIGHT – NIL**

CROSS-EXAMINATION: MR LITTLEJOHN

Q. In paragraph 3 of your supplementary statement of evidence you state that you have addressed the proposed changes as detailed in Mr Pryor's evidence and have reviewed his statement together with
20 Buildmedia's accompany folio of figures. Those are the folio of figures that we have, 22 May 2015?

A. That's correct.

Q. In preparation of your evidence did you go back to Matiatia Bay?

A. Not specifically to look at this, no, but I have been back to Matiatia on
25 several occasions in relation to other projects that I'm involved with and having missed the ferry one afternoon I had the benefit of spending quite a bit of time on the wharf and in the bay.

Q. I thought you were looking remarkably relaxed! In terms of the viewpoints depicted in Buildmedia simulations of May 2015. Have you
30 been to each of those viewpoint locations since May 2015 and assessed the simulations with the view that you found there?

A. No, I have not. I have not been to all of those locations.

Q. Well, that's not the question I asked – have you been to any of those locations?

A. Yes, I have.

5 Q. Have you been there since May 2015 with the Buildmedia simulations?

A. No.

CROSS-EXAMINATION: MR R BRABANT

10 Q. The questions I want to ask you, unsurprisingly, are about your concerns in relation to the way in which the reduced deck structure has been presented now, before the Court. Have you had, Mr Brown, an opportunity to look at the revised Buildmedia simulations that are in the folio dated the 10th of July?

A. Yes, I have.

15 Q. And you understand the changes that have been made and what Mr Johnson has told the Court about the error in the computer?

A. Yes.

Q. Have they assisted you in an understanding of the appearance of the deck?

A. No.

20 Q. That's fine then. We'll approach it another way. So with your paragraph 6 first of all, where you express a degree of concern about the parking deck elevated above part of the bay directly east of the existing marina terminus and wharves at Matiatia you have looked carefully, I take it, in the folio of figures supplied, and you have a copy there, I hope, of those
25 that are dated the 22nd of May 2015, have you got those handy?

A. Yes, I do.

Q. And you did take the trouble to look at the plans as well as visual simulations?

A. Yes.

30 Q. So, first of all, if you look at figure 145, there are two cross-sections shown there, aren't there?

A. Yes, there are.

Q. And you can see what those cross-sections are by looking at figure 143?

A. Yes, I can.

5 Q. The first thing that you see, don't you, is that the deck structure is no higher than what's been called the old reclamation to which it attaches, is it?

A. That's correct, that's my understanding.

10 Q. And also, if you had any doubt as to how much of the piles would be showing, high water, the mean – MSL – or mean low water, that is accurately available and can be scaled off these plans, can't it?

A. Yes.

1620

15 Q. So when you expressed a concern about how much pile might be showing by looking at a visual simulation, did you take some measurements off cross-section CC on figure 145?

A. Um, I scaled those and I also looked at figure 148, which also provided some assistance.

Q. Yes, because that gives a, that gives the mean high water, mean sea level and mean low water level calculated off chart datum, doesn't it?

20 A. Yes it does.

Q. And by using those numbers you can derive some dimensions of those piles on that cross-section, can't you, Mr Brown, table 145?

A. Yes you can?

25 Q. And what did you get for mean sea level; how much pile would be showing? And if you need to check, again I've got a scale rule here for you.

A. I have a scale.

Q. Oh, okay. I'm just making sure what you needed.

A. Now did you refer to a mean sea level?

30 Q. Well I, I mean yes I did, using the calculation that you can do off that other one on 148, mean sea level is indicated there.

A. Yes.

Q. And I just asked if you, have you done the exercise, draw a line through and at mean, at the mean sea level how much pile will be showing

starting from the shore and moving out? Did you have a look at what the range was?

A. Well I didn't look at all of that range, but what I did do was use the scaling that you can from mean sea level to ascertain roughly what the height of the deck was in relation to the shoreline.

5

Q. Well did you calculate this view; did you work out how much pile would show at high water, at mean sea level and mean low water?

A. Yes and it's –

Q. What's the range please?

10

A. Oh well at mean sea, at mean low water – sorry, I'm just going to have to redo this.

Q. Yes.

A. At mean low water we were looking at piles, not including the capping which fits into the underside of the promenade, probably of around about 3.1 metres.

15

Q. 3.1 metres.

A. And if we go to the mean high water mark, it's down to about one metre.

Q. Okay. So mean low water, you say that – is that the measurement that you derived off cross-section CC?

20

A. That's right.

Q. At a scale of one to 250?

A. That's correct.

Q. Okay, that's interesting.

A. Sorry, I was using the elevation of gangway side, scale one to 200. Oh I see what you mean, it goes up to four.

25

Q. Well I'm just looking under suspended deck section CC; it's a scale of one to 250. Is that the scale –

A. Have I – can you just take me to that exact drawing?

Q. Figure 145.

30

A. Oh, I've been looking on 148. You mentioned 148 and that's why I've been looking at it.

Q. Well I did and – I did, but this is the view from the shore, isn't it?

A. That's right.

Q. Looking at it and it has mean, it has mean high water springs there –

A. Yes.

Q. – and I was asking whether you'd done – it's a scale of one to 250, if you'd looked at how much of the pile would be showing, mean high water, mean sea level, mean low water, or not?

5 A. Well I calculated it – I mean as you can see, if you're looking at the suspended deck section AA, which I assume to correlate with the mean high water springs, mean low water springs and medium.

Q. Yes I understand that Mr Brown, that's looking at the end of it from the bay across by where the haul out –

10 A. That's right.

Q. But I'm just asking you about section CC, because you particularly have referred in your evidence to people who move over that reclamation and are walking along past the step, moving northwards around the bay and that cross-section CC is what they'll see.

15 A. Oh well that's highly variable, because of course their pathway descends. As you move northwards around the bay the pathway descends so you'll – there's an infinite level of variation there.

Q. Yes but there isn't at the – that cross-section can tell us how much pile is showing at different stages of the tide, can it not? And my only question was whether you'd done a calculation of that to find out how much it was.

20

A. No I haven't, sorry. I misunderstood your question.

Q. Yes. And if you had a look at it now I suggest to you it's not three metres, because of course the dark line is giving us chart datum.

25

You've got to measure above that, don't you?

A. Yes you do.

THE COURT: JUDGE NEWHOOK

Where in his evidence does he say three metres?

30

MR R BRABANT:

I don't think in his evidence he does say three metres, Sir.

WITNESS:

No.

THE COURT: JUDGE NEWHOOK

5 Well I was just wondering where your question came from?

MR R BRABANT:

My question, well, Sir, I asked him if he'd measured the distance, but it turns out what he had measured was over on 148, Sir, which shows the other side
10 of the deck from the shore.

WITNESS:

That's right.

MR R BRABANT:

15 Where it joins to the gangway. Where there are some numbers there, and he's measured some dimensions there, but as I think – and I can put the question to Mr Brown, the ground is, the sea level is rising as it goes towards the shore. So on the other side of the deck, closest to the rocky foreshore.

THE COURT: JUDGE NEWHOOK

20 The sea level's doing that is it Mr Brabant?

MR R BRABANT:

No, no.

25 **WITNESS:**

Not sea level, no.

THE COURT: JUDGE NEWHOOK

It's rising as it goes towards the shore.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. No. The question is how much higher will you see on that side, and Mr Brown hasn't measured it?

A. No. No, I haven't specifically measured that.

5 CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. Now in your evidence you talk about – I'll just find the – yes in paragraph 11 you talk about "The carpark appears to sit on stilts above the water surface next to Matiatia Reserve, and appears rather incongruous next to the lower lying marina piers and even the lower profile of the ferry wharf and terminal beyond." Are you suggesting that this structure will be higher than the –

A. No, I'm not.

Q. – No, just clarifying that.

A. – I'm simply taking into account perspective and the truth is that if you look at viewpoint 5, because the proposed carpark projects towards the viewpoint it appears more elevated than the ferry terminal and wharf do because they are more distant.

Q. So in terms of that view, of people looking out as they take that walk round, can you go to figure 144 please? And you can see the pathway is visible there on the plan?

A. Yes.

Q. So I had a look at some dimensions and I want to ask whether or not you agree with them, and that's in relation to how far people will be away from the structure when they're on that path. So if I start by measuring from the landward end 10 metres in and if you wouldn't mind doing this for me please, sir, and tell me whether this is right, and I measured 15 metres, I mean it mightn't be exact to the nearest metre to the path, so 10 metres in along the structure in the northerly direction there's a 15 metre distance to the path?

A. Yes that appears to be correct.

1630

Q. And if you go with the structure being 50 metres, just under 50 metres long, if you go half-way along it, it's 25 metres and measure across to the path is the distance then 28 metres?

A. That appears to be correct.

5 Q. And at the end, to the shoreline, my measurement, just checking with you, 34 metres?

A. Yes I think so, yeah.

10 Q. So considering the effect of this structure above the water level, and you'll see more pile in the different stages of the tide, as you walk along in an orderly direction the distance increases quite significantly that you come away from the deck doesn't it?

A. It does until you reach a point which is – oh there's reference to the bottom of the bank and the red line suddenly curves to the north instead of running in a north easterly direction. This –

15 Q. Well if we look at – sorry. I didn't mean to interrupt.

A. And from that point onwards it's roughly – well it's not quite parallel but it certainly – the amount of increased distance slows down I suppose or the transit's not as rapid.

20 Q. Which we can see on figure on 5.1 for example. It gets to around about 34 metres and stays more or less the same?

A. Yes.

Q. But of course then you're walking further away from the end of it as well aren't you?

A. Yes.

25 Q. Now the other thing you talk about is this question of anchoring. It's a matter that's central to your concern, as I understand it, about the amended design being done in this way. Do you acknowledge Mr Brown looking at – what's the best plan to use, 143.

WITNESS REFERRED TO PLAN 143

30 Q. Get that?

A. I'm just getting there. Yes I'm there.

Q. There is a significant anchoring of this wharf-type structure onto the reclamation as compared, for example, to the gangway-type connection to the marina. They would be fair wouldn't it?

A. In that sense, yes.

Q. Now have you seen Mr Dunn's rebuttal evidence please?

A. I've seen it but I skimmed it but I haven't read it in detail.

Q. And it's not his words, it's the plan at the end.

5 A. Now I may not have that with me. I think it might be still sitting on my –

Q. You're aware of the one that I'm referring to Mr Dunn responded to your concerns by asking Mr Leman to draw a different deck structure in the same form?

A. That's right.

10 Q. Now if you need the plan to answer this question please say so.

A. I would please if I could have a copy of it that would be much appreciated.

THE COURT: JUDGE NEWHOOK

Who exhibited this plan?

15

MR BRABANT:

Mr Dunn in his rebuttal Sir.

THE COURT: JUDGE NEWHOOK

Right.

20

MR BRABANT:

It's in his supplementary rebuttal.

UNIDENTIFIED MALE:

25 There should be a folder I think of supplementary evidence. I think it's coming your way actually.

MR BRABANT:

30 It's referred to Sir in paragraph 30 of Mr Dunn's supplementary rebuttal and it's attachment 1 to his evidence.

WITNESS:

Yes I have that.

CROSS-EXAMINATION CONTINUES: MR BRABANT

5 Q. And the simple question Mr Brown is that the alternative approach that you had in mind?

A. No. The alternative approach I had in mind was closer to the original application and even though it involved a larger area of either reclamation or decking, the difference was that it effectively became part
10 of the headland. It became an extension of the headland and so the difference between that and what's now proposed, and what's also partly shown here, is that it's sort of extends off the headland.

Q. So your preference, just so I understand correctly, is to retain the original dimension area for parking?

15 A. Well –

Q. Something as large as that?

A. If I had –

Q. Rather than smaller?

A. My – the – I'm just looking at this purely from a landscape and visual
20 perspective and my response is that I felt that having the area of carparking and the walkway and so on actually butting into the headland and effectively becoming part of it was preferable to having a sort of appendage which juts out from it, which is the situation we're now faced with. And so I felt that that was preferable and I stand by that and in fact
25 I make reference to the comparison between the two, so that's where I stand. I think that – I understand that the new carpark is smaller but I felt that that anchoring was quite important in terms of diminishing the effects of the carparking and I felt it was reflected in a comparison of the May 2014 simulations with those that have now been presented to us.

30 Q. So in relation to this butting into the headland, can you go to figure 140?

WITNESS REFERRED TO FIGURE 140

Q. I just used that – or we could use 142 because on 142 the new structure is very faint and it's a bit easier to see here. In terms of the existing

environment of that headland, it has two wharves butting into it does it not?

A. It does.

5 Q. And so at the dimensions and the dimensions of this structure are similar, aren't they, to the existing two wharves?

A. Yes they are.

Q. And it butts into or projects off the headland as they do?

A. Yes.

Q. So there is synergy there?

10 A. No there isn't.

Q. Not in your mind?

A. And the reason I say that is that those two are existing wharf structures and they project directly out towards the entrance to Matiatia Bay. This does not project in the same direction. It branches off and heads in a completely different direction into that bay to the north, and it projects out over part of that bay and I felt uncomfortable with that projection.

15

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

Q. Well I didn't really have any questions but this discussion is – with the appendix 1 to Mr Dunn's statements, and that revised shape of the deck, that seems to come closer into the shoreline in fact, it's difficult to quite know how they – it looks like it's at grade so that you can drive right around and out. I'm not sure, you can't really tell from that, maybe not. Maybe it's just two-way with a – two-way in and out and that's a dead end. If that was at grade with the shore, or a way through there, so it's almost had the – it was a structure but had the effect essentially of extending the ground there, would that be a better resolution than the one that represented with today?

20

25

A. Yes. I think it's certainly an improvement on the current proposal. I simply say it's not ideal because I think that there are other considerations. I think there's a strong focus at the moment on looking at this from the vicinity of the existing wharf and the ferry terminal and so on. But I think if you think about going into that bay and walking along the shore line there, and descending down from the ramp,

30

suddenly you're looking out to sea and what you're seeing the piling and the edge of the carpark with cars on top of it. So the deck becomes almost like a focal point when you're looking out to sea. Whereas before, the previous situation with having the structure of the carpark
 5 bedded into the headland, that provided a platform for views out over the bay and out to Matiatia's entrance. So you have two quite different situations, and that's one of the key reasons why I'm concerned about this.

A. Thank you, I think I understand.

10 **QUESTIONS FROM THE COURT: COMMISSIONER HOWIE - NIL**

THE COURT: JUDGE NEWHOOK

Q. Mr Brown in your paragraph 13 you refer to vehicles on top of the deck. I rather unfairly said earlier this afternoon that it appeared to have been Mr Scott and Mr Gilbert who talked about vehicles but you did too. But it
 15 was a brief comment really, in paragraph 13. THE COURT:

Q. And coming to what you seem to think is this sort of over-exercised business of views from the old wharf, could you offer thoughts on visual landscape effects of the visualisation viewpoint 9 per 182 in the new
 20 bundle, actually being fully stocked with cars on a summer Saturday afternoon. That does, in that viewpoint?

A. Yes I think it would do two things Your Honour. I think it would exacerbate the severance that I've talked about.

Q. Mhm.

A. The disconnection between that vantage point and the bay.

25 Q. Why?

A. Why?

Q. How does that work? How does it exacerbate that severance?

A. Because the vehicles simply compound the amount of elements that are between you and that day.

30 Q. Non-natural elements?

A. No, that's right. And I think the other aspect is that the vehicle movements, the activity around it would also have a certain effect. So, I

feel that between those two there would be some reduction in the feeling of outlook and association with that bay.

Q. Mr Pryor, in answer to my questions made quite something of the fact that there was activity going on behind the viewer. The viewer on the old wharf looking North across the bay. There was the vehicles on the on the old wharf he said, there was activity, people going to and from the ferries, the ferries themselves on the newer parts of the wharf structures. He considered that that was a context into which one needed to place this view point 9. Have you got any comment on that?

10 A. I think some of what Mr Pryor said is quite valid. I think that the fact that that ferry terminal exists there has been something which has weighed heavily on, on certainly my consideration of the proposal as a whole. I think that the reality is that we do have a transport hub and you can't ignore that. You have activity, you have the dinghies stored there, you have the boat ramp, you have activity associated with the actual ferry use too. But you also have to have regards to the way in which that area of activity is connected with the bay to the north. Now I felt before that there was a more, a slightly softer and more appropriate transition provided by having a carpark that was actually anchored into the headland and having a walk way and so on and so it provided a sort of stepping stone to that bay. Now I feel that what's happened is that you've got this structure elevated above the water and it becomes sort of like an impediment to that relationship.

Q. A disconnected intrusion?

25 A. Yes.

Q. That helps me to understand your disconnect theory some more.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

RE-EXAMINATION: MR ALLAN – NIL

WITNESS EXCUSED

30 **COURT ADJOURNS: 4.47 PM**

COURT RESUMES ON TUESDAY 28 JULY 2015 AT 9.50 AM

THE COURT: JUDGE NEWHOOK

Ms McIndoe, we've seen quickly, in my case, the two brief statements that Mr Blom and Mr Ellis, I think his name is –

5 MS MCINDOE:

Mr Ebbett.

THE COURT: JUDGE NEWHOOK

Mr Ebbett have put together. We've glanced at those. Were those circulated to the parties either last night or this morning?

10 MS MCINDOE:

Yes, they were. Legally represented parties. I've got copies here today as well for anyone in the public who would like a copy.

THE COURT: JUDGE NEWHOOK

Thank you for that.

15 MS MCINDOE:

Just to let you know as well, they're available, they're here and they're available this morning but unfortunately Mr Blom has appointments between 11.30 and 2.30 so some guidance on when they might be appropriate to appear, I'd be grateful for that.

20 THE COURT: JUDGE NEWHOOK

Let's work on that, let's see what other parties take on these documents is. And let's see if we're going to prevail on Mr Blom to change his other appointments and have us pull rank on him or whether we can accommodate his diary. Now, Mr Brabant, did you get these last night? This morning?

25 MR BRABANT?

Well they arrived last night, I read them.

THE COURT: JUDGE NEWHOOK

And you saw them this morning?

MR BRABANT:

Early this morning and we have no questions for either witness.

5 **THE COURT: JUDGE NEWHOOK**

Mr Littlejohn?

MR LITTLEJOHN:

I do have one question I want to put to Mr Ebbett but not Mr Blom.

THE COURT: JUDGE NEWHOOK

10 Mr Allan?

MR ALLAN:

No questions Sir.

THE COURT: JUDGE NEWHOOK

Ms Parkinson, probably not?

15 **MS PARKINSON:**

No question Sir.

THE COURT: JUDGE NEWHOOK

Mr Littlejohn?

MR LITTLEJOHN:

20 Yes Sir.

THE COURT: JUDGE NEWHOOK

Does the provision of this information bypass the wish for Ms Gisby to present second or third-hand evidence to us?

MR LITTLEJOHN:

The letter you mean?

THE COURT: JUDGE NEWHOOK

Yes.

5 **MR LITTLEJOHN:**

I'm sure if I asked Ms Gisby she'd love you to have the letter Your Honour.

THE COURT: JUDGE NEWHOOK

Yes, I thought we would actually have it working to have a more reliable source of information and so I'm looking for comment from you as to whether
10 that's occurred.

MR LITTLEJOHN:

Well there are things in the letter which I still say are relevant. They are not covered specifically by these briefs of evidence by the Auckland Transport personnel but for the purposes of Ms Gisby's evidence I don't intend to
15 endeavour to produce that letter from Mr Walden through her.

THE COURT: JUDGE NEWHOOK

Well you'll deal with whatever in whatever other way that might be available to you?

MR LITTLEJOHN:

20 Yes Sir.

THE COURT: JUDGE NEWHOOK

I'm wondering whether the thing to do then might be for the two new or one new and one not so new AT witness to be up next and we'll elicit whatever information from them we might find helpful and then that might lay the
25 platform for Mr Shumane to give his evidence and Mr Mitchell and so on. Agreement? Right, we'll do it.

**MR ALLAN CALLS
NICOLE BREMNER (SWORN)**

EXAMINATION CONTINUES: MR ALLAN

Q. Your full name is Nicole Megan Bremner?

5 A. Yes.

Q. And you have the qualifications and experience set out in your revised statement of evidence-in-chief dated 11 July 2014?

A. Yes.

10 Q. For the purposes of this reconvened hearing, you've now prepared two supplementary statements of evidence. One, dated 6 July 2015.

A. Yes.

Q. And then today's latest one, obviously dated 28 July 2015.

A. Yes.

15 Q. I understand you have some corrections you'd like to make to today's statement?

A. Yes I do.

Q. Please explain those to the Court.

20 A. First of all, the typo that you've already noted for Department of Conservation on page 3. On page 8, the original condition reference 32, I had floated the idea of deleting their requirement to provide plans to the Hydrographic Office but I am now advised that the council still requires a reference to that so that they have all as-built plans for the marina structure.

THE COURT: JUDGE NEWHOOK

25 Q. So you want to delete your recommendation?

A.

30 A. Correct. And one final correction, on page 14, condition 44. So I had identified that there had originally been two conditions, one relating to noise from the marina carpark and one relating to marina activities. The new condition just relates to marina activities and it has an increased DBA of five DBA. I am now aware that the acoustic specialists are in agreement in their joint witness statement with the condition as it was

worded, so I would delete that recommendation. And I have no further amendments.

MR ALLAN:

5 Q. And subject to those changes, can you please confirm to the Court that your two supplementary statements are true and correct to the best of your knowledge?

A. Correct.

THE COURT: JUDGE NEWHOOK

10 Q. Can I just ask one preliminary matter that will assist my understanding? Thank you by the way for this work overnight Ms Bremner, it looks like a fair bit of midnight oil might have gone into this. We are very grateful to you. I think this can help the transparency of what's been going and bring us to the present much more easily. Just taking page 5 of your schedule as an example, however, can I just have clarification from you, 15 where you've got blanks in the columns headed 3 July and 24 July, does that simply indicate that there was no change from the 22nd of May?

A. Correct.

20 Q. That clears that one up. I thought so. I just wanted to be very sure about that.

CROSS-EXAMINATION: MS PARKINSON – NIL

CROSS-EXAMINATION: MR ENRIGHT – NIL

CROSS-EXAMINATION: MS MCINDOE:

25 Q. A matter which I suspect is an error and I would like to draw Ms Bremner's attention to, to clarify that. It's on page 3 and it's the last row. There's an amendment in the column headed, "AT Changes," that refers to an amendment to paragraph B. And certainly that doesn't gel with my recollection of AT's changes. I just wonder if you could look at that and advise whether you think that is an error or not?

A. Yes, that added clause B should correctly be put under the second row, the “22 May amended application” row.

THE COURT: JUDGE NEWHOOK

Q. Let’s just clarify that. What I have done on my copy is to put a circle
5 around the comment starting, “Added B regarding,” in the 3 July column
and arrowed it to move into the 22 May box. Is that what we’re to do?

A. Yes.

THE COURT: JUDGE NEWHOOK

10 It’s on page 3, it’s the last item on page 3. You can see there’s an item in the
3 July column. Just circle that and put an arrow so it slides over underneath
what’s written in the 22 May box for that item.

CROSS-EXAMINATION: MR LITTLEJOHN – NIL

CROSS-EXAMINATION: MR BRABANT – NIL

THE COURT: JUDGE NEWHOOK

15 I might observe that Commissioner Leijnen was embarking on an exercise up
here of comparing this new schedule with the latest iteration of conditions and
was doing her usual methodical assessment of things and I did observe to her
that we probably haven’t got the time right now to do that. So she may not
have all the questions that possibly she –

20 **QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN**

No, I think they would be around conditions and I’d like to understand. I can
see what’s happened but I just need to understand them a little bit more. And
it’s more about some of the practicalities or certainty of the conditions and the
sort of general concept of the condition as the threshold or the requirement
25 and the management plan has the means of getting there. Yes, so that sort of
thing and connections between conditions like the size of the breakwater
rocks is relevant to the condition relating to the provision for the penguins. So
when you’re making that sort of selection and designing the breakwater, you

would assume you are thinking of those two things at once. So that sort of thing; cross-referencing and that's what I was looking at.

THE COURT: JUDGE NEWHOOK

5 Q. Ms Bremner, would you be available to come back a bit later, either at the end of today or first thing tomorrow –

A. Yes.

Q. – to assist if we have questions for you about that kind of detail?

A. Yes.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

10 **QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL**

WITNESS STOOD DOWN

THE COURT: JUDGE NEWHOOK

I'm just going to say, for the benefit of the people in the public gallery – the lawyers will understand this but I want everybody to take on board that just because we are spending time working with witnesses about any of the draft
5 conditions of consent does not suggest that we have it in our minds that consent will be granted. At this stage it is a completely open book as to whether that's the case or not. Working with – and I think I said this last October but I'm going to say it again – working with witnesses about draft conditions of consent can assist to inform us about the consentability or not of
10 a proposal. So that's all we're doing.

THE COURT: JUDGE NEWHOOK

What can we usefully do before Mr Shumane gets here?

MR ENRIGHT:

Sir, my submissions are only four pages. I'm very happy to present those now
15 if that's convenient.

THE COURT: JUDGE NEWHOOK

That would be helpful, I think.

MR ENRIGHT READS OPENING SUBMISSIONS

"The Iwi Trust ... to that impact." I just interpolate there, Sir, that Mr Pryor
20 was questioned about that point and he agreed there was no current evidence of – well, essentially, pending development. So it seems to be more of a hypothetical issue.

"The amended marina's ... oppose the marina."

25 THE COURT: JUDGE NEWHOOK

Any questions for Mr Enright? No. Thank you very much.

CROSS-EXAMINATION – NIL

**MR ENRIGHT ADDRESSES THE COURT: JUDGE NEWHOOK – LEAVE
TO COME AND GO (10:20:46)**

5

MS McINDOE CALLS**SCOTT ANDREW EBBETT (AFFIRMED)**

Q. Can you please confirm that your full name is Scott Andrew Ebbett?

A. Yes.

5 Q. And that you have the qualifications and experience set out in paragraphs 2 and 3 of your statement of evidence?

A. Yes.

Q. Do you have any corrections to make to your evidence?

A. No I don't.

10 Q. Can you please confirm that it's true and correct to the best of your knowledge?

A. Yes.

CROSS-EXAMINATION: MR LITTLEJOHN

Q. Good morning, Mr Ebbett?

15 A. Morning.

Q. Now I understand that you were the key reporter and one of the signatories to the 2011 Parking Restrictions Memorandum produced by the Traffic Control Committee for Auckland Transport relating to Matiatia, is that right?

20 A. I'm not completely sure which document. I've been signatory to a lot of those documents.

Q. All right, it's the one dated November 2011 that was annexed as attachment B to Mr Karndacharuck's evidence in October last year.

A. Yeah, I haven't got a copy in front of me, sorry.

25 Q. All right, well I'm looking at it and your name is on it and you signed it.

A. Okay.

Q. My question is relatively general –

MS PARKINSON ADDRESSES THE COURT: JUDGE NEWHOOK – DOCUMENT BEFORE WITNESS (10:23:20)**30 CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN**

Q. Volume 3, under Auckland Transport, tab 2.

WITNESS REFERRED TO VOLUME 3

A. Yeah I have a copy now.

Q. Okay, very well. The only reason I wanted to draw that out was because it's, it would be fair to say that you've got a very intimate
5 knowledge of the way in which the keyhole and the vehicle restriction area at Matiatia is operated, haven't you?

A. Yes.

Q. Now in terms of the brief of evidence you have produced overnight, or yesterday, for which I must say I'm most grateful, I want to ask you
10 briefly about the section concerning increasing parking spaces at Matiatia. Do you have the brief in front of you?

A. Yes I do.

Q. At paragraph 8 you say there are no plans for introduction of paid parking in the paddock area. You go on to say that it's an Auckland
15 Council property and that Auckland Transport doesn't have any decision-making authority over that area. Would it be correct to say accordingly that AT has no plans for any paid parking in the paddock area?

A. Yes that would be correct. I'm speaking on behalf of AT, so AT has no
20 plans.

Q. Okay. And are you aware of any other plans by Auckland Council for any restrictions in that paddock area?

A. No I'm not.

Q. In terms of the proposal that you talk about at paragraph 10 that you've
25 developed, why have you developed such a proposal to provide for parking in some of the P30 spaces during the weekdays; what's the reason for it?

A. At Waiheke, Matiatia in particular there's been ongoing pressures on parking and requests for any additional all day parking. So AT has been
30 dealing with the local board and ferry users group about trying to create any additional supply for all day parking. So there were two areas identified and one was the P30 spaces were not all used during the week, so we're taking some of those and converting them just Monday to Friday and then in the weekend they'll all be P30, where there's more

demand for that pickup/drop off. And there was another small area in one of the sealed, in the sealed carpark, where it was felt that we could get additional five spaces and it wouldn't impede on, so people entering and flowing through the carpark.

5 Q. And just clarify for me, when was this proposal initially developed?

A. This we had a meeting on Waiheke, I believe it was in April or May of this year.

10 Q. And the requests from the local board and I think you said ferry users group and other parties, are they requests – I think you called them “ongoing”, but have they been consistent over the past year?

A. Yes.

15 Q. Okay, thank you. Now your paragraph 16, you talk here about the parking options for tourism operators and it would be fair – or would you accept that a tourism operator that doesn't operate a bus, a tour coach, a shuttle bus, or a taxi is essentially not allowed access into the keyhole area?

20 A. They – the parking in the keyhole area is all restricted, and it's restricted to those classes that you just mentioned. So if a vehicle does not meet that class they can't park within the keyhole area, but then they may use other parking, paid parking, or P30 parking.

Q. Are they allowed access into that area?

A. The parking officers can only enforce the parking restrictions in that area. So they're not allowed to park in that area.

25 Q. But there's no, there's no ability to control any vehicle that might enter in there for a purpose other than parking; people are allowed to go in there and turn around, is that right?

A. I believe they can do that.

30 Q. In terms of people like goods vehicles and mooring holders, do they fall into that category of being allowed to pass through because they're not intending to park?

A. I believe that mooring holding vehicles do pass through and exit at the back of the keyhole and there is some parking available past the keyhole area.

Q. Now who –

THE COURT: JUDGE NEWHOOK

Mr Littlejohn, I just wonder whether we might have a bit of clarity. You asked a question that came I thought a bit from left field and the witness gave a rather generalised answer; I'm not sure that he quite had a grip on it. And it
5 may be that there is actually some level of agreement in the room about –you put it to him that general vehicles can manoeuvre through the keyhole. My understanding of the evidence and from having been on the ground there is that they are required to circulate short of the keyhole. Now is that not your understanding from the evidence?

10

MR LITTLEJOHN:

Well from hearing –

THE COURT: JUDGE NEWHOOK

The witness agreed with you but I'm just not sure. I saw a lot of heads being
15 shaken around the room, counsel and others.

MR LITTLEJOHN:

I must say it's the first time – I mean I had understood that was the case as well, so unless I was – that the answer did take me at a little bit of a surprise
20 and I guess that's why I wanted to make sure that Mr Ebbett was referred back to the document that set out the parking and access restrictions back in 2011. I'm sure what I do with that now or what the Court wants to do with that. I'm quite happy if –

THE COURT: JUDGE NEWHOOK

25 We've got other traffic witnesses to come. And I think it should be put to each of them. Commissioner Leijnen has a handle on this that's somewhere in the middle.

And we think it involves the officer who goes by a nickname –

THE COURT: COMMISSIONER LEIJNEN

30 Parking somebody or other.

THE COURT: JUDGE NEWHOOK

Parking Bob or Parking –

UNIDENTIFIED SPEAKER:

5 (inaudible 10:31:35)

THE COURT: JUDGE NEWHOOK

Parking Paul.

THE COURT: COMMISSIONER LEIJNEN

Parking Paul.

10 THE COURT: JUDGE NEWHOOK

Q. My understanding is that it's a legal road?

A. Yes.

Q. So the council's ability to control it is limited to parking as we've heard from this witness but there's Parking Paul, is there as sort of a more bluff than actual regulation.

15

MR LITTLEJOHN:

De facto guard dog. A guard dog of the keyhole, yes. That's what I understood too.

20 THE COURT: COMMISSIONER LEIJNEN

That's what I understood though they haven't necessarily got the power, the lawful right, there is some bluff being used to manage what's going on. That's where I thought we got to with the last lot of evidence.

25 MR LITTLEJOHN:

That's what I understood and I think to be fair the witness that's what he said is that it is a legal road. They can only control parking but presumably didn't go further to introduce his knowledge of Parking Paul.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN:

Q. Do you know Parking Paul Mr Ebbett?

A. Is Parking Paul the parking officer?

Q. Yes.

5 A. Yes I do.

Q. All right, very good.

THE COURT: JUDGE NEWHOOK

Well let's just see if the witness is in agreement –

10 **MR LITTLEJOHN:**

Can corroborate with Commissioner Leijnen's –

THE COURT: JUDGE NEWHOOK

Q. – with what has just been discussed led by Commissioner Leijnen.
Does that information strike accord with you Mr Ebbett or don't you
15 know?

A. I'm not involved in the enforcement of – the enforcement officers on
Waiheke so I am not sure exactly what they do. I haven't witnessed
how they control that.

Q. Do you accept the part of it that is to the effect that it's a public road but
20 that the council's powers of control have limitations?

A. Yes.

Q. Do you accept that bit?

A. Yes.

Q. I think we're probably back on the rails.

25 **CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN:**

Q. The next question I wanted to ask is the process by which a bus or a
tour coach or a taxi obtains a parking permit for that area. Are you able
to give us some information about that?

A. So they don't – the parking restrictions don't require a parking permit.
30 So the parking restrictions are by class of vehicles. It was taxi, shuttle,

tour coach and bus stop I believe, so vehicles don't need a permit to park in there, they just need to comply with those classes.

5 Q. And so presumably, like the public carpark, the available spaces and the keyhole for those classes of vehicle are on a first come first served basis?

A. Correct.

Q. So those sorts of vehicles would effectively be able to go in but if there was not capacity there they'd have to go elsewhere?

A. Yes.

10 **CROSS-EXAMINATION: REMAINING COUNSEL – NIL**

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MS McINDOE – NIL

15 **WITNESS EXCUSED**

MS McINDOE CALLS**ANTHONY WILLIAM BLOM (AFFIRMED)**

Q. Can you please confirm that your full name is Anthony William Blom?

A. I do.

5 Q. And that you have prepared a number of statements for this Court and I'll run through them. There's a statement of evidence dated the 11th of June. Then a statement of evidence in reply dated the 23rd of September, and most recently a statement of evidence that you prepared and we lodged yesterday and that's dated the 27th of July, is that correct?

10 A. That's correct, yes.

Q. And that you have the qualifications and experience set out in paragraphs 2 through to 4 of your evidence-in-chief dated 11 June 2014 with one amendment and that is in that paragraph 4 of that statement you said you were currently working on – currently

15 completing an executive MBA and pleased to say you've now completed that?

A. I have, thank you.

Q. So we'll put that amendment in there. Do you have any corrections to make to your evidence of the 27th of July?

20

A. I do not.

Q. Can you please confirm for the Court that the evidence is true and correct to the best of your knowledge?

A. It is.

25 **CROSS-EXAMINATION: MR LITTLEJOHN:**

Q. Good morning Mr Blom. I'm going to confess once again that I'm trying to understand a bus timetable is only slightly more confusing than working your way through the Resource Management Act but I'm just wondering if I could get you to clarify that for me. So where is the relevant bus timetable that we would look at that's recently been

30 commenced from the 19th of July from Matiatia?

- Q. I think Your Honour Mr Littlejohn does the Resource Management Act a disservice. The latest bus timetable is appendix 1 to my latest brief of evidence.
- Q. Appendix 1 or A is it? Is it A we're talking about?
- 5 A. Appendix A, sorry. The appendix.
- Q. The first page there has got the four coloured boxes there, is that – I understood that to be the ferry timetable is that right?
- A. Certainly the purpose – one of the purposes of the bus timetable is to meet ferries when they arrive, so it's logical to link that to the ferry timetable. So the first page that you see here describes all of the ferry arrival times across the two operators and then the following pages refer to the bus times on the various routes that exist on the island now, both from Monday to Friday and on Saturdays and again Sunday and public holiday.
- 10
- Q. So if we want to get a sense, and I'll assume that we can – well assume the bus arrives or departs at the time shown on the timetable. Some people might not think that that's a sound assumption but for the purposes of this exercise. In the first series of timetables where we see Matiatia at the end of the row of columns, that is telling us that that is a time a bus is arriving at the ferry terminal?
- 15
- 20 A. That is correct.
- Q. And in the other timetables where Matiatia is at the start of the row of columns that's effectively when a bus is there and is about to depart from the ferry terminal?
- 25 A. That's correct.
- Q. So on a normal week day can you just confirm the number of arrivals and departures of buses at Matiatia?
- A. I would have to physically go and count everything on here but there's a considerable number. So for the first page of that there are –
- 30 Q. Just the Monday to Friday?
- A. Indeed...
- 1040
- Q. Twelve times three is 36 plus 37 –

- A. So I make it there are 20 blocks of three, so 60 buses that arrive at Matiatia on a weekday.
- Q. Okay, and is that number the same for Saturday and a Sunday or public holiday or is it slightly less?
- 5 A. Slightly less.
- Q. Slightly less, so what was the number again?
- A. My rough calculation here was 60.
- Q. Sixty buses during the hours of 6.00 am to, I think the latest one arrives there is about 12.21 am, is that right?
- 10 A. 5.55, 5.55, so yes, the 12.20 one, correct, yes.
- Q. Thank you for clarifying that. It was purely gratuitous. I'll know when to come on Waiheke in the future, thank you.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

- 15 Q. Yes, Mr Blom, good morning. I was interested in your second to last paragraph where you're referring to the introduction of double decker buses.
- A. Yes.
- 20 Q. And you say that they don't take any more room other than height. Now, I'm wondering about their utility on the type of road, the windy roads that you have on Waiheke. Are they actually a practical solution for Waiheke?
- A. Well, just with some background to answer that question if I may, the bus operator, Waiheke Bus, came to Auckland Transport with a proposal to utilise double deck buses on some of its main routes on the main roads. And that's part of the major project that Auckland Transport has to introduce double deck buses on high frequency routes across the entire region. We have, for the whole regional project, part of that is to ensure that any route that we put double deck buses on, it is safe for those buses to operate and that can include, in some corridors we have,
- 25
- 30 we're cutting back shop balconies, we're moving power poles, we're trimming trees, we're, you know, moving rubbish bins, just to make sure that as the bus turns it is not going to strike anything. We're being very cautious about that. So that is background. For Waiheke Island we

have done an assessment of the suitability of those particular routes and there is a feasibility study that was completed and a costing has come up with things that need to be done to make those routes safe for the buses. So, as of today, no, we couldn't. One example was we had
5 a test bus, which was a normal bus with a scaffold on its roof. As it drove along it hit power lines so we stopped that trial very quickly. But that's an example of things that we need to ensure are done before we would allow double deck vehicles to run on that island. So Auckland Transport have not committed funding to a double deck
10 clearance on the island yet but it is still a live project that we are assessing.

Q. And so it's just height, not the windiness? I just remember my daughter getting onto a pre-ball or after-ball double decker bus and everyone got on the top of the top level of course because that's the best view. And
15 then it went around the corner and all the parents held their breath as it looked like it was going to topple over. So I'm just, there's other things with this, with a vehicle that is, you know, potentially top-heavy and on Waiheke there's beautiful views to be had and narrow windy roads.

A. As sort of I can understand the sort of bus your daughter would have been on, it would have been one of the old imported London double
20 deck buses. I can assure you that the buses that we are purchasing have got very active suspension modes that, like a modern car, turn into the corner. The ride is very, very smooth. They're a, they're a quality vehicle compared to some of the fun buses that have been around in
25 the past.

Q. More the quality of the road really than ...

A. And the bus does accommodate that. So those sorts of things are certainly part of what we look at before we would say, yes, it's
appropriate to use a double deck bus on this island or not.

30 **THE COURT: JUDGE NEWHOOK**

I think the Commissioner is probably asking you about Robbie's Fun Bus so there is a precedent for double decker buses on the island but I don't feel the need to ask any questions about it, with no disrespect to my colleague.

COMMISSIONER LEIJNEN:

It didn't look safe to me.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

5 RE-EXAMINATION: MS MCINDOE – NIL

WITNESS EXCUSED

MR BRABANT CALLS**DAVID FORESTER MITCHELL (AFFIRMED)**

5 Q. Your full name is David Forester Mitchell. You are a director of Traffic and Transportation Engineers Limited and you have qualifications and experience that are actually referred to in your supplementary evidence but are also set out fully in your evidence-in-chief.

A. That is correct, yes.

10 Q. So in relation to your appearance today before the Court, you've prepared some supplementary evidence which is dated the 22nd of June 2015 and some supplementary rebuttal evidence dated the 13th of July 2013.

A. Yes, that's correct.

Q. And to the best of your knowledge and belief, are the contents of that evidence true and correct?

15 A. Yes it is.

Q. Have you had the opportunity, in addition to hear the witnesses being questioned, have you had the opportunity to read the evidence that has just been produced formally through the two Auckland Transport witnesses?

20 A. Yes I have.

Q. So you're in a position to answer questions about that as well?

A. I am, yes.

THE COURT ADDRESSES COUNSEL - QUESTIONS (10:48:49)**CROSS-EXAMINATION: MR LITTLEJOHN:**

25 Q. Good morning Mr Mitchell.

A. Good morning.

30 Q. As I understand your supplementary evidence, the general thesis is that with a reduction in the number of berths at the marina, we get a reduction in the number of, or the amount of traffic generated, we get a reduction in the amount of carparking that we think is necessary to

accommodate berth holders and consequently we get a reduction on the other offsite traffic-related effects. Is that the basic thesis?

A. Yeah, broadly speaking that's correct. That's assuming the same, same management of the marina and the carparking area, yes.

5 Q. Would you accept that over the period that we have been adjourned, that there have been operational changes that directly affect how things are now happening at Matiatia?

A. Yes I'd accept that in terms of the numbers of ferries, ferries and the additional ferry operated there.

10 Q. Yes and additional buses?

A. And the recent change to the bus service, yes.

Q. And were you aware of AT's proposal to reallocate some of the carparking within the main carpark area?

A. No I wasn't until I saw Mr Ebbett's evidence.

15 Q. Presumably your opinion about that would be that it wouldn't change anything.

A. Broadly speaking, no it certainly wouldn't change any of my conclusions, no.

Q. In relation to the potential impacts of marina carpark overflow?

20 A. Correct, yes.

Q. But in terms of your understanding of the implications of the changes that have occurred over the adjournment period, I understand you did a site visit on the 16th of June is that right?

A. Yes I think that's the date I've given in my supplementary evidence, yes.

25 Q. Now, you accept that the only other person who has given direct evidence of the operations at the key hole and at the ferry terminal over the intervening period as Ms Gisby, is that right?

A. Um, yes that would sound right in terms of the intervening period, yes.

30 Q. In your rebuttal evidence you mention her name once in your paragraph 3 at the end of a sentence which goes, "That my rebuttal evidence will address supplementary evidence by Mr Langwell, Mr Shumane and also touches on the lay evidence prepared by Ms Gisby." Can you clarify in any way by reference to your evidence, where you

have considered and provided an opinion on the matters Ms Gisby disclosed in her evidence?

5 A. I'm having done it specifically in terms of any items of her evidence, I read it really to give myself a sort of, in the round, picture of what she had obviously observed there. That I went on really to look at the - I suppose the more, the matters of the traffic generation and the detailed parking themselves, so yeah, I haven't addressed any particular items in there.

10 Q. The proposal now is as I understand it, for there to not be any hourly base exclusion from the keyhole for marina permit holders, is that how I understand the conditions?

A. You mean in terms of restricting the time during normal day when they could access it?

Q. Yes.

15 A. Yeah, no, there's not.

Q. That's not the case. So is it your view that that restriction is now no longer necessary because of the reduction in the size of the marina?

A. Well I guess I never considered that that restriction was necessary in the first place, so my view hasn't changed in that sense.

20 Q. All right okay. The proposal to deal – the methodology by which potential problems, if I can just use that term generally in the future, at the keyhole, are to be addressed it's by way of monitoring and then presumably a review condition, is that right?

A. Yes I think that's the one proposed in the conditions, yes.

25 Q. Do you accept that, well I'll ask it more open, you do you think it would ever be a reasonable outcome of a review of the conditions of this consent that restriction for marina holders into the keyhole would arrive as a condition for a large proportion of the day?

30 A. For a large proportion of the day I would say no. That could be one of the factors that's considered, but it's probably at the more extreme end. It could be more sort of active management in terms of advising people. Again you know, if there have been particular issues at particular times of the day. I would only ever see the need for that really over the absolutely sort of peak summer periods.

1055

Q. And do you have – I hope you have in front of you the May 2015 bundle?

A. The drawings?

5 Q. Yes.

A. Yes, I do.

Q. And if I could get you to – probably the simplest one is to go to plan 143, parking deck layout?

A. Yes, I have it.

10 Q. Do you have that in front of you?

A. Yes, I do.

Q. What wouldn't a berth holder, driving onto the deck, do in the event that all of the carparks were full?

15 A. They'd have to effectively manoeuvre in the aisle area which would be a multiple sort of turn manoeuvre and then exit the deck.

Q. So there's no express provision made for any sort of quick turnaround area in case of it being full?

20 A. Not in that design. And, I mean, that design is certainly the minimum footprint and I think that's partly why it is it's the size and the shape that it is, it's the minimum footprint.

Q. Is there any mechanism proposed whereby berth holders – permit holders wishing to go to the carpark are alerted to the fact that the carpark might be full before they enter the keyhole?

25 A. I don't know that there's anything specific but it's certainly something that could be included as part of the marina management plan – I mean, people could get text alerts, for example.

Q. Text alerts?

A. If the manager's there to advise them that the carpark's full at a particular time.

30 **QUESTIONS FROM THE COURT – NIL**

RE-EXAMINATION: MR R BRABANT

Q. Just the question from Mr Littlejohn about the event of the parking being full and having to manoeuvre out – in that event, and based on your experience of the carparking being full in a parking arrangement like this
5 would you expect both of the disabled parks to be occupied as well, from your experience?

A. That's a hard question to say. From my experience, probably not, and the question might also be because we're looking at different time restrictions on the parking it could be in fact that somebody's coming in
10 to go out for the whole day and in fact the short-term parks, if there are a small number of short-term parks there, they may be vacant at that time as well and people may be able to use those to manoeuvre and turn around as well.

WITNESS EXCUSED

15

MR ALLAN CALLS**SAM AHMAD SHUMANE (SWORN)**

Q. Your full name is Sam Ahmad Shumane?

A. Yes.

5 Q. And you're a traffic engineer with the Shumane Consultancy?

A. Yes.

Q. And you have the qualifications and experience set out in your original statement of evidence-in-chief dated 11 July 2014?

A. Yes, I do.

10 Q. And for the purposes of this reconvened hearing you've prepared a single supplementary statement dated 6 July 2015?

A. Yes, I have.

Q. Could you please confirm to the Court that the contents of that statement are true and correct to the best of your knowledge?

15 A. Yes.

CROSS-EXAMINATION: MS PARKINSON – NIL**CROSS-EXAMINATION: MR ENRIGHT – NIL****RE-EXAMINATION: MS MCINDOE – NIL****CROSS-EXAMINATION: MR R BRABANT**

20 Q. Mr Shumane, you've had an opportunity to read the evidence of the Auckland Transport witnesses that was produced overnight?

A. Yes, briefly this morning.

Q. And look at the detail, for example, of the timetables that Mr Blom's produced for the buses?

25 A. Yes.

Q. And, having read that, do you change your position in terms of your evidence at all?

A. No, not at all. As I said in my supplementary statement, Sir, I reviewed or I had a look at the new timetables that were introduced on 19th of July

and they are pretty much what Mr Blom put in his evidence and my supplementary statement and my recommendations are based on part of, well (inaudible – 11:00:47) on that.

CROSS-EXAMINATION: MR LITTLEJOHN

- 5 Q. You've expressly said that your supplementary evidence effectively – it is Mr Mitchell's supplementary evidence. In preparing your supplementary evidence did you review at all the evidence by Mr Langwell?
- A. No because I received it afterwards.
- 10 Q. Of course you did, that's right, it was a simultaneous exchange, we couldn't deal with that. Have you subsequently read that evidence?
- A. I have.
- Q. And presumably it doesn't change the position you've – well, the opinions you've entered into your evidence?
- 15 A. No. I have read Mr Langwell's and other submissions as well and, no, I don't really change – or that won't change my recommendations and conclusions.
- Q. And have you read Ms Gisby's evidence?
- A. Yes, I have.
- 20 Q. Do you accept that she has a considerable knowledge of observations of activities at Matiatia over the intervening period since the last hearing?
- A. I accept that she has more knowledge of the area than I do.
- Q. You heard me ask Mr Mitchell the thesis behind his supplementary evidence was that with the reduction in the number of berth holders so, too, do you have virtually a pro rata'd reduction in all of the other traffic related incidentals arising from that parking demand, vehicle movements. Do you prescribe to that theory as well?
- 25 A. Absolutely. This is the only way – or at least in this case this is the only way we can look at it and this is the way how Mr Mitchell analysed the marina traffic in the first place, before the first hearing, and we're following the same procedures in analysing the traffic effects.
- 30

Q. And do you accept that in the intervening period since October last year there have been significant operational changes at Matiatia – additional ferries, new buses, those sorts of things?

A. Yes and I experienced that myself last Saturday.

5 Q. And yet, as I understand it, your evidence is that notwithstanding those changes you consider that the reduction in the size of the marina alone assures you that no time restriction based on ferry arrivals is necessary – is that how I understand your evidence?

10 A. Your Honour, if anything, the changes that have occurred at the terminal area made the situation slightly better than what it was before, we have more buses and they come in more frequently so the congestion's aren't as bad as they used to be before the second ferry operator started. While initially my recommendation was to impose the restriction on from day one that was on the basis of ferries arriving once every hour or 45
15 minutes – now of course they arrive every half an hour so it's not really easy to have that restriction. My original position was to have the restrictions on day one, this is not possible, it's not feasible anymore. However, as the congestion levels are slightly better than they were before, as the traffic generation by the marina will be a lot less, or 60%
20 of what it was before, I am inclined to agree that a review condition that will require the restrictions later, if necessary, will be enough. And that's what the recommended conditions currently say. The conditions provide the authorities, council and (inaudible – 11:04:12). The ability to restrict access if found – if problems eventuate – and that can be
25 determined by CCTV camera observations by perhaps talking to parking pool and other means.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

30 Q. Mr Shumane, I understood you to say previously that the nature of this parking restriction wasn't really practical. Have you changed that view? You saw that it was a very difficult thing to impose. There's been a practical solution?

- A. The recommended restriction was a difficult restriction to implement but in my view it was necessary that given that given the condition of the terminal area at the time. We have different conditions now. We have more buses, more frequent buses, as Mr Blom indicated this morning, and we have two, potentially three ferry operators with SeaLink coming on board. With that many buses and ferries operating at the same time always, almost one after the other, with no break in between, it is almost impossible to implement any restriction. Having any kind of restriction would almost say no access altogether. But if there's a problem, and I don't think there will be, but if there is a problem, council can restrict access if necessary. The conditions allow that.
- 5
- 10
- Q. So to the point that it's a public road and that this will provide access to a carpark for a facility perpetuity and looking at a long term prognosis, and because we've had quite a significant change since we last were in hearing, what's the long term prognosis? I mean can the council restrict altogether, or would it become such that you could only access the parking in very restricted hours that may not suit? You know, what happens when we look forward; what tools are left?
- 15
- Q. If the terminal area were too congested to the point that marina traffic wouldn't be able to access the carpark, then it is not doing its job. In my view, Your Honour, for the terminal area, the keyhole as well as the roundabout, to stop functioning to the point where no-one can actually drive through, then there's some serious problems with the public service and not the marina itself. Yes the marina will add to this, but one vehicle entering or exiting the marina during the busiest period, every one and a half to two minutes won't really add to that congestion. So looking to the future, council can very easily say to the marina, "Sorry you can't have your carpark, because the keyhole can't accommodate any more traffic." Council is able to do that, will be able to do that if the Court approved these conditions. If that happened then all vehicles visiting the marina will have to park elsewhere, and of course there are associated problems as well. But having examined all the evidence before me, having reviewed and analysed the situation I don't think that will happen as a result of the marina itself.
- 20
- 25
- 30

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- 5 Q. Mr Shumane, I've got a question for you that's a little bit like Commissioner Leijnen's one. For how long, remind me, have you had working knowledge of Waiheke and in particular the Ocean View Road and the keyhole in Waiheke?
- A. Since 2012, three years, when the first application was first lodged.
- Q. Did you have any non-working knowledge of that area prior to 2012?
- A. No.
- 10 Q. Well, you can only help us about the period 2012 to the middle of 2015 then.
- A. Correct.
- 1119
- 15 Q. But I wonder whether you may be able to acknowledge that even during that three year time, there has been a growth in access to Waiheke by residents, by tourists, by everybody. It's growing, it's becoming more popular.
- A. I certainly acknowledge that Sir. From a personal perspective at the beginning, 2012 onward I never had a problem catching a ferry. Last year I had to wait for a ferry, for the second ferry at least on two
- 20 occasions.
- Q. Yes.
- A. So that's an indication that yes there is a growth in numbers, passengers, tourists, people.
- 25 Q. Yes. And from your work and your knowledge of Waiheke you'd be aware of the activities of tourism operators, Auckland Tourism and other bodies in fostering visitations to Waiheke?
- A. Yes I'm aware of the tourist operators. I actually reviewed all of their pamphlets just to understand or have a good understanding of how they operate. And I did hat recently after reading Ms Gisby's evidence.
- 30 Q. Yes. There's probably a theme running through them is there not? Waiheke's a bit of a jewel in the crown of Auckland in these terms? Maybe alongside other attractions in Auckland, but it's got that quality about it hasn't it?

A. Waiheke is certainly a beautiful place and yes it very attractive and I have no doubt that the numbers will continue to increase. I said that at the last year hearing Sir.

5 Q. Yes. Have e you or others in AT, turned your mind to the medium to long-term prospects for Oceanview Road onto Keyhole?

10 A. At the beginning of the process two years ago, at the second lodgement, I discussed the matter of future proofing with Auckland Transport, and I was told by Auckland Transport that all matters relating to future proofing; the network, the road, buses, bus services terminal area, wharf and so on, was for them to deal with and it was their job and they were dealing with it.

Q. Sorry it was for who to deal with?

A. AT. Auckland Transport.

Q. Auckland Transport, yes.

15 A. And although I mentioned that in my initial statement from last year Sir, of the future proofing, but I do have faith in the authorities, or the controlling authority is who is Auckland Transport or council. Auckland Transport on behalf of council. Matters with regard the future proofing, rests in their hand.

20 Q. Yes. Well, I might need to put this to an Auckland Transport witness as well, but you tell me what you know because clearly you work closely with Auckland Transport on traffic and transport issues on Waiheke Island?

A. Only with regard to this proposal Sir.

25 Q. Well that maybe sufficient foundation. What awareness do you have of Auckland Transport turning its mind to future proofing, traffic and transport, efficiency and circulation in Oceanview Road and the keyhole in the medium and long-term?

30 A. Mr Blom in his latest evidence said at paragraph 9 that AT does not currently have any budget expenditure for improvement at the terminal area for the next three years, that would be the medium term. Based on that Sir, I don't think they have any plans to do any work in the medium term. Long-term, as a traffic engineer, traffic practitioner, I have worked in the field of upgrades for many years. When a capacity reaches a

certain level an alarming level or critical level, we must do something about it. There will be a time when more upgrades might be needed, perhaps more carparks, more bus parking bays, more services, and that will happen in the future, maybe beyond the three-year period Mr Blom's referring to. But I don't really know if AT is planning for any future upgrade in the area or whether this will happen. Growth is a natural thing and if we look at the population of Auckland, well, it's growing and Waiheke will grow with it, together with the number of passengers and ferry services. But I can't really speak on behalf of AT and tell the Court whether there are any future plans.

THE COURT: JUDGE NEWHOOK

Ms McIndoe, I was aware of Mr Blom's paragraph 9 of course. I may have made an undue assumption that nothing happening in the next three years had kind of a full stop to it but I think, in fairness, I should probably ask him about whether there is any long-term planning.

MS McINDOE:

It's dealt with in his evidence-in-chief, Sir.

THE COURT: JUDGE NEWHOOK

Can you just refresh our memory about that please?

MS McINDOE:

Yes, so in his evidence of 11th of June, on page 8, there's a heading, "Need for future flexibility."

THE COURT: JUDGE NEWHOOK

Just pause while we find that please.

THE COURT: JUDGE NEWHOOK

That's his evidence-in-chief.

MS McINDOE:

Yes. And in paragraph 35 he refers to planning documents which do not currently provide for large population growth and he talks about demand for ferry services et cetera. And then in paragraph 38 I think is really the nub of the issue. He says, “While there is an obvious need to make improvements in the area, such plans have not yet been developed and, to his knowledge, there is no item in AT’s 10-year capital plan to give effect to this.” I am happy to ask Mr Blom to come back if you have questions about that. I don’t recall him being questioned on that when he appeared in October.

10 THE COURT: JUDGE NEWHOOK

Yes, I recall these passages of evidence now and thank you very much for drawing them to my attention again. They seemed to have the same cut-off quality about them as his statement in paragraph 9 of his latest evidence and there’s some logic in that and consistency. I think I’ll simply leave it to you to contact him, today please, and ask him whether he has anything that he feels he can offer us in addition to his paragraphs 35 and 38 that you’ve so properly drawn to my attention. And if you’ll advise the registrar if there is and tell the parties what it is, what yet, exactly what it is, and make him available and we’ll have him come and help us with that. In infer from his fairly definitive comments in paragraph 9 of his statement today that there probably won’t be.

MS McINDOE:

Yes, I did ask him when we were preparing the evidence last night whether he could elaborate at all. He was having some trouble pinning down, I guess, the different budgets. So he provided the information that he could. I will ask him if anything has come up during the morning in response to his queries and if there is anything more he can add, then I will advise the registrar.

THE COURT: JUDGE NEWHOOK

I am grateful to you thank you Ms McIndoe.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

- 5 Q. Mr Shumane, given that understanding, let's make the assumption for the moment that a combination of Mr Blom's evidence-in-chief, paragraphs 35 and 38, and his paragraph 9 in his statement today, tell us that AT is not engaging in significant forward planning for the medium and the long term. I want to ask you a question as a traffic engineer and particularly in view of the last answer you gave me about traffic engineers needing to take action if extreme, extreme was the word you used, it was like that –
- 10 A. Critical, critical conditions are reached.
- Q. Critical, yes, very similar. The life of a permit for the marina would be 35 years so that's quite a long time into the future isn't it?
- A. Yes, it is.
- 15 Q. You'd agree with me, I suspect, that a period of 35 years enters the long-term when it comes to traffic planning?
- A. Yes, absolutely.
- Q. In the current context, in the Matiatia context?
- A. In Matiatia context or any other public works context. We go for the three, five and 10-year kind of plans, traffic engineers generally, so the
- 20 three, five and 10-year kind of plans, traffic engineers generally, so the 10-year plan is usually the long-term plan.
- Q. Oh, that's your long-term one.
- A. So 35 is definitely long-term.
- Q. So 35 is out there isn't it?
- 25 A. Yes.
- Q. To put it a bit colloquially.
- A. Yeah.
- Q. Mr Shumane, Ocean View Road is dead-end. It stops at the ferry terminal. It enters the keyhole and the keyhole is the current principal mechanism for the circulation of traffic at the end of the dead-end road.
- 30 A. Yes.

Q. Are you reasonably familiar with the geography of the Matiatia Valley and Ocean View Road? I'm taking it that you are over your three years of involvement.

A. From observations and visiting the site on many occasions.

5 Q. Is there anything obvious that stands out to you as steps that traffic engineers could take if gridlock arrived at the end of Ocean View Road which happened to trigger the condition of consent about limiting, restricting or preventing access to the marina carpark and, if the latter, then making it a redundant feature in the bay. What else could be done
10 by the traffic engineers do you think? Give us an intelligent look at it.

A. Thank you Sir. The Court may recall that Commissioner Leijnen asked me this question at the last hearing. And I provided an intelligent answer. I'm just going to look for it now. I will try to repeat it.

Q. You'd have to be so kind as to remind us what that answer was.

15 A. I'm just trying to find the overall aerial of the...

Q. Because although we have been back through old materials and the transcript in preparation for this hearing, there is an amazing amount of stuff in front of us. So be so kind as to remind us what your intelligent answer was to that intelligent question.

20 A. Thank you Sir. I don't think, I'm too old to remember what I said three months ago. I'm only trying to find the right plan so I can –

Q. Please take your time.

A. – so I can explain my point.

Q. Please take your time.

25 A. I'm only looking for an aerial Sir. The set of figures dated 10 July, the amended marina design with parking deck would be the best plan I can use.

Q. Which figure?

A. One-seven-three. It's not to do with the plan. It's just to show the
30 camera locations but I'm just using it for my purposes.

Q. Yes, good.

A. There are two reasons why there will be congestions or gridlocks, critical conditions that will require serious work or, say, restrictions to apply to the marina carpark or to anything. One of them will be an

excessive amount of buses that are unable to reach the terminal area and, of course, they are more important than small cars because small cars can park elsewhere. There's a whole lot of parking areas around. And if we lose the central or the immediate P30 parking area or the
5 immediate area next to the terminal, well, people can park elsewhere. So the number of buses will determine whether a road closure to everybody else, including the marina will be necessary. The other reason is just basically a lot of cars coming to the marina to drop off or pick up people because all of the cars can park elsewhere except for the
10 area next to the terminal area. Now if that happens, if we have a lot of buses or a lot of cars and it is a dead end street, as you know, and the actual roundabout itself has its own limitations, you can only have so many cars turning around it, around about 1000, maybe 800 an hour, no more than that. If you have more than that you'll basically end up with a
15 deadlock, no cars can – if we have a breakdown. I describe that in my earlier evidence, they show a breakdown. As a traffic engineer, the answer I gave Commissioner Leijnan last year was that the parking area next to the terminal, the parking area you see in the picture in front of you, would be the most logical place to install a new roundabout, a new
20 turnaround area, and then split the two classes of vehicle, no more cars to turn left into the new roundabout area and all other vehicles – buses, taxis, tour buses, et cetera, including marina traffic, to go down to the existing keyhole area or roundabout area. By doing that you would actually double the amount of capacity that is available for turning
25 around, for circulating vehicles in the area. That's quite an improvement, that's a significant improvement. That would practically double the amount of people you can actually take to the marina, to the ferry terminal and to the island but of course, coupled with that, there would need to be some other improvement to the wharf area itself to
30 accommodate more ferries because the cars carry people and ferries bring the people to the wharf.

Q. And presumably also to parking provision which would be removed to allow the creation of the new roundabout?

A. Yes, absolutely, all that parking, or a lot of it, would have to either go or be remodified or some other – yes, a lot of parking would have to be removed. Now, I looked at these options previously, I looked at the future (inaudible – 11:27:45) and, as I said before, Sir, going to the north, or as you go down the roundabout to the keyhole area, to the right-hand-side, you can't do anything. There's a wall there, there's –

5

Q. There's a cliff.

A. There's a cliff. We can't go anywhere. And of course next to the terminal itself we can't go left because this is where the wharf is, where the terminal is. The only logical place where you can actually have any reasonable facility is that parking area pretty much to the south of the marina, where there's plenty of parking, P30 and other parking. That will have to be sacrificed if we were to accommodate more buses and more cars. Now this is a long-term situation which I don't believe will happen any time soon. 35 years, I'm not really sure, sometimes we don't even know what the traffic will be like next year especially with the way how Auckland's changing, very rapidly, and Waiheke in particular. So it could happen in 10 years it could happen in 40 years but that would be on place where I think a facility can be built, for a good – reasonably well, you know, not a lot of money, won't be too expensive but of course at the expense of a lot of parking. The road itself is not a problem, Sir, Oceanview Road is not an issue, up to that point, you know, from the roundabout or from Oneroa for that one kilometre length, it's pretty – it is only a few vehicle crossing, so its carrying capacity is quite huge, I'm not worried so much about the actual road itself, it's only the terminal area.

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Q. I've raised Ocean View Road in the sense that it led to the dead end and your answer has focused on the dead end as I think I anticipated. Thank you for that, Mr Shumane, and sorry to trouble you about it again but we've got an enormous amount of material, obviously, to visit, revisit and re-re-visit before we come to a decision in this case, so thank you for that contribution.

30

MR R BRABANT:

With respect, it seems the Court has opened the area of discussion up quite considerably from -

THE COURT: JUDGE NEWHOOK

5 You're asking for Mr Mitchell back to answer this one question?

MR R BRABANT:

No, no, I'm asking Sir – I've taken some advice from my expert and I'm asking whether you'd permit me to ask this questions arising out of the matters you put to him.

10 THE COURT: JUDGE NEWHOOK

Only fair. And if you wish to recall Mr Mitchell to have him consider these matters and advise us that's open to you as well.

MR R BRABANT:

15 I may be able to deal with it without that, Sir, and that would be what I'd endeavour to do.

QUESTIONS ARISING: MR R BRABANT

20 Q. And I'm dealing here with the questions the Court has asked, quite rightly, looking ahead with a 35-year permit and the future, what's been described as the long term. Your evidence that we focused on today contains, in paragraph 7, Mr Shumane, a summary of traffic movements to this small carpark and in paragraph 9 you say that even taking the most frequent of those you would regard those vehicle movements as not noticeable?

A. Correct.

25 Q. In relation to the questions you've been asked about the future, do you agree that that frequency and that not noticeability is not going to change because the amount of traffic to the marina is fixed, isn't it?

A. That is absolutely correct. The actual number of movement generated by the marina will be very minimal, whether today or in 35 years, because it will be determined by the number of spaces available on site and on spaces.

5 Q. Mr Shumane so I put it to you that if we look to the future of increasing congestion in the keyhole – you've referred to the ability to remove some of that congestion and focus, for example, on public transport –

THE COURT: JUDGE NEWHOOK

10 Mr Brabant, I'm sorry, I don't want to interrupt unnecessarily. Can you please remember that you're not cross-examining this witness – that you actually have to examine him in chief?

MR BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

15 Let's just try and stick with the procedures.

QUESTIONS ARISING CONTINUE: MR R BRABANT

20 Q. As time goes on you've referred to your anticipation that there will be growth and there'll be more movements down Ocean View Road in answers to questions. Will the position then be akin to the position being addressed necessarily in the rest of Auckland about how people get to and from places – their mode of transport, if you like. Does the same situation arise for Waiheke as Auckland where there has to be mode or shift – if growth is going to happen?

A. Your Honour, I think I want to Crystal gaze and decide what will happen.
25 I don't think I'm able to answer this question.

Q. All right, let me put it another way –

THE COURT: JUDGE NEWHOOK

Despite the fact it remained a leading question, Mr Brabant. It's difficult, this requirement, but although we have quite an open approach to the eliciting of evidence in this Court we need to stick to some of the basic principles.

5 QUESTIONS ARISING CONTINUE: MR R BRABANT

Q. If you were planning in the long-term for the future what area of transport growth would need to be addressed?

A. Most likely public transport – facilities as well as vehicles.

Q. And in that –

10 A. In the context of Matiatia, not Auckland-wide.

Q. And in terms of non-public transport if there is growth and congestion what sort of non-public transport control is going to be most effective – in terms of numbers?

15 A. Again public transport, improved bus services and increased buses, provide more facilities for buses at the keyhole and then you could reduce the amount of traffic, or at least you could stop the growth of non-public transport traffic, or you can control it by providing more buses. One bus can take 40 people. One car can take only two or three people.

20 Q. And have you got any figures for the volume now or the predicted volume of private vehicles that come down Ocean View Road to access the ferry terminal by comparison to the numbers we're predicting for the marina?

25 A. I can't remember all the numbers or the surveys were completed by Traffic Design Group and previously Mr Mitchell or at his – under his direction. I don't remember the exact numbers but if we were to compare the marina traffic to the background traffic, non-marina traffic, it is very minimal, less than one. I don't know what it is but it's very minimal.

RE-EXAMINATION: MR ALLAN

Q. Mr Shumane, in answer to a question from Commissioner Leijnen, you referred to the possibility of the carpark being completely closed, so going from a position of now restrictions to essentially it being shut down. Are you able to assist the Court with whether between those two

5 ends of the spectrum there are other options or traffic control measures which could be introduced as a consequence of a review of the conditions?

A. Yeah certainly. The condition 5, one of the conditions anyway, talk about restrictions if something happens. It doesn't actually say the carpark should be shut down. The condition only says that the authorities must determine or something to limit the amount of interference with the keyhole and the roundabout, so yes there are other mechanisms, probably limited access to 10 minutes or 20 minutes

10 during certain periods but not necessarily closing the whole gate completely, permanently, although that is an option but it's an extreme option and I don't think it will happen.

Q. Any other tools or measures that you can think of now that –

A. Oh yes, oh sorry, yes. I think you're referring to the (inaudible

20 11:38:20).

Q. Hopefully not a leading question. I'm not referring to anything, just anything you can think of –

A. Sorry, no we discussed it Your Honour this is –

Q. – in light of our previous discussions.

25 THE COURT: JUDGE NEWHOOK

I didn't perceive it to be leading Mr Allan.

WITNESS:

I wanted to say that earlier but it just slipped my mind to do with the – with the age probably. There was a question earlier about – I think it was Mr Littlejohn

30 of Mr Mitchell about what to do if the carpark is full and that is a very general question. If the carpark is full and marina visitors or guests can't actually access it, the last thing we'll want him to do is just go and then congest the

actual carparking area, so – I proposed previously (inaudible 11:38:58) to tell people – to give people certain information about the marina, full, it's congestion, other information, and I'm going to propose this –

RE-EXAMINATION CONTINUES: MR ALLAN

5 Q. I'm sorry that's CMS?

A. CMS yes.

Q. Just what that refers to?

A. The changeable message sign, which was basically a green sign with fewer boxes that – with changeable messages. I am recommending
10 that again a sign about 500 metres away from the marina and terminal area to inform marina visitors and guest and users and all these people of the situation ahead, "Parking is full," they have congestions, so they can make other arrangement to go and park somewhere else or just drop off their stuff at the P30 or P2 zone and just go around and park
15 somewhere else. The only problem with that, and I think this is probably the only answer to the problem of full parking, the problem with that is who will operate it? We don't know. There is a marina manager but I don't have the answer to that. But that's a solution.

Q. Sorry just to be clear, I missed part of your answer there. Are you
20 saying that that's something that could be introduced on review or are you in fact saying now that you think that should be –

A. No as part of the review.

Q. As part of the review, sorry.

A. Yeah.

25 Q. Thank you I just wanted to clarify that.

WITNESS EXCUSED

COURT ADJOURNS: 11.40 AM

COURT RESUMES: 12.00 PM

THE COURT: JUDGE NEWHOOK

Now I think that is all of your witnesses Mr Allan?

5 **MR ALLAN:**

That's right, Sir, yes. That completes the list.

THE COURT: JUDGE NEWHOOK

And I think that's all of WML's witnesses and all of AT's witnesses and so I think we are up to, and we've had Mr Enright's opening. Just trying to keep
10 this mind map going, it's not easy. And so we're probably up to you, Ms Parkinson.

MS PARKINSON:

Yes that's correct, Your Honour.

15 **THE COURT: JUDGE NEWHOOK**

Phew... Got it right.

MS PARKINSON READS OPENING SUBMISSIONS

"So may it... and section 104." And, Sir, I make that submission having regard to the supplementary planning evidence and noting that none of the
20 planning witnesses have referred to that adverse effect in their summation of the effects of the revised marina proposal.

"Turning to the... against berth holders." And, Sir, I've provided a copy of the Environment Court decision in *Winstone Aggregates v Franklin District Court*.
25 That's an extract because it's some 237 pages long. So fortunately this discussion is at the beginning of Judge Whiting's decision.

"In that case the... thresholds for consent."

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL**QUESTIONS FROM THE COURT: COMMISSIONER HOWIE**

Q. In respect of your last paragraph, Ms Parkinson, you said it doesn't
meet the gateway test. If by any chance it becomes a discretionary
5 activity, what's your submission then?

A. In that case, Sir, that I would submit that it is still a relevant matter to
consider under section 104 and whether that is an acceptable effect in
the round, exercising that holistic judgement under section 104.

Q. So you're not going so far as to say that contamination is a death knell
10 for the proposal?

A. Not on its own. It's one of the factors to be taken into account in –

THE COURT: JUDGE NEWHOOK

I think counsel is very properly saying it's the job of the Court to weigh all of
15 the potential effects on the environment and make the call.

MS PARKINSON:

Yes.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL**20 THE COURT: JUDGE NEWHOOK**

Thank you very much, Ms Parkinson. Mr Littlejohn.

MR LITTLEJOHN READS OPENING SUBMISSIONS

"May it please... other than permitted." Now, Your Honour, I want to digress a
little bit here because one of the implications I get to of this argument is that it
25 has effects for the matters you will have to consider, the second level of the
104D gateway. And I'm not comfortable to make that submission, although I
have to concede I think that lawfully that is where we get to. What it did
provoke me to do though, was to go back and review some of the evidence
about what the consent requirements were for the deck. And initially I
30 understood Mr Dunn's evidence to argue that the footing of the carpark deck,

because there is a portion of it that has to attach to the land, the footing of it was a building and consequently under the relevant activity table, because buildings were permitted, ergo that component of the carpark deck required no resource consent. And then we had a detailed analysis by Ms Bremner about the other activity related controls that were triggered, leading to restricted discretion, consent and all that, and she's helpfully referred you back to the appendix to her original evidence-in-chief. Now Your Honour I don't think, well with respect, that I can on behalf of my client so easily concede on this particular point and what I'd ask you to do, with the greatest of respect, is when it comes to considering this matter look carefully at this particular activity table. In my submission, and if you go to it, the way the activities are drafted seems to confine those activities; buildings, relocation, construction, to the understandable concept of new buildings in the transport area of this particular zone. As I've mentioned the only activity that's not permitted in the zone is the activity of a boat launching ramp and a jetty. I have to think hard about the drafters of the plan and what the purpose of requiring such a thing as a jetty off the end, because that's logically where it would have to go, of this transport area to require a discretionary activity consent, because let's, let's be perfectly straight up, what we have here, albeit called a carpark, is a jetty. It is a physical extension over the water, by a structure on which people and vehicles will manoeuvre and utilise. In my submission, the Court ought, with the greatest of respect, to look carefully at this aspect of the proposal. Without the connection to the end of the transport area zone, this marina simply cannot proceed. There would be a gap. So, my submission is that the point should not be uncritically accepted. There is an argument on a plain interpretation of the activity provisions, and I'll give you the reference, 10A.18.5.1, it's in the common bundle of materials that you've been provided. There is an argument that by its nature the structure is of the kind contemplated for discretionary consent under this table.

30 **THE COURT: JUDGE NEWHOOK**

Do the objectives and policies help in the interpretation of 10A.18.5.1?

MR LITTLEJOHN:

To some extent because, of course, the objectives and policies were all written on the notion that this was for a transport area function. There would be the ferry terminals, there would be buildings, there would be all of those
5 sorts of things and it was about that particular function. And to that extent I can quite easily acknowledge why one might make the construction and reconstruction and addition to buildings within that area a permitted activity. Because they would all be buildings that were part of the transport infrastructure. Whether the intention in those words though was to enable a
10 small concrete fitting above mean high water springs that was attached by way of structural steel and concrete to a large wharf structure to be considered as a permitted component of that structure, I have my doubts with the greatest of respect. But this is a matter of interpretation of the plan and all I can ask is that it not go critically, without any critical assessment. Because,
15 of course, if I am right and if the Court agrees that that is an interpretation that is permissible on the basis of those provisions then, of course, the carpark deck still requires a discretionary activity consent under the district plan. Your Honour, it's precisely the situation that was faced by Orakei Marina, where it required a non-comply and consent to attach its
20 carpark deck to the Okahu landing. It was never assumed that that could simply happen as de minimis activity. Now, of course, the provisions were very different. There, there was a concept plan that required that any buildings outside the concept plan were a non-complying activity.

THE COURT: JUDGE NEWHOOK

25 And, of course, that case didn't get to be argued before the Court.

MR LITTLEJOHN:

No, no, it didn't.

THE COURT: JUDGE NEWHOOK

It resulted in a consent order.

MR LITTLEJOHN:

Yes, but as counsel for the applicant in that case, I'm intimately familiar with the requirements and the outcomes that were needed to be gotten over, if I can use such clumsy language, in order to obtain the consents. Different
5 situation here; no concept plan but you still had land above mean high water spring that is zoned for transport area and within that area the activity of a jetty is discretionary. I think, with respect, that we should be asking ourselves, why would the plan of all of the activities in that area to be classified as anything other than discretionary, anything other than permitted, ascribe such
10 a status to a structure like that? And my submission is that the answer is obvious. It's because it would attract the movement of people in vehicles through a transport area. I can take it no further than that.

"Paragraph 5 sets ... were generally resolved."

15 THE COURT: JUDGE NEWHOOK

Focusing on the status of the provisions of the unitary plan things haven't moved along greatly, have they, in that even if there's a bunch of settlements in mediation other things haven't happened – like, for instance, the panel hasn't given recommendation to the council, council hasn't made a decision
20 on the recommendation, I'm not even aware of the panel having one of its intended interim guidance –

MR LITTLEJOHN:

Your Honour, I don't want to interrupt you but I do not make the submission to you that the unitary plan should now be considered on par with or having
25 greater weight in the operative coastal plan, I cannot go that far.

THE COURT: JUDGE NEWHOOK

Let's just wait. I know there are different arguments running into that Section 88(a) business –

30

MR LITTLEJOHN:

When it comes to a waiting exercise I have to accept that. You can't gain weight by being around a long time – or you can – (inaudible – 12:28:42) for Rodney sat around for years and everyone started to think it got more
5 important the longer it was there underdetermined .

THE COURT: JUDGE NEWHOOK

Not all of us did, Mr Littlejohn.

MR LITTLEJOHN CONTINUES OPENING SUBMISSIONS

“I do want”...that case unsuccessfully.”

10

Now Your Honour although it's not recorded on the front page of the judgment I do have some familiarity with that case because I acted for Mr Twentymen the owner of the property in question that had the resource consents but for a failure to properly remunerate me. I didn't appear at hearing but certainly
15 prepared all of the arguments in advance of that, and I admit to a sense of déjà vu listening to my learned friend's submissions the other day. Unfortunately I was unsuccessful in those submissions in front of His Honour Judge Whiting.

20 “Put simply, the...other than non-complying.” And I've referred you there to Justice Venning's recent decision in the urban Auckland case where there was quite a complex range of bundling issues that His Honour had to grapple with there. One most notably in apposite to this case the prospect of there being an operative consent – a consent requirement or an operative plan and
25 the same consent or another consent required under a proposed plan, albeit under the same planning regime and His Honour effectively said that there is nothing wrong in principle and certainly is to be favoured for the bundling to occur of status where you have the two plans.

30 But His Honour applied the time honoured tests, “Well what is the degree of overlap?” Well in that case the applicant required a controlled activity consent

for a structure under an operative plan but the proposed plan requirements all related to storm water and despite that His Honour accepted arguments that there was an overlap between those activities. You couldn't – you didn't need to control the storm water if you weren't building the structure and so His Honour found that the proposed plan requirement and its status, which was discretionary, and the operative plan requirement, which was controlled, could be bundled together and so for assessment purposes for notification the council ought to have treated it as a discretionary activity, thus bringing into play the full range of environmental effects, which of course it hadn't done, it had limited the scope based on the – an un-bundled assessment of the activity statuses.

So we don't have that situation here in my respectful submission because the consent that's required under the operative coastal plan is exactly the same consent that's required under the proposed plan, ie for a marina in this location. So in my respectful submission we bundle the two together and with the absence of any protection of section 88A we have ipso facto a non-complying marina proposal, and that's the essential logic that I submit gets us to still having to consider the gateway tests here.

It does however, Your Honour, bring us to the issue that we always used to suffer in that wonderful area of Rodney where we might have three plans going at once, a transitional, a change to the transitional and a proposed and that situation, as the Court commented on many occasions, existed in Rodney for some time. But the Court developed or had, for example, (inaudible 12:34:55) that line of authorities that you deal with the waiting issue. And so that's an issue that may arise in this case. I say may because if you get to the point – well actually I'll just read the submission because it's probably a bit more coherent than my adlibbing.

“So I submit...marina cannot proceed.” And that's simply because that's what section 12(1) says. You need to either have a resource consent or be permitted by rules in both an operative regional coastal plan and a proposed regional coastal plan.

“If the Court...down the course.” Well (inaudible 12:36:52) flip a coin, that’s a bit flippant. “You’re only going...there with respect.” Paragraph 14 is submission I disliked writing intensely but I had to write it.

5

“The potential non-requirement...question is made.” I couldn’t submit as much as I tried to that the objectives and policies of the district plan still fell for consideration and assessment for contrariness to at the 104D1B stage in circumstances where the applicant didn’t require a consent under that plan. I would like to submit the opposite but I think the language is patently clear, the use of the word ‘the’ rather than ‘a’ would tend to be, in my understanding, a reference back to the application for the activity that is engaged.

10

“But so the...to be considered,” and I think this is the point that both my friends’ Mr Allan and Mr Engright got to, “Only under section...have regard to.”

15

“Turning now to” ... it is not about scale.” I don’t intend to read you the rest. I’ve set them out them out there just for ease. I’ve got some other concerns that have been echoed by Ms Gilbert. I’m not going to read those. They’re in her evidence. And then I’ve summarised Mr Langwell’s key conclusions in terms of residual transportation effects. And those witnesses can be called shortly and questioned in relation to those matters.

20

“In relation to... (and I’m over at paragraph 21)... its ultimate discretion.” Now, Your Honour, foreshadowing this submission we had an interchange yesterday. Now over the last –

25

THE COURT: JUDGE NEWHOOK

In which the di jurisprudence was mentioned.

30 **MR LITTLEJOHN:**

And you need to know I took a wonderful stroll down memory lane and read *Di* and all the cases that refer to *Di* and that period –

THE COURT: JUDGE NEWHOOK

That must have been exciting for you, Mr Littlejohn.

MR LITTLEJOHN:

5 – That period of jurisprudence where those key provisions of section 104 were
the subject of detailed analysis; what is an effect on the environment and what
is not? Now this is where, and I was an advocate for the throw precedent and
planned integrity out the door argument. I was unsuccessful in that regard in
a number of cases. So we still have this concept of precedent. The modern
10 jurisprudence though, following *Hawthorne* is that we have a situation in which
once the world has changed that becomes the world for assessment. And I
come on to this and this is the issue we have here. I tried to categorise this
when Mr Scott made this observation to me in preparing his evidence. My
initial reaction, Your Honour, was very much like yours, “No you can’t put that
15 in there.” His Honour will have, His Honour will have a go at you. And the
more I thought about it –

THE COURT: JUDGE NEWHOOK

I called it a “frolic”.

MR LITTLEJOHN:

20 Well with the greatest of respect, Your Honour, it was a “frolic” that ended up
on my email from my client, many of the supporters and people at Waiheke
who all instantly on viewing figure 140 said, “Oh is that stage 1 and is that
stage 2?” And that is a concern that is out there. That is an impression that
25 this has created. And the immediate advice that was sought from me was,
“Well is there any way, is there any way that it can be stopped at that?”

THE COURT: JUDGE NEWHOOK

30 But how does that stack up against the di jurisprudence. Tell me about
Hawthorne if you want to, but answer this in the course of it. Why is it not that
a concern about an extension, death by a thousand cuts, to put it colloquially,
wouldn’t crop up in a hearing about any proposed expansion, as opposed to
cropping up for consideration here?

MR LITTLEJOHN:

Yes and my answer to that is that it's probably not death by a thousand cuts; it's more the first cut is the deepest, because –

5 **THE COURT: JUDGE NEWHOOK**

Well I'm just using a colloquial expression –

MR LITTLEJOHN:

– because, Your Honour, at the point of assessment I have to accept – it's not
10 as if they could go out with a pile driver the day after the marina is finished, if it was approved, and put some more piles in. They would need another resource consent.

THE COURT: JUDGE NEWHOOK

That's right.

15

MR LITTLEJOHN:

But imagine yourself –

THE COURT: JUDGE NEWHOOK

Isn't that when it would crop up, this precedent issue or –

20

MR LITTLEJOHN:

Well it would, but on the old jurisprudence, we would say that that is something one could deal with under the guise of cumulative effects, okay? But the *Hawthorne* line of cases is now quite clear that if an, if the
25 environment is changed to be something other than what it was originally, got a consented marina, or even if a consent was held and there was an intention by the holder of the consent to say they're going to give effect to it, you have to treat the world as if that's there. And at that point in time the range of considerations for the application in front of you are considerable curtailed.
30 You're not looking at whether this whole marina is appropriate here. You're

only looking at whether this next little bit is and that is the issue here, Your Honour.

THE COURT: JUDGE NEWHOOK

That's not the concept of cumulative effects Mr Littlejohn.

5 **MR LITTLEJOHN:**

Well, I thought it would be and I've carefully studied the definition of cumulative effect. If the effect that you are adding to is a lawfully existing effect, then you could read that definition as saying you have to ignore it; you're only interested in the extra bit. But Your Honour, I do want to be very clear here, this is not –

10

THE COURT: JUDGE NEWHOOK

If that's a serious submission, I would have anticipated that you would wrap some case law around it or engage in a serious semantic analysis of it at the very least if it's cutting edge and there isn't case law. Because I'm saying to you that that's not my understanding of how cumulative effects are analysed, as I put it, in a subsequent application for an expansion of the marina.

15

MR LITTLEJOHN:

Well, I'm gratified that that is the way Your Honour sees the position. It's something that I grappled with in trying to advise my clients about what were the hurdles potentially for an expansion of this if it were ever approved and I'm glad that Your Honour has enunciated that. I wanted to make it very clear though that this was not an argument about future potential cumulative effects. It was an argument about concern at what is the playing field like in the future if the piers were extended, if the deck got bigger. And perhaps my one-eyed reading of Hawthorne, or perhaps literal reading of Hawthorne, was that there wasn't a lot left to argue about. Now, Your Honour, this issue has –

20
25

THE COURT: JUDGE NEWHOOK

Are there some passages from Hawthorne that you want to read out to us?

MR LITTLEJOHN:

No, no I don't, Your Honour. I'm simply asserting what I know and, I think, what the Court knows, as the legal proposition behind that case.

THE COURT: JUDGE NEWHOOK

5 Well, just take it from me that I'm not on the same page as you at this point, Mr Littlejohn, about Hawthorne –

MR LITTLEJOHN:

I can see that Sir.

THE COURT: JUDGE NEWHOOK

10 About Hawthorne or about the definition of cumulative effects.

MR LITTLEJOHN:

I can see that Sir. I do want, as a parting shot though, to simply refer you to –

THE COURT: JUDGE NEWHOOK

Is this a sort of back-handed SBW type flip of the ball is it?

15 **MR LITTLEJOHN:**

I'll take the compliment that's going Sir.

THE COURT: JUDGE NEWHOOK

I'm not sure if it was that. I'm not a fan of his.

20 **MR LITTLEJOHN:**

This particular issue Judge Smith dealt with in the Jackson Bay Mussels case and I don't think I can put it any higher than how His Honour categorised there and he expressed at paragraph 200 of that decision, I'll read it out, "A more subtle point made by those in opposition was that even if there was only this
25 one application granted it may change the perception of both the industry and residents to the area. Although not explicitly by any party, we gained a clear impression of a concern that it may create a mindset of use and development

as opposed to preservation. This is not a matter that we can lightly discount and is a matter that needs to be taken into account in the exercise of overall discretion.

THE COURT: JUDGE NEWHOOK

5 Did he refer to *Hawthorne* or anything else?

MR LITTLEJOHN:

Hawthorne didn't exist at that time.

THE COURT: JUDGE NEWHOOK

10 It's –

MR LITTLEJOHN:

2004. Now all I ask is that the potential here somehow in some form sit in the back of your mind and in my submission, either by reference to section
15 104(1)(c), or by reference to the ultimate question of whether sustainable management would be promoted at this location by allowing a marina to be established here at all that it would not be impermissible or unlawful consideration, and I've exhausted my argument on that thank you Sir.

THE COURT: JUDGE NEWHOOK

20 And I see the subsequent paragraphs just complete that, that thrust?

MR LITTLEJOHN:

Yes thank you Sir. It's always a pleasure Sir.

THE COURT: JUDGE NEWHOOK

25 Principally about that letter point Mr Littlejohn.

MR LITTLEJOHN:

Well it took me a long time to try and express in legal or planning terms the concerns that were coming to me from a large number of people who all
30 expressed this issue to me and I struggled. I found difficulty in saying that it's

a cumulative effect issue. I take Your Honour's guidance on that. Is it a precedent issue? Precedent as Your Honour will know was traditionally, "I want what he got," rather than, "I want to extend what I've already got." So it was a tricky one. It's not a district plan. It's not a plan integrity argument.

5 May it's not an argument. Maybe it's not a relevant factor and I have to admit of that possibility. All I'm doing is announcing a concern on behalf of my client.

THE COURT: JUDGE NEWHOOK

Look that's objective and constructive of you to make that observation

10 Mr Littlejohn, and I'll respond by saying that one can well understand the minds of the interests and observers who are essentially your clients in thinking that, "All right if this can go there what's to stop it growing in the future?" I can well and truly understand it. I been there and thought about these things many, many, many times over the years, but when all is set and

15 down the legal principles are the legal principles and we have to take them as we find the law more particularly as we are bound to by the Higher Courts, like it or not. So I don't think I can say a great deal more about that.

MR LITTLEJOHN:

20 Thank you Sir, much appreciated. Now do you want –

THE COURT: JUDGE NEWHOOK

Now let's just see if there are any other questions? Counsel questions?

THE COURT: COMMISSIONER LEIJNEN

Well I was just wondering whether the argument was, you were suggesting,

25 there is an environmental capacity?

MR LITTLEJOHN:

That could be another way of putting it. That is the flip side to a certain extent of the cumulative effect argument, isn't it, where you get to a point where once

30 you've added some more onto it it's too big. But I accept that that's another possible way of categorising, yes.

COURT ADJOURNS: 12.58 PM

COURT RESUMES: 2.18 PM

MR LITTLEJOHN CALLS

BRIDGET MARY GILBERT (AFFIRMED)

Q. Is your full name Bridget Mary Gilbert?

5 A. That's correct.

Q. And do you have the qualifications and experience set out in a statement of evidence-in-chief dated the 29th of July 2014?

A. I do.

10 Q. You've already affirmed the contents of that evidence but in relation to the matters we're talking about at this hearing have you prepared a supplementary statement of evidence dated the 6th of July 2015?

A. I have.

Q. And before I ask you to confirm the content of it, are there any errors or corrections you need to make to that?

15 A. No.

Q. That stated, do you confirm the contents of the supplementary brief that you've prepared are true and correct to the best of your knowledge?

A. I do.

20 Q. Ms Gilbert, in your paragraph 4 you state that you reviewed the folio of figures dated the 22nd of May 2015 and that you made a number of additional site visits since the environment Court hearing last year. Did any of those site visits involve visits to the view points?

A. Yes they did.

Q. Did you take any materials with you to those visits?

25 A. I did. I took the latest July 10 version of the visual simulations.

Q. And what was the purpose of you taking those materials with you?

30 A. Certainly, I wanted to eye-ball the view points before, in preparation for the hearing. I had a general knowledge of those locations but just in preparation for the hearing I wanted to see them in the flesh, so to speak, and also to check the veracity of the visual simulations and I appreciate that this is regrettably rather late in the piece but my site visit on that occasion identified some serious misgivings, unfortunately,

about the visual simulations. So, perhaps, I felt it my duty to explain that to the Court so perhaps now is the appropriate time to explain that Your Honour?

THE COURT: JUDGE NEWHOOK

5 Q. When did these inspections take place?

A. They took place on Saturday, Saturday morning. It was a pea-souper in Auckland but a lovely clear crisp day on the island and I visited the Alexander view point, the Church Bay walkway seat view point and I've got limited mobility just at the moment so I couldn't get down to the
10 Matiatia Historic Reserve elevated view or nor the reserve view nor the Oponaki Bay walkway view. But I did go to another private property, the Goldwater House, which I can show you in a view where that is and it sits just uphill of the elevated reserve view.

THE COURT: JUDGE NEWHOOK

15 Mr Littlejohn, did you put the matters that she's now going to tell us about to Mr Pryor when you were questioning him?

MR LITTLEJOHN:

I asked both Mr Pryor and Mr Brown whether they had been to the view points with the visual simulations and tested the veracity of them in relation to the
20 view and both of them said that they hadn't.

THE COURT: JUDGE NEWHOOK

They hadn't, so you didn't pursue the detail?

MR LITTLEJOHN:

I felt there was no point Sir, I could put propositions to them but they wouldn't
25 have been able to answer.

THE COURT: JUDGE NEWHOOK

Mr Brabant, it's my inclination that although it's somewhat late in the piece that Mr Littlejohn having done that much, as you see I've just tested him on,

that it would be in order for him to ask Ms Gilbert about these matters but if you feel that there's something else that should have been put to Mr Pryor and Mr Brown I might not be adverse to them being tested on them too. That's my current inclination, what do you say?

5 **MR BRABANT:**

Well Sir, first of all I think in fairness Mr Brown is my friend Mr Allan's witness and I don't even know Sir what these issues are, I think it's probably a little unfair on Mr Pryor to say he told me that he didn't test them against the view, he did say he had the materials with him and I do think that the points,
10 whatever they are, could have been put to him. I understand, I appreciate that although, perhaps we could have had some written material by now if these things were discovered on Saturday I would have liked to have thought we had some material provided outlining what these are rather than springing them on me now because it also raises a question as to whether they call into
15 question the quality of the work Buildmedia have done and if they do then I might have to go back to Buildmedia so – but there's nothing we can do about that now Sir.

THE COURT: JUDGE NEWHOOK

It's all rather unfortunate in terms of what it might do to the hearing and I've
20 already called the inquiry, shifting sands, and it just continues to have that quality and it's not in just your camp, it's now proving to be the other camp. But your expert witness relied very firmly on these visuals in his evidence. He was asked whether he did the detailed comparison of the actual views with the visual and holding the papers out at 115 centimetres and so on in
25 accordance with what I understand the Institute guidelines to say, and he said, no, he hadn't. So, counsel stop there. We will see whether unfairness arises for your witness and/or Mr Brown but I am minded to allow this questioning to continue.

MR BRABANT:

30 I don't see, Sir, given what the witness has said, I don't see how you can't. I mean, I think you have to allow the witness to give you the advice.

THE COURT: JUDGE NEWHOOK

Yes.

MR BRABANT:

It's just that it could have been provided in written form on Monday.

5 **MR LITTLEJOHN:**

I regret that, Sir. This was something that Ms Gilbert only really raised with me after she came back from the visit and, yes.

THE COURT: JUDGE NEWHOOK

Enough said. It's in the nature of this case it seems.

10 **EXAMINATION CONTINUES: MR LITTLEJOHN:**

Q. Well, I think I really just need to ask the simple question of Ms Gilbert, in undertaking the exercise that you did, what did you observe?

A. Certainly. Okay, so I did exactly what Your Honour's described; held the visual simulations up at the correct viewing distance, locating myself, in the case of the Alexander's viewpoint, where the photo was taken. And it was readily apparent in comparing the simulation with the actual view of what you're looking at, that the scale of the bay has been distorted in the visual simulations. So a really easy cue for working that out, it's quite difficult to articulate without actually looking at the view, was the scale of the red woolshed on the far side of the bay.

15
20**THE COURT: JUDGE NEWHOOK**

Q. Should we be looking at one of the exhibits?

A. Yes, that could be useful. I suggest looking at viewpoint 10 in the July 10 folio.

25 Q. Yes.

EXAMINATION CONTINUES: MR LITTLEJOHN:

A. Okay, so looking out from that particular vantage point, in the simulation outlook, the red woolshed is a very small element in the view. And the

headland at the western end of the bay is also relatively small scale. In the actual outlook from that location, the woolshed is considerably bigger. You can pick out the windows, the doors, the detail of the building. The effect of this distortion of the scale, to my eye, conveys through the simulations the impression of a much more expansive bay landscape. But it also has the effect, and this is probably to do with depth of field, in giving the appearance of Matiatia Bay as a landscape reading as much further away. So my experience from the viewpoint or the actual outlook was the bay is considerably closer. It's considerably more proximate and immediate and, to use a colloquial expression, it's just significantly more in your face. I don't query the actual modelling of the marina itself in the simulation. However, because of the distortion of the scale, it's my expectation that the marina would be a larger and more dominant part of the view than conveyed in the simulation. So, I then went and checked the same thing at the Church Bay walkway seat and unfortunately it was the same situation.

Q. Which visual is that, which figure?

A. That's viewpoint 11. So in that view, again, the ferry terminal, the northern end of the bay, well, the eastern end of the bay feels a lot closer in the view than is conveyed in the actual simulation. And then in terms of the elevated view from the reserve, if I take you to viewpoint 9, so there's, you can see roughly in the centre of the view, the spur, the grassy spur sitting above the shoreline. And that is roughly the location of the elevated reserve vantage point. Where I was able to get down to was the two-storeyed black house to the right of that area. So it's further up the hillside and more distant.

THE COURT: JUDGE NEWHOOK

Q. Can you just hold up a copy of the image and point, a bit distant for us, but help me find the black house?

A. So there's the rather unusually shaped hexagonal house to the right of the pole.

Q. Yes, the black pole?

A. Yep, to the left of the black pole is that house I'm talking about.

Q. That's the black house is it?

A. Tucked in there.

EXAMINATION CONTINUES: MR LITTLEJOHN:

5 A. So I think it's reasonable to expect that because you're further up the hill
and you're slightly further away, if anything, the view from that house
would be slightly more distant than that conveyed in the elevated view
from the reserve which is viewpoint 5. So my experience of the view
from the Goldwaters' house up the hillside, the outlook is considerably
10 closer in feel to that conveyed in this particular view, viewpoint 5. So I
guess my advice to the Court respectfully would be to be very cautious
in relying on the simulations. And a site, you know, a site visit is, which I
understand the Court has already undertaken, is to be preferred.

THE COURT: JUDGE NEWHOOK

15 Q. Well, I'm not sure but I thought we signalled on Monday, we certainly
have it in mind to go and refresh our memories of the whole of this area,
probably on Thursday when the weather's settled down a bit and after
the hearing has concluded. So we'll be going back, added to which, of
course, there are some new viewpoints that weren't modelled for us in
October. So we need to go back out in the field ourselves with the
20 materials and we'll be doing that.

CROSS-EXAMINATION: MR ALLAN

Q. I didn't have any questions Sir but just to try and help my own
understanding and the Court's about this particular point, good
afternoon Ms Gilbert.

25 A. Good afternoon.

Q. So just to understand the point you were making, you say that the
woolshed would appear more dominant or larger in the view, is that
right?

A. Not more dominant. It's bigger in the view.

30 Q. It's bigger?

A. Yes.

Q. So in scale terms it's been diminished?

A. Yes, the scale of the bay has been altered. And I suspect it's to do with a combination of factors, probably something to do with the lens and altering the depth of field. But also, I suspect it's actually been printed
5 at the wrong scale for the viewing distance.

Q. Oh, I see. Yes, I was just going to have a look at the information along the bottom of the page there to try and see if we can get a handle on it. We don't have, obviously, detail about (inaudible 14:34:20) stops and therefore are unable to work out precisely the depth of field.

10 A. That's right.

Q. What we can see here, we've got a Canon 6D, it's a full-frame camera I think, isn't it?

A. Yes.

Q. And so with an 85mm lens you're not going to have the problem you'd
15 have, well, one explanation would be if you had, say, a 24mm lens on that camera. That would seem, it would indeed seem a lot smaller, the building.

A. That's correct. Below about 28mm you get that wide angle distortion at the end of the photo.

20 Q. Which would explain why the building was smaller but we don't, with an 85mm lens, have that particular reason to explain why it would seem smaller, do we?

A. Well I think because the woolshed's in the centre of your view I don't think the wide angle lens issue would have explained it anyhow. I think
25 it, unfortunately I think it's actually a combination of factors.

Q. Mmm, okay. Thank you.

CROSS-EXAMINATION: MS PARKINSON – NIL

CROSS-EXAMINATION: MR ENRIGHT – NIL

CROSS-EXAMINATION: MS McINDOE – NIL

CROSS-EXAMINATION: MR R BRABANT

Q. Mr Gilbert, did you think to make this information available to Mr Littlejohn on Monday, so that it was possible to check what appears to be wrong?

5 A. I did make the information available –

Q. On Monday?

A. – prior to Monday.

Q. Prior to Monday to your counsel?

A. Yes.

10 **THE COURT: JUDGE NEWHOOK**

Look, haven't we been down this track, Mr Brabant? We've talked about the difficulty of this stuff arriving at this time and we agreed, in conference pretty much, to get on with it.

MR R BRABANT

15 Yes.

THE COURT: JUDGE NEWHOOK

And if you need to have, Mr Pryor, address anything and Mr Allan needs Mr Brown to address anything make the applications.

20 **MR LITTLEJOHN:**

I know, Sir. It sounds at the moment like Buildmedia (inaudible 14:36:41) something, Sir.

THE COURT: JUDGE NEWHOOK

Oh well them too. They were mentioned before. We've covered that ground.

25 **CROSS-EXAMINATION CONTINUES: MR R BRABANT**

Q. Anyway you say, let's just deal with viewpoint 10. Do I understand what you're saying is the issue is with the photograph, not the insertion of the virtual simulation?

A. That is correct.

Q. And am I right that you have also got a concern about viewpoint 5? Did I understand that right?

A. Yes I have a concern about it, but I can't be absolutely certain for the Court because I couldn't get myself to that viewpoint.

5 Q. I know, I understand that.

A. Yep.

Q. That photograph was taken at a different time, wasn't it, with a different camera?

10 A. That's right. You'll see that actually throughout the series of simulations there's a range of lenses used. A range of fields of view used, 90 degrees and 124. Yes, and different times of the day as you observe.

15 Q. So and I'm just asking you at the moment because you've raised the issue in this, if the photograph did not have what you've described as the distortion in it –

THE COURT: JUDGE NEWHOOK

Which photograph are you looking at now, 5 or 10?

MR R BRABANT:

I don't think it matters, Sir, for the point of view what –

20 **THE COURT: JUDGE NEWHOOK**

All right.

MR R BRABANT:

– I understand she's said the same thing about every view –

25 **THE COURT: JUDGE NEWHOOK**

Carry on.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

30 Q. I got, but we can use 10 as an example, but I understood her saying concern arose to each of those viewpoints, Sir. If the photograph was corrected, well the photograph did not have a distortion in it – that's

what I want to try and get this right, and the marina proposal was inserted into it, would the relationship of the, what you can see as the marina within the bay change?

5 A. Mmm, I'll try to get my head around that in answer to that. The difficulty for me when I looked at it, the actual view, is the appearance of the scale of the landscape is quite different to what is conveyed in this photograph. So I guess my fundamental concerns with the marina are about the inadequate scale of the bay to absorb that development, plus the sensitivity of the bay. This issue in the simulations talks to the issue of scale that I've got. If one were simply relying on the simulations to guide an understanding of that I don't believe it would be a fair representation.

10 Q. I'll just try and ask the question a different way. Your position at the moment is that you believe that the scale that we're looking at in viewpoint 10, I'd better focus on one, is distorted?

A. Yes.

Q. And actually the view standing there it looks bigger or closer is another way of putting it?

A. Closer.

20 Q. Given that it's looking smaller are you saying that the insertion of the proposed development is out of scale to what's smaller?

A. No, I'm not saying that the marina footprint, if you like, or modelling within that photograph before us, viewpoint 10, is incorrect. What I'm saying is the overall outlook to the bay that's conveyed in that simulation is incorrect.

25 Q. So I just want to understand where the problem lies. It's not a problem of proportion, it's a problem of how – whether this looks as big, the whole thing, as it actually should?

30 A. Yes, that's correct. And just to confirm it doesn't change my effects assessment because I have relied on the actual view incoming to my effects assessment, rather than the simulations, but I guess given the attention the simulations have been given during the course of the hearing I thought it my duty, really, to point that out.

THE COURT: JUDGE NEWHOOK

Q. I wonder if I might ask something in clarification, too. While we're talking about the possible problems and this again is maybe something Mr Pryor or Buildmedia should give us advice on. Is there another issue with these visualisations that we don't have advice printed on them as to how far from the eye to hold the sheets?

A. Well, Sir, on most of them you do. So looking at viewpoint 10, bottom of the page it specifies the lens image projection method, field of view and viewing distances. So that tells you that when you've got a printed out A3 version you should put it at 187 mls and I'm sure you're familiar with it – I mean, the idea is that if this was printed on acetate you could hold it up and look through and see the same thing. But, actually, Your Honour, some of the simulations don't have that. I think the view from the ferry, from memory. Yes, so viewpoint one doesn't have a specified – it's got a viewing scale but I'm not entirely sure what that means.

Q. Commissioner Howie wants to know if, using his iPad, he's got the image on his iPad at the moment, viewpoint 10 – if he pinches it out to expand it will he get a fix? You won't have the assistance of the page viewing distances that I'd prefer them to be called for simple people like me but you might gain a better impression but you wouldn't know by how much you'd have to pinch it out?

A. That's the problem with that method, Commissioner, you'd need to be standing in the field and matching your iPad modification with what you actually see. Just by way of explanation, I couldn't do it here because you need to think about the correct field of view for the ICs and you'd really need to be standing there.

MR BRABANT:

I just want to leave it there, Sir, at this stage. I don't have any advice from anyone to take it any further but I think I understand what the witness is saying.

CROSS-EXAMINATION CONTINUES: MR BRABANT

Q. So now I'd like to deal with your supplementary evidence, please and perhaps we should use the latest version, should use those. I understand when you went over there you used the 10th of July version.

5 And I was going to ask whether you'd had access to those because your evidence referred to different ones but I know now that you – so I'd like to start by asking you, and this relates to your assessment at each of the viewpoints. If we look at paragraph 12 which relates to viewpoint 1 and the ferry arrival, you talk about the existing – so you're saying and simple geometry or symmetry of the bay that sees the transport hub in the centre of the bay flanked and framed by a relatively diffuse and informal arrangement by boats on swing moorings?

A. Yes.

Q. And then if we go to paragraph 35 and this is in relation to viewpoints 4 and 5 and then you talk about the overall arrangement displacing the relatively open and informal arrangements of swing moorings and open water, see that reference there?

A. Yes.

Q. And paragraph 44, please, (b), this is the viewpoint from the wharf. "The perception of being 'out on the water' and amongst the spacious and charming swing mooring pattern that characterises the eastern waters of the bay." And then paragraph 47 which is in relation to the same viewpoint refers again, doesn't it, to the "Informal, spacious and relatively tranquil swing mooring pattern throughout the north side of the bay." Now my understanding in all of those passages is that what you are telling the Court is that when you are looking at this situation and assessing change you are telling the Court in those descriptions I've given you as to what you can see in each of these photos. So if we take this viewpoint from the ferry what you're describing is what you can see in that photo is what you describe?

A. Well it's in relation to the view from the ferry. I haven't constrained my description of the outlet to the simple frame of that view.

Q. Because some of it you can't see?

A. That's right.

Q. In this photograph?

A. Yes.

Q. But your description, I understand – well, if we go to viewpoint 3 which you haven't referred to that gives us a wider view of the bay (inaudible –
5 14:49:11)?

A. Yes.

Q. But your assessment and it's the same question I'm asking you is looking at what might happen if consent were to be allowed by reference to what photograph there or what you saw in the bay at the moment
10 shows, that's the way you've done it?

A. Yes.

Q. And if we look at viewpoint 5 and, again, to get this clear, what you're telling us is when you've made your assessment of the degree of effects of what you can see in the bottom photograph you look at what you can
15 see in the bottom photograph, you look at what you can see in the top photograph, right?

A. Yes, yes.

Q. And in viewpoint 11, your assessment there again is a comparison between what we can see in the top photograph and then the insertion
20 of the marina into that in the bottom?

A. Yes, that's correct.

Q. So I take it from that, that in your assessment of change, you took no consideration of the extent to which these mooring areas could be occupied by boats without any form of consent being required? Do you
25 know what I mean?

A. Yes, I think, I take it that what you're saying is there could be additional boats added to the mooring areas without any process, as of right.

Q. So if we could use an example of a different concentration that one can see in a mooring management area, are you familiar, and have you
30 observed for example from nearby Akarana Yacht Club or, in Okahu Bay, the moorings in Okahu Bay?

A. Yes I have actually. I looked really closely at the Okahu Bay moorings because they're right beside the Orakei Marina. It was quite an interesting example when I prepared my original statement of evidence

last year. I have given consideration to additional boats being located within the mooring areas and I think I spoke about it in my first statement of evidence. Because of the nature of swing moorings, my very, very limited understanding is you're still going to get a degree of spaciousness around the boats. There will be, and there is the potential, for an increase in the concentration of boats. I accept that. But you will still have that spaciousness because they, otherwise they'll bump into each other. So I, I think whilst you will get, you could have more boats, there will still be a relatively informal and spacious pattern of vessels in the bay.

5
10
15
Q. Ms Gilbert, I asked you first of all about your description in respect of each of the viewpoints and I've taken you to each of the photographs and you told me that your assessment of what the change would be with the introduction of the marina was against what you saw. That is not what you've just described now in respect of, "I took account of a potential increase in boats," is it?

20
A. Well, well, I'm not sure I agree with you because I have cross-referenced in my statement, my supplementary statement back to my original statement of evidence repeatedly, where I did make it evident, I think, that I had considered that matter. But I do accept what you're saying; that I did not explicitly, in my supplementary statement, mention additional swing moorings in the moorings.

25
Q. Sorry, Ms Gilbert, that is not what I have said. The question I asked you is what comparison you made. And you told the Court, in respect of every photo, the comparison was with what you saw. That's what you said isn't it?

A. Yes, yes, yes.

30
Q. Can I ask you whether, either in your prior professional work or in relation to this particular proposal, you've had occasion to visit other marinas? You've mentioned Orakei Marina. Have you visited other marinas outside Auckland please?

A. Yes I have.

Q. Which ones have you visited?

A. I've been to Whitianga to Whangamata many – well a while ago, Tutukaka, struggling to – oh Gulf Harbour, if that's regarded outside Auckland.

5 Q. And we're talking here about a marina that's been significantly reduced in size to around 107 berths isn't it?

A. Yes.

Q. And you can contrast that with some of the marinas that you say you visited, like the Akarana, the Gulf Harbour, those other marinas would be significantly bigger would they not?

10 A. Yes, yes.

Q. Is it your position having visited a range of marinas that they are all properly described as urban or introducing an urban pattern? Is it your view that all marinas do that or some marinas?

15 A. When I used the terminology urban pattern in describing this, my reference is to the fact that basically you're talking about the carpark on the water. That doesn't mean to say that the context around it is urban but that pattern in its, if you like, pure form is a relatively urban pattern to my mind.

20 Q. So when we look at where you introduced this in your paragraph 67, that's found in your description of viewpoint 11. So if you'd like to go to that please?

WITNESS REFERRED TO VIEWPOINT 11

Q. And your description starts at paragraph 61 doesn't it or viewpoint 11?

A. That's correct.

25 Q. Describes the outlook if you like and the range of views?

A. Yes.

Q. And 65 refers to the reduced marina footprint?

A. Yes.

30 Q. And then in 66 you say that these factors don't outweigh the negative influence of the amended marina as an incongruous concentration of boats and structures extending across the northern eastern portion of the bay and then you say, "This distinctly urban pattern contrasts with the open waters of the bay." I can't find anywhere in there, let alone – and we might go to the viewpoint in a minute, a reference by you to the

deck structure. It is a reference, isn't it, to the concentration of boats and structures in the asbay?

A. Sorry I'm not sure I follow the question.

5 Q. I understood you to say before that the urban aspect of it from your perspective was the deck structure for the carparking?

A. Sorry I did not explain that correctly. By the carpark on the water I mean it's a boat park on the water, and I did explain that in my primary statement of evidence, so I do apologise.

10 Q. That's okay, I'm sorry, no, no, no, we didn't understand each other. Well then – so you see that position would then apply to Tutukaka to Whangaroa to Whitianga, Whangamata, Orakei? They're all boat parks and therefore urban are they?

15 A. They have an urban pattern, yes. That doesn't mean to say that in every context, in every situation, they make the surrounding setting urban, but as an urban pattern, as a pattern development should I say. I would regard them to be relatively urban.

Q. Let's take the recent example of your visits and look at Orakei Marina. That's immediately adjoining an urban environment isn't it?

A. Absolutely, similar –

20 Q. In the city?

A. Yes.

Q. I mean it's – apart from Westhaven it's as close as you can get to central Auckland pretty much –

A. That's right.

25 Q. – for a marina like Bayswater perhaps. This is a different context though isn't it?

A. Absolutely a different context.

30 Q. So when you refer to the urban pattern, are you just talking about the lines of boats or are you trying to suggest that this marina in its amended form urbanises this location? Can you be a bit –

A. Does it –

Q. What's the context of your description?

A. Yes, okay, so the elements that go towards that urban pattern are the, it is the regimented arrangement of the boats, it's the various structures

that are relatively engineered. Definitely non-natural in their appearance. Does it urbanise the entire bay? I'm – that's a, I guess from my perspective I wonder if the important point to make here is that there is urban development anticipated in the bay, in the Matiatia Gateway Land Unit. My interpretation is that this pattern of boats and marinas and the carpark deck and the break waters et cetera brings that urban pattern out into an area of the bay that is currently relatively natural. So I guess it does lead to an urbanisation of that part of the bay to a degree.

5

10 Q. So if we look at view point 11 in particular, would you agree that your view somewhat silos the bay?

A. Sorry, what do you mean by "somewhat silos the bay"?

15

Q. Well, you're taking a component of it, in the middle of the bay is a distinctly active and very conspicuous wharf ferry terminal facility and of course what the photo doesn't tell us but the visits and being around the place does is that it's not just the structures it's the continual and indeed increased activity as well of commercial vessels coming in and out and then you have, as you've indicated, the knowledge of the future intentions of the District Plan to urbanise that. So what I'm saying in respect of silo-ing, I'm asking are you not just taking a portion of the bay and saying, "Well that's relatively natural, so this is unacceptable," instead of taking a wider view of the bay?

20

A. Well I think we kind of look at these things quite differently. I see the urbanisation that's anticipated on the land as being capable of mitigation through design, through planting, through a number of mechanisms. Site planning included. The difficulty with the marina is it's on water and you can't do anything to mitigate it in that location. As I think all of the landscape witnesses have agreed, location is the mitigation tool with marinas.

25

30 Q. In which case one might choose to find a location that has a connection to what boating represents which is maritime activity mightn't you?

A. I can see that argument being proffered, however I think you've got a slightly different circumstance at Matiatia as their main gateway to the

island and the, if you like the first landscape in setting the scene for the identity of the island for many visitors and residents alike.

Q. I'd like to move now to the topic of the proposed carpark structure that was discussed and explained by Mr Pryor in his evidence and you were here when he gave evidence?

A. Yes.

Q. And you were here, I think, when Mr Brown gave evidence and answered questions. Without going over what you've said, which is already there to read, have you had a look at the plan that was produced in Mr Dunn's rebuttal evidence?

A. Look I did have a look at it yesterday but I don't have a copy of it with me.

WITNESS REFERRED TO REBUTTAL EVIDENCE OF MR DUNN

THE COURT: JUDGE NEWHOOK

15 Which statement of evidence are we looking for?

MR BRABANT:

Mr Dunn's rebuttal Sir, we've been to this before with Mr Brown. Supplementary rebuttal dated the 13th of July and attachment 1.

CROSS-EXAMINATION CONTINUES: MR BRABANT

20 Q. Given the concerns that you've expressed in your evidence about the proposal would a reconfigured parking deck, as depicted there, be a preferred arrangement from your point of view if consent was to be granted?

A. No.

25 Q. So you would stick with the one that Mr Pryor promoted?

A. Sorry, would it be preferred? Sorry, I misinterpreted the question.

Q. It's exactly the same questions I asked Mr Brown.

A. I'm troubled by both arrangements.

30 Q. No, that wasn't my question please. I'll start again. If the Court were to grant consent, which involved a deck structure in order to provide the

necessary parking, would you prefer a deck structure in this configuration than the one that is shown in the visuals and the plans?

A. Sorry, I did not listen to your question closely enough.

Q. That's okay.

5 A. Yes I would probably prefer this arrangement in that it appears more anchored to the land form.

Q. Now the other thing I'd like to ask you about which is exactly what I asked Mr Brown about and if you could find the 22nd of May visuals.

A. Yes.

10 Q. And if you would go please to figure 144. I'm just going to go through the dimensions I asked Mr Brown about.

1508

Q. 22nd of May?

A. Yes.

15 Q. And if you would go, please, to figure 144. Do you scale of rule?

A. I do.

Q. I'm just going to go through the dimensions I asked Mr Brown about. You'll see in the scale there and I think he and I agree, I guess we measured it differently, but I think the structure there is near enough to
20 50 metres long?

A. Yes.

Q. And if you measure off the far end of it, to the north, there's a 34 metre dimension to the shoreline?

A. Yes.

25 Q. Distance away to view?

A. Yes.

Q. And half way back a dimension Mr Brown agreed of 28?

A. Yes.

Q. And we did look at 10 metres and up and the dimension was 15, just
30 around the (inaudible – 15:08:48)?

A. Mhm.

Q. So there were two things. First of all, Mr Brown talked about this – and I think there's something of this in your evidence about this being, in fact I think that, if I remember rightly, you might've said something about it –

yes, in paragraph 72 – you say in paragraph 72, you refer to its close proximity and height – when you wrote the words “close proximity” had you measured those dimensions or have you only measured them now?

5 A. No, I hadn't measured them but I'd given consideration to the relationship of the deck to the coastline in the simulations.

Q. Well there isn't actually a visual simulation, looking at that deck, from that position, is there?

A. No, there's not, but you do gain a understanding from, I think it's viewpoint 5, the elevated.

10 Q. You talk about this configuration effectively divorcing this part of the rocky shore from the wider bay, there is a length, I mean the pathway is of course, not a straight line but the link measured out in a straight line to the end of the structure is 50 metres so it's 50 metres of intrusion, isn't it, to be –

15 A. Hideous intrusion, yes.

Q. To be fair?

A. Yes.

20 Q. So once you've walked beyond that point those effects that you've referred to and they're not the same, they're not looking at a obstruction?

A. That's correct.

Q. Directly?

A. Correct.

25 Q. And it's also true, isn't it, that – and I think Mr Brown might've suggested it, it's shut off a view of the bay beyond but in reality, looking out as you walk past the structure you would be looking if it wasn't there at the boats, the masts and the structures of the boats, they would obscure a view to the outer bay wouldn't they?

A. Of the moored boats, swing moorings?

30 Q. No, the ones in the mooring, in the marina?

A. So that's northwards of – along the coastline?

Q. Yes. I mean, if we go to figure 141 it gives a more accurate depiction of that but the notion that the structure is going to close off a view out has

to take into account presence to the south west of that structure, if you're on the shore, of the boats behind it?

A. I'm not understanding.

5 Q. If you're on the shore and you say that this structure is going to obscure what otherwise would be a view behind?

A. Yes.

Q. The view behind is largely going to be boats in the marina, isn't it?

10 A. Well certainly as you get sort of half way up the length of the carpark deck, running parallel. So to my mind that will worsen the situation adding the layering of boats behind the carpark deck.

Q. And lastly, and this is in the context of your evidence about a revised reduced marina you've concluded by saying, "Within the context of a landscape that is assessed to rate at the higher end of the spectrum as a cultural or amenity landscape."?

15 A. Yes.

Q. Is that a spectrum that is assessed or that you've – are you referring to a spectrum that has some evaluation against a District Plan notation or a provision that we can read that has got specially recorded features?

20 A. No, I'm not, I'm referring back to the analysis that I did in my original statement of evidence around the landscape values of Matiatia Bay.

Q. None of which are recognised in the coastal plan or the regional plan?

A. That's correct. That's right, there's been no assessment of amenity landscapes in the Auckland region.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

25 Q. I just wanted to ask a question with regard to that view when you're walking along that coastal path, assuming that the marina is in place. Is the determining feature or the determining feature very quickly becomes the end of Pier A, would that be correct – I'm just putting a straight line – in walking around until the bay opens up so Pier A is sort of – I don't
30 know if that's a correct –

A. Yes.

Q. That's the sort of thing that happens?

A. Sorry, I'm not quite sure I follow. So the determining feature?

Q. Is Pier A, so it's not until you get further around the bay and past and you can finally look past Pier A that you can see the full bay?

A. Well I'm not entirely sure you will, Commissioner Leijnen, because you've got the pile moorings in the wrapping around the end of A, B, C and D, so as you move around the northern end of the bay the boats will line up differently in the view. So the elevated view gives, from viewpoint 5 gives you a good – I do think you will have an awareness of an open passage of water out into the bay, I think at shoreline level that won't be nearly as evident because of the way the breakwaters, the piled moorings and then the berthed boats line up.

Q. I think this question may have been canvassed with you in your earlier evidence. I'm just not sure but you were talking earlier about the moored boats and what you call "urban pattern" of the – a marina type arrangement for parking boats. One of the things with moored boats is they move, they move with the wind and the tide, the gaps would be a changing situation?

A. Yes.

Q. Would that be fair – when you compare it with a marina where things are rigid and there's more parts?

A. I think that's a really very good point, yes, you're right. It's considerably more fixed and static structure, a marina, by comparison to the swing moorings.

QUESTION FROM THE COURT: COMMISSIONER HOWIE

Q. I was looking at your appendix 1 to your supplementary statement?

A. Yes.

Q. And it does several things but one of which is it talks about moderate and low and high ratings and my first question is do you and Mr Pryor use those terms in the same way?

A. Commissioner, this came up in the expert conferencing that we had because I had expressed an issue with the terminology Mr Pryor used. I can't answer for Mr Pryor as to what he actually means and I'm not entirely sure I understand it anyhow. I guess – my understanding, however, at the expert conferencing, was that Mr Pryor considered –

and I'm not sure this is quite pertinent to the question but it may help – considered that the mitigation in this instance that was – how would I explain it – a fundamental part of his moderate rating, that you could mitigate the development had been achieved in this instance through the location of the marina at Matiatia. I don't take that view in coming to my effects rating. I tend to rate the effects and then apply the mitigation and see what that does to the effects.

1520

10 Q. Well that was going to be another question of mine – in the case of the marina remedy or mitigate – remedying or mitigating the effect in the case of the marina leaves me somewhat puzzled as what you might do?

A. Well that's precisely why I didn't really understand his – the definition of moderate in his primary – first statement of evidence.

Q. Do those terms not have sort of an accepted meaning?

15 A. Sadly, no, is the short answer. There is variability within the profession.

Q. And just on a slightly different topic – are you able to distinguish for me the difference between a change in a view and the effects of the change?

20 A. Well I'll try. I see it as you need to first of all describe – it's quite a logical process to my mind where you describe the existing view, you describe what the change is then you – sorry, and in that description of the existing view you talk to what the values of that view is. You describe the change and then you evaluate the effect of that change on the quality and character of the existing or original view.

25 Q. And do you assign good or bad to that?

A. Well I think there is always going to be a values judgement in looking at visual effects because it's a perceptual matter.

30 Q. Yes, it seems to me that if you are a person standing on the wharf looking at the scene as it is now you might appreciate it as you have described the swing moorings and spaces and so forth but you could also imagine a person standing on the wharf looking at it with the marina in place, fully occupied, and thinking that that, too, was a nice outlook and of interest with some activity and so forth?

- A. Yes, I agree. And that's a point I made in my evidence so one of the things that we look at when we're trying to understand the values of the landscape, what's there, and also the effects, is to do with the perceptual factors, the visual amenity and the shared and recognised factors and in my original statement of evidence I talked to that point that I acknowledged there is going to be a proportion of the population that will really enjoy looking out at a marina from that location and because that hasn't been surveyed I can't really take that into my analysis other than to acknowledge that it's a reality.
- 5
- 10 Q. If you look to the future in this bay it seems from what I've heard that it's a growing activity in the bay, more ferries, more people, more buses?
- A. Yes.
- Q. More car parks, so a development area to one side, things like that?
- A. Yes.
- 15 Q. And an encouragement as I understand of activity on the island being a good thing for the island in general?
- A. Yes, yes.
- Q. And among those increased activities, being a maritime island of course, is going to be boating, isn't it?
- 20 A. That's correct, I would expect.
- Q. So do we have a situation where there's a demand for a marina perhaps and recognition of that sort of growth and activity on the island and a concept of where would you put it – would you put it somewhere where there wasn't any of that activity and therefore ruin some pristine landscape or would you put it where this activity seems to be concentrated in visual terms, in landscape terms?
- 25
- A. Yes, I have a sympathy with what you're saying. I talked very briefly in my first statement of evidence about my – and I have not undertaken a detailed analysis but from a purely landscaping and visual effects perspective my preference for a marina on the island would probably be at Kennedy Point which is more like the service entrance to the island, rather than the front door, if you were looking to try and find a location.
- 30
- Q. In landscape terms?
- A. Yes.

Q. And just finally, in that appendix, in your appendix, the comparison is made only between viewpoints 3, 4 and 5 – why was that?

5 A. That's because the – they were the only views that were exactly the same in the latest set of visuals to the original visuals so Buildmedia have prepared new viewpoints such as the Alexander House and the Church Bay walkway seat and the ferry view from the upper deck.

QUESTIONS FROM THE COURT: JUDGE NEWHOOK

10 Q. Ms Gilbert, these visual effects ratings though moderate and high et cetera you answered a question from Commissioner Leijnen about that indicating that the witnesses might have been working off different methodological pages was how I interpreted your answer or there wasn't adequate commonality in the use of those terms. And you mentioned in the same answer or you made reference in the same answer to the joint witness statement which I've now got open in front of

15 me. Would you like to get hold of that?

A. I think I've got a copy here, Sir. Yes, I do have a copy.

Q. I've just been skimming through that while my colleagues have been questioning you –

20 A. Excuse me, I've actually got the agenda so I need to find the actual – sorry, I had the wrong – I do have it.

Q. I've just had a quick skim through that again and I'm wondering whether on page 6 under the heading "Landscape of Visual Effects" paragraphs 19 to 22 is where there is a record of your group discussing the topic because I'm not quite sure that I can see in paragraphs 19 to 22 any record of methodological differences amongst you. Perhaps it's

25 somewhere else in that joint statement?

A. Yes. It may be slightly misleading to say it's methodological differences. I think the point I was trying to make is that various landscape architects use a different definition for what moderate, low –

30 Q. Low, high moderate?

A. Yes. And that's what you actually see in my appendix 1, the difference between Mr Pryor's and my definitions but actually there was this issue of how Mr Pryor described moderate, from memory, as an effect that

could be remedied or mitigated was an issue that I raised about methodology because it, to be honest, didn't make sense to me.

Q. Can you take us to that part of the joint witness record?

A. I'm not sure if this is helpful to you but it was in the agenda so it was on the table for discussion, we had the discussion and it was agreed that how Mr Pryor had attacked it was – and this is my recollection – was to say, right, I'm applying a moderate effects rating assuming that the mitigation that is possible to enable that rating has been achieved, has been introduced or, you know, effected by the location – does that make sense?

Q. I think what you're saying is that – I'm probably right from my skim read of this joint statement that that passage of exchanges amongst you doesn't find its way here – it might lie in the agenda, it doesn't lie here?

A. Yes, you're correct.

Q. So I don't have to scour this further for that, at least at the moment. Now some years ago, Ms Gilbert, the Landscape Architects Institute conducted a three-day workshop in Christchurch on two topics that had been flagged by the Environment Court in fact and I can recall judges and commissioners attending the first half-day of that workshop and then leaving the experts to it, to see what they could do to help and I can recall leading discussion in that half-day on the presentation of visual materials which is why I should've been rather cleverer at my interpretation of that bottom line on each of those sheets but wasn't and Judge Smith, I think, led another session on methodology and terminology and the like. My understanding is that the session on work with visual materials generally including visualisations did manifest itself in a pretty much finally agreed manual that I understand to be in use. I also understand that the methodology and terminology work didn't proceed to quite the same degree of agreement and commitment within the institute but I'm wondering if – I understand it got to a second iteration or a third iteration, something like that but it never reached any final agreed status – do you know anything of all of that, did you attend that workshop?

- A. I didn't attend the workshop, Your Honour, but I do know both documents that you're referring to and I actually, around the same time, was very involved in some work with Frank Boffer who was heavily involved in the visual simulation side of things, working with Truescape.
- 5 Just to sort of put you in the picture on that one, I did go back and have a look at that best practice note after seeing the – noticing this discrepancy in the simulations. The best practice note is very helpful, in guiding what should be done. I guess what concerns me is that Buildmedia, unlike normally, they have not – there's two statements that
- 10 I read from Tim Johnson, reflecting on this issue, do not actually confirm that they've been prepared in accordance with the best practice note. And I am unfortunately aware of a debate that's emerging regarding visual simulation methodology. In terms of the landscape assessment workshop that has also made its way into a NZR lay draft best practice
- 15 note that almost all of the landscape architects that I've come across work with, it is very generic and high level, it talks about – it does help with some terminology but not with the definition of low, moderate high. It does talk to a five or seven point scale but not the actual nuts and bolts.
- 20 Q. Definitions of each of the levels?
- A. Nor thresholds, unfortunately.
- Q. It is unfortunate because we seem, regularly, to be confronted by people talking – and I'll put this colloquially – off different pages and that I think was what underpinned Commissioner Howie's concerns, his questions
- 25 to you just now. There's probably not a lot you can add to that for the moment. Unfortunately we probably will have to have something to say about these difficulties that keep cropping up in evidence of this sort and so the Institute might hear a recommendation that more work is essential because it's rather tiresome to have witnesses talking past
- 30 each other?
- A. Yes, I couldn't agree more.

THE COURT: JUDGE NEWHOOK

Any re-examination, Mr Littlejohn?

MR LITTLEJOHN:

No – there was a proposition my friend put to the witness and he began with the phrase, “A 107 berths” and I’m not sure whether I got that right but –

THE COURT: JUDGE NEWHOOK

5 My eyebrows went up, last I looked it was 112.

MR LITTLEJOHN:

As long as I didn’t mishear him I don’t think there’s any point in getting the witness to clarify, the numbers are all on the plan so that was the only point I was going to try and bring up but – no thank you, Sir.

10 **THE COURT: JUDGE NEWHOOK**

Mr Brabant, we were talking about you just then now I’m talking to you. You put a question to the witness in which you described the new proposal as being 107 berths and I just observed to Mr Littlejohn the last time I looked the figure was 112.

15 **MR R BRABANT:**

Sorry.

THE COURT: JUDGE NEWHOOK

So it’s 112?

MR R BRABANT:

20 Yes, excluding the pile moorings.

THE COURT: JUDGE NEWHOOK

Excluding the pile moorings, yes. 112 in the marina. Just so we’re all on the same page.

COURT ADJOURNS: 3.37 PM

25

COURT RESUMES: 4.00 PM

THE COURT: JUDGE NEWHOOK

Mr Brabant, you're on your feet?

MR R BRABANT:

5 Well, yes, Sir, because the matter that's just been before you, Sir, my co-counsel has been in touch with Tim Johnson of Buildmedia who advises him that the work was all done in accordance with the NZAI guidelines and he's not aware of any of the errors that have been assessed so I've asked him to arrange Mr Johnson to come down here directly.

10 **THE COURT: JUDGE NEWHOOK**

Right. We'll see where that goes.

MR LITTLEJOHN:

I have Mr Scott in the witness box. Your joint memorandum would've indicated that none of the other counsel indicated a desire to question him.
15 I've put him there out of an abundance of caution because we did have an interchange yesterday which you indicated you might wish to put some matters to Mr Scott. I endeavoured to explain those matters to you in submissions today but Mr Scott, nonetheless, is available if you wish to ask him any supplementary matters.

20 **THE COURT: JUDGE NEWHOOK**

Help me, because my mind is getting across all sorts of topics and it's a commendably fast-moving hearing considering the amount of material that we are having to consider. So would you just point out the passages in your submissions that you say cut the ground that Mr Scott might perhaps be able
25 to help us with. Yes, I think I did indicate that some things I was putting to Mr Pryor could, out of fairness, be put to other witnesses.

MR R LITTLEJOHN:

I was referring, Your Honour, to the observation that Mr Scott made about the future.

THE COURT: JUDGE NEWHOOK

5 Oh, the frolic?

MR R LITTLEJOHN:

The frolic, I think that was the thing – and I endeavoured to explain in my submissions today, I made some submissions about that matter and whether Your Honour wants to –

10 **THE COURT: JUDGE NEWHOOK**

It's a matter of law and you made a gracious concession right at the end of it, Mr Littlejohn, I think. I'm not sure that we need an elegant explanation from Mr Scott.

MR LITTLEJOHN:

15 More elegant Sir!

THE COURT: JUDGE NEWHOOK

I don't feel the need to question him about that. You've told me that the people that you act for and that he is giving evidence on behalf of have expressed concerns about what the future could hold if consent is granted to the truncated marina and I indicated then and I'll reiterate that I understand how people feel about that issue, we've seen a lot over the years and we'll continue to see it, I have no doubt. And, Mr Scott, I accept I have been motivated by that as you said you were motivated by that and we understand that and then we have to become boring lawyers again and apply the jurisprudence thrown at us by the Higher Courts.

20
25

MR LITTLEJOHN:

Thank you for that, Sir. It really comes down to whether Your Honour wanted to put any other matters to Mr Scott – there's no supplementary matters I wish to give to you.

5 **THE COURT: JUDGE NEWHOOK**

No – I'll leave that to you. Matters were run past Mr Pryor and now Ms Gilbert and so if there's anything that you feel that, in fairness, you'd like Mr Scott to have the opportunity to comment on you may do so, it's supplementary.

MR LITTLEJOHN:

10 As Your Honour is aware there was a division of (inaudible – 16:02:20) between Mr Scott and so the primary visual and landscape effects assessment evidence was Ms Gilbert and Mr Scott took a much wider –

THE COURT: JUDGE NEWHOOK

Bigger picture stuff.

15 **MR LITTLEJOHN:**

- planning strategic, those sorts of things and he's rather succinctly enunciated his comments on the revisions in the supplementary statement of evidence.

THE COURT: JUDGE NEWHOOK

20 Yes. And we've most certainly read that.

MR LITTLEJOHN:

In that situation, Sir, I won't bother to have the witness sworn it can just be taken into the record as per those who have not been questioned, if that's in agreement, Sir.

25 **THE COURT: JUDGE NEWHOOK**

Yes. So, thank you for being available, Mr Scott. No need to face the fire today.

MR LITTLEJOHN:

Well I'll ask Ms Gisby who has prepared some supplementary evidence as well to come to the witness box and then we're on the home stretch with Mr Langwell and Mr Serjeant.

5

MR LITTLEJOHN CALLS

CHRISTINE ANNE GISBY (SWORN)

Q. Is your full name Christine Gisby?

A. Christine Anne Gisby.

5 Q. And you prepared evidence-in-chief in relation to these proceedings in July 2014 and you've appeared previously at the first hearing, is that right?

A. Yes, correct.

10 Q. Now you've prepared a further statement of evidence commenting on various matters arising since that first hearing. Is that statement of evidence dated 6 July 2015?

A. On my copy here I've got 3rd of July 2015.

15 Q. We should probably make sure you've got the same one as the one that's in the bundle of evidence. So there should be a black folder close by which will have –

WITNESS REFERRED TO STATEMENT OF EVIDENCE DATED 6 JULY 2015

Q. Could I just ask you to quickly look over that and just to confirm that that is –

20 A. The same one, yes, sure. Yes, it looks the same, yes.

Q. Do you confirm for the Court that the contents of that brief are true and correct to the best of your knowledge?

A. Yes, I do.

CROSS-EXAMINATION: MS PARKINSON – NIL

25 **CROSS-EXAMINATION: MR ENRIGHT – NIL**

CROSS-EXAMINATION: MS MCINDOE – NIL

CROSS-EXAMINATION: MR ALLAN – NIL

CROSS-EXAMINATION: MR R BRABANT

Q. I'd just like to start with your paragraph 5, please, where you talk about the sailing or the, if you like, the timetable for Explore, the new ferry operation?

5 A. Yes.

Q. There is copies of the timetables for the ferries for Fullers and Explore at the back of Mr Blom's evidence, did you see that or have you got –

A. I haven't seen Mr Blom's evidence. I've heard it.

Q. Do you have a timetable handy at all?

10 A. No but I can say if it's any help that what I wrote there was before the timetable was actually published – this is from their website.

Q. Just so we can get this straight – and tell me if you need to check the timetables to be sure about this but there's 17 sailings during the week but there's less on Saturday than on the week and there's some, a little bit less on Sundays and public holidays, is that right?

15

A. I assume so I don't –

THE COURT ADDRESSES MR R BRABANT – WITNESS TO BE GIVEN COPY**CROSS-EXAMINATION CONTINUES: MR R BRABANT**

20 Q. So do you see those there?

A. So what's the question, sorry?

Q. You've referred to 17 but the 17 applies Monday to Friday?

A. Yes.

25 Q. And I think there are 13 on Saturday and 12 on Sundays and public holidays?

A. Yes, I see that.

Q. And presumably that's what you've observed as well?

30 A. The time's I'm down at the ferry terminal, I'm not there all day but, yes, I've observed the different sailings and also through my – as a tour operator I have contacted Explore because I have people coming off, my customers coming off the sailings and also as a tour operator I have to work out next summer's tours that I can offer so I need to offer what

sailings and what timings for the (inaudible – 16:09:12) et cetera. So it's not that I'm there all day but I have made enquiries for my tour operation to be able to provide packages and timings for arrivals and departures of my customers.

- 5 Q. So that was the only question about the Explore timetable, just to clarify that there wasn't a difference of view and the evidence that you've given headed "Traffic at Matiatia Since October 2014" – these are the observations you've been able to make, presumably?

1610

- 10 A. Which paragraph are you –
 Q. Under the heading –
 A. On page 2?
 Q. Yes, under the heading, "Traffic At Matiatia Since October 2014" at page 12?
 15 A. Yes.
 Q. These are the observations that you've personally been able to make?

THE COURT: JUDGE NEWHOOK

No, it starts at paragraph 12, not page 12 – paragraph 12. Just so we don't get lost when we're reading the transcript later, Mr Brabant.

20 **CROSS-EXAMINATION CONTINUES: MR BRABANT**

- Q. These are your personal observations that you've recanted?
 A. Yes, they are.
 Q. And starting at paragraph 20 you've talked about what you describe as a deterioration in parking availability at Matiatia during the weekdays?
 25 A. Yes.
 Q. Had you provided that information because you want the Court to know how much more difficult it's become to park down there or because you think it's got some relevance to the number of vehicles that would be accessing the marina carparking?
 30 A. I provided that evidence because it has been more difficult, that's my observation, that's what's been happening. I provided the evidence also because I consider that anybody, any other group that would be using

that would make it more difficult as well to park. But I can't say that because that hasn't happened yet.

Q. If you've read the traffic engineer's evidence they all agree, don't they, that the parking arrangement for the marina provides sufficient parking during weekdays – the traffic engineers all agree?

5

A. Yes, with all due respect, Mr Shuman in that sense said that I probably had more experience than he had about the traffic down at Matiatia in that sense. I actually disagree with that (inaudible – 16:11:47) say that – the traffic engineers say that there's no problem there, there's definitely a problem there during the weekdays, it's absolutely definite.

10

Q. My question was actually a little bit different from that. But what I said to you is have you read, for example, the joint traffic statement or the evidence where all the traffic engineers, including Mr Langwell, are agreed that for weekdays there is sufficient – they assess there is sufficient parking in the proposed carpark for the revised marina – you've read that?

15

A. I've read that, yes.

Q. So with the problem that people are having in parking who are presumably are they who are trying to catch the ferry?

20

A. Not necessarily, no. Are you talking about the 30 minute carpark with my tour business or are you talking about when I'm trying to get myself to town as an individual that lives on Waiheke?

Q. Well I was just talking about – I was asking you about what's in there from paragraph 20 onwards. So is this a particular issue about the 30 minute parking or parking generally?

25

A. Well that particular evidence in paragraphs 20 and 21 particularly about the 30 minute carpark and my ability to operate as a tour operator.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

30

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

MR LANGWELL CALLS**TODD JAMES LANGWELL (SWORN)**

Q. Is your full name Todd James Langwell?

A. Yes.

5 Q. And do you hold the qualifications and have the experience set out in paragraphs 1 and 2 of a statement of evidence you prepared dated the 29th of July 2014?

A. Yes.

10 Q. And do you confirm that you have also prepared a supplementary statement of evidence dated the 6th of July 2015?

A. Yes.

Q. Now just for the record, the statement of evidence you prepared dated the 29th of July 2014, was that in anticipation of the first hearing for this application?

15 A. Yes.

Q. And the supplementary statement you've prepared follows on from that and is prepared after there had been changes to the application?

A. Yes.

20 Q. In terms of the primary statement of evidence you prepared as at the time it was prepared were its contents true and correct to the best of your knowledge?

A. Yes.

25 Q. And in respect of the supplementary statement of evidence you've prepared as at the date you prepared that are its contents true and correct to the best of your knowledge?

A. Yes, except I have one correction I'd like to make.

Q. Please tell me what that is?

A. Your Honour's paragraph 21.

Q. Of which brief of evidence?

30 A. The supplementary evidence. In the last sentence, actually in the last line, I refer to "the commuter peaks" – this should actually be replaced with "peak summer periods". The preceding paragraphs discuss the

summer months only and that was my conclusion in that final paragraph.

Q. So should we take out the word “commuter”?

A. Strike out “commuter”.

5 Q. Take the “s” off “peaks” so that the sentence reads, from the comma, “Will increase the pressure on the existing infrastructure in Matiatia during the peak summer period and in particular the keyhole,”?

A. That's correct.

10 Q. Now since you prepared your statement – supplementary statement on the 6th of July two personnel from Auckland Transport prepared supplementary statements of evidence?

A. (No audible answer 16:16:55)

Q. Do you confirm that you've seen those statements of evidence?

A. Yes, I have seen those and I've read them.

15 Q. And were you in Court today when those two personnel were questioned?

A. Yes, I was.

20 Q. The conditions of consent that were proffered by the applicant at the outset of the hearing on Monday do you confirm you've seen those conditions?

A. Yes, I have, that would be the version that's attached to the joint witness statement to the Auckland Transport (inaudible – 16:17:25).

25 Q. I think they were an earlier version – there should be a version up there dated the 24th of July 2015, they were handed up by my friend Mr Brabant in his opening.

WITNESS REFERRED TO DOCUMENT OF 24 JULY 2015

Q. This is the first time you've seen that particular version?

A. Yes.

CROSS-EXAMINATION: MR ALLAN

30 Q. As we discussed in the corridor your evidence-in-chief is going to be having its first birthday tomorrow?

A. Thank you, I'm very proud!

- Q. I did have some questions for you about those conditions so we'll see how we go in terms of the questions, whether you're familiar with the conditions in question. Now, as my learned friend has covered with you, obviously your original evidence was based on the original proposal with the larger carpark, the larger number of berths?
- 5
- A. Yes.
- 1620
- Q. And caucusing of course took place on that same basis on the basis of that proposal as well?
- 10
- A. Yes.
- Q. Now caucusing it seems you and the other traffic experts were able to reach agreement on a range of matters. You probably don't need to go to the statement, you'll probably remember, but for instance you collectively agreed that at peak times when demand exceeds onsite parking there is adequate spare capacity within the public parking area to accommodate overspill, do you remember that?
- 15
- A. Yes.
- Q. And as I understand your position in your supplementary evidence, with the reduced size of the marina you don't have any issue with off-site parking effects at all, do you? I'm referring to paragraph –
- 20
- A. No that's correct, yes.
- Q. And that's paragraph 15 for the transcript.
- A. Yes, that's correct. I'm just checking that now, that's correct.
- Q. And one other thing agreed was the trip generation rate or rates to be applied to the proposal that was based on those Whitianga surveys?
- 25
- A. Yes.
- Q. But as I understand your position despite agreeing with those trip generation rates you continue to believe that there's the potential for the number of trips to triple beyond the rates that were otherwise agreed as appropriate for the development, is that right?
- 30
- A. Yes that's right. And just to be **clarifical (16:21:24)** here I have agreed with the rates. I believe that marina-related traffic that's there for the function of trips related only to the marina will be the equivalent of what I've agreed with Mr Mitchell and the other traffic witnesses. The

additional trips I'm talking about come as a consequence of not controlling those trips and also, and the location of the carpark itself next to the ferry terminal.

5 Q. Okay. We'll come back to that aspect of your evidence, but we obviously now have in exchange of supplementary evidence based on the reduced proposal. And just to take stock briefly of the traffic experts' respect positions on potential traffic effects, Mr Mitchell regards the potential effects as less than minor I think. That's where, how he described them, Mr Mitchell.

10 A. Yes I believe so.

Q. And Mr Shumane in his latest evidence regards the operational traffic effects as negligible. He obviously has some concerns about the construction effects, but operational effects I think he describes them as negligible?

15 A. Yes I think I can recall that from his evidence.

Q. And his concerns about construction effects have been to a large part, I think, addressed by this new condition and you may not have caught up with this; with the blackout period over the summer period. Is that familiar to you? That was something he was proposing that construction traffic not be allowed into that area by the terminal from the last week of
20 December for four weeks.

A. Yes I recall that from Mr Shumane's evidence.

Q. And you support that measure?

A. Yes I think that's a nice measure to put in place.

25 Q. And we don't have further evidence directly on the traffic generation effects from AT, but evidently AT's now content that the traffic effects are acceptable and the conditions are acceptable, I think it's fair to say?

A. I can read that from their evidence, yes.

Q. So looking at your supplementary evidence generally, now hopefully I'm
30 summarising this adequately, but you're concerned that the traffic effects may be more than minor and as you sort of hinted at before, that's because of the concerns you have about the effectiveness of conditions, enforcement and that sort of thing, is that right?

A. Yes that's correct, yes.

- Q. In terms of the – if we look at the current situation at the moment I think we've got several spaces allocated beyond the keyhole for mooring users. Is it six, I forget, I think it's six?
- A. Five or, five or six, yes.
- 5 Q. Something in that order, and obviously the traffic associated with those spaces it's having a negligible effect, isn't it?
- A. Yes.
- Q. So, perhaps I'm putting it a bit simply, but there's obviously a number of vehicles which could be accommodated on a deck beyond the keyhole,
10 which would have a more minor effect of a keyhole and is capable of being managed.
- A. Sorry, could you just repeat that again.
- Q. Well it's obvious that the current parking we have beyond the keyhole that's, the traffic associated with that is having a negligible effect.
- 15 A. Yes.
- Q. There's perhaps a, there's a number somewhere between what's proposed by the applicant and what we see at the moment and where the effects would be of a minor nature, you'd agree with that?
- A. Yes, okay.
- 20 Q. It's a case of pinpointing what that might be. And I think paragraph 8(c) of your supplementary is really getting to the heart of things. If you just have a look at that. In that last sentence you say, "In terms of traffic generation effects the revised proposal at best these may be minor given the reduced trip generation and parking demands associated with
25 the smaller marina." I get the impression from your supplementary that what the applicant's proposing now with the reduced traffic generation and parking area from your perspective it's on the cusp in terms of whether the traffic effects are minor or more than minor. Is that a fair observation?
- 30 A. Yes I think that's fair. I think what, in looking at the controls that are being put in place the marina traffic has the ability to be controlled, but in the same context I still have concerns over whether the ongoing management of those controls is going to allow the marina to stay within those limits if it's – .

Q. That's right, so that's what I take from your evidence that it's the effectiveness and enforceability of those measures that that potentially makes the difference?

A. Yes.

5 Q. Okay. And just turning to the conditions and if you want to take a little bit of time; I won't take you through every single traffic condition. I think we had some experiences in October like that and I won't, I won't revisit that, sir. But I think it's important that we just stop off at a few of the key ones. If we look at condition 47. Now this one will be familiar to you I think. This is the access control for parking spaces. So there's a requirement for a barrier arm system recording data for each entry and exit.

A. Yes.

15 Q. And then over the page, at 49, there's a marina carpark permit system conditions. So there's a permit system that will have to be implemented?

A. Yes.

20 Q. And you might recall, I think in a previous version the applicant's conditions, the arrangements for the parking permit system didn't actually require the approval of the council. Now you'll see there that both the council's and AT's approval is required. Presumably if consent is granted you'd agree that both council and AT should have some oversight of that permitting system?

A. Oh I think it's imperative that there's control.

25 Q. And then the next condition, 50, about CCTV monitoring. So once the marina's at 50% CCTV monitoring of the access and the keyhole would be required, and those recordings will have to be made available to the council and AT for monitoring purposes?

A. Yes.

30 Q. And then, sorry, just to dive back, so pick up a condition at 36, this is on page 19, page 19, 36(d)(iii), do you see there "The marina rules will have to include measures to ensure the carpark is used for marina activities only"?

A. Yes.

Q. And those rules and measures, you understand, have to be approved by the council?

A. Yes.

5 Q. You can see that below. It says, "The consent holder shall provide a copy for approval"?

A. Yes.

Q. And then back over to where we were before in condition 51, we've got a separate condition preventing the marina carpark from being used for casual parking and non-marina related activity?

10 A. Yes.

Q. So if a marina berth holder with a parking permit uses the deck say as a commuter carpark, they'll be breaching not only the marina rules, so that's sort of the contractual side of things, but also the resource consent conditions, won't they?

15 A. Yes.

Q. Would you agree that these measures in the conditions, backed up by the recorded data in terms of entries and exits and the CCTV recording make it much less likely that berth holders will abuse the parking and use it for non-marina purposes?

20 A. I can accept that the, all of those controls in place allow – I guess they can give comfort that all of the movements to and through the keyhole can be controlled. I'm still at the point of having reservations about whether at those peak times when there is pressure on all areas within Matiatia whether, you know, people will try to use their carpark if they can for drop-offs and so forth and there might be moments when that would occur in the off-peak as well. I'm not sure if those will actually be captured in the monitoring.

1630

30 Q. In the case of repeat offenders, if you like, if people are noted repeatedly doing this, obviously with, the council, of course, takes its enforcement obligations very seriously but with the CCTV footage and the data for entries and exits, there's a good basis for following up on any complaints isn't there and pinning down offenders –

A. Yes, I can accept that those measures –

Q. – for lack of a better word?

A. Yes.

Q. Now, I'll get your view, just connected with this there's a statement you made back in your evidence-in-chief and it's a similar point really.
5 Paragraph 33 in your evidence-in-chief on page 8. Have you got that?

A. Yes.

Q. "So although it may be in the best interests of the marina to allow ferry passenger parking to occur, that decision would ultimately be up to the marina management who, from experience, would likely support the
10 berth holders use of parking for non-marina uses." And obviously you made that statement when you didn't have these more detailed conditions that we now see at hand. Would you agree that this is perhaps an unlikely stance for marina management to take? Quite apart from the requirement in the marina rules, we've now got a
15 condition which directly prohibits non-marina use of the carpark.

A. Yes and to a degree I guess I can draw on my experiences of what I know of another marina at Westhaven where there is obviously a similar permit system that's put in place. The carparks are accessible and I know from time to time that permit system is not used solely for marina
20 purposes. But I would admit that those are rare occasions. They're not, you know, it's not a significant amount of trouble for the Westhaven Marina. And I know, you know, well, I guess it will depend on the contractual arrangements to how strong marina management would support their berth holders. But at the same time, you know, I can
25 accept that given the conditions that are in place now, that there is a high possibility the marina management would want to comply and be able to maintain their carpark access.

Q. So, if I take it, your point about Westhaven, in your experience, it's more of an isolated issue if there is one? It's not, for instance, leading to a tripling of trip generation at Westhaven is it?
30

A. No, I don't think, I don't believe it would triple the generation there. But then, Westhaven's not a marina that's alongside a ferry terminal at the same time so there are other attractors there for parking but...

- Q. Are you familiar enough with the restrictions on Westhaven to comment on whether, for instance there's a condition banning non-marina use, whether there's CCTV and some of these other proposals that we have here?
- 5 A. Yeah, yeah, there are similar measures in place I think. There's CCTV, there are permits that are issued, there's patrolling of parking.
- Q. So I suppose in terms of your concern that you express in your evidence about berth holders becoming ferry passengers, I think that's the way you put it in your evidence-in-chief, these conditions that we've just covered, they directly address that concern don't they?
- 10 A. Yes, I can accept that.
- Q. And just returning to some of the other traffic conditions, a bit of a mop up, down at 53, I think this is a familiar one hopefully, "There's to be a review of peak period vehicle data for the period of 24 December to 15 10 February."
- A. Yes.
- Q. Which captures that really busy period that we're mostly worried about. And if, during that peak period, parking demand exceeds 20 movements in total during a 30-minute period on three consecutive periods, that's the way it works I think, then the requirement for a special report is triggered. That's condition 54; the vehicle access review.
- 20 A. Yes.
- Q. "And with that report at hand the council can initiate a review of the conditions, potentially adding restrictions on traffic movements." That's condition 5D back in the very first page.
- 25 A. Yes, I recall that, yeah.
- Q. So if a problem is identified and a review is initiated, then that could ultimately result in restrictions being introduced on access to the carpark at peak times. That's one possibility?
- 30 A. Yes.
- Q. And depending on the nature of the problem identified that could result in access being prevented possibly for some hours at a time.
- A. Yes.

Q. And the installation of a variable message sign, or I think Mr Shumane called it a changeable message sign, he got the two –

A. Oh, but they're the same thing.

5 Q. Same thing essentially. Further up Ocean View Road; that's something else that could result from a review?

A. Yes, that's something that's been recommended in previous statements.

Q. And so that could alert marina users to active restrictions couldn't it before they get near the keyhole or the fact that the carpark's full?

A. Yes it could.

10 Q. So there are some practical measure which could be introduced if need be, you know, if a problem with marina traffic and the keyhole is revealed, do you agree with that?

A. Yes I could. Yes, probably fair.

15 Q. And just your evidence-in-chief at paragraph 34 alludes to a further possibility I think. Have you got paragraph 34 on page 8 of your evidence-in-chief?

A. Yes.

20 Q. Do you see at the end there, that last sentence, "I accept that if you can control the rate at which vehicles leave the marina then you can theoretically address more than half of the potential impact of the marina users on the operation of the keyhole." So, with the electronic control of the barriers there's the opportunity, for instance, to stagger departures at certain times should this prove necessary, would you agree with that?

25 A. Yeah, and that was the intention that I was making in that paragraph. That's what I was saying.

Q. So that could result from a review as well potentially if a problem is identified?

A. Yes.

30 Q. I just wonder, standing back from the proposal and looking at the suite of conditions that you now have, and I know you haven't had a chance to study all the detail, but aren't the measures we've discussed backed up by CCTV monitoring and provision for a review adequate for this reduced marina?

A. I think as conditions of consent they allow, or I should say they give options to council to enforce, you know, those conditions quite well and to be able to try and control access. I'm not sure how this might relate to Auckland Transport and how they can control access. We've, like I say, I've heard today and I've stated it in my evidence-in-chief and it's been referred to in Mr Karndacharuk's evidence, is that movement of vehicles through the keyhole is something that's difficult to enforce. And I think that's the gap that I see at the moment in where effects could potentially be increased if we can't control the movement of vehicles.

10 **CROSS-EXAMINATION: MR BRABANT**

Q. I'm looking at your latest evidence please, Mr Langwell. In paragraph 12 you refer to your evidence-in-chief, stating vehicle movements could be as much as triple the predicted flow. And your paragraph 13 goes on to explain how you arrive at that doesn't it?

15 A. Yes. My paragraph 12, also in context, as I said, it would triple unless it was controlled.

Q. Yes. But your assessment of a tripling explained in your paragraph 13 is based on the premise that all of the carparking provided for berth holders is taken up by berth holders who are going on the ferry isn't it?

20 A. Correct, that's, as I said, it's the potential for that to occur that I was saying.

Q. The calculation is based on all of the carparks being occupied by people who have broken the marina rules and the resource consent isn't it?

25 A. Barring aside possibly the mobility parking or the manager's space, I would say that it wouldn't be all of them.

Q. Right, thank you. You raised Westhaven, with which you say you're familiar, as a useful example. But Mr Langwell, it's not a useful example because it doesn't have any barrier arm control does it?

30 A. Correct, yes.

Q. Bayswater was referred to by Mr Wardale in previous evidence as being an example that he gave to the Court and that he was familiar with

through having been a manager there. Are you familiar with that operation?

1640

A. No, I'm not familiar with Bayswater.

5 Q. Have you read Mr Wardale's evidence that he gave to the Court specifically addressing the question of how the marina carpark could be operated with the traffic barrier arms and access arrangements. Have you read that?

A. Yes I recall that.

10 Q. And he said, didn't he, that each marina berth holder would be provided with a card granting access and the same personalised card would provide the marina berth holder access to the pier. Do you remember that?

A. Yes.

15 Q. And that there would be a continuous record of that and it would be continuously available to the marina manager?

A. Yes I remember that.

20 Q. Do you imagine a competent marina manager finding an unexpectedly large number of occupants of the parking during the commuter week compared to how many boats seem to be out would make some enquiries or want to know how that had occurred?

A. I imagine so.

25 Q. Yes. Not the least because particularly if your suggestion of them being fully occupied were so he would receive complaints from people coming down intending to use the berths legitimately, that's an expectation isn't it?

A. Yes, that's an expectation.

30 Q. And you'll recall in Mr Wardale's evidence explaining how that cross-referencing including details of car ownership would enable the marina management to pinpoint people who were causing the consent holder and its employee to be in breach of the Resource Consent. Do you accept that can be done electronically?

A. Yes I accept that can be monitored.

Q. And lastly Mr Langwell, the proposition you put forward is based on the premise that the consent conditions that Mr Allan has taken you through will be broken isn't it?

A. You're talking about the trip generation tripling?

5 Q. No I'm talking about the conditions of consent that Mr Allan took you through that applied to the berth holders through the marina rules but more particularly condition 51 which imposes an obligation on the consent holder doesn't it?

A. Yes.

10 Q. Not to allow the parking that you postulate.

A. Correct.

Q. So your whole proposition is based on the Resource Consent conditions being broken isn't it?

A. Now in the conditions the way they are set out, that would be correct.

15 **QUESTIONS FROM THE COURT: COMMISSIONER HOWIE – NIL**

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL

QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL

RE-EXAMINATION: MR LITTLEJOHN – NIL

WITNESS EXCUSED

20

MR BRABANT:

Mr Johnson has just arrived at the back of the Court Sir.

THE COURT: JUDGE NEWHOOK

Well you'll want to speak with him won't you?

5 **MR BRABANT:**

My co-counsel has Sir and I would imagine he would lead some questions. He's informed him simply of what even been informed by the Court and you may decide, but it's in your hands Sir whether you should hear that while it's fresh in your minds.

10 **THE COURT: JUDGE NEWHOOK**

Yes, we will do that then before we hear from Mr Serjeant. Equally if any counsel feel the need to reflect or to take advice from their own experts overnight we may need to ask Mr Johnson to return in the morning as well. That is if Pandora's box has truly been opened I suppose. Mr Allan, I want to
15 set you some homework for tonight.

MR ALLAN:

Yes Sir.

THE COURT: JUDGE NEWHOOK

I perceive that you might have nothing better to do than to do some homework
20 for us. We want to know from you in the morning, can a condition of Resource Consent deny public access over a public road? It occurs to me that through various local government legislation means there can be limitations placed, for instance bus ways created but that's through actual management of roads by local authorities. My question is as to whether
25 conditions of consent can set up limitations controlling vehicular access over public roads.

MR ALLAN:

I'll have a look at it tonight. My immediate thought is it presents a problem in terms of the common law right to pass and re-pass but I'll have a look at it certainly.

5 THE COURT: JUDGE NEWHOOK

It was in the back of my mind and you've just brought it to the front alongside that which I've put to you. So if you wouldn't mind giving us a hand with that in the morning. Any other counsel who want to help Mr Allan with his homework, maybe you Ms McIndoe.

10 MR ALLAN:

Kitt's volunteered to help out.

THE COURT: JUDGE NEWHOOK

He loves homework.

MR LITTLEJOHN:

15 That is precisely the question that Judge Whiting's division coped with in the *Winstone Aggregate's* case and the extract that Ms Parkinson handed up has the precise condition there and if you changed a few of the words around it would be the sort of condition that I imagine the Court could contemplate here, so I haven't gone on and refreshed my memory about the conclusion –

20 THE COURT: JUDGE NEWHOOK

It sounds as though you've largely done any homework that you might have anticipated that Mr Allan is asked to –

MR ALLAN:

25 I think the *Winstone* case though was about directing truck drivers to use a particular, avoid a township from memory and there were contractual means of securing that. Whereas your question is whether the public – I think it's probably a different point so I'll have a look at it. Sorry Kitt.

THE COURT: JUDGE NEWHOOK

I think it might be.

MR ALLAN:

Is there another one? Just that question?

5 **THE COURT: JUDGE NEWHOOK**

Yes, there was just that one point.

MS MCINDOE:

Sir, could I clarify, was your question to do with the public using the road or marina berth holders using the keyhole?

10 **THE COURT: JUDGE NEWHOOK**

Well based on the premise that people driving cars to get to the marina will be members of the public driving vehicles on public roads when they're in the keyhole.

MS MCINDOE:

15 But it's marina berth holders?

THE COURT: JUDGE NEWHOOK

Before they get to the marina carpark.

MS MCINDOE:

Yes, thank you.

20 **THE COURT: JUDGE NEWHOOK**

I just want to know how far this kind of control can be set up through conditions of consent and as to whether there's any legal problems with that. Mr Brabant I've got some homework for you. Or one of the Messrs Brabant. Just while we're setting homework and before I forget because I imagine that
25 sometime tomorrow you're going to be offering a reply and you could pop it into that. I'd like to save myself the bother of sifting through a million miles of documentation and I'd like three dates provided to us. The first is, and this will

be to remind us but to save us hunting. The date on which your application was lodged with the council and; secondly, the date on which the deck option was introduced. Thirdly, the date on which the latest deck option was put forward so that will probably be which the date on which plans, the latest set of plans emerge with the modified proposal. And then finally, the date of public promulgation of the Unitary Plan, section 88(a) stuff.

MR J BRABANT:

Just while we're on the question of us producing a reply and your expectations of when some of the reasons my co-counsel has been absent is, you'll imagine he's working on it, but we're wanting to enquire as to how much time might be available to us before you would want us to provide us.

THE COURT: JUDGE NEWHOOK

Well normally at the end of a short sharp hearing we like to have it on the hoof. I suppose this isn't exactly a short sharp hearing because it draws to quite some degree on the earlier hearing and you haven't exercised the right of reply in relation to that long ago event. Equally you've had, how many months? Nine? To work out reply material in relation to that. But what are you going to nominate?

MR BRABANT:

Well, I was just wondering whether, Sir, attacking it fresh (inaudible – 16:50:03) on Thursday morning (inaudible 16:50:05). I don't know how long (inaudible 16:50:09) Your Honour.

THE COURT: JUDGE NEWHOOK

Just with an eye to the weather forecast, we're looking at going to the island on Thursday and I rather imagine a fair bit of Thursday could get consumed. We're going to go everywhere we went before and some new places, around both sides of the bay and roading and structure, and so on around, Matiatia.

MR BRABANT:

In that case would there be merit in addressing you when we got back. I suppose it depends whether you think anything might come out of that visit?

THE COURT: JUDGE NEWHOOK

Who knows in this particular case? I'm feeling generous Mr Brabant. How
5 about 10 o'clock Friday morning for the reply. That's not an invitation to come here with 100 pages.

MR BRABANT:

No well I've got a firm hand on that Sir.

10 **THE COURT: JUDGE NEWHOOK**

Your junior doesn't want to do that either.

MR BRABANT:

No, I was thinking about an hour Sir, to an hour and a half.

15 **THE COURT: JUDGE NEWHOOK**

Yes, and then if we have that juxtaposition, if anything, is in our minds from the site and locality inspection on Thursday we'll be able to put before it on Friday.

20 **MR BRABANT:**

Yes thank you Sir.

MR BRABANT CALLS**TIMOTHY WILLIAM JOHNSON (AFFIRMED)**

Q. So your full name is Timothy William Johnson –

A. Correct.

5 Q. And you did a primary statement of evidence but more recently a rebuttal supplementary statement dated 13 July 2015?

A. Yes that's correct.

Q. And I think your qualifications and experience including at Buildmedia have been set out in those previous statements?

10 A. Yes that's correct.

Q. Now you should be able to find there a copy of those latest visual simulations Mr Johnson. Are they there on the desk dated the 10th of July?

WITNESS REFERRED TO VISUAL SIMULATIONS

15 A. Yes.

Q. I'm going to recount to you, because I don't have the transcript Sir but I did make some notes, if you would go to viewpoint 10 please on those, which is the one that Ms Gilbert first referred the Court to in relation to this issue. And what I intend to do Sir is just read out what I understand you were advised by the Court and take Mr Johnson to each one and the conclusion that the witness gave and then give him an opportunity to advise you. So in respect of viewpoint 10 Mr Johnson, Ms Gilbert said that the scale of the bay had been distorted and she advised the Court to look at the red shed that you can see in the photograph in that bay and this is on the basis that she's –

20

25

THE COURT: JUDGE NEWHOOK

And the Point?

MR BRABANT:

30 And the Point.

THE COURT: JUDGE NEWHOOK

The red shed and the Point. I think that's Moki Moki Point.

MR BRABANT:

Do help me Sir if I don't get everything like that.

THE COURT: JUDGE NEWHOOK

5 Yes she said that in the same sentence.

EXAMINATION CONTINUES: MR BRABANT

10 Q. So this is a witness who has told the Court she has taken them with her and looked at them according to what she understood the viewing distance was and found that they did not give an accurate reflection of what the viewer saw in the photograph and she said that the shed viewing from the location is considerably bigger and it is a (inaudible 16:55:15) viewpoint and as His Honour says made a reference to the –

THE COURT: JUDGE NEWHOOK

Headland.

15 **EXAMINATION CONTINUES: MR BRABANT**

20 Q. Headland as well. So that was viewpoint 10. So I thought I'd just take you to each one. Viewpoint 11, Ms Gilbert advised the Court that on site, that is being there looking at this view, what is depicted in the photograph, and there have been a particular reference within the photograph Sir that I didn't get, looked closer on site than in the photograph and the simulation.

THE COURT: JUDGE NEWHOOK

I think she mentioned the shed again in that regard.

25 **MR BRABANT:**

The shed again, yes, thank you Sir.

EXAMINATION CONTINUES: MR BRABANT

Q. And viewpoint 5 – and Ms Gilbert did tell us that because of an injury she wasn't able to go to the exact point in the point the photograph but explained to the Court a nearby location and again proffered the advice
5 to the Court that in her opinion that actual view is closer, appears closer, than depicted in the photograph and therefore in the simulation.

THE COURT: JUDGE NEWHOOK

Yes and just to fill that in a little bit she said that instead of scrambling down to that viewpoint she went to the black house that's almost up behind that
10 viewing location in viewpoint 9. So if you turn to viewpoint 9 –

MR BRABANT:

Yes just to the very length of that –

THE COURT: JUDGE NEWHOOK

15 Right in the middle of the photograph there you'll see that black pole on the wharf standing up and if you look just to the left of that pole you'll see a house and she went to that house and said that she nevertheless gained the impression that Mr Brabant's just indicated that she thought was referable to viewpoint 5.

20 EXAMINATION CONTINUES: MR BRABANT

Q. And lastly Mr Johnson and then I'll ask you a question that will enable you to give some advice to the Court. Ms Gilbert advised that she considered the issue is, I've written down, "The lens and/or the depth of field, and/or that the printing has been done at the wrong scale." Now
25 an issue –

THE COURT: JUDGE NEWHOOK

But not the simulation of the marina.

EXAMINATION CONTINUES: MR BRABANT

- Q. And one of the issues that was discussed was the witness, from the Court, was about the NZIA, New Zealand Institute of Architect's guidelines and the question of whether they have been followed in the production of this which is a principal reason for asking you to come down and speak to the Court. So if you could now see if you can assist the Court Mr Johnson?
- 5
- A. Sure. In terms of our process we do follow the NZIA document –

THE COURT: JUDGE NEWHOOK

- 10 Q. Is that the best practice document is it?
- A. It's the best practice document 10.2 I think is the latest version. In terms of the existing features in the photograph we can't distort those or manipulate them. They are what they appear to be in the photograph. The field of view of each photograph is a known field of view that we calculate when capturing the panorama. In terms of the distortion I'm not entirely clear as to what she is referring to in terms of existing elements in the photograph of the shed or how it's distorted.
- 15
- Q. She said it appeared too small.

THE COURT: COMPLAINANT COMMISSIONER LEIJNEN

- 20 She said the view is closer.

THE COURT: COMMISSIONER LEIJNEN

- Q. When you stand there and look at it the view feels closer than what it appears in –
- A. Right and if the document's printed correctly and viewed correctly it should be at the correct scale. I'm not sure what size she had printed these at. My recommendation would probably be A1.
- 25

THE COURT: JUDGE NEWHOOK

- Q. I think she said she was using these A3 documents and so on viewpoint 10 for instance your advice is that the viewing distance from the eye of the sheet should be 187 millimetres.
- 30

A. Yes.

Q. She said she complied with that.

A. Yes that's correct. It should provide a proper scale. In terms of my advice to her would be to print it larger and view it at a larger sheet size.

5 EXAMINATION CONTINUES: MR BRABANT

Q. Is that because it's easier?

A. It's easier. You can hold it further away from you and gage scale much better.

Q. You'd hold an A1 sheet at 375mm according to this advice.

10 A. Yes, correct, yes.

Q. I'll tell you what we'll do. Let's find a bit of practical assistance for the Court. We're going to go there on Thursday.

THE COURT: JUDGE NEWHOOK

15 Q. Let's have Buildmedia provide through you, Mr Brabant, viewpoints 10 and 11 at A1 and we'll take them out there and we'll also take the A3s and we'll do this and we'll do that. I'll get the engineer to hold the ruler. They've got to prove their worth (inaudible 17:00:56). Let's have it on heavy paper and let's have it on acetate too so we can view through it which is one of the techniques I think described in the best practice manual.

20

A. Yes, no, there is one other technique, yes.

MR BRABANT:

Would it be wise Sir that we don't short-change you on any of these in case you are at the other locations?

25 THE COURT: JUDGE NEWHOOK

If you'll do the entire collection of 10th July on A1 paper and A1 acetate, that could prove helpful, yes.

MR BRABANT:

Certainly there's one coming in on the ferry, which you'll definitely be on and –

THE COURT: JUDGE NEWHOOK

No, that's one we probably won't visit because the vessel that we're going to go on is not as tall as a ferry.

MR BRABANT:

5 Can we do them at one tide level or do you know what the tide will be Sir?

THE COURT: JUDGE NEWHOOK

No, I'd like you to do them at low tide. Commissioner Leijnen is looking up Thursday's tide table as we sit here. Let's just see how fast you are with that iPad. I'm going to announce that low tide is at midday, spot on midday, 12.00
10 and high is at 5.50 in the morning, we won't be there that early, and it's also at 6.30 in the evening. It's a fairly big tide; three metres in the morning, 3.2 metres in the evening. We'll be able to be there at low tide, at midday, and we'll give consideration to being there reasonably late in the afternoon to pick up something getting towards high tide.

15 MR BRABANT:

I know Mr Wardale's blanching at the cost of me suggesting every single one be printed Sir and I don't want to –

THE COURT: JUDGE NEWHOOK

To be sensible we could confine it to the ones that were described by
20 Ms Gilbert. Let's keep it to the ones that Ms Gilbert was critical of. That's 10, 11 and five.

CROSS-EXAMINATION: MR LITTLEJOHN

Q. It just occurred to me staring at the image that maybe the issue is that we've got two images produced on the one A3 page. Would that be the
25 issue in that you've effectively got two landscapes that have been cropped to be put one on top of the other? And that, in effect, the A3 viewing distance –

THE COURT: JUDGE NEWHOOK

Q. Is there a cropping or a change of scale?

A. The scale stated on the page?

5 CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN

Q. Yes.

A. So that is the scale of those images there.

Q. Those images shown.

A. Yeah.

10 Q. So it's not the case that an A3, two A3s have been put onto one A3 and there's been, okay –

THE COURT: JUDGE NEWHOOK

In terms just of street cropping.

15

MR LITTLEJOHN

I thought that might have been a simple explanation.

UNIDENTIFIED SPEAKER: (17:05:24)

20 You just get more sky.

MR LITTLEJOHN:

Pardon?

25 UNIDENTIFIED SPEAKER: (17:05:28)

You just get more sky.

MR LITTLEJOHN:

30 Well, or you'd be elongated and make it look smaller. And to be fair I don't –
pardon? Well, it seemed to be a simple proposition.

CROSS-EXAMINATION CONTINUES: MR LITTLEJOHN:

Q. The only other matter I wanted to ask Mr Johnson is whether following the production of these images he had actually been to these viewpoints and done the sort of distance test.

5 A. No I haven't personally been, no.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

10 Q. Well there was just one thing, Mr Johnson, when you look at viewpoint 10 on the new bundle, you look at the marina inserted into that photo, whether the photo's close enough or not close enough, is the marina still in scale with wherever the photo is?

15 A. That's correct. To do that we survey the camera position using high accuracy RTKGPS equipment. We also map the terrain. This was mapped using aerial photography and an aerial surveyor. It provided us with survey points which we used to target the digital camera and match the photograph and all those, I think the accuracies are stated in my initial evidence. Yeah, so in terms of the accuracy of the position of that marina, it is accurate as we can get it with the equipment available.

20 Q. So if we look at that image on the iPad and enlarge it, until the red shed with its windows and things are evident, as Ms Gilbert described it in reality, the scale of the marina is still true?

A. Correct, yes.

Q. Yes, thank you. Thank you, Sir.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN – NIL**QUESTIONS FROM THE COURT: JUDGE NEWHOOK – NIL**

25 **QUESTIONS FROM THE COURT – NIL**

RE-EXAMINATION: MR BRABANT – NIL

THE COURT: JUDGE NEWHOOK

Now I've got a meeting at 5 o'clock and there are people waiting just out the back for that meeting. How long do we think that Mr Serjeant would be wanted for questioning? Mr Allan, Mr Brabant?

5

MR ALLAN:

Probably be about the same as I was with Mr Langwell, however long that was, was that about half an hour?

THE COURT: JUDGE NEWHOOK

10 Yes.

MR BRABANT:

Sir I have probably one question for Mr Serjeant.

THE COURT: JUDGE NEWHOOK

15 Yes, right.

MR LITTLEJOHN:

Sir, with Mr Allan going first it tends to have an effect as it did with the traffic, Sir.

20 **THE COURT: JUDGE NEWHOOK**

Yes, yes. So my sense is then a similar order of time, which is probably something between half and three quarters of an hour. So Mr Serjeant, I'm sorry I don't think we're going to be able to get you on your way finished tonight, or even started. I think we will need to come back tomorrow morning
25 for that. Sorry about that. It would have been quite good to complete the set of evidence today if at all possible. So, yes, Mr Brabant?

MR BRABANT:

Sorry, Sir, just one point I want to check, in terms of the copies, one of paper,
30 one acetate, did you want one copy you will share, or you wanted a copy each?

THE COURT: JUDGE NEWHOOK

Yes, one to share.

MR BRABANT:

5 Thank you.

THE COURT: JUDGE NEWHOOK

Yes, don't weight us down. We can pass it round. No that's fine. That's a good question. So we'll adjourn then until 10 o'clock tomorrow morning.

COURT ADJOURNS: 5.10 PM

10

COURT RESUMES ON WEDNESDAY 29 JULY 2015 AT 10.05 AM

MR LITTLEJOHN CALLS

DAVID FREDERICK SERJEANT (SWORN)

5 Q. Is your full name David, Frederick Serjeant?

A. It is.

Q. And do you hold the qualifications and have the experience set out in paragraphs 2 to 4 of a statement of evidence you've prepared dated the 30th of July 2014 in these proceedings?

10 A. That's correct.

Q. And while we have that up there, because this is the first time you've appeared in this proceeding, in respect to that brief, the 30th of July 2014 are there any corrections you wish to make to that?

A. Yes there's one amendment in paragraph 56. Well actually I –

15 **THE COURT: JUDGE NEWHOOK**

Q. Just wait while we find this one.

A. Yes.

Q. We're going back in a time machine.

MR LITTLEJOHN

20 Yes it's at 30th of July 2014.

THE COURT: JUDGE NEWHOOK

And it's the evidence-in-chief?

MR LITTLEJOHN:

Yes. Yes, Sir.

25 **EXAMINATION CONTINUES: MR LITTLEJOHN:**

Q. So at paragraph 56, Mr Serjeant.

A. There's two changes to the hectarages of the MMA's, those changes result out of expert conferencing and I think the numbers that I am about to change, these two, are the ones quoted in the agreed statement. So

line, the sixth line, which is on the second sentence. I'll just read the sentence so you'll get it. "This is an increase on the current 39 boats moored in the southern MMA because the mooring zone is much larger, measuring approximately 5.6 hectares, compared with the current, and that's..." Instead of 2.5, that should be 3.5. And then running on from that, "Also I note that the, that based on the current density of mooring in the northern MMA Mr Dilley's estimates of mooring density appear to be on the low side. The northern MMA has an area of approximately..." Instead of 2.5 it should be 2.7. "It is said to contain 52 boats at full." And then that equates to..." and the number should be 520 square metres per boat. That's all.

5
10
Q. Okay. Now Mr Serjeant, this brief of evidence was prepared prior to the revisions being made by the applicant to the application in May, is that right?

15 A. That's right.

Q. So with the corrections you've noted at paragraph 56 do you confirm that the contents of your evidence-in-chief were true and correct as at the date it was prepared?

A. It is, yes.

20 Q. Now subsequent to that you participated in joint witness conferencing, is that right?

A. I did.

Q. And can you confirm that you were a signatory to a joint witness statement of planning consultants dated the 3rd of September 2014?

25 A. I was.

Q. And are the matters described in that joint witness statement are true and correct to the best of your knowledge?

A. They are.

30 Q. And finally, Mr Serjeant, you prepared a brief of supplementary evidence dated the 6th of July 2015, is that right?

A. I did, yes.

Q. And are there any corrections that you may need to make to that document?

A. No.

1010

Is your supplementary statement of evidence true and correct to the best of your knowledge as at the date of 6th of July 2015?

A. It is.

5 Q. Have you had an opportunity to review the revised conditions of consent presented by my friend, Mr Brabant, in his opening earlier this week?

A. I have, yes.

CROSS-EXAMINATION: MR ALLAN

10 Q. We'll just start with your evidence-in-chief, please, and paragraph 15 of your evidence-in-chief. And you're talking there about the New Zealand Coastal Policy statement and Policy 6 in particular and then as we work our way over the page having quoted Policy 6.2 at paragraph 20 you say there, "Again, the substance of these policies is given more coverage in the Coastal Plan, District Plan, important issues raised by these policies and the need for carparking as opposed to the (inaudible – 10:11:18) itself to be located in the coastal marine area and whether the marina has actually achieved efficient use of occupied space by not limiting the extent to which mooring will increase throughout the bay if it is approved." So there are a couple of things there and I really just want to focus on those two themes and you return to them elsewhere in your evidence. The first is the need for carparking in the CMA and that's obviously, that's an issue that's given Ms Bremner cause for thought so I want to just talk about that and the second there is the extent to which moorings will increase throughout the bay, so that's the second point I want to deal with. Just starting with carparking. So you're introducing the concern that carparking as opposed to the marina itself may not have a functional need to be in the CMA?

A. That's correct, yes. Those words are referred to in a number of policies.

30 Q. And so I take it from that that you don't obviously challenge the functional need of the marina itself to be in the CMA?

A. No.

Q. And looking at Policy 62D which you've helpfully quoted there at the top of page 6. It says "Recognise that activities that do not have a

functional need for location in the coastal marine area generally should not be located there.” Noting the use of the word “generally” would you agree that this falls short of a prohibition on activities that don't have the functional need to be in the CMA?

5 A. Yes.

Q. And there's no specific guidance as to what “generally” means in this context as far as I can see in the NZCPS, is there?

A. No.

10 Q. And your concern raised in this context – was raised in the context of Policy 62 but we obviously find, as you've noted, provisions along similar lines in the Coastal Plan?

A. Yes.

15 Q. And so you've said there, actually, at paragraph 20, again, “The substance of these policies is given more coverage in the Coastal Plan and the District Plan,” haven't you?

A. Mmm.

20 Q. Can we have a look at the Coastal Plan quickly, given that's one you've referred to and that's common bundle 78 is the reference. And hopefully that will take you to Chapter 11. It's in volume 5 of the common bundle?

A. Yes, I've got Chapter 11.

THE COURT: JUDGE NEWHOOK

Which statutory instrument is it?

MR ALLAN:

25 It's the legacy, Auckland Regional Plan, Coastal. Chapter 11, Activities.

THE COURT: JUDGE NEWHOOK

30 We've got common bundle. Common bundle divides into volumes and in volume 5 we've got “AC Operative Regional Plan”, “AC Regional Plan, Coastal”, “Regional Policy Statement”, “New Zealand Coastal Policy Statement” and other documents.

MR J BRABANT:

On my system here, I'm obviously not quite sure how it's showing up on yours, Sir, but it's under Volume 5 and then there's number 3 AC Regional Plan, Coastal, 2004, and then CB78 Coastal Park 4 User Development Chap
5 11. Activities.

CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. Can you see under 11.1 the third paragraph there in the introduction,
"Where an activity is not permitted and a coastal permit is required the
plan requires that the activity has a functional need to be undertaken in
10 the coastal marine area or that it is ancillary to an activity which has
such a need or there is no reasonable or practicable alternative location
for the activity." See that?

A. Yes.

Q. So this is introducing the fact – it's stating pre-conditions, for instance,
15 that it's ancillary to an activity with a functional need that are intended to
ensure that activities are appropriate and that the CMA is efficiency
used." If you look at the next sentence, "This is to ensure that activities
are appropriate and space within the coastal marine area is efficiency
allocated." Do you see that?

20 A. Yes.

Q. And then over the page, page 11-2, we've got the policy 11.4.1, can you
see that?

A. Yes.

Q. And at 'a', essentially repeating the same thing at 'a' although it does
25 actually add a fourth item, do you see there, "The activities are for the
cultural and traditional needs of tangata whenua."?

A. Yes.

Q. Now I think you referred in your evidence-in-chief and in the joint
witness statement to (b) below, about landward development but I'm not
30 sure whether you referred to 'a'. Would you agree that 'a' is relevant to
the Court's consideration with the concern raised as to the need for
parking in the CMA in relation to the carparking on the deck?

A. Yes it is. I mean, the header statement in Policy 1141 again refers to “generally” so it says, “that these activities which are not permitted shall generally be considered appropriate,” so, again, we’ve got to think about what “generally” means. And I note that i-iv are not conjunctive so we’ve only got to tick one of them, so to speak.

Q. That’s right. That was going to be my next question –

A. So looking at the first one there which I guess is probably the one that you want to focus on –

Q. Well actually, no. I was going to focus on the next one. Because you’ll recall we discussed how the fact that Policy 62D in the NZCPS says, “generally” in the context of functional need, we discussed the fact that it’s not a prohibition and that there’s no guidance in the NZCPS as to what that might mean. Here we have – and you, yourself, in your evidence said that the Coastal Plan gives substance to what the NZCPS is saying. At (ii) it’s going further and articulating another circumstances where activities may be considered appropriate, where the activity is ancillary to an activity which has the functional need to locate in the CMA,” would you agree with that?

A. That’s right. So, really it’s an interpretation of what “ancillary” means, yes. I wouldn’t think that a carpark providing for 39 carparks was ancillary in the sense of the space that it takes up in the coastal marina area. I think that’s really referring to something like a refuelling facility or something like that where you’ve got all these boats here and it’s obvious that you need to provide gas there.

1020

Q. That’s what I wanted to get an understanding of what your thinking was and that, so you don’t see carparking as ancillary?

A. No, well it’s a matter of scale.

THE COURT: JUDGE NEWHOOK

Mr Allan, your style, you’re keen to keep engaging with the witness but you’re inclined to interrupt him. He’s been quite economical in his answers, he’s not been loquacious but you need to listen to the answers before chiming in with your next question and that might help you too.

MR ALLEN:

Thank you Sir I'll take that on board.

THE COURT: JUDGE NEWHOOK

Just too eager.

5 **MR ALLEN:**

I'll dial it back.

WITNESS:

Yes, just to recap that point, I think it's the interpretation of the wording
 "ancillary" and there'll be a matter of scale there. The relative scale between
 10 the ancillary activity and the one that has the functional need.

CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. And in terms of that relativity has it become less of a concern in your
 mind now that the size of the carparking by comparison with the original
 reclamation –

15 A. Yes, I mean size definitely is important and it's scaled back.

Q. Like most cases where size is important. Paragraph 35 of your
 evidence-in-chief, I just wanted to touch on that as well because in this
 context of talking about ancillary activities you say at paragraph 35,
 "furthermore, the reclamation for the parking area is as Mur Dunn states
 20 'a significant, rather than minor, component of the coastal permit
 application,' so that while not being the principal activity it is
 nevertheless an integral part of the activity." I may be misreading that
 but I take it from that that you're suggesting that it's secondary but
 closely related and integral.

25 A. Yes, I was really, in talking about that there I was really thinking along
 the lines of that the marina needs carparking. It doesn't need to be in
 the coastal marine area but it needs carparking.

Q. Thank you, that's been very helpful. Just one final question just to
 round off that point. I suppose when we consider the wording of policy
 30 6(2) in the Coastal Policy Statement, 6(2)(d) and that use of the word

“generally” would you agree that activities that are ancillary to an activity with a functional need can be an example of an appropriate exclusion or an appropriate situation where that –

A. You asked me whether it was a prohibition and I agreed so yes.

5 Q. Actually there was one point about chapter 11 I wanted to just – it arose from my learned friends, Mr Casey and Mr Littlejohn’s, legal submissions. I just wanted to look at that because it says, I’ll read it out to you because you won’t have it at hand, this is paragraph 12.13 of their submissions. It’s about chapter 11 in the Coastal Plan activities and it says, “Policy 11.4.1 of the Regional Plan Coastal is not relevant or applicable.” And it goes on. “This policy is in Chapter 11 ‘activities’. The preface to that chapter states that other chapters specifically deal with uses and developments including the undertaking of works and any associated occupation under sections 12(1) and (2) RMA it states that
10 the Coastal Plan has separate chapters dealing with (inter alia) marinas. The introduction of section 11.1 also makes this clear.” Given that you’ve referred to chapter 11 in your evidence yourself and what we’ve just covered I just wondered as a planner do you agree with that? The irrelevance of 11.4.1.

20 A. Actually just a moment ago you lost me as to where you were reading from.

Q. Sorry, it’s the submissions, the opening submissions presented in October by Mr Casey and Mr Littlejohn so it won’t be amongst any of those documents sorry. But the simple statement is at the start of the
25 submission, “Policy 11.4.1 of the Auckland Regional Plan Coastal is not relevant or applicable.” I just wondered, whether as a planner you would agree with that?

A. I think we’ve just discussed I think it is applicable.

30 Q. The second point I just wanted to touch on, that other theme in paragraph 20 of your evidence-in-chief about efficient use in the proliferation of moorings and before we go into this I’d just like to have a look at a few provisions in the Coastal Plan just to remind ourselves of what they say. Now Sir, hopefully they should be in the same part. It’s CB84 chapter 24. We’ll start with that one.

THE COURT: JUDGE NEWHOOK

It's on moorings.

CROSS-EXAMINATION CONTINUES: MR ALLAN

5 Q. And if we can have a look at issue 24.2.1 it starts at the bottom of the first page. "There are a large number of both recreational, commercial vessels within the Auckland Region. Many of 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 on the environment, particularly with respect to natural character, landscape, 10 visual and amenity values, other users of the coastal marine area and navigation safety. These effects may be both adverse and positive for the environment." And then it's this sentence here, "Accordingly, this plan attempts to concentrate the effect of moorings into defined locations and to prevent a proliferation of moorings throughout the coastal marine area." So what I take from this is that the Coastal Plan 15 attempts to concentrate the effect of moorings in defined locations in order to prevent the proliferation throughout the rest of the CMA, would you agree with that?

A. Yes.

20 Q. And Matiatia has been identified as just such a location, hasn't it, where moorings and boats should be concentrated to prevent proliferation elsewhere?

A. Yes.

25 Q. For instance, at the next bay around the corner in either direction, we've got MMA's identified here for proliferation of boats and moorings. We don't need to have those effects in the next bay.

A. No, that's right.

THE COURT: JUDGE NEWHOOK

30 Just clarify something for us please both of you. Mr Allan placed a question that had it that Matiatia was identified for this purpose, precisely where? In this document or in some other document?

MR ALLAN:

It's in this document, the Coastal Plan, you understand how it identifies an MMA for the bay and it's split into two parts. There's the northern. I think we've been calling it the Northern MMA and the Southern.

5 **THE COURT: JUDGE NEWHOOK**

Yes we have been through that. We've read evidence about this but it's a long time ago.

MR ALLAN:

Can I refer the witness to a plan?

10 **WITNESS:**

It's either the Coastal Plan or Mr Dunn had a diagram with (inaudible 10:28:11) in his appendices.

THE COURT: JUDGE NEWHOOK

15 Just give us the reference in the Coastal Plan if that's what the two of you were talking about. I think you're on the same page, just bring us on to it.

CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. I have a figure in the volume, October 2014 folio and it's figure Q. It's a little bit cut off at the bottom but that shows...

THE COURT: JUDGE NEWHOOK

20 Figure Q you say?

MR ALLAN:

Yes. This is quite a good plan in terms of reminding – it's about four or five in I think.

THE COURT: JUDGE NEWHOOK

25 Four or five sheets in from the front?

MR ALLAN:

Yes, they're not numbered, the plans.

THE COURT: JUDGE NEWHOOK

That's right, that's the problem. I remember it well but from a long time ago.

5 **CROSS-EXAMINATION CONTINUES: MR ALLAN**

Q. And so that's quite useful in showing with the red dash line the current operative coastal plan mooring areas?

A. Yes it is. I think a slightly more helpful one to relate it to the reality of the bay is, if you may want to make a note it's figure L which is in an
10 attachment to Mr Dunn's evidence.

Q. I think that's in this folio is it?

1030

A. It shows the two mooring management areas of the operative coastal plan; one being in the north, the northern MNA and then there's a
15 southern MNA.

Q. It was Mr Dunn's evidence-in-chief figure L?

A. Yes.

THE COURT: JUDGE NEWHOOK

20 Q. Yes, but is this figure Q in the October 2014 bundle adequate for present discussion purposes, seeing as we've got it open in front of us now.

A. Right –

Q. Rather than we go hunt for another –

A. Yes that's true, certainly.

25 Q. It's probably just a copy of this.

MR ALLAN

Hopefully it will suffice – the obvious limitation to it is that it doesn't show the full extent of the – oh, sorry.

THE COURT: JUDGE NEWHOOK

Q. Mr Serjeant, have you got the October 2014 bundle handy?
Mr J Brabant, can you just look into the witness box there and – I think
he’s found it. You’ve got the October 2014 bundle, Mr Serjeant? Yes
5 just a few sheets in from the front. I’m just being lazy. I’m just saving
up from hunting for Mr Dunn’s evidence-in-chief.

A. Yes, that’s totally correct, Sir. Yes that’s right.’

Q. This will do?

A. Yes.

10 CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. So that reminds us of what we’re talking about in terms of the, with that
limitation in mind about what’s happening in the south there and how it’s
cut off. It shows us that comparable proposals under the unitary plan
with the existing arrangement under the coastal plan?

15 A. It does, yes. The southern mooring zone in the unitary plan extends a
little bit to the left of the diagram, and a little bit further to the south.

Q. Thank you, I’ll come back to that shortly. Just to resume in terms of
where we were, we were just quickly canvassing some of the provisions
in the coastal plan and the text. Just pause and make sure.

20 THE COURT: JUDGE NEWHOOK

Yes, just pause for a moment, thank you. Keep the note running. Yes, thank
you.

CROSS-EXAMINATION CONTINUES: MR ALLAN

Q. We’re just going to jump back one chapter in the coastal plan to CB83,
25 which is chapter 23, about marinas. Have you found that?

A. Yes.

Q. So if we look at the top right-hand column on page 1, 23.1 Introduction.
See there in the second sentence it says, “Marinas also concentrate
vessels and their associated effects into defined areas and provide for a
30 more efficient use of harbour space and other methods of securing
vessels.” See that?

A. Yes.

Q. And then over the page, page 23-2, we've got issue 23.2.2. And that's acknowledging that marinas usually result in a significant modification of the coastal environment. This modification may affect the nature character and visual amenity of an area and public access to and along the coastal marina area." And then it says, "Marinas can however concentrate the effects of vessel berthage, maintenance and other associated marine activities into a defined area, and this may have the effect of preventing a proliferation of these activities in and along the coastal marine area." And then it goes on to talk about some of the benefits. But this is sort of making a similar point to the provision we just touched on in chapter 24, isn't it, that marinas can also assist in preventing proliferation elsewhere in the CMA?

A. Yes they can, but there must be a limit to the number of boats that can be accommodated in the bay before we start getting into the effects that you referred to in that issue statement, 2322.

Q. Mmm.

A. So what we have here is we've got a significant increase overall in the bay of boat occupation. So that we've got one mooring area turned into a marina, significant increase in boats and then as I understand it most of the swing mooring holders that were in that area, or are in that area currently, will be relocated to the south, and –

Q. I think there was a number from memory. It's 10 months ago. Was it 14, I think, which might have been the figure, who were relocated? I may be wrong in that. Do you remember the figure?

A. No I don't, no.

Q. Okay, just a significant number you think?

A. No, so I mean obviously some are going into the marina, but others will be relocated. And then you've got an enlarged, a larger number of boats that need to be accommodated, will have a demand for that southern area.

Q. In the south. And you use the word "enlarged" there, and that's – I just wanted to move to that next. It's in the joint witness statement. We don't probably need to turn it up; maybe I'll just read it to you. But for

the transcript it's on page 5 of the joint witness statement at (j)(ii). It says, "The users' concerns with objective 24.3.3 remain in relation to efficient use and the proliferation of boat moorings in the bay, particularly in the enlarged southern mooring zone in the unitary plan in the future." So that was your concern at caucusing?

5

A. Yes.

Q. Now I think we can see this at that plan we hopefully still have open. Figure Q in the October 2014 folio, as I've noted unfortunately it doesn't show what's happening to the south there. If you can have that open and then also have open the March 2013 folio of figures, which is the other larger folio we were working with back in October, and it's figure 11 in the March 2013 folio. Hopefully that one there.

10

A. Yes I've got both those, yes.

Q. So we can see that I think it's 36 odd moorings in the southern part of the MMA, or the Southern MMA. They lie, if we look at figure 11, they lie both inside and outside the designated **new May area (10:38:01)**, don't they?

15

A. Yes.

Q. They're not all contained within the dotted line?

20

A. No.

Q. So there's quite a number that extend out to the left? If you compare the unitary plan mooring area for the southern part of the bay, the blue shaded, and I know it's a pain and it's not there in full, with that mooring plan in figure 11, I just wondered whether you'd agree with us it looks, doesn't it, like the unitary plan is seeking to regularise the position to align the mooring zone boundaries with what we actually see on the water in terms of permits that have been issued for moorings. Does that look like that's what's been happening?

25

A. Yes well it certainly extends out to the west to take in those.

30

Q. Yes and actually if you look at the northern part of the MMA it looks like there might be something similar happening there as well, because there are also some, some permits obviously issued outside the dotted line in the northern part and you can see that the shape in the unitary plan slightly changing, arguably to accommodate those permits as well?

A. Yes.

Q. Now it's been a long time, but do you recall reading the rebuttal evidence of Mr Moss, the Deputy Harbourmaster?

A. No I didn't.

5 Q. Oh you haven't read his evidence?

A. Mr Moss, no.

Q. Oh, okay.

A. No.

10 Q. Well, we'd probably better turn it up. It says, it should be in Briefs 3, behind you there are, there's some evidence. Briefs, Volume 3, should be Auckland Council and Auckland Transport.

1040

WITNESS REFERRED TO BRIEF 3 – AK COUNCIL/AK TRANSPORT

Q. And I want to take you to paragraph 26.

15 A. I've got 26, I'll just take a moment to read it.

Q. I was going to read it out to you but you read it to yourself.

THE COURT: JUDGE NEWHOOK

Read it out, read it into the record.

CROSS-EXAMINATION CONTINUES: MR ALLAN

20 Q. "As of 10 September 2014 there are 52 moorings in the northern NMA number 62 and 26 moorings in the southern NMA number 62. Both areas are currently full. Although the Auckland Regional Plan Coastal states that a maximum of 98 moorings can establish in Matiatia Bay NMA practically there is not enough room to physically fit 98 moorings in
25 this area, particularly given the variability and type, size and displacement of vessels, swinging room required, and the state of the seabed." So do you see he mentions a number of factors that are governing the number of moorings you can have and he mentions those things we've just – including swinging room, for instance?

30 A. Yes.

Q. So this makes sense, doesn't it, that even if you have a stated cap, as we do in the legacy plan at the moment, this indicates that there are

practical limitations on the number of moorings that one can have in an NMA, would you agree with that?

A. Yes, I understand what he's saying.

5 Q. Now obviously we need to be a little bit careful about drawing too many conclusions from the unitary plans provisions given its (inaudible – 10:42:28) and status but we know that the incoming plan doesn't state a cap for the potential number of moorings, does it, and it's part of your concern?

10 A. That's right – no, you'd be relying on the sort of practical factors that Mr Moss mentioned.

Q. That's right – so you'd agree that despite the fact that you might not have a cap his comments about the number of moorings one can practically have for those various reasons would apply equally to the unitary plan situation?

15 A. Yes. Probably the other thing that would apply is enforcement of the mooring area, doesn't seem to have been enforced in the past so it might just keep boats sort of, you know, going on further out through the bay.

20 Q. Although, as we've just covered, and I think you agreed that it's a reasonable inference to draw the Unitary Plan is now trying to regularise the position and sort that out, isn't it?

A. Mmm, policy's one thing.

Q. Policy is one thing.

A. We can't do anything about that here.

25 Q. And the process of granting permits while it may not have been adequately managed in the past it is managed by the Harbourmaster's Office, isn't it?

A. I'll take your word on that, yes.

Q. Well it's not an unconstrained process?

30 A. No, it's managed.

Q. And the Harbourmaster looks at the various sort of things that we've just covered in terms of size of vessel and swing room and so on?

A. Yes.

- Q. You heard Ms Gilbert's evidence yesterday and I'm sure my learned friend, Mr Littlejohn, will correct me if I've recorded this incorrectly but I think she said that there's a degree of spaciousness which accompanies swing moorings, would you agree with that?
- 5 A. Well there's spaciousness and they also have that natural change as the tide and wind affect the way the boats sit.
- Q. I just wondered whether the combination of factors – these practicalities that Mr Moss has mentioned, the fact that it's a managed and constrained process of granting permits and the spaciousness that you
- 10 find in swing mooring areas that Ms Gilbert referred to, does that lessen your concern at all about the possibility of proliferation in the southern part of the bay?
- A. Yes, I think it does place an absolute cap on it, subject to enforcement. I think you're still looking at an overall significant increase in the effect of
- 15 boating in the bay through the introduction of the marina and the intensification of the activity in that area.
- Q. We should probably just touch on that overall point. And paragraph 57 of your evidence-in-chief. So this is, at paragraph 57, your concern's expressed there in relation to 237 boats and you can see the calculation
- 20 there, 160 plus 60 plus 17. Obviously with the revised proposal we need to take those numbers down, don't we?
- A. Yes, the new total would be 189.
- Q. And that's based on 112 plus – 12 pile moorings I think we've now got plus – and 60, is that what you've - what have you added up?
- 25 A. Sorry – at 12 pile moorings it would be 184 not 189, as I said. So it would be 112 plus 12 plus 60.
- Q. And the 60 we've drawn from Mr Dilley's evidence, I think?
- A. Yes, based on his area of 930 square metres per boat.
- Q. We can dip into Mr Dilley's evidence if you want, it's probably a while
- 30 since you've seen it but you recall that 60 was the maximum, he identified – I think he identified a range, he thought 52 to 60, is that your recollection?
- A. Yes and my comment in paragraph 58 was that when I looked at the current spacing of boats in the northern NMA I felt that that number was

a bit low. I felt – I mean, I’m not a mooring expert but I simply – by observation I saw that the number of boats within a given area was closer as I said to 520 square metres per boat so that’s why I questioned his figure.

5 Q. Just one final question. Would this overall lower number of berths and moorings in the bay lessen your policy concern about proliferation?

A. I accept that the provisions of the plan do, if implemented appropriately, do place a cap on it and that would be subject to the practicalities of how many boats you can get in that zone.

10 **CROSS-EXAMINATION: MR ENRIGHT**

Q. Mr Serjeant, if we could please go to your supplementary evidence dated July 2015.

WITNESS REFERRED TO SUPPLEMENTARY EVIDENCE OF JULY 2015

Q. Please turn to paragraph 11.

15 A. Yes.

Q. Now just in your last sentence you posed the question as to the cultural effects of the amended proposal as now before the Court. Now, as I understand it, when you wrote this evidence you didn’t have the benefit of Morehu Wilson’s evidence, supplementary evidence, directed at the amended proposals?

20

A. No, I wasn’t aware of that brief when I completed this.

Q. And I understand you’ve now had the opportunity to read that evidence?

A. I have, yes.

Q. So how does Mr Wilson’s supplementary evidence affect your conclusions on cultural effects in Section 60 of the RMA?

25

A. Mr Wilson’s additional brief is consistent with the other two that I have reviewed and commented on in paragraph 12, it’s probably a bit more detailed, and he gives examples of features and sites, et cetera, that reinforce his view that the waahi tapu applies to the whole of the bay and so it’s consistent with the other briefs that I have reviewed in relation to Section (e) and (f).

30

CROSS-EXAMINATION: MR R BRABANT

Q. Well, you've got Mr Morehu Wilson's evidence open?

A. I haven't got a copy of it with me.

Q. So you were working off memory?

5 A. No, I just said I've read it.

Q. And your reply, you worked off memory not looking at it?

A. Yes.

Q. Can we turn it up, please.

WITNESS REFERRED TO MOREHU WILSON EVIDENCE

10 Q. I understand my friend, Mr Enright, drew your attention to a statement of evidence that you got after your evidence and asked you if it assisted you in looking at the revised marina proposal and you've got that now in front of you, haven't you?

A. Yes.

15 Q. Look at paragraph 4, please. Does the witness refer to what he describes, to, "substantial changes to the design of the marina since the original application to such an extent that the footprint is moderately reduced." See that?

A. Yes.

20 Q. Tell me and the Court anywhere else in his evidence that he refers to "other changes that are significant to cultural values." Seeing you say this assisted you – where else in this evidence?

A. I understood his evidence to largely reiterate his view.

Q. That he originally gave in his evidence-in-chief?

25 A. Yes.

Q. And it doesn't refer, does it, to the removal of dredging?

A. Not directly, no.

Q. And it doesn't refer, does it, to the creation of a reclamation no longer being part of the proposal?

30 A. No.

Q. And when it comes to his evidence about encroachment, paragraph 15, please, of what he describes as "large scale infrastructure development." He then says, doesn't he, "waahi tapu can include" and gives the Court a long list?

A. Yes.

Q. And what do you read out of his paragraph 16 to assist you in deciding that the revised proposal would have adverse cultural effects, how does that assist you?

5 A. Well it details some of the things that would be present in the bay.

Q. Without saying which of them it might be?

A. Mmm.

Q. Isn't that right?

A. No, he doesn't – he doesn't specifically identify them, no.

10 Q. Do you accept, Mr Serjeant that in fact Mr Morehu Wilson's evidence doesn't assist you in assessing cultural effects of the revised proposal or the Court?

A. Well he doesn't –

THE COURT: JUDGE NEWHOOK

15 Leave the latter part of that question to answer the first part of it, Mr Serjeant, does it actually assist you?

CROSS-EXAMINATION CONTINUES: MR R BRABANT

A. Well, as an area of obvious Māori occupation in days gone by – I mean, he does provide a long list, many of those things would be relevant.

20 Q. Well we already knew that from his first evidence, don't we?

A. Mmm. I mean, he has repeated a lot of what he said.

Q. But what he hasn't done is indicate whether there's a change arising out of the removal of the dredging and the reclamation, does he?

A. No. I mean, I would accept that with the removal of the reclamation the
25 potential for disturbance is lessened.

Q. It's now the potential for disturbance by the insertion into the seabed of piles?

A. Yes.

Q. Isn't it?

30 A. That's true.

Q. Which he makes no reference to?

A. No. I've already said he doesn't make any reference to the –

Q. So now before I started what I'd prepared to ask you I'll go back also because it's fresh in everyone's minds to the discussion about the mooring areas that Mr Allan's taken you through.

THE COURT: JUDGE NEWHOOK

5 And, Sir, what I've discovered, and it could be corrected in the bundle I guess for the purposes of your later consideration in the case is that with the proposed Unitary Plan it's got the rule provisions in it but not the objectives and policies.

THE COURT: JUDGE NEWHOOK

10 So a deficiency in the common bundle?

MR R BRABANT:

Yes. So I've had to get some old fashioned copying done right now to assist and if I could ask the registrar to provide three for the Court.

THE COURT: JUDGE NEWHOOK

15 And if you could have the electronic bundle brought up to date later or Mr J Brabant, it's your specialist area, through the registrar for us, thank you.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. So to the extent that the Court might have regard to the Unitary Plan provisions Mr Allen's already asked you about the change in the
20 dimensions and I think made reference to the lack of a debt, what we might call a density or an intensity control. I just wanted to refer you, Mr Serjeant, to Objective 2 which speaks directly, doesn't it, of the issue of maximising the use of mooring space in a mooring zone?

A. It does, yes.

25 Q. And that's, effectively, a policy shift from the existing operative plan which is scheduled and I know that there is a cap, effectively, in the different areas?

A. Yes.

THE COURT: JUDGE NEWHOOK

Because we have so much paper in this supposedly paperless hearing we're going to have to mark up this so I'm just going to add a note to it, for the record, from Mr Brabant, 29 July 2015 and because it's not headed up in any way "Excerpt from Unitary Plan, Objectives and Policies."

MR J BRABANT:

I'll just check with my co-counsel and I gather that he will be able to add it into that same division in the bundle for you so that the objectives –

THE COURT: JUDGE NEWHOOK

If it can be placed in the relevant position in the common bundle and then I'm just going to have to leave it to him and the registrar to work out whether that means that some part of our existing copy of the common bundle has to be redacted from the electronic record and a new one replaced. I hope that doesn't occur because we've placed highlighting and notes and all sorts of things hither and yon across many documents, including in the common bundle.

1100

MR J BRABANT:

But I think, Sir, sensibly to avoid that sort of outcome it will need to be CV, pick a number, but 77 Cap A, I think is the only real way, otherwise you will have a whole lot consequential changes.

THE COURT: JUDGE NEWHOOK

Yes. Just as to that indexing approach by the way, Mr Brabant, you've noted that when we were looking in the common bundle to find those chapters of the regional coastal plan we didn't find that method of indexing so helpful and you had to help us, and we got onto it when you did. I don't think we should make any changes to this, but for the future one of the projects that I have in connection with the Court's use of iPads is, is very crisp, clear, logical indexing and the use of that CV approach with numbers, just sort of – it wasn't intuitive.

MR R BRABANT:

All I was saying that, Sir, and we may perhaps have a chance to engage at some stage –

5 **THE COURT: JUDGE NEWHOOK**

Yes.

MR R BRABANT:

– but I would certainly be interested in talking to you about iPads versus other
10 technology and how the Court's working it because –

THE COURT: JUDGE NEWHOOK

Yes, I think you're aware that in-betweens, for when we've finished this case, I'm intending a workshop with Auckland counsel about the experience of handling the direct referral and in the parties doing the electronic approach to
15 it, and they're very interested in that. We think we can share learnings to use the jargon, and I'm minded to include any of the counsel who have been involved in this case in that workshop and the Ministry for the Environment is actually also very interested in that workshop.

20 **MR R BRABANT:**

I'm certainly happy and keen to volunteer to be involved in that, Sir.

THE COURT: JUDGE NEWHOOK

Excellent.

25 **UNIDENTIFIED SPEAKER:**

(inaudible 11:02:02) as well.

MR R BRABANT:

From my perspective. Now –

30

THE COURT: JUDGE NEWHOOK

I can see the reliance happening, Mr Brabant.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

5 Q. I've done quite a bit to learn, but I've just left that to one side. Now there's just a few matters I wanted to just check with you, Mr Serjeant, before I start asking you some questions, and one of them at least has been covered by my friend, Mr Allan. So my first question I've written down here to ask you, is to ask whether you have read all of the evidence, including the latest supplementary and rebuttal evidence?

10 A. I've read all the evidence that I considered relevant to my brief.

Q. Right.

A. Mmm.

15 Q. I just thought I had better check because you did say you hadn't read Christiaan Moss's evidence, so that's all right. It's just knowledge in terms of how I ask a question. The next question is, have you made yourself familiar with the Option 2 Deck Parking Plan that was produced by Mr Dunn in this rebuttal?

A. Yes.

20 Q. Have you got a copy of that handy, because if you haven't I can provide you with one.

A. No I haven't got it handy, unless it's in the bundle.

Q. Well it is in the bundle.

A. Mmm.

25 **MR R BRABANT ADDRESSES THE COURT: JUDGE NEWHOOK – COPY FOR WITNESS (11:03:28)**

CROSS-EXAMINATION CONTINUES: MR R BRABANT

30 Q. Now the next thing, Mr Serjeant, so that I don't have to repeat myself and we both know where my questions are focused, the questions I'm going to ask you, including in relation to your original evidence-in-chief, about the proposal are based on the revised marina design and a deck structure for parking either as prepared by Mr Pryor and presented with

- original material, or the option to was raised with Stephen Brown and Bridget Gilbert in terms of questioning as to their preference. So I will, if I'm talking about option 2, instead of option 1 and that deck I will say so, but my questions are all going to focus on that package rather than the old one, right? Now, first of all can I start with your supplementary evidence and each question I'll identify which statement I'm referring to and your paragraph 6 please. I'm sorry, start again, it's the evidence-in-chief, paragraph 6. For some reason I wrote down "supplementary" when it wasn't. evidence-in-chief, paragraph 6. So in that evidence you've informed the Court and the parties of your past experience in marina proposals and you go on in the last sentence to say, having referred to the complex nature of obtaining approvals, which this is a good demonstration of, "This can be due to the direct adverse effects of a marina on the estuarine harbour or coastal area, but often is more particularly due to the prior and competing claims on the use of land where the necessary landside facilities needed to support the marina are to be located." Would I understand that that consideration, which of course related to the proposal you were addressing then, is no longer relevant to the revised proposal?
- 5
- 10
- 15
- 20 A. Well you've still got to, you've still got to access the marina from land.
Q. Yes. Yes.
A. So there's all those things involved with that access.
Q. Yes. But I'm not, I'm wanting now to focus on this particular revised proposal, not talk in generality. So my question is, is there an issue now with this revised proposal as you describe can happen with marinas generally? That is "prior and competing claims on the use of land where the necessary landside facilities needed to support the marina are to be located"? And if you say there still is, so can you tell the Court exactly what you're referring to?
- 25
- 30 A. Well it's not a facility so much; it's the use of the access. So there is a competing use of the access that the marina relies on.
Q. Right.
A. So the marina hasn't got its own access.
Q. That's fine. Yes. Thank you.

A. That's what I'm identifying.

Q. And now the Court should consider that issue, shouldn't it, in relation, or by reference to the expert evidence that the traffic engineers have completed for this hearing?

5 A. And in the policy context of the (inaudible 11:07:47) Plan, because those policies are relevant.

Q. So are you saying this is not an effects issue that you're raising here; it's a policy issue as well?

A. It's more of a policy issue.

10 Q. So if there was a policy issue, for example, as I know your evidence says about the Matiatia land unit and the priority to public transport, is that the sort of policy you're referring to?

A. Yes.

15 Q. You acknowledge now that Auckland Transport, who are the roading authority and responsible for public transport are now satisfied with this proceeding subject to consent conditions?

A. It's not Auckland Transport's policy though, it's a policy of the district plan.

Q. That wasn't my question though.

20 A. Oh yes, yes, I understand that. Yes, I was here for their evidence.

Q. And I'll turn to the traffic engineering evidence later, but whether or not the policy is impacted upon must depend, mustn't it, on the assessed impact that that access to the revised marina could now have?

25 A. Well Auckland Transport, it's not their policy. It's a policy of the district plan –

Q. Yes.

A. – and so it can be interpreted on its face –

Q. Yes.

A. – as I have done.

30 Q. But correct me if my memory serves me wrong, but it's about – the policy is about giving priority to public transport use of the keyhole. Would that be a good way of summarising the policy, or would you prefer to look at it?

A. Well there are more policies than just that one. I mean if we're talking about the priority, yes I'd agree that what you are saying is right, that they've addressed that for the moment anyway. But there's more to the land unit policy than just public transport priority.

5 Q. Yes. So to try and keep this outside an area that we may go back to later, Mr Serjeant –

A. Yes, yeah.

Q. – that would now be with the revised proposal the focus of that issue for you, access?

10 1110

A. Yes. Well, I think it always has been. I mean, we've never had – well, we briefly had a proposal for carparking on the land but that's not the case now and so it's never been that there was – to use my word there – that there's never been a facility on the land that was part of the marina. It's simply always been access.

15

Q. I want to turn now to cultural effects. Mr Serjeant, do you agree that the physical works will not disturb any known – by which I mean recorded cultural sites?

A. I agree.

20

Q. Do you agree that there are two known and described urupa that have been located, one in the southern part of the bay which has a picket fence around it and the other is the one that the witnesses all, I think, including Mr Rikys spoke of up in the Matiatia Reserve?

A. Yes.

25

Q. The other recorded sites in the northern bay are (inaudible – 11:11:13) do you agree?

A. Yes.

Q. Now go to your primary evidence, please, at paragraph 113.

WITNESS REFERRED PRIMARY EVIDENCE – PARAGRAPH 113

30

Q. And I want to refer you, please, to the bullet point at the bottom of that page which is the third one in paragraph 113. You referred there to “the nature and extent of waahi tapu in Matiatia Bay by virtue of the urupa and co-iwi there.” Would the Court understand that what you're saying is that the waahi tapu, the nature and extent of it, is directly in your

professional view and understanding connected to identified urupa and co-iwi, in this location?

A. No. No, it's a general reference, as I understand it.

5 Q. Well it's your evidence so you started off with the words "by virtue of" and then you refer to two distinct, what we would understand to be, circumstances, a burial place, or the presence of co-iwi. Isn't that what you mean "by virtue of"?

A. I do, I do –

Q. It's specifying waahi tapu by connection to those two elements?

10 A. It is, but the references in the evidence of Ngāti Paoa was general, as I understand, and I'm referring to it as Matiatia Bay being a place of importance to that history and so the likelihood of those sorts of sites being within the bay, albeit not recognised, would be high.

15 Q. And where would those be, Mr Serjeant, in addition to the ones that I've just asked you about and you've confirmed?

A. I don't know, they could be anywhere.

Q. Well, from the evidence, where could those co-iwi be?

A. Well, apart from the two sites that you've referred to, I don't know.

20 Q. Well, the evidence, I can take you to it – the evidence was presented of battles or conflicts and the suggestion was made, was it not, that there could be what would now be bones, so co-iwi, on the seabed, do you recall that evidence?

A. Yes, I do.

Q. So is that what you're referring to?

25 A. They could be, yes, they could be anywhere.

Q. And they could've been affected from the point of view of iwi, or hapu, who gave evidence by dredging?

A. Or any disturbance, yes.

Q. But everything is a question of degree, as well, isn't it?

30 A. Yes.

Q. We had to consider degree?

A. Yes.

Q. And so the degree of effects from dredging that the evidence was aware of, the authors of the evidence were aware of then, and you were, is no longer part of the project, is it?

A. No.

5 Q. So if I can take you now to your paragraph 12 in your supplementary.

WITNESS REFERRED TO PARAGRAPH 12 OF SUPPLEMENTARY EVIDENCE

10 Q. I've already taken you to the evidence of Mr Enright's witness but here you refer to evidence of others that has been presented and you were able to read when you prepared your supplementary. So you refer, first, to the evidence of Toy Turangahua and he refers to "burials along both the northern and southern bays." Are those the ones we've just – I've just put to you and you've confirmed, they're burials?

A. That's what I've been referring to.

15 Q. Yes but does the other concept of co-iwi that may not be – that we also discussed so that's why I'm asking you specifically about what you think or you say he's referring to. So those are known burial locations, aren't they – burials along both the northern and southern bays?

A. And within the coastal marine area.

20 Q. Well I'm just dealing with that first and that, to your understanding, are two locations that are not impacted by this development, are they?

A. Oh okay, you were talking about the bays being down to low water mark or something like that, are you, you're making a distinction between the CMA and the bays?

25 Q. No, no. I just was wanting to – you wrote this evidence so am I misunderstanding or not that when you say "the witness, he, refers to burials along both the northern and southern bays" – what you're referencing are those urupa locations because they're burials?

A. I understood his reference to be broader than that.

30 Q. In respect of burials?

A. Or co-iwi.

Q. And is that a reference to both the northern and southern bays or are you referring to the words that you've then got next "and within the coastal marine area."?

A. Well, we seem to be going round and round a bit but I mean, my understanding is that the – because of the nature of prior activity within Matiatia Bay, generally, that there could be burials and co-iwi anywhere in the northern, southern bays, and within the coastal marine area.

5 Q. There could be a burial as opposed to co-iwi in – under the water, is that a practice that you're familiar with?

A. I'd don't know how you're distinguishing co-iwi and burials. I mean, co-iwi are bones, which are burials.

10 Q. Yes but if a body falls into the water and goes to the seabed it's co-iwi under the – on the seabed, is it not?

A. Yes. I see what you're saying. It's not a burial in the sense of a ceremony.

15 Q. Unless we've been informed of evidence that, in this instance, occupying Māori were burying people in the water I understood the burials would be land based – could be right down to the water's edge so that's why I'm asking you about this.

A. No, I'm referring to the fact that if battles took place in the bay there would be co-iwi under the seabed, not a burial.

Q. Well, there could be?

20 A. Mmm.

Q. There could be. So when you say "he refers to burials" you actually mean the ones we know about and when you talk about "within the coastal marine area" they are the product of battles or conflicts which means that there could be co-iwi under the water?

25 A. Yes.

Q. That's what you're saying?

A. Mmm.

1120

30 Q. Then you refer – now in that respect you asked yourself before you wrote that evidence "Would the revised proposal have any material difference on my assessment of the effects of the proposal on wāhi tapu, or cultural values?" There will be no difference in respect of the burial locations because they're not now and they weren't physically impacted, were they?

A. No.

Q. And there will, won't there, be a difference in potential effects on koiwi on the seabed by the removal of the dredging?

A. Yes I agree with that.

5 Q. Next you make a reference, again by referencing back to the witness, to the natural world, including sea creatures. How will the revised marina affect that in any significantly different way from the existing effects? And I'm talking there about the effects of the existing, including permitted moored boats, and the existing maritime predominantly
10 commercially related activity?

A. Sorry, what was the beginning of the question, how would it differ?

Q. Okay. The proposition is that the revised marina will have an effect on the natural world, including sea creatures, right? And my question is how will the revised marina proposal affect that natural world, including
15 sea creatures, Mr Serjeant, in a significantly different way from the effects that the natural world, including sea creatures, would experience from the moored boats, the mooring areas where boats moor and can anchor, and the existing maritime activity in and out of the bay? What is your conception of how that would be significantly different?

20 A. It would only be significantly different in relation to maybe the number of boats.

Q. Next you've referred, and I understand these things are relied upon by you as coming to a firmer conclusion now you see; you refer to "The occupation of the bay by boats and structures." You mean first of all
25 more boats, don't you, because the bay's already occupied by boats?

A. Yes.

Q. And there are existing structures, as we know, so we're talking about some additional structures?

A. Yes.

30 Q. And then the visual appearance of many masts. That's again a comparative factor here to take into account, isn't it? There are already masts in the bay.

A. I think, yeah I think that one is probably a bigger step change in terms of the congregation of the masts that we're talking about.

Q. "A bigger step change"?

A. Mmm. Mmm. Compared with the other things that are listed there.

Q. Yes.

A. I think it has a bigger degree of difference.

5 Q. When you formed a view about that effect, assuming that it is an effect, have you had any, have you taken any assumptions about the ratio of yachts to launches that might be in this marina? Have you tried to form a view of what the proportion might be?

10 A. Only by observation of what's there at the moment in terms of that sort of ratio.

Q. Right, thank you. And then you talk about the bay's history as a Māori transport centre and the passage of waka, and the reference I think is the Aramoana or pathways.

A. Mmm.

15 Q. How will the situation in that respect, the historical position as you say of the bay's history as a Māori transport centre and the passage of waka, be significantly differently affected than it has been and currently is by mooring management areas and the activity focused on the transport hub, which the evidence tells us since you originally wrote your evidence as significantly increased by new ferries? How will the marina, revised marina, significantly change the effects that may already exist on these matters?

20 A. Well I think you've got a considerable increase in the density of what Ms Gilbert termed "urban". I would hesitate to go that far, but I would probably call it non-natural features in the bay, and as my understanding of Māoris' appreciation of the cultural landscape is that a more natural, the more natural features would favour a higher quality cultural landscape than the presence of unnatural features.

25 Q. I understood your reference here was to transportation and passage of craft. Those are the things that I was identifying for you?

30 A. Well you certainly can't have a waka passing through the marina, can you?

Q. No, but my question was, was about the significance of the change in relation to those historical matters, given the amount of activity in the

bay already and its occupation. What's the degree of change? Is it more than minor?

5 A. Well it depends where your starting point is I suppose. And I guess if we were starting from a pristine bay and Māori got involved in the first development that was going to happen there, ie, maybe the construction of the first wharf, then the step change is quite large, isn't it? And as we've gone on we've now, we've got two wharves. We've got many more boats moored there. So I mean a degree of change I guess does get smaller as you go on, but the conversion of the mooring areas to a marina is certainly I think is quite a large step change from what they've appreciated, what Māori might appreciate up to date in terms of what that cultural landscape is.

10 Q. So you discount the marine activity, in particular the ferry activity, that exists, which must be the starting point, must it not, in terms of a change of effect. You discount that and only look at the moored boats?

15 A. Oh, no, no, I wouldn't discount that. No, that's – if I skipped over that I'm sorry. You know, all those things create that current environmental and there's nothing much we can do about that.

20 Q. And the next question I want to ask you is in reaching the conclusion that you arrive in paragraph 15, do you rely on the proposition by a witness for the Ngāti Paoa Iwi Trust that the whole of Matiatia Bay is a wāhi tapu area? Those were the words. Do you rely on that evidence that the whole, asserting the whole of Matiatia Bay is a wāhi tapu area?

25 A. Yes I do and I wouldn't as a matter of general practice apply wāhi tapu that broadly. I think you have to look at the importance of Matiatia Bay over the many years that Māori have been in occupation there and compare that with other places on Waiheke. For example if you, I mean one objective measure of that is if you look at the places of mana whenua importance in the proposed unitary plan across Waiheke, there is a congregation of those sites at Matiatia and you don't, and there are other places where there are congregations as well, but you don't see that density, if you like, everywhere around the coast of Waiheke. So I, I mean that's just one measure of to me, an objective measure, that says that this place is, has significance.

30

Q. So you've had occasion to be involved as a planner and providing expert evidence before in situations where impacts on wāhi tapu have been an issue before a council hearing or the Environment Court?

A. Certainly, mmm.

5 Q. And has your experience been that the identification of a location as wāhi tapu is connected to important or significant events, or circumstances such as urupa?

A. Yes my understanding is the Court has been reluctant to apply wāhi tapu in a broad way.

10 Q. But you're not?

A. Well I've only got the evidence of Ngati Paoa who has mana whenua status in this area to go on.

Q. All right.

A. That's the only evidence that I've got.

15 1130

Q. Paragraph 13 in your supplementary, where you say, "Matiatia is as attractive today as a place of occupation as it was a thousand years ago." There's a reference to historical occupation, obviously, but actually, that sentence talks about occupation as it is now, doesn't it? "It is as attractive place of occupation today as it was a thousand years ago."?

20

A. Yes.

Q. So can we actually look at what the occupation is now – first of all, around the bay, the northern bay, the backdrop to it, the land as it rises, is that occupied and owned now privately?

25

A. Yes.

Q. And there are rural residential houses that can be seen in the photographs established there?

A. Yes.

30 Q. The land, in the formal sense, has been alienated a long time ago?

A. Yes.

Q. Into private ownership?

A. Yes. I wasn't saying it's attractive – I wasn't saying that tang atu whenua are in occupation today and it's attractive to them today as it

was a thousand years ago, well it probably still is but they're not there, are they?

Q. No.

5 A. I was saying that the features of the bay that make it an attractive place to be in private occupation today, some of those features are very similar to what would've made it very attractive to iwi as a strategic position on the eastern end of Waiheke, given the flow of tribes up and down the coast, 500 and 800 years ago.

10 Q. So do you consider the current occupation of privately owned land by a ferry terminal, all the activities that go with it, does that assist in determining whether wáhi tapu values impact upon whether or not this revised development should proceed?

A. No, that's not what I'm saying here.

15 Q. And in paragraph 14 you take this to a broad sweep and say, "Irrespective of whether Matiatia Bay is wahi tapu it is part of the coastal marine area, Te Kapa Moana/Hauraki Gulf that is of special spiritual, historical and cultural significance." Accepting that to be so does that mean that that broad sweep of consideration of value to iwi or to Māori is then directly applied to whether a development of any sort can take place in Matiatia in the coastal marine area or on land?

20 A. No but I would certainly have made, engaging with Ngati Paoa as to their preferences of where a marina could be around the coast of Waiheke a greater consideration than I think, not Waiheke, WML did.

25 Q. So this reference relates back to what you see as a shortcoming in consultation, is that why you've written that?

A. I've just said that as much.

30 Q. Now having taken that position that these values of the whole of the Hauraki Gulf are relevant to considering whether this marina should proceed, can I take you to paragraph 44 of your primary statement of evidence.

WITNESS REFERRED TO PARAGRAPH 44 PRIMARY STATEMENT OF EVIDENCE

Q. This evidence is in the context of you looking at alternative locations and suggesting that Kennedy Point presents an alternative marina site for reasons that you've described there?

5 A. Could I just say that I didn't suggest it, it was something that came out of WML's alternative assessment and I took it from that assessment that – well Mr Leman said Kennedy Point is worthy of further review.

10 Q. And your evidence says, "I consider that Kennedy Point presents an alternative marina site." And you went on to say, what I understand to be, reasons why you thought it was to be preferred. Do I misunderstand that?

A. I don't see where I said it should be preferred.

Q. Well, three lines from the bottom, "I consider that Kennedy Point presents an alternative marina site and one which would spread the land/sea interface requirements on the island."

15 A. Mmm.

Q. Were you not intending to indicate you thought this was preferable to the Matiatia concept?

A. I think it is preferable on a range of points, yes.

20 Q. But when you carried out that consideration we don't find any reference to these cultural issues that you're raising now, do we?

A. Well it wasn't up to me to do that at the time, was it?

Q. Wasn't up to you to consider whether Kennedy Bay is part of the coastal marine area of Te Kapa Moana that is of special spiritual, historical and cultural significance?

25 A. Well I'm not saying every part of the coastline has that status.

COURT ADJOURNS: 11.37 AM

COURT RESUMES: 12.00 PM

CROSS-EXAMINATION CONTINUES: MR R BRABANT

5 Q. Mr Serjeant, I'd like to traverse the question of the potential transport or traffic effects arising out of the revised proposal, with you, and I'd like to start by asking you to reference Mr Shumane's supplementary evidence, go to page 3, please. So I'm referring you now in relation to potential effects from the revised proposal to paragraph 7 where the witness accepts the analysis provided by Mr Mitchell which he records was based on the joint witness statement agreement on traffic movements and he lists them out there, doesn't he, sub-paragraphs (a) through to (d)?

A. Yes.

15 Q. And then in paragraph 9, having referred to the position in relation to time restrictions and his view about that, he concludes by saying, in paragraph 9, "I agree with Mr Mitchell that the impact of one vehicle movement in any direction every 1.6 to 1.7 minutes during the busiest summer weekends will not be noticeable," doesn't he?

A. Yes.

Q. And you will have read that before this hearing?

20 A. Yes.

Q. And you agree with me that Mr Langwell has not taken issue with that, has he – with that analysis based on the way it was done?

A. No.

25 Q. Instead, Mr Langwell constructed a proposition of a vastly increased, a tripling of vehicle movements, based on the berth occupants with ability to park in the parking area and the marina management effectively breaching the resource consent conditions that you will have heard Mr Allan take Mr Langwell through yesterday?

A. Yes.

30 Q. Is it your position as a planning witness advising this Court, Mr Serjeant, that the Court should take account of a proposition of increased traffic

movements over and above these based on a consent holder breaching a resource consent, is that what you would –

A. No. No, that's not my advice, no.

5 Q. Can we turn now to – and I've kind of bundled this up into visual landscape, natural character issues – do you agree, for a start, so that I know whether we're on common ground for subsequent questions – there are no notations or overlays in the district, and I'm talking about the operative documents here, the district or regional planning provisions identifying Matiatia Bay as an outstanding natural character area or even a high natural character area?

10 A. That's correct, yes.

Q. Now this I think affects the application of the regional coastal plan policy 7.4.4.1 so if we could turn that up, please.

WITNESS REFERRED TO REGIONAL COASTAL PLAN POLICY 7.4.4.1

15 Q. Sorry, I've made a mistake there, Mr Serjeant, and the Court, I meant the regional policy statement. 7.4.4, Sir – Policies, Natural Character of the Coastal Environment. So, Mr Serjeant, do you agree that the way this policy is set out the natural character of the coastal environment is to be preserved and protected from inappropriate subdivision use and development and then there's two separate considerations and the first under sub-paragraph (i) is relating to areas of high natural character, isn't it?

20 A. Yes.

Q. So the application of that policy here is in respect of (ii) in all other areas?

25 A. Yes.

Q. And that refers to a significant reduction in habitat important or preserving the range and diversity of indigenous and migratory coastal species. There's no evidence of a conflict with that policy in this case, is there?

30 A. No.

Q. I'd like to take you now to your paragraph 9 of your supplementary evidence.

A. Just on 7.4.4.1 Mr Brabant, I mean, we went through (i) and (ii) but we didn't look at (iii) which is an area of (inaudible – 12:05:59) or mitigating adverse affects a subdivision on the elements of natural character.

5 Q. And, as you say, avoiding where practicable or remedying or mitigating is the requirement?

A. Yes, I mean, I picked on that because that's what I referred to in my evidence.

Q. So paragraph 9 of your supplementary evidence.

A. Yes.

10 Q. Now that evidence of yours refers, at the end, or in the last sentence, I believe, to Ms Gilbert's supplementary evidence at paragraph 87, if I could take you to that please?

**WITNESS REFERRED TO MS GILBERT'S SUPPLEMENTARY EVIDENCE
– PARAGRAPH 87.**

15 Q. So you've picked up on her conclusion and adopted it, effectively?

A. Yes, I have.

Q. Her evidence has, as appendix 1, a matrix or a comparative process that she's done between the way in which she's assessed effects?

A. Yes.

20 Q. From different viewpoints than Mr Pryor has. Do you see at the bottom under her name she has described, for the Court, what these different categories of high and moderate mean? That's in appendix 1.

1210

25 A. Yes I'm sorry I've got it, I'm just reading what it says in relation to each of her categories.

Q. Sure.

A. Yes.

30 Q. What she's advised is that her, "Assessment of effects of the revised marina proposal has been judged by her as an effect on the character or quality of the existing visual landscape or outlook," that's what it says, doesn't it?

A. Yes.

Q. As a planner, Mr Sergeant, do you understand that when you look at the environment for the purposes of effects analysis under 104(1)(a) you are to take account of the future environment as well?

A. Yes.

5 Q. And also take account of the permitted level of activity that could occur which is relevant, isn't it, to the occupation of the coastal mooring management areas by boats?

A. Yes.

10 Q. Which are obviously visually, and by comparison to the areas, not fully occupied are they?

A. No, not on the – they don't appear to be fully occupied on the montages that I've looked at.

15 Q. The other thing I wanted to ask you about in this regard is do you agree that when assessing visual landscape and amenity values the context within that assessment is done is important?

A. Context? The physical context?

Q. Yes.

1212

A. Yes. Yes, including the landside area, et cetera in the bay?

20 Q. Yes.

A. Yes.

25 Q. To use an easy and readily referenced example here, there's a completely different context for a valuation of those matters were this proposal proposed in Opunake Bay, as compared to the context in which it should be assessed for its effect on visual amenity and landscape values in Matiatia Bay?

A. Certainly, yes.

30 Q. Yes. So I want to address those context issues with you. First of all, there is a context of buildings and structures, isn't there, to take into account here, when assessing effects of the revised marina proposal?

A. Yes.

Q. And do you agree those include the presence of housing around the northern bay in particular, but also observable on the southern side?

A. Yes.

Q. The ferry terminal and all the paraphernalia that goes with it?

A. Yes.

Q. The carpark facilities and then in terms of the future environment the potential for development of the mixed use zone.

5 A. I think the latter is very important, mmm.

Q. Yes. And then there's the context of activities, oh sorry, and the existing boats in the mooring management areas and their potential for more dense occupation?

A. Yes.

10 Q. That's part of the context, isn't it?

A. Yes.

Q. And then there's the context of activities to take into account, isn't there, Mr Serjeant?

A. Yes.

15 Q. And would you agree with me that these are the critical contextual elements that need to be considered here in relation to whether the revised marina is acceptable. First of all the activity associated with this ferry terminal?

A. Yes.

20 Q. And that activity as the witnesses have told us, has increased since the Court last considered this issue last year, hasn't it?

A. Yes.

Q. We've been told about the number of extra sailings. So there's more activity and do you agree that the effects of that activity in respect of noise and movement through the bay is a relevant contextual element of the ferries coming and going.

25 A. All the generated effects of that movement.

Q. And then there's the duration of the activity is important too, isn't it?

A. Yes, certainly, mmm.

30 Q. So in assessing these effects the witnesses, including you and Ms Gilbert, need to have taken account of the fact that the ferries start at around about six in the morning and go through to around about midnight. And there's no break in this activity, is there; it's seven days?

A. That's right.

1215

Q. Throughout the year?

A. Mmm.

5 Q. And other relevant effects include the lighting effects of the terminal facility at night?

A. Yes, but I don't know the details of that but, yes, I accept what you're saying.

Q. Have you been out there and looked at what it's like at night?

A. No, I haven't, no. Certainly not recently, anyway, no.

10 Q. There is a visual of it in the material, do you recall that?

A. No.

THE COURT: JUDGE NEWHOOK

Mr Brabant you're right at the cusp, I put it to you, of questioning this witness about landscape and visual matters, right at the cusp. You've led from him and understanding that he accepts that he has about what effects might be
15 relevant for consideration. If you're about to move over the cusp and start asking him for his assessment of those effects would you not be treating him as a landscape witness?

MR R BRABANT:

20 Yes. Well that's exactly what I didn't intend to do, Sir.

THE COURT: JUDGE NEWHOOK

Well that last question sounded a bit like it. I've just been watching to see how far you were wanting to take this witness.

MR R BRABANT:

25 Whether he'd seen the lighting, you mean, Sir?

THE COURT: JUDGE NEWHOOK

Yes, you seemed to me to be coming very close to starting to ask him to assess the effects of the lighting, if he had seen it.

MR R BRABANT:

My only concern was, Sir, I asked him about a contextual issue and then I was not sure whether he'd actually seen it himself so I thought I should ask whether he'd seen it.

5 THE COURT: JUDGE NEWHOOK

I'm not stopping the line of questioning, I'm just observing that you're at the cusp of a cross-over between the responsibilities of a planning witness and those of an expert in a particular field.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

- 10 Q. And if we return to activities then associated with the ferry terminal, in particular, a contextual element would be all of the movements, first of all the public transport and I'll just gather it all together – then of the other service vehicles, the taxis, the shuttle buses and then there's all the private vehicles that come and go to the carpark?
- 15 A. Yes.
- Q. They add a contextual element of movement and of activity?
- A. They do.
- Q. And do you agree that all of those elements would be relevant to a consideration of those landscape visual and amenity effects?
- 20 A. Yes, they would be. A lot of the things you've referred to probably fall into the general amenity area.
- Q. Now I just want to turn to part 2 now. You've identified, in your evidence, that section 6(a) to do with natural character, comes into play here?
- 25 A. I'll just refer to it to remind myself.
- Q. Yes, 120 in your evidence-in-chief?
- A. Yes.
- Q. And of course you acknowledge that that's a policy that has the qualification on it that brings into play the question of appropriateness or
- 30 inappropriate subdivision use and development, doesn't it?
- A. It does, yes.

Q. So the matter of national importance comes into play and takes effect if there's a finding that the use and development, in this case a marina, would be inappropriate?

A. It does, yes.

5 Q. And in respect of 6(e) the provisions of 6(e) I'm assuming that with your experience you remember the provision but the issue there is the relationship with, isn't it, the key words in 6(e) –

A. Beginning of it, yes.

10 Q. Are in the relationship with – by contrast to 6(a) which talks about protection?

A. Mmm.

Q. Now you've also included 6(f) which is historic heritage – what elements of historic heritage are you referring to there, Mr Serjeant?

A. I'm referring to the potential for the sites that I've referenced previously.

15 Q. Can you identify which sites you mean?

A. No, I can't, no. It was a general reference.

Q. So now I want to move to another issue that you had raised and I'll give you the reference number – paragraph 27 of your evidence-in-chief.

20 A. I have it, I'll just have a quick glance at it. It's about the Hauraki Gulf Marine Park Act?

Q. It is. So your paragraph starts by saying that the Act, this Act, requires that Sections 7 and 8 are treated as an NZCPS and that the provisions are broad and then what you go on to do is say that you consider the following provisions in Section 8 are relevant. What I want to ask you is, why didn't you refer to Section 7, Mr Serjeant, and just to – so we get the question through as succinctly as possible, I've got a copy of it here and Section 7, sub-paragraph 2(b) says, "To use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation." Do you agree that's a relevant provision that you haven't referred to?

25

30

A. Yes it is a relevant provision. I think I've referred to the same sort of thing in the context of the coastal plan or the RPS, was it, earlier on, but, yes, I should've noted that as well at the same time. The paragraph I'm referring to is paragraph 18 where I refer to policy 6(2) of the NZCPS, I

say, "There are no specific policies about providing for marinas however I consider that they are an important means by which people access the marine environment for their enjoyment."

5 Q. So turning now to the New Zealand coastal policy statement – do you have a copy there?

A. Yes, I do.

10 Q. So I'm going to put a series of propositions to you by reference to the New Zealand coastal policy statement. So can we look at Objective 6 first, which is – if you've got the paper one like me – is on page 10 and in each case and these questions, to avoid repetitiveness, are in relation to making provision for Waiheke Island at Matiatia Bay for a marina facility in the revised form. Do you understand what I mean, Mr Serjeant?

A. I do, yes.

15 Q. So is that supported by the second bullet point of Objective 6?

A. Yes.

Q. And also the next one underneath it relates to functional use and that's obviously relevant to a marina as well, isn't it?

A. Yes, it is, as we've discussed, not the parking.

20 1225

Q. And if we go not to Policy 6 and page 14, over the page, into the second – that policy provision is separated into two parts and the second part starts, "Additionally, in relation to the coastal marine area."?

A. Mmm.

25 Q. And in relation to this proposal sub-paragraph (a) recognises a facility such as this?

A. Yes.

30 Q. So in terms of supporting or being consistent with sub-paragraph (a) under 2 in the second part of this and sub-paragraph (c) and in respect of the provisions that's been made on the access pier the breakwaters and on the proposed deck structures, either option, under sub-paragraph (e) requiring that structures be made available for public or multiple use wherever reasonable and practicable, they all apply here, don't they?

A. Yep, that's all good stuff but you've sort of bounced around on the ones that I think support the marina as opposed to ones that don't. I mean, with respect.

THE COURT: JUDGE NEWHOOK

5 Some might unkindly call it cherry picking, Mr Serjeant, but we know how these statutory instruments work and we have heard a lot of evidence from you, the other planners, various witnesses who refer to them and, in the end, we're going to do the job of taking the holistic look at them and coming to a view in relation to relevant sections of the Act.

10 **MR R BRABANT:**

The thing is, Sir, I didn't accused Mr Serjeant, and nor would I, of cherry picking but what I'm dealing with is provisions that I think need to be added to the mix that he's already provided, that's what I'm really doing at the moment.

THE COURT: JUDGE NEWHOOK

15 And we haven't covered off what might be your final question in this set of questions, but as to the previous set and earlier sets, he then took you back into parts of his evidence where if only in a generalised way he considered the provisions of this flavour again his case to demonstrate that he actually brought balance to the exercise. But, anyway, maybe you've got one more question in
20 this set in case you want to bring a message to us that he has not been balanced on this topic and, if so, place that question.

CROSS-EXAMINATION CONTINUES: MR R BRABANT

Q. If you go to policy 23, please.

WITNESS REFERRED TO POLICY 23.

25 Q. Do you agree that policy 23(1) (a) and (b) is relevant to the question of the potential for contaminant discharges from the marina activities?

A. Yes, it is, yes.

Q. And do you agree that the council expert on contaminant discharges has covered that adequately and the conditions of consent as well?

A. I haven't got any problem with the conditions of consent though from my experience of marinas they seem to be appropriate.

5 Q. Now for reasons that you've explained in your evidence you consider that the application requires to be assessed as a non-complying activity meaning what is commonly called the gateway or threshold tests come into play?

10 A. Yes. I mean, things have changed a little bit as it's gone on. As I understand there's possibly two avenues for that now, one is that the activity status as we started out at is saved but that then means that's really referring to reclamation and the second construction would be that the provisions of, the active provisions of the Unitary Plan come into play because of your change to the proposal.

15 Q. I'm just – for the purpose of this question I'm just accepting that you've undertaken that exercise, whether or not it needs to be undertaken is a matter of legal submissions?

A. Yes, yes – I accept that.

20 Q. So I'm working from the basis that you've done what you considered was appropriate, on legal advice, and that's fine. I just wanted to understand from you the basis upon which you've undertaken this exercise of looking at the relevant objectives and policies. Is your work being based on the understanding that contrary to means words like “offensive to” or “completely in conflict with” – so when you'd undertaken that work, you had no misunderstanding about that?

25 A. The usual understood interpretation of those words, yes, “repugnant to” et cetera.

Q. And that the correct procedure here when you undertake this is to carry out a fair appraisal of the objectives and policies read as a whole?

A. Yes.

QUESTIONS FROM THE COURT: COMMISSIONER LEIJNEN

30 Q. Mr Brabant discussed with you the nature of the existing environment and he talked about the nature of permitted activities and what you should take into consideration with the existing environment. The one thing that he didn't mention was the historic reserve which I had to go

back to the original plan package but it does seem to show it quite well on Figure 12, called Marina Layout. It shows the whole area.

A. Which folder is it?

THE COURT: JUDGE NEWHOOK

5 March 2013.

QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER LEIJNEN

Q. So it seems to run from the end of the road cul-de-sac right around the edge and then makes its way up to the headland?

A. Yes.

10 Q. Would that be part of the existing environment?

A. Yes.

Q. In terms of the assessment required?

A. Yes.

15 Q. And without going back and I know we had evidence and I know it was a lady that gave it to us on the nature of why it is a historic reserve. Do you recall why it is a historic reserve – you don't? I'll go back to it but I just thought you might remember?

A. No, I'm sorry, I can't recall. I know I've read it along the way but it's slipped from my mind at the moment.

20 1235

Q. One of the comments you made in answer to a question was you can't get a waka through the marina. My understanding is that what you were referring to was the access to that beach which the historic reserve is attached to.

25 A. Yes.

Q. Is that, in your mind, part of that cultural impact that you were referring to? That relationship between the land and the sea?

30 A. Well I mean I was interpreting other evidence in that regard and that's what I understand was what the reference was to, obviously the passage from the shoreline out to the outer bay.

Q. And that will now be through the break water, so to enter the bay you're entering the marina essentially to enter the bay. That will be the experience.

5 A. Well you'd have to definitely take a detour, I mean it's not, you couldn't do that but you would need to.

Q. So you can't enter around the other side of the outer break water? It looks like it's a bit shallow and rock from memory.

THE COURT: JUDGE NEWHOOK

22nd of May 2015 bundle, just to help us to navigate through all this stuff.

10 **QUESTIONS FROM THE COURT CONTINUE: COMMISSIONER LEIJNEN**

Q. So the connection of the bay to the historic reserve, the historic reserve connection to the bay or either way is, would be between the primary and secondary break water?

15 A. Yes. Yes, it would seem to be fairly shallow. It would still be passable but you'd probably tend to stick to deep water.

Q. The other thing that was discussed with you was the efficiency and replacement of moorings with a marina. It's a difficult question to ask really but in looking at that is there actually a direct relationship in terms of replacement given the cost of a marina berth compared to the ability to rent a mooring?

20

A. Well I've, and there's a policy in the Coastal Plan on the effect on the activity on the zone. On the mooring zone, so what is the effect of the marina on mooring activities and if you do draw a distinction between the mooring activities then you could say that there's an adverse effect on mooring activities because of the presence of the marina. So there is that, so, I don't think you're, you're not replacing like with like if that's what your question is.

25

Q. I don't have the policy directive or the part of the directive from the Operative Coastal Plan in front of me where it refers to marinas and I don't have it open either but we were told, I think from Mr Allan, that there's a presumption in the new Unitary Plan that marinas would be accommodated through a plan change.

30

A. Yes, that's my understanding.

Q. The flavour of the Operative Plan, how would marinas be accommodated in that way?

A. The activity status is discretionary.

5 Q. And so then you'd work with those policies?

A. Yes.

QUESTIONS FROM THE COURT: COMMISSIONER HOWIE

Q. Mr Serjeant, I think you mentioned that you preferred Kennedy Bay for a new marina.

10 A. Yes, Kennedy Point. It might be a bay as well I'm not sure.

Q. Where the ferry comes in.

A. The vehicular ferry, yes Sir.

Q. Did I get that right? You preferred that?

A. Well I mean I didn't do a complete analysis of it but it seemed to me that
15 there, if I looked at the criteria that WML used to look at alternatives and admittedly they said themselves that it wasn't an assessment of alternatives to the nth degree but just looking at their criteria it seemed to have a lot of things going for it for my way of thinking. And I particularly looked at the concentration of activity that was provided for
20 by way of zoning on the land side at Matiatia and looking at what the District Plan expected to happen at Matiatia and increase of ferry activities and all the things that are already provided for at Matiatia whereas Kennedy Point seemed to me to have a greater capacity to have additional activities there.

25 Q. How much notice can we take of that?

A. Well this application isn't for a marina at Kennedy Point so – well I think you need to take it into account in terms of – I mean if marina activity was an activity that the community had to have and Matiatia was the only place where it could be then your assessment of effects may be
30 different but that's not the case. I mean it's a completely discretionary sort of activity to create enjoyment for community but it doesn't have to be at Matiatia and therefore in my mind it does open the question as to whether there is a better place for it.

Q. If we reached the conclusion there was a better place for it do you say we should turn this down?

A. Yeah, I'm not sure that I can point you to assessment criteria in any of the plans that would direct that you do that.

5 QUESTIONS FROM THE COURT: JUDGE NEWHOOK

Q. Mr Serjeant I have a question for you in relation to the Regional Plan Coastal, so if you would turn up in the bundle issue 23.2.2, so we find that in CB83 of the common bundle. You've got the paper version of the Regional Plan Coastal there, look for 23.2.2.

10 A. 23.2.2? Issue statement?

Q. Yes. You were asked some questions about that by Mr Brabant and just for the record it reads, "Marinas usually result in significant modification of the coastal environment. This modification may affect the natural character and visual amenity of an area and public access to and along the coastal marine area. Marinas can, however, concentrate the affects of vessel berthage, maintenance and other associated marine activities into a defined area. This may have the effect of preventing proliferation of these activities in and along the coastal marine area..." et cetera. My question is this, if we were to consider on the evidence that there's become such a proliferation of moorings in Matiatia that this issue arrives on the radar and that that might benefit positive consideration of a marina, to your knowledge is there anything in this instrument or any other which would direct us or encourage us to say that that marina should be here where these moorings are, or whether it could be elsewhere? Long question, hope you understand it. Is there anything in the instruments that would have us focus a marina here where we might think there is considerable proliferation as opposed to somewhere else? Or might the question of location of a marina be silent in the statutory instruments? If you can, working from the knowledge of the statutory instruments. I think the latter, but you probably know these instruments better than I do.

25
30
A. Well I think that the consideration of a marina in an area of recognised boating activity would have to be a starting point, because it does

demonstrate the practicalities or desire of boating to be in the area and the shelter provided in that area. So I think that, I think the provisions do point to the consideration of mooring areas as being potential for marinas. So that's a general point that I think does –

5 Q. You think there might be some policy thrust in this or another statutory instrument about that? That was the question. If there's nothing comes to mind after you've thought about it carefully just say so. We'll look into it ourselves.

A. Yes it's just that connection between the mooring area, the mooring
10 zone and the marina zone, which I can't actually specifically take you to right now, but –

Q. Right, so you would recommend that we look for any crossover between chapter 23 and chapter 24?

A. Yes.

15 Q. Because I think it runs on the marina's limited moorings. Got that right?

A. Mmm. Yes I would. Yes, Sir.

Q. So you would recommend that we look at that if we're interested in that question?

A. Yes I think that is a starting point –

20 Q. Yes.

A. – and then I think, as set out in my evidence, I mean I think the landside connection is the other one that needs to be gone into.

Q. Yes.

A. And the need for integration across that CMA boundary.

25 Q. Yes. Okay. Thank you for that.

A. Sir.

MR LITTLEJOHN

I was just going to see whether there were detailed aspects of Mr Serjeant's
30 evidence where I could take him to that might assist in Your Honour's last enquiry, but at the risk of just pointing to provisions that you will presumably go back and read, I won't do that. So no I have nothing. I have nothing, Sir.

RE-EXAMINATION: MR LITTLEJOHN – NIL

THE COURT: JUDGE NEWHOOK

Yes. Clearly we're going to have to do our own trawl.

5 **MR LITTLEJOHN:**

Yes.

THE COURT: JUDGE NEWHOOK

Forgive the pun.

10 **MR LITTLEJOHN:**

Thank you, Sir.

THE COURT: JUDGE NEWHOOK

Q. Thank you, Mr Serjeant.

A. Thank you, Sir.

15 **WITNESS EXCUSED**

THE COURT: JUDGE NEWHOOK

Now I think that's your case, Mr Littlejohn.

MR LITTLEJOHN:

- 5 Yes, finally, Sir. I've finished all of the supplementary and primary evidence for Direction Matiatia.

THE COURT: JUDGE NEWHOOK

Right, thank you very much. Now Mr Allan, your homework, would you like to offer this in the remaining 10 minutes before the lunch break.

10

MR ALLAN:

- Yes I can power through it and the only other thing I think was whether you wish to see Ms Bremner again in relation to her supplementary evidence on conditions. She's still with us should you wish to, otherwise I imagine she can come back on Friday morning I suppose if you needed more time to look over the –

15

THE COURT: JUDGE NEWHOOK

- Well there is another option. Just looking at the clock it's nearly 10 to one, perhaps we've got a bit more to do than just hear you about your homework.
- 20 We may, we'll need to think about whether we want to hear from Ms Bremner again, but also I want us to spend some time essentially in conference here in the courtroom to talk about the site inspection that we'll be conducting tomorrow. And I think that's probably a 10 minute exercise. So I think, I'm actually minded to stop now and come back at 2 o'clock. Hear from you,
- 25 Mr Allan then, conduct that conference and possibly hear from Ms Bremner about conditions. I think that's possibly how we'll do it, rather than try and put the foot down to the accelerator and have you rush through your submissions, which you've taken the time to think about carefully and set out for us.

30

MR ALLAN:

And I must say, because I was somewhat rushed I haven't got the cases together yet to provide to my learned friends and to the Court. I'll email those through subsequently if that's okay.

5 THE COURT: JUDGE NEWHOOK

Yes, that would be helpful.

MR ALLAN:

Yes.

10 THE COURT: JUDGE NEWHOOK

Okay, so we'll adjourn to – oh sorry, Mr J Brabant?

MR J BRABANT:

Sorry, Sir, excuse me, and it may be we can deal with this on return, but you
15 did ask for a few specific dates –

THE COURT: JUDGE NEWHOOK

Oh yes, yes, you had homework too.

MR J BRABANT:

20 And so I could give those to you now or when we come back.

THE COURT: JUDGE NEWHOOK

No we'll just deal with all of this when we come back.

MR J BRABANT:

25 That's fine, thank you, Sir.

THE COURT: JUDGE NEWHOOK

But thank you for reminding me about your homework.

COURT ADJOURNS: 12.52 PM

COURT RESUMES: 2.08 PM

THE COURT: JUDGE NEWHOOK

Mr Allan

MR ALLAN:

5 “So these supplementary ... considered to be unenforceable.” There was no details discussion of – there probably wasn’t a huge body of case law by that stage anyway but no detailed discussion of case law or anything like that, it was just a concern the Court expressed, an agreement with one of the parties that the condition in question wouldn’t be enforceable.

10

“(inaudible – 14:11:12) and Waitakere ... they are routed.” And we’ll see a distinction between that earlier case which I think was 1992 and the case my learned friend, Ms Parkinson, has already drawn to the Court’s attention in another context and which we’re about to come to, the Winstone Aggregate
15 Case.

“In that case ... of the RMA.” And I’ve set out a passage there from Justice Barker’s judgment.

THE COURT: JUDGE NEWHOOK

20 Yes, it’s a fairly well known authority, that one.

“Reference was also ... of the situation.” I’ve set out another passage there at paragraph 13.

25 “So drawing an ... pass and repass.” I’ve, belatedly, given some thought to what happens, say, in the case of invitees of berth holders.

THE COURT: JUDGE NEWHOOK

Yes, that was straying around in my mind.

MR ALLAN:

Much again would depend on the nature of the contractual relationship and the extent to which, I suppose, this could be held over berth holders such that they in turn had to make sure that their invited guests were also abiding by the
5 rules but I don't think that that necessarily undoes the authority that we find in *Winstone* as it were.

THE COURT: JUDGE NEWHOOK

It beckons the chain of command, doesn't it?

MR ALLAN:

10 Yes, that there's a weaker link and it potentially could create enforcement difficulties, I suppose.

THE COURT: JUDGE NEWHOOK

I wonder if – and there may be some attention needed to the conditions of consent if consent were to be forthcoming. I wonder where just a straight ban
15 on others than berth holders parking in that place, signposted at the entrance, might help.

MR ALLAN:

That's right. You're ensuring there is that direct contractual relationship between the consent holder and whoever's parking.

20 **THE COURT: JUDGE NEWHOOK**

I just float that idea.

MR ALLAN:

I'm sure my learned friend, Mr Brabant, will have further comments in reply that – it did just occur to me as something that would need to be considered.
25 In the dim and distant past I recall some evidence concerning the possibility of perhaps third parties, i.e. not berth holders, borrowing a permit.

THE COURT: JUDGE NEWHOOK

The very thought was going through my mind as you were addressing us about these authorities that you could get into trouble if berth holders got into the habit of inviting their cousin or neighbour or friend to pop in and out of
5 there. So it's something that you could think about and reply, Mr Allan.

MR BRABANT:

Yes, I actually – my recollection, Sir, is that Mr Wardale's already addressed it and ruled out invitees, guests on boats being able to use the berths. However, we will check it, Sir.

10 **THE COURT: JUDGE NEWHOOK**

Perhaps you could check on that and see whether it's reflective in the draft conditions of consent

MR R BRABANT:

I believe there is something (inaudible – 14:17:16)

15 **MR ALLAN:**

We will check, Sir.

THE COURT: JUDGE NEWHOOK

It's not to pre-suppose any overall conclusion, I just say for the benefit of people at the back of the room, this is just continuing enquiries about detail.

20 **MR ALLAN:**

Perhaps that was limited to use of the carpark and I may be mis-remembering, to use that wonderful word, but I think there was some discussion of the possibility of members of the public being able to sub-let a berth over a holiday period and that being – is that no longer – but then
25 perhaps those individuals wouldn't have access to the carpark. I think that's probably the important point of distinction.

MR R BRABANT:

On the contrary, Sir, of course that if someone's using a berth and they're renting one and that could be for a shorter or a longer term they're not outside the scope –

5 **THE COURT: JUDGE NEWHOOK**

It would be hard to think that they'd be creating any worse effects on the environment than the berth holder himself or herself.

MR R BRABANT:

10 It's the invitees that I thought were already excluded by what Mr Wardale said but I'll certainly check that.

THE COURT: JUDGE NEWHOOK

Check into it.

MR R BRABANT:

15 In the sub-letting situation I imagine they'd be subject to the same terms and conditions and contractual arrangements so they'd be –

THE COURT: JUDGE NEWHOOK

One would think so.

MR R BRABANT:

20 Probably signing up, Sir, to a temporary berth agreement which will control all their activities as if they were a berth holder.

THE COURT: JUDGE NEWHOOK

You look into it for us, anyway, Mr Brabant, to tell us about it on Friday.

MR ALLEN CONTINUES SUPPLEMENTARY SUBMISSIONS

"I draw the ... in their analysis."

THE COURT: JUDGE NEWHOOK

Well thank you, Mr Allan, that looks like a fairly thorough review of that and I have the impression that if we focus particularly on Winstone we should get good guidance.

5

MR ALLAN:

I think so, Sir.

MR LITTLEJOHN:

10 Your Honour, just while we're on the reference to *Staceys* reminded me of a similar case I think in which Your Honour presided, which involved the noise of smokers on a footpath outside a late night entertainment venue up in Queen Street.

THE COURT: JUDGE NEWHOOK

15 Oh yes, up at Queen Street, that case. You with me on those.

MR LITTLEJOHN:

Yes, and I think similar sorts of issues about the extent of the Court's and the consent authority's jurisdiction to deal with effects in a public place arising
20 from private activity.

THE COURT: JUDGE NEWHOOK

Yes, yes, people going outside onto the footpath to smoke, I think actually.

MR LITTLEJOHN:

25 That's right. I think it was *Empire Entertainment* might have been the case reference, but similar sort of situation.

THE COURT: JUDGE NEWHOOK

Yes, yes, that was a cat fight.

30 **MR LITTLEJOHN:**

Yes.

MS PARKINSON:

Sir, that was (inaudible – 14:21:54) *Evidential Trust*, and it went on appeal through the High Court as well.

5 **THE COURT: JUDGE NEWHOOK**

(inaudible – 14:21:54) *Evidential Trust*, that's right, yes.

MS PARKINSON:

It was a High Court decision, Justice Brewer.

10 **THE COURT: JUDGE NEWHOOK**

Yes, right. Thank you both for that. Yes that was fraught that one. Okay. Thank you all for your contributions on that, but particularly to you, Mr Allan.

MR ALLAN:

15 You're welcome, Sir. I have, Ms Bremner – I'm not sure whether Commissioner Leijnen has any questions.

THE COURT: JUDGE NEWHOOK

Yes, now, just, there's so much going on, just refresh me about what it was that one of my colleagues said that you might be able to help us with?

20

MR ALLAN:

Oh I think it was just in terms of whether I've got any members of the Court, but Commissioner Leijnen in particular had any questions concerning the relationship between that table attached to Ms Bremner's supplementary and
25 the actual various sets of iterations and conditions.

THE COURT: JUDGE NEWHOOK

Yes, yes, I did a bit of homework and I don't, but do you Commissioner Leijnen?

30

COMMISSIONER LEIJNEN:

No I don't think I do. I think we sort of got there in the end, thank you.

MR ALLAN:

5 And I'll just double check with Ms Bremner in case in the last day or two something else has –

THE COURT: JUDGE NEWHOOK

In case anything's come to mind for her, yes.

10 **MR ALLAN:**

Nothing, nothing that she wishes to –

THE COURT: JUDGE NEWHOOK

No the three of us don't. Thank you, Ms Bremner, for putting it together, and thank you for coming back again. I'm sorry if it was, you were not needed in
15 the end, but your table was very helpful in allowing us to get our heads into that part of the transaction and with the qualifications that emerged yesterday while you were giving evidence it looks most helpful. So thank you.

Right, okay. Now site visit. Have you got something else Mr Brabant?

20

MR R BRABANT:

Well yes, Sir, yes the homework that we were given that –

THE COURT: JUDGE NEWHOOK

Oh, yes, yes, this is the second time I've forgotten it.

25

MR R BRABANT:

– Jeremy did and I've got the dates here on my phone.

THE COURT: JUDGE NEWHOOK

Yes.

30

MR R BRABANT:

So the first was, “When was the application lodged with the council?” And the answer is “The 18th of March 2013.”

THE COURT: JUDGE NEWHOOK

5 Yes.

MR R BRABANT:

“When was the proposed unitary plan (dear old thing) publicly notified?” “30th of September 2013.” And remember, Sir, the day before the election.

10 **THE COURT: JUDGE NEWHOOK**

Yes.

MR R BRABANT:

A familiar ring to that. “Date on which the deck option was introduced?”

15 “9 April 2014.”

THE COURT: JUDGE NEWHOOK

Yes.

MR R BRABANT:

20 And “The date at which the latest deck option was put forward?” That is the latest –

THE COURT: JUDGE NEWHOOK

The reduced deck option.

25 **MR R BRABANT:**

“The latest set of plans emerged with the modified proposal?” And the answer is, “The Court was advised and the parties were of revision to be made in a memorandum of the 22nd of April 2015 and the plans and visuals were circulated on the 22nd of May 2015.”

THE COURT: JUDGE NEWHOOK

Yes, okay.

MR R BRABANT:

5 And while I'm on my feet I can, if I may, Sir, provide information that's come from Mr Johnson, at Buildmedia.

THE COURT: JUDGE NEWHOOK

Yes, thank you.

10 **MR R BRABANT:**

And I've been sent this again by my co-counsel and this is – I'll read it out: "Advice from Tim Johnson... Large A1 prints on paper should be done by 2.00 pm. Three by acetone prints won't be completed until 4.00 pm."

THE COURT: JUDGE NEWHOOK

15 Today, that's today?

MR R BRABANT:

"I will then have to run them round to you, going to be tight." I'm just letting you –

20 **THE COURT: JUDGE NEWHOOK**

That's all right.

MR R BRABANT:

So we've got to get them to you and I –

25 **THE COURT: JUDGE NEWHOOK**

Yes, if they can be brought to the Court's office by about nine or 9.30 tomorrow.

MR R BRABANT:

30 Oh, that will be all right.

THE COURT: JUDGE NEWHOOK

That will be all right, because we've decided that we will probably leave from here about mid-morning, which will allow us to be in the Matiatia area at low tide and then we will be there through the rising tide, maybe not quite to fully
5 high tide, because it will be dark by then, but that's the proposal. So if they got here by about 9 o'clock tomorrow, that would be good.

MR R BRABANT:

So that you know, Sir, can I read out the rest of this?

10 **THE COURT: JUDGE NEWHOOK**

Yes.

MR R BRABANT:

There's a note from Tim Johnson regarding the acetone prints. "A3 seems to
15 be as big as I can get the acetone prints. We will crop and scale the image, allowing the viewer to hold it up at 500 millimetres from the eye." This is akin to the question before from Commissioner Howie as to whether you can make an adjustment and it all stays in scale. So what he's trying to do is give you something that you can hold at a reasonable distance. "We will focus the
20 image on the marina allowing the viewer to hold it up and align the print to the existing background. I will also write an explanation on the proper method to view the prints, which will need to be followed precisely when on site.

THE COURT: JUDGE NEWHOOK

Yes.

25

MR R BRABANT:

And I'm sure that he doesn't mean to be –

THE COURT: JUDGE NEWHOOK

Well that will need to be circulated to the other parties.

30

MR R BRABANT:

Oh, yes.

THE COURT: JUDGE NEWHOOK

– and leave given to raise any commentary about that on Friday morning
5 should they have it. For instance, if Ms Gilbert were to look at the notes and
find them wanting in some way, Mr Littlejohn might feel the need to give us,
give them that advice.

MR R BRABANT:

10 Well, yes, Sir. At the moment I'm working I think reasonably optimally –

UNIDENTIFIED SPEAKER:

(inaudible 14:27:44) on the basis there is an issue to be resolved here rather
than –

15 **THE COURT: JUDGE NEWHOOK**

Yes.

UNIDENTIFIED SPEAKER:

(inaudible 14:27:45) a problem that can't be resolved.

20 **THE COURT: JUDGE NEWHOOK**

Yes, yes. I'll just offer you a quick response and at this stage I don't know if
it's a qualification or not. You said 500 millimetres to hold the acetate. 500
millimetres from the eye when viewed in A3 size. I don't think I see
500 millimetres in any of the footnotes.

25

MR R BRABANT:

No, but what I think Mr Johnson is saying, Sir, he's going to adjust it to the
same way Commissioner Howie was talking about as to whether you can
enlarge it, and he did say that you could enlarge. So he's going to do that for
30 you and give you a precise dimension.

THE COURT: JUDGE NEWHOOK

Oh well –

THE COURT: COMMISSIONER LEIJNEN

He's cropping the view basically.

5

MR R BRABANT:

Yes, in order.

THE COURT: COMMISSIONER LEIJNEN

So the piece of paper gets bigger and the view –

10 **THE COURT: JUDGE NEWHOOK**

Yes, I think I understand, but it is going to be important that the other parties get that note and have the ability to consider it.

MR R BRABANT:

15 I don't – there's no difficulty with –

THE COURT: JUDGE NEWHOOK

I think I see what you're saying now.

MR R BRABANT:

20 Yes.

THE COURT: JUDGE NEWHOOK

Yes. Commissioner Howie raises an important justice matter, Mr Brabant. We said to you yesterday in answer to Mr Wardale's concerns about cost, to supply the Court with one acetate, just one set of acetates and A3 visuals on
25 paper. The other parties, of course, have the right to see what we see and then themselves go out into the field, or have their experts go out into the field holding up those acetates and wielding those pieces of paper. They actually need to be provided with each of the represented parties whose interested, and a couple of them might say they're not, and you can check with them. But

otherwise the represented parties at least need to be served copy. I hope Ms McIndoe's let you off the hook for one set. I don't know if Ms Parkinson wants a set of the visuals that the Court's going to take into the field tomorrow?

5

MS PARKINSON:

No, Sir, with our limited interest –

THE COURT: JUDGE NEWHOOK

Yes, I thought that's what you and Ms McIndoe would be saying.

10

UNKNOWN SPEAKER 14:30:10

And if you're a (inaudible 14:30:11) person Sir you might hear –

THE COURT: JUDGE NEWHOOK

You enquire it of Mr Enright but I don't think –

UNKNOWN SPEAKER (14:30:21)

15

I can assist Mr Enright.

THE COURT: JUDGE NEWHOOK

Just from his participation I don't think he'd be interested.

MR ALLAN:

20

I know there's some expense associated with producing these sorts of images so what I could suggest is if one additional copy were made, if that could be passed to me I could arrange a quick meeting with Stephen Brown just to work through them and then I could pass them on directly to Mr Littlejohn who may want to spend a bit more time with them, with his witness.

THE COURT: JUDGE NEWHOOK

25

He and his expert witness and there maybe one or two of the individuals that he represents who might also want to look over his expert's shoulder.

MR R BRABANT:

Mr Allan is being very kind but I take the point of Commissioner Howie and I think that I should make a copy available to the counsel who called what evidence from the landscape architect, that seems to me to be the right
5 approach so I should give one to Mr Allan.

THE COURT: JUDGE NEWHOOK

I think that's a very proper offer.

MR LITTLEJOHN:

It does bring into focus what happens from hereon in because we've got one
10 last day on Friday, I think it's unlikely that the other parties experts are going to be able to get over and look at those things. It starts to look like it's an adjournment after the reply to see if parties want to lodge any further comment on it, I'm loathe to say the "A" word and suggest that this thing go on longer but if we're going to be given the benefit of this information with an
15 opportunity to potentially comment on it then it needs to be a reasonably practicable one. I'm just raising it Sir, I don't have an answer to it.

THE COURT: JUDGE NEWHOOK

Well I think I do, which I hope doesn't surprise you too much and that is that I would be loathe to adjourn the delivery of the reply to you on Friday. I'm off to
20 Christchurch for four weeks hearing next week. I've got a very busy book from here for quite a while and we need to keep some momentum going in this, unfortunately, aged case. So my suggestion is we should proceed to deal with the reply on Friday but that if either you or Mr Allan's clients and landscape witnesses have any concerns about the materials coming from
25 Buildmedia tomorrow and in particular if they haven't been able to go into the field but want to, and Ms Gilbert might well, then counsel can flag that to the Court as early as possible in writing, say some time next week or even the week after because we're certainly not going to be embarking on writing the decision next week, I'm hearing another case. We'll leave it like that I think.

MR R BRABANT:

The information I have says that I can get these copies to my friend tonight and I do, with the greatest respect, point out that this information was known to my friend on Monday, we weren't told. It didn't emerge until the witness got
5 in the witness box and maybe it's going to be necessary for Ms Gilbert to try and look at the –

THE COURT: JUDGE NEWHOOK

I'm not going to start letting people examine the motes in each other's eyes. Too much has happened in this case that has caused problems and so I'm not
10 going to go down that route right now Mr Brabant we're going to do the best we can with it which it has been, you'll have observed, my entire approach this week, I hope, out of an abundance of fairness. I think we'll just leave it there. If we get dragged back here in a week or two for an hours' discussion about this landscape issue or methodology issue I won't be happy because we've
15 been trying to sort landscape witnesses and their methodology out for years now but we'll do it if we have to and what's more I'll hot tub them. Tell them. That would be the quickest way through it. Now, let's confer about the site inspection.

20 FURTHER DISCUSSION ON SITE INSPECTION

COURT ADJOURNS: 2.42 PM

25

30

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THE COURT: JUDGE NEWHOOK

A small matter of housekeeping before we get underway with your submissions, and it relates to the visuals. Thank you Buildmedia, particularly, Mr Brabant, for producing those extra materials that we took into the field, we
5 made liberal use of them. Interestingly, what we found with the acetates for those viewpoints that had been debated in front of Mr Pryor and Ms Gilbert was that a couple of them seemed to be quite good to work with albeit that we placed slight question marks over the viewing distance from the eye, in terms of the millimetres. It seemed to be up to 100 millimetres out, possibly, but
10 more worryingly, there were two acetates for viewpoints that still seem to have problems of the sort that Ms Gilbert described, concerning the printed visuals and they were the viewpoints from the north wharf, looking north and northwest and the viewpoint from the Alexander residence. And the visual effect in those appeared to involve a stretching, a horizontal stretching and a
15 flattening, particularly when you looked at objects like the red shed and the houses and so we were uncertain about why that would still be after Mr Johnson's careful assurances to us when he came to see it on the last day here. I don't feel the need to explore the issue further. I don't think any point would be served by hot tubbing the witnesses, as I threatened. At the end of
20 the day the visuals are only visual aids and the Environment Court says that repeatedly in its decisions, and that's why it's so critical, in landscape cases particularly, to go into the field and work with what we have but take it in for ourselves. So we had lengthy discussions amongst ourselves using the materials and I thought I would just put into the record those impressions that
25 we gained of the visuals vis a vis viewing with the naked eye.

MR R BRABANT:

I must say and I've dealt with these for a while now, I don't remember how long, but I've never had the acetones before and when Gareth dropped them off to me the other night he said you could actually move it until the
30 photograph behind matched the actual view.

THE COURT: JUDGE NEWHOOK

That is actually a very interesting thing to do. I've not had that experience, either.

5 MR R BRABANT:

I must say I found it – I was sort of asking myself why have we never had these before. I don't know whether you found the same because holding up and then looking around as opposed –

THE COURT: JUDGE NEWHOOK

10 Technology keeps moving although acetate isn't a new medium – but, anyway, it's the first time we've had that experience, too. However, I just put into the record that two of them still seem to have problems of stretching and flattening of objects and I'm not quite sure why that would be, there's maybe still a depth of field issue in there or reproduction of something but let's not
15 spend time on it. We need to get in your submissions.

MR R BRABANT:

But some time on it would be usefully spent in the future in another workshop and I'm sure all the people who do this work would benefit.

THE COURT: JUDGE NEWHOOK

20 Well, the decision, when it arrives, will probably have some commentary about the NZILA guidelines and how they're working, or not, in terms of what we had here because this has involved a heavy use of them and of visual materials.

MR R BRABANT:

But otherwise you had a nice fine day to go over.

25 THE COURT: JUDGE NEWHOOK

Well it was the best day of the whole winter. It was a good day in the field and it was fully utilised. One thing I should add. We did a little extra that I need to tell the parties about. We decided to go back over to Kennedy Point on the

subject of breakwaters, rock breakwaters. We remembered that we'd seen the rock breakwater surrounding the ferry terminal there, on our previous visit, and because the rock breakwaters were a fairly significant part of the visual materials that we were utilising yesterday we wanted to refresh our memory of that one for whatever comparisons it might offer and one has to be careful about that, of course, I'll say that for the record. But we did go back over and see that breakwater. By the time we decided to do that it was mid-tide, so the tide was probably about a metre up on the face of the Kennedy Point breakwater but we just want the parties to know that we went there, too.

10 **MR R BRABANT:**

Sir, the submission is accompanied by some material and I'll be corrected if I miss something out here but my co-counsel's done a further revision of the consent conditions to bring in the matters that have been raised. We've got an update of the mooring arrangement, Sir, by Mr Leman, to bring into account that different berthing arrangement that Mr Wardale told you about. There is a definition here, Sir, of what building means in Hauraki Gulf protection plan. That deals with the question of the footing and there is the recent decision of the Environment Court in *Saddleview*, Sir, which I think has already been referred to by others but is certainly referred to in my submission because it brings together the authorities in relation to two issues. And what we've done is just the extracts out of it, Sir. I hope that's satisfactory, otherwise you get pages of material that's specific to the particular proposal rather than the matters of principal. Sir, you'll notice that there's a contents on the inside, it's two-sided. I'll pass that by and start.

25 **CLOSING SUBMISSIONS**

"The proposed marina ... activity in question."

THE COURT: JUDGE NEWHOOK

Now before you move to the next topic, Mr Brabant, I want to ask you a couple of questions. You haven't mentioned that promulgation of the proposed Unitary Plan in this submission and you haven't mentioned that which I asked you about a couple of days ago – the dates on which the deck

arrangement for parking was first introduced, let alone when its modified form was introduced. The proposed Unitary Plan rates marinas as non-complying.

MR R BRABANT:

Yes.

5 **THE COURT: JUDGE NEWHOOK**

Are you effectively unbundling when you say that the deck which does come into the CMA and must be governed by the proposed Unitary Plan was introduced after the Unitary Plan was promulgated?

MR R BRABANT:

10 It was, yes, Sir.

THE COURT: JUDGE NEWHOOK

Now other counsel addressed the Court on the impacts of that and submitted that Section 88(a) came into play and essentially brought non-complying activity status back into the frame. What have you got to say about that?

15 **MR R BRABANT:**

Well, Sir, my answer to that, Sir, and I understand the point, is that the consent that's required for this deck is a consent under – so what she's listed there, Sir, in her (b) and I acknowledge this, is she said that a marina structure consent – in her paragraph 11, Sir, she gives the opinion that the parking deck and viewing platform are encompassed with the definition of a marina as opposed to being a marine import facility discretionary activity as is Mr Dunn's view. But I had considered, Sir, that what's required for the parking deck is a discretionary consent in respect of other structures under the rules she quotes at the top of – at the top of the next page she quotes a rule there and I guess
20
25 what I'm saying, Sir –

THE COURT: JUDGE NEWHOOK

What does that rule say?

MR R BRABANT:

“Construction occupation and use,” and she says, “of the viewing platform.” But you’ll see there’s a disagreement, Sir. Mr Dunn – and I join his view – takes the view that the parking deck is not included under the umbrella of a marina. Its effects may overlap when you’re considering – I guess that’s the simple point, Sir. I mean the position that the parking deck needs a marina rule consent is not accepted by WML and you’ll need to make a determination about that. And so I don’t take issue with the dates and the impact but what I’m – well, I guess, my submission is resting on, Sir, that the marina itself, and the structures as part of the marina require non-complying consent under the new plan but not the parking deck although, as an overall consideration there’s obviously an interplay and that’s accepted. But it gets back to my point about how you deal with (inaudible – 10:25:28).

THE COURT: JUDGE NEWHOOK

15 It’s not about scope, it’s about the operation of Section 88(a).

MR R BRABANT:

Yes, exactly, Sir.

THE COURT: JUDGE NEWHOOK

Which contains a shield as I see it.

20 **MR R BRABANT:**

Yes.

THE COURT: JUDGE NEWHOOK

And it’s a question of whether, by introducing the deck after the Unitary Plan was introduced you stepped away from the protection of the shield –

25 **MR R BRABANT:**

Yes. And this relates back to whether you – when you’re looking at marina structures and the rule, the old rule and the new rule, whether the parking

deck is in that umbrella or is separately consented on a discretionary basis and obviously, Sir, the argument that I've presented rests on that position.

THE COURT: JUDGE NEWHOOK

Yes. Thank you for that clarification.

5 CLOSING SUBMISSIONS CONTINUE

"If the Court ... cannot be passed." And I would imagine, Sir, that with your and the Court's knowledge of marinas, I mean, it's not a surprise where you have changes and I'm not going to address some of the evidence about that, I just indicate that acknowledgement.

10 THE COURT: JUDGE NEWHOOK

You're acknowledging Mr Pryor's own evidence-in-chief.

MR R BRABANT:

And this other element, Sir, that you could have regard to if you wished. But we submit, Sir, that the second gateway test is passed.

15 CLOSING SUBMISSIONS CONTINUE

"Objectives and policies ... the Auckland region."

MR R BRABANT:

And I might say, Sir, you may be aware, because it's an area of which you've had concern for many years that this has been a thorny issue for the
20 Northland Regional council as well.

CLOSING SUBMISSIONS CONTINUE

"Chapter 23 marinas ...assessment is done."

MR R BRABANT:

And I refer, Sir, to the recent discussion of the case law in the *Saddleview*
25 decision. It picks up both the Ngāti Kahu Court of Appeal, Sir, to do with the Carrington Estate and of course *Hawthorne* and what was said, specifically,

about this by the Court of Appeal in the *Hawthorne* judgment. And this is where there are clear objectives and policies, Sir, as you will no doubt recall.

CLOSING SUBMISSIONS CONTINUE

“The objective, which ... and function facilities.”

5 **MR R BRABANT:**

So my submission is, Sir, that if you look at what *Hawthorne* invites and indeed says is needed to be done in terms of looking at the future environment where there are clear objectives and policies then that becomes an appropriate part of the environment.

10 **CLOSING SUBMISSIONS CONTINUE**

“Landscape and natural ... enable and encourage.”

THE COURT: JUDGE NEWHOOK

Mr Brabant, I'm just trying to get my head around your paragraph 34 in which you say that – you're quite critical, strongly critical of Ms Gilbert's evidence.
15 You say that it was romanticised – and we'll let that terminology pass, I'm not going to quiz you about that. You say that, your footnote 22, and you said this as an oral aside, is effectively drawn from caselaw – was that the effect – you said that your footnote was effectively referring to caselaw.

MR R BRABANT:

20 No, no, Sir. I didn't. If I did –

THE COURT: JUDGE NEWHOOK

Well I'll need to be clear about this because it doesn't reference any.

MR R BRABANT:

25 In our submission we say that the matters, and we've tried to give some details, Sir, which we say she doesn't give, as my submission says, or she downplays those aspects of the Matiatia Bay experience. And it's not meant

to be a reference to caselaw at all, it's meant to be the matters which – well, these contextual matters, I'll read the footnote, Sir –

THE COURT: JUDGE NEWHOOK

No, no – I've read it.

5 MR R BRABANT:

It's not meant to be a caselaw reference, Sir.

THE COURT: JUDGE NEWHOOK

Okay. I wanted to be very clear about that because, you see, one of the strongly competing in this case that we are needing to grapple with is that one
10 party says – and I'm just going to identify the two competing parties in my attempt to be succinct – one party says that there are components of this bay that are quite strong and natural and they draw on the evidence of Ms Gilbert. Other parties, like your client and his landscape architect, Mr Pryor, earlier this week made much of, for instance, standing on the north wharf and looking
15 northwards into the bay where the cleaning grids are, and ignoring – he was critical about ignoring the wharf infrastructure that was behind the viewer. So the competition, I suppose, is between one party that asserts that there are strongly natural parts of the bay in particular viewed from certain places and certain directions and another party that effectively says that because there's
20 a wharf and ferries at the head of the bay that significant parts of the rest of the bay could be the subject of, be it described as urban type development or built type development. There was a mild debate between landscape witnesses this week about that. So that's what we're having to grapple with and so I wanted to know if you were endeavouring to advise the Court that the
25 position that your client adopts is I hope reasonably summarised by me is grounded in caselaw because I thought I heard you say that.

MR R BRABANT:

No. And if I may, Sir, I think, as a submission, this is a submission from us, Sir, that we would say, Sir, that what Mr Pryor was saying about that view
30 from the wharf, looking north or for that matter looking more west, is one that

takes into account, from his perspective, not just the view shaft of him looking but the experiential that what the landscape witnesses refer to experiential value. So you're standing in an environment and you're aware of an environment so when you're looking it has those experiential values entering
5 into your overall perception. And I think I'm right in saying that he referenced those in his evidence –

THE COURT: JUDGE NEWHOOK

Well, we know what he said. He was quite clear about it.

MR R BRABANT:

10 And the other thing, Sir, is of course you can stand on the old wharf, as it's been described, look north across the boats that you can see there to that foreshore, if you like, into that northern bay and that's one view. But another, and an equally important view is to stand over the other side of the bay and look back. So I guess what we're saying, Sir, is you can – this is the question
15 of whether or not there's an over focus on any particular views rather than taking a more overall approach.

THE COURT: JUDGE NEWHOOK

You appear to have come pretty much to the end of the landscape aspect and you're moving to other topics. You haven't addressed cumulative effects in
20 the submission?

MR R BRABANT:

Not specifically, Sir.

THE COURT: JUDGE NEWHOOK

Cumulative effects springs, you'll acknowledge I'm sure, from the discussion
25 that you and I have just had.

MR R BRABANT:

Yes, Sir.

THE COURT: JUDGE NEWHOOK

With the two competing positions.

MR R BRABANT:

Not in this reply, Sir. And I guess – and I’m just working from memory here
5 but we’ve spent a fair bit of time preparing this also errors can be made – we
hadn't perceived, Sir, that there were any submissions from other parties that
we needed to reply to that jumped out at us in that regard and I’m not saying
that we don't accept, of course, that the Court is to take into account
cumulative effects as part of its task.

10 CLOSING SUBMISSIONS CONTINUE

“I submit that ... the revised design.”

MR R BRABANT:

I have drawn back, Sir, from any criticism of Mr Scott about the content of it
because I don't believe I need to say anything and I’m not going to, Sir. I
15 didn't ask him any questions but what I've said there will do. It's a question of
staying within your scope of your expertise.”

CLOSING SUBMISSIONS CONTINUE

“Traffic and transport ... matters are imposed.”

MR R BRABANT:

20 In my submission, Sir, that advice from the agency responsible for the road
and the management of it is an important consideration.

CLOSING SUBMISSIONS CONTINUE

“The carpark management ... discharges from boats.”

MR R BRABANT:

25 And I’m not talking here, Sir – and I should've made this clear, or we
should've, I guess – about a sewerage discharge or a bilge water discharge or
that kind of discharge but the one that got the most focus, Sir, which was the

antifouling issue. So we're saying that the complete avoidance of effects of that contaminant discharge, and maybe qualify that, because the others are prevented by condition is not required or realistic.

CLOSING SUBMISSIONS CONTINUE

5 "The receiving waters ... respect to antifouling."

THE COURT: JUDGE NEWHOOK

Mr Brabant, and I might just say for everybody's benefit, that during the course of the site inspection yesterday and passing around the head of the north part of the bay, near the grids, at medium tide, we were concerned to
10 note that, clearly, there had been cleaning and/or antifouling sanding operations conducted on those grids yesterday and the antifouling – pink antifouling – had been carried to two large bodies of water on the edge of the sand from those grids and we were just left wondering whether the Auckland Council is taking any notice at all of those old grids.

15 **MR R BRABANT:**

Well, Sir, yes – and to put responsibility where it first belonged, Sir, as to whether the people who utilise the grid, are taking any account of their responsibilities.

THE COURT: JUDGE NEWHOOK

20 Well, I think it's Auckland City Council's domain as the regulatory authority of that water. It's not something that, by speaking about it now, we're visiting on you because you're not proposing, your client's not proposing a grid –

MR R BRABANT:

No.

25 **THE COURT: JUDGE NEWHOOK**

But I'm just telling everybody what we observed yesterday and wondering what the Auckland Council's doing about those grids.

MR ALLAN:

It's proper that I indicate that I will take that up with council's enforcement in relation to that specific consent applying to the boat grid.

THE COURT: JUDGE NEWHOOK

5 Yes, that might be an appropriate thing, Mr Allan.

MR R BRABANT:

It is my understanding, Sir, that now, by now, where there are the remaining haul-out grids still remaining, and there are some, and you find more of them in the north, that the control is quite tight, or it's mean to be quite tight now,
10 what can be done.

THE COURT: JUDGE NEWHOOK

I'm a little bit familiar – not from having used it – on the corner of Westhaven, right in the south eastern corner of Westhaven, near the drive stack, and I think that's fairly tightly controlled. But the one at Matiatia's not.

MR R BRABANT:

15 Well obviously there may be people in the room, Sir, who are more familiar with it and its use than I am, who will no doubt hear what we've said.

THE COURT: JUDGE NEWHOOK

I don't think what I've just said has particular relevance to this hearing but
20 people may be interested to know what we observed.

CLOSING SUBMISSIONS CONTINUE

"The supplementary submissions ... require best practice."

THE COURT: JUDGE NEWHOOK

Just pause for a moment again, please. 49(b), back on page 13, you've
25 inserted the quote marks around the word "may" have you, or did they?

MR R BRABANT:

Yes.

THE COURT: JUDGE NEWHOOK

Counsel has?

MR R BRABANT:

Correct, Sir. Maybe it should've been underlined.

5 THE COURT: JUDGE NEWHOOK

Well, maybe it should've been, I'm not going to be pedantic about that. What I am going to ask you about is as to whether you would accept that that statement – and I'll read it again – “Adverse effects on (inaudible – 10:57:39) and sediment within the marina may become more than minor after
10 approximately five to 10 years.” Is simply the way in which predictions about potential effects on the environment are often phrased – because they are just that. They are predictions of potential effects and therefore it's appropriate to use the word “may”. I'm putting it to you that it's not appropriate for you to downplay that statement by the experts by suggesting that, for instance, it
15 might not be likely or it might be less than likely to happen. This is just potential effect terminology.

MR R BRABANT:

I agree, Sir, that it would be appropriate, and if I can ask you, Sir, would you like to please cross out “*may*” and just put an ordinary ‘may’ in.

20 THE COURT: JUDGE NEWHOOK

I think that's appropriate, yes.

MR R BRABANT:

I agree, I agree, Sir. I mean, this has the elements of adaptive management in an area where new technology is enabling the experts to see the pathway
25 forward as to where these longstanding effects that are an inevitable consequence of moored boats in the water can be actually managed much better.

THE COURT: JUDGE NEWHOOK

Well I will say that one of the things that we're grappling with in this particular area is that the problem of contaminants from antifouling is not confined to existing or proposed marinas. There are boats and there are ships and there are other objects that receive antifouling. It just strikes me that it's a national problem that required to be addressed on a national basis and that manifestations in terms of existing marinas, existing floating moored boats, shipping, (inaudible – 10:59:43) the whole nine yards, are individual manifestations of a national problem and I guess that's the context in which we have to decide whether we would say 'no' to this proposed marina on account of that problem, even if the experts say that, potentially, it could rise to become a more than minor problem. And then again, of course, we've got to take each individual effect on the environment, weigh it, and build it into the mix and the ultimate discretion. So those are the things that are going through our minds – we don't know which way we're going, I'm just saying this for the benefit of the parties that have been particularly concerned about this issue.

MR R BRABANT:

I remember when you no longer put paint with PPT or – and we all knew that the ships were still coming in and out and everywhere else with it on. I think my recollection is correct, Sir, that Mr Cameron, who's the council's expert in this area, was seeing what we've put in here as being leading the way in terms of new controls via marina opportunities for trying to do something about this issue.

THE COURT: JUDGE NEWHOOK

I think it came in after some slightly acerbic comments by us, Mr Brabant, because you were heard to say that this was something that couldn't be controlled pursuant to conditions of consent and therefore your hands were tied.

MR R BRABANT:

Well, no, Sir, I was –

THE COURT: JUDGE NEWHOOK

That's how I thought it arose.

5 **MR R BRABANT:**

With respect, Sir, my concern has always been that the ultimate responsibility for unlawful discharges rests with the boat owner and that what must happen and that's why we've reached a common ground here, Sir, is –

THE COURT: JUDGE NEWHOOK

10 That's not the entirety of what was said at the time, Mr Brabant.

MR R BRABANT:

The marina people, Sir, have a very high standard placed on them to see that that happens.

15 **THE COURT: JUDGE NEWHOOK**

Anyway, you've offered revised conditions of consent in answer, I put it to you, to my criticism of the totality of what you said on the subject at that time, not just the bit you've picked now.

MR R BRABANT:

20 This process, Sir, has been committed to from the outset, this marina. The use of antifouling products incorporating the (inaudible – 11:02:04), Diuron, and there's some reference to why that was picked out, Sir, and it was picked out, as you may recall because the national agency has already signalled Diuron is to be phased out so this marina proposal, if it's consented, is
25 anticipating that and saying none from the day we open. And low copper formulation or low copper release antifouling paint will be required by the marina rules. And I've just given a note, there – someone again, Sir, and it may have been Ms Parkinson, says, "Well how can that be done?" And I just

note, and this may be familiar to you as a technique, a certification from the antifouling applicator before a new antifouled boat returns to the marina is straightforward. So I see a certification process would be a requirement so the applicator would provide a certificate and specify the paint that was used
5 before a boat is allowed back in, after antifouling. So there are some methods.

THE COURT: JUDGE NEWHOOK

Just take me to the conditions of consent on this subject, please.

MR R BRABANT:

10 15 – marina rules?

THE COURT: JUDGE NEWHOOK

I'm looking to see whether, during the various iterations of these, there's been any prohibition on the cleaning off of boats by divers in the marina – has that ever come into the frame? I don't recall there is and there are people at the
15 back of the room who I think are fairly familiar with this aspect who are shaking their heads because they don't believe it's covered. It's certainly occurred to me as a marina myself that some people have their boats cleaned off by a diver and that there's a lot of cloudy antifouling substance and sediment in addition to the fouling goes into the water. It might be that here's
20 another step forward if we consent the marina that there might a prohibition in the conditions of consent and the marina rules and that might be quite a mitigation in relation to other existing marinas in the country. I'm just stressing – if we grant consent to the marina.

MR R BRABANT:

25 Yes, Sir, there is, in condition 32, my co-counsel's putting out, Sir, provision there about the development of a bio-security management plan including expectations on users of the marina as to frequency extent and location of hull cleaning activities but that, on the face of it, could indicate an opportunity –

THE COURT: JUDGE NEWHOOK

That would appear to accept that it could occur.

MR R BRABANT:

- 5 Yes, and it would seem to me, Sir, with respect, that the better way to deal with it is to put it straight into the marina rules, along with the other provisions which states that no –

THE COURT: JUDGE NEWHOOK

In the conditions of consent.

10 MR R BRABANT:

- No cleaning of boat hulls should be undertaken in the marina and as you'll appreciate, Sir, this marina is actually – is an island marina – we haven't had one before in Auckland – actually quite close to the Half Moon Bay facility so it's not a difficulty –

15 THE COURT: JUDGE NEWHOOK

Right next door to a re-vamped grid. Sorry, I'm being facetious, now.

MR R BRABANT:

- Yes, Sir, that's another issue though isn't it, Sir, that needs to be (inaudible – 11:06:07). So there is, Sir, to be under (ii) (a)(ii) under 36, a rule which
20 addresses restrictions on boat maintenance and repairs undertaken within the marina. So that, Sir, can simply be refined or added to further including a prohibition on in-water hull cleaning, I suggest would be the words, Sir, and I've had confirmation that would be fine.

THE COURT: JUDGE NEWHOOK

- 25 Well, if consent is forthcoming to the marina this would be something that we would be focusing on because I think it's a fairly obvious kind of mitigation and quite a major mitigation of itself in comparison to what one sees in existing marinas.

MR R BRABANT:

I don't have a boat anymore but I do understand that the ability to clean or not has come and gone in the Auckland area. At one stage –

THE COURT: JUDGE NEWHOOK

5 I know it's still happening.

MR R BRABANT:

Yes, and I seem to remember Mr Wardale telling me that there's now been an acceptance it can be done whereas I thought that there'd been some move to prevent it being done. Anyway, Sir, dealing directly with this and moving on, a
10 condition to that effect, if consent were granted, is certainly not challenged. And it's consistent, Sir, with everything that's been written about this topic, anyway, and the rules and provisions that have already been offered so I agree with you, Sir, respectfully.

CLOSING SUBMISSIONS CONTINUE

15 "Turning to conditions ... no evidential support."

THE COURT: JUDGE NEWHOOK

By "evidential support" do you mean physical manifestation of an archaeological sort?

MR R BRABANT:

20 I'm saying, Sir, it goes beyond assertion.

THE COURT: JUDGE NEWHOOK

Well, we'll be thinking carefully about what is assertion or what is a recitation of cultural knowledge – and I stress the word "cultural" – beyond the sense of physical manifestation and ascertainment by archaeological means.

25 **MR R BRABANT:**

And there is, Sir, some information about whether there were battles and where they might've taken place that you'll no doubt look at, Sir.

CLOSING SUBMISSIONS CONTINUE

“The proposal and ... piles and breakwaters.”

MR R BRABANT:

I just checked with my co-counsel, Sir. One of the new documents that we've
5 handed up and you've made reference to it before is one that actually tells you
the exact number and location of the piles of the revised design. Sorry,
they're not numbered, Sir, but they're identified and they're the dark dots on
the plan.

THE COURT: JUDGE NEWHOOK

10 While your co-counsel is doing that, Mr Brabant, I am going to say this – that
taking in documents like this, on the hoof, when evidence has closed despite
the fact that there was some discussion in evidence of it this week and really
only as a result of questions from the Court – but what we've seen in the
visualisations – carries with it difficulties that there aren't exhibit numbers,
15 although we can overcome that, on the hoof, I suppose but, equally, that
there's been no discussion of it by witnesses, really, other than your folk. It's
not terribly satisfactory to have this continuing moveable feast of plans and I
anticipated that we would get this, you said they were going to come because
of my criticism of lack of engineering drawings or conceptual drawings
20 showing the position of piles as now asserted by Mr Wardale out of
Queensland model or something.

MR R BRABANT:

To be fair, Sir, and I understand on instructions, this information, unbeknown
to me, Sir, but I'm not trying to protect myself, I'm ultimately respondent, was
25 provided to Buildmedia and of course the piles went in and so, Sir, it is a
problem and I can only regret that there's a problem and if I'd been and I just
say I should've been better informed, Sir, I would've made sure that these
plans went through as part of Mr Leman's supplementary evidence because
where they should be.

THE COURT: JUDGE NEWHOOK

At this stage I don't know whether a great deal turns on it as to whether the marina is consent-able or not. But there is an aspect that is troubling and
5 comes close to that quality out of numbers of piles that are visible, particularly in the view from the north wharf. Again, I say – moveable feast – difficult to nail this thing down at times.

MR R BRABANT:

Yes. Well I think Mr Wardale did give unequivocal evidence, Sir, that that
10 nearest finger to the wharf hit a new methodology on it with a different number of piles which you can see in the visual and that information should've been made clear in Mr Leman's evidence.

THE COURT: JUDGE NEWHOOK

Well I've said enough about my concerns about this. I am going to assign
15 them an exhibit number by consent of the parties who are present unless somebody's leapt to their feet – I haven't observed anybody doing that just yet. So the plan, the overall plan titled “Indicative Pile Locations Reduced Marina Layout” will be exhibit 11.

20 **EXHIBIT 11 PRODUCED BY CONSENT – INDICATIVE PILE LOCATIONS
REDUCED MARINA LAYOUT
EXHIBIT 12 PRODUCED BY CONSENT – TYPICAL BERTHING LAYOUT
AND ALTERNATIVE BERTHING LAYOUT PLAN**

MR R BRABANT:

25 Obviously that plan formed the basis for being able to write a submission that indicates the number of vessels and then the associated piles and breakwater so you can actually see how many and where they are and the submission is that the scale of disturbance to the seabed, from the revised marina, is, in our submission, less than minor.

30

CLOSING SUBMISSIONS CONTINUE

“In the context ... much wider areas.”

MR R BRABANT:

And there is a reference to an Environment Court decision.

5 THE COURT: JUDGE NEWHOOK

I think we stated it in a rather more careful way than that, Mr Brabant. That was my division that issued that decision.

MR R BRABANT:

I’m aware of that, Sir.

10 THE COURT: JUDGE NEWHOOK

And there was a good deal more to it than your simply three lines, as recorded here. But, anyway, I’m fully familiar with that decision, having written it.

CLOSING SUBMISSIONS CONTINUE

“Navigation safety. Following ... a discretionary activity.”

15 MR R BRABANT:

And I've attached, Sir, a copy of the definition of building in the Hauraki Gulf Islands Plan. Because building – this traditional definition is termed “building” but it’s like defining everything down to a dinghy as a ship. It can be misleading because when you look at these definitions, and they’re a carryover from the past, they actually talk about structures, including buildings, so they get right down to retaining walls and all sorts of things. The landward component, in fact, Sir, of this revised parking deck, which is a footing and small section of railing, Mr Dunn spoke about this specifically, comes within this definition.

25 CLOSING SUBMISSIONS CONTINUE

“Carparking on the ... the *Hawthorne* case.”

MR R BRABANT ADDRESSES THE COURT**THE COURT: JUDGE NEWHOOK**

You said you'd probably stay until half past – that's entirely up to you. We're very comfortable being left in the hands of your co-counsel, your very
5 competent co-counsel, and happy to have him take over the delivery of the submissions from the heading, "Conditions and Plans" – and then you're at liberty to stay or go. When these reply submissions are finished I'm going to talk, generally, to the parties about where to from here and I've no doubt that that will be of interest to you but your co-counsel can relate that to you if it
10 occurs after you've had to leave us.

MR R BRABANT:

It will be of interest to me, Sir, undoubtedly, considering the time and effort that's been involved in this and if it weren't for an unexpected expansion of what we all confidently assume would be two and a half to three days – and
15 there have been reasons for that – I would stay, Sir –

THE COURT: JUDGE NEWHOOK

I might say, just in case anybody's waking up and raising their antennae needlessly, we are not going to be announcing the decision on the case after we've heard the decisions in reply but I'll be talking with you about the timing
20 of that.

MR R BRABANT:

So, Sir, maybe if it's acceptable, if I get to this point, the part that I have addressed you on, Sir, can I ask if there are any further matters that I need to respond to? You've asked me some matters –

25 THE COURT: JUDGE NEWHOOK

Yes, that's a reasonable request. I've badgered you as you've gone along on what I think are some quite important matters. Commissioner Leijnen, do you have questions in relation to matters addressed thus far?

THE COURT: COMMISSIONER LEINJEN

No, only in relation to exhibit 11, so I understand it properly. I think I do –

MR R BRABANT:

My co-counsel can deal with that.

5 **THE COURT: JUDGE NEWHOOK**

And Commissioner Howie?

THE COURT: COMMISSIONER HOWIE

Nothing from me, thank you, Sir.

THE COURT: JUDGE NEWHOOK

10 Well you can get away if you need to, Mr Brabant, and we'll no hear from your co-counsel.

MR J BRABANT:

There is nothing of particular note with the amendments to conditions but just to make sure you understand what changes have been made.

15 **THE COURT: JUDGE NEWHOOK**

Yes, that could be helpful, thank you.

MR J BRABANT:

So the IMC plans we've already had a bit of discussion about, they're referenced there in paragraph 67 of the submission and then you will recall,
20 Sir, that Ms Bremner was set some homework, a comparative exercise, and there were a few recommended changes which she identified. I spoke, Sir, with WML's planning consultant, Mr Dunn, about those, and also Mr Pointer and received assistance with what further changes, if any, were required and if you have a look at these dated 31 July 2015 the further changes are
25 highlighted in green, Sir. And so, paragraph 70 of the submissions, you'll see there's some sub-headings, Sir, in italics, and the first reference is to Condition 6 and that, Sir, is simply including a reference to the two plans

which you have just been provided with and you will see those there on page 2, in green. Now the next point, Sir, is Condition 8.5 and that condition is headed "Site Management". So, Ms Bremner identified, Sir, that clauses (b), (c) and (d) of former Condition 6.5 – and she was referring there, Sir, to of course, the land use consent conditions and they dealt with construction traffic management so she was identifying that they had not been included in the equivalent 8.4(a) CTM of the coastal consent. Now, an issue's arisen, Sir, unfortunate of course, we've had multiple versions, so it's difficult to track where things have gone. Those particular clauses – (b), (c), (d) are incorporated in Condition 8.5 as (c), (d) and (e) so as a result a change isn't necessitated by that. Ms Bremner then also identified that Clause (f) of Condition 8.5 did not refer to the adjacent boat ramp and historic reserve walkway. The boat ramp does receive a mention in Clause (f) of Condition 8.5 so we don't need a new condition there but there was not a reference to the historic reserve walkway and so that is the insertion you can see at 8.5 (f) in the green, a reference to the historic reserve walkway. Condition 10, and that is on, Sir, page 6 of these conditions. You will recall a discussion about under-deck services and questions from the Court about that – Condition 10(d), which relates to engineering plans and specifications for the parking deck structure now specifically references under-deck services and the need for those to be discreetly located with limited visibility from public viewpoints. Now the terminology in the proposed condition is largely hidden. It's a little bit problematic, I will concede, but the reason that terminology is used is because of the particular nature of the deck and the ability for someone to approach it – whether they're on a stand-up paddleboard or in a kayak or maybe they're walking on the shore when the tide's out, maybe even wading – if we were to say completely hidden from any public viewpoint it would make it very – well, it's probably not achievable unless you put a complete shield underneath the whole of the underside of the deck. So that's the reason for that terminology, Sir. Condition 10(b) on page 7 relates to the lighting plans and specifications and, in short, this condition has been moved to improve the legibility and work-ability of the conditions so it was previously sitting under Condition 33 as part of marina operations and, upon review, our submission is that it would more logically be brought forward to Condition 10(b) as part of a construction

condition so that, logically, it's upfront, along with other plans and there is a small consequential change to 33 – of course, that is now smaller and that condition simply requires installation and maintenance in accordance with the plan that is improved under 10(b). Page 10 and, to be helpful, it commences
5 on the previous page, on page 9. We've got Condition 15.2 which deals with the contents of the monitoring programme to be approved by council and you will recall you have heard submissions this morning with respect to ecological matters which identified the pH dissolved oxygen solidity temperature and dissolved organic carbon had been missed out and they have now been
10 added into (ii) at the top of page 10. On all other matters, I should add, if – and I don't know whether the Court will do this – but if you do undertake a comparative exercise between the recommended conditions of consent that the joint witnesses compared and this version unfortunately the layout adopted by the planning witnesses has changed things around but I've been
15 through them and those were the only matters that were missing. It's just it's not the most straightforward of a comparison, unfortunately. Condition 17D, on page 13, and that is just making clear that, for Penguin Boxes and Bows, it's not just a design exercise – they actually need to be constructed and installed post designing of said homes. And then Condition 26(a) – and I
20 recall this was a matter raised by my friend, Mr Enright, the archaeological inspection preconstruction, this is on page 15 of those draft conditions, there was no reference to Ngāti Paoa and that has been added in. And then, finally, Sir, Condition 35 on page 18 – and I should say on that page 18 you'll see Condition 33 has just got a green highlighting on Provision of Lighting.
25 You'll recall that was the condition where the plan aspects of it had been moved forward and all that's left there is the requirement to install and maintain. And you will see there, under 35, "Marina Management Plan" the reference to management of marina parking has been enlarged upon to make clear that a plan specifying short, medium and long-term parking spaces is
30 required.

THE COURT: COMMISSIONER LEIJNEN

Firstly, I didn't quite catch at the outset whether you said these amendments had been run by the council as well?

MR J BRABANT:

No, they had not been run by Auckland Council.

THE COURT: COMMISSIONER LEIJNEN

No, exhibit 11 – there’s solid black dots at the end of (inaudible – 11:35:28)
5 and then there’s hollow dots. What are the hollow dots, are they ones that
don't come above water?

MR J BRABANT:

If you look at the legend they’re described – well, firstly, they’re described as
an “intermediate pile” – now, if you're going to ask me what the difference is
10 from a physical perspective I may have to quickly ask Mr Wardale because I
do not know the answer to that off the top of my head, I’m sorry. So the
explanation is, physically they are the same, but the distinction is made
because they’re not structural.

THE COURT: JUDGE NEWHOOK

15 And that means, visually, they’re the same?

MR J BRABANT:

Yes, I understand, potentially, you could make them out of a different material
but, essentially, they look the same – correct – it’s just they’re not forming a
structural function.

20 **THE COURT: JUDGE NEWHOOK**

I think the plan gives us clarification it’s really on Pier A that's lost lots of piles?

MR J BRABANT:

That’s correct, Sir.

THE COURT: JUDGE NEWHOOK

25 The bigger piers B and C still retain finger-end piles and intermediate piles.
We have no further questions for you, Mr Brabant.

MR ALLAN:

I'm always loath to raise something about an applicant's right of reply, it's just a very small matter of accuracy which I just feel I should note in relation to
5 paragraph 6 where it states that a Section 87(f) report was prepared which recommended the grant of consent conditions. Small detail, but important. The original Section 87(f) report of course recommended refusal and that change in position emerged in evidence-in-chief so I thought I'd just note that as a small but relatively important point.

10 THE COURT: JUDGE NEWHOOK

So the approval emerged when?

MR ALLAN:

It was in the council's evidence-in-chief. I can refer to the –

MR J BRABANT:

15 I acknowledge that, Sir – my friend's quite right, so apologies, the passage of time meant that – that he is quite correct.

THE COURT: JUDGE NEWHOOK

I don't think a great deal will turn on it, it's more the substance that we're interested in but thank you for that. Now, we have reached the end of a very
20 long hearing. Over a very significant period of time, an unusually long period of time for a case like this, we've had nearly four weeks of hearing – nearly three last year and nearly one week this week and an enormous amount of material has been proffered to the Court during the course of those hearings. I think it's fair to say that the case has had a tortuous – and I'll even go so far
25 as to say tortured history. These factors mean that we're certainly not going to be able to give you an oral decision today and it also means that, unfortunately, you're not going to get one within days or even a short period of weeks and so, sadly, the anxieties as to the overall outcomes is going to remain for a while. I made quite deliberate reference to a tortuous and,
30 indeed, tortured history and I want to re-visit, briefly, the minute that we issued

just after the three weeks of hearing as long ago as October last year. Parties will, I think, quite clearly recall that we stated in that minute, as we had, orally, in Court on the last day, that there were aspects of the proposed marina that, by that stage of the hearing – that is, nearing conclusion – it had become quite clear to us as not consent-able and we listed a number of respects in addition to that which the applicant had started by changing on the previous day – that is, the removal of the carpark, in its entirety, at that point. So we listed a number of other things that we said troubled us and we didn't believe could be consented. We went out of way, however, in the minute, to record that we were not looking for compromise, we were not endeavouring to foster something else that might be consent-able because, frankly, we didn't know what else might be, or might not be consent-able, and I just want to remind everybody that we said that very deliberately. The applicant elected to make further changes in addition to the then complete removal of the carpark and those changes gradually emerged and we set new timetables for proposition for this further hearing. As we ran through that timetable and were all engaged in preparing for this further hearing it occurred to me that by this juncture, perhaps in comparison with the end of last year, members of the Court have a great deal more work on their plates. You might recall that, last October, before we got the bombshell of the removal of the carpark, we were saying that we had hoped that we would get your all a decision by Christmas 2014. I'm now saying to you that I think you're likely to get a decision before Christmas 2015 but I don't know quite how long before that it will be and I am very mindful of the fact that not only did I endeavour to set down this hearing for the previous week but was persuaded by the parties that another week was needed, so we settled on this week and that has pushed further into what has presently a crowded timetable for a number of us. And, as I started out, by saying we have an enormous amount of material to go back through and we will be doing that in the interests of doing our job thoroughly in what, for all of you, is an extremely important case. So we're not going to cut any corners in the interests of trying to get something out and into your hands fast. So please don't stand by your letterboxes in this cold and inclement weather for the next little while. The Court's general aim, as I think is stated on a website, is to endeavour to get decisions on moderately complex cases into the case of

parties within three months or less. This one is going to struggle to get it out to you by that timeframe but we will be doing our best. However, in particular, I go right off the radar for a number of weeks during that period of time so it's not easy. We might've been able to get something to you before I go off the radar in September if we had been able to have the hearing last week, but that wasn't possible. Anyway, there are the pressures that are on us so please breathe deeply, all of you, and be patient with us in the circumstances that I've just described and I stress that we are not, yet, ready to say whether we can consent this marina or not. Now, does anybody have any questions for us in relation to what I've just said? Mr Brabant?

MR J BRABANT:

Sorry – it's not in relation to that Sir – it was just one matter I thought I'd ask. When I speak with Buildmedia and give feedback, and I know in the eventual decision you'll make some comment but one of the principals of Buildmedia lives on the island and I'm sure he'll be interested in going himself to have a look. You mentioned viewpoint 10 looked a bit stretched but that, of course, is a private property, so he can't go there. I just didn't catch the other one –

THE COURT: JUDGE NEWHOOK

Unless he asks them nicely.

20 **MR J BRABANT:**

Unless he asks them, and maybe he could do that.

THE COURT: JUDGE NEWHOOK

Mr and Mrs Alexander strike me as nice people.

MR J BRABANT:

25 That's right, Sir, and I'll mention that to him. I just didn't catch what the other –

THE COURT: JUDGE NEWHOOK

He could say to them that I have commented that it might be useful, in the interests of the science of this kind of work that they do let him on.

MR J BRABANT:

5 And, sorry, Sir, the other –

THE COURT: JUDGE NEWHOOK

And the other one was the split views from the north wharf. Viewpoint 5, from memory. Are there any other questions before we rise? Well thank you all for bearing with us, thank you all for your interest. One further thing I suppose I
10 should say is these cases are never about a numbers game and so while I know that you have been interested and I do know that Gulf News had endeavoured to make sure plenty of people appear interested, at the end of the day we have to focus on the evidence and the law that's before us.

15 Thank you very much.

COURT ADJOURNS: 11.46 AM

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