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Event:	Mount Messenger Bypass Hearing	
Date:	16 August 2018 (Day Six)	
Before:	Mr S Daysh	- Hearings Commissioner
Witnesses:	Ms L Adams	- DOC: Herpetofauna
	Mr Amos White	- Te Korowai Chairman
	Mr W White	- Te Korowai: Herpetofauna
	Mr W Simpson	- Te Korowai: Bats
	Mr Allen White	- Te Korowai: Invertebrates
	Mr G Carlyon	- Te Korowai: Planning
Counsel:	Mr D Allen	- NZ Transport Agency
	Mr T Ryan	- NZ Transport Agency
	Ms S Ongley	- Department of Conservation
	Mr T Hovell	- Te Rūnanga o Ngāti Tama
	Mr R Enright	- Te Korowai Tiaki o te Hauāuru
Also present:	Mr P McKay	- Hearing manager
	Ms R McBeth	- Reporting officer, New Plymouth District Council
	Ms K Hooper	- Reporting officer, Taranaki Regional Council
	Mr J Winchester	- Advisor

THE COMMISSIONER: Kia ora koutou and welcome everyone again.

The first business for today is to address the application by NZTA for an adjournment process, which I received yesterday. Mr Allen, can you take us through that and we will go through what you are proposing?

MR ALLEN: Thank you, sir.

The reasons for the adjournment are set out succinctly in paragraphs 1 to 3. They are that last week there was the evidence on behalf of the Department of Conservation; following from that, there was also evidence from Ngāti Tama, further evidence; and a productive meeting all of last Friday following on from a number of meetings last week with the councils and Mr Roan --

THE COMMISSIONER: If I can just interrupt you, Mr Allen, you are talking about evidence. Is that evidence or conditions?

MR ALLEN: It was conditions. That was discussions directly between the councils and NZTA on condition drafting.

THE COMMISSIONER: Not evidence per se?

MR ALLEN: No.

THE COMMISSIONER: It was conditions?

MR ALLEN: Solely on condition wording, et cetera. Those discussions were productive. The outcome of the DOC, the Ngāti Tama and the discussions with the council is that the agency would like some extra time to develop some changes to both the conditions and to the ELMP to address some of the issues that have arisen and therefore a proposed framework and timetable is set out.

THE COMMISSIONER: Yes, okay. Thank you.

Would anyone else like to speak to the proposal? Ms Ongley, do you have any comments?

MS ONGLEY: Yes. DOC welcomes the adjournment. DOC supports the application for an adjournment. I will discuss with Mr Allen at some stage the timing that DOC has been allocated to discuss matters during the adjournment, but that is more between counsel. The times stated here in the memorandum are entirely acceptable.

THE COMMISSIONER: Thank you. Mr Hovell?

MR HOVELL: I'll come to the lectern.

THE COMMISSIONER: Yes. Thank you.

MR HOVELL: Yes, thank you, sir. Te Rūnanga o Ngāti Tama supports the adjournment as well.

On the back of that request for the adjournment, I think there was an email request that was sent through to the hearing manager yesterday seeking some extra time for the rūnanga within which to respond the Poutama submission, that it had the right to reply to. The reason for that is essentially that the Poutama submission involved expert evidence. The rūnanga would like to consider the opportunity to have expert evidence, or an expert witness to consider that themselves and potentially reply in that nature. We would like extra time to do that. What they would be seeking is, within the period of the adjournment, to potentially lodge something and then address that when the hearing recommences.

THE COMMISSIONER: Sure. I think as I said last time we were here, I am willing to look at flexible processes to enable everyone to have a fair hearing. I think with the new Poutama evidence particularly, the piece from - is it Mr Stirling - obviously there is some new information there so I will certainly consider that favourably. Thank you.

MR HOVELL: Thank you.

THE COMMISSIONER: You will not be talking to us today? You will listen in and --

MR HOVELL: No. So, if that option is granted, then we would not need to address it today. We will leave it until that time.

THE COMMISSIONER: Yes. I think I will allow that so I will confirm that in writing as part of our response to this.

MR HOVELL: Thank you, Commissioner.

THE COMMISSIONER: Is Mr Enright here? No? Would anyone else like to address the proposal for the adjournment? Mr Harwood?

MR HARWOOD: The council welcomes the adjournment as well.

THE COMMISSIONER: Thank you.

There is one matter of process, Mr Allen, that I have thought about, in your procedure. In your 5(c), you are proposing to file updated conditions and any expert evidence explaining those updates. I think it would be appropriate to have that enshrined around some evidence in terms of actually explaining the background.

I do think that, under you 5(d), it would be fair and appropriate to permit any submitter to file any additional expert evidence in relation to NZTA's new condition proposal, not just DOC and Ngāti Tama. Do you agree with that? Or do you ...?

MR ALLEN: That is fine to the degree in terms of that was expert evidence and they are the only parties with experts. But to the degree there is planning evidence, for example from Mr Carlyon, that is acceptable.

THE COMMISSIONER: Yes. I am thinking, obviously, about fair process and natural justice. For submitters - if there is some

new evidence from the applicant - for anyone to file additional expert evidence. I am likely to do that.

I have looked at my diary. Monday 8 October is a good option for me, so it was well anticipated.

The other matter I wanted to cover before we getting started is your 5(a). So what is left for us today, to confirm what is left on the table, Ms Ongley, are you going to present some information to me this morning?

MS ONGLEY: Yes. It will be a more streamlined, given that I anticipated that you may grant the adjournment.

THE COMMISSIONER: I had anticipated that, so that is good.

I do not think Mr Enright is here but I see Mr Carlyon lurking behind counsel there. What I am thinking there, Mr Carlyon, is, is Mr Enright due shortly or is he en train?

MR CARLYON: I expect him any minute, sir.

THE COMMISSIONER: All right. Can I signal that I have only received his submissions this morning and I have tried to have a

read on my phone over breakfast, but I have not actually managed to read those submissions, so I will that a short adjournment, before Te Korowai does their presentation, to read that. There is also an additional brief of evidence, I think. We will take an adjournment after the Department of Conservation has finished, to give me a chance to read the new material and come back prepared.

Mr Hovell, 5(a)(iii), we are now going to defer that until later on. We should be well finished this morning, I think.

The other matter to alert the parties to is that I have decided to take up Mr Pascoe's offer to visit the valley that his farm is in. We are proposing to do that tomorrow afternoon. Mr McKay and I, we have been monitoring the weather forecast on a daily basis and there does seem to be a reasonably fine window tomorrow afternoon, hopefully, so we will take that opportunity. We will be accompanied by a member from the Alliance, Mr Oliver --

MR ALLEN: Mr Copeland.

THE COMMISSIONER: Mr Copeland, sorry - Oliver Copeland - who took us on the original site visit. He is from Downer's. He is

not actually a witness or anything, so he will just be taking us, in terms of that trip. So that is the update on that.

Any other housekeeping or any other matters that people would like to discuss before we get underway?

Right. Thanks, Ms Ongley.

MS ONGLEY: Thank you, sir. Last week the applicant tabled pages 77 to 78 amendments to the ELMP on herpetofauna.

THE COMMISSIONER: Those are the two pages that they gave us?

MS ONGLEY: Yes. I have those here. I have brought Ms Adams along - DOC's herpetofauna expert - because you did ask whether that was acceptable to DOC, and they do relate to the conditions. With your leave, I would like Ms Adams to read a very short set of speaking notes on that.

THE COMMISSIONER: Sure. Thank you.

MS ONGLEY: The pages in question are attached to the speaking notes.

THE COMMISSIONER: Good, because I did not bring them along. Thank you for that. Ms Adams, welcome.

MS ADAMS: Thank you.

In my evidence, I agreed with Mr Chapman's recommendations to take a precautionary approach to the project, in particular in how he addressed the herpetofauna. That was due to the uncertainty over the herpetofauna that were on the site. Mr Chapman and I are in agreement on that area.

I also agreed that the most significant herpetofauna that were likely to be present at the site are striped skink, Forest gecko, Gold-striped gecko and Wellington green gecko. They all have a threat status of at-risk/declining but in particular, the striped skink does not have any secure site, so we agreed that elevated its importance above the geckos.

I outline in my evidence why the management options of salvage, restoration planting, habitat enhancement, and the pest control have deficiencies in providing positive outcomes for lizards. There is very little evidence that it does provide any good outcomes for lizards.

To gain a positive outcome for lizards, to get populations doing well, I agreed with Mr Chapman's approach of a predator-proof fence proposal. I said that the area needed to have a known population of lizards in the area and we wanted to focus on the species that were most important, so those Striped skink in particular, because they did not have secure areas, but also the arboreal geckos, those geckos that I listed above.

I outlined a number of details that I considered essential for the predator-proof fence proposal. Obviously, eradication of all the predators in there, which is the primary cause of decline of all our New Zealand lizards and maintaining those predators at zero density, so no predators in there, is needed for recovery.

I stated in my evidence why fence management would determine the success or failure of establishing a healthy lizard population and that is essentially that we need to maintain a fence that is intact and maintains that predator-free status. That needs to be there in perpetuity. As soon as predators enter that fence again, then lizards potentially are going to start declining.

In my conclusion, the predator-proof fence that meets all, or most, of the criteria outlined in my evidence was supported. However, the consent conditions and the ELMP must outline those requirements, must outline the construction specifications, the eradication and the long-term management of that fence. Unless the fence meets those objectives, that is the only way we can allow a recovery in perpetuity. I had an understanding at that stage that Mr Chapman and I were in agreement about that.

THE COMMISSIONER: One question on the arboreal gecko.

MS ADAMS: They live in the trees, so those three geckos are up in the forest canopy.

THE COMMISSIONER: Arboreal means tree-living.

MS ADAMS: Yes. Arboreal.

THE COMMISSIONER: Thank you.

MS ADAMS: Out of interest, striped skinks are too. They are one of the few skinks that we know of that live in the canopy most of their lives.

THE COMMISSIONER: Do they favour particular trees, types of trees?

MS ADAMS: To be honest, we do not know enough about striped skinks to know that. That was part of the reason why I supported the precautionary approach. They are really difficult to find, obviously, because they are up really high. We have really poor detection methods for those species. They pretty much spend all their lives up in the canopy, so it is really difficult.

THE COMMISSIONER: You are aware of some areas where they definitely are currently located?

MS ADAMS: Yes. We have scattered records of the arboreal species. They tend to be in intact forests that have had remnant areas that have never been chopped down. Where there is regrowth, they are generally absent. They have really poor dispersal abilities.

Striped skinks, interestingly, are generally found in rotting logs, so where the forest has been cleared in the past, there will be big logs that have not rotted down and they are just surviving there. So again, after the forest is cut down,

they just do not know what to do, so they stay there and those rotting logs are the only habitat that is left for them, so they are probably in decline; they are functionally extinct, a lot of those populations.

THE COMMISSIONER: Thank you.

MS ADAMS: In the revised pages of the ELMP, the applicant now proposes to maintain that fence for only 12 years. It also proposes that after 12 years, or potentially earlier if striped skink numbers are doing well. The review panel would be appointed to determine how that skink population is managed. There were three options there. One was to transfer them to Ngāti Tama land and there would have to be some significant changes in our pest-control techniques, or a fence to be built on the Ngāti Tama land following the specifications that I outlined, for that to be successful. To be honest, I do not think that our pest control will be that sophisticated in 12 years' time. They could be transferred to the Rotokare pest-fenced sanctuary -- so that would protect them, but those species are highly likely to be present already. We know of five species in there, including those arboreal geckos. I would not be surprised if striped skinks would turn up in Rotokare, but they have not been found to date -- or another suitable

sanctuary. I would support them going to a suitable sanctuary but it would have to be a fenced site. I question why you would not use that site at the beginning and not subject the animals to two transfers, which generally has quite a high mortality, even if it is done really well.

With the revised proposal, with management for only 12 years, I do not think that there is any certainty for the long-term outcomes for lizards. I do not think the population will do well after 12 years. I think there is a highly likely chance for predator incursions without ongoing management.

An interesting point: there are not many animals on this planet - or fewer and fewer animals on this planet - that are older than I, but lizards actually live a long time, so the animals that get transferred to the fenced area are likely to be the same animals that are going to be transferred out 12 years later. Just so you are aware, there is a gecko in Canterbury that we know is 52 years old.

Jumping to 13, it is quite possible that striped skink numbers will not be suitably abundant after 12 years. I cannot give you any certainty about whether that is or is not the case,

because it very much depends on the population that will be there.

THE COMMISSIONER: All right. Thank you.

My understanding was that the proposal was to build a predator-proof enclosure around an established area, somewhere where it was known that there were already some lizards, so there was a benefit there by protecting that known population with a predator-proof fence --

MS ADAMS: Yes, that is right.

THE COMMISSIONER: -- that any herpetofauna found, skinks or geckos, through the project, could be translocated there. My understanding was that that predator-proofed enclosure would then be maintained in perpetuity. That was the proposition that I had understood from the applicant. Is that as you had understood it?

MS ADAMS: That was my understanding and that is what I think Simon and I were in agreement about. That is right.

THE COMMISSIONER: What you are highlighting to me is that the proposal has now changed to still do that predator-proof enclosure, translocate any herpetofauna found into there as well, so there would be the established population, plus additional animals.

MS ADAMS: That is right.

THE COMMISSIONER: But that after 12 years, that would cease and those animals within the fence would be recaptured, including the current ones, and taken somewhere else. Is that right?

MS ADAMS: That is right. So the fence would still be there but management of that fence would stop after 12 years. There is a high likelihood, we know from other fenced sanctuaries, that there are occasional incursions. Once there is an incursion, then the predation rates will increase and those populations would decline. The new proposal was proposing to take some of those animals out and put them elsewhere.

THE COMMISSIONER: All right. So actually capturing geckos and skinks, is that an easy thing to do, if you were going to translocate them again?

MS ADAMS: No. The applicant did a lot of survey work as part of the project, to see what was there, and I support that. They saw a lizard, but they could not identify it. I am not surprised about that. As I said, the arboreal geckos - because they are living in the forest - those particular species, are very difficult to detect and even harder to catch enough to translocate. To be fair, though, after 12 years, and depending on the success of that population, they will be more abundant in there, so you could feasibly catch them. It might take longer. I suspect, without having too much certainty, that after 12 years there would not be enough animals in there to translocate. I think it would need longer.

THE COMMISSIONER: One last question. On the very back page of the updated ELMP, page 78, the new words:

> "At year 12, or beforehand, if striped skink numbers were suitably abundant, a final assessment of striped skink numbers will be undertaken."

That assessment, as you understand it, would that be undertaken in the whole PMA? Or would that just be in the enclosure?

MS ADAMS: In the enclosure, I assumed.

THE COMMISSIONER: All right. That is not very clear.

MS ADAMS: It would not be feasible to do it in the PMA, I think.

THE COMMISSIONER: All right. So, obviously this is a topic that is on the table between NZTA and the Department, Ms Ongley.

MS ONGLEY: Yes. No doubt we will be discussing that in the break, sir.

THE COMMISSIONER: Thank you.

MS ONGLEY: All right. So, what I propose to do, is to hand out the conditions, but not do a page turn.

THE COMMISSIONER: Sure.

MS ONGLEY: There is a lot of documentation, sir.

THE COMMISSIONER: Can you just explain what we have here?

MS ONGLEY: The coloured set, where the front page is coloured, those are the Taranaki Regional Council conditions. What we

have done is that for both sets, we have put what DOC considers to be the bottom line requirements for the ELMP in a schedule. Rather than attaching the schedule to the back, I have put that at the front. There are two copies of each set of conditions. The first A3 copy is a clean copy. Under that, there is a redlined copy on the NZTA conditions. The second set, which has no colour on the front, is the NPDC set. We considered that we should provide you with a clean copy as well as a redlined copy, because it did get quite messy.

THE COMMISSIONER: That is helpful. Thank you.

These have gone to the applicant and also to the councils?

MS ONGLEY: Yes. I distributed copies earlier in the week. Yesterday, I did advise the applicant and the councils of a couple of minor tweaks, given that Dr Barea was away. Those have now been incorporated in this full set.

THE COMMISSIONER: All right. Thank you very much.

MS ONGLEY: Thank you.

I have a very brief set of submissions to read, which sets the framework for the conditions, but as I said earlier, I do not propose, given the adjournment, to go and do a page turn through the conditions.

THE COMMISSIONER: Certainly. Given where the discussions are at, I will just receive your submissions and these documents. I do not think it is appropriate for me to make any particular comments at the moment. That is fine. Thank you.

MS ONGLEY: Thank you, sir. Would you like me to read my submissions?

THE COMMISSIONER: Yes, please.

MS ONGLEY:

> "Sections 104(1)(ab) and 171(1B) of the Act require the decision maker to have regard to:
>
> Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.'
>
> In my submissions of 7 August, I set out DOC's position that there are significant adverse effects that cannot be avoided, remedied or mitigated. However, in this case, DOC considers that offset or compensation is an option. DOC has suggested that the package be called "compensation". Because compensation for potential adverse effects on the

> long-tailed bat is considered to be insufficient - that was the 3650 ha pest management area without radio tracking to confirm the location of bat roost trees - DOC cannot support the granting of regional consents or a recommendation to confirm the requirement. That is, these conditions are put forward on the basis that the applicant would be required to offer further in the way of compensation prior to consent being granted or a recommendation to confirm.
>
> The key issues with the conditions:
>
> DOC suggests that the bottom-line requirements for the ELMP be placed in a schedule to the conditions. Two different schedules have been prepared that reflect the differing functions of the regional and district councils."

I should say that because the functions are, of course, overlapping, there are quite a few similarities in the schedules.

THE COMMISSIONER: Each of these schedules is encapsulating the specific definite actions and performance measures that are scattered through the ELMP and a schedule to that document itself.

MS ONGLEY: No. This is proposed to be a schedule to the conditions.

THE COMMISSIONER: To the conditions, all right. And where some of these matters are in the conditions already, would there be an overlap?

MS ONGLEY: They have been moved into the schedule.

THE COMMISSIONER: All right.

MS ONGLEY: You will see, if you go through the schedule - Mr Inger has prepared this - under each topic heading, it has specific performance outcomes and then monitoring requirements.

THE COMMISSIONER: Can you take me through an example? We are talking about vegetation.

MS ONGLEY: Yes, so the Landscape and Vegetation Management Plan, if you go to the bottom of page 2, you have specific performance outcomes.

THE COMMISSIONER: I am looking at the scheme of what you have. You have a purpose of what the ELMP is seeking to achieve, so an objectives-type statement.

MS ONGLEY: Yes.

THE COMMISSIONER: Then you have matters to address in relation to each topic.

MS ONGLEY: Yes.

THE COMMISSIONER: Then you have some specific performance outcomes, which are things that are normally measurable.

MS ONGLEY: Yes.

THE COMMISSIONER: Then you have some monitoring requirements in each area. So that is the framework.

MS ONGLEY: That is exactly right, sir, yes.

THE COMMISSIONER: Certainly that is the type of management plan process that I am aware is favoured by the Courts and certainly by me, as being a robust type of process.

MS ONGLEY: Yes. Again, no doubt we will be discussing this in the break but DOC makes no apology for the fact that it is a lengthy schedule.

THE COMMISSIONER: All right. That is fine. This is what you have proposed. Carry on with your submissions.

MS ONGLEY:

> "Paragraph 6: DOC does not consider that the ELMP, including the PMP, is at a state where it can be confirmed through this hearing. Therefore DOC recommends a certification process for the ELMP following comments by the Ecological Review Panel. Because the ELMP is such an important part of dealing with the potential adverse effects of the proposal, DOC has put further detail around the process by which the Ecological Review Panel would have this opportunity to comment prior to certification. DOC does not consider that a mediator should have the final say on certification."

THE COMMISSIONER: Ms Ongley, could I just ask you about this process? I am a little troubled by the third party subsequent approval-type process that this sets up. I have asked other counsel about whether there are examples of where the Courts have signed off on this type of approach. Are you comfortable that we are within **vires** on this type of approach?

MS ONGLEY: I have not cited the case law here, sir, but I understand there is case law that if a council does not have a particular area of expertise, and needs to certify something, my understanding is that they can get an external expert to do that. However, the case law that I have looked at refers to the word "expert" not mediator. We do have some discomfort with the word "mediator". But if, and subject to what the councils have to say, it is considered that the council does not have the internal expertise to certify the document, then possibly that could go to an external expert who could discuss the matters

with both the applicant and the council. However, because DOC considers that this document is just so important for addressing the adverse effects of this particular project, DOC is uncomfortable with an external person having final say on the certification, although that may be **vires**.

THE COMMISSIONER: Okay. What do you envisage the Ecological Review Panel would be certifying? Would it be certifying material changes to the draft or would it be certifying the ELMP in relation to final construction plans? What are you concerned about that cannot be finalised now, that needs to be left for a later certification process?

MS ONGLEY: The whole ELMP, in DOC's view, needs to address the matters in these schedules and it does not, adequately, now. Without going through a whole discussion of the ELMP document, I think Ms Adams has provided an example as to where DOC considers a part of the ELMP to be deficient. DOC would like to discuss this in the break, as well, but at this stage, DOC does not consider that the ELMP is at a stage where it can be certified through this hearing.

THE COMMISSIONER: All right. My understanding and knowledge is that it is quite unusual, with such a large project and such a

number of management plans, to have those finalised and certified as part of a hearing process, although that has been done, I am aware. Quite often there is a draft to a stage, and then there is a certification process that finalises those post-confirmations of a requirement or granting of resource consents. I think NZTA is familiar with that type of process. If that is an issue that is still in discussion, certainly involving the council and other relevant parties, I am very happy for you to continue the discussion. I do just signal that I would want to have some comfort that we are not straying into that third-party approval right that is not **vires.** Thank you.

MS ONGLEY: Thank you, sir:

> "Page 2: DOC does not consider - and this relates to changes to the document - that there should be a streamlined approval process for changes to the management plans based on an interpretation of what is minor. Rather, DOC suggests that certification and further comment from the Ecological Review Panel must occur for changes to the ELMP that involve:
>
> (1) substantial changes to pest management methods - which would include changes to pest management methods due to one or more of the performance measures in the schedule not being met, and;
>
> (2) changes to the methodologies for monitoring."

So, in summary, for those types of changes, DOC does not consider that they should be made without going back through the panel.

THE COMMISSIONER: But there might be some other matters that are essentially minor that could not go back through the panel. That is your submission?

MS ONGLEY: Yes.

THE COMMISSIONER: All right.

MS ONGLEY:

> "Monitoring and response:
>
> The NZTA conditions require that the requiring authority undertake an annual review of all monitoring carried out under the ELMP, up until the completion of construction works. Condition 29 of DOC's suggested conditions ... [that is the designation numbering]... would provide that this would occur on a continuing basis. Pest management and outcome monitoring must be compiled annually, and a report prepared by a suitably qualified ecologist. Following receiving the monitoring report ..."

Would you like to turn to that one, sir?

THE COMMISSIONER: I am going to have a look at 29 and see how you have couched that.

MS ONGLEY: It is the version without the colour on the front.

THE COMMISSIONER: Yes, I have that.

MS ONGLEY:

> "Following receiving the monitoring report, the Ecological Review Panel could make recommendations to the Council regarding changes to the pest management or monitoring methodologies."

That has been quite substantially revised by DOC.

THE COMMISSIONER: Thank you.

MS ONGLEY: Paragraph 10:

> "DOC has set out monitoring requirements under topic headings in the schedules which reflect the sub-management plans contained in the ELMP. It is understood NPDC Officers may require a closer connection between the monitoring conditions and the main body of the consent conditions. DOC would likely support that clarification."

There we have already discussed the separate headings in the schedules that set out the monitoring requirements:

> "Compensation areas:

> DOC rejects NZTA's draft conditions that "the exact location of the PMA may change over time", for the reasons set out in DOC's evidence.
>
> DOC's proposal contains the following as an essential requirement of the ELMP:
>
> 'Legal agreements and/or other authorisations necessary to allow, in perpetuity, the requiring authority to enter on to land outside the boundaries of the designation to carry out, continue and maintain all the measures set out in the ELMP, including the restoration, riparian planting, pest management and fenced lizard-enclosure measures. Such evidence will also include appropriate access to such sites, for the purposes of undertaking those measures.'
>
> Apart from preparatory works, the intention is that no works could be undertaken except in accordance with certified management plans, including the ELMP. Effectively, this would mean that works cannot be undertaken until legal agreements have been resolved and evidence provided to Council in the ELMP.
>
> Again, I understand NPDC Officers may recommend that this requirement be more closely connected with the main body of the consent conditions."

Sir, I have put that quotation in the schedule. DOC would likely support moving such a requirement up front into the consent conditions themselves.

THE COMMISSIONER: Is this in the form of some type of condition precedent that you would have to have the property rights for the pest management areas and process before the project could commence? Is that what you are suggesting?

MS ONGLEY: It possibly could be viewed that way, but in terms of **vires** matters, at the end of the hearing last week, you did mention Ogier. I have done some thinking about that, sir. Because at the end of the day, this project will get over the line with a compensation package, any **vires** matters should be able to be dealt with on an Ogier basis because DOC's position is that without these conditions, the project cannot proceed in terms of the consents and the designation. On that basis, DOC would really be rejecting any argument that there is a **vires** problem and considers that the conditions, if there are issues, should be offered on an Ogier basis.

THE COMMISSIONER: Is that linked back to 171(1B), where any offset or compensation has to be proposed or agreed to by the applicants? Does that circle back to that, in a way?

MS ONGLEY: Yes. It possibly does, yes, sir. I mean, they have to be offered by the applicant anyway, so it would be quite bizarre to offer something and then say, "That is **ultra vires**".

THE COMMISSIONER: It is pretty clear to me that in this offset/compensation space, I just could not impose those sorts of compensation requirements without them being proposed or agreed by the applicant. The words are pretty clear.

MS ONGLEY: That is right.

THE COMMISSIONER: I can impose other conditions, as long as they do not involve offset or compensation. Is that how you read that?

MS ONGLEY: Yes, it is. Perhaps the jurisprudence around this might get quite interesting. Sometimes it is a bit difficult to delineate offsetting compensation from mitigation.

THE COMMISSIONER: Yes.

MS ONGLEY: This is possibly the first place where this has been looked at quite thoroughly.

THE COMMISSIONER: Yes. This could be where, Mr Allen, we could get some thoughts from you in any closing, just about how that fits together, mitigation - offset - compensation. It is a pretty blurry line sometimes. Clearly the ball is in the applicant's court to work with the parties, come up with some proposals that it can present to me by way of compensation offsetting and also, I would suggest, how any property or legal agreements are tied in before the project gets going. You are

concerned about lack of certainty, that areas can be defined and legal agreements can be made, and the compensation can be locked in. Is that essentially your point?

MS ONGLEY: That is right, sir. I believe when you ask Mr MacGibbon about that issue, he was also keen that those property rights be locked in before the project could proceed, or that at least there was certainty.

THE COMMISSIONER: Yes, I understand the issue. All right. Thank you.

MS ONGLEY: Paragraph 13 - I believe I have covered that.

THE COMMISSIONER: Yes, you are up to paragraph 15.

MS ONGLEY: Paragraph 15:

> "DOC considers that updates to the CWMP are required before it can be certified to improve the provisions for sediment management and monitoring and to include a feedback loop to the ELMP requiring a suitable ecological response if an adverse sediment event occurs."

Those were the matters that were discussed in evidence by Dr Drinan and Mr Duirs, for DOC.

THE COMMISSIONER: Yes.

MS ONGLEY:

> "DOC looks forward to discussing these conditions with other parties during the adjournment."

Again, I had anticipated that you would grant the adjournment, sir.

THE COMMISSIONER: Yes, a reasonable assumption. Are you thinking that there might need to be a similar schedule to the CWMP, as you have with the ELMP?

MS ONGLEY: No, that is not the proposal.

THE COMMISSIONER: Not anticipated?

MS ONGLEY: The monitoring requirements are, I believe, although I would have to ask Mr Inger if you wanted more detail on it, but the monitoring requirements are contained in the conditions and the TRC schedule does link in with that.

THE COMMISSIONER: All right. Thank you.

MS ONGLEY: Thank you.

THE COMMISSIONER: Thank you very much.

Mr Enright, welcome. I think you just walked in after I had addressed your timeslot for your presentation. I have only just received your submissions this morning.

MR ENRIGHT: I apologise for that.

THE COMMISSIONER: That is fine. I think I would like to take an adjournment just to read those through. Could we take an early break for morning tea, and report back at 10.30?

MR ENRIGHT: My submissions are relatively short.

THE COMMISSIONER: Yes, but there is some other evidence, is there not?

MR ENRIGHT: Yes, there is.

THE COMMISSIONER: And a letter from Simpson Legal.

MR ENRIGHT: Sir, I have hard copies of the briefs here, which of course they are not from experts and they were not supplied to you in advance, but I am happy to hand those up now.

THE COMMISSIONER: Those are from people who are just going to make submissions to me.

MR ENRIGHT: That is right.

THE COMMISSIONER: I am happy to receive those as they come up. I would like just to take a bit of time to read your opening submissions and also the statement from Mr Simpson. That will take me a wee while to do that. If we could come back at 10.30, we will take things from there. Thank you.

(Adjourned until 10.30 am)

THE COMMISSIONER: Good morning everyone again. Mr Enright.

MR AMOS WHITE: I would like to give a karakia in English, so everybody can understand what I am talking about.

Our dear Father in Heaven, we humbly bow our heads in prayer acknowledging at this moment in time and we give thanks

for the creation of this world which we live. Thy son Ihu Karaiti, Jesus Christ, created this world and especially this land of Aotearoa for the Māori nation, our people, our ancestors who have lived on this land for many years, and we give thanks for that. Later on in time, before my birth, there are founding documents signed by our people, namely 1830 Declaration of Independence, 1835 the Treaty of Waitangi, in our day and time today, 2007, the world indigenous rights of people around the world, which includes our Māori nation. Heavenly Father, we assemble here today to give evidence to Commissioner Daysh concerning the whenua that this motorway detour has been set aside to happen. We ask that we may be able to deliver our evidence peacefully and in harmony with high spirit. That those that will hear it will understand it and that we may be able to answer questions relating to it. We ask for thy Spirit to be with us, along with our ancestors that live in each one of us, that whakapapa to them that we may speak words representing them. Please bless us so we may keep to the schedule and those that will speak will speak clearly. And we say these things through the name of thy Son, Jesus Christ. Amen.

THE COMMISSIONER: Thank you.

MR ENRIGHT: Kia ora. My name is Rob Enright. As you know, I appear for Te Korowai. You have now had the opportunity to read through the submissions, Commissioner. Do you want me to take you through them anyway?

THE COMMISSIONER: Yes, please. I would like you to take me through and highlight -- I will have some questions as we go through.

MR ENRIGHT: Great, thank you. It is common ground that the adverse cultural effects of this project are significant with all the relative alternatives receiving negative cultural ratings. But what is not agreed is whether the sign-off by one iwi authority, Te Rūnanga, is sufficient for you to conclude the cultural effects are adequately avoided, remedied or mitigated, or in this case offset.

I refer to section 6E RMA --

THE COMMISSIONER: Mr Enright, before you go on to paragraph 2. This question of iwi authorities, TPK website, iwi authority has a certain meaning under the Act; what is your understanding of the position with iwi authorities that are relevant in this case through those processes?

MR ENRIGHT: I acknowledge the rūnanga is of course an iwi authority and there are some processes which, for example, you can have an iwi management plan, which has to be had regard to under 104 and 171, and there are other processes, which perhaps have not been crystallised yet in terms of recognition processes. But I guess the key point I make here is hapū also have a right to be heard and tangata whenua have a right to be heard. If you think about the NZCPS, that uses the expression "tangata whenua".

The point we make here is Te Korowai represents more than 500 Māori who do whakapapa to Ngāti Tama, but they say they are entitled to be heard in their own right, and of course to rely on the relevant policy instrument.

The fact that you have the iwi authority, I accept it is a material issue because they of course are the landowner of the subject land basically within which the highway proceeds, so it is necessary you have regard to the view but not sufficient in itself to deal with the section 6E issues.

THE COMMISSIONER: There is another iwi authority on the website, Ngā Hapū o Poutama. Have you had a look at that website and thought about that?

MR ENRIGHT: So I have not looked at the Poutama issues because I guess we are here in terms of Te Korowai, which speaks for its hapū, who are related obviously to Ngāti Tama. But again, I suppose the point earlier. So we are not really getting into the Poutama argument.

THE COMMISSIONER: I have been thinking about this quite a lot - I will ask Mr Allen again when he closes - iwi authorities are certainly referenced through plan-making processes as having consultation obligations. In terms of 104, we need to think about iwi management plans.

MR ENRIGHT: Yes, that is right.

THE COMMISSIONER: But in the requiring authority processes, there is no mention of iwi authorities or iwi management plans. It is just something that has been exercising my mind a little bit. That is why I asked you a question about iwi authorities. We do have resource consents. They are referred back through part 2 obviously in sections 6 and 7 as well but ...

MR ENRIGHT: Yes. I am grateful for the point because that is the central point I am making here is the sign-off by one iwi authority does not discharge your responsibilities as Commissioner to look at section 6E. That is the line you have been given. With respect, it is incorrect because consistently throughout the legal submissions you have had from NZTA all that they refer to is, yes, Ngāti Tama, the rūnanga that is, has given you a sign-off. That is not sufficient to address the matters of national importance that are before you.

THE COMMISSIONER: Thank you for that.

MR ENRIGHT: Again a point, I pick it up in paragraph 3, is that really what we are looking at here is not avoidance. You cannot avoid if you are going to put the State Highway through the ancestral lands of Ngāti Tama. Instead it is a combination of mitigation and offsetting. Reflecting the terms of an agreement, which, as we stand here at this late stage of the hearing, still has not been signed yet between the two parties. That is unsatisfactory because, as I say further down the track, in 6 in particular, how can you be satisfied that the cultural effects have been addressed through an agreement not yet completed, which you have not been given access to? You have

not seen it. Neither have we. So we are in a difficult position, in terms of our expert evidence, in terms of assessing the extent to which that agreement may or may not avoid, remedy, mitigate or offset the relevant cultural effects.

THE COMMISSIONER: I did want to ask you about that. My understanding is that your clients are beneficiaries of Ngāti Tama, part of the rūnanga in terms of being beneficiaries.

MR ENRIGHT: Just for clarity, I am not 100 per cent sure as to whether all of them are registered beneficiaries but they are all whakapapa to Ngāti Tama, so I cannot tell you. You can ask my witnesses for clarity on that.

THE COMMISSIONER: Yes, I will. Just settling that, you make a point in your paragraph 5 about the fact that there is an undisclosed side agreement. My work and understanding, working with iwi hapū groups, is that those sorts of agreements ordinarily and almost always go through some sort of Hui-ā-Hapū beneficiary approval process so if there is an agreement in the future is it fair to expect that there would be an iwi, including beneficiary sign-off of any agreement that was put forward?

MR ENRIGHT: This is a matter on which you will get some evidence today. It is acknowledged there has been a process followed by the rūnanga but the process has not been satisfactory from the perspective of kaumātua, who are giving evidence today, and who are registered beneficiaries of the iwi.

THE COMMISSIONER: Do you think it would be expected that any agreement would go through some sort of sign-off process through beneficiaries?

MR ENRIGHT: Yes, it has to be signed off obviously in a manner consistent with the trust deed for the rūnanga, and generally I agree that at the level of principle there would have to be a number of hui that endorse the agreement. There is a dispute as to whether the rūnanga has followed correct process for that, which, I have acknowledged in the written submissions, is not for you to decide.

THE COMMISSIONER: Not for me, yes.

MR ENRIGHT: But there is unfortunately a legal storm brewing around that issue.

THE COMMISSIONER: I see that, thank you.

MR ENRIGHT: In paragraph 6, the point here is, yes, you have the evidence of authorised representatives of the rūnanga and they may say they are satisfied as to the relevant cultural effects being offset. But your role as the independent decision maker is to ensure the agreement is adequate, much the same way that the court often looks beyond a settlement reached by parties to ensure it meets the relevant statutory framework.

There is a public policy interest in ensuring matters of national importance are properly assessed and protected. Priority status is not necessarily given to the iwi authority over other representative groups. Whakapapa to Ngāti Tama or the hapū of Ngāti Tama I think was the point we were just discussing. I would respectfully agree with your point that there is no advantage in section in 171 RMA iwi authorities. Nor, for that matter, section 16.

THE COMMISSIONER: I am also interested in your thoughts, Mr Enright, about your comment about the environment looking through -- look beyond a settlement reached by parties. Again, in your experience, quite often there are agreements between parties, sometimes commonly referred to as side agreements. Sometimes those agreements are recorded and referenced and

conditions are on the table. Sometimes they are not. Sometimes they are side agreements that are not publicised. That is my practice experience. What is different here, do you think?

MR ENRIGHT: I accept the point you have just made would reflect my experience of practice too, that there is a combination of either there are side agreements that are confidential or disclosed. The problem you have here is you are relying on the say-so that there has been agreement that has been negotiated but not yet signed off. So we do not even know if ultimately it will be signed off at this stage of the evidence.

Let us assume it is signed off, and you certainly have the evidence from the rūnanga they are happy and they are represented by their counsel on that, that is not the end of the story of course because you still have to look at the effects on other Māori groups in terms of this issue. This is why the Te Korowai, who, as I say, all members whakapapa to Ngāti Tama are saying, "Well, we are not happy with the Crown taking our land that we got back through the legislative process. We object to that and it is a significant adverse cultural effect.

THE COMMISSIONER: I do not think it is fair to say - you may not have implied this - that I have been told that there is an

agreement but it has not yet been signed. I think what I have been told by NZTA and rūnanga is that there is an agreement in negotiation of which there are some various elements that have been worked on, but it has not been finalised. That is the position I have been led to understand.

MR ENRIGHT: That is just with the evidence.

THE COMMISSIONER: Thank you. Carry on.

MR ENRIGHT: It is my paragraph 7 where I suppose I have put a point about conflation that essentially NZTA is putting the argument to you, "Well, as long as the rūnanga is happy that is all that matters in terms of the section 6E effects". Again, that is not correct in terms of the Act because you have evidence before you, and you will hear it today, from Te Korowai about their concerns about adverse cultural effects not being addressed.

What is unique about this case, and it is a point I make later though, is this must be one of the strongest treaty principles cases litigated under the RMA because you have land originally confiscated by the Crown under raupatu, having been returned back to Ngāti Tama in trust for future generations, are

now being taken again, whether that is voluntarily or under the Public Works Act framework for a state highway.

Section 8 is a very strong issue here in terms of Treaty principles. That is what Te Korowai relies upon to say, "Well, this is a breach of Treaty principles and should not be happening" and the best outcome here would be to decline the NOR and recommend its withdrawal.

Again, the point here is in paragraph 8, for your purposes as Commissioner, it is not sufficient just to look at whether the proposal has been signed off by the rūnanga.

We have made a point in paragraph 9 about Te Korowai asking for separate meetings with NZTA and you have some evidence on that. It is correct that NZTA did have a separate meeting with Te Korowai, just prior to the start of this hearing. But NZTA cannot rely on the fact that members of Te Korowai could have, if they wanted to, gone along to the Hui-ā-Iwi organised by the rūnanga, we are saying. We are a submitter in our own right where we deserve the consideration that NZTA would normally give to submitters of engaging and assessing our concerns, and that really has not happened other than in a very minimal way.

Paragraph 10, I have just picked up the point that you have had the submission in the evidence talking about when members of Te Korowai, who are suspended trustees, and I have asked that you note the fact that the words used matter here. It is an allegation. It is allegedly suspended rather than necessarily - another way of phrasing it - because the legality of the suspension is the subject of separate High Court proceedings. As I say in paragraph 10, there is a contest as to the level of information disclosure provided by Te Rūnanga to both the trustees and beneficiaries generally of the rūnanga. But again, it is not relevant to your RMA deliberations, but we should try to avoid pejorative labels.

Paragraph 11. I agree that mandate is not usually resolved in the RMA context but can be where that is required by the evidence. This is not a mandate case. Instead it is a matter where the evidence of all relevant tangata whenua on 6E, 7A and 8 should be considered. Again, my submission here is NZTA are saying you cannot rely on mandate but then they seem to themselves rely on mandate because they refer to the requirement for a sign-off by the rūnanga as being all that is necessary.

THE COMMISSIONER: Can I just pause there, Mr Enright? Your first two sentences in paragraph 11, you are saying, "Mandate is

not usually resolved in the RMA context" and that is my understanding, "although it can be where required by the evidence." Then you say, "This is not a mandate case". Are you suggesting that I do need to think about mandate in relation to the evidence in this case? Can you just elaborate on what you are trying to get across there to me?

MR ENRIGHT: Sure. The key point is the third sentence, basically you have to have regard to the evidence of all relevant tangata whenua and so therefore sign-off by the rūnanga is not sufficient for you to dispose of the 6E issues. Basically that is the gist of it.

THE COMMISSIONER: You are saying that I can and should consider all submissions from Māori in terms of section 6E, particularly.

MR ENRIGHT: And weight is the matter for you. So you could decide to prefer the evidence you are going to hear today from Te Korowai witnesses as compared to the evidence you have heard earlier from the rūnanga.

THE COMMISSIONER: Just on the evidence point. Again, there are obviously rules of expert evidence and experience and quite often - ecology is a good example here - that there are

differences of opinion. I have always thought in my own practice and sense that in terms of cultural evidence, the experts are tangata whenua. In a way, it is similar but would you say that the evidence I am getting on cultural matters is expert evidence in that sort of context?

MR ENRIGHT: I accept your summary is correct. Tangata whenua are the experts in their own tikanga and their own knowledge in their own whakapapa. So you really have to balance the evidence you have heard from Te Rūnanga witnesses with Te Korowai witnesses around the issue of the remedy. Importantly, everyone agrees that cultural effects are significant and adverse. The only real issue here is what is the remedy for that. Is it to recommend approval or to recommend denial?

THE COMMISSIONER: And if approval, what conditions and agreements.

MR ENRIGHT: Yes. So answering your point. Tangata whenua are -- where they are recognised kaumātua or kuia then they are experts in tikanga mātauranga Māori, the relevant information. They do not qualify as independent experts in the sense that the code talks about.

THE COMMISSIONER: Yes, thank you.

MR ENRIGHT: At paragraph 12 I have submitted to you there are several aspects of this proposal, both unorthodox and arguably unlawful. The first point we have already discussed about the lack of a final agreement, which means you cannot validate the existence of the agreement or whether that will avoid, remedy or mitigate the adverse cultural effects.

The same difficulty applies to Te Korowai in terms of Greg Carlyon's expert evidence. How does he assess the extent to which that could be seen as offsetting or remedying the adverse cultural effects?

Paragraph 14. There is the point made by NZTA that members of Te Korowai, who are also members of the rūnanga, have had the opportunity to influence the negotiation process. That is perhaps simplistic in terms of trustee dynamics. Again, Te Korowai has been unable to assess the full terms of the agreement, take legal advice on it, and as I said earlier, Mr Carlyon has been unable to do an assessment of it.

Another sort of unusual element here is the presence of a veto power.

THE COMMISSIONER: Before we move on to that. I asked Mr Greg White, I think, about how meetings and hui are advertised amongst Ngāti Tama in terms of matters. The rūnanga has told me they have had a number of hui associated with NZTA's proposals. I recall them telling me that such hui were advertised in newspapers and there were websites and emails and people within Ngāti Tama would know about meetings coming up. Your point about it being simplistic, that Te Korowai members have not had the opportunity to influence negotiation processes, that is not because they could not have gone to those meetings and would not have known about them. Is that something different?

MR ENRIGHT: No, it is all right. I think best left to my witnesses because they give you an answer to that. It is important again to acknowledge -- you have to distinguish between registered members of the rūnanga and those who whakapapa but are not currently registered.

THE COMMISSIONER: I will leave that to the witnesses?

MR ENRIGHT: Yes, I think that is a better way of dealing with that question.

THE COMMISSIONER: Thank you.

MR ENRIGHT: So the veto power point, as you know, normally we do not leave a reserve of veto power to a third party in relation to public works projects. So I say in 16 that if that veto is exercised this RMA process will have been futile. Again, making the submission that we really should have had some disclosure of what the term of this agreement for offsetting are to allow a valuation of whether the effects are appropriately mitigated or whether the remedy generates its own suite of adverse effects, and that any agreement -- if there were commercially sensitive terms, which of course there I am sure, that could be addressed through directions on your part. They are obviously named along those lines to date.

The point about fettering power, so it is a curious aspect of this proposal, and I say perverse outcome, if NZTA having identified the road as the most appropriate in terms of its detailed evidence and meeting the, what I have called "public interest criterion", section 171 then prevented the public work proceeding through a side agreement with the rūnanga. So that is a concern of itself.

Another issue here where we have this contingency arrangement, is that your assessment cannot rely on the exercise of the rūnanga as a third party of its side agreement or powers. That is a concern in itself as well. How do we deal with that? I suppose that is a matter for NZTA but it is of concern and, from Korowai's perspective, raises questions about vires.

THE COMMISSIONER: Vires. But is that not NZTA's risk if they could not secure a final agreement, which in many -- again, Mr Enright, I have been getting evidence that there are some matters of cultural significance being dealt with in the RMA conditions. For example, the kaitiakitanga condition. Some conditions relating to pest management areas, and looking after the biophysical interests as they intersect with cultural interests. There are also some probably more property-focused issues, which are not ordinarily in the RMA realm. They are dealt with by property agreements. So a landowner whose land has to be acquired for a project, either voluntarily or through some other process, has to agree outside the RMA legislation a property deal or a property negotiation. Again, if NZTA does not get across the line with those property negotiations, they just have to go back to the drawing board and not build the project and come up with some other solution.

MR ENRIGHT: It is a fair question and an analogy comes to mind with the East-West project in Auckland where the route of the East-West highway goes through a separate designation held by Transpower. So there is a need to realign the power lines basically. NZTA in that case, I think, accepted, "Well, it is our risk, albeit relatively likely we will get a final sign-off from Transpower". That is one way of approaching it. We say it is a cart before horse problem though. That they should have got the sign-offs in place under rūnanga, disclosed the material terms of that, in terms of why they say it offsets the relevant cultural effects, before coming to you for a decision, which could otherwise be rendered futile.

THE COMMISSIONER: But you are not suggesting, are you, that I do not have the authority and power to confirm the requirement on the basis that there have not been all of the property negotiations concluded?

MR ENRIGHT: No, I cannot say that. But I do say you have got unsatisfactory information as to the relevant adverse cultural effects, how they will be -- we know that they are adverse and significant, but we do not know whether the remedies offered actually offset those effects sufficiently for you to be satisfied you can approve it.

Of course, you have the positively stated evidence of Korowai, and the evidence you will hear today, that it should be recommended withdrawn.

THE COMMISSIONER: Thank you.

MR ENRIGHT: It is really a point in 19, that I just made, I suppose, that mandate seems to have been used as a bit of a sword and shield by NZTA by saying on the one hand you cannot assess mana whenua in mandate but on the other 13 -- Te Rūnanga speaks for Korowai members that identifies Ngāti Tama, and so you do not need to be further concerned. Both positions cannot be right, one must be wrong.

Here is the point, and it was prompted, I think, by a question by you about the RMA, and Treaty principles recognised the right of hapū to self-identify and represent themselves separately from iwi authorities. Again, that terminology in the NZCPS and other planned instruments of tangata whenua rather than iwi authorities is a clue to that. The point earlier made in section 171, it is privileging iwi authorities in terms of the statutory language used.

THE COMMISSIONER: Perhaps you could help me here and you might, I suspect, refer me to your witnesses. Both in paragraphs 19 and 21 you talk about hapū as opposed to iwi authorities. Then at 21 you talk about including the hapū represented by Te Korowai. Are you suggesting that Te Korowai represents a distinct hapū within Ngāti Tama, or is that not as straightforward as that?

MR ENRIGHT: I think it is best answered by the kaumātua giving evidence today. But essentially if you are whakapapa to Ngāti Tama as the iwi you must also whakapapa to the underlying hapū because of course in 1840, when the Treaty was signed, it was a deal between hapū and the Crown. Iwi authorities are a more recent kind of creature.

I think otherwise the kaumātua can speak to this question around what is the basis on which Te Korowai claims to be representative, and it is through their whakapapa.

THE COMMISSIONER: I will ask them because I have had other evidence about Ngāti Tama not being a hapū base. Sort of everyone is Ngāti Tama and not distinctly hapū base. I am just interested really to understand not for any pejorative reason but just out of interest really about how --

MR ENRIGHT: It is an important question.

THE COMMISSIONER: Yes, so I will ask the witnesses about that. Thank you.

MR ENRIGHT: So 21, I make the point also made earlier about this being one of the stronger or strongest, even, Treaty cases in nearly 30 years of RMA jurisprudence because land taken from Ngāti Tama as raupatu by the Crown is being taken again for public roads. So some serious questions are asked by Korowai about that and whether it is a contemporary breach by the Crown to be putting this proposal to you.

Paragraphs 22 to 24 really just repeat points made in the submission originally lodged by Korowai about -- it is sort of an answer to the proposition the NZTA has put forward that, well, it is not a compulsory acquisition if it is done by agreement. That is sort of a lawyer's point really. It is true but it is being done in the context of this land being taken for a public work. So there is that overlay of powers that NZTA holds under the RMA and the Public Works Act.

THE COMMISSIONER: Can you just take me through your understanding of that connection, the RMA connecting through to the Public Works Act? Does having a designation in place confer greater rights under the Public Works Act than not having a designation in place?

MR ENRIGHT: The starting point was - I have it in my footnote --

THE COMMISSIONER: But no section.

MR ENRIGHT: Yes, section 186 RMA which basically prohibits from the day that it is notified the NOR prevents any person acting inconsistently with the Public Works. So as at now there are restrictions on what Ngāti Tama could otherwise do with its land. That is for obvious reasons but it is a restriction.

I do not have the RMA open but I can do that. I might just come back to your question to answer, but the short point is once you have the designation place usually it is a matter of negotiation on property matters as to whether it is acquired, et cetera. But there is -- if a property owner disputes or just does not reach an agreement with a requiring authority then ultimately the requiring authority can use Public Works Act

powers to acquire. Whether that happens often as a matter of practice seems unlikely, but certainly there is that overlay, the ability to acquire through those powers.

THE COMMISSIONER: Right, thank you.

MR ENRIGHT: From memory, it is done through the relevant Minister. Normally it is the Minister who does the acquisition.

THE COMMISSIONER: I suppose my question, and this is something I dare say can be addressed by NZTA in the closing, is: does by the virtue of having an approved designation ease the Public Works Act processes in any way? I think there may be some link there but I have not looked at it myself.

MR ENRIGHT: I am happy to leave that for NZTA to answer because they are the experts.

THE COMMISSIONER: I think that would be good. Yes, thank you.

MR ENRIGHT: As we say, and it is the evidence really, that there has been a lack of engagement with Te Korowai members and that is an unfortunate aspect of this process. Now I accept, and it is a point made in NZTA's evidence, Korowai did not exist

as a legal entity until the day its submission was lodged. Absolutely accept that. But there was a window of time from the end of February through to the start of the hearing for engagement direct with Korowai and not through the medium of the rūnanga, which is where most of that engagement has happened other than -- yes, there were offers made by NZTA, one meeting took place, which we acknowledge. I think it was 24 July.

A final point, and as you will know, Mr Carlyon is an experienced planning consultant who has confirmed compliance with the code. We say perhaps NZTA was a little over-critical of Mr Carlyon and would have been better if we could have resolved that prior to this hearing.

Mr Carlyon's brief does limit itself to cultural effects and is not intended to overall planning assessment. I had another read of his evidence today and he does make some reference to section 5, but it is clear within the brief as a whole that it is a limited scope brief. He is only looking at the cultural effects. But he will speak to that point for you.

For clarity, we accept it is a limited brief so, as I say in my written submissions there, and you will have him confirm his evidence today that he accepts the positive effects arising

from this proposal and he certainly accepts he has not assessed all relevant matters.

THE COMMISSIONER: Thank you.

MR ENRIGHT: I have a list for you of the witnesses and if you could just add in there between William Simpson and Greg Carlyon, Allen White will also give evidence. I am happy to take any other questions, otherwise the first ... Okay, we might change the batting order slightly I am told. I understand Bill White will speak first.

THE COMMISSIONER: That is fine. Before you start, Mr White. You also tabled a letter from Simpson Legal this morning with your opening submissions. Can you just take me through? Is Mr Simpson the same Mr Simpson we are going to hear from?

MR ENRIGHT: He is my instructing solicitor and it is just sort of an on-the-record response to NZTA that two things: (1) raising potential legal challenge to the intended agreement with the rūnanga and, (2) asking for further engagement.

The first issue is not an RMA concern so it is more just evidencing that in July these concerns were being raised with NZTA itself and also with the rūnanga through their solicitors.

THE COMMISSIONER: So this is not the same Mr Simpson as your witness, William Simpson, who is also a lawyer?

MR ENRIGHT: There are lots of Bills, Williams and Simpsons here and Whites. No, Andrew Simpson, he is an Auckland-based lawyer.

THE COMMISSIONER: All right, thank you. Mr White.

MR W WHITE: As a way of introduction, I am William Te Maihengia White, also known as Bill White. My whakapapa, I am the second eldest son of Peter Te Maihengia White of Ngāti Tama iwi and Tui Kahurangi Walden, Te Atiawa iwi, and grandchild of Potete Hotu White and Matehuirua Horomona.

I am a kaumātua of Ngāti Tama. As such I am in regular contact with immediate family, brothers, sisters, mokopuna and cousins, totalling in excess of 2,500 beneficiaries.

I am a member of the Te Korowai Tiaki o te Hauāuru Incorporated - Te Korowai. Following my introductory remarks I

am authorised to present this statement of evidence in submission by Te Korowai.

Mr Amos White, Amos, the chairman of Te Korowai, is presenting a short statement on consultation. Ms Lisa White, Lisa, is not presenting a submission as Amos and Lisa are witnesses in a High Court case to commence in the High Court in Auckland on 20 August 2018 and their time and energy is focused on that.

We, myself, Amos, Lisa and Tahu are of Ngāti Tama iwi. Amos, Lisa and Tahu are elected trustees of Te Rūnanga O Ngāti Tama Trust. We are described by the NZTA as the suspended trustees. That is what we challenge in the High Court, together with a related issue.

THE COMMISSIONER: So, Mr White, as trustees you are obviously beneficiaries of Ngāti Tama?

MR W WHITE: Yes, as far as I know, my family and I signed up -- well, as beneficiaries we signed up probably about a year ago. From what I understand, they are actually redoing the beneficiaries. I never received a pack for the AGM, which was just recently held, but it was probably sent to my old address

in Australia because I have only been back from Australia a few months.

THE COMMISSIONER: Thank you.

MR W WHITE: Anciently Ngāti Tama kaumātua elders taught the next generation tikanga: spiritual values, wairua; educators, kaiwhakāko; schools of learning into the future, kura; respect for the land, whenua; respect and managing food from the sea, rivers and streams, kai moana; respect and environmental management of native bush and birdlife to ensure sustenance for the whānau, kaitia; arts and crafts visible in stone and wood carving, whakapapa; songs commemorating important events, waiata; Māori names given to landmarks, the historical incidents passed on to future generations, mokopuna.

Along with my family and fellow siblings, ten in total - six boys and four girls - we have been taught by our father Peter Te Maihengia White, who has left a legacy to his future generations of family values, including honesty, integrity, accountability, transparency, strong work ethics, love for family and extended family honouring grandparents, parents, uncles, aunties and cousins, and our connection to each other through whakapapa and relevant here, korero o nehe, our ancient

Ngāti Tama history, and kupu tuku iho, our Ngāti Tama oral history.

The whenua being the most important part of our lives is we till the earth, planted, harvested and stored food for the winter seasons to sustain life. While we worked the air was full of song, waiata. This included gathering food from the sea, rivers and streams and birdlife from an inland forest native bush, along with working in tauiwi businesses to sustain ourselves.

We visited and wept over the sacred sites of urupa and pah on lands stolen from us from time to time.

We kaitiaki our whenua and Paraninihi.

My brother Amos will tell the Commissioner that most of Ngāti Tama iwi were excluded from planning with the NZTA in this matter. That lack of consultation is relevant here as what we have learned from our forebears, as outlined above, has not been heard. Neither, I believe, have the same views been heard by most of our iwi. In the context, we challenge the conduct of the Crown under the principles of the Treaty, the subsequent

cultural values assessment as to taking account of our cultural values in the application as presented to the Commissioner.

Te Korowai was established as a vehicle for Ngāti Tama iwi beneficiaries' members to participate in the NZTA matter. Te Korowai has in excess of 500 members. As has been pointed out in this Commissioner's hearing, the establishment was immediately prior to submissions closing when it came apparent that the NZTA were relying upon the two trustees of Te Rūnanga and two non-conforming persons and the very poor numbers of iwi who attended the various hui to form the NZTA view. More particularly, this group were about to sell Ngāti Tama land.

THE COMMISSIONER: Mr White, could you just elaborate on what you term "two non-conforming persons"?

MR W WHITE: Well, during the last election of trustees to Ngāti Tama those that were elected have some sort of police record, as we understand, and under the trustees deed I thought that we are not allowed to have people unless, I guess, it is declared and passed by the police. That is what I am referring to here. So there is a big question on their validity to act as a trustee.

THE COMMISSIONER: Thank you.

MR W WHITE: Te Korowai has concentrated on bringing together the various heads of families. Some have whānau trusts to which they are the kaumātua.

Te Korowai remains opposed to this application in its entirety and seeks it to be declined. There are serious breaches of the Treaty of Waitangi and a lack of full consultation with tangata whenua, inadequate and incomplete cultural values assessments, failure to get agreement from tangata whenua as to access to land, failure to adequately identify the address and patch from tangata whenua point of view. Failure to consult tangata whenua in a timely and comprehensive manner instead of a blind rush to get an agreement from a set of dysfunctional trustees.

The NZTA, the Minister of Transport and the Minister of Treaty Settlements have been advised in writing that litigation is pending. All of the input on notice and to that effect early in the NZTA's discussions with TRoNT the excluded trustees have not had feedback from the Ministers save for the Minister of Treaty Settlements acknowledging the correspondence. Wiremu Kīngi Te Rangitāke had a similar situation in Waitara in the

1860's. In that case the Crown did a deal with a compliant and minor chief.

Cultural assessment not complete: Te Korowai accepts as relevant the Ngāti Tama values assessment, CVA, prepared for TRoNT by Mr Tama Hovell but the claim it is not complete and fails to fully and comprehensively identify cultural values and address the impact of the activity on the cultural values. Where it fails first is that the cultural values should be derived from a wide consultation with Ngāti Tama Iwi irrespective with our elders and our academics who are repositories of knowledge and are schooled with our tikanga and knowledge. Then the CVA needs to address the particular cultural values of Parininihi and to resolve those as they are avoided or mitigated by the condition of consent. Because of the consequences of colonisation this is an extensive task as Iwi are widely dispersed around the world and New Zealand. The CVA presented by Mr Hovell, which we adopt, is not complete.

We have sought information from NZTA on how the cultural values were ranked in arriving at the final destination, or position; that information has not been forthcoming.

Ahititi is a vibrant and important historic and cultural landmark for Ngāti Tama people. It has been a breeding and nesting ground of the mutton bird, the tītī. Te Aramua Lake, now deceased but an original Kaumātua of TRoNT, remembered and talked of the fires along the White Cliffs that attracted the mutton birds to land. Peter Te Maihengia White, my father, also an original Kaumātua and also deceased, told this to us as children.

THE COMMISSIONER: Mr White, can I just ask you some questions about those two places, Ahititi and Aramua Lake, are they affected by the project or are they areas of particular importance to Ngāti Tama?

MR W WHITE: Well from what I understand where the proposed detour is at the moment is quite a way from where -- well it's to the east of the Parininihi and what we're talking about here is the White Cliffs as the birds would land on the White Cliffs. This is going back in time and possibly that doesn't happen today, I do not know.

THE COMMISSIONER: But these areas are not part of the project area, are they?

MR W WHITE: Yes, well there's more than one proposal but they've gone further inland into untouched natural bush which I feel has been there since the creation of the world and yes that -- I kind of have listened to the NZTA but there wasn't much spoken of -- about that area, how untouched it was, the springs, you know, the stream, everything and the life that's in that bush it wasn't spoken of and I think possibly -- this is why I asked for clarification -- the other detours that were spoken of perhaps don't have that natural bush and streams in this one that they're talking about today, the detour that's proposed by NZTA. So there possibly would be other areas that wouldn't be so -- what's the word -- natural bush.

I haven't actually been there myself to look at it, I know you were invited to look at it --

THE COMMISSIONER: Yes.

MR W WHITE: -- but I certainly would like to but because everything is rush, rush, let's get it all done that we haven't had the opportunity to do that and I don't think I should be going on to private land because I've spoken to the Pascoe's and they said that they weren't very happy with people just walking

over their land so permission should be gotten before you do that.

THE COMMISSIONER: That is right, thank you. In terms of your paragraph 19, NZTA has presented their reports about the different options and routes and there was a cultural ranking prepared and that is explained in those documents so that has been presented to me as evidence. That is just a comment, there is some information about that in the application.

MR W WHITE: Yes. From what they told us I think the one that they chose, which goes through the Pascoe's farm, was -- I looked at the elevation, the elevation wasn't as high as the others and there are other implications as well because of a retaining wall that they have to put up. But we were under the impression that one of the other detours was chosen but all of a sudden this one pops up going through the Pascoe's land and I was here when they gave the evidence and it sort of -- I didn't realise how untouched because they gave a better presentation, understanding, than what we received from the NZTA. So I don't know if that was just by accident or by purpose but that's what happened.

THE COMMISSIONER: Thank you. Just carry on, thank you.

MR W WHITE: Cultural Assessment not complete: Te Korowai accepts as relevant to Ngāti Tama values CVA prepared for TRoNT by Mr Tama Hovell the plan it is not complete and fails to fully and comprehensively identify cultural values and addresses the impact of the activity on cultural values.

THE COMMISSIONER: I think you have covered this paragraph. So I think we are on to page 5, "Treaty Settlement - Partnership Matters".

MR W WHITE: Treaty Settlement - Partnership Matters: Ngāti Tama Iwi in the post-settlement governance entity Te Rūnanga o Ngāti Tama Trust, TRoNT, a statutory trust with perpetual succession under the settlement deed obtained a treaty settlement of $14.5 million together with some of the land that was confiscated by the Crown. Included in that land settlement was Parininihi. TRoNT is administered by seven elected trustees of which its active administration must not drop below five at any time and a quorum is to be four trustees.

Korowai views on NZTA use of Ngāti Tama lands: Parininihi is not only a spiritual ancestral band, it is the habitat of many metaphysical taniwha entities that have protected Ngāti

Tama over time. These taniwha have contributed to the Parininihi's being a bulwark over time from invasion from the north and until the arrival of the musket protected Ngāti Tama in Taranaki from such invasions. Today Parininihi has its metaphysical beings which live in and are still a bulwark even though the Mt Messenger Road was put in place by the thieving Crown.

On settlement Ngāti Tama did not receive income-earning assets from the Crown. Parininihi, today is that opportunity and within an appropriate arrangement it can provide the protection and the future of Ngāti Tama. What is proposed in this application and its associated arrangements does not do that.

The Crown have from the first arrival of settlers coveted the lands of Taranaki including Ngāti Tama. When they could not get the land by doing a deal with a minor chief like as has been explained what happened in Waitara, Tiera in Waitara, the Crown merely took it. The Treaty claim that settled with Ngāti Tama gave back only a small portion of the land stolen, not all that was stolen, and then the land that was returned, Parininihi, was burdened with covenants and restrictions. The security of Parininihi and the protection it offered to Ngāti Tama was

compromised by the Mt Messenger road. The Crown stole a Rolls Royce and gave back the towba11 for us to use it as it was infested with vermin and possums.

A member of Te Korowai determined from listening to TRoNT that a significant sum of money and/or land was to be paid to TRoNT by the Crown as part of a sale of land to the NZTA. I know nothing's been signed but we've heard that something's been offered.

Further, that the Crown was bargaining with land confiscated from Ngāti Tama, the Shell land, as a set-off of similar reimbursement.

Te Korowai shortly after it was formed had a smaller membership of Kaumātua leaders than it does now but it immediately sought their views on the proposed NZTA deal using the internet and a set of targeted survey of questions seeking feeding back from those Kaumātua and any Ngāti Tama beneficiaries they could similarly obtain feedback from.

It was Te Whiti o Rongopai who was reputed to have advised the Crown that:

"The blanket of Taranaki is big and we can share it with you."

That too is the view of Te Korowai. However, we do not agree for the sale of the land.

Te Korowai is concerned to provide for the future generations of Ngāti Tama by arranging a transaction for using the most precious Parininihi such that future generations of Ngāti Tama will view the transactions as fair and sound and a transaction that reflects the strategic position of Parininihi and the transport sector of New Zealand Society.

New Zealand history is resplendent with unfair bargains in relation to the land transactions with Māori when looked at subsequently. For example, the payment for Whanganui consisted of muskets and gunpowder, tomahawk, clothing, red blankets, tobacco, jew's-harps, fish hooks, beads and a variety of other trade goods.

Auckland similarly, the Crown paid £41 -- or is that £341, I guess, that's pounds -- for the original land handed over for the additional 3,000 acres. Te Korowai seeks a legacy that its descendants will benefit from into perpetuity as the proposed

NZTA road will benefit for the people of Taranaki and New Zealand into the future.

So how do we go forward? Our starting point is that the proposal should be declined given the significant adverse cultural effects. If approved is to be granted -- if approval is to be granted, which we oppose, then Te Korowai requires a comprehensive values assessment of our land, waters, Wāhi Tapu and taonga including fresh water and water beings, to be completed in relation to Parininihi and associated resource consent and related activities. That assessment will first fully describe the cultural values of the area of Parininihi affected, determine the culture values involved and then condition by condition and the proposed resource consent access the project works against Ngāti Tama values. Finally, coming to a conclusion, this has not been carried out.

Members of Te Korowai involved in the early survey mentioned above rejected the sale of land in any way whatsoever. Te Korowai wants the NZTA Parininihi road named to reflect the Ngāti Tama ancestral being that Parininihi is the Mt Messenger road named after one of the members of the armed constabulary, Colonel WB Messenger, who farmed at Pukearuhe and was a member of the New Zealand armed constabulary and who as such led the

party of colonial troops that attacked and destroyed our Pukearuhe Pah, constructed their redoubt, proceeded to dispose us and oppress us. It was Messenger who also led the invading Crown troops into Parihaka on that infamous day. The name "Messenger" should not be used for this designation.

Outside the scope of this designation, Te Korowai wants the Crown to recognise Parininihi as having kept -- having "legal personality". This will require an Act of Parliament under the -- similar to the Whanganui River recognition.

Te Korowai wants the old road at present known as Mt Messenger to be returned to independent trustees on behalf of Ngāti Tama. For this portion that pass through Ngāti Tama Parininihi this would form part of a comprehensive offsetting under S171 1(b) RMA.

Te Korowai wants the way-points and rest stations on the NZTA Parininihi road to have interactive signage that tells the story of the mana whenua world view, the theft of our ancestral lands and resulting tragedy. Te Korowai does not want to see any more Parininihi pass out of the Ngāti Tama lands -- Ngāti Tama hands neither for money nor for exchange or at all.

Te Korowai is prepared to consider the use of land in a similar manner that the Anglican Church always allows the use of the land around St Heliers, Mission Bay and Meadowbank in Auckland, a perpetually renewable lease. Te Korowai does not require any money to change hands as a purchase of the use of the Parininihi. This would require further negotiations and I understand there is a legal issue as to whether a State Highway can be established on leased land -- leasehold land.

Te Korowai wants the Protective Management Area, PMA, to extend over Ngāti Tama Parininihi and to be maintained in perpetuity. Te Korowai wants this PMA outreach such that it is never subject to variation downward in level of protection but monitored to achieve its objective and varied if necessary to give effect to that targeted achievement.

Te Korowai requires all economical analysis of the increased value of the proposed road to be determined and from the value the first annual rate of remuneration to mana whenua to be set. This payment should be started on the commencement of the design works to implement the proposed consents to a special purpose and independent trust fund.

Te Korowai believes the lease rate should be reviewed every year on the basis of the Consumer Policy Index change ratcheted so that it only indexes upwards and every five years a market review similarity ratcheted as the rate of economical benefit increases to New Plymouth region and New Zealand.

Te Korowai believes that as useable timber and other resources found in the NZTA road constructions are removed. They should be stored so that they are protected from deterioration for mana whenua.

So that's my address to us, my evidence and do you have any questions?

THE COMMISSIONER: Thank you, Mr White. No, only one question, well one comment and one question.

Your paragraph 38, you talk about the old Mt Messenger Road being returned. I have been told that road needs to stay open as access to some properties so I think the expectation is that would stay open as an access route, obviously not be a road but as an access-way, so that was just an observation I have been told.

The only question was, I have written sort of nine requests down, you know. Have you had any discussions with other members of the Rūnanga about these sorts of matters that you think should be part of a negotiation or has this presented to anyone, or is this the first time that Te Korowai's sort of wish list has been put forward?

MR W WHITE: We find it awfully hard to communicate. There has been no open forum where we can discuss things. I mean I think part of the problem is we didn't really actually know everything that was happening from the NZTA point of view so we we're sort of left in the dark. So some things we kind of knew but some things we didn't and this is what -- even though we've sat down with the NZTA and we've sat in front of them there's some things that we don't know. Like I said, the Pascoe -- the road that's proposed now is -- yes, it's just we never understood a lot of that stuff, you know.

But anyhow, we only can go off what the experts tell us and what is given to us unless we physically go there and look ourselves.

THE COMMISSIONER: Yes, okay. So really my question was has this list of issues been put forward to the Rūnanga before

and/or NZTA or is the first time you've managed to actually to put your thoughts and ideas out there?

MR W WHITE: I guess this is the first time that we've put these thoughts out there. We have spoken to the NZTA but like I mentioned, some of it hasn't come back to us.

THE COMMISSIONER: Okay. Thank you very much for your submission, Mr White.

MR ENRIGHT: Can I just say, Commissioner, some of the issues raised, there's obviously going to be a question mark about legality. For example, having a leasehold interest, for instance, it seems pretty unlikely to be lawful in terms of the legislation but I am sure NZTA can comment on that but it is more an attempt to sort of articulate some of the concerns within the restrictions that Korowai has had and the key point of course being a decline as a starting point.

THE COMMISSIONER: Of course, thank you.

MR ENRIGHT: I have Amos White and he has a statement which hopefully has been handed up.

THE COMMISSIONER: Mr Enright, I am comfortable for the witnesses to read out the written material. I do not think there is any other way of adequately -- for summarising it. Clearly, and probably luckily, we are going to carry on through part of the afternoon as well, which again I am comfortable with.

MR ENRIGHT: Another option is not to retire and read it through and then I can speak to it.

THE COMMISSIONER: Well I am really in your hands. I think if you prefer to read it through.

MR AMOS WHITE: Okay. I would only just read the important issues then, well the whole lot's important but, you know, I'll target the more urgent ones.

THE COMMISSIONER: Yes. Well do not hold back. If there is anything you really want to bring to my attention do that.

MR AMOS WHITE: Thank you.

THE COMMISSIONER: If there are parts of your submission you say, "Well I will take that as read" and I can read through

afterwards that is fine as well but I am certainly not wanting to fetter you or stop you giving a full and fair submission, Okay?

MR AMOS WHITE: Okay, yes. I am Amos White. My brother Bill has helpfully said who we are -- what we are, so I'll miss one.

THE COMMISSIONER: Yes.

MR AMOS WHITE: Two. I am the deputy chair of the Rūnanga O Ngāti Tama Trust, Te Rūnanga, from which business I and my fellow trustees, Lisa White and Tahu White have been unlawfully excluded since 11 November 2016. We are referred as "the suspended trustees" by the NZTA in these proceedings. I am the chair of Te Korowai.

Now I am writing this and place before the Commissioner the nature and extent of consultation with Te Korowai and with Lisa, Tahu and myself as trustees.

We all got regular jobs, Tahu's in Perth, he's in the mines. I work in the -- as a shift engineer so I'm limited with the availability of time and Lisa has the same thing.

Okay, number five. Shortly after the NZTA appeared before the trustees of TRoNT with the desire to construct a road Lisa, Tahu and myself were excluded from the Trust information, purported suspension. Lisa, Tahu and myself commenced proceedings in the High Court in relations to the suspension matter which will be addressed probably on the 20th hopefully, of this month. Lisa wrote on behalf of the -- wrote to -- on behalf -- to the Minister of Transport and the Minister of Treaty Settlements advising them of the TRoNT was dysfunctional, that litigation at the High Court in -- had commenced between the trustees and provided them with copies of the proceedings and they both got copies.

Okay, to eight. We expected a wider and open consultation process amongst Iwi and hapū from our Treaty partners mindful of the dysfunction at TRoNT level they did -- this did not occur and why that didn't occur I'm not too sure on behalf of the NZTA because they didn't come back to us and explain why they have not included us with the information that we wanted. So we really have been shut out over the last two years.

Pukearuhe Marae: Many Iwi who lived in New Zealand did not attend the marae at Pukearuhe. Pukearuhe is an unsafe place for

many Ngāti Tama beneficiaries. The NZTA hui are held in the Pukearuhe an unsavoury intimidation and conduct taking place.

At the annual general meeting a few weeks ago whilst putting a resolution to the meeting relating to the NZTA my fellow trustee Lisa was assaulted now being reviewed by the police, and that's not rubbish. At the same meeting another senior Kaumātua with a large number of proxy votes was shouted down and his votes were not taken into account.

So I'm not going through the whole lot, there's other people and hapū relating to this but they will not come to other marae even though they're whakapapa to it.

At a recent meeting of Te Korowai another Ngāti Tama member accounts how he was physically frogmarched out of the gate of the marae, he vowed never to return. So that's the culture there. That's all I kind of -- wanted to kind of get around.

It was into that environment that Ngāti Tama members go to listen to the NZTA proposal. Attendances are low, on one occasion 12 members, on another, at the AGM, 39 and similar low numbers attended other meetings. This is the context of the size of the roll at the time of settlement, in excess of 800.

So you get less than 1 per cent coming to the meetings. Te Korowai is in touch with 800 members plus whānau connecting through Kaumātua.

THE COMMISSIONER: Mr White, your original 800 is that in excess of 800 beneficiaries of Ngāti Tama or is that to do with something else?

MR AMOS WHITE: That is the members and as well as the whakapapa to that. Is he talking about -- are you talking about Te Korowai or marae here?

THE COMMISSIONER: No. You have two 800's. You are talking about the numbers coming to meetings?

MR AMOS WHITE: Yes.

THE COMMISSIONER: Comment, "The size of the roll at the time of settlement in excess of 800", is that referring to the numbers of Ngāti Tama beneficiaries on a roll or is that something different?

MR AMOS WHITE: Yes, well I'm unsure on the Ngāti Tama roll because we were not given that information even though we

requested it at the TRoNT meetings but that roughly yes, they're all 800 Te Korowai.

THE COMMISSIONER: You are in touch with 800 in your Te Korowai group?

MR AMOS WHITE: Yes.

THE COMMISSIONER: Right, thank you.

MR AMOS WHITE: Confidentiality of NZTA material to TRoNT: The NZTA negotiator with Iwi have been cloaked in confidentiality and evidently confined to the seven trustees of TRoNT which changes must -- made to the information exchanged following the allegations of suspension of trustees. The cloak of confidence imposed from the chair of TRoNT can be seen as various items of correspondence he has communicated with the Trust and that -- I mean trustees, that's us three.

Members of the Ngāti Tama Iwi informed from the newspapers reporting of the proposed -- proposal has written to TRoNT and its legal team seeking to be advised and informed. I do not believe they have been informed.

Hui a Iwi have been advertised in the Taranaki newspaper, cancelled and re-advertised, on again, off again which has been a common thread happening through their tenure. However, our Iwi has a -- to that I was invited to a NZTA workshop in June 2017. I was only given four days notice so I told them that it wasn't enough time. I needed more time because as I said at the beginning I'm a shift worker I just can't take time off work, and so too does the other two trustees.

Okay. I'm down to 17. The limitation of Lisa, Amos, myself, with regards to input: As a functioning Trust of TRoNT we expect as Trust to be able to attend meeting properly called, listen to the NZTA aspirations, discuss and debate with other fellow trustees. Even if these debates were tense and if we agreed to differ, to consult with our registered Iwi and reflect those views back to our trustees and onwards to NZTA. We have not been able to do that, the effect of the cloak of confidence and the effect of our exclusion -- not inclusion, exclusion -- from the Trust meetings have meant we are simply reactive to the matters presented to us, so it's off the hoof.

Te Korowai, when it heard of its positions arrived at by the four trustees of TRoNT, immediately by an electronic survey and key questions determined the view of a very limited snapshot

of Iwi Kaumātua who are quickly -- quietly we're able to make electronic contact with. A reflection of their position is outlined in the statement of Bill White which he's already done.

The Te Korowai view requires more engagement and information sharing which has been nothing to date thus far and as there are significant numbers of members of Iwi and hapū yet to be involved all have a stake in custodianship of the Parininihi.

As Mr Dixon from the NZTA acknowledged when he appears before you on 3 August 2018, you asked how it was -- what involvement NZTA have with Ngāti Tama members and other Te Rūnanga and that is Te Korowai and Poutama. He stated he had only acknowledged Te Rūnanga o Ngāti Tama on the advice of Mr Dreaver saying:

> "I have given little weight to those others and given full weight to Te Rūnanga. I have taken the cultural values assessment as important and relied on the cultural values assessment."

Mr Dixon's statement reflects Te Korowai experience. So -- yes.

None of our members that we were aware of was consulted in the preparation of the cultural values assessment. Whilst we

accept the cultural values assessment was relevant it is not comprehensive of Ngāti Tama cultural values and more is required in order to sufficiently avoid the remedies or mitigation of cultural values.

Okay, I'll shoot down to 25. The Parininihi has an ancient -- ancestry arising from the union of Papatuānuku and Ranginui as are we. The Parininihi have fed Ngāti Tama, protected us, has sheltered us which is -- Bill White's covered that anyway so I'll just move on.

27. In European terms -- no, he's also mentioned that as well. We'll go to 30 because Bill was -- presented and talked about those, 27, 28 and 29.

In this NZTA application neither Te Korowai nor many of the members of the various hapū and Iwi that constitutes Ngāti Tama appear to have had any input into the works to be carried out in the freshwater streams and the valleys that feed into them. What we as an Iwi and hapū and other various hapū values has not been taken into account, we just have not been consulted. These streams are a life force value to us, they fed us over time, provided us sustenance in times of refuge and assistance to us today as poverty. They contain pathways of taniwha, our fish

breeding sites and fishing and food gathering sites, freshwater fish feeding sites. None of this has been obtained from us, our views and values have not been heard.

Similarly, our views on the biodiversity of Parininihi and the families that live within it.

The Commissioner has heard copious comments from experts in everything from birds to bats. There has not been any assessment of the wider hapū Iwi on these matters. All of these -- all those beings are the children of Papatuānuku and the Ranginui from which we, the wider Iwi, as Kaitiaki has a duty to protect.

Now to 34 onwards as everything else seems to be covered. Much of the Ngāti Tama way forward will depend on the outcome of the case on 20 August 2018, which is only four days, and what follows. Nevertheless, Te Korowai will have an ongoing legal status in this matter. NZTA has clearly been put on notice as to the consequences of doing the deal with Te Rūnanga as it stands -- presently stands.

THE COMMISSIONER: Thank you, Mr White. Your statement is clear and I do not have any questions, thank you very much.

MR AMOS WHITE: Thank you.

MR ENRIGHT: I will just clarify who is speaking next. William Simpson.

THE COMMISSIONER: Thank you.

(Māori spoken)

MR SIMPSON: To make it easier for today I have actually -- with consultation my family have written an oral submission which I've -- hopefully they've handed up to you.

When we start, I still remember the days when Walter Mantell, who was then the Commissioner for extinguishing Māori land, received his orders in 1848 and the objective of that mission was the extinguishment of any kind of Māori land but upon inquiry he found it to be vested in native inhabitants, that did happen. The whole motive was a desire to confiscate Māori lands and to trample upon the feet -- soles of the feet of our people.

The Treaty of Waitangi became the voice of the Māori people so the whole world would eventually know the truth (Māori spoken).

I stand and will be very honest to each and every one of you here today. I stand in trepidation because Ngāti Tama is at each other's face and we're fighting and my family do not approve of it so today I repeat the words of Queen Elizabeth at Waitangi Day when she said that:

> "Today we are strong enough, honest enough to learn the lessons of the last 150 years and to admit that the Treaty of Waitangi has been imperfectly observed [by the Crown]."

THE COMMISSIONER: But, Mr Simpson could I just interrupt, I am sorry. I do have another statement that was circulated by Mr Enright, dated 14 July?

MR SIMPSON: Yes.

THE COMMISSIONER: So is your statement I have now simply --

MR SIMPSON: It's in response to that one you were circulated.

THE COMMISSIONER: So the current one does not replace the other one, this is just an extension?

MR SIMPSON: Yes, the whole intention is to explain the one that was sent earlier.

THE COMMISSIONER: So both of them are on the table and you are going to go through 16 August one?

MR SIMPSON: Yes.

MR ENRIGHT: Is that okay?

THE COMMISSIONER: Yes, that's fine, carry on.

MR SIMPSON: Thank you so, Mr Commissioner. When I was a general manager for Huakina Development Trust one of the key committees set up by Waikato Tainui to manage their whenua, the environment, social health and all their affairs and I will let you know I will never forget the fights we had with the Crown to recognise us as mana whenua. It was here that we got fully comprehended -- that we fully comprehended why the whenua, fauna, forest, bird, fish, waterways, awa streams, land and

skies were all had a mauri and it was actually them that had the kaitiaki and why we needed to protect our future.

I am also still one of the current chief negotiators for Ngāti Tama Whanganui A Tara and we suffer the same issues down there as we do here. As my submission states, I am Ngāti Tama.

Firstly, we do not want -- our family do not want to delay this process any more than is necessary. We do fully support a construction of a bypass through the Te Maunga o Purehorua, Parininihi. However, I'm here to state that we as a whānau were made aware that there are many Ngāti Tama beneficiaries and whānau that have been excluded from the consultation process with NZTA for one reason or another, our father was one of those. That TRoNT had failed to notify all the beneficiaries of the Hui a Iwi.

Therefore, after consideration and many hours of discussion with my family, we ask the Commissioner and people before us, to set aside the Resource Management Application until such time as Ngāti Tama 0 Taranaki as a whole are fully included in the consultation process.

We believe that Ngāti Tama is in an extremely dark place at present and have been put through harrowing times and experiences with the loss of our Treaty Settlement moneys through bad investments. Nationally and internationally, the worldwide negative publicity our Iwi has been hurtful and catastrophic to say the least. Our past leaders of Ngāti Tama are said to have failed their people. The leadership at that time along with management was seen to be wanting and most of the leaders to some have said, have died in shame. Therefore the mana of Ngāti Tama is at stake right now more than ever before.

The decision to grant resource consent with Ngāti Tama support the application must never be taken lightly albeit the decision to consult with Ngāti Tama must included all Ngāti Tama that are directly affected must also be taken extremely seriously.

We are of the view that these two crucial and significant steps have been overlooked by NZTA and have treated Ngāti Tama with contempt. It is our view that NZTA have taken advantage of our current weakness and are willing to accept the deal from the current TRoNT as a legal requirement and say that they have consulted with Ngāti Tama. That is why at this crucial juncture

this resource consent must be satisfied, to force NZTA to complete a robust, credible consultation with all of Ngāti Tama rather than putting their faith in the current TRoNT that purport to represent all of Ngāti Tama, that is far from the truth.

NZTA have provided you with an extremely impressive paperwork and affidavits from NZTA who purport to suggest there has been a consultation pathway to show that it was comprehensive and robust. However, they've neglected to provide any evidence to show that they have not compromised the consultation process. It must be noted that NZTA have relied heavily on TRoNT to support their resource consent application, claiming TRoNT to be the only Ngāti Tama Māori group. They need to seek mandate to get resource consent to begin the bypass consultation at Te Maunga o Purehorua Let's be clear, NZTA are financially supporting TRoNT and their manager.

There are a lot of people of Ngāti Tama in the wider community who believe strongly that these payments have compromised the position of TRoNT and the manager. Questions arise as to who they purport to represent, their Iwi or NZTA and where do their loyalties lie. It is strongly believed that NZTA are not coming to this process with clean hands. At no time did

TRoNT get mandate to accept the payments by NZTA in regards to resource consent by the beneficiaries, it would be fallacious to believe otherwise.

Are we seeing history repeating itself once more? Ngāti Tama suffering at the hands of TRoNT and the manager. Their submission has shown their consultation with Ngāti Tama has not been as robust and transparent as it's made out to be by NZTA.

Our whānau are extremely troubled and say that if NZTA is granted resource consent it will be a disaster, it will have a disastrous effect on our Iwi, the environment, the ecology, our tikanga, our spiritual significance, our mauri. More importantly will the mana of Ngāti Tama be tarnished once more.

It would be extremely callous at this time to grant resource consent application knowing the facts, the history, spiritual values, cultural significance of the current route, that have not been fully espoused by Ngāti Tama.

We know there's a challenge in the courts when we speak of -- as to the validity of the trustees in TRoNT. This matter is an Iwi matter yet to be decided. However, it is an important matter to contemplate even though it's not a good council matter

the outcome must, and will have, an effect on the final decision in whether to grant the resource consent or not. We respectfully ask you to consider this when making your decision.

As an Iwi we cannot allow the matter to lie where it is knowing we are not united in spirit, thought and view on this important matter. We are about to embark and cut into the heart of Mangapepeka, the valley of darkness, the sanctuary of Ngāti Tama during the Māori Land wars between Ngāti Maniapoto, Waikato Tainui, Ngāti Haua and many others.

Mangapepeka gave life and sustenance to many of our tupuna, kaitiaki in the form, of our ngā manu lizards, rats, kiwi, morepork, wai, Ika, fauna and flora is important to remember. We do not want to head back into the dark spaces our tupuna had gone because of one error of judgement.

A final decision to give support to NZTA around resource consent must be a united one. The view that's it's okay to cut the heart and soul from a 200-year old tree and divert awa as sustained our tupuna from certain death is despicable and shameful to those that pursue this pathway especially if you are Ngāti Tama and you are Māori.

Ngāti Tama need time to heal and at this time the hake is raw. NZTA is using this valuable time and their moneys to buy Ngāti Tama's support rather than to work alongside us and hear all our stories especially those that are directly affected.

I'm here to give full recognition to spiritual and cultural values that are not mentioned nor expressed in the documents that have been provided by TRoNT. To call upon the smorgasbord of case law that NZTA and of course yourselves will be familiar with that gives recognition to the Treaty of Waitangi, to the Iwi, to the hapū, to the whānau and of course to Māori. To highlight what legal arguments to consider around the words "consultation" and "good faith" and what it means to us as Ngāti Tama. The Chief Justice, Judge Edward Taikurei Durie said:

> "The development of the consent of partnership among Māori and non-Māori is a long life job, it doesn't have an end to it and it must be worked at constantly to widen both partners views of the Treaty and the past."

We know that consultation is not a new word and I'm sure you've talked about it this morning, I've heard it and Wellington Airport International case has always been the leading case you must recognise. The duty to consult arose from out of the RMA. Further consultation is also recognised in the principles of the Treaty of Waitangi which is by virtue of section 8:

> "That all persons exercising functions and powers ... shall take into account"

and this view was recognised in the case law against -- in Ngāti Kahu plus Pacific International Investments Limited and there are many cases that refer to the duty to consult with tangata whenua, which is also identified in the First and Fourth Schedule of the Resource Management Act.

But I want to talk to you about -- to another word, which is the word and it's in good faith. We recognise that consultation itself should be conducted in good faith. We know that it doesn't necessarily require consensus but it's an ongoing -- and that consultation never should fetter the council decision in making responsibility, that's not what we're trying to do. We also recognise that section 8 RMA is clear that the council has taken account of the principles but as I said earlier, and these sentiments were echoed in another old case Gill v. Rotorua District Council and they thought that one of the nationally important requirements of a RMA under part 2 "consideration" is that account must be taken of the principles of the Treaty of Waitangi 1840, section 8 of the Act. One of these principles is that consultation with tangata whenua noted that the tribunal stated:

> "We think it right to say that the good faith owed to each other by the parties to the Treaty must extend to consultation on a truly major issue".

This is a major issue and we see these principles are echoed in the Haddon v. Auckland Regional Council case. We also agree that when consultation must take place and who is to be consulted becomes a moot point and argumentative as said by Tama Hovell's submissions and there's many older cases as in clause 25, as I say, and 57, the Gill case, the Haddon, Quarantine Waste, Ngatiwai, Hanton, Rural Management, Whakarewarewa, these cases gave rise to the importance of consulting.

A key point I want to make though today, people, it's really important to remember is that the Court of Appeal in these cases viewed consultation as analogous to a fiduciary relationship and that Māori up until then viewed consultation as a taonga, it is just not a word. And when an understanding is fully reached it is said that understanding becomes tapu but more so if the decision is made on the sacred marae, that was in the Haddon case. So the tribunal in the Haddon case stated that the onus is upon TLA not only to notify Iwi but also the hapū as appropriate landowners, therefore the obligation was seen as a section 91(1) duty to notify and a separate issue was section 8

and that was highlighted in Ngāi Tahu Māori Trust Board v Director -General of Conversation. It was interesting to note that where it was held:

> "... the requirements to take into account the principles of the Treaty of Waitangi and it should be interpreted and applied widely. The Treaty of Waitangi principles were not limited to consultation but also actual protection of tangata whenua interest."

We need to remember at this point that the Crown must take positive steps to protect tangata whenua interests under the Treaty and consult, that's what I'm trying to say. It cautioned that the requirement to protect Māori interests must not be restricted to consultation only, the spirit of the Treaty is paramount, honesty of purpose calls for honesty of effort to ascertain facts and reach an honest conclusion. Consultation is but one way to achieve this.

NZTA to date, in our view, in consultation with Iwi has been nothing but piecemeal, fragmented, lacks the understanding, prioritisation of Māori culture, spiritual, ecological, environmental values which underpin us as tangata whenua.

What is the relevance of all this? When you take advantage of a dysfunctional Iwi you can use your power to persuade and

authority to gain advantage over Iwi at a time of vulnerability. It is the view of our whānau that NZTA failed to adequately consult tangata whenua as required under the RMA. There needs to be more than just sending out notices advertising a meeting with only 20 people at what was deemed a hui. In my case I did attend all the public meetings because we were never ever notified of hui-a-iwi by Māori or by NZTA but we heard about the public meetings so I made it personally my role on behalf of my family to attend these but as a Iwi we were never involved.

It must be noted that the numbers were low at the hui and so forth; they should have raised a red flag. They could see that there wasn't a quorum therefore the meeting should either have been abandoned or at least they should have raised the issues that were beyond their control and said something to the organisers rather than continue with the hui and called another consultation hui. That raises the issue that we were talking about today, who to consult is the question.

We as a whānau along with Te Korowai are adamant that we were not consulted. Section 93 has a requirement for consent authorities to send notices to a number of specified persons and bodies. Among those to be notified are those likely be affected

by the application and Iwi authorities and, yes, we were all likely to be affected, all of us, Te Korowai and my family.

In the case of Haddon, as I said before, is an example. They notified Ngāti Wai, they notified everybody else but this one family and therefore it ended up in court. We have the same or similar situation here with Te Korowai and my family. Many other beneficiaries that have direct relation with Te Maunga o Purehorua me Paraninihi.

What the Haddon case really points out is there is an onus upon Council and others, not only to notify iwi but also hapū as appropriate land owners. Ngāti Tama's case, in our view, is analogous to the Haddon case.

The sentiments that we say the Treaty of Waitangi is synonymous with consultation process with Māori, I have a right to be consulted. Must remind ourselves that effective consultation must ultimately lie at the feet of those who are the decision-makers. Interpretation of effective consultation must also be based on who the decision is going to affect.

So I want to give rise to this in good faith, because it is important that I talk in good faith, because a lot of people

seem to think it is an underrated word and we usually overlook it, but when consultation is conducted in good faith, which we're all aware, and when these proposals can be generally influenced by the views of those who are asked to contribute, then one can see to be consulting in good faith. In good faith, in our view, should be a guiding principle, and needs to be binding and meaningful. As stated earlier, with most consultation process "in good faith" is at the heart of consultation exercise being taken.

Te Puni Kōkiri refer to that, and they gave that a meaning. Therefore, we cannot assume or expect consultative process for one Māori group or organisation be demographically the same. This gives the importance to the notion that good consultation process are nowhere more necessary than with Māori.

And we talk about tangata whenua and mana whenua quite often, and I am only going to say a couple of words on here, and that whether they are most likely be affected by any decision, as we are well aware, especially in this case, Te Maunga o Purehorua and Mangapepeke, and, of course, the Paraninihi.

The only place I could find where these two words are basically clarified is in the Māori Land Court, section 30, and

also we can see it as corroborated in the principles of Treaty of Waitangi.

I would like to move on and talk about the Kaitiakitanga, because everyone talks about this a lot. This is a very special concept, and has a meaning deeper than just guardianship and custodianship. Kaitiaki comes from a human spiritually responsible to rivers, mountains, trees, streams, fish, animals and to the whenua

Te Puni Kōkiri said that Māori identify stems from identity. It stems from a relationship natural physical resources of their rohe. Every whānau, marae, hapū, and iwi has an environmental taonga within their rohe contributes to their identity. This can be seen in the kaitiaki and lakes, rivers, mountains, and the streams, et cetera. A loss of kaitiakitanga and of mauri is one of the elements of the natural without maintaining kaitiakitanga me tohungatanga has serious consequences for tangata whenua me mana whenua of that rohe as individuals and as a whānau. We also know this if you are Māori. We use the word "be careful or you may be hit". I have not written that. I am just letting you know.

Kaitiakitanga is enormously significant because of its holistic spiritual and cultural views of the environment and of its relationship to the whenua. The holistic approach to the environment and management both in New Zealand and globally is seen as approach that people are taking to safeguard our natural environment. The spiritual approach protects those before us, and a cultural view protects the mauri, the ihi, and the mana of the rohe.

So the final points I want to make is simple. We talked about where the Crown is the consent authority it's a requirement to consult with all tangata whenua, mana whenua, prior to a consent application hearing, so it should have been done before we come here. That is why I am hurt, because it was not.

The fourth schedule requires an applicant or identified persons, interested or affected, I did see a list, but it did not list everybody. Consultation undertaken, any response to the views of those going to be consulted, and failure to provide adequate information could result in delays and requests for further information which I think has happened here. Iwi, it is submitted, should clearly express their concerns about a resource consent application so that the relevant issues can be

clearly identified during the application process, and additional information sought as need be.

This is one point I make clear NZTA did not do. But the iwi did submit to them that they had concerns, not only TRoNT but Te Korowai and my family, and there was others. What I have done today with my handout is I have just added the pertinent local government section because that was given to me by New Plymouth District Council, and the importance of mana whenua, tangata whenua in relation to consultation.

This is to highlight the consultation is written in other statutes and legislation that govern local and regional councils, that support the view that TLAs and others are required to consult with us. It was stated it is also prudent that the steps that TLA would need to make ensure that its decision-making process would withstand any form of scrutiny by Māori.

Now, it uses the word "Māori" rather than iwi or hapū, so I am assuming it means every Māori who is going to be directly affected by this decision. So we lend our support to the submission to stop the current NZTA option for the road works by Te Maunga o Purehorua and Mangapepeke, due to the Ngāti Tama not

being consulted comprehensively. Secondly, we are required by tikanga to give our protection to the current endangered Kaitiaki or Te Maunga o Purehorua and Mangapepeke. When I talk about the kaitiaki I am talking about all those animals that are in there.

I have yet to hear or see from any member that a Tohunga ki te Ngahere had actually gone in there and assessed these things. That to me is quite relevant and pertinent in regards to what NZTA want to do by cutting trees down, which in tikanga it is something we do not do. Last, but not least, the number of Ngāti Tama whānau not consulted with this is clear. When we were led to believe that the numbers that require consultation exceed those that have attended hui-a-iwi.

My final comment is this. This is a tragedy that Ngāti Tama will need to live with if a resource consent is granted at this crucial juncture. Therefore, on behalf of my family and in support of Te Korowai, and, of course our people, we ask that it be set aside until such time as NZTA have completed full consultation with all of us, and provide us with all the same materials as they provided TRoNT, so we can have our say, and we can make comment.

Our comments will not be detrimental, because we are not that way inclined, but we need to know that we can call on our experts as well to have a say. Until this moment, we have relied on five people, and I think that has been unfair and unjust. Thank you very much, Mr Commissioner, for listening to me.

THE COMMISSIONER: Thank you, Mr Simpson. I do want to come back, and maybe Mr Enright can help me. This oral statement, dated 16 August, this is on top of the statement that was sent to me this morning, dated 14 July, so both are in as submissions, Mr Enright, is that your understanding?

MR ENRIGHT: That is my understanding, yes. I was not involved in preparing most of the evidence.

THE COMMISSIONER: Okay, but the 14 July one came to us this morning, I am sure, by email or via the --

MR ENRIGHT: Yes, that would be right. Sorry, I just cannot recall --

MR SIMPSON: That is correct.

THE COMMISSIONER: Okay, yes.

MR ENRIGHT: So the witness endorses that statement. It was not clear.

THE COMMISSIONER: All right. Mr Simpson, I only really have one question. It is about who to consult and notification of the applications. The notice of requirement and the resource consent applications are all publicly notified, so everyone -- anyone had an opportunity to submit, and I think Te Korowai has come through that, so I think you make the point about the consent authorities needing to send a notice to a number of specified persons, are you saying that yourselves or beneficiaries of Ngāti Tama or a particular hapū should have been sent a specific notice?

MR SIMPSON: Yes. Can I just explain that? I will say this. Not everybody receives a newspaper. My household we certainly do not. Okay, we do not receive a newspaper, but we are on the TRoNT registry, so I would have assumed that we would have been notified, and I can categorically say today that we were not.

I heard about the public meetings through other people, so I attended those, and I was satisfied I attended them myself,

but the rest of my family were not notified. So when they spoke to me, they said, "Make sure that point has been made".

THE COMMISSIONER: Okay, so you think you should have been notified with a letter or something in person?

MR SIMPSON: Yes, correct.

THE COMMISSIONER: And certainly the staff can address that to me in their closing as well, so --

MR SIMPSON: Thank you.

THE COMMISSIONER: -- I just want to raise that with you. I do not have any other questions, thank you.

MR ENRIGHT: I think the witness's answer was he should have been notified via TRoNT as a registered member, and was not.

THE COMMISSIONER: Yes.

MR ENRIGHT: One, and two --

THE COMMISSIONER: There was an internal TRoNT --

MR ENRIGHT: Yes.

THE COMMISSIONER: -- process, yes.

MR ENRIGHT: And then point two was, yes, he would have liked to have been notified by Council. I appreciate that is not the way the law works, but that is his evidence.

THE COMMISSIONER: That is his evidence, I understand that.

MR SIMPSON: I am just following through on the Haddon cases, I am familiar with it.

THE COMMISSIONER: Yes.

MR SIMPSON: I know exactly what happened here.

THE COMMISSIONER: Yes, okay.

MR ENRIGHT: Thank you.

THE COMMISSIONER: Thank you, Mr Simpson.

MR SIMPSON: Yes, okay.

MR ENRIGHT: So last witness, Allen White. And that has been handed up in the interests of --

MR ALLEN WHITE: Good afternoon. My name is Allen White. Allen Potete White. I have the same whakapapa as my cousin sitting behind me, so I do not need to repeat it. We will be starting at item 35.

MR ENRIGHT: Paragraph 35.

MR ALLEN WHITE: Relating to the cultural assessment.

THE COMMISSIONER: Thank you.

MR ALLEN WHITE: We, as Korowai, adopt the Ngāti Tama cultural values assessment in regard to the NZTA proposed bypass through the Paraninihi, as far as it is correct. We also claim that it is not comprehensive enough. It fails to fully and comprehensively address the impact of the activity on the cultural values taonga and tikanga of Ngāti Tama.

As it has been related to you, these things needs to be addressed by the wider community rather than a select community with a different point of view. The Crown, from the first, coveted the lands of Taranaki including Ngāti Tama. Additional, and more importantly, recognised and craved the security offered by the Paraninihi. The ancestral domain of Ngāti Tama.

When the Crown could not get the land by one means or another, the Crown simply took it. That is they stole it. The systematic theft of Māori land in the name of progress has got to stop. The Crown merely took it. The Treaty claim that settled with Ngāti Tama gave back only a small proportion of that land, but all that was confiscated, and then the land that was returned was burdened with covenants and restrictions.

These covenants and restrictions were designed to protect unique pristine environment. It is the home of our ancestral beings, endangered species and vertebrates and invertebrates. The unseen fragile taonga of the Paraninihi that weeps for our protection.

Ninety per cent of the animals on this earth today are invertebrates. They are reliant totally on the water that they live in. I cannot see any mitigation that will address those

issues. They need to be addressed so that we are comfortable with that process.

(37) The building of the Mt Messenger Road Bridge breached the tenure of Ngāti Tama and compromised the security of the Paraninihi, resulting in Ngāti Tama and its people being disadvantaged yet again. The security of the Paraninihi was compromised by the Mt Messenger Road.

Notwithstanding our adoption of the cultural values assessment that has been prepared by the four trustees. Te Korowai requires a comprehensive Ngāti Tama cultural value assessment to be completed in relation to Paraninihi and the associated resource consents and related activities.

That assessment will first fully describe the cultural values of the area affected, and determine the cultural values involved, and then, condition by condition, assess the project where it is proposed by NZTA against the Ngāti Tama values. Finally, coming to a conclusion. What we are saying is that these things need to be done step by step by step, and inclusive of everybody that is involved with Ngāti Tama.

There will be a significant cost involved. We expect these funds to come from the applicant in advance. We made enquiries among other similar projects and similar cultural value assessments, and we say that the period would be between six and eight months to complete.

THE COMMISSIONER: Mr White, can I ask you about this?

MR ALLEN WHITE: Recently, Mr Commissioner, we had a meeting with the NZTA where they waxed really lyrical about the amount of work that the consultants had produced over a long period of time, which are kind of strange, because the cultural values assessment was only completed by Ngāti Tama in December 2017. Hardly a long time.

THE COMMISSIONER: Can I ask you a question about this?

MR ALLEN WHITE: I am sorry, you will have to speak --

THE COMMISSIONER: Can I ask you a question about this?

MR ALLEN WHITE: Sure.

THE COMMISSIONER: Sorry, I need to speak into the microphone. So there has been a cultural values assessment funded by NZTA, Ngāti Tama Rūnanga have facilitated that. Another group, Nga Hapū o Poutama have asked for funding to do a cultural values assessment, and that has been provided. Did Te Korowai ask for funding in support for an expanded or different cultural values assessment after it lodged its submission?

MR ALLEN WHITE: I cannot answer that.

THE COMMISSIONER: You cannot answer that. You do not know that?

MR ALLEN WHITE: Can you answer that, Rob?

MR WALDON: No, certainly not asked for funding for a cultural values assessment.

THE COMMISSIONER: Okay, thank you.

MR ENRIGHT: Sorry, that is Rob Waldon for the record.

THE COMMISSIONER: Yes, thank you, Mr Waldon. All right, carry on, Mr White.

MR ALLEN WHITE: So number seven is consultation with iwi. We say that the trust is not properly met and the incumbent defaulting trustees who without the involvement of any level of the excluded trustees have been meeting with NZTA and have not consulted widely with Ngāti Tama in order to establish wider iwi interest and views.

One on the sale of Ngāti Tama land, whether the use of land is acceptable to Ngāti Tama, and any cultural redress that might take place. We have written consistently to Te Rūnanga asking for information. We have also cc'd NZTA on those requests. The only reply that we ever got from them was an invitation to meet on June the 2nd, I think it was. It was not suitable. It was only four days' notice, and it was not suitable for us to meet, or for myself, to meet with them. So I sent an apology, and asked if I could include some items on the agenda, and also asked for any minutes from any other previous meetings. Unfortunately, that never got replied to.

So we say that, where there has been an assurance that meetings have been held, they have not been held with the wider iwi involved. And, nine, I am not too sure whether this is applicable here or not. Let me relate another story to you, if

I may. In 1997, some 435 members of Ngāti Tama signed forms detailing that they did not like the way that the mandate for Treaty settlement was being taken forward.

This packet of documents was presented by OTS to the select committee that was dealing with taking the Treaty bill forward. The upshot of it was that OTS said it represented 40 per cent of the people. A quick calculation says that the total membership in 1997, according to OTS, was some 1,100 people. It also made the recommendation that OTS do everything within its powers to try and reconcile these people, so that the iwi could become one again. Fast forward now to 2012, and there was an iwi meeting at Pukearuhe. I have a list of the active members, and that list records 890 people involved as beneficiaries to Ngāti Tama.

2013, the census says that 2,100 people associated themselves with Ngāti Tama, so there is a huge discrepancy in there. It has gone from 1,100 down to 890, and the census says that there were 2,100 people who associate with Ngāti Tama. My own family, in 2003, amounted to five people being eligible to vote.

By next year, that number will have increased to 18. So I figured it that, every four years, the number will double. So

if the census figure is correct, next year, there will be over 4,000 people involved with Ngāti Tama. Now that is going to require a lot of work by a lot of people to bring them together to get a viewpoint. It would be impossible for the Rūnanga at this point in time to secure a mandate of 75 per cent of the people.

It is disturbing that these numbers have never been talked about. It is also disturbing that we have part of the organisation that has made no effort in trying to reconcile differences. I look around here, I smiled at my cousin, she did not smile back to me, and that hurts. You know, that is not the way that we operate. I have another cousin that refuses to shake hands with me. For the life of me, I cannot understand why.

But we are committed, as a group, to provide for the future generations of Ngāti Tama by arranging transaction for using the only substantial asset left to Ngāti Tama. This is the only asset that we have left, besides its people, and we need to make sure that that asset is going to work for us forever. It does not mean we are going to sell it. It does not mean to say that we are going to give it away, but it means that Ngāti Tama must share in the economic benefit that the region will have.

So we move on to the way forward. As I said, we do not want to sell any land to the Crown or to anyone else. We could allow the use of the land by the Crown on a perpetual lease. Te Korowai wants the proposed NZTA Paraninihi road named to reflect Ngāti Tama ancestral being at the Paraninihi. And the name should be decided by the iwi. We want the return of the Mt Messenger Road. We believe that the old road named as Mt Messenger should be returned to Ngāti Tama. We believe that the signage, pathway points, and resting stations should reflect the story of Ngāti Tama, and the confiscation and the tragedy that was and is Ngāti Tama.

There are plenty of examples of lease in perpetual versus sale. The Anglican Church allows the use of land around St Heliers, Mission Bay, and Meadowbank in Auckland, a perpetually renewable lease. Te Korowai does not require any money to change hands, other than a reimbursement for the cost involved in setting the transaction in place, and the subsequent payment on an ongoing basis.

We talked about the reimbursement of costs, and I think NZTA would accept a proposal that we put as Ngāti Tama. The economic benefit to be determined at outset, okay, then, Te

Korowai requires an economic analysis of increased value of the improved road to be determined, and, from that value, the first annual rate of remuneration to Ngāti Tama to be set, with payments to be in advance. The first payment on signing. The lease review, 63, the lease review and ratchet provisions. As with all leases in this sort of thing, they must be ratcheted and reviewed every three years.

We also talk about a stockpile of the timbers from Ngāti Tama to use. So, to conclude, our first position, as Te Korowai, is that the road should be declined. It is only if that is refused that Te Korowai will consider any other options. This requires more engagement and assessment of the cultural effects.

THE COMMISSIONER: Thank you very much, Mr White. I do not have any questions, and I am sure that NZTA will have listened to your submission, along with me, so thank you very much.

MR ALLEN WHITE: Thanks.

MR ENRIGHT: Thank you. And, of course, the balance of his brief, we will just take as read, Sir, as he had offered, so we now have our final witness, so Mr Carlyon.

THE COMMISSIONER: Thank you. Good afternoon, Mr Carlyon.

MR CARLYON: Tena koe, sir. The way I propose to approach the time that I've got before you is to make some comments in relation to clarifying my evidence, and then to refer to my evidence-in-chief and take you through that without spending too much time, but emphasising the key matters.

THE COMMISSIONER: Thank you.

MR CARLYON: So I perhaps have a couple of minutes of issues to clarify, and they're in no particular order, but if I can start just at the beginning of my list. The first one is the Māori values assessment.

Mr White quite correctly identified at para 13 of his evidence that I had attributed the Māori values assessment to Mr Hovell, and that's not the case. It's clearly a product of the rūnanga (Māori spoken), so I also would like to, in that same vein, acknowledge the status and place of the rūnanga, Ngāti Tama. Throughout my evidence it's my view that at no time have I sought to undermine the role of the rūnanga or to undermine its status as the iwi authority, and there is some

commentary in other evidence, in particular Mr Dreaver's, that I'm conflating the interests and rights of Te Korowai, Ngāti Tama, and the iwi authority, and I hope as I go through my evidence those matters are clarified for you.

In relation to consultation, for my evidence I've relied on the record of meetings that's been provided by NZTA, and it's been referred to by a number of witnesses on behalf of Te Korowai over this last hour or so, but the key moments in time that I've got following Te Korowai's submission, I think, in late February of this year is 26 June and 24 July. It's just six days out from the hearing, and from the scope of the notes I've seen from that proceedings, it's clearly an introductory exercise in communicating the project as opposed to consultation in the terms of consultation and its meaning.

That's not to say that it's not clear that there had been a number of offers made to Te Korowai to attend hui or other opportunities throughout this last six months or so.

In respect of the code of conduct, which Mr Enright has already addressed, I just want to identify a couple of things. I have picked up on the code of conduct at paragraph 6 of my evidence, and I don't take that lightly. In particular, I very

carefully considered the provisions of 7.2(c) regarding a focus on expert views and a contest in relation to those views, and I absolutely accept that my evidence is limited in scope, but I understand the nature of the provision of that part of the code to reflect on playing the ball and not the person

In 7.3 of that code of conduct it talks about qualifying the evidence we required, and I very clearly do that at paragraph 8 of my evidence, and it also a little further on talks about opinions not firmly concluded, being identified and stated, and I've done that at paragraph 69 and 70 of my evidence and elsewhere throughout that evidence, and it's clear to me that that unconcluded position that I've adopted in my evidence stands today before the hearing, given the application by the applicants for these activities, to adjourn the hearing on the basis that cultural and terrestrial biodiversity matters are not resolved and require some weeks' further discussion with parties, as they have done throughout the hearing.

All that said, I now understand that Mr Allen has now moved on from his advocacy in that regard, but I am happy to answer any questions that you do have in relation to code of conduct matters.

So if I go to my evidence-in-chief --

THE COMMISSIONER: Before you do, Mr Carlyon, just that last comment about the adjournment being sought until 8 October, I am just looking at the memorandum. You mention that it was for the purpose of both ecology and cultural values discussions. I cannot see anywhere the fact that they are adjourning to do some more cultural values discussions. Is that something you have taken from a comment or from the document?

MR CARLYON: Certainly, sir. Well, the request for adjournment papers weren't provided to Te Korowai, as they were with all other parties, but my understanding comes from the commentary provided by Mr Allen and his team this morning that there was to be further conversations with Ngāti Tama over the next month to try and conclude the matters sitting in their agreement which might be forming.

THE COMMISSIONER: Yes. All right. So I did note that Mr Enright had not been copied in on that, and I asked the Council to forward that to you yesterday, Mr Enright, so hopefully that did get to you, the German request.

MR ENRIGHT: Yes. So I was hoping that we would not need to be involved in the reconvened hearing unless something arises out of the -- if there is further evidence, of course we might need to be able to have an input. So perhaps if you could just reserve us the opportunity to apply for leave, that would be fine.

THE COMMISSIONER: That is open to you, and obviously if the NZTA do want to talk any further about some of these matters, it is in their court as applicant.

MR ENRIGHT: Thank you.

THE COMMISSIONER: Thank you. Thank you, Mr Carlyon.

I would like to ask you just a preliminary question about your firm's involvement in the project. Your paragraph 7 where you do mention that Dr Fluer Maseyk has worked for NZTA on the project in some capacity before, and just really how you would reconcile that in your own minds as a conflict of interest. Is there any issue there in your mind?

MR CARLYON: No, there is not. It's just simply noting the interest that we have in relation to this case as a company, so

Ms Maseyk's contribution was to peer review the offsets approach that was adopted by Mr Singers in his work, and she did that on a couple of occasions directly with him.

THE COMMISSIONER: Yes. All right, thank you. So just carry on.

MR CARLYON: Thank you. Well, if I turn to the scope of evidence, perhaps if I read the last part of that paragraph 8, identifying there at paragraph 8:

> The opinions given in my evidence are qualified as the key requirements to address tangata whenua matters, particularly NZTA engagement and consultation with Te Korowai [and you've heard from witnesses on that today], NZTA evaluation of avoidance, cultural mitigation and cultural offsetting, and cultural relationships, associations to be raised in kaumātua and kuia evidence for Te Korowai."

And you've heard that this morning, and they were unresolved at the time that my evidence was produced, and to that extent that's what informed the position that I advanced to you.

THE COMMISSIONER: So you have updated your position given the other information you have actually heard and seen. Was that your statements to me clarifying issues, or is that something …

MR CARLYON: That's correct.

THE COMMISSIONER: Yes.

MR CARLYON: The statement from Te Korowai I think is pretty clear, and you've heard further from their witnesses today, and that ties with the conclusion I still hold at the end of my evidence in respect of opposition to the project, but some pragmatism around the approaches that needed to be taken in the event that the project is to be advanced, the notice of requirement and consents issued.

THE COMMISSIONER: While you are at paragraph 8, you use the term "cultural offsetting" in relation to those issues. So, we have heard quite a lot about ecological offsetting and compensation, a new section in the Act in 171(1)(b) I think. Do you see a cultural offsetting in that same sort of light, or compensation, is that an effect? Do you see any difference in that offsetting principle which is normally being looked at in past cases around ecological issues?

MR CARLYON: Yes, I think it has potential merits given that beyond offsetting we're simply moving straight to compensation. I have now seen offsetting applied in respect of built heritage,

and I think it may potentially have a place here as well, as an acknowledgement that they are the effects that cannot be avoided, remedied or mitigated.

THE COMMISSIONER: Okay, so I did have these full-on questions, supplementaries, about were you aware of any other examples where offsetting had been used to compensation outside of the ecological space? So there is a built heritage example.

MR CARLYON: Yes. Yes, that's correct, both in Rangitikei District in the development of policy for addressing heritage losses and Invercargill City Council. They're two that I'm aware of.

THE COMMISSIONER: And any case law, Mr Carlyon, that picks this principle up outside of the ecological …

MR CARLYON: No, sir.

MR ENRIGHT: Can I just comment on that to assist, which is a case I just did this week. It is the proposed extension to the Auckland International Airport runway, and the requirement authority, the airport, has offered a noise mitigation and offset fund, and the mitigation component involves basically

paying 75 per cent of the costs of noise insulation. The offset component involves creating a fund that can essentially have positive effects within the community, social effects if you like. So, that is another example that comes to mind anyway where you have got a financial contribution arrangement offered by the requiring authority with a mitigation and an offset component.

THE COMMISSIONER: All right, thank you.

MR CARLYON: If I perhaps go to the summary at paragraph 11. So I'll read that entire paragraph if that's all right:

> "The evidence of Mr Dreaver and Mr Dixon for the applicant, reflect on the potential for significant adverse effects on cultural values. The conclusions drawn by these witnesses conclude on a suppositional basis that the effects can be avoided, remedied or mitigated, offset or compensated when at the time of writing, it is inappropriate to draw that conclusion. I understand that substantial effort is being made by Mr Dreaver and others to bring these matters to a conclusion prior to hearing."

And if I don't refer to it further on in these presentations to you, I want to clearly acknowledge the efforts and approach taken by NZTA in relation to its consultation in general. I may not have been clear enough in my evidence about that, but it is,

both on this project and others that I've been involved in, above and beyond in many cases.

At paragraph 13 --

THE COMMISSIONER: Sorry, I have made some questions on your statements, so I will just pick them up as we go through.

MR CARLYON: Sir.

THE COMMISSIONER: Paragraph 12, you talk about "the agency does not have that blessing at this time", so this is a blessing for the project by the rūnanga. When the rūnanga presented to me last week, they had changed their position from one of opposition and reserve to one of support in Mr White's evidence, so have you seen that, and you acknowledge that the rūnanga is actually moved on to a new position of -- not opposition but support and acknowledgement that there are some more negotiations to go in terms of some of the matters that they are in discussion with NZTA on?

MR CARLYON: Yes, I've read both Mr White's and Mr Hovell, their statements to you, and I guess what is sitting in the back of my

mind is still qualified statements sitting in legal submissions at paragraph 59, the statement:

> "Overall the rūnanga consider the project involves a package of opportunities [that's opportunities for Ngāti Tama] that warrant ongoing consideration which would be provided by the approval of the RMA applications."

So I still have the view that there is a substantial amount of unresolved matters, and that there's some light there, but that light is not before the hearing at the present time.

THE COMMISSIONER: Thank you. You are on to 13 I think.

MR CARLYON: And the last thing you need me to do is say something again, sir.

At paragraph 13 I identify that Ngāti Tama's representation to speak solely to issues regarding Mt Messenger is questioned, and it may have been taken from Mr Dixon or Mr Dreaver and others, that that means I am questioning Ngāti Tama's mana whenua status and their status as an agency before you, and I certainly am not. I'm simply flagging there that Te Korowai too has status before this hearing. It's people are here in a tangata whenua perspective as Māori, and the requirements of the Act equally apply to them.

I say then at paragraph 15, and that follows my comment just made, that the rights of both the rūnanga and the Trust are not provided for, so I say that in my original statement, but agree now that Ngāti Tama at a rūnanga level has reflected an alternate view.

I guess the best place to properly acknowledge the next matter is at my paragraph 20 in relation to the statutory framework, and that's simply to acknowledge the positive effects of the application and proposal that is before the hearing. I don't dispute those. They've been clearly described by a number of witnesses before you, and I simply did not allude to those benefits given the limited scope of my evidence, but agree that they exist.

At paragraph 23 of my evidence, Mr Enright's already commented on a number of these, so I'll speak less and perhaps answer any questions you've got in relation to these matters, but at my paragraph 23, I simply refer to the underlying drivers out of the Act and the requirement to recognise the relationship of Māori and their culture and traditions. So separate to the statutory structures and institutions that we create and wrap around these things, there is a broader requirement for

engagement which, in my view, still has not occurred with Te Korowai, given their legitimate and uncontested mana whenua and ancestral links to that land.

THE COMMISSIONER: Just on that point, Mr Carlyon, the applicant, or NZTA, have put in this kaitiakitanga condition, which really is maintaining a role, both through construction into the future for tangata whenua in terms of recognising some of those matters. I have asked some other witnesses about whether that should be more inclusive rather than just appointed through the rūnanga. Do you have any comments on that, whether that could be broader and that might be a way of recognising and providing for relationships?

MR CARLYON: Well, yes, I do. I think if the notice of requirement and consents are granted, then the conditions in relation to cultural matters require substantial engagement and a process with Te Korowai that hasn't occurred, but looking at it on face value, both condition -- is it 4 and 4A?

THE COMMISSIONER: Yes.

MR CARLYON: I think there is room there to revise that condition to take account of the rights and interests of Te

Korowai and its membership, but I would also say that I think that the condition needs drafting so that the opportunities that are then provided to tangata whenua aren't stripped away where there's not reconciliation of those challenges that are made through the project, so the last part of 4A, in particular, where it says:

> "Where the provisions of the plan are not agreed by the requiring authority [and I think consent holder in the other documentation], reasons for the disagreement will be provided in writing to Ngāti Tama."

So it's not a -- it's a relationship that acknowledges that Ngāti Tama, or perhaps Te Korowai, might have an interest and a driver, but that in the event, the decision about what occurs is not necessarily there's, and I do understand the complexity of managing these things post consent, absolutely, but I think those types of matters require further exploration.

THE COMMISSIONER: So as an experienced practitioner in these areas, do you acknowledge the difficulty for NZTA with Ngāti Tama as an iwi? You know, I've heard evidence from a number of Ngāti Tama members, and there is not agreement amongst the iwi on these matters. It is fractured, there are some problems and issues currently in play. We have an application and a Notice of Requirement in front of me to determine with that as

background, do you have any other suggestions about how NZTA could be as inclusive as it possibly could given that background?

MR CARLYON: Well I firstly completely acknowledge that it's complex and it's difficult and it's in the environment where there's fractured relationships, and other witnesses have just referred to the harm that that's causing to whānau. So, with that in mind, I think that underpinning any resolution of the interests of Te Korowai has got to be a recognition of their rights first, and to date that's not the case. So both for the consent authorities, there is some analysis of their interests broadly aligning with Ngāti Tama. It's been well examined by all the witnesses before you, but Ngāti Tama -- sorry, I am conflating now, but Te Korowai as an entity is not recognised and provided for in the decision, so perhaps these conditions could acknowledge them if there wasn't the possibility of merging their interests and the administration of those conditions, and I've said at the end of my evidence that I think that is a real possibility, but if that were not the case, they could be run in parallel.

Mr Allen and I are involved in other projects where that is certainly happening so, you know, that's one possibility if those relationships are not healed.

THE COMMISSIONER: All right, thank you.

MR CARLYON: If I perhaps come to my paragraph 26, and that's the reference to that section 5, which has caused some minor consternation. I just want to clarify there I guess that the view I formed in relation to the purpose of the Act is predicated on the analysis I did at sections 6, 7 and 8 in relation to tangata whenua interests. So it is narrow in that context, but it is difficult to contemplate that with the requirements of 6(e) not being met, that you could flow through to an analysis at section 5 that says the requirements of tangata whenua have been met, and that the purpose of the Act is met in that regard as well.

I've provided an analysis for you through to section 8, but I won't repeat that, and am happy to answer any questions you have on that section.

THE COMMISSIONER: Before we go there, I am looking again at probably just above 26, the last paragraph in 25, I think you

initially asserted that the cultural values assessment was prepared by Mr Hovell. That is not your understanding now, I think as you recognised in your opening, that was prepared by the rūnanga. Is that …

MR CARLYON: Yes, that's correct, and I am not sure how I came to that conclusion. I've tried to work back through the documentation and was unable to find how I came to that conclusion.

THE COMMISSIONER: I just wanted to make a note on the way through.

MR CARLYON: I guess, you know, I was going to skip through that section, but just to say at my paragraph 29, again, it's another reference to an acknowledgement of the status and place of the rūnanga. It's certainly not my place to challenge that at all, but in my view is also the case that other hapū or entities may have a kaitiaki role in respect of that landscape.

If I come to --

THE COMMISSIONER: Just maybe I will tease out a bit more your evidence around 28, matters of national importance. We have

heard that Te Korowai was formed just before submissions were made, and is constituted under an incorporated society, as I understand it.

MR CARLYON: Yes.

THE COMMISSIONER: You say that the position of Te Korowai is that there are serious breaches of the Treaty of Waitangi in the consultation with iwi. Are you asserting that NZTA as a Crown agency is in serious breach of the Treaty in the fact that it has not embarked, or has not concluded, the consultation process with Te Korowai, is that your view?

MR CARLYON: Yes, that is my view. I'm not suggesting that Te Korowai is an iwi authority, and I'm equally not suggesting that it is a hapū. The claim that the membership of Te Korowai or the rūnanga more broadly make around hapū status is for them, not me. But I think the evidence that you've heard from Te Korowai witnesses this morning indicates a public and serious breakdown of the relationship inside the rūnanga late last year. It is on the public record, and Te Korowai legitimately formed an entity to allow their rights and interests to be heard in this forum and, in my view, that's been discounted in the analysis.

THE COMMISSIONER: The analysis from both the Council staff and in NZTA's response, is that your evidence?

MR CARLYON: Yes, it is. That's my view. I think it's been acknowledged. The issues they have raised have certainly been acknowledged, but the preference for a conclusion has very much sat with the rūnanga.

THE COMMISSIONER: Thank you.

MR CARLYON: If I come to paragraph 32, I'll perhaps read these next two paragraphs out. I think they're reasonably important. Just starting into the second sentence:

> "I do not dispute the evidence of Mr Dreaver, reporting officers for New Plymouth District Council and others, that NZTA has engaged with Ngāti Tama in a thorough and considerate way. However, I disagree with the conclusions drawn by Ms McBeth for NPDC in her 42A report, where she expresses the view, 'Overall, I consider NZTA has engaged with tangata whenua in accordance with the principles of the Treaty, and Council has taken these principles into account'."

Ms McBeth then goes on to confirm at her paragraphs numbered there that:

> "The significant adverse effects on cultural matters, as identified by her report, have not been satisfactory addressed."

I then say:

> "This view accords with my opinion that the requirements of section 6 and 7 are not provided for, and accordingly in that narrow scope the purpose of the Act is not provided for. In this respect I agree with Ms McBeth's conclusions [which I think she's come to a different position in further evidence before the hearing] if the matters are not addressed satisfactorily in evidence, I consider the Notice of Requirement should be withdrawn."

I'd then like to take you to my paragraph 50, and I'd like to read that whole paragraph. I'm talking here about reporting officers in relation to consultation:

> "The conclusions drawn by the reporting officers are that the consultation with the rūnanga [that's Ngāti Tama], in relation to the mitigation measures, give effect to this policy [and that's the above policy in relation to the regional freshwater plan]. That policy, for the record, says Wāhi tapu and other features or sites of historical or cultural significance to iwi and hapū of Taranaki, and the cultural and spiritual values associated with freshwater, will be protected from the adverse effects of activities, as far as practicable.
>
> In my opinion, that conclusion [and that's the one drawn by the officer] cannot be drawn with the current status of the discussions between the rūnanga and NZTA. Further, Te Korowai has demonstrated clear connection to the land through hapū and iwi affiliation, and at this point the position of Te Korowai has not been accounted for [and in my view still has not]. In my opinion, the cultural and spiritual values associated with freshwater, identified in the submission from Te Korowai, are not provided for."

THE COMMISSIONER: Just in relation to your second sentence there, we have had a change of position from the rūnanga, have we not, so that is that point we talked about previously?

MR CARLYON: Yes, I think it's quite fair to reflect that their view has altered on the basis of an agreement, third party agreement, that's offline.

THE COMMISSIONER: Okay, thank you.

MR CARLYON: My paragraph 56, it's probably easier to read that entire paragraph:

> "While Ms McBeth has drawn no conclusion in respect of the submission from Te Korowai, where similar submission points are made by Ngāti Tama, she recognises the rūnanga with the statement, 'At the time of finalising this report, no update has been provided, and I therefore have reservations as to whether cultural effects relevant to Ngāti Tama have been mitigated or offset'. Ms McBeth reflects that iwi authorities are recognised and provided for through legislation [and I agree with her]. In my opinion, this is not an accurate reflection in respect of the RMA. Section 6 of the Act speaks to Māori and their culture and traditions. Section 7 speaks to kaitiakitanga, and section 8 makes no mention of iwi authorities in taking into account the principles of the Treaty of Waitangi. I do not disagree with the possibility that agencies find settled iwi authorities convenient to engage with."

I stand behind that, and I'm not trying to be - I can't think of a more sophisticated word - I'm not trying to undermine the fact that that is the case, but it came up in evidence earlier this morning that the landscape is changing in relation to who we consult with and how we consult, and so where we may have been with iwi authorities, we are quite clearly now working at a hapū or whānau level on many of these cases, not to mention Trust and other institutions.

THE COMMISSIONER: Is your key premise then that when you are looking at section 6(e) and the word "Māori" in that section, you cannot read in iwi authority? Iwi authority is, you know, Māori includes all hapū, whānau, individuals.

MR CARLYON: Yes. Yes, and I have looked at the Tuwharetoa case that's been cited where there's definitions of Māori, but I suspect that the Māori people in this room would -- may take umbrage with the fact that they would have to be an iwi authority in order to be described as Māori so, in my view, that's a universal description of people that describe themselves as Māori.

THE COMMISSIONER: And I was asking Mr Enright questions about how iwi authorities use in the Act around obligations in

schedule 1 processes to consult with iwi authorities as registered on the TBK website. It has got a reasonably limited function in the Act, as I read it.

MR CARLYON: Yes, I agree with you in that respect, but the practice I'm seeing from NZTA, District and Regional Councils, and many others, is that that would be an absolute bottom line for consultation because we've moved a long way past that in the way that we do engage with interested and affected parties, including tangata whenua.

I go then to my paragraph 62. This was where I'm talking in particular about consultation. Mr Dreaver sets out an extensive record [in his evidence] of the Treaty of Waitangi claim settlement process, which led to the Settlement Act of 2003, and the position that was taken at the outset in relation to consulting with Māori, and his advice early in the project in 2016 that the rūnanga should be the key point of contact, but acknowledging that it's the mandated body, I think he and others in evidence acknowledged that the consultation would be wider rather than narrower through the scope of the project in order to act in good faith.

That I guess is where I come back to my preliminary notes to you at the start of my presentation which identifies possibly two or three occasions that were not taken up post the end of February this year, and two occasions that were taken up by Te Korowai interests, but without the resolution or resourcing or opportunity to find common ground with NZTA, and I note from the witness statements that you've heard this morning that there is common ground present.

Perhaps if I come to two of my concluding paragraphs, the first at paragraph 69 and 70. I'll read both of those and then respond to any questions you may have, and this goes to, again, the comments I made at the start of this statement to you:

> "I recognise that the submission and lay witness statements for Te Korowai offer approaches which may be capable of being the subject of conditions. As the applicants and other parties have set out for Ngāti Tama, the potential for conditions needs to be addressed in a collaborative way with the applicant.
>
> In my opinion, resolution of the outstanding matters with Te Korowai is possible. Underlying that resolution is a statutory requirement to recognise and provide for the interests of Te Korowai."

And I guess the potentially most complex matter that's been raised before this hearing by witnesses is the desire by Ngāti Tama members, but through Te Korowai, that they do not wish to

see the road area covered by that Notice of Requirement alienated once again, and I note that that's been discounted as an opportunity, and Mr Enright has identified the complexity of doing that, but I also note that in a number of Treaty settlements in recent years that we are finding innovative and new solutions all the time to address complex issues of ownership and management and co-governance, and in my view it would be worth further discussion with Te Korowai or/and the rūnanga if it was interested to look at ways in which the underlying land was not alienated.

Thank you, sir.

THE COMMISSIONER: Thank you, Mr Carlyon. I think I have picked up all my specific sort of questions as we have gone through relating to your expertise under the RMA but, look, in relation to your last statement, it is not for me to do anything other than encourage further discussions if the parties wish to do that on any matters going forward, and NZTA will have their own interests and approach, and I will say that there is some more time if parties did want to talk together, and I would encourage that, but apart from that, I certainly cannot direct that or do anything of that nature.

So that is really all I can say on that matter. So, thank you, Mr Carlyon.

MR CARLYON: Thank you, sir.

THE COMMISSIONER: Mr Enright, is that the end of your case?

MR ENRIGHT: It is. There is a couple of points I would like to deal with as closing comments, but I would prefer, if that is all right with you, to commit to writing. It might assist you better, but just around principally the Public Works Act point. I think it is dealt with in section 186 RMA, but I would like to check that, and the point which just came up about how does the Act deal with iwi authorities as distinct from Māori generally, I would like the opportunity to just commit a couple of comments on that to you in writing as well, so I could file that by Monday.

THE COMMISSIONER: I am happy with that, Mr Enright. If you could file that with the hearing administrators and counsel, and make sure that is circulated widely.

MR ENRIGHT: Thank you. Yes. It will be fairly obvious that some of the relief sought in the evidence you have heard today

goes beyond the scope of your powers, for example, the suggestion of an Act of Parliament to recognise the legal personality, but I mean, I think, you know, that is the evidence, but we accept of course there are constraints on what you can do as Commissioner. Thank you.

THE COMMISSIONER: Obviously I have only got limited rights to look at conditions and granting or not. Many of the matters that have been raised are property matters and ownership matters and such things which do not fall within my gambit, but at least they are on the table. So, thank you very much for your case.

MR ENRIGHT: Yes, and we would like to thank you also for giving us the time we needed, and I regret we did not give you a proper estimate of time, but to have the matters put on the table is very helpful.

THE COMMISSIONER: I think it worked out not too bad.

One last thing I will say before I adjourn the hearing for this stage, is in relation to the discussion this morning about the adjournment, Mr Allen, and the way forward. I will issue a formal minute responding to that. I am just confirming the next

steps which are largely in line with what we talked about this morning, and I will get that out in the next couple of days.

MR ALLEN: Thank you, sir.

THE COMMISSIONER: So before we do adjourn for the day, are there any other questions or comments for me from anyone, any party, anyone in the room?

MALE SPEAKER: No, thank you, sir.

THE COMMISSIONER: Thank you very much. I think we should just end with a mihi or a karakia please.

(Adjourned to a date to be fixed)