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Event:	Weston Lea RMA Hearing Excerpts
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Audio Recording:	"Weston Lea RMA Hearing – 6 May 2019 1:30pm – 4:45pm" – whole audio transcribed
Before:	Commissioner Wasley (Chair) Commissioner Lovell Commissioner Knott
Witness:	Professor Bruce Clarkson (on behalf of Riverlea Environment Society Inc).
	Mr Lachlan Muldowney – legal counsel Mr Andrew Parsons Mr Mark Roberts Mr Jamie Sirl (on behalf of Hamilton City Council Open Spaces, Facilities and Infrastructure Unit).

MR MAKGIL: Thank you. I had the advantage of talking to the client and to one of our senior ecologists about that idea that the rights for purposes of the (several inaudible words) might be transferred if they end up being a road to nowhere. The first point was that the ecologist, Dr Flynn, said, "Will they cease to have any ecological value", which I think is what you have been getting at.

COMMISSIONER WASLEY: Yes.

MR MAKGIL: She said no. They will still have ecological value. She is available to answer any questions you may have in respect of that.

I then went to the client and said, "What is your reaction to that? My view is that we should be (inaudible) the requirement from us back, given that they will have an ecological function and it provides an incentive for encouraging the corridor". He said, "I agree". So we are withdrawing the (inaudible). Not the condition for it to vest for local-purpose reserve but just that offer back.

COMMISSIONER WASLEY: Yes, okay, thank you for that.

MR MAKGIL: If you did want to hear from Dr Flynn on the ecological function, she is there, but I assume you trust me.

COMMISSIONER WASLEY: I will accept your word on that, that is fine. Now, Professor Clarkson. Just while you are doing that, there are a couple of administrative matters. We have had a Ministry of Education letter. It has been tabled and it is on the website, regarding their submission. I am just noting that, that it has been tabled, for the record. There is also a statement of evidence from Dr Darmody, Heritage New Zealand and also Ms McAlley from Heritage New Zealand. They are not appearing, nor is the ministry. I just needed to note those statements are tabled and they are also on the website.

Welcome, Professor Clarkson. Over to you.

PROFESSOR CLARKSON: What I wanted to do was to summarise what I have already presented in my evidence but also to clarify some points and respond to some areas where I think I may have been misinterpreted, having sat here through many of the ecologists' submissions to you.

I want to start first by admitting, of course, that I am not a planner, I am an ecologist. I also wanted to talk a

little bit about the overarching vision for the Operational District Plan and the Peacocke Structure Plan because I do have an involvement in some of the content of those documents. I want to use that to give you a context to help people understand why I am saying many of the things that I have been saying in my evidence.

It is my view that the Operational District Plan articulates a vision for restoring and enhancing the biodiversity of Hamilton. It uses phrases like, "Recommending enhancement and expansion of the NSAs". The Peacocke Structure Plan 2 refers to:

> "A vision, including environmental responsibility and to preserving and enhancing the significant natural and cultural features. [Further to] an urban form that reflects natural features, ecological processes and physical characteristics."

The Riverlea Environment Society made submissions on the development of the Peacocke Structure Plan, on the importance of the corridors. The gully and riverside reserves are another way of describing them. It is my understanding that the Peacocke Structure Plan showed corridors and has shown them all along. Depending on how you look at the widths that are produced in the mix, they appear, in some places at least, to be wider than what

we are being offered to date. I think it is important that the submissions of the Riverlea Environment group and in particular the material around the plans and the widths of corridors and buffers that were in the Peacocke Structure Plan are looked at by you.

My suggestion that the ecological compensation criteria and additionality was not met was made because I assumed that these aspects, having been covered in the Peacocke Structure Plan, were a given and not a discretion and, as well, that they were not tied to the mitigation for potential subdivision impacts on bats. I will pick that concept up a little bit later as well.

I want to reiterate once again the significance of the long-tailed bat population. Long-tailed bats were once abundant in lowland New Zealand forests and temperate podocarp broadleaf forests that once covered all of Amberfield. The reason long-tailed bats are officially classified as nationally critical is because of their widespread decline. They are in decline because of the impacts of habitat loss and, more recently, intensification of land use, including urban development, and of course predation by introduced pests.

In this part of Hamilton they represent a relic population with a tenuous foothold focused around Hammond Bush and its environs, including The Narrows. This nature of population in an urban and peri-urban setting is extremely uncommon in New Zealand. We were told - I forget which day it was now - by Georgia Cummins that a minimum number of 61 bats had been recorded and that she in fact thought that there were more than 61.

The point I wanted to make is that what has not occurred as of yet is a proper population viability analysis of bat population, which would require a lot of information around the demography of the bats, the rates of recruitment of juveniles, the annual losses through disease of predation. We actually have a scenario in front of us where no standard population viability analysis by has been undertaken, and the utilisation on the site also is only known in general terms from very recent surveys.

That takes me to my third point about the experiment. Comments were made by one of the (inaudible) ecologists, I think Sarah Flynn, that I was using the term in a pejorative sense. No, I was not. I was referring to the fact that the proposed mitigation is an experiment. It is an experiment because that

is what it is. To my knowledge there are no examples known of an attempt at mitigation of this style to protect bats from the impacts of a subdivision like the one proposed. That is why I refer to the proposal for mitigation, in relation to bats in particular, as a hopeful experiment.

The other day also various comments were made around the style of recommendations that I was making around ecological compensation and restoration. I want to make it clear that I do not agree that a landscape architecture-dominated approach will provide the style and magnitude of mitigation needed to meet the vision of the Operational District Plan, the Peacocke Structure Plan or ensure retention of the bat population in this location in perpetuity.

The restoration lens, the ecological restoration lens that I have been applying, is not a default or a generic approach, as was characterised by Andrew Blayney, but is one that recognises the fundamental problems of biodiversity decline and the magnitude of compensation needed in this case. I contend that it is one thing to aim for a targeted mitigation, as Andrew Blayney described it, to stave off population decline, and another to aim for an enhanced biodiversity and bat population and net gain and enhancement.

I consider that enhancement and reconstruction of high-quality habitat at sufficient scale is needed to turn things around in the longer term, i.e. over ecological timescales. I look at what is proposed and tend to view it as something more like a Band-Aid approach, and its staging is inadequate and in many cases too late. There is clearly a lack of clarity around the accordance of pest control. We heard various comments from Sarah Flynn the other day about that, which were really, I think, somewhat off point because pest control is well recognised to be needed to maintain these situations. The community, including Riverlea Environment Society, are doing a lot of that right now.

I consider that the characteristics of restored and reconstructed habitat has been misrepresented by Mr Blayney. First, the crowding out of bats can only occur if Peacocke Structure Plan corridors - and I believe implied increased widths - are rejected. If Peacocke Structure Plan corridors were considered in the way that they are on the maps and an account was taken then of the setbacks that are needed, then that would give us a better shot at developing mitigation to enable the survival of the bat population.

In terms of the type of habitat needed to aim for net gain, what is needed is more old-growth forest. Old-growth forest with the complexity and structure and composition like that at Hammond Bush and its environs that is containing more big, old trees, preferably moribund trees, with nesting cavities and also displaying excellent development of nest epiphyte communities, the big, perching nest epiphytes that live up in the big trees, because that is one of the reasons that the bats love Hammond Bush. The nest epiphytes have been shown by research to be places like the supermarket for invertebrates.

The point I am making is that these are the habitats that are more like the ones that bats have evolved and are best adapted to. One only has to be visit Hammond Bush and the restoration being undertaken there, or the gully restorations around Hamilton City, such as Mangaiti, to see this for themselves.

My next topic is the nature of evidence and uncertainty. I give this opinion as a researcher of almost 40 years and a research programme leader and manager for at least 20 years. On hearing the evidence from the three applicants' ecologists the other day, my overall feeling, my overall impression, was one of a degree of overconfidence that this experiment would work,

including in response to some of the critical questions raised by you as commissioners. I am concerned quite broadly about the nature of evidence that we have been seeing in this case to date, because there has been a continuum of evidence, apparent in my eyes anyway, from being based on published, refereed actual time-series data, independently refereed and used to develop predictions with known error leads, through to the scripted data gained over short periods which has not been published and apparently not independently peer-reviewed, right through to guesstimates with the assumptions not really spelled out and the methodological limitations glossed over. I felt very uncomfortable hearing the responses the other day in relation to the questions that you posed.

I now want to talk about the two Amberfield corridors. The first, the west-east shelterbelt, is currently used by bats commuting across a pastoral landscape. It is assumed that the mitigation proposed, which is a thickening up of the shelterbelt, in essence, and some additional setback, will see them continue to use the area once an urban subdivision has been developed. My comparisons of this corridor and the north-south gully were not intended to convey the notion of trade-offs as represented by Mr Blayney but rather to highlight the potential greater importance of the north-south gully. As that has become

increasingly hemmed in by the urban development, there is no guarantee that commuting, foraging and resting sites will remain the way they are now. This is particularly, I think, the case of the west-east shelterbelt. I put more emphasis on the importance of the north-south gully, with reconstruction of high-quality habitat and corridor development to link it to the headwaters of the Mangakotukutuku gully.

I also wish to clarify, as I gave in my earlier evidence, that I do not believe that the north-south gully is adequately catered for. Planting will have only a two-year head start on the commencement of nearby earthworks. That is the way I review the evidence that I have seen. Bridging, which has not really been discussed to date, will constrain the corridor development. I believe there are two bridges planned to cross the gully. I also note that on profile diagrams of the planned enhancement of the gully, comments still remain on preserving views. I accept that one does not want tall trees growing too close to one's house, but again I come back to the importance of big old trees over a long timescale in this concave feature of the gully as being really significant as a form of compensation and mitigation for an increasing bat population. If we are looking for net gain, that is what the focus should be.

My next point relates to compliance. I wish to reiterate my evidence on compliance, as published in a peer-reviewed journal and based on a New Zealand-wide study of compliance with resource consents. For non-administrative compliance, i.e. that requiring action on the ground - I am repeating the data that was in my evidence - we found 49.61 per cent compliance and compliance rates as low as 30 per cent on restoration intention.

It is also important to recognise that international reviews on ecological compensation paint a similar picture. In brief, such a review published by Walker et al in 2009 entitled "Why Bartering Biodiversity Fails" suggests that no net loss or net gain through biodiversity trading is administratively improbable and technically unrealistic. They claim that to date it has largely facilitated development while perpetuating biodiversity loss. The review that I was an author on too, Brown et al 2014, concluded that successful implementation of the concept is some way off.

My next topic is assessment of ecological compensation using standard criteria. As I noted in my evidence, there are international criteria that are applied to the assessment of ecological compensation and whether or not it is a fair trade. I reiterate my evidence that there has been no systematic

assessment using internationally criteria in this proposal. I have been unable to find one. While I am prepared to concede a little in relation to additionality, because there are some elements of the Peacocke Structure Plan which it is very difficult to tell what the baseline requirement actually is, the other criteria, namely timing and duration and compliance, remain as significant risks to a successful outcome.

Most notably, I believe a critical pinch-point will be presented by the handover of the land to the Hamilton City Council. The international literature again shows that shifting responsibility from one agency to another is the point at which the biggest risk occurs because of the lack of guarantee that the handover is done to the level required or that the receiving agency is prepared to commit the resource and infrastructure - manpower or whatever you want to call it - to assure that the project continues on to achieve the successful outcome.

I also want to comment on the use of the term "adaptive management", which has appeared in a number of places in the evidence. Basically I wish to state that I disagree that the uncertainties are catered for by what is being characterised as adaptive management in the evidence that I have seen. Comprehensive and robust adaptive management of the type

recorded in the scientific literature does not exhibit the characteristic of irreversibility. What I mean by that, irreversibly, for example, of converting a current pastoral land use to a subdivision and all of the change and impact that that would require.

It is usually used in relation to ecosystem management, which can be continuously adaptive. For example, adaptive management of rangeland agriculture or adaptive management in the marine environment, where the essential ecosystem that is being managed remains but is managed in a continuing and adaptive way. From what I have read, it is more like what is being proposed is a sort of check-in at a number of years which keeps changing - I cannot quite get my hand on what it is at the moment - checking in on bat status in particular, and not checking in on performance and success rates, for example, of the restoration or planting required. It is not framed as continuous management, an adaptive management cycle, over the whole life of the project, which is what normally adaptive management requires.

I would again like to briefly comment also on consent conditions. I tried to participate in this process and made a number of suggestions in my evidence to guide the development of

robust consent conditions. My comments now are based on my experience as the technical advisory group chair for the Waikato hydro system consents and understanding limitations that occur in achieving the beneficial outcome if consent conditions are ambiguous or compete against each other sometimes too. My impression at the moment, I have to say, is that the conditions have all the worst hallmarks of design by committee. I have been unable to keep track - okay, that is my problem - of all of the innovations. I suggest, as I will refer to when I wind up shortly, a more collaborative caucusing is essential if these are ever going to reach a desirable standard.

That takes me to my last point, which is really 8.2 in my previous evidence. I want to reiterate on the basis of what I have seen and heard, that the post-hearing approach to the ecological plan and all the other related plans that are being proposed is really problematic. I would recommend that it is rejected and that the applicant produce such plans to a satisfactory standard, as part of this hearing process, okay, but in an open, transparent and collaborative manner, involving the key stakeholders too, like the Riverlea Environment group. Without seeing these plans now, I cannot see how any of the experts, nor you as commissioners, can draw conclusions about the nature and extent of the adverse environmental effects or of

whether the ecological compensation or mitigation will achieve the desired outcome.

In the course of the hearing I have come to the conclusion that no provision appears to have been made in the event of a major bat decline. What I have been hearing is extremely vague as described in item 98, I think the revised number 98 of the resource consent conditions. I would also like to reiterate that I do not view that as being a form of adaptive management. Thank you.

COMMISSIONER WASLEY: Thank you, Dr Clarkson. Commissioner Knott.

COMMISSIONER KNOTT: Thank you, yes, I do have some questions. I do not know whether you have a copy of the Peacocke Structure Plan with you, because you made mention of that and you made mention of corridors extending across the land on that. I think that is the one. What I have Peacocke Structure Plan, Land Use Figure 2.1 in the District Plan. Looking at that it appears there is only one green corridor extending across the land over and above -- or not over and above that. There is one green corridor that extends westwards across the site that is not included on the plan but of course we have the east-west

corridor that we have spoken of that is included. On balance it appears that there was one shown and one included but it is not (inaudible).

PROFESSOR CLARKSON: I am not quite sure I understood that. I am sorry, I have just come off a very severe head cold and my hearing is not great.

COMMISSIONER KNOTT: The point is that from looking at the structure plan there appears to be one east-west corridor shown on the structure plan and we have one east-west corridor shown on the application plan but they are in different positions. My understanding is the one that we have shown on the application plan has been identified as the route that bats do use.

PROFESSOR CLARKSON: Yes.

COMMISSIONER KNOTT: I am wondering what the difference of opinion is, really, so much as there is a corridor shown that is not included but there is another which is included but that was not shown. What is the main issue, I suppose, in relation to that?

PROFESSOR CLARKSON: Yes. I think the issue is that I have been emphasising the importance of the north-south gully and the way that connects into the Mangakotukutuku - which is shown on this map too - and also obviously the point that you are referring to on the map where one of the headwaters of the Mangakotukutuku on the west side there comes very close to Amberfield. The point that I have been making is all of what we have been hearing is on -- the current pattern of commuting and use and all the rest is on the basis of a pastoral landscape. The east-west corridor that is being proposed, as I mentioned, has this major assumption that when the subdivision is in place, that corridor will still be used. What I have been trying to say is that I believe that there will be impacts and that the bats will be essentially further hemmed in in various ways. That is why I have been emphasising the importance of the north-south gully and its high-quality restoration to connect it through to the headwaters of the Mangakotukutuku which then again gives way more scope for utilisation by the bat population.

COMMISSIONER KNOTT: Okay. I was going to ask you about the north-south gully. Moving on from what you just said there, the issue is not so much about the east-west corridor, it is more that you would like to see something different done in the north-south gully?

PROFESSOR CLARKSON: It is about the uncertainty of the consequences of the subdivision and where one would want to invest in what might be the most important longer-term mitigation.

Again I would make the comment about the east-west shelterbelt being dependent on adjoining properties continuing that zigzag route shown of trees to make that connection to the Mangakotukutuku. Again, unless that is guaranteed, it will be, I think, as somebody referred to, a bridge to nowhere.

COMMISSIONER KNOTT: Clearly the position is it seems that urbanisation of the land is inevitable given the zoning has gone through and the 30 years of history that we have heard about. We are now at the pointy end of trying to make sure that what gets put in place is appropriate. I think you said, therefore, that the north-south may be long term a much more significant place to invest in, as it were.

PROFESSOR CLARKSON: That is what I am saying. I am saying, too, if your aim really is net gain as opposed to just trying to react and target two immediate issues, this population is tenuous already. Are we really going to get net gain?

COMMISSIONER KNOTT: That is my other question, I suppose. I understand the aspiration for the net gain, certainly, but is there any requirement upon us to ensure net gain?

PROFESSOR CLARKSON: What I guess --

COMMISSIONER KNOTT: I am not saying I do not want to achieve net gain, just --

PROFESSOR CLARKSON: No, but what I am saying is that there may not be a technical, specific requirement but what I have been trying to indicate is that the vision contained within the Operative District Plan and in the Peacocke Structure Plan is about restoring biodiversity in Hamilton.

COMMISSIONER KNOTT: That is helpful, thank you. Moving forward from there, you made a comment about the comments you heard last week regarding pest control. You mentioned that the Riverlea Environment group were involved in pest control elsewhere. Would you be able to give some examples of what that actually means in practice, what sort of pest control is carried out?

PROFESSOR CLARKSON: Yes. Predator Free New Zealand 2050, which is a major national operation, has started to permeate the whole of New Zealand. It is supporting community groups to undertake pest control. There are chunks of Hamilton where the community has taken over. There is also the Waikato Regional Council that is doing pest control, for example in gullies. And the Hamilton City Council too has invested funding in pest control in parks and reserves like Hammond Bush over a number of years.

COMMISSIONER KNOTT: Is that effectively trapping, et cetera, that type of control?

PROFESSOR CLARKSON: Yes, the whole range, including, I believe, at one stage, bait stations way up on the trees where people cannot access them and stuff like that. So, yes, there has been a range of methods used and the community ones have really taken off.

For example, in my own backyard, the Waikato Regional Council has provided me with a Good Nature trap and a tin strap, because I am restoring my gully personally in the city. All of the people in my suburb, Chedworth, have also been made this offer and most of them have taken it up.

COMMISSIONER KNOTT: That was just useful to have some idea of what sort of things that might include. You spent a while in your evidence and also when you spoke talking about compliance, but I wanted to understand what you meant by the term compliance in that instance. What is really meant by it?

PROFESSOR CLARKSON: That is when you go back and assess the consent conditions. It means has what was put in the conditions actually been done. Have the consent conditions been complied with? Those percentages are about what has not been complied with.

COMMISSIONER KNOTT: So it is not about whether they have achieved what they were intending. I just wanted to be sure that we were speaking in the same terms. It is not about whether it has achieved what it thought it would achieve, it was just whether it has been done?

PROFESSOR CLARKSON: It is more about whether it has been done. The other point that you raise, of course, is another risk and uncertainty.

COMMISSIONER KNOTT: Yes, I just wanted to be sure that you were not talking about both, you were just talking about implementation, as it were.

PROFESSOR CLARKSON: The important thing, though, is if you are not complying with the consent and the consent involves an action to restore something and the consent involves continued monitoring and continued work on site, then you will not be achieving the beneficial outcome that is being sought by the whole process.

COMMISSIONER KNOTT: Another thing you mentioned was you saw, in your experience, a breakdown in land transitioning from one organisation to another. In your experience what can be done to help that transition and to ensure that there was enough being done at that point? Because if we find ourselves in a position where consent is granted following this, we will inevitably find ourselves in a position where land is going to transfer. What experience do you have that would help us?

PROFESSOR CLARKSON: I have put a lot of thought into this because part of the solution, of course, is groups like the Riverlea Environment Society. When things have got difficult in Hamilton City with various financial constraints in relation to

the gully restoration programme, for example, what has tended to happen is that community groups have jumped into the breach, even to the point of raising their own funding and doing the work voluntarily to try to maintain the healthy condition and functioning of some of our most important biodiversity resources in the city and, for example, for the establishment of Waiwhakareke National Heritage Park out by the Hamilton Zoo.

Again, when I made comments about a collaborative approach, it would be really important at some stage for the community to be involved to the extent in the development of a subdivision like that. They could be mobilised to be part of the whole process and at the moment I do not see that. I see a scenario where I do not believe the community group has been adequately consulted. We have turned it into an adversarial battle.

The bottom line is if you really wanted to achieve the things that I believe many of the parties do want to achieve, one way would be to get alongside the community group and use that as a process of how you might build a new community group, and fund them. And I mean fund them. Do not just expect them to do it all for nothing. Fund them to assist in the process of protecting the important biodiversity assets of this part of Hamilton City.

COMMISSIONER KNOTT: Thank you, that has been helpful, thanks.

COMMISSIONER WASLEY: Commissioner Lovell.

COMMISSIONER LOVELL: A couple of points. What is your view of Southern Links approach, given your desire to integrate here? What is your approach?

PROFESSOR CLARKSON: I do not believe it should be used as a model for this subdivision, for a start, because there are too many variables in it which are rather different. It is a completely different style of project. I also do not believe that adequate compensation or recognition was made in relation to many of the submissions that came into that case. Yes, of course it does have some good elements and there is no doubt that some of us are benefiting from seeing the additional data that has been collected by that project, but I do not see it as the standard.

COMMISSIONER LOVELL: Is there a specific standard that you would point to?

PROFESSOR CLARKSON: Because of the nature -- again, I will come back to the experiment. I wish I could say here is an example of where there is being done and it is being done and the bat population has been saved and even increased, but there is no example. I can be confident, though, that the best-practice standard for what I am talking about in relation to restoring the vegetation is being widely practised already in Hamilton. If you go to Waiwhakareke Natural Heritage Park -- and I say this because there was a series of peer-reviewed publications based on long-term data and projections to show what works best when you are trying to recreate an indigenous-dominated vegetation habitat.

COMMISSIONER LOVELL: You were here on Friday when we were having the discussion -- obviously you were not. We talked about edge planting versus other options. It was noted that while it is not documented in terms of (inaudible), it does address it in the wild, as it were. Does that make it less relevant, given that from our understanding of the experts it is working (inaudible) in the wild?

PROFESSOR CLARKSON: I am not sure I understand.

COMMISSIONER LOVELL: The planting, the edge planting.

PROFESSOR CLARKSON: Yes, you mean the hedge-like planting?

COMMISSIONER LOVELL: I think they call it edge planting.

PROFESSOR CLARKSON: The barrier planting or the hedge planting? Again, my view on that is that it is all absolutely necessary. I believe that the timings to get to the appropriate standard have been underestimated. But again I make the point that just targeting those particular things in the long run on its own will not lead to a net gain. All it is trying to do is respond to a current emergency situation, in terms of preventing light and all of those things. The fundamental thing here is do we want a bat population in the long term?

COMMISSIONER LOVELL: You will have seen the map that was put up giving the lines and things like that in terms of where the bats are, et cetera, and the pretty obvious nature of the corridor versus roosting. Given this, and given that the bats seem to be going to other places - they are using it but they are not staying - how is what you are proposing going to add any more if they are not actually staying there in the first place? They are moving on to the other sites that they are going to.

PROFESSOR CLARKSON: I will just say some general things. I am not entirely a bat expert but I will say some general things. I think for a start the data that we have is indicative. It does not really show us entirely how the whole site is used. It is a series of records that have been collected using a methodology which of course anybody who has tried to go and monitor bats knows is not easy. But, for example, when we were undertaking the caucusing of ecologists, we asked for some additional data to be collected and, hey presto, a new roost site was detected in the north-south gully, is my understanding.

I guess what I am saying is I think that map has quite a deal of uncertainty connected to it as to the total usage of the site. Yes, it does show some trends, absolutely I agree, but I would prefer to defer that more detailed answer that I think you are seeking to our bat ecologist.

COMMISSIONER LOVELL: If we go back to some of your other comments, if you look at the conditions - and I note what you are saying in terms of keeping up with the varying versions - there seems to have been clear movement towards trying to cover off some of the points that have been raised across a number of parties. That includes including RESI in the process of consultation in terms of things. Picking up on a point just

before, is it having (several inaudible words) to have a conversation, having some conditions which we could potentially tighten, recognising that there may be uncertainties? Time will tell. Is that not better than what we have at the moment, which is really nothing? On the site, I am saying, in terms of --

PROFESSOR CLARKSON: On the site.

COMMISSIONER LOVELL: On the site. At the end of the day, the farmer can cut down a tree.

PROFESSOR CLARKSON: Except that the threats to the current scenario are essentially of an order that has allowed that bat population to persist. So we know what we have at the moment. We actually have a bat population. But we do not know what we might have after this other activity occurs.

COMMISSIONER LOVELL: That brings me back in a circle because I have been asking the question around compliance from my perspective, which is not compliance of the conditions of the (inaudible) but ultimately it triggers a mechanism flow where we might deal with a situation where, within a framework of a monitoring period, something happens that actually affects the

bat population and how might we deal with that. Do you have thoughts on that?

PROFESSOR CLARKSON: Again, I will come back to it. I am not saying that you could not devise a really good set of conditions, I am just saying that the process that has occurred to date is not emerging, in my mind. The reason partly is that you make the little changes here and there and you lose the coherency and things go out that were there previously. I have seen a couple of things go out and I do not even know why they have gone out. I have also seen ongoing changes in timespans in relation to monitoring. Where is the coherent approach of actually doing it and doing it well? That is all I am saying.

COMMISSIONER LOVELL: I do not disagree with that, at the end of the day. We can look at conditions and (several inaudible words). What I am wondering is between the conditions and between RESI and others, and Allan Pearson has now been involved in the consultation process for these plans, how far does that go in terms of meeting your concerns, or does it not? What would help with your concerns?

PROFESSOR CLARKSON: All I am saying is it has a fair way to go yet.

COMMISSIONER KNOTT: Do you think that if we did have another caucusing process, that might be something that could be resolved or would it not?

PROFESSOR CLARKSON: I think potentially it could. I am not of a mind to say that it could not be resolved. Also, I guess when you refer back to my previous evidence, I have made the comment around it should be possible to reduce the risks considerably.

COMMISSIONER WASLEY: Dr Clarkson, in terms of you discussed or highlighted the significance, in your view, of the north-south gully and that it is important that the aim is for some net gain. I want to tease out a bit more of your thinking around that in terms of the significance of the north-south gully. As part of that, can I take you back to the structure plan? Is part of that reasoning because the north-south gully is connected into future reserve areas that are identified on the structure plan that then connect into the Mangakotukutuku valley?

PROFESSOR CLARKSON: Yes, that is right, yes.

COMMISSIONER WASLEY: In your view, for that north-south gully, what is the enhancement or the mitigation to be undertaken, from your perspective?

PROFESSOR CLARKSON: What needs to be undertaken?

COMMISSIONER WASLEY: Yes. What would you have in mind, particularly reducing the risks, and you see the mitigation proposed by the applicant as being experiment - without putting words in your mouth - probably in your view an unproven experiment?

PROFESSOR CLARKSON: When you look at the way the north-south gully links back through on that reserves map, it is a bit slim in a couple of places. It also is clearly in one place overlain by a road, on my map. I do not know whether we have the same map. This is the one that I have been using.

COMMISSIONER WASLEY: Yes.

PROFESSOR CLARKSON: Also, because the approach has been more like a landscape architecture-type approach, what I am saying -- and it does not have to occur along the whole of the gully but there should be parts of that restoration, at least,

where the goal should be trying to work towards seriously high-quality, old-growth forest, with the sorts of trees that would enhance habitat for bats. Because that, in my mind, is the longer-term solution to maintaining a bat population in this part of Hamilton.

You can see also where roads get right on the edge of the gully, where the setback is, in my mind, inadequate. Again, the importance of the north-south gully is because it funnels -- the bats are begin hemmed in and they are looking for an alternative. I should not anthropomorphise bats, but this is the obvious -- you are coming down the river there and then you have the gully. You can shoot across to the Mangakotukutuku. It is really about the quality of what is being proposed and the magnitude of what is being proposed, which are the words I used in my summary.

COMMISSIONER WASLEY: In terms of the old-growth forest, are you suggesting that this is a situation over many, many decades?

PROFESSOR CLARKSON: In order to recreate something like Hammond Bush you are looking at more than 100 years. The point here is that that should be influencing the staging as well of that end of the subdivision. I know that people will say that is a

ridiculous timeframe, but the point I made in my earlier evidence was that I was trying to give clues around the point at which more natural functioning of ecosystems occur. One of the key thresholds that we have established from our research is that unless things have been going for about 20 years, you are not even getting close. I am not saying it has to be 100 years but I am saying it probably needs to be more than 20 and more likely closer to 50 to really get the ingredients back that would truly assist the bat population.

COMMISSIONER WASLEY: In terms of your evidence statement - again I come back to your view about the proposed mitigation is an experiment, and you have made several other comments - are you seeking a decline of the application until that further information and net-gain propositions are available and outlined or do you see the opportunity - picking up on the discussion that you had with my colleague - that those matters could be matters through conditions on consent?

PROFESSOR CLARKSON: As in 8.2 of my evidence, I am saying that we have to do something about getting this plan development right in particular. I think if we continue on the track where it is done extremely quickly -- I am not saying reject outright, what I am saying is surely we can do better than this. A

hurried process, I would like to add, will not get us the result that we need.

COMMISSIONER WASLEY: In terms of that plan development, do you have an example or a model in mind?

PROFESSOR CLARKSON: I certainly have a range of examples that I could provide of plans that I think are good plans. As is the nature of all plans, there will be things about this particular location and particular project that will mean that the plan to some extent will have to work it out for itself, but there are certainly examples of good plans around the place.

COMMISSIONER WASLEY: I think you were suggesting that the process around plan development needed to be, in your view, improved. That is what I was interested in if you had any examples.

PROFESSOR CLARKSON: I will give you an example of the sort of things, of a facilitated a process with an independent facilitator where people are brought into the room and basically approach the problem in a more collaborate way. I have seen many examples of this happening around New Zealand of late in all sorts of forums, in relation to water, the Land Water Forum,

in relation to a number of other projects. I guess the way New Zealand operates nowadays is more around this collaborative, facilitated model to produce a better result.

COMMISSIONER WASLEY: The Waiwhakareke Natural Heritage Park -- and certainly that is an area we are going to look at, along with Hammond Bush, in terms of some further site visits. In terms of that park, was there a particular process around that that was of value, from your point of view, and what were the aspects of it?

PROFESSOR CLARKSON: The key part of the process that was valuable was the development really early in the initial stages of a partnership approach. A memorandum of understanding was developed which involved the city council, Wintec, the University of Waikato, and umbrella community group called Tui 2000, which represents the interests of a wide range of environmental groups within the city. From the very get-go, if you like, there was a strong partnership collaborative approach to the issue. Then what tended to happen was that people just started coming on board and things really started to move.

That is not saying it is the perfect project. It has had its glitches along the way, as all of them do, but I think that

initial starting point is extremely important because otherwise things get into an adversarial arena where people talk past each other.

COMMISSIONER WASLEY: Okay. We do not have anything further, so thank you Dr Clarkson.

We will now move in terms of submission 65, the Hamilton City Council. Mr Muldowney, welcome. Just before you start, Mr Muldowney, how long (several inaudible words) the rest of the afternoon, how long do you think you will need in total, subject to any questions the panel may have?

MR MULDOWNEY: I would expect my presentation in terms of the legal submissions would be between half an hour and 45 minutes, depending on questions and then I have three witnesses to present evidence. There are four statements of evidence that were produced for this particular submission. One of the statements of evidence is from Ms Rawson, who was the author of the Xyst report. She was simply attending to present the report directly.

I have assumed from the way that the debate appears to be unfolding around the sports park that there does not seem to be

any real contest around issues associated with the demand figures and the ratios between population and size of the park. I do not think that is necessarily the battleground, so to speak. It may be that there is nothing particularly contentious about Ms Rawson's evidence, in which case hopefully it can be taken as read, which would be very convenient in that she is in Whangarei and would be having to travel back to -- well, travel to Hamilton to present.

If it is possible to get a direction from the committee on the requirement for her presence at the conclusion of this presentation that would be convenient to us, sir.

COMMISSIONER WASLEY: Okay. Yes, certainly we can give that post your presentation and the witnesses you have here. Yes, and it will be fair to say that a major interest of the panel will be what was around the process of acquisition and those matters. Mr Makgill raised those matters in his opening submissions and other witnesses have also referred to that matter.

MR MULDOWNEY: Yes, I am happy to address you on that angle.

COMMISSIONER WASLEY: Okay, thank you.

MR MULDOWNEY: I will just borrow the lectern for a minute.

COMMISSIONER WASLEY: You may, yes. Did you have some legal submissions?

MR MULDOWNEY: I do have submissions which I have provided to my learned friend and I will just circulate if I can.

COMMISSIONER WASLEY: Okay, thank you.

MR MULDOWNEY: Thank you, Mr Commissioner Wasley, and good afternoon to you and to the committee, my learned friend and other participants. What I wanted to do was step through the legal submissions carefully, if I can, principally because I want to clarify what I think is a degree of uncertainty, the misapprehension in part as to the nature of the submission and what it is seeking to achieve. There was no question and it should be evident from the written submission that was first presented that Hamilton City Council and its strategic units relating to this particular submission are very supportive of the application, it is just about getting rules right.

To my submissions. These are made on behalf of the Open Spaces Facility and the Strategic Infrastructure Unit at HCC. These units within HCC have lodged a joint submission in respect of this publicly notified resource consent application pursuant to section 96 of the RMA. The applicant's expressed some concern regarding the legality of the submission and the proprietary of the HCC approach. Both concerns can be resolved in short order.

First, as to the legality of the council lodging a submission, section 96 of the RMA provides that if an application for resource consent is publicly notified any person may lodge a submission and the RMA then goes on to define persons as including Crown, corporations, sole, also any persons whether incorporated or unincorporated. Of course pursuant to section 12(1) of the Local Government Act a local authority is a body corporate with perpetual succession thus meeting definition. Indeed councils regularly submit on resource consent applications. The twist here is submitting on their own.

As to the court's approach to that question of the council performing dual roles, it is acknowledged that the point is novel and most recently addressed by the full bench of the

Environment Court in the Auckland Council case, which my learned friend referred to in his opening submissions. While not directly on point that case dealing with a council appealing against its own decision, the court reviewed a series of cases where council had participated in appeals with dual roles and held that after that review of the most relevant case law we conclude that there is no express authority that a council as applicant for resource consent cannot appeal against its own decision as the consent authority. The council advise they searched strenuously for a direct authority and found none. The court's own research has also indicated an absence of these statements.

We accept that any entity, especially a local authority, may have these roles, however, we remain of the view the council is a single legal entity, must act with integrity and accountability and do not see any basis on which a council can assert that it is able to split itself. If it is able to act as both appellant and consent authority then it must do so in a way that carefully addresses and avoids apparent conflicts and minimises procedural complications.

Now, ultimately I say that this issue was moot because as council for the applicants stated in opening submissions, the

applicant does not seek that the hearing panel will make a termination on this point but rather you exercise caution in how this submission is received or treated. So, in effect, the question of whether or not you should receive the submission has effectively been put to one side. If I understand the concern from the opening, what they are really saying is let us get on with the debate but this will caution the exercise in the way that we treat submissions.

That caution is urged because the applicant asserts that the role of the city as submitter and as a reporting officer under section 42A presents a clear conflict. That is accepted and HCC has managed that conflict appropriately by ensuring an appropriate separation of functions between the submitting units and the section 42A author.

Now, the other reason the applicant urges caution in relation to your treatment of this submission is because it asserts that HCC is attending through the submission to secure outcomes it wishes to accomplish through a development agreement or development contributions. The applicant asserts that seeking relief, including a condition precedent, requiring a development agreement be entered into with HCC before certain works occurring is unlawful. It is my submission that the

applicant misconstrues the intent and effect of the submission. I say that rather than being unlawful the submission seeks conditions which are essential to the grant of a consent and I will develop this submission further.

Coming back to the purpose of the submission, the purpose of lodging a joint submission on behalf of these units within HCC is to ensure that the strategic infrastructure matters which arise in the context of this resource consent application are highlighted and specifically addressed. That HCC has taken the step of lodging a submission on behalf of two of its operational units rather than rely on the usual portal of the section 42A report only, which is a report commissioned at the discretion of the hearing panel, should be taken as a clear signal of the strategic significance that HCC places on the infrastructure issues which arise in respect of this consenting process. Simply put the Peacocke structure plan area is the single largest area of land within Hamilton City which has yet to be urbanised. The Weston Lea resource consent application for subdivision and land use activities within Peacocke Amberfield represents the first significant private development project dealing with this scarce land resource. It is development comes at a time when HCC is planning for and on the cusp of implementing the roll out of significant public infrastructure

within Peacocke which will enable the urbanisation of not only the Amberfield but also on the remaining land resources within the Peacockes area.

The coordinated, efficient and timely roll out of public infrastructure with urban land use activities is vitally important to the overall success of Hamilton City and the well-being of its residents. This outcome goes to the heart of achieving the single purpose of the RMA being sustainable management of natural and physical resources. The co-ordination of the development of the core public infrastructure, alongside the development of residential and other associated land use activities represents a once in a generation opportunity to get it right from the outset.

To optimise this opportunity development of Amberfield must occur in a manner which is consistent with and does not compromise the roll out of HCC's strategic infrastructure programme within Peacockes. It is important to note that HCC is supportive of Weston Lea's aspirations for Amberfield but seeks consent conditions which address its concerns regarding strategic infrastructure. This position is reflected in the joint submission which sought a decision to approve the application subject to making the amendments sought in the

submission or otherwise decline those aspects of the application which are inconsistent with the submission.

The focus of the joint submission is to identify those aspects of the application or proposed conditions of consent which require amendment, to explain why amendment is sought and to promote practical solutions which will enable Weston Lea to achieve its aspirations for Amberfield without compromising HCC's strategic infrastructure outcomes.

The Peacocke structure plan area comprises of approximately 740 hectares of land located at the south-western end of Hamilton City. The land resource is largely undeveloped rural land, transferring under a boundary organisation act 1989. In the national policy statement on urban development the capacity was developed to ensure areas with high population growth, such as Hamilton City, provided sufficient capacity for residential and business growth in a manner which promotes the efficient use of urban land and infrastructure. In addition, policy PA1 requires that short-term capacity, being three years, must feasible for zone and serviced with necessary public infrastructure while medium-term capacity, being three to ten years, must be feasible for zone and serviced with public

infrastructure or funding for that infrastructure must be identified in a relevant long-term plan.

Now, the relevant provisions of the operative district plan, which enable urbanisation in Peacockes, had been operative since 2017 but the necessary public infrastructure to support urbanisation in this area of the city has not been in place, nor has it been allocated funding in HCC's long-term plans.

That position changed in October 2016 with MBIE announcing the $1 billion housing infrastructure fund in growth councils such as Hamilton, to assist in public funding for infrastructure necessary to enable new large areas of housing and HCC submitted a successful bid, and you will have heard of this, securing $219.4 million in funding, 108.3 of it in interest free loans over a ten year period and $110.1 million of New Zealand Transport Agency subsidies. With this funding in place HCC then made provision for capital expenditure in its 2018-28 long-term plan to deliver the key strategic network infrastructure necessary to enable development within Peacockes.

In addition to resolving these infrastructure funding requirements, earlier in 2016 HCC and the Transport Agency jointly secured the necessary designations to enable the

Southern Links project, being a redevelopment and extension of the existing state highway network and certain arterial networks within and around Peacockes, which would ensure the integration of local roads being built in Peacockes with the arterial and state highway network.

Where did we get to? Accordingly in mid-2018 the conditions were set. We had the Southern Links designations in place, the land use planning framework set in the ODP and the infrastructure planning framework set out in the long-term planning had all become aligned and the conditions were set for the urbanisation of Peacockes.

Then as identified in the section 42A report the council really got on with planning that infrastructure work in according with the HIF programme and that key strategic network which is now planned for Peacockes comprises of the construction of a transfer pump station and pressure main to pump waste water north from Peacockes to the Pukete treatment plant. That project is current in design and programmed for completion in late 2023. There is the extension of the Wairere Drive southwards and the construction of a bridge over the Waikato River connecting this arterial network to Peacockes. The bridge is designed and designated as part of the Southern Links network

and is consistent with the structural plan. The bridge will accommodate walking, cycling and passenger transport and will provide a corridor for utilities, including the waste water pressure main. This project is currently in design and is programmed for completion in late 2023. The bridge will link to the arterial network within Peacockes, including the upgraded Peacockes Road.

There is also the Wairere/Cobham Drive overpass currently in construction, programmed for completion in 2021 and the intersection at State Highway 3 and Ohaupo Road, with the design being completed and looking for completion planned next year.

HCC considers the integration of these proposed infrastructure works with the Amberfield development programme to be critically important to the successful urbanisation of Peacockes. Accordingly it seeks resource consent conditions which achieve this outcome.

To the private development agreement. As is commonplace in respect of development projects of this nature, the developer Weston Lea and HCC have been in close discussions regarding technical infrastructure related matters with a particular emphasis on the requirements necessary to ensure integration

between the infrastructure provided by Weston Lea in the Amberfield and the strategic public infrastructure to be delivered by HCC within Peacockes. The parties have been working in good faith to finalise a private development agreement which would secure integration of various infrastructure projects. HCC's requirements are clearly set out in the draft private development agreement attached to Mr Parsons' statement of evidence. To date the agreement has not been finalised, however as signalled in Mr Parsons' evidence he considers that the parties are very close in terms of resolving technical matters and he reaches this view after having reviewed the evidence of Mr O'Callaghan lodged on behalf of Weston Lea.

So to the infrastructure related conditions that are sought, while the technical infrastructure specifications appear close to resolution, HCC requires all matters relating to timing, access, construction and integration to be resolved to its satisfaction before it will agree to the connection and integration of the infrastructure within the Amberfield development with its broader strategic network, unsurprising.

Accordingly HCC seeks that either the subdivision and land use consents contain conditions that directly and specifically address these infrastructure integration requirements or

alternatively a suitable condition precedent be included within the subdivision and land use consents which requires a development agreement between Weston Lea and HCC, which resolves these issues, to be in place prior to certain infrastructure works commencing. HCC considers the condition precedent option as less cumbersome and is preferred.

The applicant appears to contend that the condition precedent of this nature is unlawful, I submit that assertion is incorrect and it mischaracterises the intent and effect of the condition precedent. Rather HCC considers that conditions of this nature are necessary in order for the proposed development to be consentable. To illustrate the point I want to make reference to condition 131 in the draft set of conditions accompanying Mr Sergeant's reply evidence dated 1 May. This relates to waste water reticulation.

Condition 131 provides that the consent holder must discharge waste water from the site into the far eastern interceptor at Crosby Road. Under this condition waste water is proposed to be reticulated and pumped from Amberfield in the south-west of the city to the far eastern interceptor located at Crosby Road, some 6 kilometres away in the north-east of the city. To achieve this outcome the consent holder needs to run a

waste water pipeline within HCC's Southern Links designation footprint, bore a line underneath the Waikato River, return the waste water line underneath Cobham Drive and then extend the pipe north approximately 5 kilometres within the Wairere Drive corridor and then connect the pipe to the far eastern interceptor. What a challenge.

Clearly such a condition is incapable of compliance without HCC's consent as requiring authority, road controlling authority and infrastructure owner. What confidence can the hearing panel have that the consent holder has any prospect of complying with this condition, without HCC's compliance there can be none. Without being capable of compliance there is no waste water solution for Amberfield and without a waste water solution the project is unconsentable. It is well established that the power of imposed conditions on a planning consent is not unlimited and in addition to the restrictions that now apply under section 108AA a condition must be for a resource management purpose not for an ulterior one, fairly and reasonably relate to the development authorised by the consent to which the conditions attach and not be so unreasonable that a reasonable planning authority duly appreciating its statutory duties could not have approved it. All familiar Newbury principles.

In addition to these core requirements, the Environment Court has established that a condition may be unenforceable if it relies on the compliance of a third party or their compliance cannot occur without the agreement of a third party. Whether a condition involving third party rights is unenforceable depends on the manner in which it is worded. If compliance with the condition involves an infringement of the legal rights of third parties the condition should not be imposed unless all the third parties affected provide consent to the execution of the works and the manner of its execution or there is a statutory power to execute the work and it is carried out on behalf of a public body having the statutory power.

So while potentially problematic the fact that third party consent is required will automatically make the condition invalid. That, I say, is particularly so if it is framed as a condition precedent. So this is really the solution that I was suggesting. As to condition precedent, in Westfield v Hamilton City, the High Court held that a condition which infers the opportunity for the applicant to embark on an activity until a third party carries out some independent activity was valid. The court held that there was a critical distinction between the two ways in which the condition is framed. One requires an applicant to bring about a result which is not within the

applicant's power and is invalid. The other stipulates that a development should not proceed until an event has occurred. Justice Fisher captured the position in these terms:

> "Conditions attached to a consent will usually be regarded as unreasonable if incapable of performance. A classic example was consent to a reposition of dwellings subject to a condition requiring access to a 4.8 metre wide strip when access to the applicant's property was in fact possible only through an existing strip or the width of only 3.7 metres."

It goes on to say at 56:

> "On the other hand a condition precedent which defers the opportunity for the applicant to embark upon the activity until the third party carries out some independent activity is not invalid. There is nothing objectionable, for example, in granting planning permission subject to a condition that the development is not to proceed until a particular highway has been closed, even though the closing of the highway may not lie within the power of the applicant."

So turning to the example of draft condition 131. As a standalone condition it is prima facie unenforceable because the consent holder's compliance requires the agreements and actions of the third party, namely HCC. This defect is capable of remedy however and can be resolved by redrafting the condition in one of two ways.

Option 1 is to add, as a condition precedent, to any waste water discharge pipeline infrastructure works commencing. The consent holder must have entered into a private development agreement with HCC which secures HCC's agreement to allow the consent holder to build the necessary waste water infrastructure to connect Amberfield with the far eastern interceptor. This will validate the condition by expressly acknowledging that it requires third party agreement as a precondition to works commencing.

If I just pause there and make a comment that a condition precedent of this nature, which requires the agreement of a third party be secured before giving effect to a certain part of the development is exactly what has been promoted in the draft set of conditions that are in circulation at condition 4. It is probably just worth turning to that. I have been working off a couple versions -- I see Mr Serjeant has produced a -- I think that is the most up to date version attached to his reply evidence dated --

MALE SPEAKER: Yes, it is.

MR MULDOWNEY: Yes, condition 4 I do not think has changed even amongst a couple of iterations to the number and what condition

4 says currently, and this is the drafting that has been approved by Mr Serjeant is that:

> "No activities authorised by this consent may commence unless and until unconditional approval of the subdivision and land use has been obtained from a requiring authority, HCC as road control authority, for works within the Southern Links designation."

The point I want to make about that condition is that there is already a condition precedent of that nature. It does not expressly state that there needs to be a private development agreement in place but that is the effect of the condition because it is saying you cannot exercise any of the rights under these consents until such time as you have the unconditional approval of the requiring authority. You are not going to get the requiring authority's approval unless there is an agreement in place. It might not be visible to you as Hearing Commissioners and it might be a private agreement and it might be a side agreement but you are never going to get compliance with condition 4 without an agreement in place.

I say that condition 4 is already there, it is part of the drafting that has been circulated and I think part of the answer to this problem might be in an extension of condition 4 because, of course, while it addresses -- and I think it is designed to

address the practical issues around doing works within the designation footprint, as I have illustrated with the waste water connection pipe, there is more required than just requiring authority approval than the designation footprint. There is going to be landowner approval as pipes come across land owned by Hamilton City. There is road controlling authority approval where the pipes are going to be laid within the road corridor, particularly along Wairere Drive. Then there is, of course, the network utility operator's, being Hamilton City Council, approval to the connection to the reticulated network. It seems to me that condition 4 is a good starting point for us to solve the drafting issue and it just needs some work to capture not just road controlling authority approval but also the approval of Hamilton City in a number of other capacities that I have just described.

That is option 1, which is one solution, one drafting solution. The other option at 37, option 2, is to recast the condition so that it operates as a standalone condition precedent by simply stating that, for example, the consent holder shall not commence construction of the Amberfield waste water discharge pipeline until the far eastern interceptor has been extended south to Cobham Drive. That is a classic restatement of what Justice Fisher was saying in the High Court

where you do not put the obligation on the consent holder to procure an outcome that they are not in control of, you just simply say you cannot exercise your rights until such time as a certain thing has occurred. That is a perfectly valid condition precedent and will also solve the problem.

As I say, there are two options that I think get around the major issue that concerns the strategic infrastructure unit around how to control the integration of the Amberfield infrastructure with the roll out of the public infrastructure that these teams are responsible for.

I say that similar drafting techniques can be deployed in respect of a number of other conditions which relate to the integration of Amberfield infrastructure with the strategic network. Mr Parsons will address you further on these matters.

What Mr Parsons has prepared is a brief table which has identified about half a dozen conditions in the consent which are similar to condition 131 which suffer from the same need for some adjustment and so Mr Parsons will identify those other conditions for you and explain how they can be captured by some kind of drafting solution, either in terms of option 1 or option 2.

That deals with the strategic infrastructure integration issues and, as I say, all of which, I submit, are capable of being resolved with some drafting edits. I want to re-emphasise the point that I do not think that any such conditions which require that these third parties approvals are procured and subject to a private agreement between the consent holder and Hamilton City are in any way unlawful or invalid. As I say, the approval that is being promoted in current draft condition 4 could never be given without some kind of agreement in the background.

That is the position of the strategic infrastructure. Before I change topics and move to the sports park, is that a -- are there any questions which arise at this stage or shall I plough on?

COMMISSIONER WASLEY: If you can, in your words, plough on until you are finished, Mr Muldowney. How long is Mr Parsons going to be?

MR MULDOWNEY: Well, the intention was that he would very briefly summarise key points in his statement. He would like to produce the table of consent conditions that he is interested in

being subject to some surgery and then just take questions from you. So it might be 20 minutes.

COMMISSIONER WASLEY: Okay, I think if my panel colleagues are happy with this, we will hear the rest of your submissions, hear from Mr Parsons and then we will have questions of you both because I suspect there will be some crossover in terms of some of the questions that panel members have.

MR MULDOWNEY: Happy to proceed on that basis. All right, so to the sports park. The provision of a 7 hectare recreational sports park within the Amberfield development remains in contention between Weston Lea and HCC. Weston Lea maintains there is no legal requirement for it to provide a 7 hectare sports field within Amberfield, either to comply with any relative district plan provisions or to address the effects of the application. HCC disagrees.

It is noted in the section 42(a) report, higher order strategic policy 2.2.2(b) emphasises the need for development within the identified growth areas to be in general accordance with the relevant structure plan. This is reflected in the lower order structure plan objective 3.3.1 talking of a long-term positive and environmentally economic, social, cultural

effects of green field development and supporting policy 3.3.1(a) that the development should be in general accordance with the relevant structure plan. Additional relevant policies 528(c) and 528(d) are found in the Peacocke character zone chapter which established that requirement to ensure the development is consistent with the Peacocke structure plan and any master plan prepared for the area and to ensure developments of non-residential activities are located in areas identified in the Peacocke structure plan or in the approved master plan that provides such activities.

Then linked to this objective and policy framework is the indicative location on the Peacocke structure plan figure 2.1, and this is an active recreational and sports park within the southern part or the Amberfield site adjacent to Peacocke Road.

Weston Lea's AEE, which is accompanied the EP application, states the proposal is in general accordance with and has a high level of consistency with the structure plan provisions. The applicant's AEE states that these have all been achieved with the provision for a sports park on easy sloping or flat land in the southern part on Peacocke Road to the south of the proposed neighbourhood centre. The park is also linked to another open space and shared paths.

This provision of the sports park was not apparent to section 42(a) author given that the area is shown as residential lots on relevant scheme plan. This disconnect was tested through in a section 92 further information request and the issue was framed in these terms. I am going to just labour through these quotes because they are important. First the question or issue was the AEE assessment of the objectives and policies in the Peacocke structure plan indicates the proposal is consistent with these objectives and policies. However, the application itself does not include the land shown indicatively in the southern part of the application site required the sports park as reserve to vest in council. Subdivision plans show the indicative location as proposed residential lots. Pre-application discussions have consistently requested a sports park be provided in the proposed development.

> "Please show the sports park invested in council or if not clarify how the application is consistent with the Peacocke structure plan and relevant objectives and policies."

Weston Lea's response to that information request, which it has maintained through the hearing, was as follows:

> Section 3.11.3 of the AEE sets out the applicant’s proposals for the sports park to be located in the southern

development neighbourhood. As you point out, the scheme plan does not currently show the sports park, but instead shows proposed residential lots. The responses in appendix A are based on the assumption that the park is provided. However, the provision of the park is contingent on Council initiatives in purchase and development. Resolution of this matter therefore needs to take the following matters into account.

The council has two roles in this matter, that of a sport and recreation asset manager and that of a regulatory authority under the Resource Management Act 1991. The first of these roles requires it to establish a need for the sports park and to directly negotiate with the landowner for the purchase of the park. The indication of a green triangle on the structure plan and the expressed objectives in the structure plan do not comprise a firm commitment by the council as asset manager to purchase the park or a requirement to vest the land in council. The landowners have received no such commitment, hence the reluctance to show the sports park in the scheme plan. An action is clearly required here by the council to advance this matter to the point that the land should vest pursuant to the scheme plan. In its RMA decision-making role, the council must be satisfied that, in resource management terms, the taking of 7 hectares of land in this location within the zone is the most appropriate use of the land.

The council, as decision-maker, will need evidence from the council, as asset owner, that this is the case. It is anticipated that the council evidence would be made available to the applicant and potentially presented to the forthcoming hearing for the independent commissioners to consider. This evidence would need to contain details of the council's city-wide provisions of sports parks of the scale envisioned not just within the scheme plan area, but also the second green triangle location to the north, population projections for the proposed parks' catchment area, the types of active recreation uses generating the need for the parks, and consideration of alternatives."

And here we are doing just that. So Mr Serjeant's evidence has confirmed that the scheme plan fits approximately 110 residential lots in the sports park site area but that the road

that has been designed to facilitate the sports park is required. Mr Serjeant also notes the section 2(3) and 2(4) procedures for this area within Amberfield will not proceed for some years, allowing council ample time to secure funding and propose a firm offer for the land.

HCC's position is that granting subdivision and land use consent to build houses on 110 residential lots within the identified sports park land area is not consistent with the structure plan as required by the objectives and policies in the OEP. Nor could it be said that formulating a road layout which does not inhibit the sports park amounts to making provision for the sports park as the AEE asserts.

Weston Lea points to no firm commitment from the Hamilton City Council in purchasing the sports park land as the reason for not providing it up front. HCC has consistently advised Weston Lea of its requirement for a sports park and as Mr Sirl's evidence states, this was made clear during the pre-lodgement consultation phase and has not changed. Mr Sirl notes in his evidence that HCC's requirement for a sports park has always come with the acknowledgement that financial compensation would need to be addressed.

Weston Lea's logic appears to be that unless and until HCC has exercised statutory rights under the Public Works Act to compulsorily acquire the land or enter into a deal to acquire the land, the land should be consented and enabled for residential housing. I say this logic is inconsistent with the structure plan provisions which clearly established a requirement for this public infrastructure. This should be a starting position, particularly given that HCC has advised of its requirement.

Weston Lea also contends that the 7 hectare area is greater than what is needed to mitigate their effects. Weston Lea's evidence suggests at most the Amberfield development will generate demand for small parkland between 2.48 and 2.76 hectares consistent with the existing levels of service within Hamilton. Both Mr Serjeant and Dr Fairgray consider it inefficient and contrary to council's open space provision policy requirement for Weston Lea to only provide 2.5 hectare sports park, HCC agrees. It is for that reason it requires a 7 hectare sports park to be provided.

Weston Lea then contends that there are serious legal questions as to the lawfulness of a condition requiring a 7 hectare sports park on the basis that it does not meet the legal

test set out in section 108AA of the RMA. We say that assertion is incorrect. Section 108AA requires the consent authority must not include a condition in a resource consent for an activity unless the applicant for resource consent agrees to the condition or - that is called the (inaudible) principle - (b) the condition is directly connected to be one or both of the following, adversely effect of the activity on the environment or an applicable district plan.

Section 108AA(1)(b) which is the provision relating to a condition being directly connected to an adverse effect of activity, does not limit conditions to only migrating those effects on the environment arising from the activity. Rather section 108AA(1)(b) requires that a consent authority must not include a condition in the resource consent unless the condition is directly connected to either an adverse effect of the activity on the environment or an applicable district rule or both. Provision of the 7 hectare sports park is directly connected to an adverse effect arising from the activity, which is what is required, being the increased community demand for active sports park infrastructure and facilities in a newly urbanised location. Sizing the sports park to the efficient and effective represents sustainable management. As Mr Sirl notes, and as is accepted by Weston Lea, the 2.27 hectare sports park

will be neither functional nor efficient. Nor is a limitation of this nature which mitigates only effects arising from Amberfield necessary to comply with 108AA.

So on this basis the condition requiring provision of a 7 hectare sports park meets both the requirements of 108AA from the RMA and more fundamentally section 5 of the RMA. A condition of this nature does however raise the issue of financial compensation as Mr Sirl states. HCC is willing to address that matter through a separate process.

I understand this morning the commissioners raised the question about whether in fact there was any scope in the application to make provision for the sports park. Am I right, that was a question that was --

COMMISSIONER WASLEY: Yes, was there any scope if we were of the mind to grant consent to grant consent subject to the provision of the sports park.

MR MULDOWNEY: Yes, so I will address you on that point. In my submission the answer to that is, yes, you do have scope. It is accepted that you are confined in terms of what you can approve under any consent to what was applied for. Let us be clear, I

am not suggesting that you authorise a land use concept for the operation of a sports park. I am submitting to you that you should be making provision for public infrastructure which is necessary to one day deliver and operate a sports park. So if there is a subsequent resource consent that is required to be sought for the land use activity, say, for example, the erection of some floodlights, some changing rooms, some public toilets, goalposts, car park, whatever those are matters that will be the subject of a specific land use consent application for a sports park. That is not what is being pursued here. What is being pursued here is that there is adequate provision for the public infrastructure necessary to one day enable that land use activity. To anticipate the next question, do we have scope to do that? The answer is my submission is unequivocally yes because you have the ability to impose whatever conditions you consider are necessary and appropriate to mitigate and address effects arising from the proposal. If you consider that there is an additional public demand generated by this land use development for public infrastructure in the nature of active recreation parks, you have the ability to ensure that the consent somehow makes provision for it. So, in my submission, there is certainly scope for you to impose conditions which at least preserve the infrastructure capacity or the land resource necessary to one day deliver an active sports park in this area.

Now, again, moving to the solution, what I have suggested at paragraph 56 is that the consents, I say, should not be drafted in a manner which establishes land use rights to build residential dwellings on 110 lots within the sports park area. The consents should be drafted to reflect the structure plan requirement for a sports park within Amberfield. A sensible and practical compromise, which would address Weston Lea's concern over HCC not yet initiating any formal process to acquire the land would be for the subdivision consent to authorise two alternative scheme plans for this part of the subdivision. Scheme plan A would depict the sports park. Scheme plan B would depict 110 residential lots. A condition could be imposed which requires the consent holder to develop in accordance with scheme plan A but reserve the option for the consent holder to develop in accordance with scheme plan B if within a certain timeframe, say 2022, council formally advises that it is no longer requiring the land for -- unlikely, I should say, requiring the land for sports park purposes.

In the event that scheme plan A is pursued, there could be a further condition which would require the consent holder to vest the land in council subject to council paying compensation to the consent holder for any upsizing component which

compensates for any land vested beyond the land necessary for the consent holder to mitigate their effects. That condition could reference the Public Works Act mechanism for valuing any compensation.

Now, if the applicant or Weston Lea has any strong and credible objection to a compensation provision such as that, the alternative would be to leave the consent silent. The council could simply acquire at whatever price it is required to pay and then simply levy development contributions to recover the capital costs of the acquisition. That is another alternative. Again, that leaves aside any question of exactly what is to be paid.

The point is that those issues are separate from the consenting process, but what is necessary under this consenting process is that the resource be preserved and that is what the parks unit is seeking to achieve. It says that enabling a land use activity for 110 residential lots on this land resource is not preserving it even if it comes late in the development phase.

So, what I am suggesting as a sensible compromise or practical solution would be some flexibility built into the

consent so that there are two scheme plans that are effectively approved by you. It seems to me that there is very little to do in terms of updating the scheme plans given that the roading layout is going to be consistent between the two. It is simply a scheme plan which depicts some form of active recreation area versus a scheme plan which depicts 110 residential lots.

So, finally, I say that those drafting solutions meet the requirements of section 108A(a) by reflecting the intended structure plan but providing an alternative development path in the unlikely event that the sports park becomes surplus to council's own space requirements.

Finally, I would conclude by saying that HCC reiterates that its infrastructure teams are fully supportive of the Amberfield development concept. The issues identified in the joint submission are all capable of resolution through the imposition of suitable consent conditions. HCC remains committed to working with Weston Lea and its team to achieve drafting solutions which resolve all of these matters.

COMMISSIONER WASLEY: Thank you.

MR MULDOWNEY: Thank you, sir. So, with that, did you want to --

COMMISSIONER WASLEY: No, we will hear from Mr Parsons and then we will adjourn for an afternoon tea break. Then we will come back for questions, and there will be some questions.

MR MULDOWNEY: Excellent. Well, I will hand over to Mr Parsons.

COMMISSIONER WASLEY: Welcome, Mr Parsons.

MR PARSONS: Thank you. Good afternoon. With your agreement, I would like to take my statements as read.

COMMISSIONER WASLEY: Yes, certainly.

MR PARSONS: And just go straight to the summary of just the key points, and then I would like to just focus on the sheet that has just been distributed and just work through that next, if I may.

COMMISSIONER WASLEY: That is fine.

MR PARSONS: So, just to reconfirm, from a Three Waters and transport infrastructure perspective, myself, Hamilton City Council, is basically largely happy with where we are at in terms of Three Waters servicing and transport servicing. In my evidence, I agree that I am very aligned with the evidence statements made by Mr Raymond O'Callaghan and so the matter that I wish to talk to you today about is largely matters of infrastructural conditions. That is because, as we will see, there are a number of critical timing matters, particularly in relation to what can happen and when and what for.

If I may refer to the handout, on the handout I have identified five matters down the left. I have referenced Mr O'Callaghan's evidence where those matters arose just for your cross-reference, and then also I have referenced the condition in the latest draft conditions, which we have just spoken to, being Dave Serjeant's evidence dated 1 May 2019. Then on the far right I have scheduled a column listing all the approvals that would be required to give effect to the matter on the left.

So, if I just talk you through the first one, a wastewater connection through to the far-eastern interceptor at Crosby Road, for the wastewater pipe to exit the Amberfield site would

immediately require a requiring authority approval because it would immediately pass through the Southern Links designation but also immediately pass through an existing road corridor so, therefore, would require a road-controlling authority approval. But that in itself would not get the pipe to the river. None of the roads in the Peacocke area touch the river, so I guess there are a couple of scenarios. One is the applicant would have to talk to Hamilton City Council as it relates to private land access, so private land owned by Hamilton City Council, and the city does own some significant property that would provide a surface corridor through to the river, and get an approval from Hamilton City as the owner of that land. Or, alternatively, the applicant would have to talk to Hamilton City Council with a parks and open spaces hat on and secure a pipe alignment through a reserve to the river. Either way, further approvals are required beyond just the designation and a road-controlling authority approval.

I will park approvals across the river entirely, but immediately on the north side of the river, irrespective of the alignment to get to the river, any pipe would end up within a reserve estate owned and managed and operated by a parks and open spaces team. So, again, irrespective of the alignment on

the south side, there is always going to be a parks and open spaces approval requirement.

The next point depends on timing a little bit, but at the moment the city has a construction contract under way to complete the ring road and interchange on Cobham Drive. That project still has two years to run but if the pipe alignment - and it is likely it will - is to pass through that construction site, approval will be needed from Hamilton City Council as principal for that contract because at the moment that contract gives exclusive use to the contractor, Fulton Hogan.

Of course, crossing Cobham Drive would require state highway approval and then as you head further north up the city, depending on whether you follow roads or reserves but again still with Hamilton City Council requiring a road-controlling authority, all parks and open spaces approvals are needed. Then, for completeness, there will be a Kiwirail approval needed to cross the rail line.

So the point of telling that story is a lot of different approvals are needed to give effect to this wastewater connection to the far-eastern interceptor, which is identified under condition 131 and 132. So at no point is the city

suggesting these approvals will not be granted but there needs to be a clear agreement around how the works would be co-ordinated and managed and how and when those approvals would be given.

I am happy to speak to the remaining four items but they are very similar but much smaller in scale.

COMMISSIONER WASLEY: Yes, I think you have covered off on the general tenor and the matters that you wanted to highlight, so I do not think there is any need to go through those following matters in any detail.

MR PARSONS: The key point and the point I wish to make is that these matters need to be locked down in some form of development agreement so that we can have confidence this consent can be issued both from a road-controlling authority or the requiring authority or land owner and parks administration authority. To Mr Muldowney's point, condition 4 is very helpful as a starting position and is part of the solution, but my request is that that condition 4 be extended out to capture all the necessary approvals, not simply the requiring authority approval.

I have one other matter which is not directly related to the strategic infrastructure that I wish to raise. In preparing for today -- and I will refer to the draft consent conditions. I do not have a page number, but towards the end it schedules out what is to be vested at what stage. I notice particularly in stage 1 it schedules out roads to vest, local purpose amenity to vest, esplanade, reserve to vest, access to vest, rights of way to vest, but it does not schedule out lot 1100, being pump station 4, to vest, which is critical to stage 1.

The same theme flows through, and I am not concerned about if I get the stages right or wrong but I think also in stages 6, lot 1101, pump station 3, the vest is missing from the schedule; stage 8, lot 1102, pump station number 2 is missing from the schedule; and in stage 10, lot 1101 is incorrectly referenced as vesting as utility reserve. In fact, I believe it should be 1103. So there is some tidy-up required in relation to all of the pump stations in the application and the conditions that require vesting of other stations.

MR MULDOWNEY: Mr Commissioner Wasley, it may be that the leaving off of those particular lots to vest is inadvertent but it would be good to flush that out because if there is a reason,

for example, why these pump stations are not vesting we need to flush that out.

COMMISSIONER WASLEY: Thank you.

MR MULDOWNEY: It may just be a drafting issue.

MR MAKGIL: Sir, we think it is a drafting issue. If there is a reason we will let you know, but I rather suspect it is just a drafting issue.

COMMISSIONER WASLEY: Okay, thank you. Anything else, Mr Parsons?

MR PARSONS: No, I am happy to stop and take questions.

COMMISSIONER WASLEY: Okay. We will certainly stop now. We will adjourn for afternoon tea. We will reconvene at 3.45 pm and then there will be questions in terms of the matters that you have raised. Thank you.

(Adjourned until 3.45 pm)

COMMISSIONER WASLEY: Okay, we will reconvene, Mr Muldowney, and (inaudible) sort out the issues during the break.

MR MAKGIL: If you did, I am right and he is wrong.

MR MULDOWNEY: That is not how I recall the conversation.

COMMISSIONER WASLEY: So we will move to questions. Commissioner Knott?

COMMISSIONER KNOTT: I do not have any questions.

COMMISSIONER WASLEY: Okay. Commissioner Lovell?

COMMISSIONER LOVELL: I only have one question. Paragraph 28 of the original submission ...

MR MULDOWNEY: The submission?

COMMISSIONER LOVELL: (inaudible) submission.

MALE SPEAKER: I will just have to bring that up, I am sorry.

MALE SPEAKER: Submission 68?

MALE SPEAKER: Yes.

COMMISSIONER LOVELL: No, I think you may have actually answered the question I had, sorry, just looking at it. I do not actually have a question because I think (inaudible) you have answered it.

COMMISSIONER WASLEY: Okay. I have some. Turning to paragraph 8 of your submissions, Mr Muldowney, you talk about the usual portal of the section 42A reform. Is there some gap that the council is trying to address by making submission as opposed to the general practice that I have experienced over many years where all of the comments and input comes through the 42A report?

MR MULDOWNEY: Yes is the short point. There is a gap and the gap is this. The 42A report is entirely at your discretion. So the extent and the breadth of what is submitted to you through the section 42A report rider is a totally discretionary matter for you.

COMMISSIONER WASLEY: In the sense of -- because we do not have any overview of what goes in it, we just get the 42A report as part of the process.

MR MULDOWNEY: Yes. Well, that is the disconnect between what happens versus what the law is. What the law is - I will not quote it to you - effectively section 42A is a discretionary report that can be called on by you as a hearing committee. So the approach that has been taken is to say rather than leave the presentation of these critical strategic infrastructure matters to a discretionary report was to take a position and get a submission in which had it as part of the record.

Now, it may be that your response to that is that that is all well and good but the reality is we never stop or curtail a 42A report. It could have just come on in and that is reassuring and good to hear, but I think the council's position was that these matters were so significant that it did not want to assume anything of you.

COMMISSIONER WASLEY: You are welcome to sit while we have questions.

MR MULDOWNEY: I feel like when I am being subject to penetrating questions I am more comfortable on my feet.

COMMISSIONER WASLEY: Okay. I am just sorting out what to do first. Okay, so in terms of the approvals that Mr Parsons went through, in the last two and a bit days we have not heard from the applicant that there seemed to be any issues around approval processes. They did not seem to highlight that as an issue. The issue that was highlighted was the applicant acknowledged that given the size of the proposed development they might have to provide about 2, 2.2, 2.4 hectares of land for some type of active use, but it was the difference between that figure and the 7.2 that they have raised concerns with us.

So, just going to the approval process, does that indicate then that HCC is looking at imposing condition precedents as part of its general resource consenting process? Because for a number of years conditions get imposed about infrastructure and then the applicant and the council go away and by and large sort all that out.

MR MULDOWNEY: Yes.

COMMISSIONER WASLEY: So I am just --

MR MULDOWNEY: That I think is the issue here, is that that leaves a lot to be assumed in terms of the lawfulness of a consent condition. So a consent condition like 131, which simply says that Amberfield shall reticulate its waste from the south-western section of the city to the north-eastern section of the city assumes exactly that, that the parties will then go away and figure out how to achieve that.

Now, the problem is that that assumes an awful lot in terms of the ability to comply with the condition of consent. I do not really wish to get into a debate about whether historically the city has been right or wrong, but what I want to say is that in a matter such as this where the stakes are so high and getting it right is so significant and important to council, I think it has brought into focus the need to make sure that we have conditions that are imposed which are enforceable and meet the legal tests. What I am saying to you is simply that the condition which simply requires that waste be reticulated from one part of the city to the other through a stretch of some six or seven kilometres and that it just simply be left to the parties to then sort out is of itself ... well, I think it calls into question the legitimacy of the consent condition.

However, I have come with a solution, and the solution is that if that condition, which is so heavily contingent on the third party approval, needs to be validated, it can be validated by imposing a condition which requires that those approvals be secured from XYZ as necessary and that no works commence or no land use activities commence until such time as those approvals are in place. For me, that squares the circle, so to speak.

The other option that I have promoted in the submissions is if you do not want to go down that path, which really is a path which I say means that there needs to be some development of condition 4, if you do not want to go down that path, the other way to validate the consent conditions would be to do what Fisher J said in the Hamilton City Council case some years ago, which is we will just recast the condition to say that no land use activity shall occur in relation to the Amberfield development until such time as the far-eastern interceptor has been extended from Crosby Road down to Cobham Drive and is connectable with the Amberfield development. You could recast it that way as well, both of which I think overcome any legality or **vires** issues and I think solve the problem.

So, for me, these are not issues that are incapable of being worked through in terms of the drafting.

COMMISSIONER WASLEY: Thank you. So on a similar theme, on paragraphs 36 and 37 we discuss two options. You just highlighted option 2 in terms of, for example, the interceptor being extended. Option 1 you have suggested:

> "Consent holder must have entered into a private development agreement with HCC which secures HCC's agreement ..."

I just wanted to test the validity of if we gave consent and we were persuaded in terms of option 1 the ability for us to require the entering of a private development agreement. That is requiring again something else to happen somewhere else, and I am not too sure then on what the scope of that agreement could be. I would just be interested in your comments on that.

MR MULDOWNEY: Yes, I understand the point. It is one that my friend and I discussed in the break as well is this question of requiring that a private development agreement be entered into as a condition precedent.

Now, my point is this. There is very little difference in a condition which requires that a private development agreement be entered into or that the consent holder procure the

unconditional agreement of HCC as requiring authority, designation holder, et cetera, before such time as works can commence. Now, the second drafting, which is the one that does not require a private development agreement, it just requires the city's consent, assumes that there is a private development agreement going to happen in the background, which then lays the foundation for the agreement that the condition refers to. If that is the solution, if that is the drafting solution that appeases the applicant and satisfies the commissioners in terms of an appropriate drafting, I have no quarrel with that either. But rest assured that that condition, for it to be complied with and for the agreement to have been procured, will require some paperwork in the background. So, if you do not want to expressly state that in the condition, that is perfectly fine.

COMMISSIONER WASLEY: I suppose the reason for raising this was that option 2 is very clear in terms of until the interceptor has been extended. Option 1, because it talks about providing a development agreement, does that just relate to getting consent or are there other things that get tied up in the development agreement? That is probably whether there is any uncertainty, that was all. It is just a matter of clarity.

MR MULDOWNEY: Yes, I see the concern. Yes, there is a whole lot packed into what might the development agreement say. So, as I say, as a drafting exercise, if the way to avoid that kind of concern is to simply frame it as being that the agreement of the requiring authority, network utility operator, road-controlling authority and land owner, and whichever other hats might be necessary for the council to be wearing, if their agreement is required and the condition 4 is framed in those terms, I have no quarrel with that. That achieves the same outcome.

COMMISSIONER WASLEY: Moving to later on in your statement - and this relates to the sports park - you outlined two alternatives, we consider granting consent to two alternative consent claims.

MR MULDOWNEY: Yes.

COMMISSIONER WASLEY: One would depict the sports park, the other 110 residential lots. If, for example, then consent were granted but only in respect of the application before us from the applicant, what is to then stop the council if it so wished to issue a notice of requirement in respect of that sports park area. Nothing. But I say, then, it's not the answer to the consenting approach. The consenting approach requires you, as

the Hearing Panel, to assess the application in terms of inconsistency of the construction plan and to the extent that it is not inconsistent, you need to consider the nature of the adverse effects arising from that.

It's a very succinct way into my next question because on the structure plan, so this is back at 2.1, and it has two circles with green triangles which form about active recreation. So one is the sports park and the other one, presumably, is the, I don't know, 10, 11, 12 hectares of land that the council is currently seeking from Adare.

There's no areas described to those and what I can't compare, there's nothing in the structure plan that actually outlines the areas (inaudible) those patterns.

So where I'm heading to then in terms of this question. If the -- and I do note that the applicant has noted and to be fair to the applicant that a 2.2 hectare area is probably not appropriate for the sports park. But the applicant's suggesting probably about 2.2. The council's looking at 7.2. There's a 5 hectare gap in the middle.

So making provision for public infrastructure which you've have outlined, potentially the applicant could do that in terms of land area required for the development. I'm just teasing out the obligation, though, for them to provide public infrastructure for all of the growth area which the 7 hectare park would provide in some way or another.

MR MULDOWNEY: Well, that comes back to that point I made around 108AA of the Resource Management Act where you are not confined, in terms of your imposition of conditions, you are not confined to only imposing conditions which mitigate the effects of the development. What the section requires is that the conditions you impose are directly connected with these.

And so if you're in a situation where if you're only interested in mitigating the effects, all you would do is provide for a 2.4 or 5 hectare park, a sports park. But what the witnesses for the council and, in fact, witnesses for the applicant also agreed with is that a 2.5 hectare sports park is utterly inefficient and doesn't actually serve the needs of the community. So more land is required.

As I say, this is about securing the infrastructure, or at least making sure that we don't have land use activities which

are consented to and which are inconsistent with that outcome. The questions of compensation are very much alive and if there is an obligation for the developer to enable or show the enablement of a sports park at 7 hectares, 5 hectares more than they would have to in order to simply mitigate their effects, then that would give rise to a compensation conversation.

COMMISSIONER WASLEY: We'll come back to that matter in a moment. So in paragraph 52, you discuss section 108AA in terms of (Several inaudible words) conditions to those effects on the activity which you've just outlined. And then consent authority was not included in the condition unless the condition is directly connected to an adverse effect or an applicable district planning rule in place.

So we've just talked about what's in the structure plan. Is there then -- where's the connection then in terms of the district plan rules and provisions?

MR MULDOWNEY: Well, I think that's where we'll go groping for many hours looking for those kind of connections and they simply don't exist. The rules that are attached to the provision of the sports park are the rules which really talk about the assessment of the proposal in terms of its consistency with the

structural plan provisions. That's about as granular as it gets. It doesn't work itself into a direct rule framework and that's just the plan that we're dealing with.

COMMISSIONER KNOTT: Can I just sort of come back to you with a further question about 108AA? So in terms of -- you're effectively suggesting in this instance it would be one big one, and this has an analogous effect on the activity on the environment. It says, "of the activity" and so surely does that not mean this resource consent because no other resource consent has been granted in the area anyway?

So with the adverse effect of the activity, in this instance being the 2.4 hectares, not the 7 hectares, surely the seven is only a provider activity?

MR MULDOWNEY: Sorry? They're the same. If you're talking about mitigating the effects of the activity, then I think the demand ratios that everyone seems to accept suggest -- I think Dr Fairgray suggests that what we really need to do is provide a sports park which is sized at 2.7 or something hectares. But the problem with that is that that's not a sports park. That doesn't actually address the effect because it doesn't provide for the provision of a sports park. It's not an effective land

area necessary to address the effect. It needs to be bigger. And if it's bigger and it addresses the effect arising from the activity and also creates some broader community benefit, then let's talk compensation. But that of itself does not invalidate a consent requirement to provide it at 7 hectares.

COMMISSIONER KNOTT: But as you say, I think, it's actually two sports fields at seven rather than one, so would you not be actually just requiring 3.5 hectares or whatever the minimum size is? Do you see what I'm saying? I'm just trying to think how we relate it to the adverse effect and I'll accept you're saying 2.4 or 2.7 or whatever it was wouldn't because it doesn't provide a sports field but there will be some smaller number than seven, I think, and it might be a question to ask Mr Roberts in terms of his reporting and administrations of different configurations. A smaller size might provide a sports field which would be mitigation or would overcome the adverse effects in this environment.

MR MULDOWNEY: It may, but again, if there was a strategic infrastructure benefit imposing a condition which is directly related to the (inaudible) but has a strategic benefit, there's nothing constraining you from imposing that condition subject to ensuring that there is an obligation of compensation.

I mean, it's like upsizing of a local road to a connector road standard. There's nothing inhibiting or prohibiting you from doing so if there's a strategic benefit in doing that but if the council is looking for an upsizing in terms of, from a connector road to an arterial road, you would expect them to come with a cheque book.

COMMISSIONER KNOTT: But doesn't that though at that stage require some agreement with the applicant rather than -- you're moving beyond the condition. You're almost moving into 108.AA.1A where the applicants agreed to the condition in that instance but they're not -- it's actually going well beyond addressing adverse effects.

MR MULDOWNEY: Well, we're not because I'm not suggesting it requires an agreement. I'm not suggesting for a moment that this has to be with the agreement of the applicant. You have the ability to impose a consent condition requiring a 7 hectare sports park be addended by the provider for as an infrastructure resource within this development. You can do that because you don't have to confine the area of the sports park only mitigating the effects of the proposal. That's not what section 108.1.AB is requiring on.

COMMISSIONER KNOTT: So just to be clear, you're saying that the fact it is an adverse effect gives you the ability to pursue a condition under that?

MR MULDOWNEY: Yes.

COMMISSIONER KNOTT: But the condition can go beyond the adverse effect that you're seeing to mitigate?

MR MULDOWNEY: Correct. And there is a resource management reason why, in this case, you should do that and that is because if you were confining the sports park to simply addressing and mitigating the effects of Amberfield, you would be producing a sports park of 7.5 hectares or something like that and that is not an efficient provision of public infrastructure.

Might I also say that there is further debate and I understand you've heard some talking about the yield of Amberfield and the pressure to increase yield within Amberfield. If Amberfield was to come back and look for more yield in some form of amended resource consent but all that had been provided was a 2.5 hectare sports park, the position becomes exacerbated.

So provide the park in the size and scale and provide the infrastructure in the size and scale which is effective and the deal with compensation issues is my position.

COMMISSIONER WASLEY: If Mr Muldowney, we looked at -- well, we will. Depends what we decide in terms of the two alternative schemes laying out approaches in one that fits the sports park, do we then inadvertently or otherwise have an impact on the Public Works Act processes and the valuation of that land? You may tell me it's got nothing to do with our process here but if there are two proposals, does that mean the one with the sports park on, does that then reduce the value of that land in terms of any of the subsequent discussions the applicant and council have?

MR MULDOWNEY: I'm not qualified to answer that question so I wouldn't want to risk giving an answer which was misleading. Clearly, when one comes to the valuation exercise under the Public Works Act, there are a range of factors which are taken into account one of which is the planning framework and, of course, any consents that might relate to the land. Those will be factors, I'm sure, but exactly how that then impacts the valuation exercise, I wouldn't want to take it any further than that.

COMMISSIONER WASLEY: Just turning slightly to a more -- just turning to your comment about the need to make provision for public infrastructure, and I take it from your submissions that's where that whether that's pipes, roads, land or whatever, where do you see the clear ability to take that under the RMA and the district plan? What would be the relevant provision under the RMA?

MR MULDOWNEY: Well, when I say -- are you talking about the sports park?

COMMISSIONER WASLEY: Yes. Just putting the other matters to one side.

MR MULDOWNEY: I mean, for me this is simply an orthodox application of section 108 of the Resource Management Act. This is about identifying the effects associated with the land use activities that are proposed and imposing conditions which mitigate those effects which is why I come back to that point about do you have jurisdiction to say anything about the sports park? I'd say we don't have -- you don't have to have an application for a sports park in front of you to impose a condition upon on a subdivision layout which makes what you

consider to be adequate provision for open space in order to mitigate effects. That is available to you under section 108.

COMMISSIONER WASLEY: We heard earlier this morning in terms of the council not having any agreed levels of service for sports parks etc. So does that have any bearing in terms of our consideration of this matter in terms of calculation of areas required and that type of thing? And how, if for example, we agreed with your proposition and the sports park was confined on a scheme plan, justification or otherwise for that particular area of ground?

MR MULDOWNEY: That's a matter that I think would require evidence before you and we have that evidence from the Exist report and also Mr Sirl who can address you directly on those points. So again, I come back to that point I made when I was talking about the Parson's evidence. I don't discern that there is actually any real debate about the ratios and the levels of service that we are applying here is to -- which is underpinned by both Dr Fairgray's evidence and Mr Sirl's. But again, I think those are probably questions that Mr Sirl can address you on.

COMMISSIONER WASLEY: Nothing further, Mr (inaudible).

MR MULDOWNEY: Yes, sir.

COMMISSIONER WASLEY: So we've got Mr Roberts who was the council officer who was responsible for identifying the relevant parcels of land within the Peacocke's structural plan area that was suitable for the provision of active recreation spaces. So we'll have Mr Roberts address you. I'm not quite sure how much you've got for him but he's available and also we'll have Mr Sirl, who's the Parks Manager, who effectively took the work of Mr Roberts and then turned it into a requirement for the council.

Just before they present, we'd be interested also of the status of those reports that were referenced this morning. We'd just be interested in the status of those reports, and how far they've gone through or not gone through a council process?

MR MULDOWNEY: Very good. We will address you on those matters. Thank you, Ian(?). So I'll introduce Mr Roberts who is, as I say, the council officer who's responsible for the preparation of the internal council report which identified basically the two areas within the Peacocke structure plan as being suitable for an active recreation area; one in the north and then the one

in the south or midpoint which is the subject of this afternoon's discussion. So I'll hand over to Mr Roberts and he can explain what he did and why.

COMMISSIONER WASLEY: So is Mr Sirl -- are you going to call Mr Sirl?

MR MULDOWNEY: I'll call Mr Sirl after Mr Roberts has presented his -- Mr Sirl's evidence relies on Mr Roberts. So we'll talk about Mr Roberts' evidence and then we'll bring in Mr Sirl. Or if you wanted me to bring in Mr --

COMMISSIONER WASLEY: I'm just wondering whether we have Mr Roberts, we'll have Mr Sirl, and then we'll ask question.

MR MULDOWNEY: Would you like to empanel them both?

COMMISSIONER WASLEY: Yes, thank you.

MR MULDOWNEY: Right, Mr Sirl, come forward please. So what we're going to do is effectively have a sort of joint presentation which (several inaudible words) and then between the two of you, you can then answer questions that are put to

you. All right? So I'm in your hands, Mr Commissioner Wasley, as to how you'd like to have this part of it unfold?

COMMISSIONER WASLEY: Okay, I think Mr Roberts, if you could just give a quick overview in terms of what you've undertaken and the process around that because some of those matters were raised this morning in terms of previous witnesses. Once you've completed that, you and Mr Sirl -- and then there may be questions for either of you. If you can put the microphone in front of you so people at the back can hear. Thank you.

MR ROBERTS: Good afternoon, Commissioners. Can I take my evidence sitting down?

COMMISSIONER WASLEY: You can. You might just need to pull the microphone closer.

MR ROBERTS: I'll start on the purpose and scope of my evidence. It relates the preparation of the Peacocke's Active Sports Park Notation Assessment Report and it describes how the analysis of the area options so they (several inaudible words) and provides a summary of the findings of the report.

The Peacocke's Active Sports Park Location Assessment Report, I'll refer to it as the report from now on, was prepared to assist Hamilton City Council to identify suitable areas that could accommodate future active sports parks within the Peacocke's area. I think I'll just move down to background, thank you.

The process undertaken to assess the areas proposed suitable for sites to accommodate active sports fields was based on preliminary site identification process followed by more detailed site-specific assessments.

The preliminary site identification process aims to identify and assess four potential locations for possible active sports parks based on public use and area requirements. While the detailed site assessment provides an in-depth analysis of the identified sites based on a set of urban design criteria established by the Peacocke Structure Plan and (inaudible) plan.

This work was based on a detailed spatial analysis of the Peacocke's area to determine the most appropriate location for active sports parks. It was not the aim of the report to establish the demand for active sports parks either for the future Peacocke's community or the wide community catchment.

This work was undertaken by the experts. The intent of the report was to have (inaudible) the nature of the demand identified and to then identify suitable areas that could accommodate this demand for future active sports parks.

The preliminary site identification process was undertaken in two parts. Firstly using 2008 (inaudible) a detailed slope analysis was undertake of the Peacocke's area to determine areas suitable to accommodate sports fields. Based on the need for sports fields to be located on slopes less than 1 in 50 and of sufficient coverage to avoid (Several inaudible words).

From this feasibility of the areas identified to accommodate the minimum land requirement needed to provide optimal sports facilities was considered. This was based on areas needed to accommodate the required number of sports fields. The approximate area ranged from 7 hectares for four rugby fields and two cricket pitches, to 10 hectares for seven rugby fields and two cricket pitches. Based on these criteria, a total of ten preliminary sites were identified in the Peacocke's area. There were having slopes of areas that could accommodate an active sports park. However, of these ten sites five were considered unsuitable to accommodate four rugby fields

and two cricket pitches because they were either too small or required extensive earthworks.

As a result of the preliminary assessment for the remaining five suitable sites, two identified as having the potential to accommodate only four rugby fields and two cricket pitches while the remaining three sites could potentially accommodate a larger configuration of sports fields.

With regards to the detailed assessment, following the preliminary assessment a detailed assessment of the five identified sites were undertaken to determine final suitability. Individual sites were assessed against five criteria, these being the wide-open space network, the connection with the green space, accessibility, location and orientation.

The sites were assessed and ranked against the five criteria to determine their suitability. The outcome of these rankings which was shown in figure 1 of evidence, or figure 11, table 3 of the report on page 19, was that site 5, 9 and 10 were the best suited locations to accommodate active sports parks while the location of the remaining two sites 1 and 6 prevented them from providing the intended active sports park.

It is my opinion that site 9 is the best suited due to the size and location for an active sports park that services not only the Peacocke's but forms part of the wider city active sports park network, while site 5 location is better suited for an active sports park that services a suburban centre in the southern part of Peacocke's.

Site 10, which is located to the west of a proposed north-south major arterial route was able to accommodate the required facilities but its limited access and its proximity was better suited to site 9 made this site, in my opinion, less suited.

While both sites 1 and 6 have constraints that make them unsuitable for the provision of large active sports park facilities, these areas could still accommodate parks but with limited active recreational facilities to provide for the local communities.

So in conclusion, as detailed in the report, sites 9 and 5 ranked highest and most suitable for active sports parks in the Peacocke's area.

COMMISSIONER WASLEY: Thank you, Mr Roberts. Mr Sirl, over to you.

MR SIRL: Thanks. With your agreement I'll take my evidence as read and just talk about a few key points that I would like to emphasise.

So it seems for the most part the matter at hand here is how best to provide a sports park needs and for Amberfield and the future residents of Peacocke. My summary of evidence, in paragraph 8C I emphasise that the exercise that determined land requirements for sports parks in Peacocke had not been produced from assessment on how to accommodate (inaudible) field requirements for Amberfield or Peacocke.

Just to build on that a little bit, we don't -- we're using fields to determine -- give us a better idea of what our land requirements are. We don't know exactly what codes will be provided for within these parks. So what we're interested in here is determining an appropriate amount of land for the future of Peacocke.

So I guess a discussion around capacity and increased density in my mind only reinforces the need for us to have more consideration to that appropriate balance of residential housing and open space and certain sports parks.

HCC initially advised the applicant that a 7 hectare park would be required on the basis that 7 hectares is the most conservative land area that would result in a functional sports park. This was informed by our general position at the time that we would be (inaudible) having a similar level of provision for sports parks that the rest of the City currently has.

The position was further reinforced and refined by the work undertaken by Exist and the recommendations of the Exist report which I rely on in my submission.

HCC has subsequently progressed to preparation of the notice of requirement for a sports park in the northern location consistent with the Peacocke Structure Plan, this location can accommodate a park approximately 15 hectares.

HCC is pursuing a total 21 hectares to meet the needs generated from the community of Peacocke residents is a relatively conservative land requirement in my view. I've considered what the overall needs for Peacocke looks like for a range of yield and population estimates which is outlined in my evidence at paragraph 74 and, in my view, 21 hectares aligns with that test.

An efficient use of resources is essential to providing residential dwellings. However, this should not be at the expense of the adequate provision of open spaces to support these communities.

In paragraph 8E of my evidence I note that although it is important to understand the demand from the Amberfield and the effect on Amberfield, it would be inappropriate to consider the land requirements in isolation of the entire growth cell which Mr Moldarni has touched on. I'm happy to talk to that in more detail. If we were applying this type of approach on a case-by-case for every residential subdivision we would result in a pretty fragmented and inefficient network of sports parks.

In paragraph 8 of my submission the suggestion that the demand for sports parks associated with Amberfield should be accommodated within existing parks would place pressure on the existing network on sports parks and infrastructure additional to the demands from intensification and integral growth that the City is currently dealing with and neglects to consider the actual capacity of some of the surrounding sports parks and the effects of this approach on the existing urban area.

Just to note that if the Commissioners wish to explore this idea of existing capacity in greater detail I'm happy to discuss that. Some of the background in my evidence in paragraph 48 onwards provides the -- sorry, paragraph 40 onwards provides a bit of context to that.

Overall, my view is that HCC's requirements for approximately 7 hectares to be set aside for a sports park within Amberfield is an appropriate response to both the Peacocke Structure Plan and projected sports park needs of Amberfield and the future of Peacocke residents.

I have outlined in my evidence that HCC have funded the purchase of land for a sport park in Peacocke in its current ten-year plan, which signals a commitment to purchase and ability to purchase this land and have always maintained during the course of discussions with the applicant a desire to purchase land for a sports park in this area.

In my view, an application that seeks to obtain consent for residential subdivision and housing for an area clearly indicated to accommodate strategic infrastructure in the form of a sports park is an unacceptable response and inconsistent with the Peacocke Structure Plan and it would make it unnecessarily

difficult for council to provide an adequate level of sports parks in Peacocke. Happy to take any questions.

COMMISSIONER WASLEY: Thanks, Mr Sirl. Questions from the panel. Commissioner Knott.

COMMISSIONER KNOTT: Thank you. I just wanted to double check one of these points, this came up in Mr Roberts' evidence. In terms of your detailed site assessment, you picked up on five issues which were -- or five further criteria. I just wonder whether or not -- I can understand immediately the C, D and E. I just wonder whether or not you could actually explain the significance of A and B, wide open space network and connection with green space.

MR ROBERTS: The wide open space network is really looking at how it interacts with the existing network within the city so looking -- for instance you have got a number of sports fields located in the Glenview area, which is just north of Peacockes, and we are basically looking at probably doubling up of those activities within that space and then how it interacts with the existing network in the city.

COMMISSIONER KNOTT: So that's across the wider city?

MR ROBERTS: Yes, it is. And the connection with the green space is really, and that comes out of the actual structure plan that talks about it connecting to the green space, and the green space is as identified in the structure plan; the location for the pedestrian cycling network, so it is actually just trying to make sure that there are those connections and connecting the new cycling network.

COMMISSIONER KNOTT: Thank you. Then another question is: I presume the fact we ended up with two green marks on the structure plan meant that someone had done something similar earlier in the structure plan stage or -- do we know what was done at that stage?

MR ROBERTS: So going back through our records there is very draft assessment that was done, not as detailed as this.

COMMISSIONER KNOTT: A further question really for Mr Sirl: why have you not received an NOR in this instance? Clearly, you received an NOR with the north of the site and north-west but why no NOR here?

MR SIRL: I guess the only answer to that really is that we were progressing on the understanding that a park would be vested as part of this application to a certain point, until which time we were advised that it would not be the case and we felt that it would be best to just proceed with this process and that -- when they let it through it resulted through this process without having to revert to that process.

COMMISSIONER KNOTT: Then in terms of the approach you have taken, we have heard that the north-western park you were pursuing an NOR. You have got other areas in the city which you must include similar areas of sports park, what process have you gone through those?

MR SIRL: Previously?

COMMISSIONER KNOTT: Yes.

MR SIRL: All before my time. If I think about the Rototuna growth cell we have a number of parks, sports parks, up there in the vicinity of 8 or 9 hectares plus Mangaiti, Te Manatu, Rototuna Sports Park, Hare Puke, Flagstaff, Discovery, so we have a few out there, one of which was designated in 2003. The remaining of which -- I cannot be 100 per cent sure but my

feeling would be that they would factor in some kind of negotiation and vesting through a subdivision application.

COMMISSIONER KNOTT: That is it from me at the moment, thank you.

COMMISSIONER WASLEY: Commissioner Lovell? I've just got one question. In terms of the -- Mr Sirl, you have referenced the Xyst report and Mr Roberts, the Peacocke Active Sports Park location assessment. What is the status of those? Have they been upstairs, any Council consideration and approval or are they internal working documents?

MR SIRL: The latter, internal working documents.

COMMISSIONER WASLEY: Thank you. There are no further questions, so thank you both.

MR MULDOWNEY: That concludes the presentation so there are only really two outstanding matters. One is what we do with Robyn Rawson statement of evidence which, as I say, was only really to produce through the author the Xyst report. It may be that we can avoid having to get her from Whangarei to do that.

COMMISSIONER WASLEY: My top of mind response is that yes, we could probably avoid that. We will advise on Wednesday, if that situation has changed but I doubt that.

COMMISSIONER KNOTT: I do not think the Xyst report is in contention in the evidence.

MR MULDOWNEY: It does not appear to be based on (overspeaking)

COMMISSIONER KNOTT: On that basis ...

MR MULDOWNEY: Unless you had some questions.

COMMISSIONER WASLEY: No, we do not.

MR MULDOWNEY: Thanks, I appreciate that. So then the only other procedural matter is just coming back to the drafting of conditions. So it is drafting solutions to condition 4 and so on. Really just reserving, if I can, leave for the team to work with both the applicant and with 42A authors to see if we can iron out some kinks.

COMMISSIONER WASLEY: The panel have no objection in terms of applicant and you, Mr Muldowney, and anyone else in terms of

your witnesses working through to have any opportunity where there may be some potential further agreement. I would provide an opportunity then for that to be reported back here and also give Mr Makgill an opportunity to make any comments on that prior to the 42A report being considered.

MR MAKGILL: Yes, I was just going to resist a direction that required us to do that. Very happy to engage in further discussion with the Council, as the section 42A officer, and the Council as a submitter. It just really comes down to what is actually trying to be achieved from the applicant's perspective.

COMMISSIONER WASLEY: In terms of those matters that have been raised by the Council in Mr Muldowney's submissions, essentially is to see whether there are any matters that can be agreed in terms of what is proposed and any further amendments to conditions. If there are not, there are not. I was not proposing to issue a formal direction. Just providing an opportunity, as I saw you both talking at afternoon tea in terms of some of that informal discussion.

MR MULDOWNEY: Yes, I am certainly not seeking a direction that requires some form of the court saying -- all I am saying is that as matters currently stand I think there is more we can do

for you as a hearing panel in terms of, for example, some of the observations we made around the adequacy in condition 4. What I was saying, is I would just like to reserve leave for us to at least come back to you with some kind of drafting. At the very least represented the Council as a submitter in terms of developing its position we would try and do that with the input of the applicant, but if we cannot reach a consensus we would nevertheless give you what we think is a condition of works.

COMMISSIONER WASLEY: I will provide the opportunity for you both to address that prior to we hear from Ms Condell(?).

MR MULDOWNEY: All right, thank you for your attention.

COMMISSIONER WASLEY: Thank you. So that completes the hearing of submissions today. There is no hearing tomorrow so please do not turn up. We have quite a full day of submissions on Wednesday. Mr James Hopkins, Mr Sirl.

COMMISSIONER KNOTT: You say as if there is some ownership.

COMMISSIONER WASLEY: You have raised it a couple of times here.

COMMISSIONER KNOTT: He is a man unto himself.

COMMISSIONER WASLEY: Monday afternoon or we could start say 10.00 am on Tuesday prior to hearing from Mr Parsons. It would be two opportunities.

MR MULDOWNEY: You might recall earlier today I suggested either/either so I am entirely in your hands as to which you would prefer. If that is the course of action.

COMMISSIONER WASLEY: The best way to convey that, Mrs Guthrie, do you have his contact details?

MRS GUTHRIE: I have contacted him and he is happy to come on Monday afternoon.

COMMISSIONER WASLEY: Excellent, worrying about nothing.

MRS GUTHRIE: All sorted.

COMMISSIONER WASLEY: Thank you. Okay, there are no other matters so thank you and we stand adjourned to 9.00 am on Wednesday.

(Adjourned until Wednesday 8 May 2019 at 9.00 am)