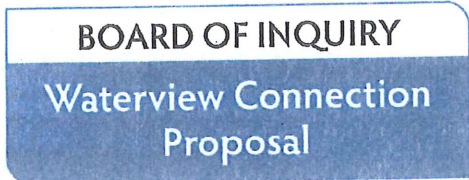


**BOARD OF INQUIRY
WATERVIEW CONNECTION PROPOSAL**



IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of a Board of Inquiry appointed under s149J of the Resource Management Act 1991 to consider applications by New Zealand Transport Authority for resource consents and notices of requirement for the Waterview Connection Proposal.

THE BOARD OF INQUIRY

Environment Judge L Newhook
Commissioner R Dunlop
Alan Dormer
Susan Jackson
Gerry Te Kapa Coates

HEARING PROCEDURES

Introduction

1. This document describes how the Board of Inquiry (the Board) intends to conduct the hearing on the Waterview Connection Proposal for resource consents and notices of requirement to complete the Western Ring Route around Auckland by connecting SH20 to the Northwestern Motorway (SH16).
2. If any person wishes to deviate from any timetable or other requirement identified in these procedures, a written request to the Board, copied to all other parties, to waive compliance will be required. Any such request must contain a full explanation of why the waiver is requested.
3. Some of the following procedures may be subject to further direction or amendment after the Board has conducted pre-hearing conference(s) with the parties.
4. A summary of relevant statutory provisions relating to the hearing is in Appendix 1.

Objectives and principles

5. The objectives of the hearing are:
 - To provide an effective and efficient opportunity for the Board to receive and test the reliability of information relevant to the proposal.
 - To provide a fair and orderly opportunity for the applicant and all who made submissions on the proposal and stated that they wished to be heard to put their points of view before the Board and provide relevant information for its consideration.

6. To achieve these objectives, the following principles should guide the procedures adopted:
- The procedures should be sufficiently formal to be fair to all parties and to allow the orderly presentation and testing of information, but not so as to inhibit lay people from taking part effectively.
 - The procedures should be robust, and should inspire the confidence of the applicant, submitters and the public.
 - The inquiry should not have the character of an adversarial contest between parties.
 - The procedures should be cost-effective in the demands on the time and costs of all taking part.

Pre-hearing meetings

7. The Board may, at its discretion or if requested, direct groups of intending parties to meet prior to the hearing on issues to be put forward at the hearing [s99]. The purpose of such meetings is to enable intending parties to clarify or facilitate resolution of a relevant matter or issue, to minimise unnecessary repetition of material at the hearing.
8. From any such pre-hearing meetings, a report must be prepared before the hearing detailing the parties who attended, the issues that were agreed, and the issues that are outstanding.
9. The Board will also be convening a pre-hearing conference on 21 December 2010, to consider progress matters relevant to the hearing. A notice about time, place and topics for discussion is being issued by the EPA.

Witness Caucusing

10. If the Board directs witness caucusing then expert witnesses will be required to caucus in relevant groups to endeavour to list agreed issues those issues on which they disagree. A written statement setting out agreed issues and those issues on which they are in disagreement, together with the reasons for disagreement are to be lodged as directed by the Board at the time.

Information

11. When used in this document, these words are intended to have the meanings given:

Submission – a submission on the proposal provided to the Board by the Minister.

Submitter – a person who made a submission.

Party - the applicant and all submitters who have indicated a wish to be heard at the hearing.

Witness – a person who gives evidence to the Board.

Evidence - evidence (expert or non-expert) is statements made at the hearing that tend to prove facts in issue, or facts from which facts in issue may be inferred. This can also include opinions by expert witnesses.

Expert Evidence – An expert witness will be expected by the Board to comply with the Environment Court Consolidated Practice Note 2006 – Expert Witness Code of Conduct (available at the following website - <http://www.justice.govt.nz/courts/ environment-court/legislation-and-resources/practice-notes/expert-witness.html>).

These

requirements include stating the relevant qualifications of the expert and a duty to the Court to be independent and not an advocate for the party who engages the witness

Non-expert Evidence – Non-expert evidence therefore must meet the criteria for ‘evidence’ (i.e. is based on fact) and is otherwise admissible, but is from someone who does not meet the criteria for ‘expert’.

Representations – In addition to the above submitters or their lawyers or other representatives may also commence their presentation for the Board by making a representation (or what are often called “submissions” - essentially advocacy of their position). The Board already has a copy of all earlier written submissions and submitters need not provide these again or read them out at the hearing. Submitters wishing to make additional representations should provide 10 copies at the time they appear at the hearing.

12. The following information will be available for inspection on the Board’s webpage <http://www.epa.govt.nz/applications/waterview/>:
 - New Zealand Transport Authority applications for Waterview Connection Proposal.
 - All submissions on the proposal.
 - Summary of Submissions report.
 - Reports the Board has commissioned.
 - All evidence (applicant and submitters) lodged with the Board.
13. The Board’s pages on the Ministry for the Environment’s webpage will be used to make information available to submitters and the public. Any submitter who cannot access the webpage is invited to ask the EPA Project Leader for a convenient place where documents can be inspected, and copies made.
14. Normal audio-visual aids will be available to submitters and witnesses at the hearing.

Submitters

15. Submitters are not obliged to attend the hearing. Their submissions will still be read and considered by the Board. They can provide more detail of their submission (but not new topics) in writing before the start of the hearing.
16. Every submitter who wants to speak to their submission (make representation) without calling evidence may do so without having to pre-circulate the submission again.
17. A submitter who is being heard may highlight the main points of the submission, and of their evidence (if previously lodged), and may respond to submissions made by others. More extensive written representations may be handed in (note: this refers to representations only – evidence must all be pre-circulated).
18. Submitters may make their own representations themselves, or they may choose to be represented by a lawyer or other agent.
19. Joint presentations (where one person makes a presentation on behalf of several submitters) – are allowed, and are encouraged where the submissions are of a similar nature. Submitters are also encouraged to combine to appoint one person to cross-examine witnesses for them all.

Evidence Requirements

20. As already notified, the Board requires all statements of evidence by witnesses to be provided to all parties in advance of the hearing pursuant to the timetable set. The timetable for lodging and circulation of statements of evidence is contained in Appendix 2 of these procedures.
21. To obtain the distribution list for all parties (both post and electronic) please contact the EPA Project Leader.
22. In order to facilitate an efficient Hearing process, the Board directs:
 - i. All expert evidence shall be filed in Eastlight folders and also electronically;
 - ii. Expert evidence is to be tabulated and indexed;
 - iii. Each witness's expert evidence is to be paginated, tabulated and indexed and all attachments or exhibits are to be tabulated, paginated and indexed;
 - iv. All Evidence shall be single-sided with 1½ spacing and minimum font size of 11;
 - v. All coloured exhibits shall be provided as colour copies of good quality;
 - vi. Where possible all evidence shall be served electronically on parties*;
 - vii. Expert witnesses shall provide an executive summary at the beginning of their evidence;
 - viii. For technical evidence that lends itself to this approach, the applicant's witnesses are to present to the Board of Inquiry a brief statement of evidence providing personal details, an enlarged executive summary cross referencing the reports already submitted with the application document and a specific response to any points raised by submitters not already addressed in the report.
- * Parties who have indicated a wish to be served electronically shall be sent an email or a CD or DVD (for larger files). If another electronic method is proposed (e.g. use of a website or other electronic means) please contact the EPA Project Leader. Those that have indicated a preference not to be served electronically shall receive a hard copy in the mail.
23. For the evidence to be filed with the Board, 6 hard copies are to be provided, each statement being signed by the witness who is to give that evidence. An electronic copy of each statement is also to be provided.
24. The statements of evidence will be made publicly available on the Boards webpage within 3 working days of being received by the Board and will be available for anyone to read at the hearing.
25. Every witness will need to attend in person before the Board, and may make an oath or affirmation that the content of the evidence is true and correct, but will not be obliged to read the statement of evidence to the Board, unless directed by the Board.
26. All people proposing to give evidence before the Board are to keep their evidence as focused and brief as possible. Where there is lengthy evidence then an executive summary at the beginning of the evidence is to be provided.
27. The Board will consult with the parties at the pre-hearing conference about appropriate time limits for length of opening statements (representation), cross examination of witnesses and of closing statements.

Reading of Evidence by the Board

28. The Board will to the extent possible pre-read the evidence of witnesses prior to the hearing beginning. Following opening submissions the Board will retire to read the remaining evidence. The Board will be proceeding on the basis that all parties will have read the material of interest to them.

Cross-examination and questioning

29. Cross-examination of all witnesses will be allowed at the hearing, provided prior notice has been given to the Board and the party concerned, and subject to direction by the Chairperson to ensure that time for cross-examination is used efficiently. Cross examination of submitters making representation only is not permitted.
30. The Board encourages parties with similar interests to consider grouping together and nominating one individual for the purpose of cross examining witnesses.
31. Any party who wishes to cross-examine a witness to be called by another party will need to notify the Board and the other party, naming the witnesses who are to be cross-examined. The Board will provide further direction for this at the pre-hearing conference.

Te Reo and Tikanga Māori

32. Any party, counsel or witness may speak in Te Reo Māori. At least 10 working days prior notice of intention to use Te Reo Māori is to be given to the Board, so that attendance of an interpreter can be arranged. However, any karakia, powhiri, or mihi, will not be translated into English language unless the presenter wishes and has given such prior notice. Note that the Māori Language Act 1987 expressly provides that no person may insist on being addressed in Te Reo.

Hearing date, venue and schedule

33. The hearing will be held in Courtroom 1, at the Environment Court, Level 2, 41 Federal Street, Auckland. The hearing will commence on 7 February 2011 at 10am.
34. The applicant and every submitter who stated that they wanted to be heard, will receive a hearing notice confirming the time and place of the hearing at least 10 working days before its commencement.
35. Following the pre-hearing conference the Board will prepare a hearing schedule identifying the order of appearances and provisional timeframes. This will be provided in advance to the applicant and the submitters who wish to be heard, and published on the Board webpage.
36. Subject to any further direction, the Board will hear the parties in the following order:
- Opening submission from the applicant, followed by the applicant's witnesses who are to appear in person
 - Opening statements from the local authorities, followed by their witnesses who are to appear in person
 - Submitters and witnesses who support the proposal
 - Submitters and witnesses who oppose the proposal
 - Submitters and witnesses who are neutral but wish to provide relevant material.
 - Closing.

37. Because of the uncertainty of the length of presentations and questioning, specific times cannot be allocated to those appearing, but will be listed in blocks. The Board has instructed the EPA to work with parties, to the extent possible, on their scheduling requirements.

Role of EPA staff

38. The EPA Project Leader will make the necessary arrangements for the hearing on behalf of the Board, and will attend the hearing to assist the Board in the administration and conduct of the hearing.
39. The EPA will contract a Hearing Manager to manage the logistics and administration of the Hearing.
40. The Board may seek technical reports or information to be provided to it. The Project Leader will arrange for preparation of those reports. They may be prepared by the EPA, or by consultants engaged by the EPA, or obtained from other persons or agencies. Any report considered by the Board will be published on the Board's webpage and its availability notified to all parties.

Media participation

41. The hearing will be in public and representatives of the media are free to attend and report the proceedings. However, cameras, video-recorders and audio recorders may only be used in the hearing with the Board's prior consent.
42. Interviews are not allowed in the hearing room. Board members will not be available for media interviews. EPA staff will be available to provide process information to the media.

Written record

43. Under section 149L(4)(a) the Board will have the proceedings at the hearing recorded, and the recording transcribed. This is primarily for use in the Board's deliberations; however the transcripts will also be made available on the Board's website.
44. The record of the hearing proceedings will include:
- A summary record of proceedings including a list of the submitters who are heard, and witnesses they call, and a list of all documents submitted to the hearing.
 - A reference set of all documents presented to the hearing.

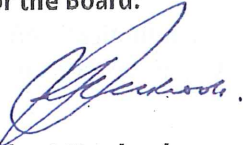
Decision

45. As soon as practicable after the Board has completed the inquiry, it will make a draft decision and produce a draft written report (in accordance with section 149Q of the RMA).
46. The EPA must:
- send a copy of the draft report to all persons listed in section 149Q(3) of the RMA;
 - invite the persons identified in section 149Q(3) to send comment to the Board within 20 working days (section 149Q(4) of the RMA).
47. As required under s149Q(5) comments provided on the draft report are to be on minor or technical aspects of the report –

- a) Include comments on minor errors in the report, on the wording of conditions specified in the report, or that there are omissions in the report (for example, the report does not address a certain issue); but
- b) Do not include comments on the board's decision or its reasons for the decision.

48. As soon as practicable after the 20 working days referred to in section 149Q(4), the Board will consider any comments received, make its decision, and produce a final report (sections 149R(1), (2), (3), (4) and (5) of the RMA).

For the Board:



**Judge L. Newhook,
Chairman - Waterview Connection Proposal Board of Inquiry**

19 November 2010

Appendix 1

Summary of statutory provisions relating to hearing

The following is a summary of the statutory provisions relating to the conduct of a hearing by the Waterview Connection Proposal Board of Inquiry.

Note: Figures in brackets marked [RMA s.] Refer to sections of the Resource Management Act.

1. Section 149L of the Resource Management Act prescribes the conduct of the inquiry to be followed by a Board appointed under section 149J.
2. Sections 39, 40, 41 and 42 of the RMA apply as if the Board was a local authority [RMA s.39(1), 41(1), 42(6)(b)(i)]. These sections set out powers and duties in relation to hearings.
3. The inquiry must be held in public at a place near to the area to which the matter relates [RMA s.149L(3)]. The applicant and any person who made a submission may speak at the hearing (personally or through a representative), and call evidence [RMA s.40(1)]. The Board can limit repetition, and if someone does not attend the Board can still proceed with the hearing if it considers it fair and reasonable to do so [RMA s.40(2) and (3)].
4. The Board must give at least 10 working days notice of the commencement date, time and place of the inquiry to the applicant and all submitters that wish to be heard [RMA s.149L(2)(b)].
5. The Board is to establish a procedure that is appropriate and fair in the circumstances that avoids unnecessary formality and recognises tikanga Māori and Māori language [RMA s.39(2)].
6. The Board may permit questioning and cross examination and must keep a full record of its hearings [RMA s.149L(4)].
7. Sections of the Commissions of Inquiry Act apply to board of inquiry hearings, including powers to maintain order and summons witnesses, and relating to evidence [RMA s.41(1)].
8. The Board may give directions to provide evidence within time limits [RMA s.41B] and give further directions or make information requests before or during the hearing [RMA s.41C].
9. The Board has the same powers and duties as a territorial authority under the RMA when considering a notice of requirement. The Board is to apply sections 92 to 92B and 99 to 100 as if it were a territorial authority [RMA s.149L(1)], as well as sections 104 to 112, 138A, 171(1) and (1A), 191(1), 74 to 77D and 293 [RMA s.149P].
10. Reports commissioned or further information requested under section 92 are to be available at least 10 working days before the hearing commences [RMA s.92 (3A)]. Reports requested by the Board under section 42A must be pre-circulated to the parties at least 5 days before the hearing [RMA s.42A].
11. As soon as practicable after the Board has completed the hearing it has to make a draft decision and produce a draft written report [RMA s.149Q]. The draft decision is to

Appendix 2

Pre-hearing timetable

Pre-hearing actions	Date
Public notification	18 September 2010
Close of submissions	15 October 2010
Submitters to give provisional advice of wish to be heard	15 October 2010
NZTA's evidence in chief exchanged	15 November 2010
Applicant evidence available on website	18 November 2010
Submitter evidence exchanged	17 December 2010
Pre-hearing conference	21 December 2010
Submitter's evidence available on website	22 December 2010
Applicants rebuttal evidence exchanged	4 February 2011
Applicants rebuttal evidence made publicly available	7 February 2011
Hearing expected to commence on	7 February 2011

include the matters listed in section 149Q(2) and be send to the parties listed in section 149Q(3).

12. The parties that have received the draft report will have 20 working days to send their comments on minor or technical aspects of it to the Board [RMA s.149Q(4)(5)]. As soon as practicable after the 20 working days the Board will produce a final report. This report has to be made public [RMA s.149R].