

In the matter of the Resource Management
Act 1991

and

In the matter of the Notice for Requirement for
designation of land and the
application for resource consents
for SH20 Waterview connection
by NZTA

Submission on Preliminary Legal Issue by the Springleigh Residents Association

This submission was prepared by Hiltrud Gröger, spokesperson

Springleigh RA has a number of particular concerns regarding the preliminary legal issues.

1. Regarding Point (3) of the Minutes to Parties by the Board of Inquiry:

1.1 Effects will occur outside the footprint of the motorway so it is proper that mitigation occurs outside the footprint, in particular to address such effects. For example, there will be effects on communities, the Owairaka, New Windsor and Waterview communities, on waterways, on the Hauraki Gulf Marine Park, and on wildlife that migrate both within the footprint of the motorway and outside of it.

1.2 We cannot establish within the RMA91 or within common resource management practice that mitigation is bound by the ‘footprint’ of a proposal assuming that ‘footprint’ refers to a geographical location. It is common that effects outside the boundary of a proposal have to be mitigated such as noise, shading issues, visual effects etc.

1.3 s3 of the RMA91 defines the different forms of effects that may occur regardless of the scale, intensity, duration, or frequency of the effect. The section makes no reference to the geographical location or to the source of the effect.

1.5 s5(c) requires '*avoiding, remedying, or mitigating **any** adverse effects of activities on the environment.* The RMA91 stresses the importance of effects and their mitigation and does not refer to the source of effects or the geographical location of a proposal.

1.6 The Board of Inquiry has to ensure that environmental effects and mitigation are addressed. The Board of Inquiry has to make certain that it has fully understood the effects and mitigation of the proposal before making a decision. It can achieve this by requesting additional information from the applicant, by requesting s42A reports and by way of the hearings process and decision.

1.7 Limiting environmental effects and mitigation to the 'footprint' of the proposal would include positive effects according to s3 of the RMA91. It would mean that many of the positive effects stated by the applicant would not be part of the proposal. This could have an impact on the decision.

2. Point (8) of the Minutes to Parties

2.1 We are the opinion that the law regarding what the Board can 'modify' has significantly and progressively changed. First, the reasonably significant change to s171 occurred. However, at a much more recent stage the call-in process of Part 6AA was introduced. The call-in process presumably deals with effects of national importance and allows the Minister for the Environment to exercise special powers. It is a significant law-change which includes s149P.

In the process, s149P is highly relevant relating to the decision-making of the Board. S149P(a) sets out that the Board must have regard to s171(1) and act as a territorial authority. S149P(b) then adds the considerations that the Board can make. S149P(b) is not limited by s171 rather it introduces matters that are not included in s171.

3. Point (9) of the Minutes to Parties

3.1. Whilst the Board of Inquiry is essentially in the same position as the territorial authority in s172 concerning the extent of modification, it must still consider the relevance of the call-in process and the relevance of s149P regarding modification.

3.2. A further issue of natural justice is involved in the call-in process. The call-in had no possibility of appealing the proposal and therefore, the consideration of alternatives by the Board of Inquiry is highly relevant. To not consider alternatives to the proposal breaches natural justice. The call-in is a very different set of circumstances to those which sit before a territorial authority. If the Board of Inquiry fails to give adequate consideration to alternatives, these will never be examined in the same detail that they would be if the matter were before a territorial authority.

4. Point (4) of Minutes to the Parties

4.1 The Board still has to ensure that a particular alternative put before it by the applicant addresses and mitigates the environmental effects. Therefore, the Board can in accordance with s149(P) either cancel an alternative put before it or modify it or impose conditions.

4.2 The Board can request that the applicant adequately considers alternatives by putting the alternatives before the Board. The Board can then decide which alternative is unacceptable, or needs to be modified, or conditions imposed.

4.3 The alternatives that NZTA was required to investigate, ought to be brought before the Board and examined in detail to determine whether the effects potentially would be than those currently proposed. Should an alternative proposal exist with seemingly lesser effects, and should the Board determine that the current proposal has a high level of nationally important effects, then the Board is able to decline the current proposal with a view to Transit submitting a new proposal based upon an alternative route with lesser effects.

5. Point (12)

In our view, the Board is obligated to conduct a full inquiry into the project and this means that all effects are considered, whether within the 'footprint' or not. In the call-

in process, alternatives have to be considered by the Board of Inquiry. We do not hold the view that the aspects of law outlined in the 'Minutes' overrule or limit the requirements of s5 of the RMA91 as we have stated in the first point of our submission. Mitigation outside the 'footprint' is required and alternatives must be considered by the Board.