

## Auckland Volcanic Cones Society Inc v Transit New Zealand Ltd

Environment Court Auckland

A 203/2002

24-28 June; 1-5, 9-11, 12 July 2002

Judge W J M Treadwell; Environment Commissioners WR Howie, J Kearney

*Resource management — Designation for motorway — Appeal — Outstanding natural feature — Whether designation reasonably necessary to achieve public work — Whether adequate consideration given to alternatives — Alternative proposal for siting of ramps — Adverse effects on volcanic cone — Impact on wetlands and catchment — Impact of motorway on local communities — Resource Management Act 1991, ss 5, 6, 171(1).*

These were a series of appeals heard together by consent relating to a notice of requirement confirmed by Transit New Zealand (Transit Ltd) in relation to an extension to the motorway corridor of State Highway 20 (“SH20”) from Hillsborough to Richardson Road in Auckland. The Auckland Volcanic Cone Inc Society (“AVC”) was concerned to protect the remaining volcanic cones on the Auckland isthmus. The proposed motorway as it proceeded west across Dominion Road would have a significant effect upon the appearance of the Mt Roskill volcanic cone. The motorway would run in a steep-sided gully to the north of the cone and cut into part of the cone base. The Mt Roskill cone was an outstanding natural feature and a matter of national importance by virtue of the provisions of s 6(b) of the Resource Management Act 1991. The main issue between AVC and Transit was whether the west-facing ramps at the Dominion Road intersection should be shifted to some other location. Greenbelt Inc (“Greenbelt”) which supported the case for AVC held further concerns, the main ones relating to wetlands, the river/stream system and the coastal environment. All were alleged to be of national importance in terms of s 6(a). Greenbelt also raised social issues in connection with the effects of vehicle emissions on the community in general and on schools in particular. Matters concerning Greenbelt within the Oakley catchment related mainly to the ecological system and the visual amenity of waterways. Transit submitted that traffic congestion was a significant issue. The present project was also intended to reduce dependence on local arterial roads which were presently suffering stress.

The exact route by which alleviating congestion was to be achieved was contentious.

**Held** (approving the designation):

(1) In respect of the stream catchments likely to be affected by the SH20 proposal the purpose of the Act would be better served by permitting the motorway to proceed with its attendant public benefits rather than make its construction difficult, if not impossible, by reason of the presence of some small upstream tributaries of the Oakley catchment. The effects had been mitigated to the greatest degree possible and that there would be some compensation by reason of wet weather water retention ponds.

(2) There were many elements relating to emission pollution and in particular free-flowing traffic in a city situation was unlikely to produce toxic effects to the same degree as a similar amount of traffic in a stop/start/cold motor environment. There was no clear evidence to support a conclusion that there should be no motorways within a built-up urban environment.

(3) The designation was reasonably necessary for achieving the objective of the public work. Mere zoning of land for motorway purposes would not fulfil the objectives of Transit in that compulsory acquisition of properties and exchanges of designated areas between agencies could not easily be facilitated. There were no available realistic alternatives.

(4) More than adequate consideration has been given to the question of the positioning of interchanges and in so doing Transit had been well aware of the importance of the volcanic cone.

(5) Given the limited areas from which the vertical motorway walls would be visible, the benefits to the visual aspect of Mt Roskill would not be great if the AVC alternative proposal for siting the ramps was accepted, particularly if the attendant adverse impacts were taken into account.

**Cases referred to in judgment**

*Bungalow Holdings Ltd v North Shore City Council* (Environment Court, Auckland A 52/01, 7 June 2001, Judge D F G Sheppard)

*New Zealand Rail Ltd v Malborough District Council* [1994] 1 NZRMA 70

*Te Runanga O Ati Awa Ki Whakarangotai Inc v Kapiti Coast District Council* (Environment Court, Wellington W 23/02, 4 July 2002, Judge W J M Treadwell)

**Appeal**

These were a series of appeals heard together by consent relating to a notice of requirement confirmed by Transit New Zealand Ltd in relation to an extension to the motorway corridor of State Highway 20 from Hillsborough to Richardson Road in Auckland.

*P T Kavanagh QC* for the Auckland Volcanic Cones Society Inc

*B Korver* and *D Andre* for the Greenbelt Inc

*J A Burns, J C Campbell and M E Smith* for the Auckland Regional Council

*S Janssen* and *F McLeod* for Transit New Zealand

*R B Enright* and *P H Mulligan* for New Zealand Railways Corporation

**JUDGE TREADWELL.** [1] These are a series of appeals heard together by consent relating to a notice of requirement confirmed by Transit New Zealand Ltd (“Transit”) after considering recommendations by Auckland City Council (“ACC”) in relation to an extension to the motorway corridor of State Highway 20 (“SH20”) from Hillsborough to Richardson Road. The bulk of the appeals relate to that primary issue but a further appeal relates to ancillary consents issued by the Auckland Regional Council (“ARC”) in respect of stream diversions, storm water runoff, earthworks, etc.

[2] Of the parties listed in the heading to this decision consent orders have been presented in respect of the following appellants:

- Director-General of Conservation;
- Auckland Conservation Board;
- Robert Bryce Co Ltd and another (subject to an objection by P Norton Trust and South International Finance Ltd).

[3] This leaves two parties still in opposition to the proposed motorway extension.

[4] The first is the Auckland Volcanic Cones Society Inc (“AVC”), a society concerned with the protection of the remaining volcanic cones on the Auckland isthmus. The motorway as it proceeds west across Dominion Road will have a significant effect upon the appearance of the Mt Roskill volcanic cone because it will run in a steep-sided gully to the north of the cone and will cut into part of the flatter cone base. Furthermore the west-facing on-ramp of the motorway interchange proposed at Dominion Road will skirt round the base of the cone, cutting further into the east face, and will displace various recreation amenities such as a children’s playground, tennis courts, and croquet greens (now disused). The Mt Roskill cone is an outstanding natural feature and a matter of national importance by virtue of the provisions of s 6(b) of the Resource Management Act 1991 (“the RMA”). The recreational features, whilst an appropriate development of that feature, are not of themselves of national importance in terms of the Act.

[5] The second is Greenbelt Inc (“Greenbelt”) which supports the case for AVC but has further concerns, the main ones relating to wetlands, the river/stream system and the coastal environment all being alleged to be of national importance in terms of s 6(a) of the RMA. We have used the expression “alleged” because we have some later observations to make on the status of the Oakley Stream and a small wetland in that context. Greenbelt also raises social issues in connection with the effects of vehicle emissions on the community in general and on schools in particular. Great emphasis is placed by Greenbelt on the Hauraki Gulf Marine Park Act 2000 which we will also discuss later. In relation to Oakley Creek Greenbelt is greatly concerned about the ecology and we will again discuss that in a little more detail later.

#### *Decision format*

[6] The case as presented by Greenbelt has tended to confuse the issue by mixing the effects of the completed public work (SH20) with the temporary effects caused during its construction. We intend to deal with

the matter in two parts. We will first address the completed work in terms of the RMA and then consider whether the construction effects are such that the work should not proceed.

*General background*

[7] We have taken the background generally from the opening submissions of Transit. It was submitted that traffic congestion is a significant issue affecting the Auckland region and that the SH20 project was a key step in implementing a long-awaited and necessary addition to the network. The desirability of alleviating this congestion does not appear to be seriously in issue but the exact route by which that improvement is to be achieved most certainly is.

[8] The situation is similar to the situation which faced the Court in Kapiti recently reported as *Te Runanga O Ati Awa Ki Whakarongotai Inc v Kapiti Coast District Council* (Environment Court, Wellington W23/02, 4 July 2002, Judge W J M Treadwell), which we will subsequently refer to as “*the Kapiti case*”. In both cases the presence of a motorway or main arterial had been signalled since the 1950s. In the present case the route known as the “western ring route” involves the extension of SH20 in order to facilitate connection of the southern motorway SH1 at Manukau with the north-western motorway SH16. However the present notice of requirement (“NOR”) does not achieve that connection.

[9] The extension from Richardson Road west and north to connect with SH16 is not within the NOR but is in the latter stages of investigation. No requirements have been issued and no designations are in place.

[10] It was submitted during the course of these proceedings that the absence of the ultimate link to SH16 rendered the present requirement premature because the whole length of the linkage should be capable of determination by the council, the requiring authority, and ultimately this Court as one package.

[11] We do not accept that proposition for two reasons:

- (a) That a requiring authority is entitled to have its requirement dealt with in terms of the RMA. It is under no obligation to extend the ambit of the requirement at the behest of submitters.
- (b) That it is perfectly open to a requiring authority to ascertain in terms of the RMA whether a particular stage of development is acceptable before committing funds to a subsequent stage.

[12] Put another way the requiring authority is entitled to require some certainty as to the point at which a subsequent stage should commence rather than run the risk of having an intermediate stage rejected thus leaving the final link in limbo.

[13] The stage with which we are presently dealing provides for the extension of SH20 through the Mt Roskill area. The subsequent link between Richardson Road/Stoddard Road through Avondale to SH16, commonly known as the “Avondale extension”, as we have recorded, is at the investigation and planning stage. There is also the Manukau link to the southern motorway presently being considered.

[14] The present project is also intended to reduce dependence on local arterial roads across the Hillsborough, Three Rings, Mt Roskill and Wesley suburban areas which are presently suffering stress. We will deal with those aspects a little later.

[15] When completed the Western Ring Route including SH16 will provide a complete bypass of the Auckland Harbour Bridge and central motorway system which currently passes with some difficulty through Auckland city, that difficulty possibly epitomised by the expression used to describe a major central interchange, namely "Spaghetti Junction". Access from the western part of the isthmus and Waitakere city to SH20 and the motorway system will also be improved.

[16] Because of the indication of a centre line by way of proclamation since the 1950s the general public have at all times been aware of the likelihood of a major road traversing that course. We accept nevertheless that in those days a more or less straight-line approach was adopted with less regard being paid to environmental issues than is now required by the RMA. Legislation then in place tended to place public works in a pre-eminent position which is no longer necessarily the case.

[17] The results of these early indications are, however, of resource management significance in that development has tended to be inhibited in and about the corridor created thus achieving the purpose of the centre-line imposition and subsequent requirements, or designations whereby final acquisition of land has not been made prohibitively expensive as a result of private works of magnitude occurring within the identified corridors.

[18] The public have also not been lulled into a sense of false security by the absence of any planning indications concerning major arterial networks.

[19] On the other side of that coin the presence of a corridor identification tends to consolidate development at the edges of the corridor leaving open space between the two corridor boundaries. As a result of that adjacent development future flexibility necessitating lateral adjustment of corridor boundaries becomes increasingly difficult and likely to cause unacceptable disruption to the existing amenities now represented by that consolidated development.

[20] That difficulty is compounded when new Acts of Parliament such as the RMA elevate features within the corridors to an importance not given statutory recognition when the original centre-line proclamation was put in place. Furthermore the RMA now backed by regional plans places great emphasis on environmental protection during construction stages when there can be unacceptable movement of silt in storm events.

[21] Turning now to environmental issues. We are firstly dealing with two catchments. One is the Oakley catchment which covers the major part of the SH20 route, the other the smaller catchment known as the Royal Oak catchment. The latter catchment involves the Bel Air Stream and minor tributaries. This is a small watercourse running into the Manukau Harbour at Onehunga. The Oakley catchment consists of some largely modified tributaries leading finally to the main Oakley Creek at Keith Hay Park immediately to the east of the Mt Roskill volcanic cone.

That creek leads finally to the Waitemata Harbour which forms part of the Hauraki Gulf catchment area.

**[22]** In so far as the environmental effects of the proposal are concerned Greenbelt is more concerned with the Oakley catchment than the Royal Oak catchment, the latter catchment not being affected to any significant degree and indeed probably improved by new retention ponds which will now treat stormwater run-off from that part of the existing motorway between the new bridge over the Manukau Harbour and the Hillsborough intersection.

**[23]** The matters concerning Greenbelt within the Oakley catchment relate mainly to the ecological system and the visual amenity of waterways which we will deal with later in this decision. As a general background we confess to some difficulty in giving to the tributaries of the Oakley Creek the national importance status suggested by Greenbelt because applying s 6(a) of the RMA the “natural character” has already been severely compromised by realignments, straightenings, culverting, etc. Section 6(a) accords “preservation of natural character” of wetlands, rivers etc, national importance status but does not appear to suggest that reinstatement of a presently degraded environment assumes the same importance. Reinstatement is probably covered by s 7(c), (f) and (g) of the Act relating to enhancement of : (a) amenity values; and (b) quality of the environment and recognition of the finite characteristics of physical resources. That section does not elevate enhancement activities to the status of national importance.

**[24]** In addition to the stream there is a “wetland” near to the Mt Roskill cone, which we will discuss later. It is certainly not an area of significant indigenous vegetation or a significant habitat of indigenous fauna. Whilst it may come within the definition of “wetland” within s 2 of the Act being a “permanently or intermittently wet” area we do not accept that it supports a natural ecosystem of plants and animals adapted to wet conditions which could by any stretch of the imagination be such as to accord it national importance.

**[25]** Moving further to the west the Oakley Stream reaches a waterfall of some significance but it appears that aquatic life to the east of that waterfall is not of the same value as that to the west leading to the Waitemata Harbour. Beyond the stream discharge point into the harbour there is an offshore area known as Pollen Island which is presently protected by regional policies as a significant wetland supporting birdlife and marine fauna.

**[26]** The whole of the catchment area and the parts of the Waitemata into which it discharges are subject to the Hauraki Gulf Marine Park Act 2000 and the provisions of that Act to which we will later refer gives to that Act the status of a national coastal policy statement.

**[27]** There are social issues addressed in a somewhat cursory manner by Greenbelt concerning side impacts of the motorway system.

**[28]** A central natural monolith of environmental concern to all parties including Transit and the councils is the Mt Roskill cone. It is otherwise known as Winstone Park with a history dating back to the turn of the nineteenth century. Once used as a quarry it was saved from further destruction by the intervention of the Winstone family and was finally

accorded reserve status. It is accepted as being an outstanding natural feature which must be protected as a matter of national importance from inappropriate use and development by virtue of s 6(b) of the RMA. Quite apart from this its historical background and its more or less original state has caused it to become a focal point for neighbourhood identity and affection. It thus assumes heritage importance. The main modification to it has been a water reservoir which was constructed on the top but fortunately in a sympathetic manner whereby it is sunk within the volcanic crater and not visible to a casual observer. Another significant modification is an exposed face created when cutting a roadway to the top. The higher reaches of the cone show visible signs of Maori occupation but neither mana whenua nor tangata whenua are opposing the motorway construction and record that they have been consulted.

[29] On the north-eastern lower slopes the topography has been modified to provide for tennis courts and a croquet green. A children's playground has also been created. These lower slopes are vegetated but not with indigenous vegetation the predominant trees consisting of phoenix palms in linear configuration. A large building complex previously used as a home for the elderly lies on the northern lower slopes of the cone where the topography levels out. Generally to the north the base of the cone levels into a more or less flat area created in the past by a lava flow and this area (apart from the recreation areas and rest home buildings) is largely bereft of any structures. In that regard we however accept that protection from urban development has largely come about as the result of the presence of the motorway designation which would for most of the relevant period from the 1950s have inhibited activities which might prevent or hinder the public work without the consent of Transit or its predecessors.

[30] The present NOR is less intrusive into the lower slopes of the Mt Roskill cone than previous designations. To the east of the volcanic cone and giving access to it is Dominion Road and that road is one of the main north/south arterials in Auckland which Transit considers will form an intrinsic part of the arterial network to be created by SH20. In order to achieve this interlinking between Dominion Road and SH20 an on-ramp will skirt the base of the Mt Roskill cone on a downslope to meet the motorway to the north-west of the cone. A wall up to a maximum of 10 metres in height will be constructed tapering to zero in both directions from its mid-point. It will taper from zero at the commencement of the ramp to its highest where it joins the motorway and tapering again to zero to the west as the motorway moves away from the topography created by the Mt Roskill cone.

[31] It was recognised by all landscape architects and planners that this would be a significant change to the views of Mt Roskill presently obtained from Dominion Road and from areas close to the cone to the north and west of it. One would not have to move a great distance away, however, before the new cutting accommodating the motorway (the earthwork creating the wall) would disappear from view leaving the cone as the solitary dominant feature of the landscape.

[32] The proposed motorway does not infringe any view shafts provided within the relevant planning documents intended to protect

views of specified cones by preventing the construction of buildings which may intrude into those view shafts.

[33] There is nevertheless no question that the Mt Roskill cone must be given great attention in so far as measures are concerned which would mitigate effects.

[34] The last matter we wish to address by way of general background is the present tangle of designations as between the road and rail networks. Both Transit and New Zealand Railways Corporation (“NZRC”) have existing designations but unfortunately they criss-cross along the length of the present designated corridor with the rail designations shifting from north to south to north and the Transit designation following an opposite course. In the middle there are joint designations. NZRC has embryonic plans concerning a rail corridor but the exact future of that planning or who will implement it is largely conjectural. We must nevertheless accept that it is a designation and it is intended for long-term planning. The ultimate intention is to rationalise the designation situation with NZRC maintaining a strip of land running along the corridor on its northern side and Transit maintaining its wider corridor on the southern side.

[35] We mention those issues at this stage because one of the suggestions by AVC is to delete the on and off-ramps from and to Dominion Road to the west of that road and thus achieve a greater separation distance by being then able to move the motorway carriageway further to the north and thus further away from the volcanic cone with a resultant reduction in the height of the retaining walls. Those ramps are to be replaced with ramps at May Road on the eastern side of that road. Quite apart from the fact that this is not acceptable to Transit the on-ramp which would thus be created may impede the construction of an above-ground rail station at that point and might further result in tunnelling being required. We will address this later. There is a problem, however, in that this alternative suggestion by AVC cannot be implemented without the consent of NZRC the owners of the land subject to the rail designation.

[36] The Court raised this towards the end of the hearing and a memorandum was filed by NZRC indicating that the present thinking of rail was that consent would not be forthcoming. Counsel for AVC complained that he had not been forewarned of this request by the Court but we must observe that he was given leave to absent himself from the hearing and, having taken advantage of that leave, can hardly complain if something unexpected happens during the course of proceedings. He nevertheless filed a memorandum but that memorandum was largely concerned with the fact that a rail corridor was unlikely having regard to the past history of rail in the Auckland area. We cannot in law accept that submission.

[37] Nevertheless the main issue between AVC and Transit is whether the western facing ramps at the Dominion Road intersection could and should be shifted to some other location. We record the responsible approach this society has taken to the matter because it is quite clear that although it does not wish any interference with the volcanic slopes, it is prepared to face the realities of the situation.

*Preliminary determinations*

[38] The first relates to the question of the reserve status of part of the land through which the motorway corridor is to be constructed. It was firstly submitted by AVC that the Court should not hear the matter at all because the question of removal of reserve status was solely for the Minister of Conservation and that this Court should not reach any decisions which may interfere with the exercise of the Minister's discretion. We agree that the Court would not normally enter into a hearing and reach a determination if its decision could be thwarted by the actions of a Minister of the Crown. There is, however, always a difficulty when reserve land is involved. As we understand it the Department of Conservation and Transit are in consultation and the results of that consultation if finally approved by the Minister would result in a land exchange whereby sufficient land would be provided to enable the recreation facilities presently on the slopes of Mt Roskill to be replaced elsewhere. It is perfectly clear to us that the Minister is not likely to remove reserve status from a parcel of land unless he knows that the public work which might necessitate the use of that reserve land will in fact proceed.

[39] A similar situation arose in Christchurch when a restaurant was proposed on top of the Port Hills within a scenic reserve. The Planning Tribunal as it then was embarked upon a hearing and reached a conclusion favourable to the restaurant; the Minister then refused consent; there was then a change of government and the new Minister gave approval. That matter ended up before the High Court but the findings are not relevant to these proceedings save to say that the procedure we are faced with in the present case whereby this Court will deliver its decision first was, as a matter of practicality, followed in that case. The facts in that case however, were a little different in that the applicant had another site, albeit an inferior site, which could be used for restaurant purposes but preferred the one located on the reserve. That situation is not, however, completely dissimilar in that a refusal by the Minister to remove reserve status would not block the motorway completely but would cause its location to be shifted to the position desired by AVC. It would of necessity result in abandonment of one of the ramps to which we have referred namely the on-ramp on the southern side of the corridor.

[40] We accordingly made the decision to continue with the hearing but make perfectly clear that the decision of this Court is a decision based on the RMA and not upon the provisions of the Reserves Act 1977. Should the Minister in terms of that latter Act decline to accept exchanges of reserve land or for any other reason decide that the reserve should remain in place then that is solely a matter for the Minister and of no concern to this Court.

[41] The second preliminary issue we have already touched upon in the preceding part of this decision whereby in terms of s 171(1)(b) we cannot consider the May Road on-ramp to be an *available* alternative to achieve the public work if we are not assured that the consent of NZRC would be forthcoming under s 176 of the RMA. For completeness we will, however, discuss the suitability or otherwise of that suggested alternative.

*Part II of the RMA*

[42] We will commence our consideration of this matter with reference to the public work itself (setting aside the resource consents for the construction period granted by the ARC) in terms of s 171 of the RMA. We will first consider the Part II issues to which that section is subject and then move to a consideration of the limbs of s 171. We will take the issue separately in so far as AVC and Greenbelt are concerned and will therefore commence with an assessment of the Mt Roskill cone; its place within the framework of the Act in terms of in terms of s 6(b) and in terms of s 7(b) relating to the efficient use and development of natural resources; s 7(c) as to the maintenance and enhancement of amenity values; s 7(e) concerning recognition and protection of the heritage value of sites; s 7(f) concerning maintenance and enhancement of the quality of the environment; and s 7(g) concerning the finite characteristic of this natural physical resource.

[43] In doing so we will concentrate on the Mt Roskill cone but it must be borne in mind that many of the matters we have mentioned in connection with s 7 can also apply to the resource which Transit and its predecessors have created by the use of protective public work mechanisms.

[44] In considering the application of Part II of the Act to this particular case the Court has recently considered a similar situation where there was clear conflict between a roading requirement and matters of national importance. That is the case of *Kapiti*. In that particular case matters of national importance arose and in particular the question of wahi tapu. There were also questions in that case of the application of s 7 in relation to maintenance and enhancement of amenity values; the quality of the environment; and finite characteristics of natural and physical resources. In that case the proposed highway was no longer a state highway but had significance in connection with the state highway network.

[45] In the present case the proposal is part of the state highway network and thus the views of Greig J in *New Zealand Rail Ltd v Marlborough District Council* [1994] 1 NZRMA 70 (HC) are directly in point. It was the then tribunal's view that national sustainability would justify overriding the preservation of the natural character of a coastal environment. In other words, the preservation of natural character in that case was subordinate to the primary purpose of the promotion of sustainable management, being not an end or an objective on its own but accessory to the principal purpose.

[46] His Honour quoted from the submissions by counsel, namely:

... an appropriate development must require the coastal location chosen for that activity to be such that it cannot be accommodated elsewhere; its effect can be so mitigated as to minimise its impact on the natural character of that environment and that the permanent modification of a coastal environment can only be justified if the development in question has significance of national importance and the economy of the nation as a whole.

[47] He later developed this theme when considering the preservation of natural character when he said at p 85:

It is, however, only one of the matters of national importance, and indeed other matters have to be taken into account. It is certainly not the case that preservation of the natural character is to be achieved at all costs. The achievement which is to be promoted is sustainable management and questions of national importance, national value and benefit, and national needs, must all play their part in the overall consideration and decision.

[48] In the event Greig J declined to place s 6 at the forefront of the Act at the expense of everything else. In that regard he did not agree with the latter part of counsel's submission to which we have referred.

[49] In essence the Court placed s 5 of the Act at the forefront and considered that that section had a deliberate openness of language about it. Thus if the purpose of the Act on a national scale is best achieved by the implementation of a state highway link then, subject to serious consideration concerning remedial and mitigation measures, the Act does not require that any natural feature, river or wetland be avoided and thus permanently protected if the value of the proposed public work best achieves the purposes of the Act as set forth in s 5.

[50] As a preliminary to considering these issues we have no hesitation in making a factual finding that to shift the SH20 corridor to positions beyond the present NOR proposal could have horrendous consequences on businesses, industries, schools, and residents who have gone about their affairs over the last 50 years in reliance upon the provisions of the district plan. This would, in our opinion, be contrary to the purpose of the Act as set forth in s 5 by causing a disruption to the social, economic and cultural wellbeing of people and communities. It furthermore would not achieve a shift of the present designation protecting a future rail route. The evidence we have is that a combination of road/rail along the NOR corridor is desirable in the public interest and we have absolutely no idea whether a realignment of the corridor even if suitable to Transit would be acceptable to NZRC. Lastly, we have no power or authority to decide upon an alternative, our powers being merely to ascertain whether adequate consideration has been given to such alternatives. All witnesses for Transit appeared to take the view that a departure from the present NOR corridor was without merit.

[51] Therefore, our task in this part of our decision in evaluating Part II matters against the NOR proposal is to identify matters which may be of importance in terms of Part II; identify what measures have been taken to avoid, remedy or mitigate adverse effects of the proposal on the environment, with particular reference to environmental matters singled out in ss 6 and 7; and then to assess whether those measures are sufficient in view of the importance of the SH20 corridor or whether the damage inflicted by the works associated with that designation will have such an effect upon Part II matters that the work should not proceed.

[52] We will now deal with the national importance matters in ascending level of importance.

#### *Wetland*

[53] There is the small wetland to which we have already referred near to and to the east of May Road. We accept that some small wetlands may be significant in certain contexts but in relation to this wetland the

evidence we have heard, apart from evidence called by Greenbelt, is to the effect that it is of no significance whatsoever; is badly degraded; contains no flora or fauna of importance; and is infested with weeds and grasses. We have viewed the wetland, albeit with some difficulty because of its small size and indeed the only tangible sign of its presence are the browned leaves of unhealthy looking raupo. It is firmly in the middle of the NOR corridor and cannot be avoided.

**[54]** To suggest that a major state highway link be deviated to avoid this remnant is patently untenable. We furthermore completely discount it as having any weight in assessing cumulative effects upon the rivers, wetlands, etc in this area.

#### *Rivers and streams*

**[55]** There are the two streams, the Bel Air and the Oakley. The Bel Air is to the north of the present formed carriageway of the motorway but a further lane is to be added on the south to deal with uphill heavy traffic. Stormwater treatment methods are to be put in place by means of a stormwater retention pond currently being constructed and known as the New Beachcroft Avenue Pond. Despite criticism of this pond we are satisfied that it will be sensitively constructed and vegetated in a way which will provide permanent habitat for a number of common aquatic species and birds. The margins will be planted with native vegetation; banks will be sloped; there will be an island for water birds; and an outlet structure suitable for the passage of fish species such as eels. The creek itself is in a reasonably natural state and the stormwater pond will have no effect upon it apart from trapping storm water run-off from the existing road with its attendant contaminants before it reaches the stream. The present native vegetation on the banks of the stream will not be affected other than by removal of one or two trees which, we gather, are presently degraded. The opinion of the Court is that in this area there will be an improvement to ecological values and that no native aquatic fish or bird species will be endangered.

**[56]** Turning to the Oakley catchment, this is in three sections in so far as this case is concerned, with some additional minor watercourses in the vicinity of the motorway extension. The sections are:

- (a) The watercourse running from upstream of Hayr Road to the main Oakley Creek at Keith Hay Park. This consists of a constructed open channel with highly modified aquatic habitats and compromised ecological value. We accept the evidence of Mr Sides that the species recorded were tolerant of degraded conditions and comprised eels and mosquito fish which is a pest species. From the evidence we do not consider that this part of the Oakley Stream represents a stream of natural character in term of s 6(a) of the Act but we do accept that it is significant in forming part of the catchment for the waters of the main creek.
- (b) The second section is a headwater of the main Oakley Creek which extends for approximately 12 km from the headwaters to its outlet into the Waitemata Harbour at Waterview. Habitats in the vicinity of the project are similar to the watercourse we have just discussed with similar low ecological values. The stream has

been extensively modified in its course both upstream and downstream. Of significance is a natural waterfall which restricts the distribution of most fresh water fish to the lower 7 km downstream reaches which are not physically affected (other than by run-off) by the SH20 project. The same tolerant species as in (a) have been found in the stretch of the creek upstream of the waterfall plus one recorded instance of the native kokopu which is one of the parent fish of the migratory whitebait. There was conflicting evidence as to the ability to repopulate this stretch with native species, the difference of opinion largely emanating from the difficulty some native fish may have in negotiating the waterfall which has a pronounced lip at the top. Nevertheless the climbing species of native fish appear remarkably determined when faced with such obstacles.

- (c) The third relevant watercourse is a tributary of the Oakley Creek which runs parallel to Stoddart Road at the western end of the alignment. This is less modified, retaining some meandering form, with variations in habitat characteristics such as channel, width and depth, and water velocity. There is still a low diversity of species. Mr Sides assessed the effects on this reach and described the proposed stream works. These consisted of construction of a new 650m long 3050mm diameter culvert between Hayr Road and Oakley Creek; construction of two new culverts at Keith Hay Park (Frost Road tributary and Bristol Road); construction of new culverts near Roseman Avenue, Roma Road and Ernie Pinches Street; construction of a new 250 m long 3050 mm diameter culvert between Roma Road pond and the western termination roundabout; and construction of four off-line storm water treatment and detention ponds at Melrose Road, Keith Hay Park, Roseman Avenue and Roma Road. This totalled some 1951 m of culvert. 1255 m would result in loss of open watercourse, the remainder consisting mainly of diversions of existing reticulation and pond outlets. He agreed with evidence we will later discuss that the culverting of sections of open watercourses would result in permanent loss of stream habitat and could impede fish passage (depending on construction techniques). Also in-stream disturbance during construction of culverts can also result in substantial release of sediment into aquatic environments.

[57] For the purposes of this present discussion we are setting to one side the construction phase of the SH20 project which we will discuss in more detail when addressing the ARC consents and conditions relating to sediment control. Mr Sides considered that piping of open watercourses was generally undesirable from an ecological perspective as it results in permanent loss of aquatic habitat. Mr Dene Andre for Greenbelt agreed. Mr Sides considered the significance depended upon existing ecological values. Mr Dene Andre for Greenbelt agreed.

[58] In response to questioning from the Court he did not consider that a properly constructed culvert of the lengths suggested in respect of

this project would impede fish passage to waters upstream of the culvert and in particular the passage of eels. Mr Dene Andre did not agree.

[59] A general precis of his conclusions was that the aquatic habitats potentially affected by the project within the catchment where culverting was intended were already highly modified and of low ecological value. Although the length of open channel lost would be substantial, being approximately 10 per cent of total channel in the catchment, he considered that populations of species such as eels would tend to be concentrated in the lower catchment area where the stream is larger and habitats more favourable. Therefore, the proportion of populations affected would be considerably less than 10 per cent.

[60] Overall, he considered that culverting would slightly reduce total population numbers in the catchment but that this would not have significant impact on catchment populations. Those species which would be affected were already widespread throughout the catchment.

[61] Because the proposed culverts were located in the upper reaches and habitat opportunities upstream of the culvert were limited in extent and generally of low quality there would be no significant barrier to fish movement. The only native species present in these upstream reaches were eels and he considered that because of the low gradient of the culverts eels would be able to negotiate those stretches. We record, however, that one specimen of native species has been recorded above the waterfall but Mr Sides did not consider this indicative of a significant resident population.

[62] He had considered alternative options for the form of watercourse realignments, including open channels. Having done that, he accepted there would be no opportunity to provide a meandering channel and that any such open channel realignment would essentially replicate the existing degraded habitat. Finally, after evaluating the evidence he concluded that piping these sections of watercourse was the only option able to satisfy the need to accommodate the motorway as well as the rail corridor, cycle way, stormwater ponds, and landscape and acoustic mitigation within the NOR corridor. Where the main Oakley Creek was affected he recorded that the motorway would bridge that length rather than culvert the water.

[63] We also wish to refer to the evidence of Mr D C Slaven, called on behalf of Transit. He heads the ecology section of the Auckland office of the firm of Boffa Miskell Ltd, a firm of (inter alia) landscape architects. He is concerned with assessments and mitigation of adverse ecological effects. His general impression of the Oakley catchment was that it is set within highly urbanised and industrial catchments and, although it includes public open space such as Keith Hay Park, in general is characterised by a distinct paucity of native vegetation. He accepts the Royal Oak catchment from that comment. He was aware that the physical limits of the NOR corridor prohibited extensive riparian plantings but in any event considered that such works would be unlikely to increase diversity of fish communities presently there. After considering water quality and general habitat opportunities he was not of the opinion that remedial measures would increase aquatic invertebrate taxa.

[64] Most of his evidence was concerned with the ARC consents which we will discuss later, but we found nothing in his evidence to suggest that the conclusions reached by Mr Sides were suspect.

[65] Turning now to the evidence of Greenbelt presented by Mr Dene Andre. Mr Dene Andre was the principal witness for Greenbelt in connection with the ecology of the streams. The other principal witness in that field was Hildred Gröger, but her evidence was basically of a landscape nature. Mr Dene Andre, unlike the witnesses called for Transit, had no academic qualifications in the fields of fish science, biology or fresh water ecology but has obviously spent a lifetime in that field and is presently editing the *Native Fresh Water Fish Journal*, *Ichthyofile*, and is the president of the Native Fresh Water Fish Society of New Zealand. He has spent well over 35 years endeavouring to learn whether fish occupy culverts or are using culverts as a passage to the upper reaches of a stream. His conclusion is that culverts of the length proposed in the present project would inhibit, if not totally deter, the passage of native freshwater fish and would inhibit eels but not necessarily deter them. In that he is not far different from Mr Sides who expressed unease about extensive lengths of culvert.

[66] Again we accept that if this were a pristine habitat, interference with present open channels would be highly undesirable. We do not, however, accept that the waters affected by the SH20 project are in that category.

[67] Also, from the evidence of Mr Dene Andre, he is obviously intent upon increasing the quality of the waters of the Oakley Creek but, like most projects of that nature, is unable to tell us from whence will come the funding. On the other side of the coin Transit are proposing to trap a lot of contaminated water presently entering the Oakley Stream and, in particular, industrial waste which on the evidence before us contains unacceptable levels of heavy metals and other contaminants. We hasten to say that we do not accept that as a reason for supporting the motorway project because if contaminants are escaping from industrial areas then steps can be taken in terms of the enforcement sections of the RMA to stop such practices. Nevertheless, the trapping of contaminants by Transit and treating of them in treatment ponds will be generally beneficial.

[68] Setting to one side the construction period where sediment flows can be expected to increase, our overall conclusion is that the project, once completed, will see an improvement in water quality but that the extensive culverting will most certainly inhibit repopulation of the upper reaches by native fish. Eels may be inhibited to a degree but in the context of the Auckland region as a whole the evidence does not lead us to conclude that the eel population on the isthmus will be endangered.

[69] In that regard much emphasis was placed by Greenbelt on the conclusions of the Commissioners who considered that the Oakley catchment was one of the most important stream catchments in the Auckland area. One cannot disagree with that conclusion, save to say that the evidence placed before this Court would not lead us to that conclusion because we had absolutely no evidence as to other stream habitats in the Auckland area, such as in the Waitakere Ranges, the Albany area and other areas of low intensity development.

[70] Once motorway construction has been completed any danger to the Hauraki Gulf as defined in the Hauraki Gulf Marine Park Act 2000 is so unlikely as to be discounted. We will return to the evidence of Mr Dene Andre in more detail later when we come to consider potential effects of sedimentation.

[71] Our conclusion on the stream catchments likely to be affected by the SH20 proposal is that the purpose of the RMA would be better served by permitting the motorway to proceed with its attendant public benefits rather than make its construction difficult, if not impossible, by reason of the presence of some small upstream tributaries of the Oakley catchment. We say that because one of the longest stretches of culverting is necessitated by a confined motorway corridor to the east of Keith Hay Park. The Court itself investigated through witnesses the question of whether an open channel could be constructed in this area in place of culverting. We had heard evidence from Transit to the effect that the open channel method could not be achieved because of the side slope required for the channel embankments. This would result in a cycle way being sacrificed and further private land acquired. It transpires that most of the private land which would be needed comprises the backyards of houses, but two houses would be physically affected. That brings us back to one of our earlier observations concerning the stability of the community and the undesirability of affecting that stability unless it can be shown that there is an amenity of such importance within the meaning of Part II that it should not be sacrificed.

[72] In the present case, therefore, on questions of national importance we set to one side the question of the Oakley Creek catchment. We are of the opinion that the effects on it have been mitigated to the greatest degree possible and that there will be some compensation by reason of wet weather water retention ponds. One pond will be wet throughout the year thus recreating a type of wetland. These are required by the conditions to be vegetated and landscaped. We accept that Ms Grüger does not like the proposed landscaping but we are not prepared to interfere with the decisions made by Transit in that regard, following the advice of its consultants who are well skilled in those matters.

#### *The Mt Roskill cone*

[73] This is by far the most serious issue confronting this Court and the proponents of this scheme. No one questions the significance of the Mt Roskill cone, it being described previously in this decision. We accept without question the importance of the volcanic structures of the Auckland isthmus and furthermore accept that they are regarded as unique in the world, forming a cluster of small volcanic cones of fairly recent geological origin. Most have been interfered with in one way or another and some have been totally destroyed. It is therefore important in terms of the RMA that Mt Roskill, one of the relatively unspoilt examples of this past history and activity, be protected as required by the RMA from inappropriate use and development.

[74] Some of the present uses of it in terms of s 6(b) are themselves inappropriate in the sense of not being suitable. The tennis courts and croquet green required levelling by cutting a bench into the side of the

mountain. The rest home required the construction of buildings on a levelled part of the apron. In the context of *protecting* a natural feature activities of that nature have about them a degree of expediency largely incompatible with the desire expressed by the RMA to keep such features intact. Walking paths, children's playgrounds, seats and activities of that nature are more compatible with the natural feature in that they enable people to enjoy an amenity without destruction of natural landform.

[75] When viewed from the housing developments immediately to the north, north-east and north-west of the NOR corridor, Mt Roskill, apart from the rest home to which we have referred (which is no longer used) and the buildings associated with the sports activities, rises from an undeveloped lava apron which gently slopes down from the sports areas to the north, east and west. This impression of Mt Roskill rising from the lava plain is ironic in that it has been achieved because the mechanisms to protect the corridor for highway purposes have largely prevented the urbanisation which has occurred beyond the corridor boundaries.

[76] Whilst there may have been public expectation of a motorway running through the apron we do not believe that the public as a whole would have visualised deep, near vertical cuts creating a gully for the purpose of achieving the gradient necessary for efficient motorway function.

[77] These deep cuts in respect of Mt Roskill have created one beneficial effect in that the movement of traffic and the lighting associated with a motorway will no longer form an alien moving amenity of modern civilisation as a ground-level forecourt to the cone. Indeed the motorway itself will be largely hidden from view except for persons using Dominion Road and May Road or from viewpoints on Mt Roskill itself, but even from those viewpoints the steep southern embankment to the motorway would shield parts of it from view and tree plantings present and intended would probably render it invisible in the future from that direction.

[78] The motorway corridor therefore in one way preserves continuance of the open space presently existing on the northern apron. The open space to be created is possibly more open than existed before in that there is not only open space above surface as at present but the surface itself has disappeared some 10 m below its present level. As we have previously recorded views of Mt Roskill from anywhere other than the immediate vicinity will be no different except for some views from distant elevated positions where part of the embankment to be created may be glimpsed. However from viewpoints in the immediate vicinity where the motorway activity may be seen it would form an incompatible visual adjunct to Mt Roskill.

[79] All landscape architects who appeared before us were sincere and concerned. Mr S K Brown was also concerned about the loss of recreation amenities but we do not put them in the national importance category but would rather give them a relatively minor place in terms of s 7(c) relating to maintenance and enhancement of amenity values. We have in any case been told that the intention of the ACC is to relocate the playground and other facilities.

[80] We also heard evidence concerning the heritage value of Winstone Park which is the name given to Mt Roskill in recognition of the

contribution made by that family in purchasing the cone and the surrounding area and then putting a stop to quarrying which has seen environmental devastation in other parts of Auckland. An example is Mt Wellington which is probably the largest surviving quarry site. Some other cones have been totally removed. Combined with that heritage value is its value as a tangible sign of occupation by the Maori people and as an example of pre-European ancestral landholdings. We record, however, that the Maori people have been consulted and do not seek any orders from this Court concerning the motorway construction other than conditions relating to the finding of taonga or koiwi (human remains). Conditions are in any case unnecessary in that regard because the finding of such taonga or koiwi is covered by the provisions of the Historic Places Act 1993.

**[81]** Other lesser but still important issues relate to the finding of lava caves during construction but this again is covered by conditions enabling proper geological and archaeological investigation of them before work proceeds further.

**[82]** The concerns about the cone addressed to us by witnesses were principally advanced by the AVC rather than Greenbelt. That society has gone to considerable trouble, including consulting with an experienced traffic engineer, Mr J F Deady, who reviewed the evidence of other traffic engineers in respect of the shifting of the Dominion Road interchange. Witnesses for Transit were also frank and concerned about the cone issue.

**[83]** That brings us to the various measures suggested for the purpose of mitigating the effect upon the Mt Roskill cone, that effect being the destruction of part of the sloping apron which is an element of the natural form of the cone itself. Although the cut may not be high, being some 10 m at its highest, this must be viewed against the height of the cone itself. The top of the cut lies at about 65 m above datum, or RL65, whereas the top of the cone is RL105. Thus, a cut which on the apron of Mt Egmont would be hardly visible, assumes some importance in relation to Mt Roskill.

**[84]** If the cut could be sloped then various options would be available but this has not seriously been suggested by any party because the objective of all parties is to shift the motorway and its embankments as far away from the rising face of Mt Roskill as is possible. Where it is presently intended, it is very close to where the lava flow tapers to virtually horizontal. That plain as shown on a cross section drawn at the request of the Court, shows the cross section at the 4860 lineal metre mark, along the corridor and indicates that the virtually level plain is reached at the northern point of the proposed southbound dual lanes of the intended NOR.

**[85]** The first positive suggestion was tunnelling. However, this is not physically possible because of the fact that the tunnel roof would be reasonably near the surface and the soil types are such that the tunnel would immediately collapse. The suggestion was then made that the motorway should be bridged where it passes the northern face of Mt Roskill. This would be enormously expensive. Provided the top of the bridging structure was set aside for reserve purposes or otherwise protected then one could expect the type of vista presently enjoyed by

persons viewing Mt Roskill from the northern side of the NOR corridor (and that is a minute almost immeasurable number of persons in relation to the population of Auckland) would be maintained but even should one move one section width back from those frontage householders then the vista would be largely lost or at the best fleeting glimpses would be obtained.

[86] The views of persons standing on Dominion Road when it is brought up to interchange standards would be marginally improved but we doubt whether that type of viewing point would be one which the public would wish to take advantage of because of safety aspects resulting from the heavy traffic load presently experienced on that road. Such traffic is expected to increase after the motorway is functioning but not to any dramatic degree.

[87] However photo montages produced to us showing the views towards the cone from the west at or about May Road presented a debatably worse vista than the vista afforded without the overbridge structure. The views along the motorway corridor and beyond to the Manukau Harbour and the Bombay Hills would be cut off and replaced by the square concrete-type structures representing the portals to the motorway itself and the portals to the off and on-ramps. The vertical walls concern landscape architects and are obtrusive from that direction because one is looking at the wall more or less end on. Therefore from that direction the Court accepts the evidence of Transit that the overbridging proposal would not make much if any improvement and would not warrant the expense of that structure. Viewed from the east at the level of the top of the overbridge on Dominion Road one would still see the entry portal of the west-facing on-ramp and the vertical walls on the south of that particular ramp. The “natural” landscape would not be replaced when viewed from that direction but moving traffic on the motorway would be hidden. We consider that particular viewing location to be a largely artificial one having regard to the main function of Dominion Road at that point which is an arterial not pedestrian function.

[88] We therefore discount the overbridge solution.

[89] This leaves the main solution being promoted by AVC and by Greenbelt which is to relocate either the whole of the interchange proposed at Dominion Road or to relocate the on and off-ramps to the west of Dominion Road at May Road. The result of that exercise would be to make available the width of the present off-ramp to the north of the motorway corridor to allow for moving the whole of the motorway carriageway that distance further to the north without going beyond the proposed designation boundaries and to enable the vertical wall on the south side to be moved to the north by a combined distance representing the width of both on and off-ramps and their immediate surrounds. This would bring the vertical wall further away from the steeper parts of the volcanic cone with consequential lowering of height.

[90] The Court has no trouble in holding that this particular proposal would mitigate, to a degree, the effects which are concerning all parties including Transit. However that particular solution in our opinion will compromise the efficient functioning of the proposed motorway and its adjacent and complementary road systems within the territory of the ACC

and must for that reason be discounted. Were the system compromised to a minor extent we would consider the national importance of Mt Roskill would warrant that type of compromise but as will be later seen we consider compromising of the system to be serious.

[91] We are talking in terms of a vertical wall being lowered by some 3 m, (from ten to seven) depending on the exact point of measurement, and the result would be a continuous linear unbroken wall of roughly uniform height of some 7 m. As against that the aspect of the present proposal is broken *because* of the on-ramp. Although the wall is higher the on-ramp traverses a significant part of its length at a downgrade thus passing diagonally across the facade of the wall. Between the on-ramp and the motorway proper planting will take place with some significant vegetation breaking the visual aspect. From the montages shown to us this is a significant visual improvement not possible with the alternative proposal we have just discussed. The improvement to the vista although of importance is not of such significance that the function of the proposed SH20 should be compromised to any appreciable degree to achieve that outcome.

[92] We now turn to the question of the alternative suggestion at May Road for on and offramps. The immediate result of this in so far as the road network is concerned would be to split the interchange between Dominion Road and May Road and thus make it more difficult for motorists to easily access the Dominion Road north/south arterial which is an intrinsic part of the Auckland arterial traffic system.

[93] Although the alternative on/off-ramps at May Road are not far distant from Dominion Road, arterial traffic intending to join or leave the motorway system must still derive arterial access from or to Dominion Road and to achieve that will be required to follow a dog-leg-type route through a residential suburb. That route will require upgrading by at least two new intersection designs and attendant widenings and will furthermore bring traffic into areas not presently experiencing heavy traffic movement. Also, whilst Auckland residents might well become accustomed to the less straightforward routes for entry and exit from the motorway that would not be the case with the travelling public who tend to appreciate simplicity in the layout of main arterial systems. We will further discuss traffic implications later in this decision but record at this stage that we do not consider the relocation of the ramps an acceptable solution.

[94] We have now set the general background against which the NOR must be assessed. In so doing we have made some general comments in respect of the conflicts which will be expected to occur when the motorway extension is completed and a new environmental landscape created.

[95] In so far as matters of national importance are concerned there are two aspects we have so far covered. In relation to the Royal Oak catchment the mitigation measures being and to be undertaken are acceptable to the Court. There is disagreement between Greenbelt, Transit, and ARC concerning the precise details and value of those mitigation measures and as to whether they should be taken into account at all because the primary objective of the retention pond is for retention of

potentially contaminated run-off. The primary purpose is therefore not amenity improvement.

**[96]** The fine details of the design of these measures end up as a matter of opinion between witnesses for Greenbelt and witnesses for the proponents of the scheme and for the consent authority. Our view is that the consent authority has paid careful and detailed attention to the design of the pond and to the preservation of indigenous vegetation in this area. We see no reason to substitute Greenbelt as a consent authority because the evidence as a whole supports the ARC. Therefore in relation to the ultimate appearance of SH20 and its surrounds we take no issue with the design in the Royal Oak catchment.

**[97]** Turning to the Oakley catchment we have previously described the regrettably degraded stream system with particular regard to its tributaries which will be affected by the public work. Because of the modification of the system we have concluded as a matter of fact that the waters of the Oakley Stream tributaries likely to be affected by permanent culverting do not presently exhibit a natural character therefore the preservation of what is presently there cannot be held to be of national importance. The same applies to the wetlands which we have previously discussed.

**[98]** Furthermore the tributary system is presently an intrinsic part of urban development with areas such as Keith Hay Park being one of the few areas where the creek appears to run in a reasonably natural state. That area is not being interfered with. The main culverting area is along the back boundaries of residential properties and within the NOR. It is presently straight and not legally accessible to the public.

**[99]** We hold as a fact that these heavily modified systems are not of national importance and we would furthermore hold that having regard to the importance of a motorway system to the citizens of Auckland the further culverting and minor realignment of the stream is but a small price to pay for that development. In terms of the Act, we consider motorway development to be appropriate.

**[100]** Turning to the volcanic cone itself we hold at this stage of our decision as a matter of fact that this outstanding natural feature should be protected from development if at all possible. We further hold that Mt Roskill cannot be totally protected unless there are alternative routes or methods available for achieving the motorway objective.

**[101]** We will discuss these issues shortly when we come to address the provisions of s 171 of the Act. We now turn our attention to some other matters which impinged upon Part II of the Act. Greenbelt stressed issues of cumulative importance relating to traffic safety (which we will shortly address); air pollution in connection with health; amenity values; ecosystem impacts; recreation and enjoyment; and eradication of wetlands and the Oakley Creek.

**[102]** Questions of sediment we will address separately but now briefly comment on the other matters raised. The only evidence we heard concerning air pollution was from Dr G R Ihaka whose doctorate is in statistics. He has no particular expertise in pollution although has obviously taken a considerable interest in it. His evidence relevant to this appeal consisted of an analysis of material relating to the dangers to health

from emissions connected to combustion from petrol and diesel engines associated with transport. By consent a report from Mr Ian Moncrief, an expert on engine emissions was produced.

[103] The evidence of Mr Moncrief largely pointed to a decrease in the harmful emissions from motor vehicles and in particular the emissions of particulate matter. Dr Ihaka based his thesis largely on that danger. Dr Ihaka furthermore suggested that Transit was in some way deliberately putting its motorway through areas of lower socio-economic status and in particular areas where the population consisted of citizens from the south pacific islands. That type of unsupported comment seriously affects the value which the Court would otherwise accord to such evidence.

[104] The weight to be given to the evidence of Greenbelt in regard to dangers to health in particular the health of schoolchildren using the educational facilities near to the motorway corridor was affected by the fact that Dr Ihaka was merely statistically analysing the expert testimony of others. Greenbelt did not call witnesses qualified to give the evidence necessary to form the foundation for the evidence of Dr Ihaka.

[105] As Mr Moncrief pointed out there are many elements relating to inquire pollution and in particular that free-flowing traffic in a city situation is unlikely to produce toxic effects to the same degree as a similar amount of traffic would produce in a stop/start/cold motor environment.

[106] In the absence of clear evidence enabling this Court to reach a conclusion based on the testimony of experts in any particular field we are not prepared to hold that there should be no motorways within a built-up urban environment which is virtually where the evidence of Dr Ihaka leads. Therefore in terms of Part II of the Act and in particular s 5 relating to the health of inhabitants we do not find the evidence of Greenbelt to be persuasive.

[107] On the question of amenity value this is addressed in general sense in s 5 of the Act and more specifically in s 7(c) and (f) and is discussed in the course of this decision.

[108] If in terms of s 5 the provision of a motorway corridor is found to be important when compared to the matters identified in ss 6 and 7 then a balance will be struck. We do not accept that the matters raised by Greenbelt are such that a motorway corridor should effectively be prohibited. We have support in this in the case of *New Zealand Rail Ltd v Marlborough District Council*.

[109] At this point in our deliberations we find that with the exception of matters relating to the visual and physical integrity of the Mt Roskill cone there is nothing in Part II of the Act which would preclude us from moving to an assessment of the balance of the matters contained in s 171 of the RMA.

#### *Section 171 of the RMA*

[110] The first issue is s 171(1)(a) namely:

- (a) Whether the designation is reasonably necessary for achieving the objectives of the public work or project or work for which the designation is sought . . .

[111] This subsection was discussed in *Bungalow Holdings Ltd v North Shore City Council* (Environment Court, Auckland A 52/01, 7 June 2001, Judge D F G Sheppard) and more recently in the *Kapiti* case. Both those decisions reached the same conclusion although *Bungalow Holdings* (above) was not specifically mentioned in that latter decision. The Court in both those cases considered first that the designation procedures should be considered as a mechanism for achieving the objectives of the requiring authority. In both those cases the Court expressed views on the necessity for the designation to extend onto an area of land greater than was necessary for the public work. In the present case Transit concedes that its requirement extends further into the Mt Roskill reserve and into the topography of the cone than is necessary for achieving the public work and is prepared to accept a condition whereby the designation (after construction is completed) can be shifted some 18 metres to the north. The timing of the shift of the line of the NOR is caused by the necessity to have construction equipment on that area of land during the construction stage but thereafter land ownership by the requiring authority is not necessary.

[112] The designation should however remain in place during the construction period and agreements between Transit and the Minister of Conservation and the ACC could take care of land use during the construction period. After that period the designation can be uplifted.

[113] The Court is perfectly happy with that type of arrangement because it effectively recognises the rights of the Minister of Conservation to resist any attempt at land acquisition for motorway purposes by reason of the reserve status of that affected land.

[114] Therefore the Court holds that the designation is reasonably necessary for achieving the objective of the public work and that the mere zoning of land for motorway purposes would not fulfil the objectives of Transit in that compulsory acquisition of properties and exchanges of designated areas as between NZRC and Transit could not easily be facilitated.

[115] In respect of the reserve land the designation is reasonably necessary for the purpose of protecting the public work subject to Transit obtaining the necessary consents relating to land presently holding reserve status.

[116] The next limb is s171(1)(b) as to whether adequate consideration has been given to alternative sites, routes, or methods of achieving the public work or project or work . . . . We do not need to address this at any length. A roading corridor has been created and protected in more or less the same position for some half a century. As a result of the identification of the roading corridor urban development has taken place on both sides. Development has been inhibited within the corridor by reason of protective mechanisms applying within its boundaries. This will facilitate the construction of the motorway with minimal disruption to the public caused by compulsory acquisition of land. Those adjacent to the corridor will find a change in their amenity values but that is a change which cannot be said to be unexpected. The exception to that statement would be those resident in Maioro Street, Stoddard Road and Sandringham Road where land is designated as road

for access to and/or for state highway/motorway purposes, use of those roads being necessary to allow for the connection of the proposed motorway to the local roading network and for future grade separation between road and rail. Nevertheless residents in that area and in particular in Maioro Street have had the expectation of being faced with an arterial as a result of the provisions of the Auckland isthmus plan.

**[117]** It was urged upon us by Greenbelt that Transit has not given adequate consideration to the results of the motorway and its link roads upon the street networks which will carry that traffic from the termination of the designated system. By reason of the designation being put in place to cope with increased traffic flows in streets such as Maioro Street it is perfectly clear that Transit has given consideration to the flow-on effects caused by motorway traffic pending the completion of the Avondale link. We are further satisfied that ACC is fully aware of the situation and is perfectly capable of attending to road upgradings; intersection improvements, and general traffic control measures at the various points where Transit financial responsibility ceases and ACC assumes responsibility. We consider it an untenable proposition that Transit should be called upon to follow every motorcar to its ultimate destination through the road reticulation system of a territorial authority charged with that responsibility. Therefore, whilst accepting that there will be increased traffic loadings on streets such as Richardson Road and Windsor Road we do not accept that the resolution of any problems which might occur is the responsibility of Transit provided Transit has been in consultation with the territorial authority which has such responsibility. We are satisfied that there has been consultation throughout. ACC is fully aware of any potential problems and does not seek any modifications to the works proposed by Transit in respect of the responsibilities of Transit relating to the motorway system through Auckland.

**[118]** In relation to alternative sites or routes we are fully satisfied that there are no available alternatives which can realistically be considered at this time. A shift of the corridor to the south is completely out of the question because of the existence of the Mt Roskill cone. Any shift to the north would be impossible without embarking upon further requirement procedures. That would bring the motorway corridor into settled communities including schools and businesses. It would affect one church which the community considers of importance and which is presently poised on the northern boundary of the NOR as presently proposed.

**[119]** Therefore, despite the fact that this corridor was envisaged more or less on this alignment in the decades preceding the RMA we are of the opinion that the provisions of s 5 of the RMA concerning the sustainable management of the present community resources represented by housing, schools, churches, parks etc should in this instance be applied so as to enable the people and communities of the Mt Roskill area to provide for their social, economic and cultural wellbeing. Those resources should be sustained to meet the reasonably foreseeable needs of future generations without having the unexpected advent of a motorway in their midst. Those directly affected by the proximity of the NOR have been fully consulted and that consultation is ongoing.

[120] To abandon the motorway completely is unrealistic in that the safety of the community and its general wellbeing in alleviating traffic congestion is best served by the SH20 corridor despite the fact that this may result in some probably immeasurable shifts of combustion engine emissions from their present locations into the new motorway corridor and its surrounds.

[121] This brings us therefore to the main positive suggestion made by the AVC concerning the *method* of achieving the public work. Its submission is that the public work can be achieved by means of the alternative on/off-ramp system at May Road rather than a complete interchange system at Dominion Road. There was a second alternative namely that the west-facing on and off-ramps be deleted completely *at this stage* because of the very small amount of traffic they would carry pending completion of the Avondale link to connect with SH16. At that stage they could be placed at May Road. If it was considered that they should remain at Dominion Road then the land could be contoured appropriately to enable that to take place in the future.

[122] In respect of that second alternative it is our opinion that the decision must be made now. It would be both expensive and undesirable to disrupt a motorway by engaging in massive earthworks a short time after the opening of the SH20 link. Mr Deady suggested it could be done without great disruption but it is nevertheless undesirable. This would in our opinion necessitate the formation of the base works for the on and off-ramps now wherever they may be located (ie May or Dominion) if their final construction is to be deferred until later. If the on and off-ramps are to remain at the Dominion Road interchange then the short-term benefit in so far as visual aspects of the cone are concerned would be of little consequence if the long-term effects are to remain basically the same.

[123] We must therefore look at the matter as part of the long-term strategy and decide at this stage of the design process where the interchange should be located. In making that decision we again record that there is an uncertainty as to whether the interchange system at May Road is possible having regard to the present attitude of NZRC. NZRC is under no obligation to relinquish or move its present designation and if it does not do so then the construction of an off-ramp at May Road could be rendered virtually impossible. In that regard we mention that the refusal by NZRC to actually consent at this stage is not capricious but rests on final design of a proposed passenger rail station at May Road. Whilst the exact design of this station has not been undertaken there has been some investigation of grades which must be maintained for the purpose of a rail corridor. The May Road off-ramp would pass over any proposed rail connection and, as a result, a rail station presently possible above ground would need to be below ground with possible tunnelling to accommodate the rail line.

[124] Although AVC was strong in its submission that a rail connection is highly unlikely in the context of Auckland, we for our part cannot lightly brush aside the fact that a designation is being maintained for that purpose and the authorities responsible for that designation will not withdraw it. The conclusion we have reached on that aspect is that the

off-ramp at May Road has the potential for causing considerable difficulties and expense in the future if it is not constructed at the time the motorway extension is itself constructed. If it were to be constructed in the future there would be considerable additional expense and complicated design required to accommodate both road and rail and until that is actually resolved the unravelling of the presently tangled designations as between Transit and NZRC would be unlikely to eventuate. Lastly the efficiency of the motorway in linking with the arterial systems of Auckland would be severely compromised if for any reason the May Road off-ramp proved subsequently to be impracticable or impossible.

[125] We therefore now move to consider the feasibility of constructing the two ramps at this stage of the design process. We will discuss it in general terms because Transit has not accepted or fully investigated any design for an on-ramp and off-ramp at May Road and AVC for its part has only made a very tentative initial design suggestion. We make clear that it is not our function to force upon a requiring authority a design which it does not want, therefore, should the Court come to the view that the May Road interchange is desirable in the context of the visual protection of the Mt Roskill cone then Transit would need to be given time to consider if and how that interchange could be incorporated within the NOR.

[126] We also consider we are entitled to take into account that the May Road intersection could well require the acquisition of further land and, if that is so, it is not an available method within the meaning of the RMA. In fairness to all parties we nevertheless consider we should pay some attention to the AVC alternative.

[127] Transit has moved the motorway itself together with the west-facing on-ramps as far away as possible in engineering terms from the base of the cone. It will not however abandon the composite interchange at Dominion Road in favour of May Road. It backed its decision in that regard by calling extensive evidence from traffic engineers.

[128] We heard from Mr J H van Barneveld, the national highway manager for Transit, and a registered engineer with a Master of Engineering Science degree from the University of New South Wales. Apart from fellowships and memberships in connection with transport he has had 25 years' experience in traffic and highway engineering, including a year as district roading engineer in the Auckland regional office of Transit's predecessor – the National Roads Board.

[129] Mr P T McCombs is a registered civil engineer with a Bachelor of Civil Engineering degree from the University of Canterbury and a postgraduate qualification in traffic engineering and transportation planning awarded with distinction by the University of New South Wales. He holds fellowships and has a background experience of 13 years in traffic and transportation matters with local authorities in Christchurch and in Wellington. He has worked for the first 25 years as founder in principal and now director of the firm of Traffic Design Group Ltd who specialise in traffic engineering throughout New Zealand. He has been involved in this project since his firm was appointed in 1988 to investigate the long-planned extension of SH20. His evidence described the function and

purpose of the proposed extension of SH20 westward from Queenstown Road and to provide an overview of the project in terms of its purpose and function in serving regional roading needs.

**[130]** The scope of his evidence consisted of a summary of findings: regional traffic needs and how the project meets those needs; integration with rail corridor and enhanced passenger transport on Dominion Road; and a conclusion. It is convenient to list his summary of findings at this stage of this decision, which are:

- (i) The extension of SH20 has been provided for and anticipated for many years.
- (ii) It has been included in Auckland city's district plans and former district schemes since at least 1961.
- (iii) The proposed work is now identified as a "high priority" project in the 1999 Auckland regional land transport strategy.
- (iv) The project provides for the rationalisation of future development in the parallel rail corridor.
- (v) In providing for extension of the arterial network the project enables future removal of traffic from other surrounding roads which are otherwise not suited to their present volumes.
- (vi) The selected alignment has been chosen to minimise environmental effects including intrusion on the Mt Roskill cone; it also enables areas designated previously for highway construction to be noticeably reduced in size.
- (vii) Particular provisions have been included to maintain established road and pedestrian connections across the highway and the associated community and neighbourhood linkages.

**[131]** We here comment that the references to many years during which the extension has been provided for and the fact that it has been included in former district schemes since 1961 are important in the context of s5, but are not persuasive in respect of s6(b) of the RMA because that matter of particular national importance in relation to the Mt Roskill cone must now be looked at in the light of that 1991 legislation with particular regard to matters of avoidance, remedy or mitigation.

**[132]** Mr R Hancey is regional transportation manager in the Auckland office of Transit and is a registered engineer holding a Master of Engineering degree. He also has memberships of engineering organisations. He has had 12 years' experience in traffic engineering in transportation planning, particularly in the Auckland region. His evidence discusses the manner in which the recommended form of the proposed SH20 extension has been identified and developed together with his assessment of resulting traffic-related effects.

**[133]** Mr P W Ellis has a Bachelor of Engineering degree (civil) and has memberships of an engineering nature. He is principal of URS New Zealand Ltd (formerly Woodward-Clyde (NZ) Ltd) and has been in his current employment for approximately 22 years. He has had 28 years' experience in management, design and cost estimation for a diverse range of civil engineering projects encompassing earthwork, stormwater management and roading elements. We mention Mr Ellis here although

his evidence is probably more closely connected with the construction stage which we will later address.

[134] Ms A L Crafer is a principal transportation planner in the Auckland office of Traffic Design Group. She holds a Master of Science degree in transportation planning and engineering from the University of Southampton and is a member of the Chartered Institute of Transport. Her evidence discusses and describes additional investigations concerning the alignment of the proposed SH20 extension, including further investigations in the vicinity of the Mt Roskill cone and the issues raised by the various appellants.

[135] This is a fairly formidable line-up of traffic expertise and certainly is very persuasive when we come to consider whether the council has given adequate consideration to alternative methods of avoiding to the greatest degree possible intrusion into the lower slopes of the Mt Roskill cone. As against that evidence we have the evidence of Mr J F Deady who has a Bachelor of Engineering (with honours) from the University of Queensland in 1968, a Bachelor of Science from the University of Queensland in 1971, and a Master of Engineering (with distinction) from the University of Auckland in 1978, that degree being for a specialised study of traffic engineering. He has practised for 35 years and nine years of that period were involved in the design and location of motorways in urban areas. His evidence basically discusses and describes the effects of the design of the SH20 motorway and ramps in the vicinity of Mt Roskill as proposed by the AVC. He summarised the AVC alternative as:

- (a) Deletion of the west-facing ramps at Dominion Road from the current project, where SH20 terminates at Maioro Street.
- (b) If SH20 is later extended beyond Maioro Street to link up with the north-west motorway, inclusion of these west-facing ramps at May Road rather than at Dominion Road.

[136] In balancing the evidence of Mr Deady, the Court must have regard to the relatively short time he has had to assess the issues. His evidence essentially reaches the conclusion that the AVC proposals are feasible and should be considered further in terms of that part of s 171 relating to methods which we are now discussing.

[137] The last witness involved in engineering evidence was called by Greenbelt. This evidence was given by Mr B L Mehaffy who is a registered engineering associate with a Bachelor of Science degree from Auckland University and a New Zealand Certificate in Engineering (civil option). He has had three years' experience as a field geologist in Australia and a further three years as a field assistant with Tonkin and Taylor Consulting Engineers. A further two years was as an engineering surveyor with McBreen Jenkins Construction. He has worked for 17 years with the Auckland Regional Authority/Regional Council, part of which was as an engineering assistant and scheme planner on the south-western transportation corridor study and the south-eastern corridor study. His work entails the production of preliminary scheme plans including geometric design, service relocation and costing for cost-benefit analyses which is a prerequisite to funding approval. He generally challenged the

goals and objectives. He also criticised the safety audit procedures of Transit; relevant issues regarding design and effect of community in the environment; and the estimated 2011 traffic volumes.

**[138]** We consider that his criticism of safety audits and peer reviews of those audits and his criticisms of predicted traffic volumes are beyond his expertise. His criticisms were in the opinion of the Court fully answered by rebuttal evidence called by Transit. We lastly comment that as a question of law, unless the evidence of those qualified in the field of traffic engineering and traffic expertise was proven to be blatantly and unarguably wrong, then the evidence of persons with the qualifications possessed by Mr Mehaffy could not be accepted as sufficient to warrant this Court in referring matters back to Transit for further consideration. The evidence is certainly not sufficient to enable this Court to strike down the requirement.

**[139]** We now turn to the main challenge of a traffic engineering nature given by Mr J F Deady, whose undoubted qualifications we have already discussed.

**[140]** We have previously commented on the necessity at this stage for the west-facing on and off-ramps. Until SH20 is extended beyond Maioro Street to link up with the north-west motorway, traffic volumes on these ramps taken in isolation would not be sufficient to justify interference with a feature deemed to be of national importance by virtue of the RMA. As against that none of the engineers who gave evidence before us, including Mr Deady, suggested that these ramps would not be necessary if and when the link to the north-west motorway is completed. As we have previously recorded, we do not consider a temporary visual respite from the results of construction works at the base of the cone to be of such significance that it should not be done at this stage, but that provision must be made for on and off-ramps in the course of the present design planning. If it be found that the Dominion Road interchange is likely to be required in the future as a necessary component of future motorway linkages, then it would be foolhardy in the extreme to ignore that issue. As we previously discussed, if the Dominion Road interchange is preferred, it does not really matter whether the on and off-ramps are fully constructed or that the land is contoured to enable future formation and sealing to effect the actual link. The topographical result will be the same.

**[141]** Mr Deady considers that Transit's evidence on the May Road replacement for the Dominion Road interchange gives an incomplete picture. As a necessary premise to his evidence there is his acceptance of the AVC submissions concerning the desirability of avoiding deep scars at the base of the Mt Roskill cone. Mr Deady develops his theme as to the lack of necessity for the off and on-ramps at either Dominion Road or May Road at this stage of the planning exercise and we agree with him that the figures as to traffic volumes support his conclusions. He pointed to the uncertainty in obtaining new designations for the extension of the motorway to link with the north-west motorway, particularly as it goes through the established urban areas between Sandringham Road and the north-west motorway. We also understand that the future route may have some effect upon the lower reaches of the Oakley Creek below and

including the waterfall. The value of that part of the stream, together with the part of the Hauraki Gulf into which it discharges, may involve issues in terms of s 6 which we have found not to be present in the lengths of motorway with which we are presently dealing. We agree with Mr Deady that if the motorway stops at Maioro Street then the on and off-ramps at Dominion Road would be unnecessary.

[142] On the other side of that coin however, is the fact that it would be desirable at this stage to feed traffic into main arterials if that is at all possible, thus producing a traffic pattern which will last into the future.

[143] Mr Deady furthermore considers that the potential disruption to the motorway in the vicinity of Dominion Road if ramps are built later could easily be dealt with at the stage when the motorway extension proceeds to the north-western motorway. In so far as costs are concerned he considered that it would largely be the costs involved in rebuilding the retaining wall along the flank of Mt Roskill.

[144] He then moved to a consideration of west-facing ramps at May Road as part of stage two construction. He produced to us an interchange design which he considered met Transit's standards for urban motorways. He conceded in his evidence that Transit has considered this alternative method in its designs but has rejected it on technical grounds. At no stage in his evidence did Mr Deady suggest that Transit has given inadequate consideration to this particular alternative.

[145] The proposed interchange at May Road would immediately have an effect upon the proposed rail corridor in that the station would need to go underground with attendant tunnelling for the rail network itself. A secondary factor is that by moving the on and off-ramps further west to the May Road intersection the distance between the Maioro Street interchange and the new May Road proposed on/off-ramp would reduce to a distance which Transit considers unacceptable for modern motorway design.

[146] Mr Deady does not accept that conclusion, nor does he accept that Transit has sufficient information about ramp and motorway traffic flows to properly assess the performance of the alternate interchange. It was accepted by all traffic engineers that a 1.5 km spacing between intersecting streets is desirable in the case of an entry ramp followed by an exit ramp as would exist with the west-facing ramps at May Road and the east-facing ramps at Maioro Street. The May Road proposal would result in a 1.2 km separation. The purpose of the greater distance is to achieve safety as regards traffic weaving in that intervening space. Put simplistically, a vehicle exiting west on the Dominion Road on-ramp may be seeking to move into higher speed lanes whilst other vehicles in those higher speed lanes may be seeking to move to the left for the purpose of exiting the motorway system at Maioro Street. If the May Road on-ramp is substituted the distance within which those conflicting manoeuvres can take place is truncated to an extent which Transit considers undesirable.

[147] Mr Deady pointed to several interchanges in the Auckland area where the spacing is between 1 and 1.3 km and was of the opinion that in those circumstances weaving traffic is accommodated in auxiliary lanes between the on-ramp entry and the off-ramp exits. Witnesses for

Transit and in particular Mr McCombs are not enamoured with that existing situation and do not wish to see it replicated in the Mt Roskill area.

[148] Mr Deady further considered the internal traffic systems on adjoining roads which would result from his May Road proposal and whilst acknowledging that a full diamond interchange at Dominion Road would be the better resolution, he considered that access to Auckland city on a primary road network was still readily available and should not result in congestion and frustration between interchanges. He furthermore pointed to the fact that May Road could be seen as more suitable because of the general industrial character of development along its frontage.

[149] Transit engineers and consultants do not dispute that some form of interchange could be constructed at May Road on the basis that anything is possible in engineering terms. Mr McCombs responded to the evidence of Mr Deady in rebuttal. He considered that Mr Deady:

. . . overlooks key aspects of the prime strategic purpose for this Project, significantly underestimates the adverse effects and shortcomings of the arrangement he suggests and he accordingly misjudged what he considers to be the possibilities for such a change.

[150] Referring to Mr van Barneveld's evidence on behalf of Transit and to his own evidence- in-chief, Mr McCombs repeated that the prime purpose of the Mt Roskill project was to provide an alternative regional route through greater Auckland, improving access from the western part of the Auckland isthmus and the motorway system, and separating through traffic from local residential areas in the corridor. A prime objective is to connect SH20 to the north-western motorway. In that regard the Auckland regional land transport survey prepared by the ARC and Transit's state highway strategy confirms a clear commitment to complete construction of the western ring route connecting the southern motorway through to join the north-western motorway SH16 within ten years.

[151] The Court must accept this overall strategy. We record however that we are not prejudging it in terms of s 171 or Part II. That brings us back to comments we have made before that the design and construction stage of the motorway from Hillsborough to Maioro Street must not be a short-term expedient.

[152] In respect of the May Road alternative, it must again be remembered that, subject to Part II of the Act, we are dealing with the adequacy of the consideration of alternative methods. Mr McCombs in his evidence confirmed that very early on in the investigations, Transit and its design team identified the potential for effects on the Mt Roskill cone as being important. As a result an alignment was developed that minimised the cut into the cone and that involved a very significant retraction of the designation boundary adjacent to the cone from that which had been in district plans for 40 years. A recent method of further minimising the earthworks was a split-level carriageway in the immediate vicinity of the cone.

[153] Mr McCombs was in no doubt when he stated that:

. . . a split interchange as suggested by AVCS would fail to achieve the objectives and efficiencies required for the project because there would be a resulting reduction in connectivity with arterial roads; there would be resulting adverse effects and limitations on the local road network; and there would be practicalities in connection with interchange spacing.

**[154]** We do not intend to develop those themes to any great degree, because we have previously commented on those factors. In particular however, Mr McCombs commented on the substandard interchange spacings and gave detailed evidence of the consideration Transit had given to the spacing of the interchanges for the purpose of providing sufficient and safe ramp lengths needed for acceleration and deceleration; the provision of merge and diverge space with appropriate site distances; and the ability to provide sufficient clear and unambiguous motorway signage.

**[155]** In that regard he discounted the examples Mr Deady had given as being particularly relevant to the issues now before us. In summary he stated:

Contrary to Mr Deady, it is my view that substandard sections of motorway will incur significant and ongoing adverse costs to the community of this kind through permanent shortfalls in standards have no place in a proper motorway design.

**[156]** Mr McCombs further discussed the difficulties with partial interchanges as opposed to a completely integrated interchange system as suggested by Transit at the Dominion Road intersection.

**[157]** For completeness Mr McCombs discussed the evidence of Mr Mehaffy which we have previously commented upon.

**[158]** Ms Crafer also gave evidence contrary to that of Mr Deady. Her evidence, together with that of Mr Barneveld, Mr R Hancy, and Mr P Ellis, has not been overlooked by us. The evidence of all those witnesses constitutes a carefully thought out team evaluation of the motorway design based on a complete interchange at Dominion Road.

**[159]** We are at this stage of course discussing s 171(1)(b) as to whether adequate consideration has been given to alternative methods. We have no hesitation in holding that more than adequate consideration has been given to the question of the positioning of interchanges and in so doing Transit has been aware of the importance of the volcanic cone. However, s 171 is subject to Part II of the Act and if this Court felt that significant improvement could be made to the visual aspects of Mt Roskill without harming the integrity of the motorway system, then the Court would tend to accept a lesser standard of motorway design (provided safety was not compromised) to achieve recognition of such a feature of national importance.

**[160]** The effects on Mt Roskill cone were discussed in the evidence of Mr Deady when he quoted from Mr P Ellis the design engineer for Transit. The proposal was described as “(a retaining wall) 260 m in length with a maximum height of 10 m”. At para 9.47 of the evidence of Mr Ellis he stated:

Deletion of the Dominion Road interchange would significantly reduce the impact of the motorway on Mt Roskill. Whilst the design of this alternative has not been modelled, in general terms it would:

- involve deletion of the west-bound on-ramp from Dominion Road, thereby reducing the physical extent of the impact on Mt Roskill by approximately 25 metres opposite the eastern end of the tennis courts, tapering away to nothing at May Road;
- enable the horizontal geometry of the 1,000 m radius curve of Mt Roskill and the 1,200 m radius curve at May Road to be revised to shift the motorway centreline northwards as far as possible whilst preserving the rail corridor within the due designation. Potentially, a further 20 m shaft may be possible opposite the eastern end of the tennis courts, tapering away to nothing at May Road;
- result in a reduction in scale of retaining wall required against Mt Roskill to a maximum height of approximately 7 m.

[161] Mr Ellis considered that it was primarily a traffic engineering matter which would be addressed to Ms Crafer in her evidence. We record that Ms Crafer did not feel that the objectives could be met with a partial interchange at Dominion Road and May Road.

[162] The Court had the benefit of evidence from landscape architects, both for and against the motorway proposal and we are indebted to the impartial approach exhibited by all those involved in that field of expertise. The main consensus amongst the members of that profession seems to be a hope that the motorway would either disappear or go somewhere else. From that extreme, which is no longer a practical possibility, the next step was to see how far away from the base of the cone the motorway could be located. There was a divergence of opinion in this regard.

[163] It is difficult to describe in words, and we have previously made some attempt at so doing. Essentially the wall to be constructed would be 10 m high (Transit proposal) or 7 m high (AVC proposal). The lower wall would be 25 m shorter but would be a continuous linear length tapering to nothing near May Road. There would be a wider area of grassing or planting which would generally cover the width of designation previously required for the on and off-ramps. This would also enable the retention of a passive recreation area and the children's playground at the base of the mountain. Some views would be improved ie from Dominion Road immediately to the south-east of the cone, the foreground would be the base of the mountain with attendant recreational facilities rather than a busy motorway on-ramp. The wall would be made of materials compatible with the volcanic nature of the area. Final design would be subject to approval by the Department of Conservation. A new condition in that regard is to be drafted.

[164] Viewed from the north, from Dominion Road, or from houses located in that direction, we are not persuaded one way or the other as to which of the alternatives is preferable. The AVC proposal, although involving a lower wall, creates an unbroken facade. The Transit proposal by reason of the on-ramp creates a diagonal sloping break in the facade of the 10 m wall and enables a planted area to be created between the on-ramp and the motorway proper. In montages produced to us this was not an unattractive facade if one accepts that a motorway needs to be constructed in this area.

[165] It is a difficult judgment to make but we have concluded that the benefits to the visual aspect of Mt Roskill, having regard to the limited areas from which the vertical walls will be visible, will not be great if the AVC proposal is accepted. We are quite firm that the benefits which would be gained are not such as to warrant a major reconstruction of motorway interchanges because those major reconstructions will have the following cumulative adverse effects:

- (i) A split interchange is not desirable because of lack of simplicity in either design or function.
- (ii) A split interchange would result in traffic using streets other than Dominion Road to gain access from May Road to Dominion Road thus injecting such traffic into residential areas and into streets not presently designed for that purpose.
- (iii) The distance between the May Road on/off-ramps and the Maioro Road intersection, whilst capable of working, is not up to the design standard expected of a modern motorway.
- (iv) That public safety could be compromised.

[166] It is our conclusion therefore in relation to s 171(1)(b) that adequate consideration has been given to alternative sites, routes, or methods of achieving the public work. The provisions of s 6(b) of the Act in relation to outstanding natural features have been taken into consideration and some effect upon the natural feature represented by the Mt Roskill cone is inevitable. It is the extent of that effect with which we are here dealing and it is our view that the benefits to be gained by the AVC proposal are not sufficiently superior to the Transit proposal (taking into account mitigation measures) to warrant this Court requiring that the interchange be shifted in whole or in part to May Road.

*Section 171(1)(c)*

[167] This paragraph requires the Court to consider:

**171. Recommendation by territorial authority —**

- (c) Whether the nature of the public work or project or work means that it would be unreasonable to expect the requiring authority to use an alternative site, route, or method;

[168] We discussed fully in the *Kapiti* case the use of designations as a technique for public works such as major roads. We have no reason to change our views in that regard. We totally discount the ability to achieve a public work of this nature with attendant land acquisitions by normal planning processes. The only matter is the question of width of the NOR in the Mt Roskill area and we have already addressed that in the course of our Part II considerations. It is agreed by all parties that the existing designation and the present NOR are both too wide to accommodate the public work once construction has ceased. That can be covered by conditions.

*Section 171(1)(d)*

[169] This subsection requires the Court to consider:

- (d) All relevant provisions of any National Policy Statement, New Zealand Coastal Policy Statement, Regional Policy Statement, Proposed Regional

Policy Statement, Regional Plan, Proposed Regional Plan, District Plan or Proposed District Plan.

[170] The catchment in this area is subject to the Hauraki Gulf Marine Park Act 2000 and the provisions of that Act have the status of a national coastal policy statement. The Act in its interpretation section defines “catchment” as any area of land where the surface water drains into the Hauraki Gulf. It refers to the interrelationship between the Hauraki Gulf, its islands, and catchments, and the ability of that interrelationship to sustain the life supporting capacity of the environment as a matter of national significance. The provisions of s55 of the RMA concerning recognition of national policy statements apply as though ss 7 and 8 of the Hauraki Gulf Marine Park Act were a national policy statement. Section 10 of the Hauraki Gulf Marine Park Act requires that ss 7 and 8 of that Act must be treated as a New Zealand coastal policy statement.

[171] The RMA requires district and regional plans to conform with national policy statements which are intended to achieve the purpose of this Act in relation to the coastal environment in New Zealand. It will be noted that Part II of the RMA does not refer to policy statements but sets the important hierarchy of the Act in relation to matters of significance. For the purposes of this present hearing the Court prefers to stay with Part II of the RMA which appears to create the hierarchy of matters of importance over and above the Hauraki Gulf Marine Park Act. Indeed if the Hauraki Gulf Marine Park Act merely constitutes the matters it covers as being the equivalent of a national policy statement, then in our opinion that is a downgrading of the values set by the RMA and shows the danger of endeavouring to graft local legislation onto legislation addressing matters of New Zealand-wide importance.

[172] For the purposes of the paragraph we are discussing, there is nothing in the regional or district plans which would cause this Court to strike down the NOR in respect of this motorway extension. It is recognised by both plans as a public work of regional and district significance therefore the provisions of this paragraph are favourable to Transit. In respect of the national policy statement, and the Hauraki Gulf Marine Park Act, we will discuss the provisions of those Acts when we come to deal in the next part of this decision with the question of sedimentation during construction. Once completed we do not see that the motorway has any effect upon those values. We have already discussed the question of the values of the upper catchments of the Oakley Creek.

### *Conclusion*

[173] In respect of s 171 (apart from sedimentation) the Court considers that the requirement should be confirmed subject to conditions which we will discuss later.

### *Sedimentation discharges during construction of SH20*

[174] The Court was initially a little concerned that we may be abrogating our role as decision maker but we are now satisfied, having considered the conditions and the evidence given, that there is sufficient detail in the resource consents together with the extra conditions we

required to ensure that the ACC is finally a certifier of adequate control measures rather than the initiator of general requirements leading to those controls.

**[175]** In looking at the discharge problems in the estuary Pollen Island the Court must accept that by virtue of s 6 of the RMA; the regional planning documents; and the Hauraki Gulf Marine Park Act 2000 the receiving waters are not the norm. They are elevated to a level higher than one would normally expect in a heavily urbanised isthmus. The balance this Court must strike is a balance between the inevitability of some sediment discharge from a major public work and the desirability (backed by provisions of s 5 of the RMA relating to avoidance, remedying or mitigating) of providing for the capture of sediment to the greatest degree possible. Practically impossible levels or financially prohibitive levels tantamount to rejection of consent cannot and should not be imposed. We have taken these matters into account when considering the importance of the public works.

**[176]** We also gave weight to the evidence of Mr Dene Andre about the potential for sedimentation disrupting marine and aquatic life in the area of the Oakley Creek below the waterfall. We are satisfied, however, that this would be short term and likely to have no effects beyond the construction period.

**[177]** The SH20 project involves extensive earthworks covering some 23.8 ha. Erosion during construction, works in watercourses and dewatering of the site present the principal likely off- site environmental effects. Of principal interest are the effects of sediment discharged from the construction site on the natural environment of Oakley Creek, the Motu Manawa Pollen Island Marine Reserve (identified in the ARC proposed regional plan; coastal as coastal protection area 1 (“CPA1”)), and the natural environment of the Royal Oak Catchment which discharges into the Onehunga Harbour.

**[178]** Mr Chester, a senior engineer with URS New Zealand Ltd, presented the evidence for Transit relating to erosion and sediment control. He concluded the proposals for sediment and erosion control would meet the ARC requirements set out in technical publication no 90 (“TP90”). He considered therefore that the proposals would avoid or mitigate the potential adverse effects of the project on the environment. He conceded that the erosion and sediment control proposals “constitute the general approach to be adopted and will be subject to refinement as the work progresses”.

**[179]** Greenbelt challenged those conclusions. Mr Handyside, a person with 25 years of experience in the control and management of the discharge of sediment from construction sites, considered that Transit had significantly underestimated the potential discharge of sediment, that because of the fineness of the sediment it would be transported to the lower marine environments and that Transit had not adequately evaluated the consequent effects, especially on CPA1.

**[180]** Mr Chester used the universal soil loss equation (“USLE”) to estimate the yield of sediment from the site subjected to earthworks. This equation has several factors that allow for soil type, slope, rainfall, catchment area and several other key parameters. Estimates are required

for each factor and the result is viewed as a guide to the magnitude of the sediment production from the site. Treatment of this sediment-laden run-off is then required before discharge. Treatment options considered for this project included sedimentation ponds, bunds, silt-retention works and sometimes flocculation to enhance settlement of the sediment in the ponds.

**[181]** Mr Chester estimated the discharge of sediment into the Royal Oak catchment would total 18 tonnes over an 18-month construction period and 37 tonnes to the Oakley Creek over a three-year construction period, or a total sediment discharge of some 55 tonnes.

**[182]** Mr Handyside considered the total quantity of sediment to be discharged over a three-year construction period would be more likely to be some 1000 tonnes. Although agreeing that his estimate was a “quick assessment” he was firmly of the view, like the ARC, that it would be some hundreds of tonnes and that Transit had significantly underestimated the likely quantity.

**[183]** A detailed re-evaluation by Mr Chester of the likely sediment yield from the project site over a three-year construction period showed higher levels than originally estimated but not as high as suggested by Mr Handyside. He now estimated that for a rainfall event with a severity likely once in two years the total sediment yield for the event would be 61 tonnes. A more intense rainfall event likely once in 20 years was estimated to yield 257 tonnes of sediment. These quantities were estimates of the sediment discharge that would be experienced after the treatments proposed which were expected to remove some 75 per cent of the sediment produced by the works.

**[184]** Prompted further by Mr Handyside’s views, Mr Chester for Transit agreed that flocculation would be installed on all sediment control ponds as well as the Roseman Avenue and Roma Road permanent stormwater ponds during the earthworks phase. The approximate effect on the discharge of sediment from the site then would be to reduce the actual discharge from 25 per cent of the gross yield of sediment from the site to a figure of between 5 per cent and 10 per cent. The treatment efficiency would rise from 75 per cent to between 90 per cent and 95 per cent with the introduction of flocculation at each of the sedimentation ponds. Then the total estimated sediment discharged during a two-year rainfall event would drop to 28 tonnes and during a 20-year rainfall event it would drop to 121 tonnes, assuming a conservative treatment efficiency of 90 per cent.

**[185]** Mr Handyside agreed under cross-examination that his “quick assessment” had not taken into account the varying soil types, the flat gradients or the short slope lengths (although it did include varying slope lengths) present at the SH20 site. He also agreed that the treatment efficiency now proposed of 90 per cent to 95 per cent was a significant improvement. We note that simply improving the treatment efficiency from 50 per cent to 90 per cent would reduce Mr Handyside’s estimate of 1000 tonnes to 200 tonnes.

**[186]** So the estimates of the total discharge of sediment from the project over a three-year construction programme seem to lie between 100 tonnes and 200 tonnes and given the more detailed analysis required by the USLE the evidence suggests a level at the lower end of the range.

Whether that level of sediment discharge over the three-year construction period leads to unacceptable environmental effects is a matter we turn to next.

**[187]** Adopting Mr Chester's revised estimate of total sediment discharge of 121 tonnes for a 20-year rainfall event, then he reports 35 tonnes would be discharged to the Royal Oak catchment and 86 tonnes to the Oakley Creek catchment. For a two-year storm the total is 28 tonnes with 8 tonnes to the Royal Oak catchment and 20 tonnes to the Oakley Creek catchment.

**[188]** In respect to the Royal Oak catchment Mr Sides, a senior freshwater biologist with Boffa Miskell Ltd, concluded after investigation:

there will be no streamworks, culverting or discharges to the existing watercourse in this catchment. Treated stormwater during and after construction will be discharged directly to the Manukau Harbour at Onehunga Bay. On the basis of my assessment of the increase (ie Chester's initial estimate of 21 tonnes from a two year storm) above background sediment discharges during construction, and the exposure of the adjacent inter-tidal flats to tidal currents and mixing, it is my opinion that any effects on the ecological communities resident here will be minor, and at worst only short-term and localised.

**[189]** The conclusion of Mr Sides was not seriously challenged and we accept it. Moreover now that flocculation treatment is to be applied on all sedimentation ponds the estimated total discharge of sediment from a two-year storm to the Onehunga Bay is 8 tonnes and from a 20-year storm is 20 tonnes, both significantly less than that assumed by Mr Sides.

**[190]** Turning now to consider the aquatic communities in the Oakley Creek in the reaches by the project site, Mr Sides testified that they have a low diversity and consist of pollution-tolerant species such as midges, snails and eels. No evidence to the contrary was presented and we accept that is the nature of the species present in this part of the Oakley Creek.

**[191]** Elevated sediment concentrations in the creek in the vicinity of the project are likely to affect the abundance of macroinvertebrates and possibly eels, however these effects would not be extensive and population recovery would be rapid. These effects are not likely to be ecologically significant according to Mr Sides. Mr Dene Andre and Ms Kruger for Greenbelt disagreed with Mr Sides' conclusion in respect to the likely effects of sediment discharges on the Oakley Creek in the vicinity of the project works. However they did not present evidence showing the presence of any sensitive species or particular concentrations of sediment that would be so in excess of current concentrations as to cause significant ecological damage to an environment already pollution tolerant. Moreover since Mr Sides made his evaluation, Transit has agreed to install flocculation treatment on all sedimentation ponds and so actual sediment discharge effects in this part of the Oakley Creek will be significantly less. We find the effects of the proposed sediment discharges to this part of the Oakley Creek will be minor and temporary and of no ecological significance.

**[192]** In the lower reaches of the Oakley Creek relatively diverse fish communities exist although a natural waterfall that exists towards the

mouth of the creek inhibits fish passage. Mr Sides considered that, as a result of dilution, dispersion and settlement over several kilometres of stream length, increased sediment concentrations in this reach will be considerably lower than those in the reaches near the project. The aquatic species present, being again pollution tolerant and adapted to an existing regime of stormwater discharges, can tolerate or recover from any intermittent increases in the sediment load in the creek. Flocculation treatment will reduce the effects further. No significant particularly sensitive species were shown to exist in this reach and we conclude that any adverse effects of sediment discharges from the project on this part of the Oakley Creek will be minor and temporary.

**[193]** The outlet of Oakley Creek is into the Waitemata Harbour at Waterview where the harbour around Pollen Island has a high coastal protection classification. This is an area that could be particularly sensitive to increases in the discharge of sediment. Mr Handyside concluded in his evidence that “most of this sediment [ie sediment discharged from the proposed works] would be transported to the lower marine environments and that this would have particularly significant effects on the Coastal Protection Area 1 at the bottom of Oakley Creek”. He explained that sediment discharged from sedimentation ponds, especially if treated with flocculation, is fine and most would travel down to the marine area where the seawater would encourage the settlement of the sediment. Mr Handyside’s opinions were based on Transit’s original proposals for sediment control. When asked in cross-examination, he agreed that using flocculation on all 18 sedimentation ponds is a significant improvement.

**[194]** Mr Poynter is an experienced marine and freshwater ecologist who was asked by Transit, as a result of the concerns raised by Mr Handyside, to investigate the effects of increased sediment discharges on the marine environment at the mouth of Oakley Creek. He conducted field studies in the estuarine and harbour zones that might be affected. He recorded that the background sediment yield from the Oakley catchment was 379 tonnes per year. He distributed the estimated total sediment discharge of 86 tonnes from the works to the Oakley Creek as 28 tonnes in year one, 46 tonnes in year two and 12 tonnes in year three. He considered this use of the one in 20 year storm to be a worst-case scenario. Assuming all the sediment discharged from the works reached the marine environment, these estimates represented a possible but temporary increase in sediment loading on the marine environment of 7.4 per cent, 12.1 per cent and 3.2 per cent in years one, two and three respectively.

**[195]** Mr Poynter testified that estuarine environments are subject naturally to significant variations in salinity, temperature, sediment texture, oxygen concentration, nutrient levels and sediment chemistry. Wave and wind-induced resuspension of fine sediments leads to a wide range in ambient sediment levels in the water column and on flood tides this sediment will enter the inlet. He is of the view that the estuarine environment that currently exists in the Water-view Inlet at the mouth of the Oakley Creek is likely to be quite robust. His fieldwork concluded that all of the taxa observed are common species normally found in harbours and estuaries.

[196] In his conclusion Mr Poynter considered that in regard to the ecological risk to the marine receiving environment of Oakley Creek, the existing fauna lives in a predominantly muddy environment and is adapted to significant flux in ambient sediment. He thinks this fauna is unlikely to be sensitive to the indicative level of sediment increase above ambient levels. We agree.

[197] Mr Handyside expressed some general concern about possible adverse effects of flocculation materials escaping from the sedimentation ponds. Mr Poynter has prepared a draft report for the ARC on the ecotoxicological and environmental risk of releases of residual coagulants and flocculants from sedimentation ponds. He said that his conclusion from that work was that there is only a very small risk and if there were any impacts they would be low and not significant. The nature of the materials mean that they rapidly attach to solid particles and settle out. Their toxicity while unattached to particulate matter is usually related to low pH levels that are not present in streams or the sea. Bioaccumulation is also not thought to be a risk. We have not received any evidence showing there is likely to be adverse effects. On the contrary there are significant benefits from the use of flocculation and provided the treatment is undertaken in a way that minimises overdosing we find the proposal acceptable.

[198] Sediment will be generated within the works predominantly from earthworks, culverting and dewatering or groundwater control. Mr Chester advised that earthworks would be staged so that run-off from earthworked areas and water from dewatering activities will be directed to sediment control devices. He said this would ensure that groundwater and surface water removed from excavations during construction would not result in sediment discharge. We conclude from this evidence that it is practicable to control all stormwater and ground water emanating from the site during construction and to treat it before discharge. We therefore require that all sediment-contaminated water from the works is to be treated in sedimentation ponds designed to cope with the 20-year storm and that all sedimentation ponds are to be fitted with flocculation treatment. An appropriate condition to this effect is to be attached to the relevant permits. It is our view that this requirement represents the best practicable option to prevent or minimise any actual or likely effect on the environment of the discharges. In the circumstances of this case it is the most efficient and effective means available.

[199] Greenbelt and in particular Mr Handyside have criticised the general nature of the conditions designed to control the discharge of sediment. Compliance with the ARC technical publication TP90, preparation of an erosion and sediment control plan and preparation of an environmental management plan are all required. They have specifications and requirements and an officer of the ARC can certify whether or not they have been complied with. However they refer largely to options and techniques for the control of sediment discharges and leave a significant discretion as to the acceptability of the details. We agree this is not satisfactory. At the same time we acknowledge that the ongoing designs for the works, the future methodology to be adopted by the contractors and the general nature of the “requirement process” make the formulation

of precise well-defined permits difficult. In this case we consider a standard for the control of sediment discharges that is effective in protecting the environment from adverse effects and which is clear, practicable and enforceable is required in addition to the general requirements mentioned already. Imposing the condition requiring all sediment-laden water from the works to be treated in sedimentation ponds with flocculation treatment before discharge meets this need for adequate control and precision.

[200] Greenbelt submitted that conditions should be imposed whereby Transit became responsible for fish recovery programmes should sedimentation occur. We do not consider the species occurring upstream of the waterfall would warrant imposition of such a condition. With the conditions now to be imposed concerning sedimentation, we do not consider sedimentation downstream of the waterfall is likely to occur to a degree where damage to fish life would be significant.

#### *Final conclusions*

[201] As will be seen from the foregoing parts of this decision, the appeals of AVC and Greenbelt have been dismissed and the decision of Transit largely confirmed.

[202] This leads us to the question of conditions. Greenbelt delivered a comprehensive set of conditions containing some major and minor amendments. The major amendments related to conditions which would place Greenbelt in control as a peer review or as a member of participatory bodies concerned with the policing of conditions. Other suggested conditions required Transit to pay considerable sums of money to a trust fund to be administered by Greenbelt for the purpose of allowing largely the Mt Roskill community to beautify their suburb as a mitigating measure for the motorway concept.

[203] It may be appropriate at this stage to remind public interest groups, who undoubtedly have an important function as a public watchdog, to realise that they are not the elected representatives of the ARC or the ACC or indeed any other territorial authority. Once issues have been decided in terms of the RMA, it is most certainly not a function of this Court to then effectively tell territorial and regional authorities that they are not trusted by the community as a whole, therefore a watchdog with some 800 members should be entitled to substitute itself for the elected representatives of the community and for all those who hold delegated authority from those councils.

[204] It is furthermore completely beyond the powers of this Court to constitute Greenbelt a trustee for the expenditure of public funds or as an adviser to other bodies which may have that power. Quite apart from that it would be impossible to frame a condition setting up the terms of such a trust and in particular in setting up the terms of such a trust we would have no power to set up a complicated system whereby the trust should be insured against defalcation or mismanagement. The whole attitude of Greenbelt was one of arrogance in assuming that it had the support of the majority of the electors and that those electors would place confidence in the committee of Greenbelt (who are unknown to this

Court) to carry out territorial and regional functions for which they are not elected.

**[205]** Furthermore in relation to the funding sought by Greenbelt for mitigation measures, it must be remembered that this Court has no power to order payment of money to anyone in terms of the RMA, leaving it to the discretion of the recipients to decide what expenditure is appropriate to mitigate the effects of a public work. That is the reason why the ARC has quite properly required Transit to carry out remedial works up to a specified amount of money not to pay money to the ARC. In the absence of detail concerning those works, the vires of that condition may also be in doubt but we record that Transit chose not to argue the legality of the condition but was prepared to accept that it was appropriate for it to assume responsibility for mitigation works, the extent of that mitigation being set by a monetary cap.

**[206]** Greenbelt attacked the quantum of the limit set and maintained that the community of Mt Roskill represented by those who might be more or less directly affected by the motorway should receive compensation in some form or another, presumably by way of physical mitigation measures designed to improve the environment. That overlooks the fact that the assessment of the quantum of compensation of this type is not a function of the Environment Court in its RMA jurisdiction, being more a matter for the Valuation Court which is sometimes chaired by an Environment Judge with valuation jurisdiction.

**[207]** We do not intend to develop this further save to say that Greenbelt did not appear prepared to concede that there may be many residents in the Mt Roskill area who would welcome a motorway which would be beneficial to them in commuting to and from Auckland central and other parts of the city and beyond without the traffic delays presently experienced and predicted to increase in the future without major improvements to the Auckland traffic function.

**[208]** Although not specifically given in evidence, we suspect that much of the evidence given by Greenbelt is influenced by a perception that motorways are not an accepted form of urban development in this day and age. We do not intend to debate that issue save to say that there are merits on all sides of the transport argument which are for regional and territorial authorities to resolve. The regional and territorial authorities in Auckland, as evidenced by their respective plans and policy documents, favours the arterial/motorway approach. This is supported by Transit. To then seek compensation from the roading authority for carrying out the policies and objectives of those charged with the preservation and enhancement of public amenities such as a transport system would not only be ultra vires this Court but would punish those authorities for creating the transport amenities contemplated by the plan.

**[209]** An updated set of conditions acceptable to the parties other than AVC and Greenbelt were presented to us. In the course of this decision we have made some suggestions which are to be incorporated in conditions placed before this Court, preferably by consent. The two major issues are that the aesthetic treatment of the vertical wall at the base of the Mt Roskill volcanic cone is to be expressed with a little more precision in order that those concerned with its construction are in the guise of a

certifier rather than a decision-maker. The cosmetic treatment of the wall was to be in accordance with the volcanic nature of the materials through which it passes.

[210] In relation to sedimentation, there are to be conditions to ensure that all run-offs containing sediment are to be directed to flocculation treatment ponds. In that regard we may point out that although recognised in some circumstances by the ARC we do not consider hay bale diversion mechanisms to be particularly appropriate in the context of this major work unless related to minor catchments unlikely to carry significant run-off.

[211] Transit, ARC and ACC have ten working days from the date of this decision to produce a final set of conditions to this Court. AVC and Greenbelt have five working days from the date of service of those amended conditions upon them to respond. A further response from AVC and ARC will only be required if requested by the Court.

[212] The conditions contained in the consent orders lodged with the Court are acceptable.

#### *Costs*

[213] In respect of AVC, we do not require any submissions concerning costs. AVC have adopted a responsible approach to the aspects which concern them and presented to this Court evidence by witnesses well qualified to speak on an issue of national importance. The approach of AVC was accepted by Transit, ARC and ACC who were all of the view that if at all possible the motorway carriageway should be moved away from the Mt Roskill cone. The argument was essentially "How far?" It was perfectly proper to ask this Court to finally balance that evidence.

[214] In respect of Greenbelt, we consider the evidence presented could have been much shorter if directed at relevant issues. We furthermore consider that many of the points raised by Greenbelt could have been earlier resolved and, as a result, the time it took to hear this case was probably extended by some 25 per cent. If any of the parties intend to apply for costs against Greenbelt, we require that application to be made within ten working days of the date of this decision and Greenbelt will have an equal time to reply. At that stage, unless requested by the Court, we do not wish any further submissions from other parties. If any application is made for costs, we ask the parties concerned with that application to remember that some public interest aspects raised by Greenbelt were relevant and important, therefore we are not receptive to cost applications seeking an award directed at solicitor/client or directed to the total time of hearing.