

IN THE MATTER of the Resource Management Act 1991

AND Notices of Requirement by **AUCKLAND
TRANSPORT** pursuant to section 168 of the
Act to the Auckland Council relating to the
proposed City Rail Link in Auckland

**EVIDENCE OF VAUGHAN SMITH ON BEHALF OF MEDIAWORKS NZ LIMITED (IN
RECEIVERSHIP) AND TVWORKS LIMITED (IN RECEIVERSHIP)**

Dated: 26 July 2013

INTRODUCTION

Qualifications and Experience

1. My name is Vaughan Arthur Smith. I hold the qualifications of Master of Planning Practice (First Class Honours) and Bachelor of Engineering (Civil) from the University of Auckland. For the past six years I have been a Director of Bentley & Co. Limited, town planning and resource management consultants.
2. Since the completion of my MPlanPrac degree in 2004, my experience as a planner has encompassed a wide range of projects with an emphasis on the preparation of resource consent and plan change applications for retail and mixed use development. In 2007 I was accepted as a full member of the New Zealand Planning Institute.
3. Prior to becoming a planner I worked for 15 years as a manager on major property development projects. For much of that time I worked on the initial phase of projects, with RMA processes playing a large part. The most significant project in this regard was the redevelopment of Sylvia Park, Mount Wellington where a large component of my role was the management of the rezoning process for the site over a three and a half year period. My experience managing development projects has provided a strong foundation for my current career as a planner.
4. In preparing this evidence, I have complied with the code of conduct for Expert Witnesses in the Environment Court Consolidated Practice Note. This evidence is within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of Evidence

5. I appear in connection with submissions lodged by MediaWorks NZ Limited (In Receivership) and TVWorks Limited (In Receivership) (collectively referred to in this statement as “MediaWorks”) in relation to Notices of Requirement by Auckland Transport relating to the City Rail Link (“CRL”) project (“the Project”). MediaWorks is located on a property at 2 and 3 Flower Street, Eden Terrace (“the Site”).
6. In my evidence I will firstly summarise the key attributes of the MediaWorks operation on the Site and the submissions made by MediaWorks. I will then

discuss the adverse effects of the Project on the MediaWorks operation and other elements of s171 of the RMA. Finally, I will discuss the response of Auckland Transport in relation to those potential effects, and the appropriateness of that response, and I will conclude with my view as to the most appropriate way of addressing potential adverse effects on MediaWorks.

7. In preparation for writing this statement of evidence I have reviewed those sections of: the Notices of Requirement and the accompanying reports, the Council's s42 report, and evidence prepared on behalf of Auckland Transport, that are relevant to the concerns of MediaWorks. I have also reviewed the evidence of all of the witnesses presenting evidence on behalf of MediaWorks to this hearing. I am familiar with the site and its environs.

Key Conclusions

8. I have reached four broad conclusions with this statement of evidence:
 - Because the Notice of Requirement has been prepared and notified at a very early stage of the Project, there is a very large degree of uncertainty in terms of construction methodology and programme in relation to the proposed works in the vicinity of MediaWorks.
 - This means that any assessment of adverse effects on MediaWorks is also subject to a high degree of uncertainty. However, from the assessments carried out by MediaWorks' technical advisors it is very likely that such effects, particularly during the construction stage of the Project, will be significant and will severely disrupt the operations of MediaWorks.
 - The proposed Environmental Management Framework will not provide certainty for MediaWorks in relation to mitigation because, until investigation work and design associated with the Project has progressed and much more detail is available, Auckland Transport cannot provide an assurance that the required degree of mitigation will be possible.
 - The total relocation of MediaWorks is the most appropriate way to address the potential significant effects on their operation and, failing that, it should be recommended that the relevant requirement be withdrawn.

MEDIAWORKS OPERATION

9. The nature of the MediaWorks operation is described in the evidence of Peter Crossan and Roger Randle and, of particular relevance to my evidence, I note that:

- The entire MediaWorks Auckland based television operation is located at the Site, including computers that control the operation nation-wide;
- MediaWorks is a technology based business utilising more than a thousand individual items of electronic equipment, many of which are particularly sensitive to environmental factors such as noise, vibration and dust.
- In relation to noise and vibration, very narrow tolerances apply to the television studio operations on the site.
- The operation occupies several contiguous buildings on the site built over a number of years utilising differing design and construction methodology.
- All of the MediaWorks operations are consolidated within the Flower Street premises, which enables all aspects of the company's operations to work cooperatively and to respond quickly to any issues that require input from more than one department.
- Approximately 400 people work on the site.
- The television studios typically operate 4.30am and 11.00pm Monday to Friday 10.45am to 7.00pm on Saturday, and 9.45am to 7.00pm on Sunday.
- The studios need to be capable of operation 24 hours per day, however, to address breaking news. An example of this is providing coverage of the Christchurch earthquake.
- Vehicle access is required 24 hours each day for camera crews and 167 parking spaces are provided for staff on the Site and other properties nearby.

MEDIAWORKS SUBMISSION

10. In its submission on the Notices of Requirement, MediaWorks states that the scale and severity of the adverse effects on its activities will be so significant that the only appropriate course of action is for Auckland Transport to compensate MediaWorks by way of relocation of the facilities which are currently located immediately adjacent to the proposed Mt Eden Worksite.
11. The television studios on the Site are particularly sensitive to noise and vibration effects. They have been constructed in a part of the MediaWorks site that is relatively free from traffic and other noise disturbance and have been developed in a way that minimises interference by vibration. The facilities are therefore isolated from the relatively low level of disturbance currently found in the area.
12. MediaWorks considers that the proximity of the Project works to the television studios will result in a level of vibration and noise that will render the studios unusable during construction and, potentially, when the CRL is operational. In

addition, the large number of items of electronic equipment located in the studios and elsewhere in the premises are sensitive to vibration and dust and are likely to be adversely affected by the proposed excavation and tunnelling activities, as well as by future train movements.

13. Due to the long hours of operation of the MediaWorks facilities, effects generated by construction activities cannot be avoided because there is only a limited window of opportunity when construction works can be undertaken without interrupting the ability to broadcast from the Site. This window is not available at all times due to the need to broadcast over the full 24 hour period for a breaking news story.
14. There do not appear to be any alternative construction techniques for work that must take place in the vicinity of the studios and temporary relocation of the studios is not technically feasible or operationally desirable.
15. In the absence of certainty that the adverse effects of the construction and operation of the CRL can be mitigated to the level required to enable MediaWorks to continue to operate from the site, MediaWorks considers that permanent relocation is the only satisfactory option if the designation is approved. In the absence of confirmation that equivalent reinstatement will be undertaken, MediaWorks asks that withdrawal of the requirement be recommended because it cannot avoid, mitigate or remedy significant adverse effects on the operations and assets of this major broadcasting network provider.

ADVERSE EFFECTS ON MEDIAWORKS

16. Section 171 of the RMA requires a territorial authority to consider the effects on the environment of allowing a requirement. This is the primary issue required to be addressed by s171 and other matters, such as policy statements and plans, are to be had regard to in considering those effects. Despite the degree of support there may be in the various planning documents that are required to be considered for the overall requirement, it is my view that if adverse effects are found to be so significant that they cannot be appropriately remedied or mitigated, the requirement, or part of the requirement, under consideration should not be recommended for confirmation.
17. In relation to the MediaWorks site, adverse effects are likely to be generated during both the construction phase and the operational phase of the Project. During the construction phase, adverse effects are likely to be generated by activities on the adjacent worksite and from the tunnelling operation (from blasting

and mining). During the operational phase adverse effects will be generated by the trains running on the CRL in close proximity to the MediaWorks studios.

Terminology

18. In the application documents and in the evidence of Auckland Transport's witnesses, effects generated during the construction phase are termed "temporary" while those generated during the operational phase are termed "permanent". While "temporary" is an antonym of "permanent", I consider that the use of these terms downplays the adverse effects, which mostly occur during the construction phase of the project, and inflates the positive effects which relate solely to the on-going operation of the CRL.
19. The construction period of the project is anticipated to be 5 – 6 years and, in my opinion, effects over such a period of time are not all temporary. The duration of the project is such that some of the effects from construction activities will have a permanent, irreversible, impact. Examples of this include business operations directly impacted by construction related effects or by changed customer behaviour to the extent that the business closes; property owners being forced to accept a financial loss to move away from disruptive works because of short-term decrease in property values; and the reputation of businesses being damaged due to an inability to provide a consistently high level of service or output due to effects taking place over a period of years. It seems to me that the use of the term "temporary" to describe all construction related effects is disingenuous and designed to place a positive spin on the overall effects of the Proposal. I consider that it would have been more appropriate to use the terms "construction effects" and "operational effects" in the Notice of Requirement instead of "temporary" and "permanent".

Anticipated Construction Activities

20. I have reviewed the evidence of Bill Newns and identified a number of construction related activities that may generate adverse effects on MediaWorks. It is unlikely that this is a full list but it reflects the variability of the activities that will take place around the MediaWorks property.
21. Enabling works for the Project include the diversion of the 1.95m diameter Nikau Street stormwater pipe and the construction of the Mt Eden Worksite. The latter is likely to include the demolition of at least 30 buildings and excavation and siteworks to form a suitable platform to accommodate the activities that will be located there. Effects will be related to the extent and duration of these enabling

works and the methodology utilised. The enabling works are not described in detail in the documentation I have reviewed. My expectation is the enabling works will generate adverse traffic, noise and dust effects and will have an inevitable adverse impact on the amenity of the area as perceived by workers, residents and visitors.

22. As described by Bill Newns, a combination of mined tunnels, shafts, cut and cover tunnels and trenches are required to the south of the MediaWorks site¹. Due to the complexity of both the rail geometry and ground conditions in this area the location of the tunnel portal, and the construction methodology and duration, are uncertain at this time². Since notification of the NoR it has been determined that there are basalt flows in this area which may extend beneath the excavations required for the CRL. Figure 1 in Bill Newns' evidence shows the "interpreted" extent of the basalt and, presumably, the actual extent of basalt in the area of the works could be greater or less than this diagram indicates. Given the presence of basalt, the formation of a trench through this rock is likely to involve a combination of blasting and the use of heavy excavation equipment.
23. Beneath the MediaWorks building, the tunnel will be mined although there is no certainty as to the equipment to be utilised and hence the effects and the duration of the work.
24. It is my understanding that, the Mt Eden Worksite will be operational throughout the whole project duration of 5 – 6 years. A list of construction materials and components likely to be stored at the worksite, and the activities that will take place there, has been provided in Bill Newns' evidence. However, these have not been described in detail and the effects associated with the operation of the worksite have not been assessed.
25. Other activities in the vicinity of the worksite and of MediaWorks will include:
 - truck movements associated with excavation (presumably between the current estimate of 400 and the previous estimate of 600 trucks per day, or 800 – 1200 truck movements per day);
 - truck movements associated with the transport of building materials and components;
 - road closures and day to day disruption to property access including, it appears, the complete closure of Nikau Street along the southern façade of the MediaWorks building (and the consequential loss of vehicle and fire accesses);

¹ Evidence of Bill Newns, paragraph 157

² Ibid, paragraph 162

- the use of the tunnel constructed under the MediaWorks building for the removal of spoil from tunnelling operations to the north of the site; and
 - the use of the tunnel for transporting the TBM, tunnel segments and other equipment, and materials to the tunnelling operations.
26. Due to the preliminary stage of design of the project, and the lack of detailed investigative work, there is such a large degree of uncertainty associated with each of these activities that it is extremely difficult to ascertain the magnitude and impact of adverse effects on MediaWorks' operation. Nevertheless, the following assessments have been made on the basis of the information available.

Construction Effects - Noise

27. Potential noise effects during the construction phase of the Project have been assessed by Nevil Hegley on behalf of MediaWorks. He has considered what noise standards may be appropriate and determined that 25dBA is the appropriate sound level that should apply to the studios operated by MediaWorks.
28. Because the construction methodology in the vicinity of MediaWorks is uncertain, the acoustic effects are also uncertain. Mr Hegley considers, however, that these effects are likely to be significant.
29. Auckland Transport has proposed Condition 21A which provides for a collaborative approach to determine 'reasonable' noise (and vibration) standards for MediaWorks and to agree on how such effects might be mitigated. However, this provides no certainty that, during construction, MediaWorks' business will be able to continue operating on the site. The key point here is that, once construction has started, the opportunity to relocate MediaWorks without severe disruption to either the CRL construction programme or the MediaWorks operation will be lost.
30. Craig Fitzgerald has stated that "short term exceedances of the Construction Noise standard limits are common (and typically unavoidable) for most large scale inner city projects"³. That statement may be correct and I consider that it is equally likely to apply to the more stringent construction noise limits that are likely to be determined through the implementation of proposed Condition 21A. Mr Fitzgerald goes on to say that "such exceedances are reasonable if they are of limited duration and BPO measures are implemented to avoid, remedy and mitigate the noise emissions as far as practicable"⁴. I do not agree that, in the case of MediaWorks, any such exceedances would be reasonable because of the severe consequences for the operation of the television studios.

³ Evidence of Craig Fitzgerald, paragraph 36

⁴ Ibid

Construction Effects – Vibration and Regenerated Noise

31. Dr John Heilig has presented evidence on behalf of MediaWorks in relation to vibration effects generated by the construction and operation of the CRL. As with the other assessments of effects in relation to the Project, Dr Heilig's assessment has been hamstrung to some extent by the lack of definitive information provided by Auckland Transport. However, he has considerable experience in relation to large scale tunnelling projects and this experience has informed the assumptions he has made.
32. During the construction phase of the Project, Dr Heilig considers that "on the basis of the modelling completed for the current alignment, there are considered no construction methods that will comply with the requirements of low vibration that are necessary for an operating broadcast studio". These vibration effects could potentially be of 20 weeks duration or longer, depending on the construction methodology selected for tunnelling under MediaWorks.
33. Auckland Transport has proposed that effects will be managed through the implementation of a construction management plan. However, as Dr Heilig notes, although this approach may be appropriate in relation to residential properties, MediaWorks requires a quiet and vibration-free environment to conduct its business. There is just not enough information in the documentation filed by Auckland Transport to determine whether the construction activities can coexist with the operation of a business such as MediaWorks.
34. In relation to blasting, studies will be required to ensure that there will be no detrimental effect on the sensitive equipment within the building, including the equipment associated with the operation of the television studios.
35. Dr Heilig considers that if, as he considers is likely, the proposed construction methods cannot comply with vibration and regenerated noise criteria consistent with requirements of an operating broadcast studio, other alignments for the CRL should be considered to reduce or eliminate the need to tunnel under MediaWorks. If this is not possible, he considers that the relocation of MediaWorks should be considered.
36. Mark Simpson has carried out an assessment of regenerated noise associated with construction activities on behalf of MediaWorks. His conclusion, on the basis of modelling, is that the regenerated noise in the ground floor television studio that will be created by the construction works will be inconsistent with the operation of the studio.

37. Jon Styles, in his peer review of the noise and vibration assessment on behalf of the Council states:
- “With respect to the TV3 studios, it is likely that carrying out the works as proposed whilst maintaining the successful operation of the studio will be impossible. Due to the proximity of the alignment to the studio it is likely that any alternative construction methods that might comply with a suitable vibration limit to allow TV3 to continue operating will be impracticable due to delays and cost.”⁵*
38. On behalf of Auckland Transport, James Whitlock deals with the effects of vibration on MediaWorks’ building and operation in paragraphs 126 to 147 of his evidence. Mr Whitlock proposes that these effects be dealt with by consultation, monitoring and the offer of mitigation and/or management strategies.⁶
39. Given the likelihood that those effects cannot be satisfactorily mitigated, it is my opinion that the risk of severe and prolonged impact on the operations of MediaWorks is such that this sort of approach is unacceptable.

Construction Effects - Dust

40. Any business is susceptible to dust infiltrating a building and causing sensitive equipment to malfunction. For a business utilising technology to the extent that MediaWorks does this is potentially a major problem. With the main worksite being immediately adjacent to MediaWorks it is inevitable that, no matter how diligent the selected contractor is, there will be dust generated for a large proportion of the 5 – 6 year duration of the Project.
41. This is, however, an adverse effect that could potentially be mitigated to a satisfactory level by making modifications to the doors and windows of the MediaWorks building and to the air conditioning and ventilation systems. If the confirmation of the designation is recommended, I consider that this matter could be addressed by way of a condition requiring Auckland Transport to make the MediaWorks buildings and external equipment dustproof prior to the commencement of works in the vicinity of MediaWorks.

Construction Effects - Transport

42. In relation to MediaWorks, the potential direct transport effects on its operation relate to truck movements and disruption to the surrounding road network from the establishment of the Mt Eden Worksite and from the road/rail overbridge construction or modification on Mt Eden Road and Normanby Road. These

⁵ Review of Noise and Vibration Effects during Construction by Jon Styles, page 10

⁶ Evidence of James Whitlock, paragraph 146

aspects of the construction phase of the project are described in the evidence of Bill Newns and Ian Clark. In addition, MediaWorks will be affected by the general traffic congestion in the Eden Terrace as a flow-on effect of disruption to the wider road network generated by the construction of the CRL.

43. The Mt Eden Worksite is located immediately adjacent to the MediaWorks site and will, as I understand it, be operational for much of the 5-6 year Project construction period. The large number of daily truck movements will be the source of noise, dust and traffic congestion. Truck movements therefore have the potential to directly affect MediaWorks. I note, however, that Ian Clark in his evidence has recommended the consideration of alternative methods for the removal of tunnel spoil⁷. At the Mt Eden Worksite the feasible alternative is the removal of some spoil by rail. If it is recommended that the designation be confirmed, I consider that a condition of consent should be imposed that presumes this method will be utilised, with road transport as the alternative should rail prove to be impractical.
44. I note that the proposed location of the Mt Eden worksite will require both permanent (for the duration of the construction phase of the Project) and “temporary” road closures in the Eden Terrace area. As has been identified in the evidence of Peter Crossan and Anatole Sergejew (on behalf of MediaWorks), road closures will have a significant impact on MediaWorks’ operation. Mr Sergejew has also highlighted the fact that the fence that is shown on the plan of the Mt Eden worksite to be located on the northern side of Nikau Street will have major implications for access for MediaWorks.
45. Mr Segejew has attempted to assess the implications for the operations of MediaWorks of increased traffic congestion on adjacent arterial roads but has found it impossible to comment on this because of a lack of information in the documents available for review.
46. The transport effects described in this section of my evidence are potentially significant for MediaWorks. Auckland Transport is relying on future consultation and management plans to determine appropriate mitigation measures but I consider that this mechanism is unsuitable because MediaWorks will have no recourse under the RMA if the effects cannot be mitigated sufficiently to allow MediaWorks to operate without restriction.

Construction Effects – Interruption to Network Utility Services

47. Particularly in the early stages of construction, there will be a heightened risk of interruption to network utility services. Electrical and telecommunications are

⁷ Evidence of James Whitlock, paragraph 45(b)

critical services to MediaWorks and the risk of interruption to these services has not been assessed with other potential effects in the AEE. Although MediaWorks has an emergency generator, it is not capable of supplying all of the electrical needs of the operation. Furthermore, unless access is available to refuel the generator it is only viable to operate it for a limited time. Alternative telecommunications arrangements can also be made but these are invariably of an inferior standard and not as reliable as the fixed lines that are currently utilised. The risk of interruption to these services is unacceptable to MediaWorks and works putting services at risk should be carefully controlled by way of condition.

The Operation of the CRL

Operational Effects – Vibration and Noise (including regenerated noise)

48. In order to mitigate adverse vibration and noise (including regenerated noise) effects when the CRL is operational, James Whitlock has recommended “preliminary mitigation” in the vicinity of MediaWorks of a “floating track slab within 15 metres of the TV3 building and resilient rail fasteners or continuously welded rail out to 30 metres either side of the building”⁸. I note that these features have not been offered by Auckland Transport as confirmed mitigation measures and are not required by proposed conditions of consent.
49. Mr Whitlock also states that “management of wheel and track maintenance programme is strongly recommended”⁹. I take the latter to mean that, in order to provide a degree of certainty that noise and vibration will fall within limits acceptable for the MediaWorks operation, the maintenance programme is essential.
50. Mark Simpson has confirmed it is likely (with the implementation of the design features recommended by Mr Whitlock applying to the tracks beneath MediaWorks) that the operation of the CRL will comply with the noise level goal of 25dBA for the television studio. Compliance is likely to be marginal, however, and reliant on all components of the CRL (trains and tracks) being maintained in an “as new” condition¹⁰. If the CRL is not maintained to a satisfactory standard, the regenerated noise within the MediaWorks studio generated by the operation of the CRL is likely to exceed the required standard “by a wide margin”¹¹.
51. It seems to me that it is inevitable that noise and vibration from the operation of the CRL will increase over time and that there is only a small margin of error in relation

⁸ Evidence of James Whitlock, paragraph 77

⁹ Ibid, paragraph 78

¹⁰ Evidence of Mark Simpson, paragraph 43

¹¹ Ibid, paragraph 48

to the acceptability of effects on MediaWorks. If that is the case it appears that there is little chance that MediaWorks will not be adversely affected to an unacceptable degree by the future operation of the CRL.

Lapse Period

52. A 20 year lapse period is proposed for the designations for the Project and because MediaWorks is a technology based operation this poses particular issues.
53. Although the extent is uncertain, the MediaWorks operation will be subject to levels of vibration during both construction and the operation of the CRL. In the construction phase, assessments reported in the evidence of MediaWorks' technical experts indicate that those effects will be unacceptable for the operation of the television studios. With the operation of the CRL, vibration effects are likely to become unacceptable for the operation of the television studios over time, even if they are initially acceptable.
54. Given the uncertainty around the potential significant effects associated with the construction and operational phases of the Project, a 20 year lapse period would effectively mean that for up to 20 years following the designation becoming operative, it would be very risky for MediaWorks to upgrade the facilities at Flower Street, or install better but more sensitive equipment.
55. For a technology company such as MediaWorks that is an unacceptable situation. In effect, MediaWorks could be left with 2013 technology as technological change occurs in the television production industry and its competitors utilise the best and most up-to-date technology available.
56. The expected rate of technological change can be illustrated by reviewing the past 20 years in terms of technological advance that consumers are familiar with. Twenty years ago there were no tablet computers, smart phones or flat screen televisions and DVD's hadn't been invented. Mobile phones had just moved on from the 'brick' style, and laptop computers and digital cameras were just becoming readily available. There have been enormous technological advances over the past 20 years and the trend indicates that the rate of technological change will steadily increase over the next 20 years.
57. Chris Meale provides a project timeline demonstrating that the CRL may be operational by May 2021. That project timeline doesn't support a 20 year lapse period and, even if the government preference of a 2020 start is implemented, the CRL would be operational by 2025 or 2026. This indicates that the lapse period should be no more than 15 years.

Concluding Comments on Effects

58. My conclusion, based on the evidence I have reviewed, is that there is no certainty that any of the adverse effects on MediaWorks from the construction and operational phases of the Project can be mitigated while MediaWorks remains in occupation of the building at Flower Street.
59. The building is not suitable for retrofitting to mitigate the potential adverse effects on the television studios. The need for the studios to operate over a period of 19 or more hours per day means that relocation of MediaWorks once the works have started is not a viable solution. The technical experts providing evidence on behalf of MediaWorks are doubtful that vibration and regenerated noise effects, in particular, can be satisfactorily mitigated.
60. The areas of uncertainty with the assessments of effects in relation to MediaWorks include:
- The construction methodology and hence the type of equipment that will be utilised for the construction of the Project and the duration of individual stages;
 - Details of the activities that will take place at the main worksite at Eden Terrace;
 - The geology of the ground underlying the MediaWorks site;
 - The performance of the combination of buildings on the site in relation to vibration and regenerated noise;
 - The susceptibility of the multiplicity of equipment within the building to damage or operational underperformance from vibration or dust damage; and
 - The continual reliance on the maintenance of the lines and rolling stock once the CRL is operational to avoid significant effects in relation to vibration and regenerated noise in circumstances where there is no margin of error even if all of the potential mitigation measures are implemented.
61. In light of this uncertainty, and the extreme consequences of not achieving satisfactory levels of effects, it is my opinion that either MediaWorks must be relocated or the withdrawal of the relevant notices of requirement should be recommended.

AUCKLAND TRANSPORT'S PROPOSAL FOR ADDRESSING ADVERSE EFFECTS

Management Plans

62. Auckland Transport proposes to utilise an Environmental Management Framework ("EMF") for the Project in order to manage the effects of construction and of the

on-going operation of the CRL. This is to be submitted as part of an Outline Plan required for work to be carried out under a designation.

63. The EMF is described in Appendix 1 to the Notices of Requirement for the CRL as “an overarching framework within which mechanisms are developed to mitigate actual and potential adverse effects from the construction, operation and maintenance of the CRL” in order to “ensure that any adverse effects from the construction, operation and maintenance of the CRL are avoided, remedied and/or mitigated throughout the project lifecycle”.
64. In his evidence on behalf of Auckland Transport, Bryce Julian states that the EMF will also provide for “communications with landowners and affected parties to facilitate the management of effects” and that the process provides the “mechanism to review the detail of the works that are proposed, to check compliance with conditions and to request any changes before construction is commenced”¹².
65. As explained in Appendix 1, the EMF is to comprise a number of documents with an Environmental Management Plan (“EMP”) being the principal document. The EMP will in turn be supported by a number of other plans. The most relevant of these in relation to MediaWorks are the Construction Environment Management Plan (“CEMP”) and Operational Compliance Plan (“OCP”). These plans (and others) are addressed in the conditions proposed by Auckland Transport.
66. Mr Julian describes the use of management plan frameworks as “a system often employed for managing the effects of large projects where the nature and extent of those effects and/or methods proposed to avoid, remedy or mitigate them is uncertain or could be variable”¹³. He goes on to state that such frameworks are commonly used as a tool for managing effects, that they are “recognised as appropriate and generally reflect good practice”, and that they are particularly useful and practicable when the construction of a project is some time in the future.¹⁴
67. I agree that management plans are commonly utilised as a technique with approvals under the RMA because, at the time an application is made, the details of construction methodology have very often not been determined. My experience with projects utilising this technique is confined to resource consents where the management plans are subject to Council approval and the effects the management plans relate to are of a general nature and not specific to a particular

¹² Evidence of Bryce Julian, paragraph 18

¹³ Ibid, paragraph 117

¹⁴ Ibid, paragraph 118

affected party. In my experience, adverse effects on an individual affected party would typically be dealt with by way of specific condition rather than by a management plan to be approved in the future without the involvement of an affected party.

68. There are two key differences between the EMF process proposed for the Project as it applies to MediaWorks and the construction management plans I am familiar with.
69. Firstly, with a resource consent the Council invariably retains the right of approval of a management plan to manage effects and, typically, work cannot commence until the Council is satisfied with the plan. I have not been able to find a corresponding condition requiring Council approval of the CEMP in the schedule of conditions proposed by Auckland Transport. Furthermore, in respect of an Outline Plan of Works the Council can only “request” changes and the Council has to take the matter to the Environment Court if the requiring authority does not agree to make a change. There is no mechanism in the RMA for an affected party to challenge a decision of the Council or of the requiring authority in this regard. Given that Auckland Transport and the Council are related parties, I consider it unlikely that Environment Court action would be taken by Council against its subsidiary in relation to the concerns of a single affected party.
70. Secondly, the construction management plans that I am familiar with typically relate to effects of a general nature rather than significant, site specific effects on a particular party. In the case of MediaWorks, while there is a high degree of uncertainty in relation to the activities that Auckland Transport and its contractors will undertake, it is quite apparent (and acknowledged by Auckland Transport) that MediaWorks is a very sensitive activity. Potentially, the effects could be so significant that one of New Zealand’s major free-to-air broadcasters could be forced to cease operating or to operate at a standard that is unacceptable in the competitive broadcasting industry.
71. While the proposed EMF provides a large degree of flexibility for Auckland Transport and its contractor, it provides little certainty for those affected by the Project. The CRL is a very large project and I expect there will be immense pressure for the Project to be delivered on time and within budget. With the applicant and the consent authority being related parties in this case I do not consider an EMF will provide sufficient protection for a third party that is significantly affected by an aspect of the Project and the mitigation of those effects should therefore be the subject of specific conditions of consent and not left to a later date with management plans when there is no recourse. In my opinion it is

not acceptable when potential adverse effects are significant to deal with uncertainties by a management plan that the affected party has no input into.

Conditions

72. In his evidence, Bryce Julian states that the conditions applying to a designation for the CRL will create an “effects envelope” and the plans prepared under the EMF for an Outline Plan will demonstrate compliance of the project with the effects envelope. He notes that the Outline Plan process is “not a duplicate consenting process” but is akin to “demonstrating compliance with District Plan rules”¹⁵.
73. Because design has only been progressed to an early stage, I do not consider that it has been possible to carry out a robust assessment of the potential adverse effects of the Project and the so-called “effects envelope” cannot therefore be relied upon. Nevertheless, I have reviewed the conditions I consider most relevant to MediaWorks and provide my comments below.
74. Condition 11 provides for “communication and consultation” with “notable noise and vibration receivers”, including television studios. Clearly, MediaWorks is one of these receivers. The condition requires communication and consultation to focus on a “collaborative approach to manage the adverse effects from construction noise and vibration while works are undertaken in the vicinity”. While the condition requires communication with the likes of MediaWorks, in itself it gives no comfort to MediaWorks that adverse effects will be addressed to its satisfaction.
75. Condition 16 identifies matters to be addressed in a CEMP for the management of effects of construction of the CRL on the road network. The provision to be made for vehicle access to private property and the proposed requirements for “temporary closure” are unacceptable to MediaWorks for two main reasons. Firstly, 24 hour access to and from the site is required for vehicles used by camera crews to attend breaking news stories remote from the site. Secondly, for reasons of safety, security and convenience, access is required at all times MediaWorks is operating to parking spaces utilised by staff, whose work day may begin at 3am or finish beyond 11pm. Condition 16 places very little actual requirement for on Auckland Transport to make alternative arrangements that are suitable for an affected party and, although there is an implied limit of 72 hours (3 days) on each “temporary closure”, there is no limit on the number or frequency of each one. Practically there is virtually no carpark capacity in the vicinity of MediaWorks’ site that could be used to house its staff and the condition may prove to be no more than empty words.

¹⁵ Evidence of Bryce Julian, paragraph 121

76. In Condition 20, the matters to be addressed in the CEMP for the management of adverse effects on the transport network specific to NoR 6 are set out. Part (b) of this condition deals with disruption to the use of private property, including that with access onto Korari Street, Flower Street and Nikau Street. MediaWorks takes its access from each of these streets. The condition requires communication and consultation but landowners have no choice but to accept the requirements of Auckland Transport with no means of recourse. Because of the importance of vehicle access to MediaWorks' operations, it is essential that any road closure is carried out only if alternative arrangements can be made to the satisfaction of MediaWorks. In practice, that is unlikely to occur if the closure will remove the only available access to key parts of the site such as the Korari Street truck loading area.
77. In Condition 21, the matters to be addressed in the CEMP for the management of adverse noise and vibration effects are set out. The condition sets up a process for identifying construction activities that are likely to create adverse noise and vibration effects, the location of sensitive receivers, mitigation options and monitoring methods. This condition is unacceptable to MediaWorks because it does not provide any requirement for construction activities to cease if the noise and vibration project criteria are not met and consequently MediaWorks' operation could be significantly impacted for long periods of time.
78. Condition 21A requires Auckland Transport and its contractor to work collaboratively with each notable receiver during the preparation of the CEMP to confirm the extent and management of adverse effects from noise and vibration. This includes identifying the point at which noise and vibration effects might "unreasonably interfere with its operation", mitigation options including "temporary relocation of affected receivers", and a process for resolving disagreements between the parties. I have serious concerns with this condition. Although permanent relocation of the notable receiver is not mentioned as an option, I consider that this is likely to be the only feasible option to address the noise and vibration effects on MediaWorks arising from the construction phase of the project. In my opinion, a process for resolving disputes is usually worthwhile but in this case the potential effects on MediaWorks' operation are so significant that mitigation is unlikely to be possible. In addition, because MediaWorks operates during most of each 24 hour period I consider it is very likely there will be impacts on the amenity of nearby residents if construction activities are scheduled to suit the hours during which MediaWorks is least likely to be operating.

79. In Condition 26, the matters to be addressed in the CEMP for the management of adverse effects on air quality are set out. I do not consider that this condition will adequately address the potential for adverse effects from dust on MediaWorks' operation, not least because procedures for limiting dust nuisance are subject in subclause (h) to a practicality test.
80. In Condition 27 the matters to be addressed in the CEMP for the management of adverse effects on utilities are set out. To minimise the risk to MediaWorks of interruptions to essential services it is important that this condition provides for compensation and/or penalties to be paid by Auckland Transport if power or telecommunication services to MediaWorks are discontinued due to construction works associated with the Project.
81. In Condition 38, the construction noise criteria to be applied to the designation are set out. This condition does not seem to apply to MediaWorks' operation as there is no specific recognition of their operational requirements. It is of concern, however, that Notes 1 and 2 allow relaxation of the noise limits by up to 5dBA for days and weeks at a time.
82. It is unclear whether Condition 38A applies to MediaWorks but it deals with a situation where anticipated noise levels are predicted to exceed the noise criteria by 5dBA or more. A Site Specific Construction Noise Management Plan ("SSCNMP") is required to be submitted to the Council if such situations occur. This condition is totally unacceptable for a noise sensitive operation because it enables significant infringements of the noise criteria to occur without consultation with the affected party and without requiring the affected party's approval. Sheet piling works and road excavation works, both of which are likely to occur adjacent to MediaWorks, are excluded from this regime. A contractor carrying out such works is only required to implement the "best practicable option" to mitigate noise effects and this means that such effects may not be mitigated at all.
83. Condition 39 contains the construction vibration criteria to be applied to the designation to assess building damage from construction vibration. The requirements of MediaWorks in relation to vibration effects are not addressed in this condition.
84. Condition 39A deals with a situation where vibration criteria are predicted to be exceeded. As with Condition 38A, this is totally unacceptable for an operation sensitive to vibration because it enables such infringements to occur without consultation with the affected party and without requiring the affected party's approval.

85. Condition 43 addresses the mitigation of adverse operational rail vibration and reradiated noise. I understand that the proposed criteria applying to a television studio are appropriate although they may not be achieved on an ongoing basis.
86. Condition 44A requires Auckland Transport to prepare an Operational Noise and Vibration Management Plan (“ONVMP”) with the objective of ensuring that the CRL tracks, rolling stock and associated infrastructure are maintained and operated so that noise levels and vibration levels are “reasonable”. This condition is unacceptable for MediaWorks because their operation is very sensitive to noise and vibration and the process set out in the condition provides no certainty that the required levels will be maintained at all times, no indication as to how long it may take to remedy a situation should it occur, and no penalties are provided for in the event of non-compliance. There is no opportunity for the involvement of MediaWorks in the preparation of the ONVMP, no right of approval, and it can be updated or amended at any time with the approval of Auckland Council.
87. Even if the tracks in the vicinity of MediaWorks are constructed as recommended by James Whitlock in paragraph 77 of his evidence (which is by no means certain), the chances of MediaWorks being able to operate without being adversely affected by noise and vibration from the CRL is dependent on continuous and effective maintenance of the tracks and the rolling stock. There is no safety margin and yet mechanical equipment necessarily deteriorates over time.
88. Auckland Transport can resolve this issue by relocating MediaWorks but it is not proposing to do so. A condition dealing with the effects on MediaWorks of noise and vibration from the operation of the CRL must, therefore require absolute compliance with the noise and vibration standards for a television studio and penalty must apply. To be effective a penalty would require closure of the CRL in the event that the appropriate standards are not met for whatever reason (such as rail degradation; rolling stock degradation; or different ground conditions and hence greater transfer of vibration and noise) until the problem is rectified. If Auckland Transport chooses not to provide certainty to MediaWorks that it can operate unimpeded by adverse effects from the operation of the CRL then the risks of that choice must fall entirely on it.
89. It is my view that the proposed conditions do not adequately address the extremely sensitive nature of MediaWorks to effects generated by the construction and operation of the CRL and provide little protection for the continuation of the business on its site in Flower Street.

STATUTORY ASSESMENT

Policies and Plans

90. I have reviewed the statutory and non-statutory plans and documents that include objectives and policies that are relevant to the consideration of the effects of the proposed designation and I note that those matters supportive of the Project have been recognised. However, the objectives and policies in the Auckland Regional Policy Statement and in the Auckland Council District Plan also include a requirement to avoid, remedy or mitigate adverse effects on the environment.
91. These include the following sections:
- Regional Policy Statement - Strategic Policies 2.6.14.1(iii) and 2.6.14.5(i)(c); Objective 4.3.2 and Policy 4.4.1.2.
 - Auckland Council District Plan (Isthmus Section) – Objectives 8.6.10.1(b) and 12.3.1 (6th bullet).
92. Consideration of these objectives and policies does not, in my opinion, alter the overall impression that there is a high level of support for the project to be found in the statutory plans and documents. However, the lack of acknowledgment of those objectives and policies referring to adverse effects indicates to me that, in applying a holistic approach to assessment, the significant effects on a submitter such as MediaWorks have not been given adequate consideration.

Alternatives and Necessity

93. It is clear from the application and the evidence prepared by its witnesses that Auckland Transport has considered a number of alternative routes for the CRL, including through the location adjacent to MediaWorks where the CRL joins the NAL. Some of the alternative routes through this area are illustrated in Figure 3.2 in the application AEE. I do not have enough knowledge of these options to form a view as to whether this analysis has been sufficient in terms of s171(1)(b) of the RMA but note that, with each option, there would have been an analysis of costs and benefits. One of the costs of the selected route must reflect the consequences of adversely affecting the operation of MediaWorks. Given Auckland Transport's view that it has carried out an adequate assessment of effects I presume that it took into account the sensitive nature of the MediaWorks activity and the consequential increase in the level of mitigation required in order to locate the work area and the tunnel in such close proximity to that activity in the event that MediaWorks is not relocated.

94. In relation to s171(1)(c), I am satisfied that a designation is the appropriate mechanism for facilitating the project and that the proposed works are necessary for achieving the objectives of Auckland Transport. I do not consider, however, that the adverse effects of the Project have been assessed with sufficient certainty or that sufficient certainty is provided with the proposed EMF in relation to mitigation of effects. Additionally, I do not consider that the proposed designation lapse period of 20 years has been justified by Auckland Transport.

CONCLUSIONS

95. The project is at a very early stage of design, arguably too early for an assessment of effects to be undertaken with any degree of certainty. In relation to MediaWorks the effects generated by the Project are likely to be significant and it is unlikely they can be mitigated to the extent necessary for the operation of a television studio.
96. The impact of the Project on the operation of MediaWorks will be extremely damaging to its business if the assessment's carried out by Auckland Transport's consultant technical experts are incorrect. The experts engaged by MediaWorks are of the opinion that, particularly in relation to vibration effects, there is a high degree of probability that they are incorrect and that it is probable that no amount of mitigation will enable MediaWorks to operate satisfactorily in its current premises.
97. The anticipated effects are particularly uncertain and potentially significant during the construction phase of the Project. Once the CRL is operational, provided the additional measures recommended by the technical experts are implemented, adverse effects on MediaWorks can be avoided but only if the rolling stock and the track are continuously maintained to a high standard. This reliance on ongoing maintenance adds a level of uncertainty to the on-going operation of MediaWorks on its Flower Street site.
98. It is my view that, once the project has commenced, there will be enormous political pressure for it to be completed according to programme and on budget. By that time it will be too late to address any unanticipated adverse effects on the operation of MediaWorks, or effects that cannot be satisfactorily mitigated. Cessation of the tunnelling work is very likely to be untenable and causing MediaWorks to cease operating, or its broadcasts to be sub-standard, is likely to be commercially catastrophic for MediaWorks.

99. In my opinion, the lack of effective mitigation proposed, coupled with the uncertainties in the assessment of effects due to the lack of design and construction certainty means that the project fails in terms of s171 of the RMA. For this reason, I consider that the hearing panel should decline the Project or recommend the withdrawal of the relevant notice of requirement with a view to re-notification when more certainty in relation to effects can be provided.
100. If the panel does not recommend withdrawal, it is my view that the most appropriate decision for the hearing panel to make in relation to MediaWorks is to impose a condition of consent requiring Auckland Transport to relocate MediaWorks to a more suitable location prior to the commencement of any construction works associated with the Project.
101. If the panel decides that this is not appropriate, I consider that the EMF process should provide for the approval of MediaWorks to any CMP for works that may adversely affect its operation and the OP as it relates to the maintenance of rolling stock and the portion of track beneath the building occupied by MediaWorks. In both cases financial penalties should apply to non-compliance with the required standards at a level that reflects the potentially severe impact on MediaWorks' business. In addition the CEMP and its elements need to be subject to independent review and approval. Auckland Transport's proposed conditions do not require this to occur.
102. In my opinion, a 20 year lapse period is not justified in the application documents or Auckland Transport's evidence and, if the Project is not declined or withdrawn, Condition 2 should be amended to provide for a lapse period of no more than 15 years.

Vaughan Smith

26 July 2013