Komiti Whakahaere ā-Ture

Regulatory Committee

OPEN MINUTE ITEM ATTACHMENTS

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Note: The attachments contained within this document are for consideration and should not be construed as Council policy unless and until adopted. Should Councillors require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
St Marys Bay and Masefield Beach water quality improvement project
St Marys Bay Project - Overview

- Transformative project that will significantly enhance the water quality of St Marys Bay and Masefield Beach
- $30 million plus budget enabled through water quality improvement targeted rate
- Part of Western Isthmus Water Quality Improvement Programme to reduce overflows into harbour from combined systems providing environmental, public health, aesthetic benefits and restoring mauri of the Harbour
- A first step towards achieving full western isthmus outcomes:
  - Provides immediate water quality improvement
  - Future proofs networks, enables further improvement
  - Secures land for fundamental infrastructure
- Requires new storage and conveyance pipeline
Selecting a pipeline alignment

- Must intercept overflows
- Technically feasible to construct and operate
- Safety of construction workers and operators
- Minimise overall construction and operational costs and impacts on environment and community-at-large
- Maximise future-proofing potential for storm and wastewater networks
- Constrained by ‘end-of pipeline’ site (Option A preferred by HW, engineers, stakeholders, community)
Final scope of work / pipeline alignment

- Best practicable alignment for new pipeline
- Technically feasible
- Minimises overall construction impacts
- Maximises future-proofing potential of new asset system
Private properties impacted

- 109 Parties served notice
- Meetings with many owners along the alignment
- 15 Objections received
- Common concerns:
  - Property and Cliff stability
  - Understanding property, ground and tree details
  - Liability for damage during construction
  - Understanding impacts on re/development
  - Compensation
Efforts to resolve objections

- Meetings with most objectors to attempt to resolve concerns, multiple sessions in some cases, providing answers to questions
- Access to engineering specialists and project team as required
- Arranged sessions with other areas of Council where needed
- Preliminary surveys on 9 out of 15 properties (some refusals)
- Carried out:
  - detailed ground level (LIDAR) survey
  - detailed cliff and tree survey to assess risk and begin benchmarking
  - detailed ground and groundwater investigations
- Provide property specific details as part of s181 notice and updated post this work
- Assessments of re/development potential, request information on any specific proposals
- Explaining compensation and injurious affection processes
- Assurance that pre and post construction surveys will be carried out
- Assurance that Council must remedy damage resulting from the Works
- Fully notified consent (now granted) – full access to all technical assessments and proposed conditions (no material changes to proposed conditions)
Where we are today:

- **Property and Cliff Stability**
  - Detailed work validates all engineering assessment – no impacts on properties, trees or cliff from the Works, Resource Consent granted, monitoring required

- **Monitoring during Construction**
  - **All properties** along alignment are offered detailed pre and post condition surveys, whether they are objectors, submitters under the RMA or not (as per s181 notice)
  - Cliff and trees will continue to be monitored

- **Concerns over re/development**
  - Potential impacts depend on development proposal, existing Development Controls limit scale of re/development, no known development proposals
  - Project will not prevent re / development or cause significant engineering issues – pipeline too deep and too small

- **Property values and ‘injurious affection’**
  - No injurious affection anticipated
  - However - compensation claim can be made under the Public Works Act – this is separate to the LGA process and not prevented by giving approval under the LGA

- **Liability and Compensation**
  - Council must remedy damage caused by the Works, monitoring and surveys provide means to capture this
  - Council is not providing general compensation because no land is taken
Next steps

- Update to Strategic Procurement Committee on project in December – sub-committee to award contract January 2019
- Works preparation including pre-construction surveys
- Construction commence Q1/Q2 2019 and complete Q4 2020
- Ongoing work with community, particularly around impacts management and landscape design
Before Auckland Council Regulatory Committee

In the Matter of the Local Government Act 2002 (LGA)

And

In the Matter of an objection under Schedule 12 of the LGA to install a new storage pipeline as part of the St Marys Bay and Masefield Beach Water Quality Improvement Project

Legal Submissions on behalf of Dairin Johannink and Anjala Natali

Dated 16 November 2018

Jeremy Brabant
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Introduction

1. These legal submissions are presented on behalf of Mr Johannink and Ms Natali, the owners of 23 London Street, St Mary’s Bay (Site) who lodged an objection to the proposed works.¹

Reasons for Objection

2. The objection raised concerns relating to:
   
   a. The separation of stormwater and wastewater infrastructure;
   
   b. Potential construction-related stability effects; and
   
   c. Council’s liability for damage resulting from the proposed works.

Other Issue arising

3. Auckland Council (Council) has been granted resource consent under the Resource Management Act 1991 (RMA) to construct and operate wastewater and stormwater infrastructure in St Mary’s Bay and Masefield Beach.²

4. Council’s application for resource consent occurred concurrently with seeking landowner’s approval to construct public works under private land under section 181 of the Local Government Act 2002 (LGA).

5. The concurrent RMA and LGA processes have resulted in an overlapping timeframe between the granting of resource consent, the RMA appeal period and the hearing of objections under the LGA. As a result, resolution of any appeals to the Environment Court (which may result in material changes to the proposed works) will post date this hearing.

¹ Objection dated 13 June 2018.
² Decision dated 9 November 2018.
Objections

6. Mr Johannink and Ms Natali maintain their view that stormwater and wastewater infrastructure should be fully separated. They believe the failure to properly separate these waters will have significant adverse environmental effects. They support the St Mary’s Bay Residents Association in its opposition to the resource consents sought.

7. Mr Johannink and Ms Natali also retain significant concerns about potential adverse stability effects and the risk of damage to the Site.

8. Turning to the “works proposed”, the resource consent process effectively remains ‘incomplete’ at the time of the hearing of objections under Schedule 12 of the LGA. Any appeals to the Environment Court must be lodged by 30 November 2018.³

9. The Environment Court is free on appeal to reach different conclusions to that of the Hearing Commissioners and the Council hearing. Resolution of an appeal may, for example, result in amendments to the construction methodology or the alignment of the proposed works. If that occurs after this Committee have determined the LGA objections, then the implication would be that the “works proposed” (which must be in accordance with the consents granted) are different to those before you in the context of this hearing. The LGA objectors would then have been denied the opportunity in the context of the LGA approval process to speak to the appropriateness of the ultimate “works proposed”.

10. In my submission this is contrary to fundamental principles of natural justice.

Relief Sought

11. I submit on behalf of Mr Johannink and Ms Natali that as a matter of natural justice either:

   a. The LGA approval determination should be deferred until the

³ Section 120, RMA.
relevant resource consents under the RMA commence, and if as a result of resolution of any appeals pursuant to the RMA the “works proposed” change in a material way to that currently before this Committee, then objectors are given a further opportunity to address this Committee on matters arising prior to the final determination being made; or

b. If this Committee decides to proceed with the LGA approval determination prior to resource consents under the RMA commencing, then the Council should also formally determine that the LGA approval process will be revisited and affected landowners given another opportunity to address this Committee, if as a result of resolution of any appeals pursuant to the RMA the “works proposed” change in a material way to that currently before this Committee.

Shannon Darroch
Counsel for Darrin Johannink and Anjala Natali

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4 Pursuant to section 116, RMA. In short when the time for lodging appeals against the grant of consent expires and no appeals have been lodged; or when the Court determines the appeals or all appellants withdraw their appeals.
Regulatory Committee Hearing

Project: St Mary’s Bay and Masefield Beach Improvement Project

Date & time: 16 November 2018  9.30am

Address: Room 1, Level 26, 135 Albert Street, Auckland

Submitter: Susan Young

1. My name is Susan Young. I am the property owner of 17 London Street. I object to have the Combine Sewer/Storm Water Tunnel to be constructed under my property.

2. In my opinion, this tunnel does not serve the purpose of improving water quality in our harbor. It is merely a cost saving scheme for Auckland Council to avoid repairing the much needed upgrading and maintenance of the 100-year-old sewer and storm water pipes in Saint Mary’s Bay.

3. I disagreed with Healthy Water’s claimed that their public consultation process for this project was adequate and the community engagement had been lengthy and extensive.

4. I attended the very first public meeting organized by Healthy Water to inform us of the Project. At the time, I was told that the Project would improve the water quality of Saint Mary’s Bay. A tunnel would be constructed and there were 3 different locations for the tunnel to be considered. I told all the staff at the time (include Ms Crosby) that I live in 17 London Street and I do not wish to have the tunnel going under my property. They assured me that it was just an initial consultation, the tunnel may not even be put under my property, I need not be worried. If I put my email address down, they will contact me and inform me and include me in their future discussions. I heard nothing from Healthy Water. I attended the 2nd Healthy Waters meeting. This time, there was only one scheme. It was the one to have the tunnel under my house. I asked them why did they do that and
what happened to the other schemes. The answer was, it was the cheapest option. It would cost the council a lot more money if the tunnel were to be put under and along London Street. I asked if it could be possible, they said 'Yes'. However, it would mean they would have to dig another hole and change the direction of the machine. It could be very costly. I asked what happened to the 3rd option. They said it would involve NZTA. Road Transport would never agree to the use of their land for the construction of this tunnel.

5. I do not want to have a Combined Sewer/Storm Water Tunnel constructed under my property. Personally, I would never have bought a property and live in it if there is a Sewer/Storm Water Tunnel under it. It is very bad 'Feng shui' to have a tunnel or hole under ones house. If you do not believe in Feng Shui, that is fine. But I do. I believe it may and can affect both my physical health and mental wellbeing. Unfortunately, in this instance, because I already own this property, I have no choice but to have to deal with it.

6. If this project goes ahead, I do have a few questions and queries related to my situation. I hope the authority in this meeting could help me find some answers.

7. Stability of the land. My property is on the cliff face. Healthy water is proposing to use a machine to drill a 2-meter diameter hole underground across my house. I have spent many hours reading and trying to understand all the documents from Health Water telling me how safe this construction method is. Reading this kind of materials is not easy for me. I am a retired pensioner. I live to a simple routine. I stayed home most days and I look forward to my grand children's weekly visits. This tunnel under my house really worries me, what if:

   a. The stability of the cliff is undermined or compromised?
   b. What happen if there is a crack appeared on my house during or after the drilling?
   c. What if a part of my house suddenly collapsed?
d. If that happen, what am I supposed to do?
e. Who should I contact?
f. How do I go about getting help?
g. Can I depend on this group of experts from Healthy Water (if they are still around) to help me?

8. **Value of the property.** I am really concern with the value of my house. I believe the tunnel will devalue the value of my property. As I mentioned before, I would never have bought this property especially for the price I paid for, if I knew that there is a tunnel underneath it.

a. Health Water stated that the Tunnel would **never** affect the value of my property.
   i.) What happen if it does?
   ii.) If it does, what am I supposed to do?
   iii.) Should I just walk away from it as though nothing has happened or should I seek compensation for my lost?
   iv.) What prove would be required to establish that the tunnel was a contributing factor to the devaluation of my property?
   v.) Who should be responsible for my lost?
   vi.) Where should I go to lodge my complaints?

b. If the stability of the cliff is undermined and cracks appeared in my house, I don’t think I could cope with the stress and selling the property would probably be my only option. In that case, I am sure the value of the property would drop considerably. Because who would want to purchase a property full of problems? In situation like this, who would be responsible for the difference of that value? How do I go about getting help? Who should I contact for help? Where should I go?

c. I wondered if there are procedures in place where we can establish and prove that the tunnel has affected the value of the property?

d. I had an appraisal from a real estate agent last year on my
property. Can that be a baseline for the value of the property if something does happen to my property during or after the tunnel was constructed?

9. **Future development prospects.** My house has a fairly large semi developed basement and the property has enough land to build a swimming pool. If a future buyer or I decided to extend the basement or to build a swimming pool, without the tunnel, it will be a straightforward application. However, with a tunnel underneath it, I know for a fact that the procedure will be much more complicated and costly.

   a. At present, if one were to put a building over some water pipes, storm water pipes or sewer pipes on a property, the council application is much more costly than a property without any pipes underneath it.
   b. This is because the council will require special engineering reports and specialist geotechnical reports and special architectural design/planning and may even required applicants to do various special tests on the site.
   c. I cannot imagine what kind of tests and specialist reports the council would require if one want to build a structure with a 2-meter tunnel beneath it.
   d. Can the council give me written assurance that all future development projects on this property above the tunnel will be treated as though the tunnel does not exist?
   e. Even if the council gives me this piece of paper today, what assurance do I have to ensure that they will honor it in the future?

Lack of or reduce future development opportunity will certainly affect the value of the house.

10. **Alternative options.** Healthy Water could have chosen the option to constructed the tunnel underneath the length of London Street. That option would not have affected any property owners. However, because Healthy Water wanted to save construction costs, they decided to choose a cheaper option for their benefit.
Healthy Water simply told property owners that the tunnel would not devalue the value of their home. And so they will never consider compensating any property owners for the right to the use of their land for the tunnel.

It is really unfair that Healthy Water is saving huge amount of money from their construction cost by drilling a tunnel under private landowners property and telling them that they are not eligible for compensation and will not be given any compensation.

Healthy Water is saving huge construction cost at the expenses of the property owner’s lost. We are not just talking about taking a part of our property away from us for the construction of the tunnel. We are talking about the long-term effect on future developments and future value of our property. We are also talking about the physical and psychological stress we have to endure during and after the process that could affect our personal wellbeing for life.

Is it unreasonable for property owners to claim compensation for their lost?

Is it unfair for property owners to ask Healthy Water to use the money they saved from the cheaper option construction route they chose to compensate the property owners?

Is it not the rights of property owners to ask for compensation if a portion of their land is being taken away and used by others for cost saving purposes?

11. I love my home because it is close to my children and grandchildren. I love my home because I am familiar with the surroundings and the neighborhood. And most important of all, I love my home because it bears all memories of the happy days I have with my late husband. It would be incredibly sad if I am forced out of my own home due to unforeseen problems out of my control without any compensation because Healthy Water
decided to put a tunnel under my home to save their construction costs.

Conclusion:

There is no such thing as absolute certainty in this world. Accidents happened, many unexpected things happened. How can Healthy say that the drilling of the tunnel will never cause any problem to the properties above it; the stability of the cliff will never be affected by the drilling; the house value will never be devalued as a result of the construction of the tunnel, therefore, Healthy Water will not be responsible for any compensation on the use of land or the devaluation of property value.

I am a retired pensioner; I do not have the resources or the energy to go against the mighty Healthy Water's unfair treatment and pressure exercising on my property and me. Am I supposed to just accept what put in front of me without stating and exercising my rights?

If I cannot cope with the pressure, I may have no choice but to be forced to sell my property at a low price and walk away from it, with or without compensation. In that case, it is likely I will suffer the psychological trauma the rest of my life. I wonder who will be responsible for the lost of my 'quality of life' and pay for the treatment it may incur.

At this point, I am at a lost. I need the authority's assistance and guidance to help me find answers and assurance for my worries.

Finally, I wondered what you would have done if this is your own home - the property you treasured and loved? Would you be raising the same questions I am asking now?
At this LGA Hearing we confirm that we totally oppose the pipeline being tunnelled under our property.

The councils technical advisers of this project do not inspire us with confidence.

Caroline Crosbie The contractor in charge of the project, is unprofessional and a bully and was not willing to undergo serious consultation with us the stakeholders.

Very little maintenance has been done to repair the 100 year, old pipes and as a result this unsatisfactory project is being forced upon us when there are other engineering options, whilst we wait for future separation as proposed by the council.

The specifications of the project keep changing and we are totally unaware of the technical planning as it appears to be made up as the project proceeds. Both before and since the RMA hearing.

As councillors you will be aware of the non-notified resource consent granted to Watercare in 2014 for a 35 year period, to discharge Sewage and stormwater overflow into the Waitemata Harbour through a pipe running on the western side of Westhaven Marina from Masefield Beach.

I Refer to NO 79,80,81 Maori Impact statement from this regulatory committee Open Agenda

Our question to Manu Whenua is: were they informed that the size of the pipe planned to be discharging into the Auckland harbour is through a 1.6m dia pipe with a peak design flow of 3000 litres per second & the storage pipeline is anticipated to take 14 minutes to totally fill in periods of heavy rainfall and it will take 35 hours to pump its pipeline contents into Watercases' branch 5 sewer which is a 300mm dia pipe. At present Healthy Waters have been refused access by Watercare to their connection. Therefore, the volume from the storage pipe will be pumped out using the outfall pipe into the Waitemata harbour. This scenario is much worse than the current situation as the bulk of the sewage is maintained and travels to Mangere. Sir Dove Myer Robinson would turn in his grave after all the efforts he made to clean up the harbour.

I refer to NO 23 statement from this regulatory committee Open Agenda; which states **The key objective is to complete the project before Americas Cup.** The $44M project is being forced onto the property owners for the wrong reasons. A storage area is being created instead of looking at the alternative movement through existing systems in the area. Panuku informs that Westhaven waste will flow from the marina network into the pipe that runs under Westhaven drive into Victoria Park to connect with the Orakei pipe. The Masefield beach Pipe could be connected to the Westhaven Drive pipe. The current outflows into St Marys Bay including the ignored Outflow we call Swashbucklers could be connected to a pipe which would tunnel under the motorway into Victoria Park to connect to Orakei. This would be acceptable as in the proposed plan there will still to be 2 overflows proposed into St Marys Bay.

The information in the RMA report is incorrect and the St Marys Rd Bay reserve land where the pump station is to be constructed is not deemed motorway, but "Open Space Activity" as shown in the Planning map dated 14th May 2014. Building a pump station in this public zone is not in the public's interest.

We request the committee abandons the works as proposed

We make two requests if the tunnel was to go ahead:

1/ Long Term Indemniﬁcation against damage or Loss to any part of our property

2/ Surety of future development of our property over the pipe without any additional cost.
Jennette Henry

19 RING TERRACE
1. On 15 October 2018 you advised that the date of the Council hearing for the LGA process for St Mary’s Bay and Masefield Beach Project had been moved to Friday, 16 November 2018.
2. Previously in your email of 11 September 2018 you advised me, amongst other things “We expect that, if the resource consent is granted there will be conditions addressing a range of potential effects, including noise, vibration and ground settlement”.
3. All these matters concern me and in particular, ground settlement. No. 19 Ring Terrace was specifically mentioned in the evidence/rebuttal evidence of two engineers (Messrs Ireland and Stapleton), Council’s Officer’s Reply and Addendum to s42A RMA report and lastly referred to in paragraph 9 of Council’s closing legal submissions. In short, 19 Ring Terrace figured very prominently in the RMA hearing.
4. How can I adequately prepare for a hearing of the LGA matter when I do not know whether Healthy Waters’ application will be granted and what, if any, conditions will be placed on Healthy Waters re “noise, vibration and ground settlement” (as they affect 19 Ring Terrace).
5. Simply put, to me Council “has placed the cart before the horse” and should not be holding the LGA hearing until:
   (a) The independent hearings commission has issued its decision; &
   (b) I have had a reasonable time to consider how any conditions imposed on the applicant re noise, vibration and ground settlement impact on my submission.
6. It may well be that if I consider any conditions imposed in this regard are adequate, I will not proceed with my objection. Alternatively, if I consider such conditions are not adequate, this will bring a very sharp focus to my objection.
7. I am a barrister and solicitor of the High Court of New Zealand and consider the rules of natural justice and procedural fairness will be breached if the hearing goes ahead on 16 November 2018 and will likely pursue this matter to the District Court if a hearing goes ahead at this date.
8. I will read this letter over to the hearing and then take no further part.
9. For your consideration and reply.

Yours sincerely