

Complaint about the Conduct of Waka Kotahi NZ Transport Agency

For the attention of the Chief Ombudsman

Good day Mr Boshier

The Paremata Residents Association is very unhappy with the actions and recent stated intentions of Waka Kotahi relating to the future of the existing state highway between Paremata and Plimmerton (in particular the Mana Esplanade). Attached is a file of some of the most recent correspondence we have had with Waka Kotahi and the Porirua City Council, which may give you some idea of the current position.

With the new Transmission Gully Motorway (TGM) about to open at any time, our major and most urgent complaint at present is that Waka Kotahi (and PCC) have chosen to ignore very important commitments made by Transit NZ (NZ Transport Agency predecessor) – and, as a result, are creating a situation of serious injustice for our residents and not complying with the legitimate expectations of the community.

We also believe that we have strong grounds for complaint about the way our concerns relating to the current operation of the clearways through Mana Esplanade have been handled. That is not the major subject of this complaint, however, and may no longer be an issue if this complaint is upheld and acted on.

Transit's "Commitments to the Local Community"

These commitments were made in evidence presented to the Environment Court by Transit's Regional State Highway Manager (David Rendall) when the Court was being asked to approve a "Reduced Upgrade" of the state highway between Paremata and Plimmerton in 2000. The stated objectives for the upgrade were to "relieve existing congestion" and "provide a sufficient level of service" on the coastal highway route "**during the interim period pending construction of the Inland Highway route**". And as Mr Rendall said, "**those objectives recognised that the additional present and future capacity that should be provided should be no more than sufficient.**"

Mr Rendall's evidence also included the following statement (emphasis added):

14. TRANSIT'S COMMITMENTS TO THE LOCAL COMMUNITY

14.1 It is my perception that much of the opposition to the proposal to upgrade the State highway stems from a deep-seated belief by parts of the local community that Transit will indefinitely delay construction of TGM if it is able to increase the capacity of the State highway through Plimmerton/Paremata.

*14.2 In order to allay those fears, I am authorised to make a number of commitments on Transit's behalf **which it will honour whether imposed as conditions of the requirement or not.***

14.3 In particular, Transit commits itself to the following:

- ***To demolish the existing Paremata Bridge and remove the Clearways through Mana in conjunction with the opening of TGM, and following appropriate public process.***

The statement went on to make or repeat a number of other commitments relating to installation of footpaths on the new bridge, relocation of the Plimmerton footbridge, mitigation measures for some properties, enforcing and reviewing the operation of the clearways, and liaison with the community, before concluding that:

*15.3 In my opinion, the Reduced Upgrade provides the minimum impact project on the community which still provides an adequate improvement in traffic capacity...The upgrade provides for the security of the route by provision of a new bridge across the Pauatahanui Inlet and **recognises that additional traffic capacity is not desirable in the community once TGM is completed.***

The Environment Court's Conditions

As well as acknowledging Transit's "Commitments to the Local Community", the Environment Court's eventual decision released in July 2001 included a host of conditions. One of those was a requirement that Transit consult with a number of organisations (PCC, GWRC, Paremata Residents Association, Plimmerton Residents Association and Ngati Toa Rangatira) on matters relating to the future ownership and operation of the existing highways **"prior to the completion of the construction of Transmission Gully Motorway"**.

Removal of the clearways (and old bridge) was not a condition imposed by the Environment Court. The commitment had, however, been made by Transit NZ in evidence presented to the Court, and obviously had a significant influence on the Court's eventual decision to approve Transit's clearways proposals. (In fact, most of those involved in the hearings at that time would probably have described it as a determining factor, given the importance that the Court and Transit itself put on the works being *"reversible"* when TG opened.)

For anybody to argue subsequently that the commitment meant nothing because it wasn't included in the Court's conditions ignores the fact that Transit also specifically promised that the commitments would be honoured *"whether imposed as conditions of the requirement or not"* and that the funding would be included in *"the cost of construction of the TG Project"*.

Because of those promises, it seemed to those involved that there was no need for the Court to include a specific condition in the designation. Those acting for the Paremata and Plimmerton Residents Associations and TRANSMAC at the hearing (non-lawyers), certainly saw no need for the commitments to be spelt out specifically in the Court conditions because Transit had told them and the Court that that was not needed. Moreover, if Transit (or Waka Kotahi) ever wanted subsequently to dishonour its commitments, provision had been made in the Court's conditions for consultation with the community prior to the opening of TG - when the matter could be discussed.

Interference by the BOI

In 2011 a Board of Inquiry was appointed to consider Notices of Requirement and Resource Consents for the Transmission Gully Project. Instead of sticking to that project, however, when the Board's attention was drawn to the Environment Court's decisions relating to the Reduced Upgrade between Paremata and Plimmerton, it decided to ignore Transit's

commitments and tried to override the Court's conditions relating to timing of consultation. Neither the wording in its draft report nor the amended wording in its final report did that, however. Instead the BOI's report simply repeated the condition imposed by the Court requiring Transit to consult with the same organisations on the same matters but substituted the words ***"no earlier than six months after the commencement of the Project and no later than 12 months from that date"***.

Considering that **"the Project"** (i.e. the construction of the Transmission Gully Motorway) was expected to commence some years before its opening, this didn't seem to make any sense and it would appear that the BOI's condition was set aside or forgotten about by Waka Kotahi officers. This was obviously the situation when:

- a) they wrote to us on 13 August 2020 seeking to start consultations with us in accordance with the Environment Court's condition,
- b) they attended our Executive Committee meeting on 12 November 2020 to start that consultation, and
- c) the Minister of Transport (Hon Michael Wood) confirmed in a letter dated 24 February 2021 that consultation with the five named parties *"will be completed prior to the opening of Transmission Gully Motorway"*.

In fact it wasn't until 24 May 2021 that we received a letter from Waka Kotahi's Regional Manager System Design telling us that their attention had been drawn to the BOI's condition - which they had decided to interpret as *"meaning that Waka Kotahi is required to consult with the identified parties six months after Transmission Gully is open to traffic but no later than 12 months after TG is open to traffic"* – and that, following discussions with PCC, they intended to *"fulfil the conditions as required by the Board of Inquiry"*.

Subsequent correspondence with Waka Kotahi has confirmed that Waka Kotahi does not intend to take any action or make any decisions about the clearways until they *"have the appropriate data available"* and until they *"have consulted, as required, with the wider community"*.

The injustices created and legitimate expectations ignored

It is the Association's contention that;

- a) the BOI should never have tried to change the Environment Court's conditions. The BOI's role related to the TG Project, whereas the Court had heard all the submissions on the Reduced Upgrade and was much more aware of the issues (including the dangers of delaying changes to the existing highway).
- b) Waka Kotahi was wrong to re-interpret the BOI's confusing condition to mean something that it doesn't say (even if they thought that may have been what the BOI intended).
- c) Waka Kotahi (and PCC) were wrong to decide that the BOI's condition should "take precedence over" the obligations imposed by the Environment Court, not just for the reasons mentioned but also because nobody had been given the opportunity to appeal or even question the confusing condition in the BOI's final report.
- d) Regardless, Waka Kotahi and PCC have been wrong to ignore the existence of Transit's commitments, whatever their reasons might be.
- e) Delaying any consideration of the commitments until consultation with community groups has taken place between 6 and 12 months **after Transmission Gully is open**

to traffic, has created a situation of serious injustice that needs to be addressed as a matter of urgency.

Normally if a government agency no longer wanted to honour its commitments, we would expect the agency to feel obliged to approach the groups to whom the commitment had been made (in this case, the residents associations) to explain the reasons for wanting to dishonour the commitments and to seek their agreement. Waka Kotahi has chosen instead to not even acknowledge the existence of the commitments or to answer any queries that we have raised about them.

The Association is not averse to reviewing commitments made in the past. The commitment to demolish the old Paremata Bridge has been a matter of contention for some time with some members of the community and we have not pushed for it to be demolished in conjunction with the opening of TGM. We have, however, asked that modelling be carried out now to allow informed discussion about the bridge's future – particularly on the effects of the bridge on the flushing of the harbour. We believe that if Waka Kotahi wants to dishonour the demolition commitment, it has an obligation to provide that sort of information.

Removal of the clearways is a much more urgent matter, however. In fact, legal advice received by a local resident suggests that there is a strong case for judicial review of Waka Kotahi's position on the basis of legitimate expectation. Certainly removal of the clearways in conjunction with the opening of TGM has been the expectation incorporated in virtually all community consultations and planning exercises since the commitment was made. These included, for instance, the findings of a major hearing in 2006 to report on a proposed new Western Corridor Plan; the evidence and technical reports presented at the time of the BOI hearings in 2012; and the publishing of the Porirua Growth Strategy 2048 in 2019 - which included an artist's impression of "*Mana Esplanade post revocation*" showing a very wide pedestrian plaza with just two traffic lanes and extensive seating and trees.

The importance of these issues

Over and above the stigma associated with a government agency being seen to dishonour its commitments, there are other likely dangers (recognized by both the Court and Transit NZ) if the clearways are not removed when Transmission Gully opens.

By the time Transmission Gully is finally opened, it will have been more than 16 years that those affected by the works (local residents, visitors, motorists, truck drivers and the community generally) have had to put up with the adverse health effects, the extra road-related dangers, the community severance, and the hostility associated with these "interim" clearways. The clearway requirements are particularly hated by most truck drivers. The authorities can expect some real anger to become apparent if this is allowed to continue any longer than there is a real need to do so.

Of equal concern is the danger that retaining the clearways now will negate much of the expected benefit of building Transmission Gully and increase the use of vehicles. The Residents Association believes – and it was always Transit's stated position – that reverting to 2 lanes through Mana should happen immediately after the opening to avoid a situation which would:

- encourage through traffic (including heavy vehicles) to continue using the existing road instead of TGM
- encourage local commuters to change their patterns of travel and increase peak flows on the existing route, and
- induce people to move from public transport into cars.

It is imperative that every effort is made to discourage any unnecessary use of the coastal route and those efforts were always expected to include removal of the clearways. We have been given no reason to believe that more than one traffic lane in each direction will be needed initially (and this is supported by Waka Kotahi's own traffic modelling for after TGM opens) – so closing off the kerbside lanes to avoid incentives for extra traffic and to allow better assessment of future needs, should happen as soon as TGM is opened.

What we are seeking

It is not the Association's wish at this stage to argue about the timing of the required consultation on the matters outlined in the designation conditions. We understand that before formal consultation begins, Waka Kotahi wishes to optimise the performance of the road after TGM opens and obtain actual data on its use, for around 6 months. We do not know what optimisation is intended, but we **do not** believe that full optimisation of the road can be achieved, and realistic data obtained on road use, without closing the Mana clearways **at least on a temporary basis** when TGM opens.

We believe this is necessary to address the current health and safety issues associated with the clearways and to create the correct environment for assessing future capacity requirements. It would also avoid a considerable amount of anger and division within the community and the motoring public.

Temporarily closing off the kerbside lanes on Mana Esplanade to through traffic has been done before quite simply and could be done again if there is the will to do so. We are hoping that by making this complaint to you, pressure might be put on Waka Kotahi to comply with the Environment Court expectations when TGM opens, even if only on a temporary basis. We also want Waka Kotahi to commit to closing the clearways permanently when the data collected confirms that clearways are not necessary for the foreseeable future.

We would be more than happy to discuss the matter further or provide additional details. You could contact either myself or Russell Morrison by phone if wished. (Tony 027 575 5789 or Russell (04) 233 1056)

Yours sincerely

Tony Shaw

President, Paremata Residents Associations.