

05 March 2014

BY HAND AND EMAIL

Hon Amy Adams
Minister for the Environment
Parliament Buildings
WELLINGTON

Dear Minister

BOARD OF INQUIRY INTO NZTA'S BASIN BRIDGE PROPOSAL – REQUEST FOR TIME EXTENSION

INTRODUCTION

1. We are acting as Counsel assisting the Board of Inquiry hearing the New Zealand Transport Agency's (NZTA) Basin Bridge proposal (*Board*).
2. On 3 July 2013 you directed that NZTA's notice of requirement and resource consent applications for the Basin Bridge proposal be referred to a Board of Inquiry for decision. Your direction was publicly notified by the Environmental Protection Authority (*EPA*) on 10 August 2013. In accordance with section 149R(2) of the Resource Management Act 1991 (*RMA*), the Board has nine months from this date in which to produce its final decision and report.
3. Including allowance for the holiday period as provided in section 149R(2A) RMA, this means the Board's final decision and report must currently be produced by 30 May 2014. The Board must currently also produce a draft decision and report no later than 17 April 2014, in accordance with section 149Q(4) RMA.
4. Under section 149S(1) RMA, you may any time grant an extension of time in which a board of inquiry must produce its final report. However, in accordance with section 149S(2) RMA, you may only grant such an extension if you consider special circumstances apply. Unless the applicant agrees, the extension may also only be for a period not exceeding 18 months from the date of public notification.
5. The Select Committee on the Resource Management (Simplifying and Streamlining) Amendment Bill commented that the Minister's ability to grant extensions under section 149S RMA is intended:

*“to address our concern that the nine-month time-frame could be too tight for proposals of national significance, especially since it would be effectively reduced to seven months of inquiry once requirements for public notification and circulation of the draft report were taken into account. Because call-in would be used for the more complex proposals involving a combination of matters (consent applications, notice of requirement, and private plan changes), we consider that rigid adherence to the nine-month time-frame could compromise the hearing process or the quality of the decision”.*¹

6. The Board is committed to providing a robust and accurate decision. On behalf of the Board, and to allow the Board to honour this commitment, we respectfully request that you

¹ Page 17 of the Select Committee's commentary on the Bill, dated 18 August 2009.

grant an extension of time for the Board to produce its final decision and report. The extension sought is of three months to Saturday 30 August 2014. However, the Board is committed to releasing its draft report and decision on or before 18 July 2014.

“SPECIAL CIRCUMSTANCES” APPLYING TO BASIN BRIDGE PROPOSAL

7. There is no definition of “special circumstances” in the RMA. A “special circumstance” can generally be defined as being outside the common run of things, which is exceptional, abnormal or unusual, but something less than extraordinary or unique.
8. We consider that the following matters, both individually and collectively, constitute special circumstances applying to the Basin Bridge hearing which warrant an extension of the nine month timeframe for the purposes of section 149S(1) RMA:
 - a. the matters before the Board involve one notice of requirement and five resource consent applications for a significant roading project. The notice of requirement in particular, and these matters cumulatively, are highly complex and require significant consideration and deliberation. Indeed, the complexity of the issues before the Board has proved to be far greater than originally anticipated by the Board or parties;
 - b. the volume of material to be considered by the Board is substantial, and growing on an almost daily basis. To illustrate:
 - i. the assessment of environmental effects (*AEE*) accompanying the application documents runs to a total of 631 pages, plus four significant appendices. The *AEE* is in turn supported by some 20 technical reports (plus appendices), five proposed management plans and a drawing set of over 320 drawings;
 - ii. at the Board’s request, the applicant has provided a further six visual simulation sets. Independent experts have also provided both a Stage One and Two planning report, and an original and updated transportation peer review report, in accordance with section 42A RMA;
 - iii. the Board received a total of 215 submissions, including three late submissions which have now been accepted by the Board;
 - iv. the Board has received a total of 138 briefs of evidence (evidence in chief and rebuttal evidence), with each witness then presenting a concise summary of their evidence when taking the stand. To date, there has also been seven supplementary briefs/witness summaries with new information. As at the date of this application, the parties are also actively contemplating the calling of additional witnesses (and supplementary evidence from existing witnesses), to address issues that have arisen during the course of the hearing thus far;
 - v. the Bundle of Documents provided by the parties for the hearing comprises 8 volumes, and a total of 235 separate documents or parts of documents. Some of this material has only been made available, and added to the Bundle, as a result of discovery since the hearing began. NZTA’s assessment of alternatives in particular has become a key focus of the hearing. This assessment has taken place over a number of years (beginning around 2001), and is recorded in a multitude of lengthy reports, technical notes and other documentation. Much of this detailed assessment was not provided (except in summary form) in the *AEE*, so has only become progressively available as the issue has emerged during the hearing;
 - vi. as at the date of this application, the transcript of the hearing exceeds 2300 pages;

- c. the Board has endeavoured to hold the hearing as continuously as possible since it began on 3 February 2014, to the date of this application. However, the main hearing venue has not always been available when required. The Board and counsel have also found the pressure of having to maintain a continuous hearing schedule quite considerable, given the volume of information involved and manner in which issues have emerged during the hearing. Some adjournments have accordingly been necessary to accommodate this, and ensure a fair and robust hearing;
- d. the Basin Bridge proposal is located within a well-established area of urban Wellington, on the outskirts of the city's central business district. It also runs immediately adjacent to the historic Basin Reserve cricket ground, and lies just to the east of the National War Memorial (and proposed National War Memorial Park currently under construction, due to be opened for the Gallipoli centenary celebrations next year);
- e. the Basin Reserve is a critical transport node for the Wellington Region, as it is an intersection point for local traffic, public transport and state highway/through traffic (including freight). It is also an important route for emergency services, with the main Wellington Hospital being located just to the south of the Basin Reserve. Appropriately providing for and balancing these various needs is not only complex, but crucially important to ensuring the efficient operation of the overall transportation network in the wider Wellington;
- f. the Basin Bridge proposal is also an integral section of NZTA's Wellington Northern Corridor, running from Levin to Wellington Airport. The Wellington Northern Corridor is one of seven 'roads of national significance' (*RoNS*) identified by the Government as essential state highways which require upgrading to reduce congestion, improve safety and support economic growth in New Zealand;
- g. the combination of the proposal's physical location, its role as an important transport node and its integration with the Wellington Northern Corridor *RoNS* means it raises a unique combination of complex and significant issues, at a local, regional and national scale. All of these issues must be carefully heard, considered and balanced by the Board in making its determination;
- h. given the project's proximity to both a well-established urban area and the historic Basin Reserve cricket ground, many of the submissions raise a range of substantive and deeply felt issues, rather than being a simple "pro-forma" opposition to the project. The majority of submitters (130 out of the 215, or 60.5%) have indicated they wish to be heard in support of their submission. As at the date of this application, the Board is still hearing expert evidence from the parties, so is yet to begin hearing representations from individual submitters who are not calling expert evidence;
- i. the main submitters in opposition to the project are community groups with funding and resource constraints. This means that rather than calling expert evidence in all areas (including, for example, transportation and consideration of alternatives, which as noted has emerged as a significant contested issue), these parties must largely rely on detailed cross-examination of NZTA's witnesses (in particular) to establish their case. This in turn has required the Board to allow parties more latitude in cross-examination than may otherwise have been the case. This has already resulted in NZTA's alternatives assessment expert (Dr. Stewart) being under cross-examination for five days, which to the Board's and our knowledge is unprecedented in a hearing of this type;
- j. the lodgement and notification dates for the proposal necessarily meant the hearing preparation period spanned the Xmas/New Year summer holiday period. To ensure

a fair and robust process (particularly given the volume of information to be absorbed for hearing preparation), the start of the hearing had to be delayed from 13 January 2014 (as originally proposed) to 3 February 2014; and

- k. the Board and parties initially anticipated a six week hearing, finishing on 21 February 2014. This provided adequate time for the Board to issue its draft decision and report by 28 March 2014, as originally proposed. As at the date of this application, the hearing has already spanned five weeks. Due to the number of witnesses, length of cross-examination and the number of submitters wishing to speak in person, the hearing is now anticipated to take a total of 13 weeks (over a 16 week duration). This makes it far longer with the closest comparable Board hearing which has previously been granted an extension of time, being the New Zealand King Salmon hearing.

HEARING PROCESS

9. The Board has used its best endeavours to ensure that the hearing has occurred efficiently. This has included:
 - a. issuing Inquiry Procedures to ensure the effective, efficient and fair running of the hearing as early as 26 August 2013 (i.e. just over two weeks after the proposal was formally notified);
 - b. arranging for an extensive programme of expert caucusing to be facilitated by experienced Environment Commissioners during the period from November 2013 to February 2014. This expert conferencing extended across some 16 different disciplines, and resulted in 17 separate joint witness statements being filed with the Board for consideration;
 - c. requesting that as Counsel assisting the Board, we liaise with the parties to develop a list of contested issues in advance of the hearing commencing. Unfortunately, and reflecting the range and depth of issues being raised by submitters, the list extended to some 11 pages and almost 150 separate listed issues;
 - d. pre-reading the entire application and all evidence before the commencement of the hearing on 3 February 2014;
 - e. holding the hearing as continuously as possible from 3 February 2014 to the date of this application. As noted, the only adjournments in the hearing schedule to date have been to accommodate availability at the main hearing venue (although the entire hearing has been moved overnight to accommodate this, where an alternative venue has been available and shifting venues was economically efficient), and to allow parties sufficient time to produce and absorb new material required for the hearing;
 - f. working during the evenings and weekends;
 - g. extending hearing hours on some days; and
 - h. undertaking site visits outside of sitting times.

TIME CONSTRAINTS

10. The current timetable requires the Board to produce its draft report and decision on or before 17 April 2014. On current estimates, it will not be possible for the Board to have even completed hearing all the evidence, legal submissions and submitter representations by this date, let alone have had any time for substantive deliberation, consideration and writing of the report and (if required) the wording of conditions. In addition, this timeframe

would actually be 14 April 2014, as the Board needs to give the EPA at least 3 working days to print and serve its draft decision and report.

EXTENSION REQUESTED

11. The Board is aware of the costs associated with any extension of time and will continue to use its best endeavours to hear and decide the matters before it in an efficient manner. However, the Board is committed to providing a robust and accurate decision, and running a fair hearing which gives all parties an appropriate opportunity to make their case. The Board accordingly considers that due to the special circumstances outlined above, more time is required to achieve this outcome.
12. On behalf of the Board we respectfully request that an extension to 30 August 2014 be granted. This time period provides for:
 - a. the Board to release its draft decision and report on or before 18 July 2014;
 - b. all parties and submitters to provide comments on "minor and technical" matters arising from the draft decision and report by 15 August 2014 (as provided for in section 149Q(4) RMA);
 - c. the Board to review and consider the comments made, and provide its final decision and report to the EPA by 26 August 2014, including if necessary amending the wording of the resource consent conditions; and
 - d. the EPA to print and serve the Board's final decision and report by 30 August 2014.
13. Given the special circumstances outlined above, the Board would be under impossibly tight timeframes to deliver a decision should the extension of time not be granted. The Board further considers it would not be able to provide a full and fair hearing to all parties, or meet its natural justice obligations, if required to deliver a draft decision and report by 17 April 2014, as is currently the case. We respectfully request that you consider this matter, and make a decision, as a matter of urgency so that the Board can manage its timeframes accordingly.
14. Thank you for your consideration of this request. Please contact us if you have any questions.

Yours faithfully
ChanceryGreen



Karen Price
Partner

Contact: Karen Price DDI:+64 9 357 0330
karen.price@chancerygreen.com



Helen Andrews
Partner

Contact: Helen Andrews DDI:+64 9 357 0331
helen.andrews@chancerygreen.com