

Before the Board of Inquiry
Waterview Connection Project

in the matter of: the Resource Management Act 1991

and

in the matter of: a Board of Inquiry appointed under s 149J of the Resource Management Act 1991 to decide notices of requirement and resource consent applications by the NZ Transport Agency for the Waterview Connection Project

Memorandum of Counsel on behalf of the NZ Transport Agency providing
Comments on the Board's Draft Report and Decision

Due date: 23 June 2011

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MEMORANDUM OF COUNSEL ON BEHALF OF THE NZ TRANSPORT AGENCY PROVIDING COMMENTS ON THE BOARD'S DRAFT REPORT AND DECISION

MAY IT PLEASE THE BOARD OF INQUIRY

Introduction

- 1 The NZ Transport Agency (*NZTA*) makes the following comments on the draft report and decision of the Board of Inquiry (*Board*) released on 25 May 2011 (*draft Report*).
- 2 The NZTA respectfully welcomes the Board's draft Report and Decision to grant consents and confirm the designations sought for the Waterview Connection Project, and considers that the draft Decision has largely achieved an appropriate balance between the NZTA's project requirements and the communities' needs and concerns.
- 3 Pursuant to section 149Q(4) and (5) of the Resource Management Act 1991 (*RMA*), the NZTA's comments relate to minor or technical aspects of the draft Report, and include:
 - 3.1 Comments on minor errors;
 - 3.2 Comments on the wording of conditions specified in the draft Report; and
 - 3.3 Comments on omissions in the draft Report.
- 4 Accompanying this Memorandum is a set of Compiled Proposed Designation and Consent Conditions which shows, in "green-line", further amendments to the Board's draft conditions (Volume 2 of draft Report) as sought by the NZTA.¹ It also shows a number of other amendments sought by other parties (Auckland Council, Living Communities Inc and the Albert Eden Local Board) which the NZTA supports. This set also includes the various amendments made to Schedules A and B and specific conditions in response to the Board's Minute and directions dated 24 May 2011.²
- 5 This Memorandum also addresses issues raised in the Board's more recent Minutes and Directions (17 and 21 June 2011).
- 6 Accordingly, this Memorandum is structured as follows:
 - 6.1 Comments on minor errors or technical aspects;

¹ See **Annexure A1** (separately bound document). A clean set of conditions is also provided, **Annexure A2** (also separately bound).

² See Memorandum of Counsel on behalf of the NZ Transport Agency dated 8 June 2011.

- 6.2 Comments on minor errors or technical aspects in relation to noise;
- 6.3 Comments on wording of conditions;
- 6.4 Response to the Board's 17 June 2011 Minute and Directions; and
- 6.5 Response to the Board's 20 June 2011 Minute.

COMMENTS ON MINOR ERRORS OR TECHNICAL ASPECTS

- 7 The NZTA's comments will follow the paragraph numbering of the draft Report.
- 8 **Paragraph 32** - The paraphrasing of Section 96 of the Land Transport Management Act (*LTMA*) is slightly inaccurate. As the paragraph correctly notes, the NZTA is under general statutory duties to:
 - 8.1 Exhibit a sense of social and environmental responsibility, which includes avoiding, to the extent reasonable in the circumstances, adverse effects on the environment;
 - 8.2 Use its revenue in a manner that seeks value for money; and
 - 8.3 Ensure that its revenue and expenditure are accounted for in a transparent manner.³
- 9 However, the NZTA is only under a statutory duty to ensure that people and organisations:
 - 9.1 Take into account the views of affected communities; and
 - 9.2 Give land transport options and alternatives an early and full consideration; and
 - 9.3 Provide early and full opportunities to persons and organisations who are required to be consulted;

when such people and organisations are preparing regional land transport programmes.⁴
- 10 Clarification could be provided by adding, after "environment" on the 4th line of paragraph 32, the words: "*ensuring that persons and organisations preparing regional land transport programmes take*"

³ Sections 96(1)(a)(i), (b) and (c) LTMA.

⁴ See section 96(1)(a)(ii) LTMA.

into account ... give land transport options ..., provide early and full opportunities".

- 11 **Paragraph 47** – "Reduction of Motu Manawa Marine Reserve" should be listed under Sectors 3 and 4 only (not Sector 2).
- 12 **Paragraph 120** – In relation to Condition OT.1(g), the Board notes that it requires "*strengthening of that condition to commit NZTA to synchronised cycle lights at the interchange unless through detailed design it proves feasible to construct underpasses and/or overpasses that makes lights unnecessary.*" As a result, the Board amended proposed Condition OT.1(g) to read:
- (g) As part of detailed design at the Te Atatu Interchange, the installation of underpasses and/or overbridges, provided however that should same not prove feasible in civil or traffic engineering design terms, the installation of synchronised cycle lights.
- 13 The NZTA's concern with this amendment is that feasibility should not be limited to engineering issues only. There may be other reasons (in particular, visual, public safety or designation requirements), that make installation of underpasses and/or overbridges not feasible.
- 14 The NZTA supports and is committed to the use of traffic signal co-ordination to reduce the delays and stops to cyclists on the northwestern cycleway. However, this objective cannot be considered in isolation of the overall design and operation of the Te Atatu Interchange, the consequential impact on other movements (such as buses, High Occupancy Vehicles, general traffic and pedestrians), and the need to integrate the Interchange's signal operation with those signals on the local road network. It is therefore suggested to replace the term "synchronised cycle lights" with "co-ordinated traffic signal operation ..." in Condition OT.1(g) in order to better reflect the standard terminology and design processes used in the industry.
- 15 As a result, the NZTA proposes the following wording:
- (g) As part of the detailed design at the Te Atatu Interchange, consideration of the feasibility of the installation of underpasses and/or overbridges, provided however that should same not prove feasible ~~in civil or traffic engineering design terms~~, the installation of co-ordinated traffic signal operations which seeks to reduce delays for cyclists on the north-western cycleway. ~~synchronised cycle lights.~~
- 16 **Page 54** – Heading format to be corrected (7.3 Issues About Economics).

- 17 **Paragraph 164** – This paragraph incorrectly states that the NZTA Board had “approved funding for it [the Project] of up to \$2 billion”. Mr Parker’s EIC stated that the Board approved funding of up to \$2 billion for completing the whole of the remainder of the Auckland Western Ring Route, of which the Waterview Connection Project is only part.⁵
- 18 **Paragraph 216** – This states that the Urban and Landscape Design Framework (*ULDF*) is “*an aspirational document, which strangely was not included in the hearing materials, but which we called for, and found instructive*”. To clarify, part only of the ULDF was included in the hearing materials, being Section B which was attached to the 15 November 2010 Evidence in Chief (*EIC*) of Ms Lynne Hancock (as Annexure E). Section B sets out the Design Vision and Principles. Given its background and overall purpose, the complete ULDF was not lodged as part of the Project application, in particular because it referred to and contained the wider aspirations and longer term vision of stakeholders⁶ and the surrounding community and it related to areas outside the Project’s boundary.⁷
- 19 As noted in Ms Hancock’s *EIC*,⁸ a full copy of the ULDF was made available to the public as a “Non-Lodged Document” on the Waterview Connection website from 15 November 2010 onwards. The NZTA confirmed that had occurred to the EPA on 2 December 2010 and, for the Board’s ease of reference (given the document’s size), at the same time, delivered six hard copies of the ULDF to the EPA’s Auckland office for use by the Board.
- 20 **Paragraphs 288, 327 and 337-339** - Given the Board’s view that the additional Saxon Reserve properties and the Howlett Reserve expansion were too uncertain to be accorded mitigation value, it is unclear from these paragraphs whether the Board is directing that the NZTA should still seek to obtain the relevant parcels of land and convert them to open space use. It is noted that Land Information New Zealand (*LINZ*, which acquires land on behalf of the Crown) will only acquire land for a State highway project where the NZTA can reasonably demonstrate a Project requirement for the land.
- 21 **Paragraph 348** – For clarification, it is noted that the existing sports facilities in Alan Wood Reserve include only one full size field (rather than two), one $\frac{3}{4}$ size field and one $\frac{1}{2}$ size field. A plan noting the dimensions of the existing facilities at Alan Wood Reserve was attached to the rebuttal evidence of Mr Dave Little.⁹ It is accepted that Ms Janissen’s question to Mr Gallagher suggested

⁵ Mr Parker *EIC*, para 82.

⁶ Including the (then) three Councils and Housing New Zealand.

⁷ This is explained in Ms Hancock’s *EIC*, paras 27 and 41-48.

⁸ *Ibid*, Footnote 5.

⁹ Mr Little’s rebuttal evidence, Annexure C.

there were “three sports fields there, I think two full sized, nearly full sized and one half size”¹⁰ but her mid-sentence correction appears to have been missed by the Board.

- 22 **Paragraph 353** – To clarify, Ms Janissen was referring to “betterment” in the sense of the provision of different positive effects, which are not related to the direct mitigation of adverse effects (in the way, for example, that a noise wall directly mitigates the Project’s adverse noise effects). It is accepted (and intended) that these positive effects offset other general adverse effects on the community’s use of open space.
- 23 **Paragraph 372** – The NZTA agrees that there is no rail designation (and no issues with a rail designation) near the “Alford Bridge”. Ms Linzey’s explanation of the consenting difficulties with a Sector 8 cycleway noted various issues for the Alford Bridge including “designation requirements so in addition to the Kiwi – the rail designation, which is H13-09, there’s the Unitec designation and landowner issues”.¹¹ Ms Linzey was noting that there are two designations which could affect consenting for the cycleway and did not intend to suggest that there was a rail designation on the Alford Bridge site.¹²
- 24 **Paragraph 391** – To clarify, Ms Janissen’s reference to the 450m “gap” along Great North Road at the northern end related to the Auckland Council’s proposed cycle route which included a bridge at Phyllis Street in preference to an Alford Bridge.
- 25 **Paragraph 400** – In relation to the second sentence, the NZTA was never seeking additional area at Valonia Street. The NZTA proposal (and the plans supported by the Board) includes sufficient space for 2 full size sports fields at Valonia Street. The proposal to acquire 8 additional properties so that the sports fields could sit side by side (and therefore accommodate a cricket pitch – not currently provided) was a Council proposal only.
- 26 There appears to be an error with the Board’s reference to mitigation by sports fields at Valonia Street being “downgraded in ... quantitative terms because of the want of space, and noise”. The sportsfield provision at Valonia Street (2 full size all weather fields) exceeds the current provision of facilities at Alan Wood Reserve which are being lost to the Project (1 full size field and 1 ¾ size field, the latter of which is partially on rail land).

¹⁰ Transcript of Proceedings (TOP), page 1240.

¹¹ TOP, pages 411-412.

¹² H13-09 is the North Island Main Trunk Line, which runs parallel to New North Road through the Project area.

- 27 **Paragraphs 404-422 and 328** – the NZTA considers that the Board’s legal analysis on financial contributions omits to refer to the line of High Court authority regarding the restraints on when a statutory power can be interpreted as including a power to require someone to pay money (i.e. the power to tax cases).¹³
- 28 **Paragraph 424** – The form of wording for a pedestrian/cycleway condition contained in the Joint Memorandum of Counsel dated 18 May 2011 was provided in response to a specific direction by the Board (16 May 2011) to the parties to draft such a condition, rather than being a condition agreed to by all parties. The NZTA continues to have concerns as to whether it is deliverable.¹⁴
- 29 To avoid any legal or technical issues arising, a further revised condition SO.14 is proposed with a new approach, which the NZTA considers will provide the level of mitigation sought by the Board, without raising issues in relation to how the NZTA can legally comply with the condition given the statutory controls on land transport funding under the LTMA (Land Transport Management Act). This new approach has the support of Auckland Council/Auckland Transport, Living Communities Inc and the Albert Eden Local Board.
- 30 The suggested revised condition, together with a more detailed explanation of the NZTA’s reasons for seeking an amended approach to the form of condition, are set out in the section headed ‘Wording of Conditions’ later in this Memorandum.¹⁵
- 31 **Paragraph 439** – Sentence not complete on pdf version of draft Report.
- 32 **Paragraph 448** – In the fourth sentence, Dr Bell’s evidence as quoted should correctly read “*that current movements ... show that*

¹³ The High Court has held that a compulsory extraction of money by a public authority for public purposes enforceable by law which is not a payment for services rendered can only be compulsorily required either pursuant to clear and express words contained in a statute, or if the necessary implication of the express words used in the statute is that Parliament must have intended there to be a power to tax. To meet this test the High Court has said that it is not enough to establish that it would be sensible and reasonable for Parliament to have included a power to tax or that, if Parliament had thought about it probably would have included a power to tax. What is needed is for it to be a matter of “express and unambiguous logic” that, given the words used in the statute, Parliament must have intended to include a power to tax. (*Neil Construction v North Shore City Council* [2009] NZRMA 275, para [47]; *Carter Holt Harvey v North Shore City Council* [2006] 2 NZLR 787, paras [21] to [24]).

There are no express words in either section 149P(4) or 171(2) RMA which empower territorial authorities or consent authorities to impose conditions on designations requiring the payment of money, and it is not a matter of “express and unambiguous logic” that the words of those sections must be intended to include a power to require someone to pay money.

¹⁴ This is explained later in this Memorandum, at paras 141-143.

¹⁵ See paras 137-148.

*brackish water from the Causeway Bridges inflow does inundate the inlet ...*¹⁶

- 33 **Paragraph 454** – In regard to the first sentence, the partially quoted paragraph 97.7 of Dr Bell’s EIC (referring to a lowered soffit level) only relates to the “lowest southern side” of the widened bridge,¹⁷ not to all of the existing Sector 4 causeway bridge. The NZTA suggests that the following wording would more accurately address what the Project proposes: *“It is proposed to widen the existing Sector 4 causeway bridges, which will require additional piles in the CMA and will lower the soffit levels of the northern extension by at the most 140mm and on the southern extension by “about 220mm, assuming a bridge camber slope of 2.5%” [FN60]; and construct a new pedestrian / cycle bridge ...”*
- 34 **Paragraph 457** – In the last sentence, the reference should be to “MHWS” (not MWWS).
- 35 **Paragraph 481** – The last word should read “satisfactory”.
- 36 **Paragraph 532** – The Regional Pest Management Strategy referred to in the NZTA’s Reply is a statutory document prepared by the former Auckland Regional Council under the Biosecurity Act 1993, rather than an internal NZTA document.
- 37 It is noted that the Board’s comments during the hearing on moth plant vine were in relation to the existing state of parts of Oakley Creek, not the motorway network around Auckland.¹⁸
- 38 **Paragraph 557** – The NZTA queries whether this paragraph is intended to read “We directed...” as the Board’s directions have previously been picked up in the relevant conditions.
- 39 Throughout **Section 7.13**, reference should be to Dr (Tim) Fisher, rather than Mr Fisher.
- 40 **Paragraph 567** – Under the heading In Sector 1, the reference in the fourth line should be to “extend three existing culverts” (not two).
- 41 Under the heading In Sector 4, the last sentence is not correct as the collection of stormwater runoff from the causeway bridge was

¹⁶ Dr Bell’s EIC, para 49.

¹⁷ This is because the 2.5% camber of the existing bridges (a slope to allow lateral rainwater drainage) needs to be continued on the same downwards slope when widening, meaning the soffit level of the extension reduces the more it is widened.

¹⁸ TOP, page 1322.

proposed in the EIC of Tim Fisher.¹⁹ The NZTA suggests that the last sentence be reworded as follows:

In addition, stormwater runoff and treatment is now proposed for the causeway bridge, as confirmed in the rebuttal evidence of NZTA's stormwater expert Tim Fisher.

- 42 Under the heading In Sector 5, the statement should be clarified as to what will be new and which is retrofitted. The NZTA suggests that it be reworded in part to read "... *via one new wetland (the Northern Portal wetland), one retrofitted wetland (the SH16 Onramp Eastbound wetland), a retrofitted existing treatment swale, three filter cartridge vaults and two bio-filter strips ...*".
- 43 **Paragraph 581** – "AURECOM" should read "AECOM" in three places.
- 44 **Paragraph 594** – As stormwater responsibility rests with Auckland Council, rather than Watercare, the NZTA suggests that "Watercare" in the last line should be replaced by "Auckland Council".
- 45 **Paragraph 597** – The Board notes increased flooding effect at 68-70 Methuen Avenue as a result of the Project. This is not correct. It is understood²⁰ that the Board's conclusion in this regard is based on its analysis of Figure 8.7a in Technical Report G.15 Assessment of Stormwater and Streamworks Effects.
- 46 Unfortunately the scale on Figure 8.7a is not very clear and the effects on 68-70 Methuen Road are hard to discern. This is because Figure 8.7a is intended simply as a summary of the more detailed information contained in the Appendices to Technical Report G.15. In particular, Figures 1 and 2 of Appendix C show that there is no difference to the flood extent or depth for 68-70 Methuen Road. The Figures also show that the property boundaries are offset from the area of stream flooding.²¹ Figure 8.5 of Technical Report G.15 also shows no discernable difference in flooding for 68-70 Methuen Road (which are just downstream of Realignment C).²²
- 47 **Paragraph 600** – The change to Condition SW.13 was as specifically directed by the Board's 7 May 2011 Directions, rather than being "agreed" by the experts. (The context for the Board's

¹⁹ Dr Fisher's EIC, paras 104-105. Also note corrected drawing 20.1.11-3-D-D-300-108 Rev D in Dr Fisher rebuttal, Annexure C.

²⁰ From the Board's comments at paragraph 583 of the draft Report.

²¹ 70 Methuen Road is shown as flooding but this is due to an overland flow path from Methuen Road through the property, not from changes to Oakley Creek due to the Project.

²² Dr Fisher identified the properties adjacent to Oakley Creek with a change of flood extent due to the Project as 12, 12a, 14a, 20, 22a, 22b, 32a, 32, 34b, 44 and 46 Bollard Avenue. (Dr Fisher EIC, footnote 50 and rebuttal evidence, para 64).

Directions was not clear until the draft Report was released.) Indeed the NZTA's stormwater expert, Dr Fisher, has significant concerns about whether the NZTA could comply with this amended condition.²³

- 48 To explain, the flooding at Bollard Avenue is caused by the existing limited capacity of the culvert under Bollard Avenue and the emergency overflow culvert under New North Road. These culverts are owned and maintained by the Council and are outside the NZTA's designation footprint.²⁴
- 49 The projected increase in flooding at Bollard Ave is primarily caused by the Project's proposed improvements to floodplain management upstream, resulting in lower flood water levels for properties along Valonia, Whittle, Methuen and Hendon Roads and reduced flood risk for houses at 33 Valonia Street and 33 Whittle Place for 100 year ARI flood.²⁵ The occupation of the motorway and rail corridor of the flood plain is mostly offset by the preservation of the flood storage within the Goldstar property.²⁶ While this is positive for the properties concerned, it has the consequence of sending a greater amount of floodwater downstream.²⁷
- 50 If the NZTA was to ensure that the operational stormwater system design "mimicked" the existing hydrological regime in a manner that avoided a flood level increase at Bollard Ave, the NZTA considers that it would need to retain flood storage by returning flood levels back to existing in its present location (e.g. in Alan Wood Reserve adjacent to the streets identified earlier).
- 51 Given the significant benefits that the Valonia, Whittle, Methuen and Hendon Road properties would receive from a reduction in flood extent and depth, and the relatively slight increase to flood levels at Bollard Avenue (where the properties fringing the creek have a minor increase in flooding and the basement of one dwelling that already floods experiences an increase in depth), the NZTA considers it is preferable to carry out the stormwater works as proposed in Dr Fisher's evidence.
- 52 Options to reduce the flooding at Bollard Avenue due to the culvert were investigated.²⁸ The only feasible option is to upgrade the Bollard culverts and/or add to it a secondary inlet. This solution needs to be developed in conjunction with Auckland Council who own this asset. Meanwhile, Auckland Council has developed a

²³ In particular the requirement "to mimic the existing hydrological regime".

²⁴ Dr Fisher EIC, para 11B.

²⁵ Technical Report G15, page 167, paras 5 and 6 and page 171, para 2.

²⁶ Technical Report G15, page 171, paras 1 and 3.

²⁷ Increase of 3.3% (refer Technical Report G15, page 173, para 1).

²⁸ Dr Fisher EIC, para 113 to 119.

preferred solution to flooding upstream of Richardson Road, which is to pass more through to the Project areas and the Bollard Avenue culverts, which will necessitate an upgrade to the culverts.

- 53 The desire for the NZTA to work constructively and collaboratively on flooding issues is expressed in Technical Report G.27²⁹. Proposed Conditions STW.27-31 include approval steps with Auckland Council for flooding aspects of the design.
- 54 Accordingly, the NZTA seeks to remove from SW.13³⁰ the words "(including to mimic the existing hydrological regime)", in preference to relying on the reference in that condition to Technical Report G.27 and Conditions STW.27-31.
- 55 **Paragraph 600** – In the last sentence of the second paragraph, the words "100 year ARI rainfall event plus the 20 year ARI sea level" have been repeated twice.
- 56 **Paragraph 620** – The correct reference in line four should be to "G.13 – Assessment of Ground Settlement Effects".
- 57 **Paragraph 634** – There appears to be a typographical error as this paragraph incorrectly states that "*caucus members arrived at full agreement*" on certain matters, including "*that NZTA shall design and construct the tunnels and approaches as described in the Geotechnical Interpretive Report ...*". The experts' Agreed Statement (2 February 2011), at page 2, records the experts' agreement (on Issue 7) as being that proposed clause G.10 of the Earthtech S42A report³¹ (which had recommended that a condition be included to require the NZTA to design and construct the tunnels and approaches as described in the Geotechnical Interpretive Report) "*is not needed*", provided that Figure E14 (attached to the rebuttal evidence of Gavin Alexander) forms part of the Ground Settlement Conditions of Consent. The latter has occurred (refer Conditions S.1, S.2 and S.4 and Schedule A, Row 26).
- 58 Accordingly, the NZTA considers that the Board's draft Report should be amended to read:

"... that provided the revised figure E14 forms part of the ground settlement conditions of consent, then a proposed clause suggested by Earthtech (which required NZTA to design and construct the tunnels and

²⁹ Technical Report G.27, page 4, design philosophy, bullet 4 – "*The design should best practicably mimic the existing hydrological regime and setting, to deliver outcomes objectives that remedy or mitigate adverse environmental effects. The design should also consider any measures to improve current issues in the catchment.*"

³⁰ Now SW.12 in the green-line set of conditions (Annexure A1).

³¹ Earthtech Consulting, Supplementary Section 42A Report, Groundwater and Settlement (December 2010), Appendix C1 (Groundwater Conditions).

approaches as described in the Geotechnical Interpretive Report) is not needed.”

- 59 **Paragraphs 734-896** (pp 191-228) relate to noise. See the NZTA’s Comments at paragraphs 87 et seq below.
- 60 **Paragraphs 918-920** – During the hearing on March 1st, the focus of the discussion about the ULDF was on whether there was adequate “linking between conditions of consent and materials like the framework document”.³² The discussion thereafter focused on Section B of the ULDF as the NZTA’s intention was for the Project to draw from the “design principles” in Section B, including during in any redesign required (e.g. redesign of the ventilation buildings) in the UDL Plans.³³ At that time the Section B design principles were already specifically incorporated in (then) conditions DC.8, DC.9 and LV.2(a),³⁴ but Ms Janissen acknowledged the Board’s concern and offered to “go back and look at the plans as well to see if they sufficiently incorporate reference to those principles”.³⁵ The NZTA experts subsequently carried out that review to ensure that had occurred.
- 61 The Board remains concerned that the UDL Plans have “*failed to pick up on much of the conceptual detail of the ULDF drawings*”.³⁶ It is noted that the NZTA’s experts have undertaken a review of the plans in the ULDF (including Section C) to assess their relevance and/or the degree to which they are already included in the Project. It is acknowledged that this review was not reported back to the Board. Having undertaken that review, the NZTA is confident that the conceptual detail of those aspects of the ULDF relevant to the current Project (e.g. for bridge features, noise walls, retaining walls) are identified in either lodged documentation (in particular Part F.8 (Structures and Architectural Features), Part F.16 in the UDL Plans and in Technical Report G.20 the visualisations and visual assessment of the project), and in the evidence presented by Ms Hancock (Annexure E of her EIC). In other instances, the conceptual details either refer to work outside the designation footprint (e.g. the Phyllis Street Bridge) or work that has since been amended through the Board of Inquiry process (e.g. open space

³² TOP, page 794.

³³ Ibid, pages 795-798.

³⁴ Refer “green set” of conditions dated 1 March 2011. Condition ON.3(a) had also been amended to require the noise barriers to be designed in accordance with Section B of the ULDF. Since then, Condition LV.2(j) has been added to require artworks or art through design of structures to be designed in accordance with Section B.

³⁵ TOP, page 797.

³⁶ Ibid.

concepts at Waterview Reserve and portal designs at both the north and south).³⁷

- 62 The NZTA agrees that further amendment of Condition LV.2, to add a new condition (a), could strengthen the link between the UDL Plans and the relevant part of the Framework (being Section B). It accordingly proposes wording that requires the Council, in certifying the UDL Plans, to be satisfied that those Plans include “the visual mitigation of infrastructure as detailed in Section B of the ULDF ...”.
- 63 In the NZTA’s view, the conditions (as amended) would then contain appropriate cross-referencing to Section B of the ULDF to ensure that those design principles are carried through into the next phase of the Project.
- 64 For the reasons discussed below, it would be problematic for the conditions to specifically refer to any other aspects of the ULDF work.
- 65 In its 7 May 2011 Minute (para 2.4), the Board directed that various F:16 UDL Management Plan matters be added to the consent conditions requiring their implementation. The parties’ experts responded on 13 May 2011 and amended the conditions accordingly.³⁸
- 66 The Board’s Minute did not direct that the LV and OS conditions be amended “to refer to relevant parts of the ULDF”, albeit that has been done in relation to the LV conditions where the Section B design principles will be appropriately referenced.
- 67 In the draft Report (Volume 2 Conditions), the Board has amended (in red) Condition LV.2(j) as follows:

“In certifying the UDL Plans, prepared in accordance with LV.1, the Auckland Council shall be satisfied the UDL Plans include:

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- (j) Details of artworks or art through design of structures within the Project (e.g. design detailing of median barriers, bridge railings or safety barriers), in accordance with Section B of the Urban Landscape and Design Framework (ULDF June 2010) (refer Schedule A, Row 38) (also e.g. bridges, piers, retaining walls and tunnel portals in accordance with Section C: ULDF June 2010 – refer Schedule A Row ??? [tbc])

³⁷ The only exception to this is the Te Atatu underpass design concepts, which are included in the ULDF and do not appear in the consent documentation. The NZTA has now included the detailed features of that underpass as a matter to be discussed with the Community Liaison Group (see new Condition PL.6(h)).

³⁸ Memorandum of Counsel, pages 3-4.

- 68 For the reasons discussed below, the NZTA considers that including reference to Section C of the ULDF in the conditions of consent would be problematic.
- 69 Section C of the ULDF contains 142 pages of "Sector Design Concepts" including aspirational elements as at June 2010, many of which:
- 69.1 Were never included as part of the Project (e.g. Phyllis pedestrian bridge (C8.2.5), Olympus pedestrian bridge (C9.2.7));³⁹ or
 - 69.2 Were included in the lodged application in an amended form, i.e. a form which is no longer consistent with Section C (e.g. stormwater designs in the Alan Wood Reserve Sector 9 area); or
 - 69.3 Have in any event been superseded by the BOI hearing process and will be significantly different as a result of the Board's final conditions. For example, Section C7, Great North Road Underpass, refers to the ventilation building and stack – this was the original Jasmex design, and shows two concept options. This was superseded by the NZTA's own EIC and rebuttal evidence, and will be changed again pursuant to the Board's final Decision (in particular as to the ventilation stack's location). It will also be subject to specific designation conditions and an OPW process.⁴⁰
- 70 As a result, the NZTA considers that confusion, conflict and uncertainty would result if the (non-lodged) Section C of the ULDF was now included by specific reference in Condition LV.1(j) (or in any other condition).
- 71 Section C was not referred to nor incorporated into the NZTA's evidence, nor referred to in expert caucusing, has not been referred to in any previous drafts of or discussions by experts or parties about the consent conditions, and its contents were not discussed during the hearing.⁴¹

³⁹ Any aspects of Section C that were relevant to the lodged Project were incorporated at the time (e.g. noise wall designs and bridge features are included in the documentation, particularly in Rows 9, 17 and 32 of Schedule A, and a number of these have been amended as a result of the Hearing process.

⁴⁰ The same applies with respect to the southern portal and ventilation buildings and stack (Section C9.2.6).

⁴¹ Some submitters made generic reference to earlier design concepts discussed during consultation with the NZTA but the substantive content of Section C was not assessed in anyone's evidence or during the Hearing.

- 72 For the same reasons, the NZTA has concerns with the inclusion of reference to ULDF Section C as a new Row 41 in Schedule A of the Conditions.⁴²
- 73 The NZTA submits that Section B of the ULDF is the appropriate portion of the ULDF which should be (and is) referenced in Condition LV.1(j). Section B sets out the design vision and principles for the Project, with specific reference to bridge design (Section B5.3), tunnels and portals design (B5.4), noise walls design (B5.5), retaining wall design (B5.6), and highway furniture design, including gantries, barriers and fencing (B5.7).
- 74 Accordingly, the NZTA proposes that Condition LV.1(j) (now Condition LV.1(l)) be worded as follows:
- (j) Details of artworks or art through design of structures within the Project (e.g. design detailing of median barriers, bridge railings, or safety barriers, piers, retaining walls and tunnel portals), in accordance with Section B of the Urban Landscape and Design Framework (ULDF June 2010) (refer Schedule A, Row 38), ~~(also eg bridges, piers, retaining walls and tunnel portals in accordance with Section C: ULDF June 2010—refer Schedule A Row ????(tbc))~~
- 75 **Paragraph 921** – See the NZTA’s Comments on paragraph 216 of the draft Report, above.
- 76 **Paragraph 927-935** – There is no legal hierarchy between “avoiding, remedying or mitigating” in section 5(2)(c) of the RMA, and mitigation is not to be preferred over avoidance. Indeed, environmentally, where practicable “avoiding” (which avoids creating any adverse effects in the first place) achieves more than “mitigating” (which attempts to address adverse effects which have or are occurring). Accordingly, the NZTA does not consider it is correct to describe the avoidance of effects through tunnelling as “[mitigating] the risk of not succeeding”.
- 77 **Paragraph 937** – This states that “NZTA owns some of the land involved ...”, and “... there is much land that it does not yet own”. To clarify, land held for State highway projects is owned by the Crown, not the NZTA, although it is held by the Crown for the purposes of the Project. The same point applies to **paragraph 1116** of the draft Report, which refers to the NZTA owning 17 Oakley Avenue.
- 78 **Paragraph 1021** – The Board has directed that the Construction Yard 1 designation be “rotated to cover the original portion to be

⁴² Refer Board’s 24 May 2011 Minute, para 8 (table), and the Joint Memorandum of the NZTA and Auckland Council/Auckland Transport in response dated 8 June 2011 (para 11). Refer also the Board’s 17 June 2011 Minute, para 2.

retained and the area subject to the land use consent". Given that this will result in a modification to NOR1 as lodged (i.e. some new land will be added to the original designation footprint and some land will be deleted from that footprint), the NZTA understands that to achieve the result intended by the Board, the Board will need to formally confirm and modify the requirement for NOR1 (pursuant to s149P(4)(b)(iii) of the RMA).⁴³

- 79 **Paragraph 1025** – The Board has directed that the qualification "if possible" in Condition SO.12 be deleted. The NZTA agrees that with goodwill it should be possible to avoid key events. However it considers that a definition of "key events" is required to assist the parties. To that end, the NZTA, proposes an amendment to Condition SO.12 by the provision of an Advice Note which defines "key events" as events that are scheduled on the Equestrian Events NZ Calendar.
- 80 **Paragraph 1026 and footnote 115** – To address the Board's concern, Condition OS.4(g) (rather than (c)), has been amended to refer to consultation on landscaping to avoid species toxic to horses.
- 81 **Paragraph 1099** – It is noted that Ms Hayes' presentation at the hearing was not tested as it was not circulated in her submission or as evidence prior to her appearance and there was no opportunity for the NZTA to assess the accuracy of her depictions or to provide its own simulation of the view from her property.
- 82 **Paragraphs 1141-1157** – The draft Report states that the Board was *"offered no detail of how the spending of money of this order would relate to the allocation of funds for other projects, let alone what those projects might be, or what they cost"*. This is incorrect.
- 83 Under cross examination by Mr Allan, the NZTA's Mr Parker stated *"we are living in a constrained fiscal environment all the time and consciously making these choices between projects around the country. And I have, for example, some other alternative costs of what other projects [sic] which might just assist the Board, if this is useful?"*⁴⁴ His Honour declined to have Mr Parker provide this information, noting "I don't think we need to have a catalogue of what those other projects are."⁴⁵
- 84 **Paragraph 1268 and 1269** – This refers to the evidence lodged by Mr Robert Black for the Waterview Primary School Board of Trustees. As Mr Black's evidence was formally withdrawn by the

⁴³ In other words, technically more than a direction that the change be made may be required.

⁴⁴ TOP, page 87.

⁴⁵ TOP, page 88.

Board of Trustees in March 2011,⁴⁶ it is submitted that reference to that evidence should either be deleted from the draft Report or have a qualification noting this.⁴⁷

- 85 **Paragraphs 1271 and 1276** – For clarification, the NZTA notes that the “sound system”, referred to in the Project Agreement with the Waterview Primary School, is an intercom system for school communication purposes, rather than a microphone and speaker system for teaching purposes. All parties rejected the idea of using a microphone and speaker system to address noise effects as it effectively meant that noise levels would not be reduced but further increased. Instead the various acoustic insulation measures proposed by the NZTA will ensure that internal noise levels are conducive to teaching, without a microphone.
- 86 **Paragraph 1321** – As the reference in Condition S.7 to “Great South Road” has been corrected to read “Great North Road”, the last 10 words in this paragraph can be deleted.

COMMENTS ON MINOR OR TECHNICAL ASPECTS IN RELATION TO NOISE

Construction noise

- 87 **Paragraph 734** – For clarification, it is noted that the Appendix 7 referred to (in the 3rd sentence) was an appendix to Technical Report G.31: Technical Addendum Report rather than to Technical Report G.19 (although the information in that appendix was additional to Technical Report G.19: Assessment of Vibration Effects).
- 88 **Paragraph 755** – The second sentence should be clarified by amending it to read “in part to attenuate noise”. The boundary fence at St Francis School is intended for safety reasons primarily,⁴⁸ but will have acoustic benefits.⁴⁹
- 89 **Paragraph 759** – The last two sentences leave the impression that the issue of re-radiated noise and the need for temporary relocation was of much wider application than it actually was. The only temporary relocation considered potentially necessary due to re-radiated noise raised during the Hearing was in relation to 1510 Great North Road (Unitec One), albeit Condition CNV.11 covers other properties as a precaution.

⁴⁶ Refer Memorandum of Counsel on behalf of the Waterview Primary School Board of Trustees and the Ministry of Education, dated 18 March 2011, para 3.

⁴⁷ Mr Black’s evidence as an individual submitter on the Project remained.

⁴⁸ For example, Ms Linzey’s EIC (Social Impact) at paras 93 and 94.

⁴⁹ Ms Wilkening’s EIC (at para 116) stated: “*The boundary fence, in addition to shielding the school from traffic noise ... and providing mitigation from construction noise ..., will improve the safety aspect of the school adjacent to the road.*”

- 90 **Paragraph 760** – To clarify, while full enclosure of the concrete batch plants was suggested by the NZTA (due to their potential 24 hour operation), enclosure of the rock crusher and associated truck loading area was not offered as the only mitigation option by the NZTA as the crusher and loading area are not intended to operate during the night time. The more recent changes to Condition CNV.9 (to also require the rock crushing plants and loading bays and conveyors for all plants to be fully enclosed) were made pursuant to the Board's specific Directions of 7 May 2011 (para 10.3). The NZTA now accepts the Board's required mitigation.
- 91 **Paragraph 761** – The reference to the "*family named Chand at 51 Hendon Avenue*" may not be correct, as construction noise not a focus of their presentation at the hearing and they produced no evidence.⁵⁰
- 92 **Paragraph 762** – The statement "*Traffic noise was said not to be a significant part of background noise in much of this sector [9], such that a night time criterion of 45dB LA_{eq} could be met by and large*", is not technically correct. There appears to be confusion about ambient noise levels in that sector (which are low, not affected by existing traffic) and construction noise levels (which will be high at times and not meet the 45dB LA_{eq} limit for a number of activities.⁵¹
- 93 For accuracy, the NZTA suggests that the last part of the statement quoted above should be amended to read "*... sector, therefore the night time noise criterion of 45dB LA_{eq} of the construction noise standard was proposed for this sector*".
- 94 **Paragraphs 769 (last bullet point) and 772** – For clarification, Mr Hegley's recommendation related to the early installation of permanent operational (traffic) noise barriers where practicable prior to commencement of construction (rather than to the installation of construction noise barriers per se – which are temporary structures). This is reflected in Condition CNV.7.⁵² Likewise, **paragraph 787** of the draft Report should refer to early installation of "permanent" or "traffic" (rather than "construction") noise barriers.⁵³
- 95 **Paragraph 776** – The reference to Mr Hunt being "*particularly concerned about areas that are currently relatively quiet at night, for instance in proposed sector 9, where allowing construction noise to reach levels of up to 60dB LA_{eq} could pose a real issue*" is incorrect. In his s 42A report, Mr Hunt correctly referenced the

⁵⁰ Their primary concerns at the hearing were the amount of land take, the location of the southern vent building in relation to land take and operational noise.

⁵¹ Siiri Wilkening EIC, para 68.

⁵² And also in the Expert Caucusing Joint Report to the Board – Topic Noise dated 2 February 2011 at paras 14-15.

⁵³ This is now also addressed in Condition CEMP.1(xiv).

NZTA's recommended night-time noise criterion of 45dB LAeq for Sector 9.⁵⁴

- 96 **Paragraph 777** –The reference to “65dB limit” in the second sentence should read “60dB limit” (as proposed by the NZTA). The last sentence of this paragraph is not correct as the night time noise criterion for Sectors 1 to 7 proposed by the NZTA fell in the exact middle of the 45dB residential noise limit and the 75dB commercial noise limit of NZS 6803.
- 97 **Paragraph 779** – With respect to the second sentence, to fully reflect the evidence before the Board, the draft Report should also note Mr Hunt's subsequent agreement with the recommended indoor noise criteria in Ms Wilkening's proposed conditions (which used NZS 2107:2000).⁵⁵
- 98 **Paragraph 784** – Again, as with Mr Hegley, Mr Hunt supported the early installation of operational (traffic) noise barriers for construction noise mitigation purposes. (Refer to the NZTA's Comments in relation to Report paragraphs 769, 772 and 787, above.)
- 99 **Paragraph 785** – It is noted that the Expert Caucusing Joint Report to the Board on Noise⁵⁶ listed no areas or items of disagreement outstanding. For clarification, the NZTA considers that the following words should be added to the end of paragraph 785, “with no areas of disagreement outstanding”.
- 100 **Paragraph 793** – For clarification, it is noted that these were the internal noise criteria originally put forward by the NZTA.
- 101 **Paragraph 796** – The statement that “*Ms Wilkening acknowledged that they [the Board's questions] were similar to other queries placed before NZTA before the hearing*” is not correct. Ms Wilkening's Supplementary evidence (dated 28 February 2011) stated that “*my evidence also responds to other queries made by the Board during the hearing, in particular in relation to the wording and practical implementation of the proposed ... (CNV) conditions*”.
- 102 **Paragraph 797, 7th bullet point** – For accuracy, this should read “*Does it exceed night time criterion 60dB LA_{eq}/75dB LA_{eq}/45dB LA_{eq}*”. Because the table covered all sectors, there were several night time noise limits referenced.

⁵⁴ Malcolm Hunt Associates “Noise & Vibration Issues Identification Report” dated December 2010, Section 3.1 Night-time Construction Noise Criteria, page 6.

⁵⁵ Refer Expert Caucusing Joint Report to the Board – Topic Noise, dated 2 February 2011, paras 27-30.

⁵⁶ Dated 2 February 2011.

- 103 **Paragraph 801** – The second sentence states that *"In each case, a brief description was provided of mitigation that would be likely to have been put into effect in order to get sound levels down to those predicted ..."*. That is incorrect. The table referred to showed the predicted noise levels without noise mitigation measures being undertaken. Accordingly the recommended noise mitigation measures proposed by the NZTA (also contained in the table) would reduce noise levels down from those predicted, rather than down to those predicted (as interpreted by the Board.)
- 104 **Paragraph 812** –In this paragraph the Board has effectively queried why the NZTA cannot currently predict the construction noise levels that would be received at affected properties with the same accuracy as it can predict the operational noise levels that would be received at PPFs. The reason for this is explained in the evidence given by Mr Hegley during the hearing. In response to further questioning from Commissioner Dunlop, Mr Hegley acknowledged that he (i.e. as a noise expert) "can't" have prior knowledge of the equipment a contractor would deploy or the number of activities a contractor may be undertaking in parallel. As a result, he stated *"... what I'm saying this is indicative. This table [i.e. Exhibit 9] should be indicative of what's happening, not exactly what's happening. You can't decide exactly until you have let the contract"*.⁵⁷ The NZTA considers that this difference should be reflected in paragraph 812. (For the same reasons, the NZTA questions the accuracy of the statement in **footnote 129** of the draft Report).
- 105 **Paragraph 821** – See the NZTA's Comments on paragraph 760 of the draft Report, above.

Operational noise

- 106 **Paragraphs 838 and 866** - There is case law on the interrelationship between NZ Standards (such as NZS 6806:2010) and the role of a decision maker under the RMA which is relevant to this aspect of the Board's draft report and which does not appear to have been taken into account by the Board.
- 107 In *McIntyre v Christchurch City Council*, the Planning Tribunal discussed whether compliance with a New Zealand standard (in that case a standard in relation to radio frequency radiation) was sufficient to demonstrate an absence of adverse effects. The Tribunal held that:⁵⁸

A party to resource consent proceedings is entitled to rely on compliance with a relevant New Zealand standard as tending to show that effects on the environment of a proposed activity should be acceptable because

⁵⁷ TOP, pages 858-859.

⁵⁸ *McIntyre v Christchurch City Council* [1996] NZRMA 289 at 295.

emissions would not exceed levels set in that document. Absent challenge by another party, a consent authority may treat the standard as setting an appropriate level of emissions that would not have unacceptable effects on the environment.

However parties to resource consent proceedings are not bound to accept that compliance with a New Zealand standard would avoid adverse effects on the environment that should be taken into account in deciding whether resource consent should be granted or refused. Because New Zealand standards are not given particular status by law, parties must be free to assert that significant adverse effects on the environment would occur despite compliance with the standard.

In practice, New Zealand standards are prepared by committees of people well-qualified in the subject, and with consultation with interested sections of the community. The standards are generally accorded respect. **So opposition to a resource consent application based on an assertion of significant environmental harm despite compliance with a relevant New Zealand standard would usually need to be supported by expert opinion to be worthy of serious consideration.** A mere assertion of harm, without such support, may not be a responsible exercise of a right of appeal.

(Emphasis added).

- 108 In the present case, ultimately the position of all of the noise experts before the Board (as set out in the Second Expert Caucusing Joint Report⁵⁹) was that they supported the application of the concepts and criteria as set out in NZS 6806:2010 for all noise sensitive locations along the Project alignment.
- 109 **Paragraph 845** – This paragraph implies that the BPO test in NZS6806: 2010 is primarily driven by the cost benefits analysis. That is not correct. The BCR is not the defining or determining factor in deciding which mitigation option is considered to be the Preferred Option for the purposes of the Standard; it is only one of a number of factors which are taken into account. (Other factors relevant to determining the BPO include visual effects and public safety issues). Appendix D to the Standard is an informative (only) appendix, not a normative one. It is noted the same issue arises in **paragraph 870** of the draft Report (last 2 sentences).
- 110 **Paragraph 852-858** – It appears from the draft Report that, when considering the potential operational noise effects of the Project, the Board omitted to make a distinction between properties within Sectors 1-8 (where overall the Project has a positive effect on traffic noise received at properties when compared to the status quo), and those within Sector 9 (where, by putting a new section of road through an existing residential area, the Project is having more

⁵⁹ Noise (Construction and Operational) dated 17 March 2011, at paras 12-13.

adverse traffic noise effects). This omission has meant that the Board's draft Report regarding the operational noise mitigation conditions that are to apply to Sectors 1 to 8 of the Project is inconsistent with relevant RMA caselaw.

- 111 Sectors 1-8: The draft Report does not record or acknowledge that, once the noise mitigation measures proposed by the NZTA as part of the Project were implemented, the majority of PPFs near the sections of the Project in the vicinity of the existing SH16 and Great North Road (i.e. the sectors outside Sector 9) would experience a quieter noise environment (including a quieter *internal* noise environment) than they would have if the Project was not built.
- 112 This is true of the PPFs in this area:
- 112.1 For which the NZTA proposed to only undertake external noise mitigation measures (i.e. the "Category A" and "Category B" PPFs);
- 112.2 As well as for those PPFs where the NZTA considered it likely that it would need to undertake building modification measures (i.e. the "Category C" PPFs).⁶⁰
- 113 The evidence established that:
- 113.1 321 of the 535 PPFs outside Sector 9 will end up with lower noise levels if the Project as lodged is built, than they would receive if the Project was not built (i.e. with the existing SH16.) Therefore, the Project delivers an improvement or positive effect for those properties.
- 113.2 A further 103 of the PPFs outside Sector 9 are predicted to have no change in noise effects.
- 113.3 In total, for 424 of the 535 PPFs, the Project will not result in any adverse noise effects, and in many cases will achieve a noticeable improvement in traffic noise when compared to the status quo.⁶¹
- 114 As a result, it is not clear from the draft Report on what legal basis the Board considered it had the power to direct NZTA (by amending Condition ON.6) to further improve the internal noise environment at those properties.

⁶⁰ Para 13.8 of the Second Expert Caucusing Report provides: "*For dwellings in Sectors 1 to 7, along SH16 and Great North Road, the mitigation identified to be the BPO will result in betterment for the most affected dwellings. This means that these dwellings are predicted to receive noise levels for the design year (2026), which are lower than current (2010) noise levels.*" See also Appendix 5 of Technical Report G.12.

⁶¹ Refer Appendix 5 of Technical Report G.12, Tables of predicted noise levels.

- 115 The requirement to avoid, remedy or mitigate effects under section 5 of the RMA relates solely to the effects:
- 115.1 Of the Project (as mitigated by all the mitigation measures which form part of the Project);
- 115.2 On the existing environment - i.e. the environment which includes existing lawful developments (such as SH16) and developments that might be carried out as a permitted activity under the relevant RMA plan.⁶²
- 116 This was recognised by the Board elsewhere in its draft Report (paragraph 450) where it recognised that the remediation of historical siltation and contamination issues was *"not an example of what is meant by the term "remedying" in s5(2)(c)"*.
- 117 In *Matamata Piako DC v Matamata Piako DC*, the Planning Tribunal held *"[i]t is important to bear in mind that conditions must reasonably relate to what is authorised. A condition which obliged the Council to ameliorate traffic noise below the level experienced before the bypass would not be related to authorisation of the bypass"*.⁶³
- 118 Likewise, for this Project, it is submitted that the Board's new requirement (as reflected in its directions to amend the ON noise conditions) that the NZTA mitigate internal traffic noise at the 424 properties outside Sector 9 - where the Project will either have positive traffic noise effects or no adverse traffic noise effects - down to an internal level of 40dB, means that the NZTA is being required to go further than section 5 of the RMA.
- 119 Moreover, it is noted that of the remaining 111 PPFs outside Sector 9:
- 119.1 83 will receive an increase in traffic noise of less than 3dBA (noting that an increase of less than 3dBA is not generally discernable).⁶⁴
- 119.2 Of the remaining 28 PPFs, 2 are in Category C and would receive acoustic insulation to ensure an internal noise level of ≤ 40 dB under the conditions proposed by the NZTA.
- 119.3 Of the remaining 26 PPFs, 10 would receive a noise level increase of 3 dBA or more, but would have an external noise

⁶² *Queenstown Lakes DC v Hawthorne Estate Limited* [2006] NZRMA 424 (CA), paras 103-104.

⁶³ *Matamata Piako DC v Matamata Piako DC*, 24 May 1996, A41/96, p4.

⁶⁴ A point recognised by His Honour who noted that 2dB is "at the margin of" perceptibility. NZS6806:2010 also recognises this by applying to PPFs where the road noise is predicted to increase by 3dB or more.

level of 60 dB or less, and therefore an internal noise level of no more than 40 dB without any building modification mitigation being carried out.

- 119.4 Only 16 PPFs will receive an increase in traffic noise of 3dBA or more and, following implementation of the noise mitigation already proposed by the NZTA, would have an internal noise level of ≥ 40 dB. Only 1 PPF of the 16 would be likely to have an internal noise level of ≥ 45 dB.⁶⁵
- 120 Accordingly, for 110 of these 111 PPFs, it is also submitted that there is no more than a minor adverse noise effect that warrants further mitigation by the NZTA than is currently proposed.
- 121 Given there is no more than a minor adverse effect, and given that the level of effect at these properties would be consistent with the criteria set out in NZS 6806:2010 that were endorsed by all of the noise experts who appeared before the Board, it is submitted that it is not warranted, and would be inconsistent with the approach endorsed in the *McIntyre* case, for the Board to require a greater level of noise mitigation at these properties than that proposed by the NZTA.
- 122 As a result the NZTA considers that the imposition of further mitigation of internal noise in sectors outside Sector 9 cannot be justified under the RMA, and that the intention of the wording initially proposed by the NZTA for ON.6 should remain, albeit with some clarification as set out below.⁶⁶
- 123 The wording proposed by the NZTA for Condition ON.6(a) reads as follows:
- (a) Sectors 1 to 8 - Prior to construction of the Project, a suitably qualified and experienced acoustics specialist approved by the Auckland Council shall identify those PPFs within 100m of the edge of the closest traffic lane of the motorway where, following implementation of all the structural mitigation measures included in the Detailed Mitigation Options:

⁶⁵ The 16 properties are – 1, 2A and 2B Karamu Street, 1, 1B, 3, 11 and 15 Titoki Street, 3, 5, 7, 9, 11, 13 and 15 Alwyn Avenue and 5 Bridge Street. The 1 property out of these 16 which would be likely to have an internal noise level of ≥ 45 dB is 11 Titoki Street (Sector 1 North). The predicted external noise level at this property is 65 dB LAeq(24h) and the increase in the noise received at this property as a result of the Project is predicted to be 3 decibels. This dwelling falls within Category B and would not receive additional building modification mitigation under the process set out in NZS 6806:2010.

⁶⁶ The reworded condition ON.6 sets out the requirement that a noise level increase of 3 decibels or more should occur and a likely internal noise level of 45dB, as a requirement for Building Modification Mitigation to be investigated. This will also include PPFs which are not in Category C, and identify those PPFs that may have a noticeable effect in addition to an elevated internal noise level.

- (i) a noise level increase of 3 decibels or more will occur due to road-traffic noise from the Project; and
- (ii) habitable spaces are likely to receive in excess of 45 dB LAeq(24h) from motorway operational noise with windows closed, in the Design Year.

For those PPFs, following the process set out in Conditions ON.7 and ON.11, it shall be determined which Building Modification Mitigation is required to achieve 40 dB LAeq inside habitable spaces.

- 124 Sector 9: The NZTA recognises that Sector 9 is a unique case in the New Zealand context, being a new motorway with predicted traffic levels of >75,000 vpd in an existing residential neighbourhood.
- 125 In that Sector, of the 141 PPFs, 87 would experience a noise increase, albeit that (all except 4) of the PPFs in the sector would achieve a Category A external noise level for the purposes of NZS 6806:2010.
- 126 Up to 100 of the PPFs in Sector 9 might have internal noise levels over 40dB. However, as all except 4 of the Sector 9 PPFs are Category A, these properties are likely to receive internal noise levels of 44dB, which is below the 45dB trigger level for which NZS6806 requires building modification.
- 127 However, given the unique situation which applies in Sector 9, the NZTA would accept the appropriateness of a requirement for it to achieve a 40dB internal noise level at the PPFs in that particular Sector. (As noted above, given that the NZTA is already proposing to achieve an overall improvement in the noise environment for the parts of the Project outside of Sector 9, it would be inconsistent with section 5 RMA and relevant caselaw for the Board to seek to direct the NZTA to achieve an even higher level of improvement in those sectors.)
- 128 As a result the NZTA proposes a revised Condition ON.6 applicable to Sector 9 only which reads as follows:
- (b) Sector 9 - Prior to construction of the Project, a suitably qualified and experienced acoustics specialist approved by the Auckland Council shall identify those PPFs within 100m of the edge of the closest traffic lane of the motorway where, following implementation of all the structural mitigation measures included in the Detailed Mitigation Options, habitable spaces are likely to receive in excess of 40 dB LAeq(24h) from motorway operational noise with windows closed, in the Design Year. For those PPFs, following the process set out in Conditions ON.7 and ON.8, it shall be determined if Building Modification Mitigation may be required to achieve 40 dB LAeq inside habitable spaces. For those PPFs

where Building Modification Mitigation is required to achieve 40 dB LAeq inside habitable spaces, this shall be implemented following the process set out in Conditions ON.9 to ON.11.

- 129 **Paragraph 860** – In the context of NZS 6806: 2010, “constructability” does not mean “cost”. Constructability is related to the technical side of noise mitigation implementation (e.g. low noise road surface is not suitable on certain roads where improved shear resistance is required). Therefore, in section 6.3(j) of the Standard, one consideration is the “the technical feasibility of undertaking the mitigation option”.
- 130 **Paragraph 871** – As noted above in commenting on **paragraph 812** of the draft Report, evidence was given as to why it was more difficult to predict construction noise than operational noise.⁶⁷
- 131 **Paragraph 874** – The ‘target’ internal noise level under NZS6806 is 45dB not 40dB. The post-mitigation level of 40dB indicates that any building modification mitigation must achieve a reduction of at least 5dB.
- 132 **Paragraph 875** – the Board suggests that a PPF along the route could experience an internal noise level of 57dB based on 72dB at the facade. It is not clear where the Board derived 72dB from. The highest external level for which no treatment of PPFs is required is 67dB. Beyond this external level, building modification mitigation would be required by the Standard. The highest internal noise level for which no building treatment would be required is therefore likely to be no more than 47dB.
- 133 **Paragraph 896** – It is noted that Mr Hunt’s communications to the Board and the Board’s response to Mr Hunt were not circulated to all parties until after the draft Report was released.

COMMENTS ON WORDING OF CONDITIONS

- 134 This section contains the NZTA’s comments on the wording of conditions and requests amendments to Volume 2 of the draft Report (unless commented on earlier in this Memorandum).
- 135 A set of Proposed Designation and Consent Conditions accompanies this Memorandum showing in “green-line” further amendments sought by the NZTA to the Board’s set of draft conditions (**Annexure A**), in addition to a “clean” set (**Annexure A2**).

⁶⁷ Refer Technical Report G.5, Section 4 Methodology, last paragraph and Section 8 “Assessment of Noise Effects and Specific Mitigation, second paragraph and Technical Report G.12, Section 6.4 Modelling Process, third paragraph.

136 Following is a list of conditions amended, with a reason for the amendment (unless the amendment merely corrects a typographical or grammatical error, or unless the amendment is consequential to the Board's direction of 17 June)⁶⁸:

Condition to be amended and how	Reason
DC.1 – minor wording clarifications. DC.1(e) – clarification.	To clarify which evidence is relevant.
DC.1A – to add reference to 'Major Infrastructure Team Manager'. DC.1A – amend requirement for full set of conditions for each designation. DC.1A - deletion of clauses (e) and (f) about the UDL Plans. DC.1A - minor wording clarifications.	Auckland Council advice that this is the correct officer (note this amendment made throughout the conditions). As directed by Board Minute dated 17 June 2011. Replaced by amendments to LV.1 as considered appropriate by the NZTA, and accepted by Auckland Council, to only update these plans once.
DC.5 – to include inaction and monitoring as matters covered by the dispute resolution condition. DC.5 - Advice Note added about enforcement rights not being prejudiced.	Agreed with Auckland Council that these potential sources of dispute should also be covered. To clarify that enforcement rights are not prejudiced.
DC.6 – cross referencing to DC.7 added. DC.6 – 'Stacks' added to Advice Note.	Added at request of Living Communities and accepted by the NZTA.
DC.7 – to note in the definitions of Ventilation Building and Ventilation Stack that these do not include equipment unrelated to structure or operation.	This point was previously made in DC.8 and in two locations in DC.9. The NZTA, Auckland Council and Living Communities consider it tidier to cover this point in the definitions (and the DC.8 and DC.9 references have been deleted).
DC.8n – to provide for assessment of the land stability and retaining works needed for the northern ventilation stack.	The stack site proposed by the Board is on a small promontory immediately east of the Great North Road, overlooking the Oakley Creek. The promontory is about 15m above the creek level. The stack site lies east of the retaining structure, which runs for several hundred metres along the eastern side of Great North Road.

⁶⁸ In which case it is addressed in **Annexure B** attached.

Condition to be amended and how	Reason
<p>DC.8 – consequential amendment to additional equipment provisions, following amendment to DC.7.</p>	<p>This particular site has an elevated geotechnical risk associated with instability of the slopes adjacent to the Oakley Creek. Possible ground instability at this location may affect construction of the stack and/or its long term viability. The issue of instability associated with Oakley Creek slopes was raised in the Board hearing and is addressed by Condition S.16.</p> <p>In this part of Oakley Creek, the creek bed exposes the older sedimentary rocks of the East Coast Bays Formation (<i>ECBF</i>). The sides of the Oakley Creek valley are formed predominantly by the relatively soft, weak sediment (layers of clay, silt and sand) of the Tauranga Group. On the eastern side of the creek, however, the Tauranga sediments are capped by basalt flows from the nearby Mt Albert volcano. This profile is evident in the geological cross sections in F.10.</p> <p>While no detailed assessment has been made of the suitability of this site to accommodate a ventilation stack, solutions required to stabilise this site may have significant temporary impacts on the adjacent road and creek as the NZTA's experts have identified some slow-moving deformation already taking place at the site and that existing preventative works are only just satisfactory.</p> <p>On this basis, initial design for the stack in the revised location directed by the draft Report indicates that it will require retaining structures given the steep drop down into the adjacent Oakley Creek valley. There is a need therefore to encourage integration with the Oakley Creek Esplanade Restoration Plan.</p>
<p>DC.9 – minor clarifications.</p> <p>DC.9 – consequential amendment to additional equipment provisions, following amendment to DC.7. (Also DC.9(f)).</p>	
<p>DC.10 – to add "Manager Regional and Local Planning".</p>	<p>Auckland Council advice that this is the correct officer.</p>
<p>DC.13 – new condition about administrative charges.</p>	<p>Sought by Auckland Council. The NZTA has no objection.</p>
<p>DC.14 – new condition about access to site by Council officers.</p>	<p>Sought by Auckland Council. The NZTA has no objection.</p>

Condition to be amended and how	Reason
Figure DC.A – expanded OPW area.	This is required so that the OPW provisions will apply to the retaining structures required to support the relocated northern ventilation stack. Refer discussion about DC.8(n) above.
RC.1 – to clarify that the relevant evidence is that of the NZTA.	
RC.2 – minor clarification re review date.	Requested by Auckland Council and accepted by the NZTA.
RC.3 – amend requirement for full set of conditions for each designation. RC.3 - deletion of clauses (e) and (f) about the UDL plans.	As per Board direction dated 17 June 2011. Replaced by amendments to LV.1 as it is considered appropriate by the NZTA, and accepted by Council, to only update these plans once.
RC.5 – new condition applying dispute resolution provisions (as in DC.5) to consents.	As set out in the joint memo to the Board of 8 June 2011. Note this also replaces CEMP.14
RC.6 – new condition about administrative charges.	Sought by Auckland Council. The NZTA has no objection.
RC.7 – new condition about access to site by Council officers.	Sought by Auckland Council. The NZTA has no objection.
CEMP.1 – minor clarifications to the Advice Note.	Recognises that draft SSCEMP for Construction Yard 7 is now referenced and that it will need to be revised now the northern ventilation stack is to be located in that Yard.
CEMP.2 – cross referencing added.	Auckland Council requested cross referencing to CEMP.6 as both conditions raise matters to be certified.
CEMP.6 – formatting clarified.	As set out in the Joint memo to the Board of 8 June 2011.
CEMP.14 – deleted	Replaced by DC.5 and RC.5.
P1.6(h) – incorporation of review of design detail of underpass by community liaison group.	
TT.8 – minor clarification.	Sought by Auckland Council and agreed by the NZTA.
OT.1(g) amended to provide for cycle underpasses or overbridges to be assessed.	As discussed earlier in this Memorandum.
ON.6 amended to distinguish between PPFs within Sector 9 and PPFs outside Sector 9.	As discussed earlier in this Memorandum.
OV.1 – to provide for Council approval (as directed by the Board).	

Condition to be amended and how	Reason
<p>LV.1(a) and (b) – to incorporate requirements previously noted in DC.1A and RC.3.</p> <p>LV.1(c) and (d) – to note amendments to the reconfigured bund at Alwyn Ave and the relocation of the northern ventilation stack.</p> <p>LV.1 – to set a timeframe for certification.</p>	<p>Considered more appropriate to address these matters in the conditions on UDL plans.</p> <p>Alwyn Ave and ventilation stack amendments to reflect directions in draft Report.</p>
<p>LV.2 – new subclause (a)</p> <p>LV.2 – new subclause (b)</p> <p>LV.2(h) – minor clarification</p> <p>LV.2 – adding piers, retaining walls and portals to structures to clause (j). (Note now subclause (1)).</p>	<p>Proposed by Auckland Council and the NZTA.</p> <p>Sought by Auckland Council and accepted by the NZTA.</p> <p>Sought by Auckland Council and accepted by the NZTA.</p> <p>Ensuring that these structures are considered for art or art through design.</p>
<p>LV.8 – to provide for methodologies to be submitted with ULD Plans to Council.</p>	<p>Sought by Living Communities Inc and accepted by the NZTA (reflecting the intent of caucusing outcomes).</p>
<p>OS.2 – cross-references added.</p> <p>OS.2 – to provide a timeframe for the Open Space Restoration Plans to be provided to Council.</p>	
<p>OS.4(g)(ii) – amended to include provision to avoid plants toxic to horses.</p>	<p>As directed by the Board.</p>
<p>OS.5(c) – cross reference added.</p> <p>OS.5(d) – to add a reference to the UDL Plans as an alternative.</p>	<p>Requested by Auckland Council and accepted by the NZTA.</p> <p>Sought by Auckland Council. The NZTA has no objection.</p>
<p>OS.7 – to include reference to stability works needed for relocated stack.</p>	<p>Refer discussion on DC.8(n) above.</p>
<p>OS.11 – to include reference to the effect of the works required for the relocated stack on the walkway.</p>	<p>Stack construction may provide less ability now to retain existing walkway during construction.</p>
<p>OS.16 – deletion of the alternative of a link to the park entrance.</p>	<p>At Auckland Council request, as accepted by the NZTA.</p>
<p>SO.12 – deletion of “where possible” and addition of a definition of “Key Events”. (Note related amendment to SO.9)</p>	<p>Deletion at Board direction and definition added to assist parties to define Key Events and ensure adequate notice of such events.</p>
<p>SO.14 – revision of the cycleway condition to address NZTA’s deliverability concerns while still providing the mitigation required by the Board.</p>	<p>As discussed in the following section of this Memorandum, the NZTA has concerns about deliverability of the existing condition.</p>

Condition to be amended and how	Reason
V.3 and V.4 – “within the designation” deleted.	As per Board direction of 17 June.
V.8 – incorporation of the Advice Note in the body of the condition.	Sought by Living Communities Inc, accepted by the NZTA (reflecting the intent of caucusing outcomes).
S.13 – additional cross referencing.	Includes S.16 dwellings in the provisions of S.13.
G.12 – “for peer review” added.	At Living Communities’ request and accepted by the NZTA.
CL.2 – minor clarification.	
CL.6 – minor clarifications.	To clarify relevant management plans, at Auckland Council request.
E.21 – amended to specifically require that areas of bulk earthworks not actively worked for two weeks must be stabilised.	Recommendation from NZTA expert, minor modification for clarity.
SW.4 – minor clarification.	Requested by Auckland Council and accepted by the NZTA.
SW.5 – minor clarification and provision of timeframe written notice to Council for site meetings.	Requested by Auckland Council and accepted by the NZTA.
SW.7 – to provide for records of inspections to be provided to Council.	Requested by Auckland Council and accepted by the NZTA.
SW.10 deleted.	Sought by Living Communities Inc, accepted by the NZTA (because it is repeated in SW.20, which has been included in reference to Schedule B for both construction and operation).
SW.12 – to delete the requirement to mimic the existing hydrological regime.	As discussed earlier in this memorandum.
SW.13 – minor clarification.	Requested by Auckland Council and accepted by the NZTA.
SW.14 – minor clarification and provision of timeframe for written notice to Council for site meetings.	Sought by Auckland Council and accepted by the NZTA.
SW.15 – timeframe for as-builts tightened.	Sought by Auckland Council and accepted by the NZTA.
SW.18 – amended to make the as-builts available at post construction site meeting.	Sought by Auckland Council and accepted by the NZTA.
SW.21 – amendments to require that CBCMP include locations of devices, auditing requirements, an emergency spill response plan, and that the plant operation not start until certification is obtained.	Additional requirements inserted at Auckland Council’s request.

Condition to be amended and how	Reason
SW.23 – amendment to delete “at the northern SH20 portal”	Amended so the condition applies to the tunnel generally (i.e. both portals).
F.1 – contingency plans reference added.	Requested by Auckland Council.
F.5 – amended to refer to the ecologist and hydrologist. F.5 - to provide for the contingency plans to be submitted rather than implemented.	The ecologist and hydrologist will review the monitoring results (rather than the NZTA). The contingency plans should be approved by Auckland Council (but only need to be implemented in an emergency).
C.12 – C.14 – to provide that the monitoring information should be provided to Auckland Council (rather than just available) and to set a timeframe for this to occur.	Sought by Auckland Council and accepted by the NZTA.
C.16 – minor clarifications and amendments to provide information to Auckland Council.	Sought by Auckland Council and accepted by the NZTA.
Schedule A – Row 41 deleted.	To remove reference to Section C: ULDF for the reasons discussed in this Memorandum.
Schedule A – new Rows 41 and 42 added.	To include reference to the draft SSCEMP for Construction Yard 7 and to the revised concept section for the Alwyn Avenue bund.

Pedestrian/cycleway condition SO.14

- 137 The NZTA acknowledges the Board’s finding in the draft Report⁶⁹ that the NZTA must make a contribution to the value of \$8 million for the construction of a pedestrian/cycleway to enable connectivity between Waterview and Owairaka/New Windsor as mitigation for the effects of the Project.
- 138 Given this finding, the NZTA has reviewed whether a condition in the form set out in the Board’s draft Report (SO.14) is a workable way of achieving that. For technical and legal reasons relating to the funding of land transport projects (discussed below), the NZTA remains concerned that there would be legal issues associated with its ability to comply with the condition as currently worded. However, having considered the matter further in some detail, the NZTA considers that those issues could be avoided if the condition was framed around the NZTA itself building the pedestrian/cycleway (rather than the Council).
- 139 As a result, the NZTA considers that an amended condition SO.14 in the following form (which has had substantive input from Auckland Council, Living Communities Inc and Albert Eden Local Board) would

⁶⁹ Draft Report at paragraphs 417-424.

both achieve the mitigation the Board is seeking and avoid any technical and legal problems arising:

SO.14 For the purpose of mitigating significant adverse effects on passive open space and reserves in Sectors 5, 7 and 9, both during the construction years and longer term, particularly in the Waterview, Owairaka and New Windsor communities (other mitigation having been held by the Board of Inquiry not to be adequate) the following applies:

- (a) The NZTA shall, subject to conditions (b), (c) and (d) below, construct the following:
 - (i) A pedestrian and cycleway to AUSTROADS standards between Waterview and Owairaka/New Windsor (as generally indicated on drawing labelled as "Indicative SH20 Cycleway Route" (refer to Schedule A, Row 40)), subject to any modifications necessary to address design, property or engineering constraints.
 - (ii) The "Alford St Bridge".
 - (iii) The "Soljak Pl Bridge".
- (b) The NZTA's obligations under condition (a)(i) arise when the NZTA receives certification from the Auckland Council and Auckland Transport that the Auckland Council and Auckland Transport have:
 - (i) acquired all necessary land, or obtained all necessary interests and/or landowner approvals on a permanent basis in respect of the facilities described in condition (a)(i); and
 - (ii) acquired sufficient land to form a cycle and pedestrian way to AUSTROADS standards between Alan Wood Reserve and Unitec; and
 - (iii) obtained all necessary resource consents required for construction and operation of the facilities.
- (c) The NZTA's obligations under condition (a)(ii) arise when the NZTA receives certification from the Auckland Council and Auckland Transport that the Auckland Council and Auckland Transport have:
 - (i) acquired all necessary land, or obtained all necessary interests and/or landowner approvals on a permanent basis for the Alford St Bridge; and
 - (ii) obtained all necessary resource consents required for construction and operation of the Alford St Bridge.
- (d) The NZTA's obligations under conditions (a)(iii) arise when the NZTA receives certification from the Auckland Council and

Auckland Transport that the Auckland Council and Auckland Transport have:

- (i) acquired all necessary land, or obtained all necessary interests and/or landowner approvals for the Soljak PI Bridge either on a permanent basis or on the basis that the Soljak PI Bridge may be constructed and operated unless and until its continued existence and / or operation conflicts with or compromises future works pursuant to the designation for rail purposes; and
 - (ii) obtained all necessary resource consents required for construction and operation of the Soljak PI Bridge.
- (e) The certification from Auckland Council required under conditions (b), (c) and (d) above must be received by the NZTA within 8 years of the designations for the Project being confirmed.
 - (f) Each of the facilities for which certification has been given must be constructed within 1 year of the opening of the motorway, or two years from when certification is given for the relevant facility, whichever is the latest.
 - (g) The value of the construction works to be undertaken by the NZTA pursuant to condition (a) to (d) above shall not exceed a sum equal to \$8 million in June 2011 New Zealand dollars (with any construction costs above that figure being met by the Council.)
 - (h) The pedestrian and cycleway facilities described in condition (a)(i) above are in addition to the cycling and pedestrian facilities required by the other conditions.⁷⁰

Advice Notes:

The intention of this condition is to construct a continuous pedestrian and cycleway with bridges at Soljak PI and Alford St. To achieve this, the Council and Auckland Transport will use their best endeavours to obtain the necessary consents and landowner approvals, for all three components of the network.

The approvals required for the Soljak PI Bridge reflect the designation for rail purposes of land under the bridge and the possibility that any bridge structure will be approved for a limited length of time only.

In the event that, despite their best endeavours, the Council and Auckland Transport cannot obtain all of the necessary landowner

⁷⁰ The NZTA notes that its attached Conditions (Annexure A1 and A2) do not yet include subclause (h) in Condition SO.14 as the Council requested that it be reinserted after the NZTA's Annexures had already gone to print. However, the NZTA has no objection to that subclause being added.

approvals, the condition allows each part of the network to be constructed in isolation from the others. That will provide some mitigation of the significant adverse effects on passive open space and reserves in Sectors 5, 7 and 9 that the condition is intended to address. It will also enable the Council and Auckland Transport to complete the network in the future at their expense when and if they are able to obtain the outstanding approvals.

Subject to landowner approvals, the Council and/or Auckland Transport will be the owner of the pedestrian and cycleway and the bridges described in (a) above and shall have full responsibility for the operation and maintenance of those facilities once they have been constructed by NZTA. Accordingly, NZTA will be under no further obligation in respect of any of the facilities once they have been constructed and, in particular, will have no obligation in terms of the removal, alteration or replacement of the Soljak PI Bridge in the event that it conflicts with or compromises proposed works pursuant to the designation for rail purposes.

- 140 Under this condition the NZTA would make a contribution to the value of \$8 million to the provision of the pedestrian / cycleway by constructing it and meeting the construction costs up to that value. Should the Auckland Council/Auckland Transport decide that they would like to obtain consents for a facility that would be more expensive to construct (e.g. a facility that had extra features or was materially wider than required by the AUSTROADS standard), that would be able to be accommodated by Auckland Council/Auckland Transport contributing the extra cost.
- 141 The reasons for the NZTA's concern with the form of Condition SO.14 in the draft Report are as follows:
- 141.1 A pedestrian/cycleway constructed by Auckland Transport/Auckland Council would be a land transport capital project undertaken by someone other than the NZTA who is an "approved organisation" under the Land Transport Management Act 2003 (LTMA).
- 141.2 The NZTA accepts that the Board has found that the pedestrian/cycleway is mitigation for the effects of the Waterview Project but, after careful consideration of the funding regime in the LTMA, the NZTA considers that if the facility was to be constructed by Auckland Transport/Auckland Council then, for funding purposes, the provision of that facility would need to be treated as a separate Auckland Transport project under the LTMA.
- 141.3 This would be problematic as:
- (a) The pedestrian / cycleway is not currently included in the national land transport programme;

- (b) The funding contribution the Board has held to be appropriate might not be consistent with the funding assistance rate set under the LTMA that applies to Auckland Transport projects at the time when the obligation to pay the money crystallised; and
- (c) A decision whether or not to fund such a project would require the NZTA to exercise its statutorily independent function regarding giving funding approvals, which becomes problematic if the Board has directed the provision of funding.

- 142 However, if the condition is framed around the NZTA constructing the pedestrian / cycleway, then the NZTA is comfortable that its part of the construction costs of the facility could be funded as part of the Waterview Project (in the same way that other mitigation works for that Project would be funded as part of the Project).
- 143 While the NZTA accepts that this is quite a technical issue, its concern in seeking a different form of condition is, not to place barriers in the way of the pedestrian/cycleway being provided but instead, to avoid legal issues that in its view could interfere with that facility being provided.
- 144 To avoid potential issues relating to the condition being in any way uncertain, the NZTA confirms that it consents to the imposition of a condition in the form proposed above (para 139), in accordance with the principle in the case *Augier*.⁷¹
- 145 The NZTA understands that the Auckland Council, Albert Eden Local Board and Living Communities Inc support this approach whereby the relevant condition is reworded so that the NZTA (rather than the Council) constructs the shared pedestrian and cycle pathway once the Council has obtained necessary consents and approvals.
- 146 It is noted that those parties had also sought amendments to Condition SO.14 in order to enable the cycleway and bridges to be completed in parts, and to have the \$8 million construction cost stipulated by the Board amended so as to be adjusted annually to the Consumer Price Index (*CPI*).
- 147 The NZTA has no objection to the condition being broken down into the three constituent parts now proposed by those parties (i.e. Conditions SO.14(b), (c) and (d)), although the NZTA notes that there would likely be considerable cost efficiencies in completing all the construction works at once.

⁷¹ *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219.

148 The NZTA does oppose the \$8 million being adjusted to the CPI, as those parties now seek in their version of Condition SO.14(g) which the NZTA understands reads:

- (g) The value of the construction works to be undertaken by the NZTA pursuant to condition (a) to (d) above shall not exceed a sum equal to \$8 million in June 2011 New Zealand dollars as adjusted annually at a rate equal to the Consumer Price Index (all groups Consumer Price Index) calculated from the date of commencement of this consent to the date of completion of the construction works (with any construction costs above that figure being met by the Council.)

The timing of when the Council obtains consents and land rights will be largely at Council's control (rather than the NZTA's), leaving the NZTA exposed to increased and uncertain costs. The CPI adjustment could also act as a disincentive to the Council acting expeditiously to obtain the relevant consents and approvals.

RESPONSE TO THE BOARD'S 17 JUNE 2011 MINUTE AND DIRECTIONS

149 In this Minute (para 4), the Board asked that the relevant parties respond to various matters contained in the Board's spreadsheet concerning Schedule B at the same time as they lodged comments on the draft Report.

150 The NZTA has collaboratively discussed the spreadsheet issues with the Auckland Council and attaches, as **Annexure B**, the spreadsheet with an additional (5th) column containing the NZTA's comments and response, with which it understands the Council is in substantial agreement. Any consequent changes to Schedule B and/or the conditions have been included in the "green-line" set of conditions (**Annexure A1**).

151 In addition, the NZTA notes the following:

151.1 It has addressed "Row 41" of Schedule B (Minute, para 2) in its earlier Comments;⁷²

151.2 It confirms that the missing items in Condition CEMP.6 (referred to in the Minute at para 5) remain included in the Condition set;

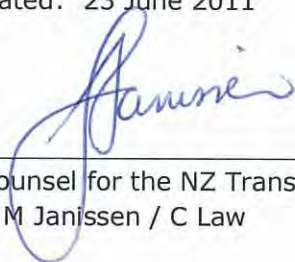
151.3 It has added the words to Conditions DC.5 and RC.5 as sought by the Board (Minute, para 6).

⁷² See paragraphs 68-74 of this Memorandum.

RESPONSE TO THE BOARD'S MINUTE DATED 20 JUNE 2011

- 152 This Minute concerned the draft Schedule A lodged by the NZTA and Auckland Council on 8 June 2011,⁷³ and contained further comments from the Board.
- 153 The NZTA and Council agree with the changes noted by the Board in paragraphs 2-6 of the Minute and confirm that relevant changes have been included in the latest draft of Schedule A (see **Annexures A1** and **A2**).

Dated: 23 June 2011



Counsel for the NZ Transport Agency
S M Janissen / C Law

⁷³ Refer Joint Memorandum dated 8 June 2011.

ANNEXURES A1 and A2**PROPOSED DESIGNATION AND CONSENT CONDITIONS**

Separately bound booklets showing:

- **the NZTA's proposed changes in "green-line" (Annexure A1), and**
- **a clean set (Annexure A2).**

ANNEXURE B

**NZTA'S RESPONSE TO AND COMMENT ON THE BOARD'S 17 JUNE
2011 DIRECTIONS SPREADSHEET**

ANNEXURE B

WATERVIEW: SCHEDULE B: NOTICES OF REQUIREMENT: CONDITIONS REVIEW – RESPONSE BY THE NZTA

NOR	Designation or Resource Consent No	Board Query	Board's Comment	NZTA Response and Comment
<p>NOR 1: Sector 1.</p>	<p>EPA 10/2.001 - (WCC. NOR - 2010 – 1034)</p>	<p>Unless NZTA can confirm the absence of blasting in the Sector by reference to consent documentation and/or evidence, CNV.3 is to be included.</p> <p>Question omission of CNV.5. Sub-paragraph (b) specifically refers to vibration effects in Sector 1.</p> <p>If blasting may occur in Sector 1, should CNV.6 not be inserted?</p> <p>AQ.2 which allows for the review of the CAQMP to be inserted.</p> <p>As CL.2 is specifically concerned with Sectors 5 & 7 shouldn't it be omitted?</p> <p>As CL.3 is specifically concerned with Sector 9 shouldn't it be omitted?</p> <p>As CL.9 & .10 are specifically concerned with Sector 8 shouldn't they be omitted.</p> <p>If the freshwater suite of conditions is</p>		<p>Blasting is not proposed in Sector 1. CNV.3 would enable blasting through the higher noise limit that applies.</p> <p>CNV.5 added.</p> <p>No for the reasons noted above.</p> <p>AQ.2 added.</p> <p>CL.2 deleted.</p> <p>CL.3 deleted.</p> <p>CL.9 & 10 deleted.</p> <p>Groundwater and settlement</p>

		relevant the Board questions why the groundwater and settlement suite of conditions would not also be relevant in some or all sectors. This query is not repeated for subsequent NOR's.		conditions only relate to the tunnelling (in Sector 8).
NOR 2: Sectors 2, 3, & 4.	EPA 10/2.003 – ACC plan modification 202	Same queries re CNV.3, CNV.5 and CNV.6 as above. Same AQ.2 query as above. CL conditions which do not apply to Sectors 2 – 4 to be omitted.		As for NOR 1. As for NOR 1. As for NOR 1.
NOR 3: Sector 6.	EPA 10/2.004 - ACC Plan modification 202	Vibration OV.1 is imposed on all designations, which is appropriate. Should it be amended to require council approval of the location of NZTA's proposed monitoring sites? Recurring AQ.2 query. Query relevance of OS.16 to Sector 6. Appears more relevant to NOR 4 - where it is also included. Query relevance of V.14 concerning north bank of Oakley Creek to Sector 6. NOR 3 starts just W of Carrington Road and extends eastward.	If there is an overlap between sectors the condition should be retained.	Amended. As for NOR 1. Deleted as more applicable to SH20. Deleted as more applicable to SH20.

<p>NOR 4: Sectors 5 and 7.</p> <p>Surface designation</p>	<p>EPA 10/2.005 - ACC Plan modification 202</p>	<p>Query exclusion of AQ.9 - .11 when Construction Yd 6 has a concrete batching plant.</p> <p>Should V.14 which applies to north bank of Oakley Creek not be included?</p> <p>Query merits of imposing a single SW condition (SW.24) on the designation.</p>		<p>AQ.9-11 added.</p> <p>V.14 added.</p> <p>SW.24 deleted as relates to discharge consents rather than the NOR.</p>
<p>NOR 5: Sectors 7 & 8.</p> <p>Subsoil designation</p>	<p>EPA 10/2.006 - ACC Plan modification 202</p>	<p>The contaminated land (CL) suite of conditions is not proposed despite:</p> <ul style="list-style-type: none"> a) Sector 8 passing under a number of closed landfills. b) CL suite being imposed on the preceding NOR. <p>This omission requires correction?</p> <p>CL.9 has a specific Sector 8 requirement for groundwater monitoring and is a “pointer” to inclusion of the CL suite.</p>		<p>CL conditions added.</p>
<p>NOR 7: Sector 9.</p>	<p>10/2.008 ACC Plan modification 202</p>	<p>On the face, we would expect AQ.9 - .11 (batching plant) and AQ.12 - .13 (rock crushing) to be included as there’s a batching plant in Construction Yd 10 and a basalt crusher south of the portal.</p>		<p>No objection to inclusion, but not necessary as the AQ conditions will apply to the relevant air discharge consents (EPA 10/2.020 and 2.022).</p>

Other Matters pertaining to NORs

1. NZTA is to correct the typographical errors in the Purpose column throughout Schedule. In NOR 7 rows H and L should be separated. In NOR 4 the AQ conditions should be in correct numerical order. – **Corrections made.**
2. The last sentence in ON.6 has a qualification that the Board finds, at best, ambiguous. The qualification provides that where PPF are identified that require building modification mitigation to achieve 40 dBA indoors with windows closed this “may be required”. The sentence is to be re-worked to ensure that this is not a discretionary matter. If it’s needed, it is to be offered and followed through in terms of the succeeding conditions. – **Sentence amended.**
3. It is not clear to the Board why DC.6 (exemption from OPW) refers back to DC.3 - .4. A reference to DC.7 - .9 would seem more appropriate? – **Agreed and amended.**
4. The Schedule B “duration” of all NORs is shown as 10 years. The board considers that the column should be headed “Lapse period (s.184(1)(c))”. Having said that, it accepts the underlying wish that the period be greater than the statutory baseline of 5 years, and approves of 10. – **Agreed and amended.**

WATERVIEW SCHEDULE B: RESOURCE CONSENTS: CONDITIONS REVIEW

Consent and Sector	Resource Consent No	Query	Comment	NZTA Response
<p>Land Use – construction – land disturbance/earthworks - includes “discharge of sediment laden water as a discharge consent” - Sectors 1 – 9.</p> <p>Duration 10 years.</p>	<p>EPA 10/2.010 ARC 38313</p>	<p>RC.1 describes the consent documentation to be complied with and cross references back to DC.1. The latter includes “... and supplementary information provided in evidence”.</p> <p>This seems far too open-ended, and could result in problems for both the consent-holder and the council.</p>	<p>It’s implicit that only NZTA’s evidence is intended, but even so that is a large amount of information (9 folders). Answers given in cross examination are also evidence. The Board hesitates to require that NZTA identify relevant passages, but what enforcement issues might arise if the subject were left “open”?</p> <p>The 2nd part of the 1st sentence in DC.1A is also relevant. It refers back to DC.1 and, in turn, RC.1.</p>	<p>Amended to clarify that this is NZTA evidence only with addition of DC.1(e) to include reference to Evidence in Chief, Rebuttal Evidence and Supplementary Information of the NZ Transport Agency.</p>

		<p>Suggest the relevance of including TT temporary traffic conditions on an earthworks/sediment discharge consent be reviewed.</p> <p>Same comment re inclusion of OT.1 operational traffic.</p> <p>Ditto for the four CNV construction noise and</p>	<p>The Board has also given further thought to its earlier re-draft of the second sentence of DC1A (also, RC3). It should read <i>“At the same time NZTA shall prepare to the satisfaction of Auckland Council a document for each designation [consent] which sets out the designation [consent] and have attached to it in text format a comprehensive set of the conditions imposed by the Board of Inquiry in its Final Decision as summarised in Schedule B, inclusive of any standard conditions and advice notes.</i>”</p>	<p>The TT conditions are considered relevant because management of TT effects are considered necessary to comprehensively manage temporary construction activities. Accept they would be covered by designation conditions so no objection to removal.</p> <p>Agree, delete OT.1</p> <p>Earthworks activities can create significant noise and require noise barrier installation (the permanent traffic barriers if possible) and may</p>
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		<p>vibration conditions nominated. What does CNV.7 (early installation of permanent noise barriers) have to do with earthworks? Or CNV.13 (process for SSNMP's).</p> <p>It occurs to the Board that AQ.5 - .8, which are applicable to dust emissions beyond site boundaries are more directly relevant to an earthworks consent.</p> <p>As the application expressly includes the" discharge of sediment laden water as a discharge consent" it is notable there are no stormwater (SW) conditions dealing with the quality of construction run off. We have the preliminary view that at least those SW conditions concerned with construction runoff should be included and invite comments.</p>	<p>Is NZTA offering on an Augier basis that it'll conduct the earthworks in compliance with the CNV conditions? If so, is it avoidable duplication as the CNV conditions apply irrespectively.</p>	<p>require the development of SSNMPs. However, now deleted on the basis that the Board is correct that CNV conditions will apply through the designation conditions</p> <p>AQ conditions not included as separate air discharge consent is being sought.</p> <p>SW conditions not included as separate water discharge consent is being sought.</p>
<p>Land use consent – activity on reclaimed land – <u>construction and</u></p>	<p>EPA 10/2.002. WCC: LUC –</p>	<p>Unclear why AQ.2, which requires annual review of the Construction AQ Management</p>		<p>Duration changed to Lapse Period. Lapse period reduced to 10 years</p>

<p>operation of motorway - Sector 1.</p> <p>Duration 35 years</p>	<p>2010 - 1035</p>	<p>Plan, should not apply.</p> <p>Unclear why AQ.16, which requires one construction TSP monitoring location in Sector 1, should not apply. If AQ.16 were included AQ.20 & .21 would also need imposition.</p> <p>Same comments apply re absence of AQ.17, which requires construction wind speed monitoring in Sector 1.</p> <p>Question relevance of V.17 & .18 concerning Traherne Island in Sector 4 to Sector 1 consent.</p> <p>Unclear how CL.2, CL.3, CL.9 and CL.10 which deal respectively with Sectors 5, 7, 9, 8 and tunnel construction are relevant to work in Sector 1.</p>		<p>consistent with the designation.</p> <p>AQ conditions not included as separate air discharge consent is being sought.</p> <p>AQ 1, 3 -8, 14, 15, 19, 22, 23 are included. AQ 2, 16, 17, 20 and 21 have been added because these AQ condtions are not specific to discharge consents ie they apply to general air quality monitoring for construction activities</p> <p>V.17 and 18 deleted.</p> <p>CL.2, 3, 9 and 10 deleted.</p>
<p>Land use Consent – activity on Reclaimed land – s.89(2)</p>	<p>EPA 10/2.009 – ACC: R/LUC</p>			<p>Duration changed to Lapse Period. Lapse period reduced to 10 years</p>

<p>Construction & operation of motorway - Sectors 2 and 4.</p> <p>Duration 35 years</p>	<p>2010/3396</p>	<p>Are CNV.3, .5(a) and .6 not relevant because blasting isn't proposed in Sectors 2 and 4?</p> <p>Recurring query re relevance of AQ.2 and CAQMP.</p> <p>Is there open space within Sectors 2 and 4 to which OS.1 - .4 need apply? Possibly small areas on Sheets 20.1.11-3-D-L-810-301 and 302?</p> <p>Might V.16 not be relevant to reclamation on south side of Sector 4 at entrance to Oakley Creek? Refer F:18 Sheet 8.</p> <p>Unclear how CL.2, CL.3, CL.9 and CL.10 which deal respectively with Sectors 5, 7, 9, 8 and tunnel construction are relevant to work in Sectors 2 and 4.</p>		<p>consistent with the designation.</p> <p>Correct (re CNV conditions).</p> <p>AQ 1, 3 -8, 14, 15, 19, 22, 23 are included. AQ 2, 16, 17, 20 and 21 have been added because these AQ condtions are not specific to discharge consents ie they apply to general air quality monitoring for construction activities</p> <p>Not on land created by reclamation.</p> <p>No – the Guidelines the condition refers to, do not cover this area.</p> <p>CL.2, 3, 9 and 10 deleted.</p>
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<p>Land use Consent – use, erection or placement of new structures – SW pipe underneath Oakley Creek – Sector 9.</p> <p>Duration 35 years</p>	<p>EPA 10/2.011 – ARC - 38316</p>	<p>Why does CEMP 8, which requires all construction materials be stored within designation boundaries, not apply to this activity?</p> <p>Why exclude CNV.3 [blasting control], CNV.4 [vibration], & CNV.5 - .6?</p>		<p>Duration changed to Lapse Period. Lapse period reduced to 10 years consistent with the designation.</p> <p>CEMP 8 - not considered necessary (the designation conditions will provide for this) but the NZTA has no objection to its inclusion if the Board wishes.</p> <p>CNV conditions - not considered necessary (this is only a pipe – no blasting etc) but the NZTA has no objection to the inclusion of the conditions if the Board wishes.</p>
<p>Land use consent – new structures over Oakley Creek, including Hendon Bridge and cycleways – Sector 9.</p> <p>Duration 35 years.</p>	<p>EPA 10/2.012 – ARC 38317</p>	<p>Same query re CEMP 8 as above.</p> <p>Why exclude CNV.3 [blasting control], CNV.4 [vibration], & CNV.5 - .6?</p> <p>Would seem appropriate to include LV.2, which amongst</p>		<p>Duration changed to Lapse Period. Lapse period reduced to 10 years consistent with the designation.</p> <p>CEMP 8 – as above.</p> <p>CNV conditions – not considered necessary for these activities (no blasting etc) but the NZTA has no objection to the inclusion of the conditions if the Board wishes.</p>

		other things, deals with design of structures – including bridge railings.		LV.2 added.
<p>Land use consent - Use, erection or placement of new structures for SW outfall – Pixie Creek - Sector 1.</p> <p>Duration 35 years.</p>	<p>EPA 10/2.013 ARC 38318</p>	<p>Why would CEMP .8 not apply?</p> <p>Will outfall structure be supported by piles making CNV.8 relevant?</p>	<p>Although C. Yd 1 is some distance away there appears to be storage space within the designation at the W. end of Jack Colvin park.</p>	<p>Duration changed to Lapse Period. Lapse period reduced to 10 years consistent with the designation.</p> <p>CEMP 8 – as above.</p> <p>No.</p>
<p>Land use consent - Use, erection or placement of new structures for SW outfall – Oakley Creek -- Sectors 7 and 9.</p> <p>Duration 35 years.</p>	<p>EPA 10/2.014 ARC 38319</p>	<p>Recurring question of why CEMP.8 wouldn't apply given proposed C.Yds in the relevant sectors. NZTA to consider in the context of all subsequent, relevant consents. Not repeated.</p>	<p>Is the same matter covered by other conditions, or indeed the consent documentation?</p>	<p>Duration changed to Lapse Period. Lapse period reduced to 10 years consistent with the designation.</p> <p>CEMP 8 – as above.</p>

<p>Land use consent - Use, erection or placement of new structures for SW outfall – Meola Creek — Sector 6.</p> <p>Duration 35 years.</p>	<p>EPA 10/2.015 ARC 38320</p>	<p>Might TT.5 be relevant in this instance given possibility of gaining construction access from GNR?</p> <p>Is NZTA sufficiently confident that blasting and vibrations will not occur for CNV.3 and .4 to not be required?</p>		<p>Duration changed to Lapse Period. Lapse period reduced to 10 years consistent with the designation.</p> <p>TT.5 – not considered necessary (as applied to NOR anyway) but the NZTA has no objection to its inclusion if the Board wishes.</p> <p>CNV conditions – not considered necessary for these activities (no blasting etc) but the NZTA has no objection to the inclusion of the conditions if the Board wishes.</p>
<p>Disturbance of Bed of lakes & Rivers – tunnelling under bed of Oakley Creek, stream diversion and infilling (Sector 9)</p> <p>Duration 35 yrs</p>	<p>EPA 10/2.016 - ARC 38321</p>	<p>CEMP 1A - should be included? (Referred to in CEMP1).</p> <p>CEMP 8 – storage of material relevant.</p> <p>CNV11 – follows on from CNV 2 so should be included?</p> <p>LV1 included but not LV2-5 & 8. Aren't these needed for completion?</p> <p>Given the land disturbance inherent in the works and known presence of</p>		<p>No – it's a trial embankment condition.</p> <p>CEMP 8 – as above.</p> <p>CNV.11 – not necessary for these activities but the NZTA has no objections if the Board wishes to add it.</p> <p>LV conditions added.</p> <p>The CL and E conditions are picked up in the relevant discharge consents (EPA 10/2.021 and 2.018/19 where relevant), but the</p>

		contaminants at some locations, why are CL and E conditions not proposed?		NZTA has no objection if the Board wishes to add them.
Discharge to the Water Table of a road (Sectors 1-9) Duration 35 yrs	EPA 10/2.017 - ARC 38322	General RC + operation SW appropriate.		
Discharge of water from road (S 1-9) Duration 35 yrs	EPA 10/2.018 - ARC 38323	General RC + operation SW appropriate. Should the F conditions also apply?		F conditions – no because the discharge is to the stormwater network and then the stormwater consents cover the discharge to freshwater, but the NZTA has no objections if the Board wishes to add the F conditions.
S/W Discharge to land & water (S 1,3,5-7, 9) Duration 35 yrs	EPA 10/2.019 - ARC 38324	Should the F conditions also apply?		F conditions – as above.
Discharge of contaminants from rock crusher – S 9 Duration 10 yrs	EPA 10/2.020 - ARC 38325	Should the AQ conditions be included here as well as ARC 38327? F conditions?		No – this is the discharge to water. There is a separate discharge to air (EPA 10/2.023). F conditions – as above.

<p>Discharge of contaminants to land or water from contaminated land - S 1,3 5-9</p> <p>Duration 35 yrs</p>	<p>EPA 10/2.021 - ARC 36474</p>	<p>Why exclude CL .9 and .10?</p> <p>How are CEMP.3 and the CSMP to apply if not expressly included?</p> <p>Why are there not SW & F conditions for managing effects of the discharges?</p> <p>Why exclude PI conditions when all other discharges (except SW & road works) have them?</p>		<p>CL.9 and .10 not considered necessary but added.</p> <p>Added.</p> <p>Not considered necessary but added.</p> <p>PI conditions Added.</p>
<p>Discharge of contaminants to land & water from concrete batching - S5 & 9</p> <p>Duration 10 yrs</p>	<p>EPA 10/2.022 - ARC 38326</p>	<p>Why are the Freshwater conditions not included?</p>		<p>F conditions – as above.</p>
<p>Discharge to Air – crusher activities (S9)</p> <p>Duration 10 yrs</p>	<p>EPA 10/2.023 - ARC 38327</p>	<p>-</p>		
<p>Discharge to Air – concrete batching plants - S5 & 9</p>	<p>EPA 10/2.024 - ARC 38328</p>	<p>AQ 16-21 monitoring and reporting conditions to be included.</p>		<p>Added</p>

Duration 10 yrs				
Discharge to Air – roadworks Duration 35 yrs	EPA 10/2.025 - ARC 38329*	AQ 15 to be added. *Note this is incorrect in Schedule B	It would assist if the activity description were edited to clarify that it (presumably) applies to roadworks post commissioning.	This consent is a construction consent – it does not apply to post-commissioning road works. AQ.15 added. Note: Duration changed to 10 yrs in Schedule B.
Diversion of water (other than CMA) S9 Duration 35 yrs	EPA 10/2.026 - ARC 38330	STW general conditions 1-16 should be included. Note: STW 27 (included) refers to STW 5 (not included). Add SW operational conditions? Note – Board cannot find original application for this consent in the NZTA <u>Overview, NOR and Consent Application Forms</u> folder. Appendix B in that folder contains a Form 9 which in its Summary, part (d)(i) refers to there being an application for a Water Permit for diversion of water in Sector 9. Then under tab “Consents Form A”, the relevant consent	This appears, amazingly at this late stage of the process, to be a problem of non-compliance with s88(2)(b). It occurs to the Board that it may simply be a problem to do with copying and/or collating in the copies of the 43 volume	Added. No – because different consent. Form was completed but omitted from the application. A new form has been provided, and is attached to this Annexure.

		<p>appears to be identified as the 3rd under the heading “Water Permits”, and to correctly identify that a Form B6 is required. However there is no Form 6 for this matter under the Water Permits tab later in the folder. The application has nevertheless been assigned a number by the EPA & notified. The Board understands that its effects on the environment have been fully described and discussed in the AEE and evidence for NZTA.</p>	<p>document prepared for use by Board members. Alternatively it may manifest itself as an omission in the original application documentation. The Board has not had the time to check into matters to that extent.</p> <p>If there is a technical omission from the application documentation in the strict terms of s88(2)(b), but not one of substance in the sense of no application having been made at all and/or no assessment of effects having been conducted, s37 RMA could perhaps be used to cure the situation. Subsection (2) would seem to be apposite, and the limitations found in s37A would</p>	
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			not come to bear because they appear to relate only to subsection (1) matters. S 37B(b) provides a bridge from s37 to Part 6AA.	
Taking & use of groundwater – construction - (S7-8). Duration 10 yrs	EPA 10/2.027 - ARC 38331	Add F.5 to more effectively manage potential effects on base flows and ecology.		Added.
Taking & use of Groundwater – operation - (S7-8). Duration 35 yrs	EPA 10/2.028 - ARC 38332*	*Note this is incorrect in Schedule B		
Diversion and taking of groundwater for tunnels - (S7-8) Duration 35 yrs	EPA 10/2.029 - ARC 38333*	*Note this is incorrect in Schedule B.		

Coastal Consent – activity in CMA –use of CMA for SH transport	EPA 10/2.030- ARC 38334	Shouldn't sectors be identified? What reasoning underpins imposition of CNV.3 blasting but not the		This consent is required for the activity of driving vehicles across the SH16 bridges (which are over
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<p>purposes and construction, including spoil conveyance</p> <p>Duration 35 years.</p>		<p>construction noise conditions?</p> <p>If planting were proposed in the area of CMA to be permanently occupied (F: 12), for example, “along the corridor on Traherne Island,” should LV.2 apply? Or would M.9, which is excluded from the suite of M marine ecology conditions, better address this?</p> <p>V.11, .17 and .18 deal effectively with aspects of Traherne Island. However F: 12, at Sheet 3 for example, shows other areas of permanent CMA occupation where adverse vegetation effects might arise. Is it not necessary therefore for conditions like V.2 and V.5 to apply (recognising that the designation doesn’t include the CMA and therefore “activate” other V conditions)?</p> <p>Are A.5 and .6 which concern vegetation and pest management on Traherne Island, including in the case of .6 in the CMA, not relevant?</p> <p>It is not clear why C.3 - .5 should not apply when “ongoing use of CMA by SH ...” has a permanent flavour. And C.7, .9 and .10? And possibly C.12 and</p>	<p>As described by Dr de Luca EIC [59] and Slaven EIC [90] & Annexure E.</p> <p>See discussion below about the possibly different activities covered by EPA 10/2.032 and 10/2.030.</p> <p>Perhaps EPA 10/2.032 is intended to authorise permanent structures, which begs the question about the purpose of EPA 10/2.030.</p> <p>Do the applications</p>	<p>the CMA), primarily when the SH is operational. It is not the consent for the occupation of the CMA by the bridge structure itself or the construction (widening) of the SH16 bridges. So the use of the CMA referred to is simply driving over the completed bridge.</p> <p>So sectors are clear (2 & 4) because the consent only applies to the bridges.</p> <p>All CNV, LV, V and A conditions are also irrelevant and should not be included or be deleted as appropriate (as this consent only relates to the use of the bridges).</p> <p>C.3 – 5 and the permanent</p>
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		<p>C.16?</p> <p>Unless a compelling reason is provided all the permanent structure conditions on EPA 10/2.032 should apply.</p>	<p>differentiate between areas of existing occupation and proposed future occupation? Documentation doesn't provide a readily discernable audit trail.</p>	<p>structure conditions are not applicable to this consent as it relates to the use of the bridges and not the structures themselves.</p>
<p>Coastal Consent – for erection of <u>temporary structures</u> in CMA including consequential activities such as vegetation removal – Sectors 1, 2, 4 and 5.</p> <p>Duration 10 years</p>	<p>EPA 10/2.031 ARC 38335</p>	<p>If there is Significant Vegetation and Valued Vegetation identified in the ECOMP in proposed work areas then V.2 and V.5 - .7 should also apply.</p> <p>Why should the effect of V.3 and .4 be limited to “within the designation”? Why exclude any vegetation in CMA below MHWS?</p> <p>Given that work in the CMA is proposed in the vicinity of the Rosebank Road ramps (F:12 sheet 6) , should ARCH.2 not apply (recognising ARCH.4(a) applies to the designation)?</p> <p>Is E.10 properly part of a temporary</p>		<p>V.2 added. V.5-V.7 not applicable as no significant or valued terrestrial vegetation affected and no V.7 works proposed.</p> <p>Wording referencing ‘designation’ removed.</p> <p>Not relevant as the area of Archaeological interest relates to the terrestrial not marine area (eg. Rosebank Road not the Interchange)</p> <p>Agree – deleted.</p>

		<p>structures consent? The condition concerns a discharge to the CMA (refer EPA 10/2.046 p29 which includes E.10).</p> <p>Why is LV.7 omitted when it concerns temporary embankments?</p>		<p>LV.7 added.</p>
<p>Coastal Consent – erection of permanent structures in CMA and consequential activities – Sectors 1,2, 4 and 5.</p> <p>Duration 10 years.</p>	<p>EPA 10/2.032 ARC 38336</p>	<p>Given that works in the CMA are proposed in the vicinity of the Rosebank Road ramps (F:12 sheet 6) , should ARCH.2 not apply (recognising ARCH.4(a) applies to the designation)?</p> <p>Question relevance of LV.7 which deals with temporary activities.</p> <p>V.11, .17 and .18 deal effectively with aspects of Traherne Island. However F: 12, at Sheet 3 for example, shows other areas of permanent CMA occupation where adverse vegetation effects might arise. Is it not necessary therefore for conditions like V.2 and V.5 to apply (recognising that the designation doesn't include the CMA and therefore "activate" other V conditions)?</p> <p>Same comment as above re relevance of E.10 a discharge condition to structures consent.</p>	<p>Same point as raised above re EPA 10/2.030. It's uncertain to what extent both cover permanent CMA</p>	<p>As above</p> <p>LV 7 refers to trial embankment. Trial embankment will be incorporated into permanent reclamation.</p> <p>V.2 unnecessary as addressed by other consents but the NZTA has no objection to the conditions be included if the Board wishes. V.5 is not applicable as no significant vegetation is affected in the CMA.</p> <p>Agree -E.10 deleted.</p>

		Why is it proposed that this consent for permanent operational structures have a 10 year term? Term does not align with footnote.	structures.	Construction consent for a permanent structure not for occupation by that structure.
<p>Coastal consent – temporary structures in CMA and consequential activities – Sectors 3 and 4.</p> <p>Note: EPA 10/2.031 also covers temporary structures in Sector 4.</p> <p>Repetition intended or not? Does it matter?</p> <p>Duration 10 years.</p>	EPA 10/2.033 ARC 38338	<p>If there is Significant Vegetation and Valued Vegetation identified in the ECOMP in proposed work areas then V.2 and V.5 - .7 should also apply.</p> <p>Why should the effect of V.3 and .4 be limited to “within the designation”? Why exclude vegetation in CMA below MHWS?</p> <p>Given that work in the CMA is proposed in the vicinity of the Rosebank Road ramps (F:12 sheet 6) , should ARCH.2 not apply (recognising ARCH.4(a) applies to the designation)?</p> <p>Is E.10 properly part of a temporary structures consent? The condition concerns a discharge to the CMA (refer EPA 10/2.046 p29 which includes E.10).</p> <p>Why is LV.7 omitted when it concerns temporary embankments?</p>	Same issues and queries as arise for EPA 10/2.031.	<p>V2 added. Comments on V.5-V.7 as above in EPA 10/2.031.</p> <p>Wording referencing ‘designation’ removed.</p> <p>ARCH.2 added</p> <p>Agree -E.10 deleted.</p> <p>LV.7 added.</p> <p>Note re repetition with EPA 10/2.031 that there are different CPA zonings within the same sector with different activity</p>

				statuses – so different consents.
<p>Coastal Consent – permanent structures in CMA – Sectors 3 and 4.</p> <p>Note repetition of Sector 4.</p> <p>Duration 10 years</p>	<p>EPA 10/2.034 ARC 38339</p>	<p>Why 10 year term for permanent structures?</p> <p>Put CEMP, C and M conditions in numerical order.</p> <p>Question omission of V.15.</p> <p>Same E.10 query re relevance to structures consent.</p> <p>Is C.15 relevant to Sector 3 or 4? If it's Sector 4, care is required with how duplication around Sector 4 is resolved as between EPA 10/2.032 and .034 (so that C.15 doesn't drop out).</p> <p>Presumably work required to close a culvert constitutes a "structural" activity.</p>		<p>Construction of structures (as opposed to the occupation consent)</p> <p>Done</p> <p>V.15 added</p> <p>Agree E.10 deleted.</p> <p>Both – Sector 3 relates to existing land and Sector 4 relates to the CMA and reclamation. Therefore, as the culvert traverses both, both apply.</p>
<p>Coastal consent – temporary structures in CMA – Sector 5.</p> <p>Duration 10 years.</p>	<p>EPA 10/2.035 ARC 38340</p>	<p>Are ARCH.2(b) and . 5 concerning the Oakley Inlet Heritage Area not relevant?</p> <p>Question relevance of E.10 on a structures consent and whether coffer dam discharges are planned in Sector 5.</p> <p>Place M conditions in numerical order.</p>		<p>ARCH.2(b) and . 5 added.</p> <p>E.10 Deleted.</p> <p>Done</p>

<p>Coastal consent – permanent structures in CMA – Sector 5.</p> <p>Duration 10 years.</p>	<p>EPA 10/2.036 ARC 38341</p>	<p>Are ARCH.2(b) and . 5 concerning the Oakley Inlet Heritage Area not relevant? F:9 Sheet 109 shows at least one structure traversing the Archaeological Area in CMA.</p> <p>Recurring E.10 query.</p> <p>Why 10 year term for permanent structures?</p>		<p>ARCH.2(b) and . 5 added</p> <p>E.10 deleted.</p> <p>Consent is for construction purposes.</p>
<p>Coastal consent – reclamation in CMA – Sectors 1 and 2.</p> <p>Duration 35 years.</p>	<p>EPA 10/2.037 ARC 36576</p>	<p>Question relevance of E.10 coffer dams discharge to reclamation and to Sectors 1 and 2.</p> <p>Given E.5 is imposed why is E.18 excluded?</p> <p>Why is V.18 not imposed to implement the plan required by imposed V.17?</p>	<p>Summarised, s.123(a) provides that the period for which a coastal permit for a reclamation is granted is unlimited, unless otherwise specified in the consent. Section 245 contains relevant post-reclamation</p>	<p>Duration changed to Lapse Period. Lapse period reduced to 10 years consistent with the designation.</p> <p>E.10 deleted.</p> <p>The intent of E.18 in the CMA is covered by C.2 because C2 provides for the erosion and sediment control measures applicable to work in the CMA.</p> <p>V.18 added.</p>

			provisions.	
<p>Coastal consent – reclamation in CMA – Sector 4.</p> <p>Duration 35 years.</p>	<p>EPA 10/2.038 ARC 38342</p>	<p>Why does CEMP.15 become relevant on this consent in this sector when consistently excluded from previous consents?</p> <p>Are V.2 and V.5 and V.9 not relevant - or is there no significant vegetation in Sector 4 that reclamation might adversely affect? V.11 and V.17 - .18 speak specifically of Traherne Island, which suggests otherwise. See also F: 18 sheet 6.</p> <p>Recurring E.10 query.</p> <p>Why is E.18 excluded when E.5 to which former relates is included?</p>		<p>Duration changed to Lapse Period. Lapse period reduced to 10 years consistent with the designation.</p> <p>CEMP.15 deleted – not relevant.</p> <p>V.2 and V.9 added. V.5 not relevant as no significant vegetation affected.</p> <p>V.17 and V.18 added.</p> <p>E.10 deleted</p> <p>E.18 as above</p>
<p>Coastal consent – disturbance of foreshore and seabed during construction – Sectors 1, 2, 4 and 5.</p> <p>Duration 10 years.</p>	<p>EPA 10/2.039 ARC 38343</p>	<p>Recurring E.18 vis-a-vis V.5 query.</p> <p>Shouldn't C.16 apply within Sector 4?</p>		<p>E.18 as above</p> <p>C.16 added.</p>

<p>Coastal consent – disturbance of foreshore and seabed – vegetation removal – Sector 2.</p> <p>Duration 35 years.</p>	<p>EPA 10/2.040 ARC 38344</p>	<p>Query 35 year term for what appears to be a construction consent. Or is there an ongoing operational need?</p> <p>Put C coastal conditions in numerical order.</p> <p>C.13 refers to work adjacent to the Rosebank Domain access road, which appears to be in Sector 3 and therefore excluded from this consent?</p> <p>Given M.7 is included, shouldn't M.3 - .6 to which it relates also be included?</p>		<p>Duration should be 10 years.</p> <p>Done</p> <p>Relevant because Sector 2 includes all works in the Whau river (not just the bridge).</p> <p>No monitoring in the Whau –M.7 deleted</p>
<p>Coastal consent – disturbance of foreshore and seabed – vegetation removal/temporary structures – Sectors 4 and 5.</p> <p>Duration 10 years.</p>	<p>EPA 10/2.041 ARC 38345</p>	<p>Remove CNV.8 from CEMP conditions.</p> <p>LV.8 applies to areas within designation and isn't relevant to coastal consent?</p>		<p>Deleted.</p> <p>Deleted.</p>
<p>Coastal consent – disturbance of foreshore and seabed – vehicle use – Sectors 4 and 5.</p>	<p>EPA 10/2.042 ARC 38346</p>	<p>Query 35 year term. Is there an ongoing operational need?</p>		<p>Duration should be 10 years.</p>

Duration 35 years.				
Coastal consent – taking and use of coastal water for coffer dams – sectors 2 and 4. Duration 10 years.	EPA 10/2.043 ARC 38347	Recurring query re E.10 discharge. It appears to be correctly imposed on EPA 10/2.046 – discharge of contaminants sectors 1 – 5 p29.		E10 deleted.
Coastal consent – damming and impounding coastal water – construction - coffer dam - Sectors 2 and 4 in RCP General Management Area and CPA 1. Duration 10 years.	EPA 10/2.044 ARC 38348 and EPA 10/2.045 ARC 38349	Recurring E.10 query x 2		E10 deleted.
Discharge of contaminants into CMA during construction, including sw run off – Sectors 1 – 5. Duration 10 years.	EPA 10/2.046 ARC 38350	Given the consent includes SW run off, it's unclear why E.16 - .19 should not apply. Put M marine conditions in numerical order.		Deliberate CMA discharges are not intended. This consent is sought out of abundance of caution in the event an unintentional discharge occurs – so E16 – 19 measures won't apply. Done.
Discharge of contaminants into CMA	EPA 10/2.047	Given the consent includes SW run off, it's unclear why E.16 - .19 should not		See comment directly above.

<p>during construction, including sw run off – Sectors 1 – 5.</p> <p>Duration 10 years.</p>	ARC 38351	<p>apply.</p> <p>This consent appears to be for the same construction activities & to be subject to the same conditions as preceding EPA 10/2.046. The <u>Overview of NOR and Consent Application Forms</u>, Coastal Permits p 4 shows the consents respond to different rules. Although not critical, could the consents not be combined to good effect?</p>		<p>Yes, could be combined but at this stage considered not warranted as relate to different zones in Coastal Plan CPA 1 & 2. ∴ different activity status. Auckland Council agree.</p>
<p>Discharge of contaminants in sw from operations to CMA – Sector 1.</p> <p>Duration 35 years.</p>	EPA 10/2.048 ARC 38352	<p>Why would V.17 - .18 which concern Traherne Island in Sector 4 apply to a Sector 1 discharge?</p> <p>Given there's to be a permanent SW pond in Jack Colvin Park (F: 02 Sheet 1) why wouldn't SW.23 apply?</p>		<p>Deleted.</p> <p>Added (note now SW.22)</p>
<p>Discharge of contaminants in sw from operations to CMA – Sector 2.</p> <p>Duration 35 years.</p>	EPA 10/2.049 ARC 38353	-		
<p>Discharge of contaminants in sw from operations to CMA – Sector 4 and [GNR]</p>	EPA 10/2.050 ARC 38354	<p>Might SW.20 which is concerned with maintaining overland flow paths be relevant to the area of the</p>		<p>No major overland flow paths occur within Sector 4 and GNR Interchange</p>

interchange. Duration 35 years.		interchange?		
Discharge of contaminants in sw from operations to CMA – Sectors 4 and 5 and GNR interchange. Duration 35 years.	EPA 10/2.051 ARC 38355	This consent is for the same activity as EPA 10/2.050 except that Sector 5 is specifically cited as opposed to the more general term “interchange” (which presumably is the same GNR interchange). Both consents respond to the same rule and are subject to the same conditions. Although not critical could they be usefully combined?		Same as EPA 10/2.047 above
Occupation of CMA by permanent structures – Sectors 1 (wetland pond) and 2 (Whau bridge). Duration 35 years.	EPA 10/2.052 ARC 38356	Why would SW.23, which concerns post-commissioning monitoring, not be relevant to Sector 1 pond?		Added (note now SW.22).
Occupation of CMA – permanent sw outfalls – Sector 1. Duration 35 years.	EPA 10/2.053 ARC 38357	Wouldn't Pixie Stream be a better descriptor than Henderson Creek (refer F:15 Sheet 1)? Is SW.11 not relevant? Namely that the “measure” be operated in accordance with G:15 plans and information.		Jack Colville wetland outfall ∴ it is discharge to CMA not freshwater so Henderson better than Pixie. Added (note now SW.10).

<p>Occupation of CMA – permanent SWoutfalls – Sector 2.</p> <p>Duration 35 years.</p>	<p>EPA 10/2.054 ARC 38359</p>	<p>Same query re SW.11 as above.</p> <p>It is not readily apparent where the corresponding consent is for the CMA sw outfalls in Sector 3 shown on F: 15 Sheets 4/5. Has it been applied for?</p>		<p>Added (note now SW.10).</p> <p>Sector 3 pertains to land above MHWS. Sector 2 relates to the CMA (Whau) so it is not relevant. Appreciate it is not a simple delineation of sectors and therefore a comprehensive suite of consents has been sought and a global application.</p>
<p>Occupation of CMA – permanent SWoutfalls – Sector 4.</p> <p>Duration 35 years.</p>	<p>EPA 10/2.055 ARC 38360</p>	<p>Same query re SW.11.</p> <p>C.7 has an operational component which suggests it should be imposed (consistent with EPA 10/2.053).</p>		<p>Added</p> <p>Added</p>
<p>Occupation of CMA for construction works – Sectors 4 and 5.</p> <p>Duration 10 years.</p>	<p>EPA 10/2.056 ARC 38361</p>	<p>Given the proximity of parts of the CMA in Sectors 4 and 5 to residential areas, including the propensity for noise to travel across water, a full suite of CNV conditions is required.</p> <p>Isn't V.11 also relevant?</p>		<p>Noise standards in the Coastal Plan differ from the District Plan and it was concluded that a consent was not required under the Coastal Plan rules. There is no objection to applying these conditions to the CMA as they apply to the adjoining designated land. However suggest that if it is to be applied should be an activity consent, e.g. reclamation, disturbance, erection of structures, not occupation.</p> <p>V.11 added</p>

		<p>Recurring query about E.10 being a discharge condition (rather than an occupation one).</p> <p>Why omit SW.1?</p> <p>Why omit C.9 given inclusion of C.10? Importantly both C.9 and .10 are imposed on Sector 4 CMA reclamation consent p24.</p>		<p>E.10 deleted</p> <p>SW.1 added.</p> <p>C9 and C10 should be deleted because they relate to reclamation consents, not occupation.</p>
<p>Occupation of CMA – construction works – Sectors 1 and 2.</p> <p>Duration 10 years.</p>	<p>EPA 10/2.057 ARC 38362</p>	<p>Given the proximity of parts of the CMA in Sector 2 to residential areas in Sector 1 a full suite of CNV conditions is required. The same potential effects arise within Sector 1.</p> <p>Recurring query about E.10.</p> <p>Recurring query about SW.1.</p> <p>Same query as above re omission of C.9</p>		<p>See above re CNV conditions for EPA 10/2.056</p> <p>E.10 deleted</p> <p>SW.1 added</p> <p>C9 and C10 have been deleted because they relate to reclamation consents, not occupation.</p>

Consent and Sector if relevant	Resource Consent No	Query	Comment	NZTA Response
<p>Occupation of CMA – construction works – Sectors 3 & 4.</p> <p>Duration 10 years</p>	<p>EPA 2.058 ARC 38363</p>	<p>Need additional CNV conditions 1-2 & 13?</p>		<p>These are construction conditions, Not necessary for occupation. Note noise conditions discussion in EPA 10/2.056.</p>

		<p>Notwithstanding that the work is in the CMA, should LV1-5 be included in addition to LV8?</p> <p>LV8 (included) refers to E.3 (not included). More fundamentally, perhaps, are sub-soil and top-soil (the subject of LV.8) found in CMA?</p> <p>Are noise & vibration conditions required to manage effects on neighbouring land uses?</p> <p>Query inclusion of E10 (discharge condition) on CMA occupation consent.</p> <p>C9 (not included) links with C10 (included)</p>		<p>Agree - LV 1 -5 added .</p> <p>Agree - LV 8 deleted .</p> <p>No. As above.</p> <p>Agree – E10 deleted.</p> <p>C10 deleted as it related to reclamation.</p>
<p>Occupation of CMA – permanent structures - S4 & 5.</p> <p>Duration 35 years</p>	<p>EPA 2.059 ARC 38364</p>	<p>CNV8 implies pile driving and/or removal may occur under this operation consent. Valid? Construction is to occur under EPA 10/2.056 and 58?</p>		<p>Not valid – deleted.</p>
<p>Ongoing use of the CMA by SH transport activities and associated sw discharges – Sectors 1-9.</p> <p>Duration 35 yrs</p>	<p>EPA 2.060 ARC 38365</p>	<p>Relevance to Sectors 6, 7 – 9 elusive.</p> <p>LV2 should be supported by LV 1 & 3-5.</p> <p>Relevance of <i>associated SW discharges</i> is problematic given consents for permanent discharge of SW to the CMA? Presumably this is why operational SW consents not included.</p>		<p>Agree – no relevance to Sectors 6 – 9.</p> <p>LV1 &3-5 added</p> <p>Agree - Reference to associated SW discharges can be removed as these are included in other consents.</p>

<p>Ongoing use of the CMA by SH transport activities and associated SW discharges – Sectors 1-9.</p> <p>Duration 35 years</p>	<p>EPA 2.061 ARC 38366</p>	<p>Not evident on its face how this consent differs from EPA 2.060.</p> <p>Same queries/comments as for EPA 2.060.</p>	<p>Duplicate consents have been applied for as the activity status differs between CPA 1 and 2 (same as 10/2.033).</p> <p>Agree – no relevance to Sectors 6 – 9.</p> <p>LV1 &3-5 added</p> <p>Agree - Reference to associated SW discharges can be removed as these are included in other consents.</p> <p>Agree - Reference to associated SW discharges can be removed as these are included in other consents.</p>
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Other Matters pertaining to Resource Consent Conditions

1. CNV.13 incorrectly refers to CNV.1(xv) and should read CNV1.(xvi)
2. The reclamation consents have been accorded a life of 35 years. Having regard to the provisions of s123(a) and s245, and bearing in mind the decision of the High Court in *Bayswater Marina Holdings Ltd v NSCC (No.2), 9/9/09, Heath J CIV-2009-404-1730*, might not these consents be of indefinite duration ? Arguably there is some permanence about a motorway. Or was NZTA relying on the operation of s245 to subsume the issue of duration in any event ?

Application for water permit to divert surface water



Form B14

Office Use Only:
Application No: _____
Receipt Date: _____
Deposit Paid: _____

Attach **four** copies of any information identified in Form B in support of this application. This form and checklist is intended as a guide to help you to ensure that all the required information is submitted with your application. The level of information should be both relevant and appropriate to the scale of the proposal and reflected in your Assessment of Environmental Effects. This may require the need for Specialist(s) Reports.

Please ensure you complete this form in full and include with your application. **This form needs to be attached with Form A when submitting an application.** Delays in processing the application will occur if inadequate information is supplied.

To be used with the Auckland Transitional Regional Plan and the Proposed Auckland Regional Plan: Air, Land and Only

Diversion of surface water – why is a resource consent required?

Section 14 of the Resource Management Act 1991 (RMA) provides for the regulation of the diversion of surface water.

The activity may be subject to rules in both the Auckland Transitional Regional Plan 1991 (TRP) and the Proposed Auckland Regional Plan: Air, Land and Water (PARP:ALW). As the relevant provisions of the PARP:ALW are not yet operative the status of the activity is determined as the more restrictive of the relevant rules of both plans.

The Auckland region has a unique and vulnerable network of lakes, rivers and streams. Diverting surface water permanently or temporarily for construction purposes (e.g. in river or stream beds or to install sediment control or storm water devices) can significantly affect the natural character of the region's lakes, rivers and streams as well as the wider environment.

Chapter seven of the PARP:ALW contains objectives, rules and policies relating to the management of diversion of surface water. The status of consent category is based on the type and significance of environmental effect.

Accept/
Reject

1.0 SPECIALIST/AGENT DETAILS

Company:

Refer to Form A.

Contact
Person:

Postal Address of agent:

Postcode:

Telephone
(day):

Telephone
(work):

Mobile:

Fax:

Email:

Area of Expertise:

2.0 DESCRIPTION OF PROPOSAL

Describe proposed works in a report including, but not limited to the following.

- Description and discussion of the purpose of the proposed diversion e.g. stormwater control, river works, stream re-alignment etc.
- Detailed diagram of the proposed works with all dimensions.
- The extent of the works e.g. continuous length and width and total area of the waterbody to be diverted, length of new stream path to be constructed etc.
- Length sections showing short term and long term works.
- Detailed works methodology including all relevant hydraulic calculations to support methodology, deposition techniques, design flood flows return periods etc.
- Discussion of alternative methodologies and sites and reasons why they were not chosen.
- Details of the construction period and timeframes – time of year works are to be carried out, duration, order and staging of the works.
- General design of the works, materials to be used, construction methods, compaction, filling.
- Extent type and maturity of vegetation to be removed/planted.
- Details of site management, use of machinery.
- Design method of diversion and/or discharge – inlet works, overland flow paths, outlet works, erosion control.
- Maintenance and provision of fish passage.
- Provide a detailed discussion on the outcome of the works, including calculations (e.g. hydraulic calculations supporting the size of any proposed culverts). Discuss and explain all assumptions.
- Diagram of location of stream in relation to proposed diversion, location of any meanders and proposed planting.
- Flood flow volume of the stream at point of proposed diversion.
- Proposed rate of diversion.
- Provide a description of consistency with any relevant approved Structure Plan, ICMP, NMP or Flood Management Plan.

Purpose of the proposal – classification (tick one):

- | | | | |
|--|--------------------------|---------------------------------------|--|
| <input type="checkbox"/> Erosion Control | <input type="checkbox"/> | <input type="checkbox"/> Water Supply | <input type="checkbox"/> Flood Control |
| <input type="checkbox"/> Recreation | <input type="checkbox"/> | <input type="checkbox"/> Aquaculture | <input type="checkbox"/> Construction/Services |

Other:

Construction, operation and maintenance of Waterview Connection Project.

Accept/
Reject

3.0 SITE PLAN

Show the following on the Site Plan: (provide one set of plans reduced to A3):

- Title Box including:
 - The name of the person and/or company that prepared the plans.
 - Address of property/site (adjacent to the location of the proposal in the CMA).
 - Date plans were drawn.
 - Unique plan reference or identification or variation number where relevant.
- Legend explaining symbols on the Site Plan.
- North point (orientated to the top of the page if possible)
- Scale Bar.
- Appropriate metric scale e.g. 1:2000 (1cm = 20m) and page size reference (e.g. @ A3).
- Total site area in hectares or m² (if relevant).
- Road frontages and names.
- Property boundary dimensions – existing and future (where relevant).
- Adjoining street numbers.
- Disturbed areas (including staging details).
- Refuelling/Maintenance areas.
- Catchment areas.
- Steep slopes (>15°) highlighted.
- Sub-catchment areas for both the existing and proposed site conditions.
- Dedicated overland flow paths for storms exceeding normal site conveyance systems.
- Location of existing and proposed structures, roads, buildings, fences etc
- Location of any cultural heritage features including historic, waahi tapu and Archaeological sites on the site and environs.
- Location of any natural heritage features e.g. indigenous vegetation and / or any significant ecological or geological features or features with significant natural heritage and / or conservation values e.g. volcanic cones, wetlands etc on the site and environs.
- Floodplains/overland flow paths/stormwater outlets to kerb (five years, 20 years and 100 years average recurrence interval (ARI) flood levels).
- If the site is within or near the Coastal Marine Area (CMA), the location of the Mean High Water Springs (MHWS).
- Width of the bed of any watercourse.
- Extent of any existing and proposed reserve area.
- Location of all dams, bores, springs, wetlands, rivers or streams including those on neighbouring properties.
- Existing and finished ground levels for either the whole site or the relevant work area. Show natural ground level datum points, contours and spot heights (to LINZ datum). Where appropriate, show contours to extend across boundaries.
- Amounts and location of any earthworks - show volumes and areas of cut, fill and stockpiles (include staging details where relevant).

4.0 SITE LOCATION AND CHARACTERISTICS

4.1 Map Reference of Diversion Site: mE mN

Use New Zealand Transverse Mercator (NZTM) e.g. 1756730mE 5919740mN. *Refer Part F- Plans and Drawing*

Use geographic positioning system (GPS) device if possible to obtain a map reference accurate to 10m. The northing follows the easting. If you do not have a map reference, ensure that the location of your diversion site is marked to an accuracy of 10m on your location plan.

4.2. Give the name of the stream, river or lake (or if the stream is unnamed, state what water body it is a tributary of):

Name: or tributary of:

Stream number: (for office use only)

Refer G.15 Stormwater and Streamworks
If you are unsure of the name of the water body, the Council will be able to help you. In many instances tributaries to larger water bodies do not have official (or legally recognised) names. If this is the case describe the water body as "an unnamed tributary of"

- River/Stream/Lake classification under chapter three of PARP:ALW e.g. Permanent or Intermittent stream.
- Natural lake, stream or wetland management area classification.
- Description of the current nature of the lake, river or stream at the site of the proposed works including:
 - Width of bed and top of stream channel in the location of the proposed works.
 - Morphology.
 - In-stream values.
 - Water colour / clarity.
 - Bed and bank material.
 - Bed and bank gradients.
 - Aquatic flora and fauna.
 - Riparian vegetation.
 - Erosion, flooding and scouring.
 - Fish and invertebrate life.
 - Winter flow calculations.
 - Ecological assessment of the lake, river or stream.
- The current land use on the site and in the vicinity of the lake, river or stream and within the wider catchment.
- The historical land use of the site and in the vicinity of the lake, river or stream.
- Discussion of the potential for and or evidence of contaminated land.
- The topography, geology and soil characteristics of the site and environs.
- The immediate and ultimate receiving environments including ecological characteristics and sensitivity to sediment charges.
- The wider catchment – upper and lower – vegetation land use etc.
- Any cultural heritage features, including historic, waahi tapu and Archaeological sites, on the site or environs and any investigation undertaken.

The following may help you identify any cultural heritage features on your site:

Check the Auckland Regional Cultural Heritage Inventory (CHI) for historic or cultural heritage information.

The New Zealand Historic Places Trust has a register of historic places, Archaeological sites, historic areas waahi tapu and waahi tapu areas.

The Auckland Regional Plan: Coastal (ARP:C) schedules one and two contains a list of protected and preserved historic and cultural heritage sites.

District Plans have schedules of protected cultural heritage items.

Appendix B of the Auckland Regional Policy Statement (ARPS) contains a list of significant natural heritage values and identifies sites and areas of special value to Tāngata Whenua.

Areas/places that are significant to Tāngata Whenua may only be identified during consultation.

- Natural heritage features e.g. indigenous vegetation and / or any significant ecological or geological features with significant natural heritage and / or conservation values e.g. volcanic cones, wetlands vegetation, etc on the site or environs and any investigation undertaken.

4.0 SITE LOCATION AND CHARACTERISTICS contd

The following may help you identify any natural heritage features on your site.

Check the Natural Heritage Database (held by the Council) – ask Council staff.

Appendix B of the Auckland Regional Policy Statement (ARPS) identifies areas of significant natural heritage values. Volume two of the Plan Maps for the Auckland Regional Plan Coastal Protection Areas, schedule three of the ARP:C describes their values.

Schedule four of the ARP:C shows areas of significant conservation value as identified by the Ministry of Conservation.

Plan change nine of the ARPS and schedule three of the ARP:C identify sites that have geological, landscape or coastal heritage value, including volcanic cones and coastal protection areas.

Section 3.2 and 3.3 of chapter three of the PARP:ALW provide a description and management approach for wetland management areas and natural lake management areas respectively.

- *Schedule one of the PARP:ALW identifies significant wetlands which constitute the wetland management areas. Information on the boundaries is available from the Council's Natural Heritage Information Database. The natural lake management area contains the identified lake and a 50m buffer strip around the lake.*
- *Section 3.4 of chapter three of the PARP:ALW provides a description, criteria, and management approach for natural stream management areas.*
- *Maps series one of the PARP:ALW identifies wetland and natural lake management areas, and also illustrates natural stream management areas in an indicative manner*

Extent of levels of existing and proposed 20 and 100 year average recurrence interval (ARI) flood plains.

5.0 ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

5.1 Identify, describe and assess the actual or potential effects of the proposed activity on the environment including, but not limited to, the following:

- Water quality and clarity – sediment transport and deposition i.e. consented water bores or water takes, fishermen, kayakers etc.
- Water flow/quantity – stream hydrology and water availability.
- Morphology and flow hydraulics – natural water level fluctuations, impediments to water flow during flood conditions, water flow velocities and flow paths.
- Flooding – adjacent land or exacerbation of existing flooding upstream or downstream.
- Aquatic flora and fauna – fish passage and other aquatic organisms upstream and down stream.
- Stream/lake bed through modification and erosion or deposition in bed or adjacent land.
- Freshwater ecology.
- Cumulative effects – incremental drainage and reclamation, existing structures on natural character of the Permanent stream and riparian vegetation.
- Recreational and amenity values.
- Public access/access to other sites.
- Existing lawful water users upstream and downstream.
- Habitat and habitat values – riparian and aquatic.
- Erosion and scouring.
- Cultural heritage features including historic, waahi tapu and Archaeological sites on the site or environs and any investigation taken.
- Natural heritage features e.g. indigenous vegetation and/or any significant ecological or geological features with significant natural heritage and/or conservation values e.g. volcanic cones, wetlands vegetation, etc on the site or environs and any investigation undertaken.

Accept/
Reject

6.0 PROPOSED MITIGATION

6.1 Discuss measures to be undertaken to avoid, remedy or mitigate adverse effects on the environment including, but not limited to, the following:

- Bypassing or release of low flows.
- Flood attenuation.
- Provision of passage for migratory fish.
- Wetland creation.
- Riparian planting.
- Site management.
- Machinery use minimised.
- Works staging and timeframes.
- Provide a Sediment Control Management Plan (SCMP)(s) showing.
 - Erosion controls detailed (including clean and dirty water diversions).
 - Sediment controls detailed.
 - Staging plans detailed.
 - Disturbed areas detailed.
 - Appropriate and standard scale.
 - Clear orientation (i.e. north).
 - Reduced levels.
 - Topography.
- Discuss and justify the chosen and alternative erosion and sediment control measures.

7.0 CONSULTATION

Where consultation has taken place with Iwi and/or any other interested person, details of the consultation undertaken, including the views of those consulted and your response to their concerns/issues must be provided. Copies of any correspondence confirming this consultation should be attached to this form.

7.1 Describe and discuss the consultation undertaken (who was consulted and why?)

Refer AEE Part A-D

7.2 Describe and discuss the response from those consulted:

7.3 Describe your response to the views of those consulted:

8.0 MONITORING

- Provide details of any proposed monitoring
- Provide details of inspection maintenance and records programmes for erosion and sediment control measures

8.1 Do you intend monitoring the effects your abstraction may have on other water users, on the resource as a whole and ground settlement as appropriate?

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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If YES, provide details:

8.2 For water metered groundwater takes, how do you propose to record the information?
The data obtained from water meters must be collected and recorded. Often this is done manually, but manual recording (e.g. daily visits to the water meter) is not always convenient to the consent holder, and recording may become sporadic. In addition, errors can occur when data is recorded incorrectly (e.g. numbers are transposed). Data-loggers are an automatic electronic way of obtaining and recording data from certain types of water meters with a pulse output. Depending on the type of water take you are applying for, and the rate and volume of water sought, the Council may require that you install a data-logger to record details of your taking.

8.2.1 Take manual readings at a daily/weekly frequency. (specify)

8.2.2 Use a datalogger or telemetry (automated systems).

8.2.3 Other: (specify)

NB: RMA regulations require a meter capable of providing output in a form suitable for electronic data storage for all takes 5 litres per second and over, Contact Council staff for further details.