

Before the Board of Inquiry  
Waterview Connection Project

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*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

Opening legal submissions on behalf of the **NZ Transport Agency**

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## **INDEX**

<b>INTRODUCTION .....</b>	<b>3</b>
<b>OUTLINE OF SUBMISSIONS .....</b>	<b>4</b>
<b>THE WATERVIEW CONNECTION PROJECT.....</b>	<b>4</b>
<b>POST-LODGE MENT CHANGES .....</b>	<b>9</b>
<b>SEPARATE APPROVALS REQUIRED.....</b>	<b>13</b>
<b>ADDITIONAL CONSENTS REQUIRED.....</b>	<b>18</b>
<b>STATUTORY FRAMEWORK OVERVIEW .....</b>	<b>22</b>
<b>KEY ISSUES .....</b>	<b>27</b>
<b>OTHER SUBMITTER ISSUES .....</b>	<b>52</b>
<b>STATUTORY ASSESSMENT .....</b>	<b>53</b>
<b>COMMENTS ON SECTION 42A REPORTS.....</b>	<b>59</b>
<b>PROPOSED CONDITIONS .....</b>	<b>63</b>
<b>OUTCOMES OF CAUCUSING SESSIONS .....</b>	<b>64</b>
<b>EVIDENCE ON BEHALF OF THE NZTA .....</b>	<b>65</b>
<b>CONCLUSION .....</b>	<b>65</b>
<b>ANNEXURES:.....</b>	<b>67</b>
ANNEXURE A: FIGURE 1.2 FROM AEE.....	68
ANNEXURE B: OVERVIEW OF PROJECT AEE STRUCTURE .....	69
ANNEXURE C: FIGURE 1.1 FROM AEE.....	70
ANNEXURE D: LIST OF NZTA'S WITNESSES (EIC AND REBUTTAL EVIDENCE).....	71

# OPENING LEGAL SUBMISSIONS ON BEHALF OF THE NZ TRANSPORT AGENCY

## INTRODUCTION

- 1 These submissions are presented on behalf of the New Zealand Transport Agency (*the NZTA*) in support of notices of requirement and applications for resource consent lodged with the Environmental Protection Authority (*EPA*) by the NZTA on 20 August 2010 in relation to the Waterview Connection Project (*Project*). The Project comprises works previously investigated and developed as two separate projects, being:
  - 1.1 The State Highway 16 (*SH16*) Causeway Project; and
  - 1.2 The State Highway 20 (*SH20*) Waterview Connection Project.
- 2 On 27 August 2010 the Minister for the Environment and the Minister of Conservation directed that the Project applications be referred to a Board of Inquiry (*the Board*) under Part 6AA of the Resource Management Act 1991 (*RMA*) on the basis that the Project is a proposal of national significance.
- 3 The NZTA is a Crown entity which combines the former functions of Transit New Zealand and the Land Transport New Zealand. It was established on 1 August 2008 under the Land Transport Management Amendment Act 2008.
- 4 The NZTA's objectives, set out at s94 of the Land Transport Management Act 2003 (LTMA) is "to undertake its functions in a way that contributes to an affordable, integrated, safe, responsive and sustainable land transport system".
- 5 The NZTA's functions include (relevantly):
  - 5.1 Promoting an affordable, integrated, safe, responsive and sustainable land transport system.<sup>1</sup>
  - 5.2 Managing the State highway system, including planning, funding, design, supervision, construction, and maintenance operations, in accordance with the LTMA and the Government Roadway Powers Act 1989.<sup>2</sup>

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<sup>1</sup> Section 95(1)(a) LTMA.

<sup>2</sup> Section 95(1)(c) LTMA.

- 6 The NZTA is approved as a Requiring Authority under section 167 RMA for the construction and operation of any State highway or motorway.<sup>3</sup>

### **OUTLINE OF SUBMISSIONS**

- 7 These submissions will cover the following issues:
- 7.1 The Waterview Connection Project, including Project overview and strategic role of the Project;
  - 7.2 Post-lodgement changes;
  - 7.3 Separate approvals;
  - 7.4 Additional consents required;
  - 7.5 Statutory framework overview;
  - 7.6 Key issues;
  - 7.7 Other submitter issues;
  - 7.8 Statutory assessment;
  - 7.9 Comments on section 42A Report(s);
  - 7.10 Proposed conditions;
  - 7.11 Evidence on behalf of the NZTA; and
  - 7.12 Conclusion.

### **THE WATERVIEW CONNECTION PROJECT**

#### **Project Overview**

- 8 The Project has been under development for more than 10 years and will be the largest roading project undertaken to date in New Zealand.
- 9 In summary, the Project covers a length of 13.2km and involves:
- 9.1 Constructing a new 5km section of SH20 from Maioro Street to connect with SH16 at the Great North Road Interchange (Waterview). The majority of this new section of SH20 will comprise tunnelled roads;

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<sup>3</sup> A copy of the Gazette Notice declaring the NZTA (then Transit) to be a Requiring Authority is attached as Appendix D to the Project Overview.

- 9.2 Upgrading over 8km of SH16 between Henderson Creek Bridge and the St Lukes Interchange, including increasing the capacity of SH16 (including additional lanes) and raising the causeway between the Great North Road and Rosebank Interchanges;
- 9.3 Provision of nearly 3km of new and upgraded pedestrian / cycleways along SH20 and SH16, as well as approximately 4.2km of additional Quality Transport Network on SH16 (bus shoulder).
- 10 To aid in describing and assessing the proposal, the Project has been divided into nine geographical sectors (Sectors 1 to 9). These sectors are shown on Figure 1.2 of the Assessment of Environmental Effects (*AEE*), which is attached for ease of reference as **Annexure A** to these submissions. Broadly:
- 10.1 Sector 1 comprises the western most part of the Project on SH16 including the Te Atatu Interchange;
- 10.2 Sectors 2-4 cover the SH16 causeway and coastal marine area; and
- 10.3 Sectors 5-9 are the balance of the Project including the Great North Road Interchange and new sections of SH20.
- 11 A detailed description of the Project is given in the AEE, in particular, Chapter 4 – Project Description (Operation) and Chapter 5 – Project Description (Construction). The evidence in chief of Mr Andre Walter also provides an overview of the Project.<sup>4</sup>
- 12 To assist the Board and parties, Mr Walter will give a Project overview using a computer generated “flyover” as a visual aid at the conclusion of these opening submissions.
- Application documentation**
- 13 The Project application documentation includes notices of requirement to designate land (as lodged, four new designations and three alterations to existing designations were sought), and applications for 54 resource consents. The applications are supported by an assessment of environmental effects (*AEE*) and a range of specialist

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<sup>4</sup> Andre Walter evidence in chief (*EIC*), at paragraphs 16-22, and more detail is provided from paragraph 23 to 125.

technical reports (Part G of the AEE). One addendum report was lodged in September 2010.<sup>5</sup>

- 14 An overview of the Project AEE structure is attached as **Annexure B** to these submissions.<sup>6</sup>
- 15 As the Project application was lodged prior to establishment of the Auckland Council, the application refers to the former Auckland Regional Council, Auckland City Council and Waitakere City Council, including the relevant plans of these former authorities. The Auckland Council has subsequently taken over the functions of the former Auckland territorial and regional authorities, and the district and regional plans of the former authorities are deemed to be the plans of the Auckland Council.<sup>7</sup>

*Summary of NoRs and consents sought*

- 16 In summary, the NZTA seeks notices of requirement and resource consents to authorise the following main Project activities:
  - 16.1 The construction, operation and maintenance of the Waterview Connection motorway;
  - 16.2 The widening of SH16 and associated infrastructure and activities;
  - 16.3 Land use consents for works on reclaimed land, land disturbing activities, and works/disturbance in relation to the bed of a river and floodplain;
  - 16.4 Coastal permits for works in the Coastal Marine Area (relating to the widening and raising of the SH16 causeway via reclamation and new structures such as ramps and bridges);
  - 16.5 Discharge permits for discharge of contaminants to land, air and water;
  - 16.6 Water permits for diversion of surface water and the taking and use of groundwater to take, use and divert groundwater.
- 17 Detailed analysis of the requirements and applications are set out in Annexure C to the 1st Statement of Evidence of

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<sup>5</sup> Addendum Technical Report G.31.

<sup>6</sup> Amelia Linzey's 1st Statement of EIC, Annexure A.

<sup>7</sup> See the Local Government (Auckland Council) Act 2009, s6 and the Local Government (Auckland Transitional Provisions) Act 2010, section 78(2).

Amelia Linzey, and Annexure B of the 1st Statement of Evidence of Owen Burn respectively.

**Project objectives**

18 As stated in the NoRs,<sup>8</sup> the NZTA's Project objectives are:

18.1 To contribute to the region's critical transport infrastructure and its land use and transport strategies:

- (a) By connecting SH16 and SH20 and completing the Western Ring Route;
- (b) By improving the capacity and resilience of SH16

18.2 To improve accessibility for individuals and businesses and support regional economic growth and productivity:

- (a) By improving access to and between centres of future economic development

18.3 To improve resilience and reliability of the State highway network:

- (a) By providing an alternative to the existing SH1 corridor through Auckland that links the northern, western and southern parts of Auckland;
- (b) By securing the SH16 causeway against inundation.

18.4 To support mobility and modal choices within the wider Auckland Region:

- (a) By providing opportunities for improved public transport, cycling and walking;
- (b) By protecting opportunities for future passenger transport development (e.g. rail).

18.5 To improve the connectivity and efficiency of the transport network:

- (a) By separating through traffic from local traffic within the wider SH20 corridor.

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<sup>8</sup> Notice of Requirements and Consent Applications, page 9.

### **Strategic Role of the Project**

- 19 As explained in the evidence of Mr Tommy Parker,<sup>9</sup> the Project will complete the strategic Western Ring Route (*WRR*) by providing the missing motorway link between SH16 and SH20. The 48km *WRR* provides an alternative motorway route through the Auckland Region by connecting the southern and northern motorways between Manukau and Albany via a western transport corridor. This is clearly shown on Figure 1.1 in the AEE (attached as **Annexure C**). This strategic corridor will reduce dependence on the existing (central) State Highway 1 route and Auckland Harbour Bridge and will improve connectivity between the Auckland isthmus, Manukau, Waitakere and North Shore.
- 20 The *WRR* is one of the Government's seven Roads of National Significance (*RONs*), as listed in the Minister of Transport's Government Policy Statement on Land Transport Funding (*GPS*) dated May 2009. Under the Land Transport Management Act 2003 (*LTMA*), the NZTA is required to give effect to the *GPS*. Planning for and delivering the *RONs* is accordingly prioritised in the NZTA's current National Land Transport Programme. Completion of the *WRR* is also strategically aligned with key Auckland regional land use and transport planning policies, including the Regional Land Transport Strategy 2010.
- 21 A key project objective is to contribute to the Region's critical transport infrastructure by connecting SH20 and SH16. Facilitating additional local trips onto the State highway network by providing a local connection at Great North Road is not a Project objective, nor is it reasonably necessary to achieve the Project objectives.

### **Proposal of national significance**

- 22 The Ministerial direction of 27 August 2010 confirmed the Project as a proposal of national significance.<sup>10</sup> As reasons for the direction, reference was made to the EPA's view that the matter is a proposal of national significance given the relevant factors of s142(3) of the RMA, being:

22.1 There is widespread public interest in the actual or likely effects on the environment of the Project [s142(3)(a)];

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<sup>9</sup> Tommy Parker's EIC, at paragraphs 33-44.

<sup>10</sup> Direction made by Hon Dr Nick Smith (Minister for the Environment) and Hon Kate Wilkinson (Minister for Conservation). <http://www.epa.govt.nz/applications/waterview/lodgement-and-notification/ministers-direction/index.html>



- 22.2 The Project will involve significant use of natural and physical resources, including the removal of a number of residential dwellings and loss of open space [s142(3)(b)];
- 22.3 The Project will affect structures, features, places or areas of national significance, including SH16 and SH20, the Hauraki Gulf Marine Park, the Motu Manawa (Pollen Island) Marine Reserve, Traherne Island and the Chenier Plain-Shell Barrier Beach [s142(3)(c)];
- 22.4 The Project will result in or contribute to significant changes to the environment, including the reclamation of coastal land, loss of public open space and removal of residential dwellings [s142(3)(g)];
- 22.5 Completion of the Western Ring Route as an alternative to SH1 will assist the Crown in fulfilling its safety obligations [s142(3)(h)];
- 22.6 The Project affects more than one district and relates to a network utility operation that extends to more than one district under the Auckland local government arrangements existing at the time (noting that this would change from 1 November 2010 under the new Auckland Council) [s142(3)(i) and (j)].

### **POST-LODGEMENT CHANGES**

- 23 Since the Project application was lodged in August 2010, there have been some amendments made to the Project. Key changes are correctly identified in Section 2 of the Addendum Report,<sup>11</sup> some of which are discussed below. The changes include:
- 23.1 No separate emergency exhaust stack;
- 23.2 Redesign of the ventilation buildings and stacks;
- 23.3 Trial embankments;
- 23.4 Additional reserve replacement; and
- 23.5 Ongoing refinement and amendment of conditions.

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<sup>11</sup> Section 42A Addendum Report, pages 2-3.

**No separate emergency exhaust stack**

- 24 On 15 November 2010, the NZTA withdrew Notice of Requirement 6 (*NOR 6*), which provided for a separate emergency exhaust stack at 36 Cradock Street. *NOR 6* was withdrawn on the basis that it is not required for the safe and efficient operation of the tunnels.<sup>12</sup>
- 25 Counsel notes that the withdrawal of *NOR 6* effectively addresses concerns originally raised by a number of submitters regarding the proposed Cradock St emergency exhaust stack.
- 26 Instead of constructing a dedicated emergency exhaust stack, any emergency exhaust will be discharged via the tunnel ventilation stacks. In his rebuttal evidence, Mr Walter explains that, as is the case with many tunnels around the world, the tunnel and ventilation system have been designed to deal with smoke in the event of a fire.
- 27 In particular, because the NZTA has determined that the SH20 tunnel will not form part of a dangerous goods route, the design fire size for the tunnel was reduced. With a deluge system installed, any smoke can now be extracted through the normal ventilation system. In the event of a major incident, the NZTA's protocol with emergency services will determine who will take control in an emergency, based on defined event trigger levels.
- 28 Accordingly, and in response to the issue raised in the Section 42A Report and Addendum Report,<sup>13</sup> the NZTA advises that all performance standards for the proposed ventilation system will still be complied with and there will not be any consequential environmental effects as a result of the removal of the emergency exhaust stack.
- 29 As a final point on this issue, I note that in the event of an emergency (e.g. a fire), the discharge of smoke via the tunnel ventilation stacks would not require a resource consent. Section 15 of the RMA contains an exception that would apply to an activity undertaken in response to an emergency, in terms of section 330 of the RMA.<sup>14</sup>

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<sup>12</sup> See Andre Walter EIC at paragraph 80, Andre Walter rebuttal evidence at paragraph 103 - 111, and 1<sup>st</sup> EIC of Ms Amelia Linzey at paragraph 57.

<sup>13</sup> Paragraph 1.7.1 of the Section 42A Report, and paragraphs 2.2 to 2.4 of the Addendum Report.

<sup>14</sup> Broadly, section 330 of the RMA allows a network utility operator to remove the cause of an emergency or to mitigate any actual or likely adverse effect of an emergency.

### **Redesign of ventilation buildings and stacks**

- 30 Following lodgement of the application and in response to concerns raised by submitters, the NZTA commissioned a more detailed assessment of the technical requirements for the tunnel ventilation buildings and stacks. As a result, revised design options have been developed as described in the NZTA's EIC.
- 31 The purpose of the revised design options is to demonstrate that a number of the adverse effects of concern to submitters can be mitigated via the detailed design process. It is, however, important to be clear that these revised design options do not represent final designs.
- 32 The revised design options are described in the evidence of Mr David Gibbs.<sup>15</sup> By way of brief summary:

#### *Redesign of northern ventilation building and stack*

32.1 The redesign of the northern ventilation building and stack involves:

- (a) Reducing the area and height of the building (excluding the stack);
- (b) Separating the above ground facility into four separate smaller buildings;
- (c) Removing the 50m<sup>2</sup> control room;
- (d) Treating the building and stack as objects of urban sculpture.

#### *Redesign of southern ventilation building and stack*

32.2 The redesign of the southern ventilation building and stack involves:

- (a) Reducing the area and height of the building (excluding the stack);
- (b) Relocating the control room from the northern building, in an expanded form, to a separate facility at the southern tunnel portal;
- (c) Providing a "green roof"; and
- (d) Treating the building and stack as objects of urban sculpture.

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<sup>15</sup> See David Gibbs' EIC, at paragraphs 36-70.

- 33 The Addendum Report notes that the re-design of the ventilation buildings are not presented as the preferred design outcome, and claims that this is confusing because it is not clear how this re-design can then be part of the application documentation.<sup>16</sup>
- 34 With respect, it is submitted that presenting the design for the northern and southern ventilation buildings and stacks as options is a perfectly valid approach. Ms Linzey explains that the detailed design of the buildings and stacks will now be included within a separate Outline Plan of Works (OPW) process. Specific criteria are included within new General Designation conditions DC.8 and DC.9 to provide greater certainty regarding the above ground nature and bulk of these buildings/structures.<sup>17</sup>
- 35 It is further submitted that conditions that specify criteria for the development of a final design are perfectly appropriate and acceptable, provided that there is sufficient certainty that key issues will be addressed. That was certainly a focus of Mr Brown's rebuttal evidence.<sup>18</sup>
- 36 As a matter of law, there is no requirement for a Court or tribunal "to settle every last detail of the conditions which it seeks to impose".<sup>19</sup> "Generalised" conditions may be imposed, which require certification of a secondary set of standards.<sup>20</sup>
- 37 It is submitted that the NZTA's proposed conditions which now require an OPW to be lodged provide a reasonable and appropriate mechanism by which the design criteria set out in conditions DC.8 and DC.9 for the ventilation buildings and stacks will be met.<sup>21</sup>
- Trial embankment**
- 38 A trial embankment now forms part of the SH16 causeway part of the Project so that the performance of the ground improvement works can be monitored.

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<sup>16</sup> See paragraph 2 of the Executive Summary of the Addendum Report.

<sup>17</sup> Amelia Linzey's rebuttal evidence (planning), at paragraph 120.

<sup>18</sup> Stephen Brown's rebuttal evidence, at paragraph 22 and Annexure A.

<sup>19</sup> *Turner v Allison* [1971] NZLR 833 at 857. Conditions requiring a council employee to be satisfied with the appearance of a building, as well as with the undertaking of landscaping and planting, have been found to be appropriate examples of certification conditions.

<sup>20</sup> *Ravensdown Growing Media Ltd v Southland Regional Council* (C194/2000, 5 December 2000) at [45].

<sup>21</sup> There is further discussion on the ventilation buildings and stacks later in these submissions.

- 39 Mr Burn confirms that the trial embankment has been designed so that it can be constructed within the suite of applications for resource consents already lodged by the NZTA. He also confirms that erosion and sediment control measures will apply.<sup>22</sup>

**Additional reserve replacement**

- 40 The Section 42A Addendum correctly records that since lodgement there have been changes to the provision of esplanade reserves, and other changes that result in an overall increase of approximately 0.6 hectares of additional reserve replacement in both Waterview, and in Alan Wood Reserve.<sup>23</sup> These changes arose out of consultation with Auckland Council.

**Ongoing refinement and amendments to conditions**

- 41 Since lodgement and public notification of the Project applications, the NZTA and its expert witnesses have considered the issues raised by submitters and consequently made a number of amendments to the set of proposed conditions originally lodged.
- 42 As is the normal course, further amendments have been made following review of the submitters' evidence and as a result of the further consultations.
- 43 The proposed conditions are considered in more detail later in these submissions.

**SEPARATE APPROVALS REQUIRED**

- 44 In addition to the notices of requirement and applications for resource consent lodged with the EPA (which are the subject of this hearing), there are a number of additional approvals required for the Project. These other approvals are separate processes under other legislation that are additional to requirements under the RMA. These separate approvals do not form part of this Board of Inquiry process, but are briefly explained below for completeness.
- 45 The NZTA generally intends to lodge applications for these necessary separate approvals, or to seek Ministerial declarations as the case may be, after it has secured designations and resource consents for the Project under the RMA.

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<sup>22</sup> See Owen Burn rebuttal evidence, paragraphs 61 and 62.

<sup>23</sup> See Amelia Linzey 1st statement of EIC, at paragraphs 58 and 59.

- 46 The EMS Section 42A Report suggests that "It is common for major projects to secure the above consents prior to the overarching resource management decisions", albeit EMS then indicates that because the NZTA is a Crown agency, the consents "are better pursued once the Board has issued a report".<sup>24</sup> It is noted that in the normal course, the NZTA would not seek to obtain other statutory approvals prior to RMA approval, as the latter sets the final footprint of the Project.

### **Other statutory approvals**

#### ***Marine Reserves Act 1971***

- 47 The Project reclamation adjacent to the existing SH16 causeway involves works within the Motu Manawa (Pollen Island) Marine Reserve. Public works in a marine reserve require the consent of both the Minister of Conservation and (in the present case) the Minister of Transport.<sup>25</sup> As stated in the evidence of Ms Fullam on behalf of the Department of Conservation (*DOC*), consent to undertake a public work in a marine reserve is a "*separate and distinct process from the RMA process*".<sup>26</sup>

- 48 The NZTA's draft application under the Marine Reserves Act 1971 is well advanced and the NZTA anticipates lodging it with DOC within the next month. There is no specified statutory process for such an application, nor provision for public consultation. The Ministers' decisions are not anticipated prior to the Board of Inquiry decision.

#### ***Historic Places Act 1993***

- 49 As discussed in the evidence of Dr Rod Clough,<sup>27</sup> a number of archaeological sites have been identified within the Project construction footprint.<sup>28</sup> The key area where archaeological remains will be affected is in Sector 5 around the Great North Road Interchange.<sup>29</sup>

- 50 Any archaeological sites within the area affected by the Project cannot be modified or disturbed without an authority from the New Zealand Historic Places Trust (*NZHPT*) under the Historic Places Act 1993. Such authorities are typically issued subject to conditions, which can include requirements for archaeological investigations.

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<sup>24</sup> EMS Section 42A Report, paragraph 13.2.4.

<sup>25</sup> Section 4(3) of the Marine Reserves Act 1971.

<sup>26</sup> See paragraph 4.12 of Marilyn Fullam's evidence for DOC (Evidence No. 32-1).

<sup>27</sup> See Dr Rodney Clough EIC, at paragraph 8.

<sup>28</sup> Refer Technical Report G.2 Assessment of Archaeological Effects, Table 1 (List of archaeological and other heritage sites recorded in the project area, by sector).

<sup>29</sup> Ibid. The relevant archaeological sites are identified in Figure 6.10.

51 As explained by Dr Clough in his rebuttal evidence, the NZTA intends to lodge an application for an NZHPT authority once the Board of Inquiry's hearing has issued a decision on the NoR and resource consent applications.<sup>30</sup>

***Wildlife Act 1953***

52 Approval from DOC is required under the Wildlife Act 1953 to relocate copper skinks (or any other protected wildlife) that may be found within the Project footprint.

53 Wildlife Act approvals are granted by DOC to a "specified person", so such approvals will need to be held by the person who ultimately carries out the skink relocation. It is understood that Mr Simon Chapman (NZTA's herpetofauna expert) would be able to utilise his existing DOC approvals, should he be appointed to do this work.<sup>31</sup> Otherwise the required approvals will need to be obtained once the NZTA has secured RMA authorisation for the Project and has appointed its contractors (including a herpetofauna expert).

***Public Works Act 1981***

54 Implementation of the Project requires the NZTA to acquire additional land. Land acquisition and compensation is governed by the Public Works Act 1981 (*PWA*), and these issues are discussed later in these submissions.

55 The NZTA will also need to use PWA processes for the closing of Cowley Street, which will cease to exist once work on the Great North Road interchange commences. In response to an EMS section 42A query as to whether road stopping procedures are concluded,<sup>32</sup> it is noted that road stopping procedures will not proceed until the NZTA takes possession of all Cowley Street properties (as the occupants will require the use of the road for access in the meantime).

56 At this stage it is not proposed that Valonia Street will need to be stopped, when that street is realigned, as the affected area of the street is currently proposed to be used as car-parking.<sup>33</sup>

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<sup>30</sup> See Dr Rod Clough's rebuttal evidence, at paragraph 39.

<sup>31</sup> See Mr Simon Chapman EIC, at paragraphs 28-29.

<sup>32</sup> See EMS Section 42A Report, section 10.6.7.

<sup>33</sup> Refer to Memorandum of Counsel in Response to Minute from the Board dated 6 February 2011, Issue H, paras 30-34.

- 57 The NZTA will rely on section 116 of the PWA, which empowers the Minister of Lands to declare a road or any part of a road stopped by notice in the Gazette.

**Reserves Act 1977**

- 58 The Project affects a number of reserves held under the Reserves Act 1977, including Cowley, Waterview and Oakley Creek Esplanade Reserves. To use this land for the Project, the NZTA will rely on section 52 of the PWA, under which the Minister of Lands may, by notice in the Gazette and with the consent of the Minister of Conservation, set apart land required for a public work. This process effectively revokes the land's reserve status because the definition of 'Reserve' in the Reserves Act excludes land set apart under the PWA for such works.

**Approval from requiring authorities with overlapping existing designations**

- 59 The Project NoRs overlap a number of existing designations.<sup>34</sup> Approval under section 177 of the RMA is therefore required from five Requiring Authorities for works within existing designations. While the requirement for such approvals is a separate process from the Board of Inquiry process, the status of discussions with the relevant authorities is addressed for completeness. The relevant Requiring Authorities are:

59.1 KiwiRail;<sup>35</sup>

59.2 Auckland Council;

59.3 Ministry of Education (*MOE*);

59.4 Vector Ltd; and

59.5 Watercare Services Ltd.

- 60 As explained in the EIC of Amelia Linzey, the NZTA has consulted all relevant Requiring Authorities and has either already obtained, or anticipates obtaining, the necessary approvals.<sup>36</sup>

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<sup>34</sup> See Amelia Linzey's 1st Statement of EIC, at paragraphs 43-45 and Annexure D, and Part B: Statutory Matters – Chapter 7 (section 7.1) of the AEE and F.1: Designation Plans of the AEE.

<sup>35</sup> As noted by Mr Buchanan for KiwiRail at paragraph 2.3 of his evidence, the rail designations are held by New Zealand Railways Corporation, part of the KiwiRail group.

<sup>36</sup> See Amelia Linzey's 1st Statement of EIC, paragraphs 46-47.



### ***KiwiRail***

- 61 The Project overlaps railway designations for the existing North Auckland Railway (H13-09) and the proposed Avondale Southdown Line (G08-05). As discussed later in these submissions, the Project design maintains the opportunity for future development of the Southdown Rail Line in a "replacement" corridor, for which KiwiRail would seek a designation under a future separate designation process. The 'overlap' with the existing North Auckland Line is limited to the point where the proposed motorway tunnel passes underneath that line.
- 62 As noted in the evidence of Mr Buchanan for KiwiRail,<sup>37</sup> a Project Agreement is being progressed between KiwiRail and the NZTA. Once finalised, this agreement will provide section 177 approval from KiwiRail for the Project.

### ***Auckland Council***

- 63 Section 177 approval is required from Council for works in its local road network (B08-04) and on the edge of the Western Springs carpark (D04-09). The Council has indicated that it will provide its section 177 approval for the local road network through its Road Opening Notice approval process.<sup>38</sup> Consultation has not identified any reason why this approval should be withheld.

### ***Ministry of Education***

- 64 The Project's NOR 4 overlaps part of the existing MOE designation for Waterview Primary School (D04-03). The affected section of the MOE designation provides for pedestrian access between the School and Great North Road. However that 'access' has never been formed, and the land concerned is not in MOE ownership.
- 65 Agreement has mostly been reached with the Ministry and the Waterview Primary School Board of Trustees in relation to mitigating the effects of the Project. Details of the proposed mitigation are discussed later in these submissions. However, for present purposes it is noted that the agreement provides for the uplifting of the affected section of MOE designation, and the designation by MOE of the existing access onto Oakley Avenue.

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<sup>37</sup> See Neil Buchanan evidence, paragraph 3.10.

<sup>38</sup> See correspondence from Auckland City Council (now Auckland Council) on 14 October 2010, attached to Amelia Linzey's 1<sup>st</sup> Statement of EIC, at Annexure E.

**Vector**

- 66 Consultation is ongoing with Vector. The NZTA advises that nothing has arisen during consultation which would indicate a reason for such approval to be withheld.

**Watercare**

- 67 The Project's NOR 1 overlaps with a small section of Watercare's designation WSL9. Watercare has granted section 177 approval to the NZTA for the Project works.<sup>39</sup>

**ADDITIONAL CONSENTS REQUIRED**

- 68 As noted in the evidence of Mr Burn,<sup>40</sup> the NZTA has identified that one additional consent is required, which is a controlled activity resource consent for modifications required to restore a heritage sea wall.<sup>41</sup> It is considered by both the NZTA and Dr Clough, the NZTA's expert archaeologist, that the application should wait until the Project design is finalised so that there will be some certainty about the appropriate form of restoration.<sup>42</sup>

- 69 Since lodgement of the Project with the EPA, it is noted that additional consents have been sought for:

69.1 The 'rotation' of Construction Yard 1 (although this could also be addressed by 'rotating' the relevant section of designation); and

69.2 Consenting of the new sections of Saxon Reserve for open space use.<sup>43</sup>

- 70 It is understood that consents and alteration to designation will also need to be sought for the permanent relocation of the kindergarten and the associated adjustment of Waterview Primary School's designation boundaries.

- 71 In all other respects, the NZTA considers all consents required for the Project have been sought. The section 149G reports prepared by the Councils also confirm this.<sup>44</sup>

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<sup>39</sup> See Annexure A to Memo of Counsel in Response to Minute from the Board dated 6 February 2011, Issue A.

<sup>40</sup> Owen Burn 1st Statement of EIC, at paragraph 37.1.

<sup>41</sup> Under Rule 12.5.11 of the Auckland Regional Plan: Coastal.

<sup>42</sup> The relevant assessment of effects has already been set out in Technical Report G.2 to the AEE.

<sup>43</sup> Amelia Linzey (Planning) rebuttal evidence, paragraph 36.

<sup>44</sup> As noted in the EMS section 42A report at paragraph 2.3.1.

- 72 As noted in the s42A EMS report, some of the mitigation sought by submitters would require additional consents, and accordingly those matters are currently not in the suite of applications which are before the Board. In particular, the cycleway sought through Sector 8 and pedestrian links would require additional consents not currently sought by the NZTA. The expansion of the Valonia Street reserve beyond that proposed by the NZTA would require an additional designation (which as it would relate solely to the provision of open space, would fall outside the scope of the NZTA's requiring authority approval).

### **Subsequent Alteration to Designation – Reclaimed Land**

- 73 The Project involves reclamation of coastal land to upgrade the SH16 causeway. The s42A EMS Report dated 7 December 2010 raises the issue of "*jurisdictional and procedural questions about giving effect to the reclamation of land and the ability to carry out works associated with the Project.*".<sup>45</sup>
- 74 It is submitted that there is no jurisdictional or procedural difficulty with the reclamation of the SH16 causeway. In brief, the process for reclaiming the land and obtaining consents and a designation for this part of the Project is as follows:
- 74.1 Applications are lodged for a coastal permit to reclaim land (under section 88 RMA) and for resource consent (under section 89(2) RMA) for activities planned to occur on the land once reclaimed (as if the application related to an activity on land within the Council's territorial authority jurisdiction);
  - 74.2 After the area has been reclaimed, a survey plan is submitted to the Council for its approval (under s245 RMA);
  - 74.3 Following issue of the s245 certificate, jurisdiction for the reclaimed land transfers to the Council within its territorial authority jurisdiction,<sup>46</sup> which enables both the land use consents to commence (under s116(2) RMA) and the land to be designated in the district plan.

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<sup>45</sup> At paragraph 6.3.7. The EMS report cross-refers to the Auckland City Council section 149G report discussion of this issue at page 41.

<sup>46</sup> See *Bayswater Marina Holdings Ltd v North Shore City Council* (2009) 15 ELRNZ 258 at [31].

75 The NZTA has applied for land use consents for activities to be carried out on the new SH16 causeway land once it has been reclaimed.<sup>47</sup> It then also intends to designate the reclaimed land in order to safeguard the State highway corridor and ensure the full extent of the State highway is clearly recorded in the district plan. As it is not possible to designate the CMA, designating the land will need to be achieved by way of alteration to designation after the area has been reclaimed, and once a certificate has issued under section 245(5) of the RMA approving the survey plan for the reclaimed land (which classifies the reclamation as 'land').

### **Outline Plan of Works**

76 A question raised in the s42A Addendum report (paras 4.1.2-4.1.3), and also in the Board's 28 January 2011 Minute (Issue U), is whether the NZTA proposes that the designations sought will authorise all aspects of the Project and, if not, what does the NZTA propose to deal with by subsequent outline plan of works.

77 Section 176A of the RMA provides, in relevant part:

- (1) Subject to subsection (2), an outline plan of the public work, project, or work to be constructed on designated land must be submitted by the requiring authority to the territorial authority to allow the territorial authority to request changes before construction is commenced.
- (2) An outline plan need not be submitted to the territorial authority if—
  - (a) The proposed public work, project, or work has been otherwise approved under this Act; or
  - (b) The details of the proposed public work, project, or work, as referred to in subsection (3), are incorporated into the designation; or
  - (c) The territorial authority waives the requirement for an outline plan.
- (3) An outline plan must show—
  - (a) The height, shape, and bulk of the public work, project, or work; and

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<sup>47</sup> EPA 10/2.009 and EPA10/2.009. As there is no underlying zoning the activities are to be treated as discretionary activities under section 87B(1)(b). It is submitted that this is the correct approach rather than the suggestion in the Auckland City Council section 149G report (at page 41) that "[a]s there is no zoning applied to the land once reclaimed (as it is currently outside the district) it may be appropriate to rely on the provisions of zones applied to adjacent land (Special Purpose 3 in parts and Open Space 1 in others)". It is submitted that it is inappropriate for the resource consent application to be determined on the basis that land to be reclaimed is within the adjacent zone (see *Tairua Marine Ltd v Waikato Regional Council* (A108/2005, Judge Sheppard, ENC Auckland) at [179].

- (b) The location on the site of the public work, project, or work; and
- (c) The likely finished contour of the site; and
- (d) The vehicular access, circulation, and the provision for parking; and
- (e) The landscaping proposed; and
- (f) Any other matters to avoid, remedy, or mitigate any adverse effects on the environment. \*\*\*

78 The NZTA's position is that many aspects of the Project as proposed and detailed in the applications meet the requirements of s176A(3) of the RMA. Therefore, pursuant to s176A(2)(b), an OPW need not be required (nor would a waiver need be sought from Auckland Council under s176A(2)(c)).

79 An OPW is also not required if the Project has been "otherwise approved under this Act", s176A(2)(a). Counsel notes that s149P(4)(c) of the RMA provides that the Board, when considering an NOR for a designation, may waive the requirement for an OPW to be submitted under s176A.

80 In that regard, the NZTA proposes (new) General Designation condition DC.6 which reads:

DC.6 Subject to Conditions DC.3 and DC.4, the NZTA shall be exempt from providing an Outline Plan of Works for the Project, as provided for in Section 176A(2) (b) of the RMA.

*Advice note: The Construction and Operational Management Plans are considered sufficient detail in all aspects of the Project, with the exception of proposed works for the Northern and Southern Ventilation Buildings where further details are required.<sup>48</sup>*

81 Conditions DC.3 and DC.4 relate to the process whereby the construction and operational management plans are updated, finalised and (where necessary) approved or certified by Auckland Council.

82 The exception to this general position relates to the final design of the northern and southern ventilation buildings and stacks, which the NZTA proposes to deal with by way of OPW. This is now provided for in (new) proposed General Designation condition DC.7, and more specifically by:

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<sup>48</sup> See updated set of conditions attached as Annexure A to Amelia Linzey's rebuttal evidence (planning).

82.1 Condition DC.8 – dealing with the northern ventilation building and stack;

82.2 Condition DC.9 – dealing with the southern ventilation building and stack.

83 In light of the concerns raised by submitters and the revised design options developed since the Project application was lodged,<sup>49</sup> the NZTA accepts that the OPW process is appropriate for these high profile elements of the Project.

84 Conditions DC.8 and DC.9 incorporate the design criteria which were detailed in Mr Stephen Brown’s rebuttal evidence,<sup>50</sup> and appear to incorporate the matters identified for conditions in the relevant Joint Caucusing Report.<sup>51</sup>

85 The proposed conditions will also specifically require the OPW submitted by the NZTA to Auckland Council to include further input from the community by way of “documentation of consultation” with the Waterview (to St Lukes) Community Liaison Group, the Owairaka Community Liaison Group and the Manager, Urban Design Auckland Council.

## **STATUTORY FRAMEWORK OVERVIEW**

86 This section of the submissions provides a summary of the statutory framework which the Board must follow in reaching its decision. This framework is also addressed in the first statements of EIC of Ms Linzey and Mr Burn. An assessment of the Project against this statutory framework will be provided later in the submissions after discussion of the key issues to be considered.

### **Board of Inquiry’s Jurisdiction**

87 This Project has been referred to the Board as a proposal of national significance. The Board’s jurisdiction in this matter is accordingly governed by Part 6AA of the RMA. Under section 149P(1) of the RMA, in considering this matter the Board must:

87.1 Have regard to the Ministers’ reasons for making a direction in relation to the matter;

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<sup>49</sup> As described in David Gibbs EIC, at paragraphs 36-70.

<sup>50</sup> Stephen Brown rebuttal evidence, at paragraph 22 and Annexure A.

<sup>51</sup> Joint Report of Landscape and Visual Design Expert Witnesses (dated 4 February 2011).

87.2 Consider any information provided to it by the EPA under section 149G;<sup>52</sup> and

87.3 Act in accordance with subsections (2)-(7), as the case may be.

88 Of relevance to this Project, the Board:

88.1 When considering the resource consent applications, must apply sections 104 to 112 and 138A<sup>53</sup> as if it were a consent authority (section 149P(2)); and

88.2 When considering the notices of requirement for designations or alterations to designations:

- (a) must have regard to the matters set out in section 171(1) as if it were a territorial authority; and
- (b) may cancel or confirm the requirement, or confirm the requirement but modify it or impose conditions as the Board thinks fit; and
- (c) may waive the requirement for an outline plan to be submitted under section 176A (section 149P(4)).

**Notices of Requirement and section 171**

89 In summary, section 171(1) requires that when considering the Project NoRs and any submissions received, the Board must, subject to Part 2, consider the effects on the environment of allowing the requirements. In doing so it must have particular regard to:

89.1 Any relevant statutory planning documents<sup>54</sup> (171(1)(a));

89.2 Whether adequate consideration has been given to alternative sites, routes and methods of undertaking the public work, (171(1)(b));

89.3 Whether the work and designation are reasonably necessary for achieving the Project objectives (171(1)(c)); and

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<sup>52</sup> These being the three s149G reports provided by Auckland City Council, Waitakere City Council and Auckland Regional Council.

<sup>53</sup> Section 138A is not relevant to the present applications.

<sup>54</sup> The statutory planning documents, which the NZTA considers are relevant under both sections 104 and 171(1)(a) RMA, are set out in section 6.4 of the AEE.

89.4 Any other matter that the Board considers is reasonably necessary in order to make a recommendation (171(1)(d)).

***Adequate consideration of alternatives***

- 90 Section 171(1)(b) requires the Board to assess whether adequate consideration has been given to alternative alignments or methods of undertaking the work. It does not require that the NZTA demonstrate it has considered all possible alternatives, or that it has selected the best of all available alternatives.<sup>55</sup>

***Reasonably necessary***

- 91 The Board is required to consider whether both the 'work' and the 'designation' (as a planning tool) are reasonably necessary for achieving the Project objectives (s171(1)(c)). In doing so the Board is not to pass judgement on the merits or otherwise of the NZTA's objectives. Rather the Board's task is to have particular regard to whether the proposed work and designations are reasonably necessary for achieving those objectives.<sup>56</sup>

***Resource Consents***

***Section 104 Assessment***

- 92 Under section 104, when considering consent applications and submissions, the Board must, subject to Part 2, have regard to:

92.1 Any actual and potential effects on the environment of allowing the activity;

92.2 Any relevant statutory planning documents; and

92.3 Any other matter the Board considers relevant and reasonably necessary to determine the application.

- 93 When forming an opinion as to actual and potential effects, section 104(2) provides that the Board may disregard any adverse effects on the environment if a National Environmental Standard or relevant plan permits an activity with that effect.

***Non-complying Activity Assessment***

- 94 As explained in the application and in the evidence of Mr Owen Burn,<sup>57</sup> this Project requires resource consents for

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<sup>55</sup> *Meridian Energy Ltd v Central Otago District Council* [2010] NZRMA 477, at paragraph 81.

<sup>56</sup> *Babington v Invercargill City Council* (1993) 2 NZRMA 480, at page 486.

<sup>57</sup> See Owen Burn 1<sup>st</sup> Statement of EIC, at paragraph 20 and Annexure B.



activities ranging from controlled to non-complying activities. Applying the “bundling” principle,<sup>58</sup> an overall assessment of the applications against the non-complying activity tests is required.

95 The “gateway” tests in section 104D provide that the Board may only grant consent for non-complying activities if either:

95.1 The adverse effects of the activity on the environment will be minor; or

95.2 The application is for an activity that will not be contrary to the objectives and policies of the relevant plan and/or proposed plan.

96 In considering if the activity is not contrary to the objectives and policies of the relevant statutory planning documents, the Board must consider whether the Project is contrary to the overall purpose and scheme of those plans, rather than assessing the non-complying activity against the detailed provisions of the plans. Non-complying activity status of itself recognises that the proposed activity is unlikely to be supported by the provisions of the relevant plan, however consent may be granted if the activity is not contrary to the overall objectives and policies of the plan.<sup>59</sup>

97 If the Board determines that the resource consent applications pass through the gateway tests, it must then have regard to the matters set out in section 104 as noted above. The Board retains an overall discretion as to whether then to grant the consents.

### **Section 105 Considerations**

98 For those applications which relate to discharge or coastal permits, section 105 RMA requires the Board to have regard to:

98.1 The nature of the discharge and the sensitivity of the receiving environment to adverse effects;

98.2 The NZTA’s reasons for the discharge and coastal activities;

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<sup>58</sup> *Locke v Avon Motor Lodge* (1973) 5 NZTPA 17 (SC).

<sup>59</sup> Refer *Arrigato Investments & Ors v Auckland Regional Council & Ors*, (2001) 7 ELRNZ 193 at paragraphs 17-18.

98.3 Any possible alternative methods of discharge, including discharge into any other receiving environment.

- 99 For the two applications for reclamation<sup>60</sup> the Board must also consider whether an esplanade reserve or esplanade strip is appropriate and, if so impose a condition requiring an esplanade reserve or esplanade strip. The NZTA's position is that such a condition would not be appropriate in this case as the result would be to require more reclamation, within a marine reserve, than may otherwise be necessary.

### **Overall Part 2 Assessment**

- 100 The Board's consideration under both sections 104 and 171 of the RMA is subject to Part 2 of that Act, which as the Board will be aware, sets out the purposes and principles of the RMA. This means that the directions in Part 2 must be considered as well as those in sections 104 and 171, and indeed override them in the event of conflict.

### **Section 5 – Purposes and Principles**

- 101 The purpose of the Act as set out in section 5(1) is to "promote the sustainable management of natural and physical resources".
- 102 "Sustainable management" is further defined in section 5(2) as meaning:

managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while:

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life supporting capacity of air, water, soil and eco systems and (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

- 103 At the core of sustainable management under section 5 is a balancing between the relevant resources, communities and environmental concerns that make up the environment. This requires a broad overall judgement of whether the Project would promote the single purpose of the Act, and allows for the balancing of conflicting

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<sup>60</sup> EPA 10/2.037 and EPA 10/2.038.

considerations in terms of their respective significance and proportion in the final outcome.

- 104 Sections 6 to 8 set out relevant matters for the Board to consider. Of relevance to this Project, it is submitted that all of the matters of national importance listed in section 6 are relevant for the Board to recognise and provide for and that all of that 'other matters' in section 7 (except s7(h) and (j)) are relevant for the Board to have particular regard to.

### **KEY ISSUES**

- 105 A total of 251 submissions were received by the EPA on the Project. The submissions raised a wide range of issues, which have been addressed in evidence subsequently exchanged by both the NZTA and submitters. Rather than attempting to exhaustively address all issues raised by submitters, these legal submissions focus on key issues which the NZTA understands arise from the evidence and which may require resolution at this hearing.
- 106 The NZTA's response to issues raised by submitters (including the key issues discussed below) is set out in more detail in the NZTA's evidence in chief and rebuttal evidence (if not already covered in the extensive application documents).
- 107 The views of NZTA expert witnesses on the key issues are also set out in the various joint caucusing reports which will be provided to the Board on or before 7 February 2011.
- 108 The key issues addressed are as follows:
- 108.1 Project benefits and economic assessment;
  - 108.2 Waterview / SH20 connection;
  - 108.3 Open space;
  - 108.4 Ventilation buildings and stacks;
  - 108.5 Pedestrian / cycleways;
  - 108.6 Coastal and marine;
  - 108.7 Health effects;
  - 108.8 Construction effects;

108.9 Community input and information; and

108.10 Specific submitter issues.

### **Project Benefits and Economic Assessment**

- 109 Some submitters have questioned the adequacy of the Benefit Cost Ratio (*BCR*) for the Project.
- 110 Economic assessments for the Project have been undertaken over time, the most recent of which takes into account traditional road user benefits, externalities, and potentially broader productivity and economic growth associated with the Project.<sup>61</sup>
- 111 The RMA does not require projects to meet any specific cost benefit threshold before they can be legitimately designated or consented. Section 7(b) of the RMA does require particular regard to be had to the efficient use and development of natural and physical resources, as the High Court in *Meridian Energy Ltd v Central Otago District Council*<sup>62</sup> (*Project Hayes*) case has recently confirmed, the role and significance of cost benefit analyses in the RMA context should not be overplayed.<sup>63</sup>
- 112 The *Project Hayes* decision is clear that consideration of whether a Project is an efficient use of resources does not require the Project to be the most efficient use of resources. At paragraph [120] of that decision, the High Court found as follows:
- We do not think s7(b) (or Part 2 generally) was intended to give to decision makers under the RMA the power to make judgments about whether the value achieved from the resources that are being utilised is the greatest benefit that could be achieved from those resources or whether greater benefits could be achieved by utilising resources of lower value or a different set of resources.
- 113 The *Project Hayes* decision also comments that in undertaking this analysis, one cannot and should not try to quantify everything, such as intangible values.<sup>64</sup>
- 114 The NZTA's Mr Parker considers that the economic assessment undertaken is robust.<sup>65</sup> Mr Copeland confirms

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<sup>61</sup> See Michael Copeland (rebuttal evidence) at paragraphs 30-32, 36-38; Tommy Parker (rebuttal evidence) at paragraphs 37-38, and paragraphs 87-89.

<sup>62</sup> *Meridian Energy Ltd v Central Otago District Council* [2010] NZRMA 477.

<sup>63</sup> *Ibid*, at paragraphs [116] and [123].

<sup>64</sup> *Ibid*, at paragraphs [83] and [84].

that the Project is an efficient use of resources, as the benefits will outweigh the costs.<sup>66</sup>

- 115 While important, section 7(b) of the RMA is just one aspect of the broader Part 2 assessment which the Board must undertake considering this Project.

**Waterview / SH20 Connection**

- 116 A key component of the Project will be the new motorway to motorway interchange at Great North Road, to facilitate access to and from SH16 and SH20, in addition to the existing interchange connecting Great North Road and SH16. Four new ramps will be provided as follows:

116.1 Ramp 1 – southbound single lane ramp connecting SH20 towards Maoro Street;

116.2 Ramp 2 – two lane ramp connecting SH20 tunnel to SH16 heading west;

116.3 Ramp 3 – two lane ramp connecting SH16 to SH20 southbound; and

116.4 Ramp 4 – two lane ramp connecting SH20 tunnel to SH16 heading towards the City.

- 117 Various submitters have requested that the Waterview and Point Chevalier communities be provided with local access to the new SH20 connection at the Great North Road Interchange. The EMS Section 42A Reports also note that the NZTA should evaluate local access options through the presentation of plans and articulate the implications of these options.<sup>67</sup>

- 118 As explained in the NZTA's evidence, a number of connections to the new SH20 alignment were investigated as part of the design development (including at New North Road, Great North Road (near Blockhouse Bay Road) and at the existing Great North Road Interchange.<sup>68</sup> As part of the NZTA's review of submitters' evidence, the NZTA has also considered a specific proposal for on and off ramps at Carrington Road by Sir Harold Marshall.

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<sup>65</sup> See Tommy Parker rebuttal evidence, at paragraph 39. Further explanation of this assessment is set out in the EIC of Andrew Murray at paragraphs 152 to 157.

<sup>66</sup> See Michael Copeland rebuttal evidence, at paragraphs 12 and 22.

<sup>67</sup> Paragraph 10.6.39-10.6.42 of the Section 42A Report, and paragraph 3.3.5 of the Addendum Report.

<sup>68</sup> See Robert Mason rebuttal evidence, at paragraph 12.

- 119 While the NZTA appreciates that local access to SH20 would be convenient for the Waterview and Point Chevalier communities, it maintains that any local convenience benefits must be balanced against the adverse impacts of providing such access. In particular:
- 119.1 As explained by Mr Mason, the Great North Road Interchange design is very complex, essentially because it involves connecting two motorways in two directions that need to tie in with the existing local road ramp connections at the Interchange.<sup>69</sup>
- 119.2 As explained by Mr Andre Walter, there are engineering constraints on providing additional local road connections at the Great North Road Interchange and any such connections would require a larger Project footprint.<sup>70</sup>
- 119.3 Mr Mason, in considering whether on and off ramps at Carrington Road would be technically feasible, explains that there are significant design constraints and the provision of these ramps would result in significant safety issues and increased costs.
- 119.4 Ms Amelia Linzey identifies a number of adverse environmental effects associated with the provision of such on and off ramps, such as noise and visual impacts, effects on archaeological and the Coastal Marine Area.<sup>71</sup>
- 119.5 Mr Andrew Murray's evidence explains that a new local connection would be likely to have a detrimental impact on the performance and usability of the motorway and local network.<sup>72</sup> It should be noted that the transport experts agreed in caucusing that a new interchange could adversely affect other local movements passing through the Great North Road / Carrington Road intersection and the northern end of Carrington Road.<sup>73</sup>

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<sup>69</sup> Ibid, at paragraph 18.

<sup>70</sup> See Andre Walter EIC, at paragraphs 53-54.

<sup>71</sup> See Amelia Linzey, rebuttal evidence (planning) at paragraph 9.2 and Annexure B(i).

<sup>72</sup> See Andrew Murray EIC, at paragraphs 100-110.

<sup>73</sup> See Expert Caucusing Joint Report to the Board of Inquiry – Topic Transport dated 3 February 2011, Local Ramp Connections to SH20 section, Areas of Disagreement That Have Been Resolved, paragraph 5.

- 119.6 Mr Murray further concludes that the Project does not reduce the accessibility to SH20 for the Waterview, Point Chevalier and Carrington communities and does not consider that local ramps are needed to mitigate any adverse transport effects of the Project.<sup>74</sup>
- 120 Having carefully considered these options, therefore, the NZTA has concluded that local access to SH20 in proximity to the Great North Road Interchange is not reasonably necessary for achieving the Project objective of completing the Western Ring Route to provide an interregional connection between SH16 and SH20.
- 121 The topic of providing local road ramp connections at Great North Road Interchange was the subject of expert caucusing, and a number of areas of disagreement were unable to be resolved by the transport experts.

### **Open Space**

- 122 The Project will impact on public open space. For example, elements of the motorway, interchange ramps, tunnel portals and ventilation buildings will encroach onto areas of existing open space. The NZTA has carefully assessed the potential adverse impacts of the Project on open space, including in relation to quantity, quality and connectivity, and is proposing various mitigation measures.
- 123 The key open space issues relate to the SH20 and Waterview area.<sup>75</sup>
- 124 The NZTA initially assessed open space issues based on a “network approach” that focussed on upgrading the incomplete open space network in the SH20 area via improved linkages and upgraded reserve areas. However, in light of consultation and community feedback, an alternative approach was taken where the NZTA sought to replace reserve land and facilities as locally as possible (the “land for land approach”).
- 125 As such, the designation as lodged includes land for open space replacement (where this is contiguous with the Project), to provide sufficient land area to replace those areas of land that are owned and managed as reserve with equivalent land, sufficient to reinstate the recreation facilities.

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<sup>74</sup> See Andrew Murray rebuttal evidence, at paragraph 83.

<sup>75</sup> As explained in the evidence of Mr David Little, only minor local effects arise at SH16 and mitigation is proposed to address these issues. David Little EIC, at paragraph 275.

- 126 In the Waterview area, land has been designated around the existing Waterview Reserve to reinstate a recreation area of sufficient size to replace the soccer sportsfield, half basketball courts (two), volleyball court and children's playground. In addition, beyond the designation, the NZTA is acquiring land at Saxon Reserve (to expand this passive reserve area) and at Oakley Avenue (so that a coastal walkway from Cowley Reserve to Oakley Avenue can be completed) and will establish an esplanade reserve on the property at 36 Cradock Street to protect riparian vegetation along the Oakley Creek. Once implemented, the 'replacement' open space will exceed the reserve land required by the Project by around 0.6ha. The areas are sufficient to replace all recreation facilities impacted by the Project.
- 127 In the Alan Wood Reserve area the issue is more complex as the area perceived as 'open space' includes land owned and managed by Council as reserve, land owned by the Crown for rail, and private land owned by the NZTA and private landowners (but currently undeveloped). In this area, the designation proposed provides sufficient land to reinstate recreation areas of sufficient size to replace the two soccer sportsfields, and half basketball court, as well as parking, toilet and changing facilities, and following construction will provide an 'open space' land area approximately 1ha larger than the reserve areas affected by the Project.
- 128 It must be emphasised that there is no single contrary view to the NZTA's mitigation proposals, with divergence between Council and the community and between residents / community groups themselves. However, broadly, there are three remaining issues that have been raised in submissions and not resolved in caucusing in respect of the NZTA's open space mitigation:
- 128.1 That further investment should be undertaken to achieve 'better than existing' open space active reserve outcomes. In particular:
- (a) That the NZTA should relocate the sportsfield at Waterview Reserve to Phyllis Reserve, as an active reserve 'hub'; and
  - (b) That the NZTA should acquire 8 residential properties at Valonia Street<sup>76</sup> to establish an

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<sup>76</sup> David Little's rebuttal evidence, at paragraph 77, referring to evidence of Andrew Beer for Auckland Council (Submitter 111-9).



improved configuration for the sportsfields (e.g. side by side fields);

- 128.2 That there is an unmitigated adverse impact on the value of the passive open space, particularly in Alan Wood Reserve (due to the noise and amenity impacts of the Project) which means that further mitigation is needed (including investment in other reserves and additional pedestrian linkages to reserves); and
  - 128.3 That the impacts (open space and wider social effects), particularly during construction, are not sufficiently mitigated and further network connections should be provided as 'off-set' mitigation.
- 129 Responding to each of these in turn.
- 130 In respect of the first issue there are two considerations:
- 130.1 The NZTA considers the mitigation proposed already provides for 'better than existing' mitigation by: consolidating sportsfields in Alan Wood Reserve and providing them on land that will be completely owned by Council (rather than currently where part of one field is on rail land), by upgrading facilities, by improving the ecological restoration of the Oakley Creek; and by providing pedestrian connection across the Oakley Creek within the reserve area (Hendon Bridge); and
  - 130.2 In principle, the NZTA is supportive of seeking opportunities for the Project to integrate with Council's developments and aspirations for open space in this area (e.g. for the expansion of reserves, provision of upgraded facilities and improvement of connections between these open space areas). However, the NZTA considers it is beyond its Requiring Authority jurisdiction to progress this as it cannot designate (take residential property) for works beyond those that can be considered 'mitigation' of its Project. Further, the NZTA considers that it is important that the mitigation is delivered in the area of impact (rather than development of facilities in the wider City);
- 131 On the second point, the NZTA acknowledges that there will be a substantial change to the environment as an outcome of the Project. This designation is a regionally

significant infrastructure investment and as such, it is recognised that its scale is necessarily large. The NZTA has sought significant mitigation of open space impacts (amongst others) by tunnelling (e.g. to avoid impacts on areas such as Phyllis Street and the ecologically valued Oakley Creek north of New North Road. It is also important to consider the existing rail designation and Special Purpose 3 (Transport) zoned land that bisects the Alan Wood Reserve. Key points in this regard are:

- 131.1 There are 'as of right' activities that would / will generate similar severance and amenity impacts at the time of their development in the Alan Wood Reserve area;
  - 131.2 None of the effects anticipated by this Project are beyond 'reasonable limits' for open space (e.g. there are passive open space areas that are as noisy and have busy roads through or near them elsewhere).
- 132 In relation to the issue of off-sets, the NZTA considers that the key questions are:
- 132.1 Measures have been proposed by the NZTA to mitigate effects of construction;
  - 132.2 Many of the issues being raised by submitters are actually existing deficiencies (e.g. low reserve ratio for residents of New Windsor) and the Project is being seen as an opportunity to fix existing problems;
  - 132.3 Whether any, and if so how much, investment is appropriate to provide an off-set mitigation for temporary effect (given that the 'small' bridges sought by submitters are all in the order of \$2M and the Eric Armishaw bridge is huge); and
  - 132.4 What are the implications of off-set mitigation sought by submitters that also has potentially adverse effects - for example, the proposed bridge to Eric Armishaw has significant visual and other effects while others have uncertain effects (e.g. Soljak bridge and the neighbouring residential properties).
- 133 Finally, the NZTA has been consulting with Council and the community on open space options for some time and has

considered numerous options (including those documented in the evidence of Mr Little).<sup>77</sup>

- 134 On balance, the NZTA is comfortable that its proposal responds as best as it can to the Council and divided views of the community and provides an open space outcome that will leave residents certainly no worse off, and in many cases better off, in respect of open space and provides an appropriate response within its 'jurisdictional constraints'.

### **Ventilation Buildings and Stacks**

- 135 The northern and southern ventilation buildings and stacks have attracted a considerable amount of attention.

- 136 It is first important and relevant to note why these structures are part of the Project. The necessary corollary of choosing to tunnel under Sector 8 in order to mitigate the effects of the Project (i.e. to avoid surface motorway), was the need for the NZTA to provide ventilation for the tunnels. Certainly in relation to the ventilation stacks, the NZTA cannot achieve undergrounding part of the Project without construction of the stacks.

- 137 Some of the key issues and concerns raised by submitters are the following:

137.1 Whether the ventilation stacks should have filtration.

137.2 Whether the northern ventilation stack can be moved;

137.3 Whether the northern ventilation building (which is already over 50% underground) can be further undergrounded; and

137.4 Whether the southern ventilation buildings can be partially or fully undergrounded.

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<sup>77</sup> David Little EIC, at paragraphs 59-125.

**Filtration**

- 138 A clear outcome from the caucusing of air quality experts is that filtration is not warranted. The Joint Report states:<sup>78</sup>

“**Filtration:** It is accepted and agreed that from an air quality technical viewpoint that it is unlikely that filtering the air from the vents will provide any significant benefits” (paragraph 8).

- 139 In his evidence, Mr Gavin Fisher discusses that issue further and points out the very significant costs that would be associated with filtration.<sup>79</sup>

**Northern ventilation building**

- 140 The ability to underground the northern ventilation building further was explored during expert caucusing of the landscape/visual witnesses. The Joint Caucusing Report concludes that “technical and functional limitations to further undergrounding were accepted” (paragraph 2.1). The rebuttal evidence of Mr Andre Walter provides further evidence about the engineering issues and significant costs associated with further undergrounding those buildings.<sup>80</sup>

- 141 The landscape/visual experts recommended wording in relation to a proposed condition that would ensure that particular design features be incorporated into a future design of that building. See Joint Caucusing Report (paragraph 2.12). It is noted that those design requirements have now been incorporated into the NZTA’s proposed condition DC.8 which requires the final form of the northern ventilation buildings to be in accordance with those requirements as part of the OPW process.

**Northern ventilation stack**

- 142 The location and form of the northern ventilation stack is a key issue outstanding for this hearing, both in relation to the evidence and views of submitters and the views of the visual experts.
- 143 Full agreement between the experts regarding the location of the stack could not be reached during caucusing for relocation. There was no consensus regarding which of three options would minimise the extent of impacts and resulting effects. The three different location options are shown in Attachment 1 to the Joint Caucusing Report

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<sup>78</sup> Expert Caucusing Joint Report – Topic Air Quality (dated 26 January 2011).

<sup>79</sup> Gavin Fisher rebuttal evidence, paragraphs 5 to 7; and Memo of counsel on behalf of the NZTA in response to Minute from the Board dated 6 February 2011, Issue S, paragraphs 155 to 160.

<sup>80</sup> Andre Walter rebuttal evidence, paragraphs 16 to 24.

(Landscape and Visual Design) and are also specifically addressed in the rebuttal evidence of Andre Walter.<sup>81</sup>

144 The Joint Caucusing Report reflects the different views of the experts who did, however, agree that a proposed condition should be included with respect to the ventilation stack, as follows:

“(x) Location of the stack as far away from the adjoining Waterview Kindergarten and the Waterview Primary School grounds as is practicable without compromising the aesthetic value and integrity of Oakley Creek esplanade reserve or Waterview reserve.”

145 Mr Andre Walter’s rebuttal evidence provides further engineering detail in terms of what would be associated with relocating the stacks to any of the three options considered. It also outlines that the costs associated with such a relocation would be significant (ranging from approximately \$18 to \$28 million).

146 The NZTA’s position, following further review of the effects, implications and costs associated with any relocation of the northern ventilation stack, is that costs in that order are not warranted and the design of the ventilation stack can be appropriately and adequately mitigated.

#### ***Southern ventilation building***

147 The southern ventilation buildings and stack were also a subject of detailed discussion during expert caucusing, the primary question being considered (as raised by numerous submitters), being whether the southern ventilation building could be partially or fully undergrounded.

148 The NZTA evidence has acknowledged that there would be various benefits if the southern ventilation building could be largely underground. However, there are also various implications and significant costs associated with that undergrounding.

149 In summary, the NZTA’s position is that undergrounding of the southern ventilation building is not warranted, for the following reasons:

149.1 Significant ramps would be required to provide access to a fully below-ground building, with a number of additional design considerations and significant cost implications for this (with an

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<sup>81</sup> Ibid, at paragraph 28 and Annexure E.

estimated additional capital cost of over \$10 million);<sup>82</sup>

- 149.2 The partial burial of the ventilation building has also been considered in response to further option development which arose from expert caucusing on landscape/visual issues and subsequently in caucusing on open space. This option was considered to reduce the amount of open space that would be lost through road surfacing for the access ramp and roads (otherwise associated with the first option). Mr Walter's rebuttal evidence (paragraphs 50 to 53) provides a summary of the engineering, design and cost considerations for this option (over \$25 million);
- 149.3 The partial burial of ventilation buildings, but with the use of a gantry crane building (rather than ramps) to access the below-ground ventilation fans, has also been considered. Again this option was developed from the expert caucusing sessions. Mr Walter's rebuttal evidence (paragraphs 54 to 57) provides a summary of the engineering, design and cost considerations (additional capital expenditure of \$13.5 million).
- 150 The NZTA considers that the cost implications outweigh the potential partial mitigation that these undergrounding options might provide (particularly given the mixed expert opinions from the landscape/visual and open space caucusing) and does not represent "sustainable development". Further, other witnesses for the NZTA have provided rebuttal evidence of the effects of undergrounding given the engineering requirements required to do so. The NZTA considers that the range of potential effects of the building being undergrounded cannot be ignored and on balance, it considers that an aboveground structure can be appropriately designed to sufficiently mitigate adverse effects.
- 151 In considering the aboveground proposal, the visual experts did not reach agreement on the location of the building, or the benefits or desirability of creating a "green roof". Nonetheless, they did agree the wording of conditions relating to treatment of the ventilation stack and buildings, again by specifying particular design criteria. The NZTA's proposed condition DC.9 contains many of those criteria.

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<sup>82</sup> Andre Walter rebuttal evidence, paragraphs 16 to 24.

### **Pedestrian / Cycleways**

- 152 It is important to note that the NZTA is significantly enhancing and extending the pedestrian / cycle way provision in the Project area, with over 3km<sup>83</sup> of new facility provided through the Project. However, there are two areas of remaining issue:
- 152.1 Completion of the north-south pedestrian/ cycle link from SH20 to SH16 (this is through Sector 8 of the Project which is proposed to be tunnelled); and
  - 152.2 Local pedestrian / cycle connections (this has been addressed in the open space 'network' issue discussed above).
- 153 Submitters have sought the north-south pedestrian/ cycle link from SH20 to SH16 either as mitigation of what they perceive to be otherwise unmitigated effects (off-set mitigation in many cases); or to meet what they consider to be the NZTA's objectives.
- 154 The crux of this issue is not whether such a pedestrian / cycle connection would be a transport or open space benefit - in both cases it is recognised by the NZTA as such. But rather, the extent to which it can be considered a component of this Project. In considering this, the questions are:
- 154.1 Is it reasonably necessary to achieve the Project objectives? and
  - 154.2 Is it needed to mitigate the effects of the Project?
- 155 In both cases, the answer is simply 'no'.
- 156 The evidence of Mr Murray goes into some detail to consider whether this pedestrian / cycle link is necessary to achieve the Project objectives. He concludes that the Project supports mobility and modal choices and provides opportunities for improved cycling and walking without provision of this link. He also confirms that the Project does not preclude this connection being progressed in the future.<sup>84</sup> On this basis, the NZTA does not consider the link (and the associated additional consenting and designation requirements to provide it) reasonably necessary to meet its Project objectives.

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<sup>83</sup> An additional 600m of pedestrian / cycleway has been confirmed in the Project as an outcome of expert caucusing on open space.

<sup>84</sup> Andrew Murray EIC, at paragraphs 111-128 and rebuttal evidence, at paragraph 39.

- 157 In considering whether the link is needed as mitigation for other 'effects', it is submitted that the assessments undertaken by the NZTA have not identified transport, land use or open space effects that cannot be avoided, remedied or mitigated to such a degree that the implementation of this link is warranted as mitigation. In addition, while the social effects of the Project in particular acknowledge the disruption of construction activities to include the issue of 'perception' for the community, it is considered that alternative mitigation measures are more appropriate to address and even off-set this (e.g. community liaison, communication, and the mitigation packages to support the Waterview Primary School and relocate the Kindergarten). On the basis of the assessments undertaken, the NZTA considers there is no evidence that this link will mitigate adverse effects of the Project, particularly as such a link would likely require additional consents and land purchase (depending on the final alignment), with associated effects on the environment in its own right.
- 158 Further, it is unclear whether the NZTA would have jurisdiction to designate land on the surface in Sector 8 to create this cycleway connection. While it is accepted that the NZTA has the power to construct a cycleway under section 61(4)(c) of the Government Roding Powers Act 1989 (*GRPA*), it arguably cannot designate for a cycleway unless it forms part of a motorway or State highway.<sup>85</sup>
- 159 In this case, the cycleway would necessarily be separated from the motorway network due to that part of the motorway in Sector 8 running through the tunnels.<sup>86</sup> Accordingly, the cycleway would not form part of the proposed motorway<sup>87</sup>, and arguably, would fall outside the purposes approved under section 167 of the RMA.
- 160 As Mr Parker states, the NZTA has offered and continues to offer to work collaboratively with Auckland Transport and Auckland Council on opportunities to fund and implement this connection, and he notes that Auckland Transport

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<sup>85</sup> Transit New Zealand (now the NZTA) was approved as a requiring authority under section 167 of the RMA for "the construction and operation (including the maintenance, improvement, enhancement, expansion, realignment and alteration) of any State highway or motorway pursuant to the Transit New Zealand Act 1989" under the Resource Management (Approval of Transit New Zealand) as Requiring Authority Notice 1994).

<sup>86</sup> See the Notice of Requirement 5 for a sub-strata designation, dated 13 August 2010.

<sup>87</sup> The definition of "motorway" as set out in section 2 of the Government Roding Powers Act 1989 includes "all bridges, drains, culverts, or other structures or works forming part of any motorway so declared".



have similarly indicated their commitment.<sup>88</sup> In this regard, the completion of the north-south pedestrian/ cycle link from SH20 to SH16 is considered an important but separate multi-agency Project.

- 161 In terms of the NZTA's broader role under the Land Transport Management Act 2003 (*LTMA*) and the Project objective of supporting mobility and modal choices by providing opportunities for improved cycling and walking,<sup>89</sup> this objective will still be achieved by the Project through the provision of other new facilities and upgrading of the existing SH16 cycleway. Looking beyond this Project, the NZTA will, through its funding arm, continue to play a role in completion of this important north-south pedestrian / cycle link.

### **Coastal and Marine Sea-Level Rise**

- 162 The section 42A Addendum report notes that the issue of sea level rise is addressed in the evidence of Mr Rob Bell, but queries whether a condition to address sea-level change is proposed.<sup>90</sup> One of the Project objectives is to secure the SH16 causeway against inundation (including by sea level rise) and the SH16 component of the Project is designed with that outcome in mind. A condition to require this is therefore unnecessary.

### **Trial Embankment**

- 163 The section 42A Addendum report queries whether an additional consent is required for the proposed trial embankment.<sup>91</sup> Mr Burn addresses this query in his rebuttal evidence and confirms that "the design of the trial embankment has been undertaken such that it can be constructed within the envelope of the resource consents lodged with the application".<sup>92</sup>

### **Causeway Discharge**

- 164 Dr Bellingham raises issues as to historical road run-off into the CMA and suggests that the current causeway discharges are not legal. He therefore suggests that the NZTA's approach of applying stormwater treatment for the

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<sup>88</sup> Tommy Parker rebuttal evidence, at paragraphs 46-47.

<sup>89</sup> Project Objective 4, Section 3.3 of the AEE, and discussed in the rebuttal evidence of Tommy Parker at paragraphs 10 to 12.

<sup>90</sup> EMS section 42A Addendum report, at paragraph 3.5.1.

<sup>91</sup> Ibid, at paragraph 3.5.6.

<sup>92</sup> Owen Burn rebuttal evidence, at paragraph 62.

existing causeway as 'off-set' mitigation for the loss of marine habitat is inappropriate.<sup>93</sup>

- 165 The NZTA currently holds various consents for the causeway<sup>94</sup> but accepts that these consents are ambiguous as to whether they cover, between them, the entire causeway. It is submitted this is not a relevant issue for this hearing as the Project proposes to consent, and more importantly to treat, both new and existing causeway discharges<sup>95</sup>. Of note, the NZTA also proposes to treat those discharges to 80% Total Suspended Solids (TSS), which exceeds the 75% TSS treatment level required under the Council's TP10<sup>96</sup> guideline.
- 166 In any event, it is noted that the relief Dr Bellingham seeks, being an extension of the Motu Manawa Marine Reserve, is not supported by NZTA's consultant marine ecologist Sharon De Luca as discussed below.

***Extension of Motu Manawa Marine Reserve***

- 167 A number of submitters, including Shirley Upton, Shona Myers (on behalf of the Friends of Oakley Creek), and Michael Coote and Dr Mark Bellingham (on behalf of NZ Forest and Bird Motu Manawa Restoration Group), seek enlargement of the Motu Manawa Marine Reserve (or at least NZTA support and funding for this) as a form of mitigation for the area of reserve lost as a result of the proposed reclamation<sup>97</sup>. Notably DOC does not. However, extending the Marine Reserve is outside the scope of this Project and is beyond the authority of the NZTA.
- 168 The creation of marine reserves is governed by the Marine Reserves Act 1971. Section 5 of the Act provides that marine reserves are created by Order in Council by the Governor-General. Areas can only be declared a marine reserve if an application is made to the Director-General by one or more of the following:

168.1 Any university within the meaning of the Universities Act 1961;

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<sup>93</sup> Bellingham Evidence, paragraph 19.

<sup>94</sup> Refer Technical Report G.15, section 4.1.

<sup>95</sup> Dr Bellingham also raises Marine Reserve Act 1971 issues which are equally not an issue for this hearing.

<sup>96</sup> Auckland Regional Council Technical Publication TP10.

<sup>97</sup> This 'mitigation' was also recommended in the Marine Ecological Effects report, paragraphs 8.3 & 9.4, (attached as Appendix A to the EMS section 42A report).

- 168.2 Any body appointed to administer land subject to the Reserves Act 1977 if such land has frontage to the seacoast;
- 168.3 Any body corporate or other organisation engaged in or having as one of its objects the scientific study of marine life or natural history;
- 168.4 Maori iwi or hapu who have tangata whenua status over the area; or
- 168.5 The Director-General of Conservation.
- 169 The Minister for Conservation makes the final decision on whether to grant the application.<sup>98</sup>
- 170 The NZTA therefore does not have the ability to apply for an extension to the Motu Manawa Marine Reserve, nor to decide that the reserve should be extended. The NZTA agrees with the EMS section 42A report<sup>99</sup> that expansion of the marine reserve by way of designation condition is also beyond the jurisdiction of the Board in these proceedings.
- 171 It is also submitted that such an expansion would not be appropriate mitigation in any event. It is noted that the Ryder s42A report, in suggesting that expansion of the reserve be considered, does not appear to suggest that such expansion is necessary, just that it would make the Project more acceptable to submitters.<sup>100</sup> Moreover, the NZTA's expert Dr De Luca states "I do not consider that an extension to the MMR provides significant benefit to marine ecological values", preferring instead other off-set mitigation as set out in her evidence.<sup>101</sup>

### **Health Effects**

- 172 Submitters have raised various concerns relating to the potential health effects of the Project, in particular regarding air pollution, vehicle emissions, dust, noise, vibration, and soil and water quality effects.
- 173 It is entirely understandable that the community is concerned about potential adverse health effects of the Project. Although these are genuinely held concerns, it is submitted that the public's perception of health risk in this

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<sup>98</sup> See section 5 of the Marine Reserves Act 1971.

<sup>99</sup> EMS section 42A report, paragraph 7.6.5.

<sup>100</sup> Marine Ecological Effects report, Ryder Consulting, paragraph 9.4, (attached as Appendix A to the EMS section 42A report).

<sup>101</sup> Sharon De Luca EIC, paragraph 83.

case is not well founded on evidence. While the Board must consider the actual or potential effects of the Project, case law is clear that community perception of risk, if unsupported by evidence, cannot influence a decision. Put simply, perceived health effects can only be given weight if they are reasonably based on real risk.

- 174 The Environment Court considered perceived effects in cellphone tower cases, where such effects related to people's fears of exposure to radio frequency radiation. In *Shirley Primary School v Telecom Mobile Communications Ltd*,<sup>102</sup> the Environment Court considered whether to grant consent for a cellsite immediately adjacent to a school. At paragraph [193] of the decision, the Court found as follows:

In the end we find all the expert psychological evidence unhelpful. We had direct evidence about people's fears of exposure to RFR from enough parents and teachers to be sure that a significant part of the school community is genuinely concerned about, even fearful of, the effects. But whether it is expert evidence or direct evidence of such fears, we have found that such fears can only be given weight if they are reasonably based on real risk.

- 175 The evidence of Dr David Black addresses potential health effects of the Project. Dr Black concludes that, although the potential for adverse public health impacts exists, relevant matters have been adequately identified and suitable mitigation proposed. Dr Black's expert opinion is that the net effect on public health of the Project in the operational phase is likely to be positive for both the local and the wider Auckland community.<sup>103</sup>
- 176 In light of this expert evidence, it is submitted that concerns regarding potential health effects of the Project should not influence the Board's decision.

### **Construction Related Issues**

- 177 The construction phase of the Project raises various construction effects, but it is noted that, as between the relevant experts, most of the issues have been resolved.

### **Noise**

- 178 While the Joint Caucusing Statement on Noise<sup>104</sup> (which includes discussion of vibration issues) recorded that "the

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<sup>102</sup> *Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66 at [193].

<sup>103</sup> See Dr David Black EIC, at paragraph 24.

<sup>104</sup> Expert Caucusing Joint Report to the Board of Inquiry – Topic Noise (construction and operational), dated 2 February 2011.

main areas of disagreement had now been resolved”, it is understood that with the adoption by the NZTA of conditions proposed in the statement, that all disagreements have in effect now been resolved. Certainly no issues are identified as outstanding by the caucusing statement. A number of amendments to the conditions have resulted, which will ensure adequate notice of the potential for noise or vibration, the early installation of operational noise mitigation measures, where practicable, as a means of providing additional noise benefits during construction) and a provision preventing pile driving at night.

- 179 Submitter concerns about the potential for relocation as a result of structure-borne noise (raised by Unitec and owners of 1510 Great North Road) have been addressed in comments on Unitec above.

***Construction Traffic***

- 180 Auckland Council’s concerns about temporary traffic management have now been addressed between Mr Clark for the Council and Mr Gottler for the NZTA, as recorded in the joint caucusing statement of transport experts<sup>105</sup>.

***Concrete Batching Plant***

- 181 The Board and the EMS Section 42A Report have questioned why the concrete batching plant must operate 24 hours a day. It is suggested that the specific design of the batching plant needs to be approved, due to uncertainties in the Concrete Batching and Crushing Management Plan.<sup>106</sup>
- 182 As explained by Mr Walter, the 24 hour operation of the concrete batching plant is essential to the Project to ensure safety of works, maximum utilisation of resources and to enable the driven tunnels to be constructed within a reasonable timeframe.<sup>107</sup>
- 183 In order to mitigate any potential noise or dust effects from the operation of the batching plant, the NZTA has proposed a condition (Noise and Vibration condition CNV.9)

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<sup>105</sup> Expert Caucusing Joint Report to the Board of Inquiry – Topic Transport, dated 3 February.

<sup>106</sup> Paragraph 10.10.63 of the Section 42A Report and Minute of Board of Inquiry dated 28 January 2011, Issues O and W.

<sup>107</sup> See Andre Walter rebuttal evidence, at paragraphs 114 to 127.

requiring the concrete batching plant to be fully enclosed.<sup>108</sup>

### **Community Input and Information**

- 184 The set of conditions proposed by the NZTA provide for a wide range of mechanisms to ensure that there are opportunities for appropriate community input into the Project and provision of information to the public about the Project. The proposed conditions address community information and input in relation to the design, construction and operation of the Project.
- 185 This has been identified as an essential element of the mitigation for the Project, providing a mechanism to proactively respond to community perceptions of effects (e.g. demonstrating monitoring results on air emissions), and providing a process where the community maintains input and engagement (having a degree of control on their environment, particularly in relation to the form and detailed design of mitigation works).
- 186 A number of amendments have been proposed to the Public Information (PI) and Social (SO) conditions in light of the submitters' evidence and as an outcome of recent expert caucusing.
- 187 For example the NZTA proposes:
- 187.1 To provide for community input via the creation of Community Liaison Groups (*CLGs*) in Te Atatu, Waterview, and Owairaka. CLGs will be open to all interested parties within the Project area, will hold regular meetings throughout the relevant construction period and will provide opportunities to comment on various Project design issues. For example, CLGs will have an opportunity to review and comment on the finalisation of designs for the northern and southern ventilation buildings and stacks, the Oakley Inlet Heritage Plan, the Urban Design and Landscape Plans, and various Open Space Restoration Plans.<sup>109</sup> The CLGs will also provide a regular forum in which the community can receive information about the Project, and can raise any concerns.

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<sup>108</sup> See Siiri Wilkening rebuttal evidence (construction noise) at paragraph 94, and Andre Walter rebuttal evidence at paragraph 126.

<sup>109</sup> See proposed Public Information conditions (PI.1 to PI.7).

- 187.2 In addition, a Working Liaison Group (WLG) will be established for the construction phase. The Auckland Council, Housing New Zealand Corporation, Te Kawerau Iwi Tribal Authority, KiwiRail, Department of Conservation and Ministry of Education will be invited to join the WLG. The WLG will provide a forum through which consideration is given to appropriate protocols for the commencement and completion of construction activities (such as blessings). Comment can also be provided through the WLG on the finalised designs of the Project's structural elements, as well as the finalised urban design and landscape plans. Importantly, this governance level communication forum also provides for improved integration of the Project with projects being delivered by others in the community (e.g. social housing, transport initiatives and wider environmental enhancement or rehabilitation programmes).<sup>110</sup>
- 187.3 To communicate with the community during the construction period as provided for under the Communication Plan (to be implemented through the Construction and Environmental Management Plan). Proposed communication mechanisms include a 24 hour toll free telephone number and email address, appointment of a communication liaison person, and advertisements in local newspapers (detailing the nature, location and hours of upcoming construction works). Following productive expert caucusing, the development of the Communications Plan will also provide a process to inform other agencies in the community that represent particular groups (including health, elderly, youth and ethnic representative agencies).<sup>111</sup>
- 187.4 The appointment of a Community Liaison Person further provides a single readily accessible point of contact for persons affected by the Project. They will be responsible for disseminating information to affected parties, managing the Communications Plan, and be the first point of contact for concerns and complaints regarding the Project. This

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<sup>110</sup> See proposed Social condition SO.12.

<sup>111</sup> See proposed Public Information conditions (PI.1 to PI.7).

dedicated person provides a direct link for the community to the Project.<sup>112</sup>

187.5 The NZTA will also establish an Education Liaison Group (*ELG*), which will provide a forum for educational institutions and parents to raise any particular concerns during the construction phase, and allow information to be disseminated and provide a forum with these institutions to be 'good neighbours' for the consultation period (e.g. to identify opportunities for the timing of noisy construction activities to minimise disruption to sensitive education activities such as exams).<sup>113</sup>

188 This structured approach to ongoing liaison and consultation with the community and with other agencies addresses a number of adverse social effects raised in submissions and submitters' evidence including the sense of 'learned helplessness' (the sense of powerlessness and the impacts that this has on peoples wellbeing), the disengagement that the community may have with the Project (given its long planning phase), and the issues of perceived adverse effects of the Project being more significant than the expected physical effects. This approach is endorsed by the Expert Caucusing Joint Report to the Board of Inquiry – Social / Planning.<sup>114</sup>

### **Specific Submitter Issues**

#### ***Unitec Institute of Technology***

189 The NZTA and Unitec have reached agreement in principle to address the latter's concerns about potential impacts of the Project on its site and its students in particular. The NZTA is currently drafting a Project Agreement and it is anticipated that this will be finalised in the next week or so.

190 While the agreement addresses each of the concerns raised by Unitec, the following points are of note in terms of the effects of the Project:

190.1 A new condition is proposed OS.12 to ensure that pedestrian access between the student hostel at 1510 Great North Road and Unitec (and to other areas of useable open space) is maintained.

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<sup>112</sup> See proposed Public Information condition PI.1.

<sup>113</sup> See proposed Social condition SO.7.

<sup>114</sup> Expert Caucusing Joint Report for the Board of Inquiry - Social/Planning, paragraph 39.



- 190.2 The proposed internal noise criteria for educational facilities (CNV.2 (iv)) now also references Unitec hours and facilities.
- 190.3 Building modification mitigation proposed for operational noise will be installed as soon as possible (but preferably during holiday periods).
- 190.4 The NZTA will liaise directly with the NZHPT over any approvals required for that mitigation work.
- 190.5 Relocation of students from the hostel at 1510 Great North Road will, if required, be a one-off event, of up to 2 weeks duration, with appropriate notice periods agreed with Unitec.
- 190.6 Condition SO.7 has been amended to identify and, where practicable, address conflicts between noisy activities and sensitive periods such as exams.
- 190.7 Buildings 310 to 313 have been identified as buildings potentially at risk and therefore subject to inspection for in Ground Settlement Condition S.7.<sup>115</sup>
- 191 While the NZTA does not accept Unitec's argument that the NZTA should pay to provide noise insulation on any future Unitec developments, this issue was addressed by the production of noise contours that demonstrated that the 2026 noise levels at Unitec with the (mitigated) Project in place are not discernibly higher than 2026 noise levels without the Project, both at ground level and at the height which Unitec considers it would be able to develop to. This outcome reflects the twin layer OGPA noise treatment which will be used.

***1510 Great North Road***

- 192 The potential for relocation of the students from this hostel has been discussed in the comments on Unitec above.
- 193 The concerns expressed by Mr Tauber (one of the property's owners) about consultation and conflicting statements about property purchase are addressed and refuted in the rebuttal planning evidence of Ms Linzey.<sup>116</sup>
- 194 The property at 1510 Great North Road is not being acquired (save for strata title for the tunnel) as it is not

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<sup>115</sup> Gavin Alexander rebuttal evidence, at paragraph 28.

<sup>116</sup> Amelia Linzey rebuttal evidence (planning), at paragraphs 37-42.

required for the Project. The collective assessment of the NZTA's experts is that any adverse effects on the property and its student residents can be appropriately mitigated.

***Waterview Primary School and Kindergarten***

195 The NZTA has recently agreed, in principle, mitigation measures with the MOE<sup>117</sup>, the Board of Trustees of Waterview Primary School, and the Auckland Kindergarten Association. These mitigation measures are to be finalised in two Project Heads of Agreement in the next few weeks. While the NZTA will provide the Board of Inquiry with full details of the agreed mitigation package once that agreement is finalised, it is now able to advise that the proposed mitigation includes:

- 195.1 Permanent relocation of the Waterview Kindergarten to Oakley Ave, with the NZTA to consent and construct a new (and potentially larger) facility. The underlying land will be transferred to the MOE.
- 195.2 Relocation of the junior school buildings to the opposite side of the school grounds.
- 195.3 Relocation and redevelopment of the junior playground.
- 195.4 The upgrading of all classrooms including the installation of acoustic measures such as double glazing, acoustic insulation, and ventilation.
- 195.5 Reconstruction of the school hall to install acoustic measures.
- 195.6 Reconfiguring and upgrading the Oakley Avenue entrance to act as a primary entrance to the school and tie in with the revised school layout and the relocated kindergarten.
- 195.7 Landscaping and amenity improvements to the school grounds, with the landscaping and built environment improvements to be developed through a master plan process.
- 195.8 Temporary support during construction for offsite swimming lessons.

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<sup>117</sup> In the MOE's case, the NZTA is awaiting formal confirmation (expected today) but is advised this is procedural.

195.9 Resourcing to maintain teaching levels during and for a period after construction.

196 These measures collectively address all of the recommendations of the NZTA's experts for mitigation of Project effects on the school. Indeed it is submitted the proposed works go further and, as Ms Linzey notes in her rebuttal evidence,<sup>118</sup> "may help to offset the 'push' factors that are impacting on the school's desirability by creating other attraction elements" such as new and improved facilities.

***Te Atatu Pony Club***

197 The NZTA considers that Te Atatu Pony Club's concerns will be addressed by the proposed 'rotation' of Construction Yard 1, discussed earlier. This provides the club with more functional use of the available land. Further, the club's concerns are addressed by the proposal, discussed by Ms Wilkening,<sup>119</sup> to install noise walls around the perimeter of that yard.

***Cultural/iwi***

198 Since the applications and NoRs were lodged, the NZTA has met with both Iwi groups to discuss the matters raised in their submissions.

***Ngati Whatua***

199 The NZTA has reached an agreement with Ngati Whaua o Orakei for it to provide input into the detailed design process, archaeological monitoring and assessment of options for cultural planting within the Project. Consequently, Ngati Whatua has confirmed (in its letter to the EPA dated 20 December 2010)<sup>120</sup> that it does not seek any further specific conditions and considers there will be future opportunities to consider appropriate mitigation at the detailed design stage.

***Te Kawerau a Maki***

200 The NZTA has also met with Te Kawerau a Maki Tribal Authority to develop protocols to provide opportunities for its input into the detailed design stage of the Project, in particular with respect to archaeological, landscaping, lighting and stormwater matters. The NZTA is awaiting detail on the scope of works being sought with respect to this future involvement by the Authority.

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<sup>118</sup> Amelia Linzey rebuttal evidence (social), at paragraph 53.

<sup>119</sup> Siiri Wilkening rebuttal evidence (construction noise), at paragraph 77.

<sup>120</sup> Annexure F to Amelia Linzey's rebuttal evidence (planning).

- 201 As a result, it is considered that this process will effectively respond to the issues raised in Te Kawerau a Maki's submission and evidence.

## **OTHER SUBMITTER ISSUES**

### **Property and compensation**

- 202 Some submitters have raised issues relating to property acquisition and compensation. Although significant property acquisition is required for the Project, matters relating to property purchase and compensation are provided for under the Public Works Act 1981 and are entirely separate to the RMA approvals process. Accordingly, these issues are outside the Board's jurisdiction in this hearing.
- 203 As noted above the property at 1510 Great North Road is not being acquired (save for strata title for the tunnel), as the NZTA considers that any adverse effects on the property and its student residents can be appropriately mitigated.
- 204 Submitters John and Linda Lewis requested purchase of their full property in Te Atatu, as the proposed partial acquisition of their property will compromise their living court. The NZTA has agreed to purchase the full property.

### **Rail**

- 205 Several submitters, including Margaret Watson and Robert Black, have requested that the hearing be adjourned so that the combined effects of the Project and future rail are assessed together. In her evidence on behalf of KiwiRail, Pam Butler sets out a very useful explanation<sup>121</sup> as to why it is not possible or appropriate to delay the Project and hear it together with the KiwiRail's proposal. The key points are:
- 205.1 KiwiRail's project is not at a sufficiently advanced stage to progress in the medium term and any assessment of its effects would be speculative.
- 205.2 It is not possible for the NZTA to designate for rail at the same time because rail corridors are outside the scope of its requiring authority powers.
- 206 Further, it is important to note that the Project maintains the opportunity for the development of the Southdown/Avondale line in the future.

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<sup>121</sup> Pam Butler evidence, paragraphs 3.8 to 3.13.

## STATUTORY ASSESSMENT

- 207 The statutory framework that the Board needs to consider is outlined earlier in these submissions. This section assesses the Project against that framework.

### **Notices of requirement - section 171 matters Assessment of Effects**

- 208 A detailed assessment of effects regionally and for each sector is set out in Chapters 12 to 22 of the AEE: Part D. Further as detailed in Table 12.1 of Chapter 12, the effects are assessed in the 31 Technical Reports that form Part G of the AEE. Ms Linzey concludes that Part D of the AEE “provides a comprehensive and complete description of the effects of the Project.”<sup>122</sup>
- 209 Chapter 24 of the AEE provides a summary of the measures identified to avoid or mitigate the actual and potential effects of the Project, based on the mitigation recommended in the Technical Reports. Ms Linzey concludes that:

“Overall, on the basis of the assessments and opinion provided by the experts and subject to the mitigation measures proposed in the draft conditions, I am of the view that the potential adverse effects of the Project will be adequately and appropriately avoided remedied and mitigated.”<sup>123</sup>

### **Relevant statutory planning documents – section 171(1)(a)**

- 210 As noted earlier, section 171(1)(a) requires particular regard to be had to any relevant provisions of a national policy statement, national environmental standard, regional and district planning documents.
- 211 Chapter 23 sets out a detailed analysis of the relevant planning documents, including the New Zealand Coastal Policy Statement, and Regional and District Plans. Ms Linzey concludes that the Project is, on balance, consistent with the relevant policy directions set out in these documents<sup>124</sup>.

### **Adequate consideration of alternatives – section 171(1)(b)**

- 212 Under section 171(1)(b), particular regard must be had to whether adequate consideration has been given to

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<sup>122</sup> Amelia Linzey 3<sup>rd</sup> Statement of EIC, at paragraph 5.

<sup>123</sup> Ibid, at paragraph 7.

<sup>124</sup> Ibid, at paragraph 8.1.

alternative sites, routes and methods of undertaking the public work. As noted earlier, this does not require that the NZTA demonstrate it has selected the best of all available alternatives.

- 213 In this regard, it is also important to recognise that Project operates within some significant existing constraints, including the broader layout of the State highway network. Specifically the present abrupt ending of SH20 at Maioro Street leaves an obvious 'missing link' between SH20 and SH16 (see Annexure A). Further, SH16 is a significant piece of existing infrastructure.
- 214 When considering the adequacy of the assessment of alternative methods, it is also important to recognise that some of the Project features which have concerned submitters are themselves products of the development of alternatives to mitigate Project effects. In particular, the ventilation buildings and stacks are the products of the NZTA's decision to proceed with a tunnel rather than a surface motorway designation through Sector 8.
- 215 A detailed history of the assessment of alternatives for route and alignment options, and for design options is provided in Chapter 11 of the AEE. This analysis allows Ms Linzey to conclude that "appropriate consideration has been given to alternative corridors, routes and construction methods for the works".<sup>125</sup> Ms Linzey also explains how consideration was given to alternative methods to designation, noting her conclusion that a designation was required given the complexity of consenting requirements for a Project of this scale, and the need for transparency of process.<sup>126</sup>
- 216 The EMS section 42A report agrees that the "adequate consideration has been given to alternative sites and routes" and notes that the adoption of the designation process is appropriate.<sup>127</sup> That report does, however, suggest that fuller documentation be provided detailing the options analysis. This issue is addressed in the 6 February 2011 Memorandum of Counsel in Response to the Minute of the Board. Detailed route and mitigation options are assessed in sections 11.5 to 11.7 of the AEE.
- 217 It is submitted that the NZTA's evidence and this assessment demonstrates that the NZTA has given

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<sup>125</sup> Amelia Linzey 3rd Statement of EIC, at paragraph 8.2

<sup>126</sup> Amelia Linzey 1st Statement of EIC, at paragraph 42.

<sup>127</sup> EMS section 42A report, section 8.

adequate consideration to alternative route options and forms for the Project including construction measures, designs and alternative mitigation measures.

- 218 Finally, it is noted that submitters have raised concerns regarding the large volume of Project application information; yet on the other hand have also raised concerns that not enough detail has been provided (for example, in relation to options/alternatives).
- 219 As the Board and submitters must appreciate and acknowledge, this is a very large Project and it has been underway for many years. In lodging the RMA applications, the NZTA has tried to strike an appropriate balance of lodging sufficient information for RMA purposes whilst not unduly overloading submitters with all available information. For example, in addition to the application material lodged with the EPA, there is an equal amount of additional supporting and investigative information, data and reports relating to the Project that has not been formally lodged (but much of which has been in the public domain in the past). The NZTA elected not to include all of this additional information on its Project website in order to avoid completely overwhelming submitters, acknowledging as it must that submitters will have found it difficult to digest the volume of information already lodged).

***Reasonably necessary to achieve objectives – section 171(1)(c)***

- 220 Section 171(1)(c) requires that particular regard must be had to whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought. The required assessment is not as to whether the Project objectives are reasonably necessary but whether the means proposed are reasonably necessary to achieve them.
- 221 The AEE and the evidence of Mr Parker and Mr Murray in particular demonstrate that the Project is reasonably necessary for the NZTA to achieve its objectives, in that as Ms Linzey notes:

“it will complete the Western Ring Route; providing an alternative route through the region and delivering improved trip reliability with appropriate capacity for current and future traffic demands, enhancing the efficiency of the State highway and surrounding transport network, which will create opportunities for enhanced economic growth”.<sup>128</sup>

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<sup>128</sup> Amelia Linzey 3rd Statement of EIC, at paragraph 8.3.

- 222 The EMS section 42A report comments<sup>129</sup> that 'necessity' implies "a test of showing that [the Project] is the best reasonable option for those objectives". With respect that is not correct. There is no caselaw to support EMS' position and it would be contrary to the approach taken by the Environment Court's assessment of alternatives (that is, that the applicant does not need to show that its alternative is the best of all available alternatives).
- 223 It is noted that EMS nonetheless concludes (subject to its earlier noted qualification that a fuller options assessment is required) that the use of the designation and work are reasonably necessary to achieve the Project objectives.<sup>130</sup>

***Other matters – section 171(1)(d)***

- 224 Section 171(1)(d) requires that particular regard to be had to any other matter that the Board considers is reasonably necessary in order to make a recommendation on the requirement.
- 225 An issue raised in the EMS section 42A report,<sup>131</sup> is whether the NZTA can rely on permitted baseline arguments based on the Special Purpose 3 Zone through Alan Wood Reserve which enables the construction of transport infrastructure. The NZTA does not seek to rely on permitted baseline arguments in the assessment of the Project NoRs. However, as discussed earlier, on the topic of open space, that zoning is relevant to the Board's assessment of what constitutes the existing environment, and specifically to the issue of how much open space exists at present. It is submitted that neither the Special Purpose 3 Zone nor the 25 Valonia Street land (subject to an existing consent for intensive residential subdivision) should be considered to be open space regardless of current levels of development.

***Resource Consents – section 104 & 104D matters  
Gateway Tests – s104D***

- 226 Mr Burn concludes about the first gateway test of s104D, that "there are certain effects that result from the reclamation in the CMA that cannot be avoided and mitigated such that they are reduced to being no more than minor".<sup>132</sup> It is noted that the effects referred to arise from the overall loss of the CMA created by the reclamation, Mr Burn otherwise concludes (based on the

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<sup>129</sup> EMS section 42A Report, section 12.7.

<sup>130</sup> EMS section 42A Report, section 12.8 & 12.11.

<sup>131</sup> EMS Section 42A report, sections 10.10.17-10.10.19.

<sup>132</sup> Owen Burn 2nd Statement of EIC, paragraph 9.



expert reports contained in Part G of the AEE) that the effects of activities that require consent will be no more than minor.

- 227 In his evidence Mr Burn provides a detailed analysis of the objectives and policies of the relevant statutory planning documents.<sup>133</sup> He concludes that the second part of the gateway test is met as “the resource consents do not offend against the objectives and policies of the relevant plans and proposed plans, in large part because these documents recognise the importance of State highways as physical resources and anticipate and allow for the enlargement of the SH16 causeway into the CMA where this is necessary”.<sup>134</sup>

***Assessment of Effects – s104(1)(a)***

- 228 As noted earlier a detailed assessment of effects regionally and for each sector is set out in Chapters 12 to 22 of the AEE: Part D and by topic in the Part G Technical Reports. Further, Chapter 24 of the AEE provides a summary of the proposed mitigation measures.

- 229 Mr Burn concludes that “While the aerial extent of the Project creates an effect that may be considered to be more than minor with respect to loss of part of the CMA as a result of reclamation, I consider that this effect is tempered by the extensive range of measures that propose to avoid, remedy and mitigate the effects of the Project”.<sup>135</sup>

- 230 While it is not necessary under the balancing test in Part 2 to provide positive effects or indeed to have no adverse effects, it is nonetheless also noted that the Project creates environmental enhancement in some instances (for example, the additional treatment of stormwater discharge and the rehabilitation of Oakley Creek).

***Statutory Planning Documents – s104(1)(b)***

- 231 Mr Burn’s analysis of the relevant statutory planning documents, with reference to the section 104D gateway tests, has been set out above. His conclusion that the consents required for the Project are consistent with the relevant planning provisions is equally relevant for section 104(1)(b).

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<sup>133</sup> Ibid, at paragraphs 41 to 85.

<sup>134</sup> Ibid, at paragraph 9. Refer also paragraph 85.

<sup>135</sup> Ibid, at paragraph 112.

**Permitted Activities**

- 232 Section 104(2) provides that the Board may disregard any adverse effect of the activity if the relevant plan permits an activity with that effect. It is submitted that the discharge to air from vehicles, both from open sections of the motorway, and from the tunnel ventilation stacks, fall within this category. Rule 4.5.3 of the Auckland Regional Plan: Air Land and Water allows discharges from mobile sources (which includes motor vehicles). As noted in the Memorandum of Counsel in Response to Minute from the Board (6 February 2011), the NZTA considers that the application of this Rule to ventilation stacks is consistent with the air quality rules' focus on the "activity" causing the discharge, rather than the method of dispersal.

**Overall Part 2 Assessment**

- 233 Chapter 23.11 of the AEE: Part D assesses the Project against the provisions of Part 2 of the RMA, including a detailed assessment of the Project against the matters in sections 6 and 7. The AEE notes the requirement to balance the scale of regional and national benefits against local effects. It is noted that the Project:
- 233.1 Sustains the potential of natural and physical resources for future generations by meeting growing transportation needs and not precluding future rail development.
  - 233.2 Safeguards the life-supporting capacity of air (by reducing congestion), of water (by improving stormwater treatment and rehabilitating Oakley Creek), and of ecosystems (by avoiding or mitigating effects on ecosystems).
  - 233.3 Avoids, remedies and mitigates the adverse effects of the Project.
- 234 This analysis allows Ms Linzey to conclude in her evidence that "the Project meets the definition of sustainable management as provided in section 5 of the RMA, appropriately provides for the relevant matters of section 6 and has regard to the matters of sections 7 and 8 of the RMA".<sup>136</sup>
- 235 It is noted that, with qualifications addressed elsewhere in the NZTA's rebuttal evidence or in these submissions, and subject to appropriate conditions and monitoring, the EMS section 42A report concludes that "the confirmation of the

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<sup>136</sup> Amelia Linzey 3rd Statement of EIC, paragraph 8.4.

designations and alterations to designation and resource consents will serve to promote the overall purpose of the Act".<sup>137</sup>

- 236 On balance, it is submitted that the benefits of this Project alongside the proposed measures to avoid, remedy or mitigate its adverse effects, should lead to the conclusion that the Project achieves sustainable management of natural and physical resources and is consistent with the purposes and principles of the RMA.

### **COMMENTS ON SECTION 42A REPORTS**

- 237 This section of the submissions addresses matters raised in the section 42A reports commissioned by the Board, in particular those matters which the Reports identified as warranting further discussion between parties and/or at the hearing. It is noted that many issues have been thoroughly responded to in NZTA's rebuttal evidence and in the Memorandum of Counsel in Response to the Board's Minute.<sup>138</sup> To the extent not covered elsewhere therefore (including elsewhere in these submissions), some matters are now addressed.

#### **EMS s42A Reports Recommendation to Minister of Conservation**

- 238 The question has been raised whether this Board is still required to make a recommendation to the Minister of Conservation for a restricted coastal activity under NZCPS 2010, Policy 29?
- 239 The Board is not required to make a recommendation to the Minister of Conservation about the reclamation aspects; it is for the Board to make this determination.
- 240 The EMS Report reference (para 9.5.2) to making a recommendation to the Minister of Conservation for restricted coastal activities (RCAs) appears to refer to the former procedure for RCA applications that was in place prior to 1 October 2009 where the Minister of Conservation decided RCA applications following a recommendation from the regional council. Since 1 October 2009, RCA applications are determined by regional councils, except if the application is made to the EPA under section 145.<sup>139</sup>

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<sup>137</sup> EMS Section 42A Report, section 15.3.

<sup>138</sup> Memorandum in Response (dated 6 February 2011).

<sup>139</sup> Section 117(1) of the RMA, as amended by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

The RMA no longer provides for RCA applications to be determined by the Minister of Conservation.

- 241 Policy 29 of the NZCPS provides for the removal of RCA status from regional coastal plans. However, where an application for a coastal permit for an RCA is notified prior to planning documents being amended to give effect to Policy 29, that application shall continue to be treated as an RCA application under s117 of the RMA.<sup>140</sup>
- 242 As noted above, section 117 of the RMA provides that an application for an RCA must be made to the regional council for the relevant region, except if the application is made to the EPA under section 145.<sup>141</sup> As the RCA applications in this case were lodged with the EPA, and publicly notified prior to the NZCPS 2010 coming into force (and therefore prior to any regional plan amendments to give effect to Policy 29), it is for the Board to continue to determine the applications as RCAs.
- 243 Since the Project relates partly to the coastal marine area, any references within Part 6AA must be read as references to both the Minister for the Environment and the Minister of Conservation.<sup>142</sup> As a consequence, the Board must provide a copy of its draft report to both Ministers.<sup>143</sup> The two Ministers will also receive a copy of the Board's final report, containing the Board's decision.<sup>144</sup>

### **Conditions and Management Plans**

- 244 The Section 42A Report and Addendum Report raise the following key issues regarding the use of management plans and conditions:<sup>145</sup>
- 244.1 General Designation condition DC.1 should be amended to require the works to be undertaken "in accordance with" the application documents, rather than "in general accordance with";
- 244.2 The "subject to final design" qualification should be deleted, given that the plans and drawings are appropriately detailed; and

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<sup>140</sup> Policy 29(3) of the 2010 NZCPS.

<sup>141</sup> Section 117(1) of the RMA.

<sup>142</sup> Section 148(2) of the RMA.

<sup>143</sup> Section 148(2)(b), and section 149Q(3)(e) and (f) of the RMA.

<sup>144</sup> Section 148(2)(b), and section 149R(4)(e) and (f) of the RMA.

<sup>145</sup> See paragraphs 14.2.1 and 14.2.4 of the Section 42A Report, section 3.9 of the Addendum Report.

244.3 Use of objective and measurable performance standards in management plans.

- 245 The first two issues can be addressed together.
- 246 The use of the phrases “generally in accordance” and “subject to final design” are common place in resource consent and designation conditions. Mr Parker, Ms Linzey and Mr Foster all explain why there needs to be a degree of flexibility for a large roading project such as this.<sup>146</sup>
- 247 While the authors of the Section 42A Report are of the opinion that the drawings are detailed enough, this is simply not the case. It must be remembered that these drawings are based on preliminary design, and the detailed design stage (which is yet to commence) will most likely result in further refinements.
- 248 Without the flexibility provided by the terms “in general accordance” and “subject to final design”, there would be no ability to refine the opportunities for design innovation and better environmental outcomes, along the lines discussed in Mr Parker and Ms Linzey’s rebuttal evidence.<sup>147</sup>
- 249 The management plan technique provides the means by which the Council will certify that the detailed design complies with the relevant conditions and will result in effects no worse than envisaged in the applications presented for the Project.
- 250 It is submitted that the certification of management plans by the Council against conditions is an entirely valid approach, supported by established case law.
- 251 The Section 42A Reports seek the inclusion of appropriate objectives and measurable performance standards in management plans and associated conditions, to enable clear and effective “certification” of the management plans by Auckland Council.<sup>148</sup>
- 252 There is no requirement for a court or tribunal “to settle every last detail of the conditions which it seeks to

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<sup>146</sup> See rebuttal evidence of Michael Foster at paragraph 38 to 42; Second Statement of Rebuttal Evidence of Amelia Linzey at paragraphs 124 to 128; Rebuttal Evidence of Tommy Parker at paragraphs 79 to 82.

<sup>147</sup> See Tommy Parker rebuttal evidence at paragraphs 82 to 85; Second Statement of Rebuttal Evidence of Amelia Linzey at paragraph 128.

<sup>148</sup> Paragraph 14.2.7 of the Section 42A Report, and paragraph 3.9.3 of the Addendum Report.

impose”.<sup>149</sup> For example, specific controls or parameters may be set out in the conditions of consent, but the information about how the consent holder intends to comply with those controls or parameters may be contained in a management plan.<sup>150</sup> A consent authority may approve such a management plan at a later time, so long as the consent authority acts only as a certifier.<sup>151</sup>

253 The use of management plans was a key issue in a recent Environment Court decision *Crest Energy Kaipara Ltd v Northland Regional Council*.<sup>152</sup> Your Honour found at paragraph [226] of that decision:

Steps have been identified in some such plans, that involve setting objectives, design and planning for management of the resource, the managing of the resource, monitoring, evaluation of monitoring results, reviewing and refining hypotheses, the management plan and programme to better meet the objectives.

254 In respect of the associated conditions, it is desirable to measure outcomes in a clear and enforceable way, even where the assessment is qualitative or descriptive.<sup>153</sup>

255 In this regard, Mr Leersnyder confirms the draft management plans provide procedures that will result in specified objectives being met.<sup>154</sup> While he acknowledges that the degree to which performance standards can be quantified varies between effects, he concludes, contrary to the comments in the Section 42A Report and Addendum Report, that the Project’s draft management plans and associated conditions do contain appropriate and measurable performance standards.<sup>155</sup>

### **Hauraki Gulf Marine Park Act**

256 At paragraph 9.6.2 of the s42A EMA Report, EMS stated that “the over arching policy framework of the NZCPS will determine whether the Project is consistent with [the Hauraki Gulf Marine Park Act 2000]” (*HGMPA*).

257 When considering requirements under section 171 of the RMA, particular regard must be had to any relevant

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<sup>149</sup> *Turner v Allison* [1971] NZLR 833 at 857.

<sup>150</sup> *Wood v West Coast Regional Council* [2000] NZRMA 193 at [19].

<sup>151</sup> *Ibid* at [18].

<sup>152</sup> *Crest Energy Kaipara Ltd v Northland Regional Council* (A132/2009, 22 December 2009) at [226].

<sup>153</sup> *Ibid*, at paragraph [216].

<sup>154</sup> See Hugh Leersnyder rebuttal evidence, paragraph 48.

<sup>155</sup> *Ibid*, at paragraphs 49 and 53.

provisions of a New Zealand coastal policy statement.<sup>156</sup>  
As such, the Project has been assessed against the NZCPS 2010.<sup>157</sup>

258 However, section 10(1) of the HGMPA states that “sections 7 and 8 must be treated as a New Zealand coastal policy statement” for the coastal environment of the Hauraki Gulf. Section 7 of the HGMPA recognises the national significance of the Hauraki Gulf and its islands, while section 8 sets out six objectives for managing the Hauraki Gulf, its islands and catchments.

259 This means that when considering NoRs under section 171, particular regard must be had to not only the relevant provisions of the NZCPS 2010, but also to the relevant provisions of sections 7 and 8 of the HGMPA. The HGMPA provides that the NZCPS prevails in the event of conflict between the two.<sup>158</sup>

260 The Project has been assessed in relation to sections 7 and 8 of the HGMPA, and is consistent with the objectives set out in section 8 of the HGMPA.<sup>159</sup>

### **PROPOSED CONDITIONS**

261 The application documents lodged in August 2010 includes a complete suite of proposed conditions (contained in Appendix E.1 of the AEE). This was updated in Appendix 9 of Technical Report G.31 prior to public notification in September 2010.

262 Since lodgement and public notification of the Project applications, the NZTA and its expert witnesses have considered issues raised by submitters and made a number of amendments to the set of proposed conditions. An amended set of conditions was attached to the Third Statement of Evidence of Amelia Linzey (Annexure B, dated 14 November 2010).

263 Following review of the submitters’ evidence (exchanged December 2010), further amendments have been proposed in the NZTA’s rebuttal evidence. The current set of updated proposed conditions is attached to Amelia Linzey’s rebuttal evidence (planning) as Annexure A.

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<sup>156</sup> Section 171(1)(a)(ii) of the RMA.

<sup>157</sup> Amelia Linzey’s 3rd Statement of EIC, paragraph 28.4.

<sup>158</sup> Section 10(2) of the HGMPA.

<sup>159</sup> Amelia Linzey’s 3rd Statement of EIC, paragraph 29.

264 It is anticipated that these conditions will be developed further during the hearing and a final set will be presented with the NZTA's Reply, so as to establish that the effects of the Project will be appropriately mitigated.

### **OUTCOMES OF CAUCUSING SESSIONS**

265 At the Board's direction, a number of expert and non-expert caucusing sessions have been held in recent weeks on the following topics:

265.1 Noise and vibration (construction and operational);

265.2 Traffic and transport;

265.3 Air quality;

265.4 Landscape and visual design;

265.5 Social impact and planning;

265.6 Open spaces;

265.7 Ecology - comprising coastal processes, freshwater ecology, herpetofauna, marine ecology and vegetation;

265.8 Groundwater and ground settlement; and

265.9 Stormwater management.

266 The joint caucusing reports were required to be signed and lodged with the EPA by 7 February 2011.

267 It is noted that some of the joint caucusing reports were not concluded or signed until after the NZTA's rebuttal evidence had been finalised for printing. These included transport, landscape/visual design, social impact and open spaces.

268 As a result, NZTA's updated set of conditions (attached to Ms Linzey's rebuttal evidence (planning) as Annexure A) may not accord with or incorporate conditions agreed in caucusing by the experts, but which are nonetheless acceptable to the NZTA.

269 It is therefore likely, once the NZTA has had the opportunity to review all the caucusing reports, that a number of conditions will need to be updated to reflect further amendments which the NZTA is willing to accept.



270 In that regard, and to assist the Board and other parties, it is proposed that NZTA's counsel lodge a memorandum with the Board by Thursday morning (10 February) advising the position of the NZTA with respect to any conditions noted as "agreed" by experts. While it is anticipated that many of them will be accepted, the NZTA will clarify which conditions it may have an issue with and/or not be willing to accept.

### **EVIDENCE ON BEHALF OF THE NZTA**

271 A suite of evidence in chief and rebuttal evidence has been exchanged and lodged on behalf of the NZTA, which comprises:

- 37 statements of evidence in chief (EIC) (lodged and served on 15 November 2010); and
- 33 statements of rebuttal evidence (lodged and served on 4 February 2011).<sup>160</sup>

272 In addition, various NZTA expert witnesses have been involved in expert caucusing and have signed joint caucusing reports lodged with the Board on or before 7 February 2011.

273 For ease of reference, a summary table listing all of the NZTA's witnesses, their areas of expertise, if they lodged EIC or rebuttal evidence, and if they have been involved in caucusing, is attached as **Annexure D** to these submissions.

### **CONCLUSION**

274 The Waterview Connection Project is the final and critical link in the Western Ring Route. Its completion will open up the regional and national economic growth and productivity benefits of that broader route. It will provide an alternative route to the existing SH1 corridor through Auckland, and it will improve the capacity and resilience of SH16 and protect it from the sort of inundation experienced this past month.

275 The Project has a long history ranging over 10 years of consultation, and assessment of route, alignment and design options. A broad range of alternatives have been

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<sup>160</sup> Counsel understands that the Index pages to the rebuttal evidence were missing when printed and lodged (served on 4 February). Those Indexes will be circulated to the Board and submitters who require hard copies as soon as possible. The full Index has been available on the EPA website since 4 February.

considered during that time, within the constraints imposed by the existing State highway network, specifically the existing SH20 motorway termination at Maioro Street and the existing SH16 motorway.

- 276 The Project has been comprehensively assessed in terms of its compliance with policies and objectives of relevant statutory planning documents and in particular in terms of the assessment of effects (as set out in Chapters 13 to 22 and 31 Technical Reports).
- 277 It is acknowledged that there will be some adverse effects, which is unavoidable for an infrastructure project of this scale. However most of these effects will be either avoided through design measures or mitigated by a comprehensive set of mitigation measures as set out in the Technical Reports and evidence of the NZTA's witnesses.
- 278 The Project provides several positive environmental benefits (beyond the socio-economic benefits outlined in the Project objectives), including the rehabilitation of Oakley Creek, the additional stormwater treatment for discharges into the Marine Reserve, and major upgrading of Waterview Primary School.
- 279 In the overall balancing required by Part 2 of the Act, it is submitted that the Project will enable people to provide for their social and economic well-being while appropriately avoiding, remedying or mitigating adverse effects. It is submitted that the NZTA's evidence taken as a whole will justify a finding that the Project meets the principles of sustainable management under the RMA and should be confirmed.

Counsel for the NZ Transport Agency



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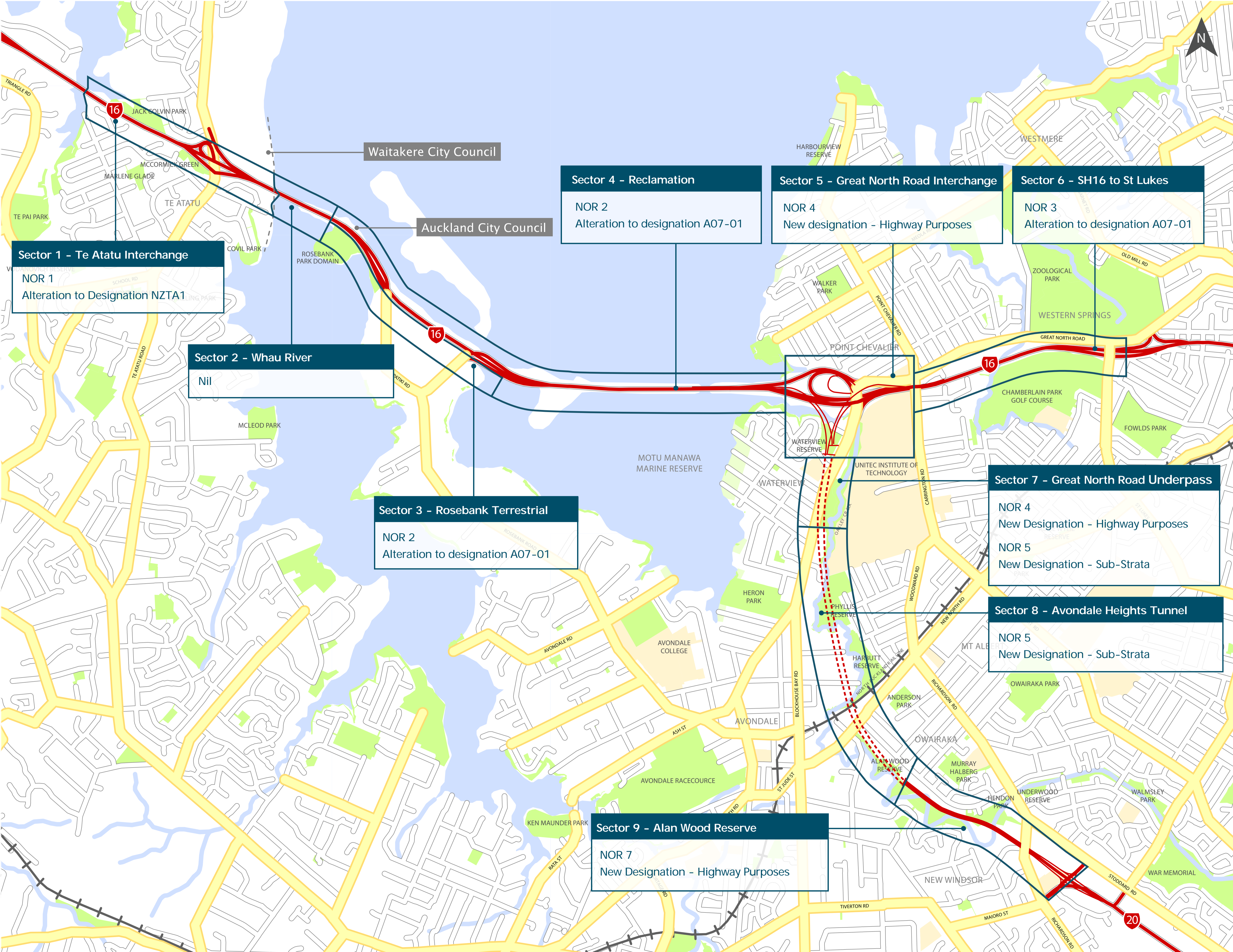
**S M Janissen / C Law**  
February 2011

**ANNEXURES:**

- Annexure A - Figure 1.2 from AEE
- Annexure B - Overview of Project AEE structure
- Annexure C - Figure 1.1 from AEE
- Annexure D - List of the NZTA's witnesses (EIC and rebuttal evidence)

**ANNEXURE A: FIGURE 1.2 FROM AEE**

# Western Ring Route: Waterview Connection (SH16-20) - Notices of Requirement



## **ANNEXURE B: OVERVIEW OF PROJECT AEE STRUCTURE**

# Statutory Applications Overview, EPA Applications, NOR's Resource Consent Applications

## Assessment of Environmental Effects (AEE)

### AEE Report (Part A - F)

#### Part A - Project Description:

Introduction to the Project, objectives and Project description.

#### Part B - Statutory Matters:

Statutory and Strategic Matters and Consents and Designations sought.

#### Part C - Existing Environment

#### Part D - Project Assessment:

Investigation process, consultation, assessment of alternatives, assessment of effects (regional and sector based), assessment of planning documents and mitigation.

#### Part E - Appendices:

Proposed consent conditions, planning maps, statutory references, open space restoration options, consultation summary, cultural impact report and schedule of trees.

#### Part F - Plans and Drawings:

Designation and Scheme Plans, Sections, Construction Plans, Works in CMA and Streams, Urban Design and Landscape Plans and Plans of other structures and features.

### Supporting Technical Reports (Part G)

#### G.1: Air Quality Effects

Air Emissions, including assessment of impacts from the emissions to air during construction and operation of the Project.

#### G.2: Air Archaeology Effects

Assessment of Archaeology and Heritage effects, including identification and assessment of impacts of construction and operation of the Project on sites and areas of heritage and historic value.

#### G.3: Avian Ecology

Avian Ecology, including consideration of impacts on avifauna and habitats for avifauna over construction and operation of the Project.

#### G.4: Coastal Processes

Assessment of the effects on Coastal Processes: the impacts and changes to the physical processes of the coastal marine environment (as a natural resource).

#### G.5: Construction Noise

Noise Emissions, including assessment of impacts from noise emitting from the Project during construction and operation.

#### G.6: Freshwater Ecology

Freshwater Ecology, including consideration of impacts on fauna and habitats for fauna in freshwater areas.

#### G.7: Groundwater

Assessment of Groundwater (as a natural resource) effects of the construction and operation of the Project.

#### G.8: Herpetofauna

Herpetofauna Ecology, including consideration of impacts herpetofauna and habitats for herpetofauna over construction and operation of the Project.

#### G.9: Land and Groundwater Contamination

Contamination Effects, including the effects of construction works on contaminated land.

#### G.10: Assessment of Lighting Effects

Light Emissions, including assessment of impacts from lightspill from the Project during construction and operation.

#### G.11: Assessment of Marine Ecological Effects

Marine Ecology, including consideration of impacts on fauna and habitats for fauna in the coastal marine area.

#### G.12: Assessment of Operational Noise Effects

Noise Emissions, including assessment of impacts from noise emitting from the Project during construction and operation.

#### G.13: Assessment of Ground Settlement Effects

Effects of Ground Settlement (resulting from construction and operation of the Project) on built resources and the neighbourhood.

#### G.14: Assessment of Social Effects

Social impact assessment, including assessment of impacts of the construction and operation of the Project on communities and neighbourhoods.

#### G.15: Assessment of Stormwater and Streamworks Effects

Assessment of the effects on Streams (as a natural resource), including the effects of stream realignment associated with the construction and operation of the Project.

#### G.16: Assessment of Temporary Traffic Effects

Transport assessment, including assessment of impacts on the transport network during construction and operation.

#### G.17: Assessment of Terrestrial Vegetation Effects

Vegetation ecology, including consideration of impacts of construction and operation of the project on significant vegetation and habitats for fauna.

#### G.18: Assessment of Transport Effects

Transport assessment, including assessment of impacts on the transport network during construction and operation.

#### G.19: Assessment of Vibration Effects

Vibration Emissions, including assessment of impacts from vibration emitting from the Project during construction and operation.

#### G.20: Assessment of Visual & Landscape Effects

Visual and Landscape assessment, including consideration of amenity impacts during construction and operation.

#### G.21: Construction Environmental Management Plan (CEMP)

A description of the environmental management and monitoring procedures proposed to manage the effects of the Project's construction.

#### G.22: Erosion and Sediment Control Plan (ESCP)

Discharge of Contaminants (stormwater): including the effects of land disturbing activities and the discharge of contaminants from these activities to receiving environments.

#### G.23: Coastal Works

Information on the project works in relation to reclamation and occupation of the Coastal Marine Area.

#### G.24: Geotechnical Interpretative Report

An interpretative assessment of the geotechnical/geological conditions for the proposed alignment route of the project.

#### G.25: Traffic Modelling Report

The assumptions, inputs and outcomes of the forecast year traffic modelling that has been undertaken to assess the transport effects of this project at a regional, project assignment and operational level.

#### G.26: Operational Model Validation Report

Information on the development and validation of the base year micro-simulation (or 'Operational') traffic model.

#### G.27: Stormwater Design Philosophy Statement

An outline of the philosophy (design parameters and guidelines) that will be used for design of stormwater systems and stream works for the Project.

#### G.28: Geotechnical Factual Report - 500 Series

A factual report of geotechnical field investigations undertaken along the project route (see G.29 for further investigations).

#### G.29: Geotechnical Factual Report - 700 Series

A factual report of geotechnical field investigations undertaken along the project route (see G.28 for further investigations).

#### G.30: Assessment of Sediment and Contaminant Loads

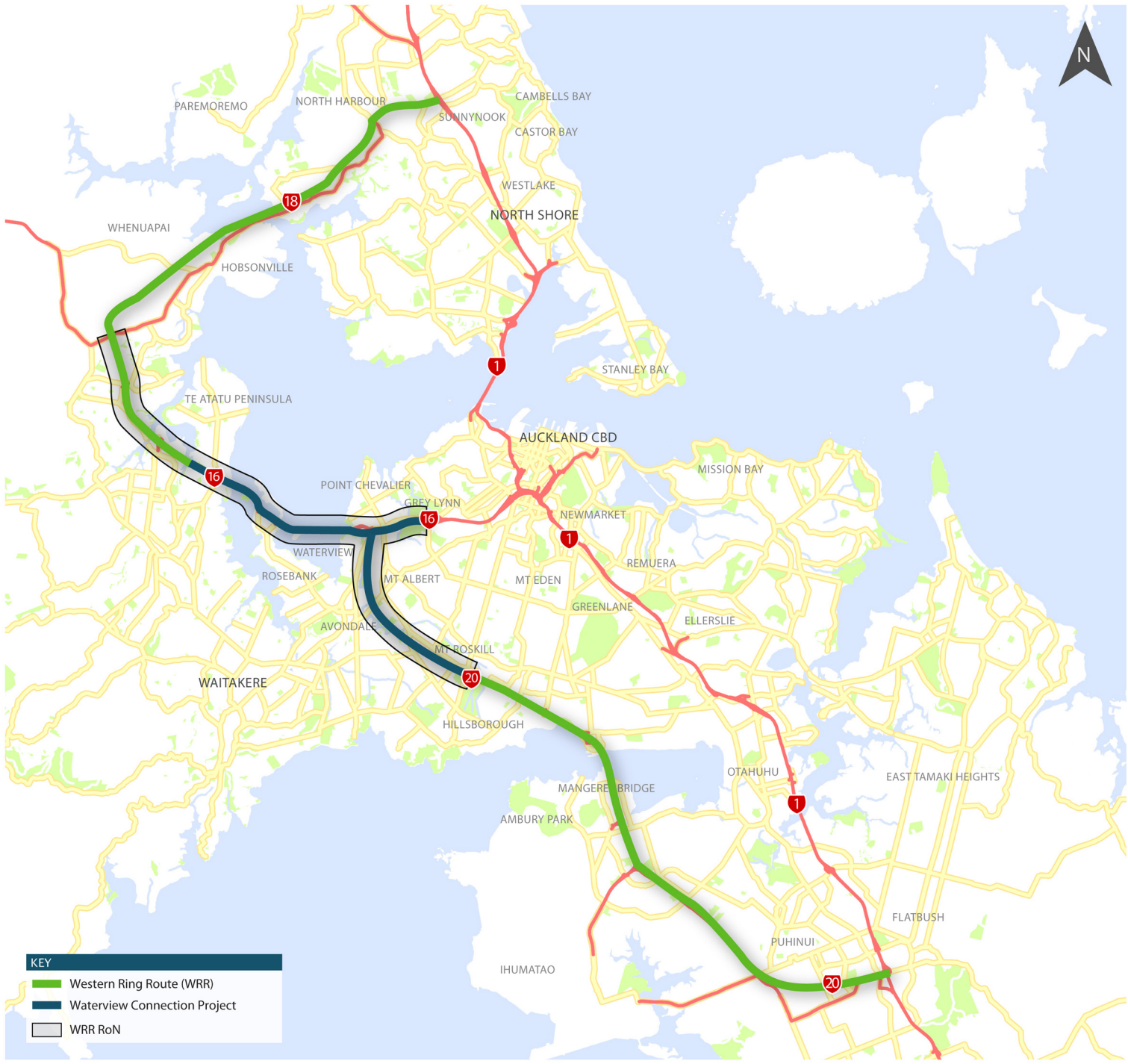
The methodology and results of expected sediment and contaminant loads delivered to the Waterview Inlet.

#### G.31: Additional Technical Information




Provides further technical information to support the application of notices of requirement and resource consents for the project.

**ANNEXURE C: FIGURE 1.1 FROM AEE**





**KEY**

-  Western Ring Route (WRR)
-  Waterview Connection Project
-  WRR RoN

## ANNEXURE D: LIST OF NZTA'S WITNESSES (EIC AND REBUTTAL EVIDENCE)

WITNESS NAME	EVIDENCE TOPIC	EVIDENCE IN CHIEF (EIC)*	REBUTTAL EVIDENCE*	JOINT CAUCUSING STATEMENT	PROPOSED HEARING ORDER
Tommy Parker (NZTA)	NZTA statutory and strategic objectives, importance of the Project, Project history and process to preferred route	1	1	x	1
Andre Walter (NZTA)	Project description, construction process	2	2	✓	2
Mike Foster (Zomac)	Strategic planning	None	3	x	3
Andrew Murray (Beca)	Transport/traffic	3	4	✓	4
Rob Mason (Beca)	Design Manager	None	5	✓	5
Mike Copeland (Brown Copeland & Co)	Economics	4	6	x	6
Hugh Leersnyder (Beca)	Construction environmental management	7	7	x	7
Graeme Ridley (Ridley Dunphy)	Erosion and sediment control	8	8	x	8
John Gottler (Aurecon)	Temporary and construction traffic	9	9	✓	9
Siiri Wilkening (Marshall Day)	Construction noise	10	10	✓	10
Peter Millar (Tonkin & Taylor)	Vibration	11	11	✓	11
Ann Williams (Beca)	Groundwater	12	12	✓	12
Gavin Alexander (Beca)	Ground settlement	13	13	✓	13
Terry Widdowson (Beca)	Land and Groundwater Contamination	14	14	✓	14
Jon Hind (Aurecon)	Causeway geometrics and options	15	None	x	15
Jeff Hsi (SMEC)	Coastal works	16	None	x	16
Rob Bell (NIWA)	Coastal processes	17	15	✓	17
Jonathon Moores (NIWA)	Contaminant load modelling	18	None	x	18
Sharon De Luca (Boffa Miskell)	Marine ecology	19	16	✓	19
Tim Fisher (Tonkin & Taylor)	Stormwater and streamworks	20	17	✓	20
Amelia Linzey (Beca)	Social effects	21	18	✓	21

\* As listed on the EPA website.

<b>WITNESS NAME</b>	<b>EVIDENCE TOPIC</b>	<b>EVIDENCE IN CHIEF (EIC)*</b>	<b>REBUTTAL EVIDENCE*</b>	<b>JOINT CAUCUSING STATEMENT</b>	<b>PROPOSED HEARING ORDER</b>
Julie Mead Rose (SEL)	Social effects	22	None	?	22
Gavin Fisher (Endpoint)	Air Quality	23	19	✓	23
Dr David Black (Enviromedix)	Public health	24	20	?	24
Siiri Wilkening (Marshall Day)	Operational noise	25	21	✓	25
Geoff Waller (Beca)	Lighting	26	22	x	26
David Gibbs (Construkt)	Architectural design	27	24	✓	27
Stephen Brown (SBEL)	Visual and landscape	28	25	✓	28
Lynne Hancock (Beca)	Urban design	29	26	✓	29
David Little (SBEL)	Open space	30	27	✓	30
Rod Clough (Clough & Associates)	Archaeology	31	23	x	31
Graham Don (Bioresearches)	Avian ecology	32	28	✓	32
Eddie Sides (Boffa Miskell)	Freshwater ecology	33	29	✓	33
Dave Slaven (Boffa Miskell)	Terrestrial vegetation	34	30	✓	34
Simon Chapman (Boffa Miskell)	Herpetofauna (lizards)	35	31	✓	35
Owen Burn (Green Group)	Planning analysis (resource consents)	6 and 36	32	x	36
Amelia Linzey (Beca)	Planning analysis (NORs/designations)	5 and 37	33	✓	37

\* As listed on the EPA website.