

Before the Board of Inquiry
Waterview Connection Project

in the matter of: the Resource Management Act 1991

and:

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

Memorandum of counsel on behalf of the **NZ Transport Agency** in relation to conditions contained in joint expert caucusing reports

Dated: 10 February 2011

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**MEMORANDUM OF COUNSEL ON BEHALF OF THE NZ TRANSPORT
AGENCY IN RELATION TO CONDITIONS CONTAINED IN JOINT
EXPERT CAUCUSING REPORTS**

PURPOSE OF MEMORANDUM

- 1 During the presentation of opening submissions on 7 February 2011, counsel for the NZ Transport Agency (NZTA) proposed to lodge a memorandum with the Board advising of the NZTA's position with respect to any conditions noted as "agreed" by experts in the various expert caucusing joint reports.
- 2 The NZTA had provided an updated master set of conditions for the Project with the rebuttal evidence.¹ However, some of the joint caucusing reports were not concluded or signed until after the NZTA's rebuttal evidence had been finalised for printing.
- 3 The Board accepted the NZTA's proposal and directed that the NZTA's memorandum be lodged on Thursday morning (10 February).
- 4 Accordingly, the purpose of this memorandum is to clarify which conditions contained in the caucusing joint reports by experts, the NZTA acceptor does not accept, or accepts in part (with different wording).
- 5 This memorandum will also clarify if those conditions the NZTA accepts had already been included in the February 2011 master set of conditions (or if they need to be added).
- 6 The updated master set of conditions, including all those accepted by the NZTA, will be provided on Friday, 11 February at the hearing.

CAUCUSING REPORTS

- 7 NZTA has reviewed the following joint expert caucusing reports:
 - 7.1 Avifauna, dated 21 January 2011;
 - 7.2 Freshwater ecology, dated 27 January 2011;
 - 7.3 Herpetofauna, dated 27 January 2011;
 - 7.4 Coastal processes, dated 28 January 2011
 - 7.5 Marine ecology, dated 28 January 2011;
 - 7.6 Vegetation, dated 28 January 2011;

¹ Annexure A to Ms Linzey's planning rebuttal evidence dated 3 February 2011.

- 7.7 Air quality, dated 28 January 2011;
- 7.8 Noise, dated 2 February 2011;
- 7.9 Stormwater, dated 2 February 2011;
- 7.10 Groundwater and ground settlement, dated 2 February 2011;
- 7.11 Land and groundwater contamination, dated 2 February 2011;
- 7.12 Transport, dated 3 February 2011;
- 7.13 Landscape and visual design, dated 4 February 2011;
- 7.14 Social / planning, dated 4 February 2011; and
- 7.15 Open space, dated 4 February 2011.

THE NZTA'S RESPONSE TO CONDITIONS FROM CAUCUSING REPORTS

- 8 The following table in column three indicates which conditions:
 - 8.1 The NZTA accepts (✓);
 - 8.2 The NZTA does not agree with or does not accept (X).
- 9 Column four provides a summary of whether the conditions agreed in expert caucusing are contained in the master set of conditions lodged on 4 February (Ms Linzey's rebuttal evidence, Annexure A).

Report Topic	Conditions agreed in caucusing	Conditions NZTA accepts or does not agree with	Contained in NZTA rebuttal set of conditions	Paragraph references for comments
Avifauna	A.5	✓	✓	
Groundwater and ground settlement	G.1	✓	✓	
	G.7	✓	✓	
	G.10	✓	✓	
	G.11	✓	✓	
	G.12	✓	✓	
	G.13	✓	✓	
	S.1	✓	✓	
	S.2	✓	✓	
	S.4	✓	✓	
	S.6	✓	✓	
S.7	✓	✓		
S.10	✓	✓		

Report Topic	Conditions agreed in caucusing	Conditions NZTA accepts or does not agree with	Contained in NZTA rebuttal set of conditions	Paragraph references for comments
	S.11 S.12 S.13 S.15 S.16 S.17	✓ ✓ ✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓ ✓	
Freshwater ecology	F.3 F.5 G.12 STW.20(c) STW.1 STW.20A	✓ ✓ ✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓ ✓	Para 12 Para 13 (as STW.21)
Herpetofauna	H1	✓	✓	
Vegetation	V.8 V.10 V.11 V.14 V.15 V.16 STW.20(d) S0.3	X ✓ ✓ X ✓ ✓ ✓ ✓	X ✓ ✓ X ✓ ✓ ✓ X	Para 14 Para 15 Para 16
Noise and vibration	CNV.1(xi) CNV.1(xiv) CNV.1(xv) CNV.2 CNV.2(iii) CNV.9 CNV.7	✓ ✓ ✓ ✓ ✓ ✓ ✓	X ✓ ✓ ✓ ✓ ✓ ✓	Para 17 Para 18 (as CNV.8)
Transport	TT.1 TT.2 TT.3 TT.4 TT.5 TT.6 TT.7 TT.8 TT.9 TT.10 TT.11 OT.1	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ X	Para 19

Report Topic	Conditions agreed in caucusing	Conditions NZTA accepts or does not agree with	Contained in NZTA rebuttal set of conditions	Paragraph references for comments
Landscape and design	LV.1.(e)(i)	✓	✓	As DC.8, DC.9
	LV.1.(e)(ii)	✓	✓	
	LV.1.(e)(iii)	✓	✓	
	LV.1.(e)(iv)	✓	✓	
	LV.1.(e)(v)	✓	✓	
	LV.1.(e)(vi)	✓	✓	
	LV.1.(e)(vii)	✓	✓	
	LV.1.(e)(viii)	X	X	Para 20
	LV.1.(e)(ix)	X	X	Para 20
	LV.1.(e)(x)	✓	✓	
	LV.1.(e)(xi)	✓	✓	
	LV.1.(e)(xii)	✓	✓	
	LV.1.(e)(xiii)	✓	✓	
	LV.1.(e)(xiv)	✓	✓	
	LV.1.(e)(xv)	X	X	Para 21
	LV.1.(e)(xvi)	✓	X	Para 22
	LV.1.(e)(xvii)	X	X	Para 23
	LV.1.(e)(xviii)	✓	✓	
	LV.1.(e)(xix)	✓	✓	
	LV.1.(e)(xx)	✓	✓	
	LV.1.(e)(xxi)	X	X	Para 24
	LV.1.(e)(xxii)	X	X	Para 25
	LV.1.(e)(xxiii)	✓	✓	
	LV.1.(e)(xxiv)	✓	✓	
	LV.1.(e)(xxv)	✓	✓	
LV.5	X	X	Para 26	
LV.7	✓	✓	As LV.6	
LV.9	✓	✓		
SO.12	X	X	Para 27	
Stormwater	SW.10	✓	✓	
	SW.12	✓	✓	
	SW.19	✓	✓	
	SW.21	✓	✓	
	STW.1	✓	✓	
	LV.9	✓	✓	As LV.8
Social/planning	PI.1 (para 13.1)	✓	✓	
	PI.2 (para 13.2)	✓	X	Para 28
	PI.2 (para 13.3)	✓	✓	
	PI.2 and PI.5 (para 13.4 and 20)	✓	X	Para's 29 - 30
	PI.3 (para 13.5)	✓	✓	

Report Topic	Conditions agreed in caucusing	Conditions NZTA accepts or does not agree with	Contained in NZTA rebuttal set of conditions	Paragraph references for comments
Social/planning	CNV.2(iv) (para 18)	✓	✓	As SO.1
	SO.7 (para 18)	✓	✓	
	P1.2 (issue 22)	✓	✓	
Open space	Issue Resolved (para 91)	✓	X	Para 31
Air quality	OA.1	✓ (in part)	X	Para 32
	OA.2	✓	✓	
	OA.5	✓	✓	
	OT2(e)	✓	X	Para 33
	Para 42	✓	✓	As AQ4(e), CNV.9
	Standard Conditions (para 40)	X	X	Para 34

10 The following reports recommended no changes to conditions:

10.1 Coastal processes;

10.2 Marine ecology; and

10.3 Land and groundwater contamination.

CONDITIONS THAT THE NZTA DOES NOT AGREE WITH OR DOES NOT ACCEPT OR ACCEPTS IN PART

11 In this section, the NZTA describes which conditions it is either not willing to accept, or has concerns about, or has proposed alternative wording.

12 Condition F.3(b) has been incorrectly struck through and should read: "During construction – **twice per year annually** for fish and macroinvertebrates and **three times per year for** cross sectional profiles, **within one month**-prior to **the beginning of the earthworks season and within one month either side ,during and at the end**-of the earthworks season. This will be corrected in the revised set of Conditions presented to the Board.

13 The cross reference in condition F.5 in the caucusing statement refers to Condition G.12, however it has been referred to as Groundwater Condition G.10 in the Condition as this is considered a more appropriate reference (as it is this condition that sets the groundwater monitoring, while Condition G.12 refers to reporting of monitoring results).

- 14 V.8 – the NZTA agrees with the intent of this condition, but has proposed revised wording in the revised set of conditions to clarify the area referred to is that of the surface designation (and recognising that maintenance of the state highway network is a general obligation of the NZTA). This is further discussed in the rebuttal evidence (planning) of Ms Linzey, para 132.10;
- 15 V.14 – the NZTA has proposed a minor change, such that the planting plans are submitted to the Auckland Council for certification rather than approval. This approach is further discussed in the EIC of Ms Linzey (planning analysis) (para 82-86).
- 16 The Expert Caucusing Joint Report – Vegetation identifies the need for the Open Space conditions (was SO.3 now OS.3) to refer specifically to the increased riparian planting. This amendment is not considered necessary as revised Urban Design and Landscape Plans have been presented in the rebuttal evidence of Ms Hancock (Annexure B) and the proposed conditions (DC.1) make specific reference to the updating of these Plans in evidence. To clarify, this has reference will also be added to the text of proposed Condition LV.2.
- 17 The finalised Expert Caucusing Joint Report - Noise (construction and operational) was not available at time of preparing rebuttal evidence. Proposed condition CNV.1(xi) will in part be included in revised set of Proposed Conditions presented to the Board. However, it is noted that there is a conflict between the wording of this condition and proposed condition CNV.1(xv) addressed in paragraph 23 of the caucusing report and the rebuttal evidence of Ms Wilkening (this condition has been included). The discussion in relation to this condition is for underground works and those aspects of the proposed condition that similarly address underground works have been accepted.

The element of the Condition CNV.1(xi) put forward in the caucusing report is not accepted by the NZTA in relation to surface works as it is considered impractical in terms of timing for and extent of notification as it relates to any surface construction works. On this basis, the following condition is proposed to CNV.1(xi), which includes the amendment for CNV.1(xv):

Measures for liaising and notifying potentially affected receivers of proposed construction activities and the potential for noise and vibration effects, specifically:

- *PPFs located within 35 metres of underground excavation works along the tunnel alignment shall receive prior notification no greater than 7 days (and not less than 24 hours) prior to the commencement of works.*
- *Methods for ensuring affected residents are notified of scheduled night-time works (i.e. any works during the*

hours of 20:00 to 06:30 (at least 5 days prior to the commencement of any such works)).

- *Maps showing PPFs to be notified shall be included within the CNVMP.*

- 18 The proposed conditions in rebuttal evidence refer to 'dwellings' rather than PPF's this will be amended in the revised Proposed Conditions served to the Board.
- 19 The NZTA does not accept the proposed wording of this Condition and OT.1(e) as it considers that the potential for underpasses and overpasses has been considered in the Project assessment of alternatives and, on balance, does not constitute a benefit for the Project. Particularly in light of the additional land requirements and costs associated with undergrounding or overbridges.
- 20 LV.1(e)(viii) and (ix)– now Condition DC.8(g). The NZTA considers that it may be able to accept the amended rewording as follows, to recognise potential operational performance (particularly air quality) constraints:

Treatment of ventilation building and stacks as objects of urban sculpture(should the height requirements for the stack be significantly reduced, this may require physical 'subdivision' of the stack into several components that vary in height and proposition, providing it fulfils its functional requirements).

- 21 LV.1(e) (xv) – the NZTA agrees with intent It proposes to add as Condition DC.9(k) with proposed amended wording (underlined) as follows:

As practicable any control building should be configured in a manner that occupied spaces are aligned to overlook public walkways/ cycleways.

- 22 LV.1(e)(xvi) – the following revision will be made to DC.9(l):

The site configuration should maximise the use of building facades to achieve site security, minimising the necessity for additional fencing.

- 23 LV.1(e)(xvii) – the NZTA agrees with intent of this condition. It proposes to add as Condition DC.9(m) with proposed amended wording (underlined) as follows:

If parking areas are required to be secured they should where practicable directly abut the buildings: any fencing should be kept to a minimum.

- 24 LV.1(e)(xxi) – The NZTA proposes to add to Condition DC.9(n) amended wording (underlined) as follows:

Consider the potential for a 'green roof' on top of the main portal building.

- 25 LV.1(e)(xxii) – The NZTA does not agree with this proposed condition. The NZTA has identified security and safety issues that need to be taken into consideration which would likely restrict public access.

- 26 LV.5 – now Condition LV.4. The NZTA agrees with the intent, but has proposed new wording to recognise the maintenance of the state highway network as a general obligation (as per discussion in para 12 above).

- 27 SO.12 – the NZTA does not consider this amendment is necessary as the requirement to be in accordance with the principles of the Urban Design and Landscape Framework (UDLF June 2010) is already provided for in the proposed Conditions DC.8 and DC.9.

- 28 PI.2 – it is proposed to attach the Communications Plan as Figure 1 to the conditions, with amended wording to include the following additional sentence:

The structure of the communication groups set out in these conditions is attached as Figure PI.A.

- 29 PI.2 – this condition will be updated with revised wording as follows:

...procedures detailing how the public, Ministry of Social Development (including Housing New Zealand Corp) and organisations.....

- 30 PI.5 – this condition will be updated with revised wording as follows:

(h) Housing New Zealand Corp.

- 31 The NZTA proposes that this resolved issue can be addressed through a new open space condition OS.14, worded as follows:

The works shall not result in any permanent loss of carparking within the Western Springs Gardens carpark.

- 32 The experts and the NZTA accept the suggested wording amendments to this condition. However, the reduced height (to 15m) has been proposed following other commitments in the Expert Joint Causing Report – Air Quality. Therefore the proposed condition will be amended as follows:

The vents used to discharge emissions from the tunnel shall discharge vertically into air at a minimum height of 15 metres

above ground and shall not be impeded by any obstruction that decreases the vertical efflux velocity.

- 33 While the NZTA accepts in principle the intent of this condition, it is considered more appropriately provided as an Advice Note, and will be included as follows:

Advice Note: The operation and maintenance of the air quality monitoring equipment inside the tunnel shall follow manufacturer's recommendations.

- 34 The experts and the NZTA accept in principle the intent of the 'standard conditions' set out in the Expert Caucusing Joint Report – Air Quality. However, as discussed in the rebuttal evidence of Mr Fisher it is considered that these are already provided for in the proposed conditions, particularly in the Management Plans (refer para's 28 and 29).
- 35 A revised set of conditions will be prepared and presented to the Board, based on the above.

Dated: 10 February 2011



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Agency**