

Before a Board of Inquiry
Transmission Gully
Notices of Requirement and Consents

under: the Resource Management Act 1991

in the matter of: Notices of requirement for designations and resource consent applications by the NZ Transport Agency, Porirua City Council and Transpower New Zealand Limited for the Transmission Gully Proposal

between: **NZ Transport Agency**
Requiring Authority and Applicant

and: **Porirua City Council**
Local Authority and Applicant

and: **Transpower New Zealand Limited**
Applicant

Second statement of evidence of Andrea Judith Rickard (Planning – assessment of effects and statutory analysis) for the NZ Transport Agency and Porirua City Council

Dated: 16 November 2011

REFERENCE: John Hassan (john.hassan@chapmantripp.com)
Nicky McIndoe (nicky.mcindoe@chapmantripp.com)

SECOND STATEMENT OF EVIDENCE OF ANDREA JUDITH RICKARD FOR THE NZ TRANSPORT AGENCY AND PORIRUA CITY COUNCIL

QUALIFICATIONS AND EXPERIENCE

- 1 My full name is Andrea Judith Rickard. My qualifications and experience are set out in my first statement of evidence regarding the notices of requirement, resource consent applications and preparation of the assessment of environmental effects (*AEE*).
- 2 I confirm the statement in my first statement of evidence that I have read and agree to comply with the Code of Conduct for Expert Witnesses as contained in the Environment Court Consolidated Practice Note (2011).

SCOPE OF EVIDENCE

- 3 I reiterate that my evidence is given in support of the NZTA and PCC Projects. It does not relate to the Transpower Project. For the purposes of my evidence the NZTA Project and PCC Project shall be collectively referred to as the TG Project.
- 4 This statement of evidence will address the following:
 - 4.1 Section 104D Resource Management Act 1991 (*RMA* or *the Act*) gateway assessment;
 - 4.2 Relevant planning documents;
 - 4.3 "Other matters" relevant under sections 104(1)(c) and 171(1)(d) of the RMA;
 - 4.4 Summary of actual and potential effects on the environment;
 - 4.5 Part 2 analysis;
 - 4.6 Methods to manage effects on the environment;
 - 4.7 Response to issues raised in Section 149G(3) reports; and
 - 4.8 Response to submissions.
- 5 My first statement of evidence for this Inquiry describes my role with respect to the Transmission Gully Project (*TG Project* or *Project*), the notices of requirement, and resource consent applications, the existing designations, and the preparation of the AEE. This second statement of evidence is intended to be considered after the first statement, and after evidence from the technical specialist witnesses.

SUMMARY OF EVIDENCE

- 6 I have undertaken an assessment of effects on the environment of the Project and assessed it against the relevant provisions of the RMA, and the relevant provisions of the New Zealand Coastal Policy Statement, relevant National Environmental Standards and National Policy Statements, the Regional Policy Statement and regional and district plans. I conclude that the Project will not be contrary to the objectives and policies of the relevant regional plans.
- 7 I conclude that any potential adverse effects of the Project on the environment are either avoided, or where they are not avoided, will be appropriately remedied or mitigated.
- 8 The construction of the new highway and link roads will give rise to positive environmental effects, including on the safety and security of the transport network of the Wellington Region, and will likely have positive economic benefits.
- 9 The Project will, in my opinion, achieve the sustainable management purpose set out in Part 2 of the RMA. It will appropriately use, develop and protect both the natural and physical resources of the environment. It will enable the NZTA and PCC to provide for the social wellbeing and safety of people and the community.
- 10 Overall, I conclude that the Transmission Gully Project achieves sustainable management through the efficient use of land resources with, on balance, minimal long term adverse effects on natural and physical resources. In my opinion, the Project will not compromise the reasonably foreseeable needs of future generations.
- 11 I also provide a detailed discussion about the structure of the consent and designation conditions, and how the suite of management plans is proposed to work. In my experience of implementing conditions and management plans on major construction projects, I am confident that the measures proposed will appropriately manage effects on the environment.
- 12 I also discuss some of the concerns raised in the Section 149G reports prepared by the Councils, and in particular the concern that the applications rely heavily on management plans. Again, I discuss how, and why, I am confident that the proposed framework will appropriately manage effects.
- 13 Finally, I also discuss issues raised in the submissions.

SECTION 104D GATEWAY ASSESSMENT

- 14 Section 104D of the Act requires that an application for a non-complying activity passes one of the two “gateway” tests¹ – either that the adverse effects on the environment will be minor, or the application is for an activity that will not be contrary to the objectives and policies of the relevant plan or proposed plan. As the NZTA’s applications for resource consents have status as a non-complying activity the gateway test is relevant. Section 104D is not relevant to PCC’s resource consent applications (which are a discretionary activity).
- 15 The activities requiring resource consents under Rule 50 of the Regional Freshwater Plan (*Plan* or *RFWP*) are non-complying activities (together with those activities “bundled” with them). Specifically, reclamation activities within listed streams are non-complying activities. Whilst there is no definition for “reclamation” in the Plan, there are works proposed within the Horokiri, Ration and Pauatahanui Streams that involve realignment of the stream bed and reconstruction of the stream bed in a new location, and thus must reasonably be considered to be reclamation. There has been some debate over the definition of reclamation and how it may be applied to culverts which cross a stream at (roughly) right angles, and which do not materially alter the course of the stream. This has also been raised in the section 149G Key Issues report prepared by the Regional Council. Regardless of which view is taken, the overall activity status is not altered and remains non-complying (because streamworks are bundled, i.e. crossings and realignment, and grouped with earthworks).
- 16 Because the activities of stream reclamation and earthworks are “bundled” together and cannot be unbundled because they are inextricably related, I consider the Regional Plan for Discharges to Land to also be relevant to my Section 104D assessment – effectively as another “chapter” of the Regional Plan. I have had regard to these provisions as well (where relevant).
- 17 Having regard to the test of section 104D(1)(a), I note the following:
- 17.1 It would be very unusual, in my experience, for a major roading project to have ‘minor’ (or not more than minor in the context of section 104D(1)(a)) adverse effects on the environment. Whilst any adverse effects should be balanced with significant positive social, economic and environmental effects, I consider that the challenge is always to minimise

¹ ... (a) the adverse effects of the activity on the environment will be minor.....; or
(b) the application is for an activity that will not be contrary to the objectives and policies of...relevant plans

the adverse effects as much as possible, whilst acknowledging that some other methods to manage effects (e.g. remedy, mitigate or offset) will likely be needed;

- 17.2 Thus, the planning policy framework is important for large projects which often incorporate non-complying components, and which therefore need to pass the section 104D threshold – of which the NZTA’s Project is one;
- 17.3 In this case, whilst there are positive benefits of this Project, the expert studies indicate that the adverse effects on streams and freshwater ecology² (i.e. from realignment and culverting) will be more than minor. In particular, the quantum of works required to realign streams and the consequential effects on freshwater ecology are significant, and whilst remedial and mitigative actions can be taken post-construction, there will be an adverse effect during construction;
- 17.4 Therefore, it is necessary to consider the application against the objectives and policies of the relevant plan – in this case the Wellington Regional Plan – and in particular, the Regional Freshwater Plan – the relevant test under section 104D(1)(b).
- 18 Having regard to section 104D(1)(b), I have assessed the Project against the relevant provisions of the Regional Freshwater Plan and Regional Discharges to Land Plan.
- 19 As the Board will be aware, the NZTA’s private plan change to the RFWP (once it has been included in the Plan) will result in a change to some of the particularly relevant policies in the Plan (especially Policy 4.2.10). It clarifies that a range of measures to manage effects on the environment in relation to the TG Project are appropriate – including the concept of offsetting. An additional policy that is specific to managing adverse effects arising from the TG Project is also added by the Plan Change – Policy 4.2.33A.
- 20 My assessment, as set out in Part I of the AEE report, considered the applications under the framework that was relevant at the time I wrote it, in other words, prior to any decision being made on the plan change request. At the time of writing this brief of evidence, a similar regime applies because the Council has not yet included the Plan Change in the Plan, and therefore it is not considered operative.
- 21 I am the sole author of the Statutory Assessment (Part I of the AEE report). In the interests of brevity I will not repeat that assessment here but reiterate the conclusion that I made in the AEE report that,

² Refer Technical Report 11 and the evidence of **Dr Vaughan Keesing**.

on balance, it is my opinion that the Project will not be contrary to the objectives and policies of the regional plan (refer to Section 32.8 of the AEE report). In carrying out my assessment I took a holistic view of the objectives and policies in the RFWP, the Regional Discharges to Land Plan and Regional Soil Plan, rather than focussing only on one or two specific provisions. I consider this holistic and balanced approach to be the best planning practice. Regardless, there is necessarily more scrutiny applied to some specific provisions of the Plan over and above others, because they directly link back to the rules that give the Project a non-complying activity status.

- 22 Some of the key points I make in my assessment that are of particular relevance to the Section 104D assessment are:
- 22.1 Tangata whenua have been closely involved with the development of the Transmission Gully Project and have provided a supportive Cultural Heritage statement about the Project. **Ms Pomare** explains the position of tangata whenua further in her evidence. Overall, tangata whenua have expressed support for the Project, particularly in relation to the approach to managing effects on the environment through land retirement and planting, and this has certainly been my experience in the informal engagements I have been involved in;
- 22.2 The Plan sets out objectives and policies under the topic area of "natural values". These policies have been particularly scrutinised in relation to the TG Project through the Plan Change process and in consideration against section 104D. I understand the concerns that have been raised about Policy 4.2.10 of the Regional Freshwater Plan, and in particular the strong focus on the word "avoid". Policy 4.2.10 has come under particular scrutiny as a policy of relevance to the Section 104D assessment of the Project because it is closely linked to Rule 50 which determines the non-complying activity status;
- 22.3 As I have stated in Section 32.8.4 of the AEE, there will be some adverse effects on the Appendix 2 streams in the short term during construction, and immediately post-construction whilst the streams are settling into their new environment (having particular regard to Policy 4.2.10). These streams, according to **Mr Fuller** and **Dr Keesing** exhibit a good level of natural character though it has been somewhat compromised by historical land uses, including pastoral farming. Whilst **Dr Keesing** takes an "ecological" approach to natural character, **Mr Lister** also discusses the visual aspects of natural character. They both address the magnitude and significance of these impacts and then

determine the measures required to manage these effects to an acceptable level. **Mr Fuller** and **Dr Keesing's** reports and evidence both conclude that there will be an overall improvement in stream water quality resulting from upstream retirement, revegetation and native planting, particularly in the upper catchments of the Horokiri and Duck Streams, and through riparian planting and restoration of stream margins, thus improving instream habitat and natural character;

- 22.4 Overall, I acknowledge that there will be some adverse effects on natural character in the short term, and that these will be temporary in nature and related to construction. In the longer term, and I rely on the evidence of **Mr Fuller** and **Dr Keesing**, the effects will be positive. As such, I believe long term effects could be said to have been avoided. In my opinion this approach demonstrates that the Project is not contrary to the overall direction of Policy 4.2.10 and I set out my reasons in more detail on page 592 of the AEE;
- 22.5 Along with natural character, maintaining and enhancing access to lakes and rivers (and the coast) is an important focus of the Plan. Whilst there will be some restrictions on public access during construction, including in the regional parks (Battle Hill and Belmont), the Project will, in the long term, provide for more direct public access to key streams and waterways by opening up opportunities for walking, cycling and horse riding including between Battle Hill Forest Farm Park, and SH1 to the north. The Lanes Flat area will be enhanced for public recreation purposes and landscaped. New accesses through regional parks and through new land acquired by the NZTA for the Project will also be made available. In my opinion, there will be adverse short term effects, but significant positive long term benefits for public access. In my opinion, this demonstrates consistency with the amenity values and access provisions of the Plan;
- 22.6 There is general agreement between the water engineering experts (**Ms Malcolm**, **Mr Martell**, and **Mr Gough**) that there will be adverse effects on water quality at some stages throughout construction, but that this can be managed to acceptable levels with the use of appropriate design and erosion and sediment controls. Further to this, there will, in the long term, be beneficial effects on stream water quality through upstream land retirement and revegetation, along with extensive riparian planting. The approach to design and effects management methods are also supported by Ngati Toa as explained in the evidence of **Ms Pomare**. In my opinion, this is consistent with the water quality provisions of the Plan;

22.7 I also assess the use of the beds of rivers and streams and associated effects on flooding. The Plan seeks to allow for particular uses within river beds including structures for transportation and network utility purposes (refer to my assessment on page 597 of the AEE). Overall, I conclude that the Project will not be contrary to these relevant provisions.

- 23 In summary, I do not consider it appropriate to make an overall determination as to whether the application is contrary to the relevant objectives and policies based on one individual policy. Policy 4.2.10 also needs to be assessed against the objectives that it is related to, including Objective 4.1.4: "*The natural character of wetlands, and lakes and rivers and their margins, is preserved and protected from inappropriate subdivision, use and development*". Policy 7.2.1 is also linked to these provisions reflecting that structures for transportation and network utilities are defined as an appropriate land use.
- 24 In conclusion, and having regard to all the relevant provisions, I am of the opinion that the Project will not be contrary to the objectives and policies of the Regional Freshwater Plan and the Regional Discharges to Land Plan.

CONSIDERATION OF RELEVANT PLANNING DOCUMENTS

- 25 Chapter I of the AEE provides an assessment of the Project against Part 2 of the Act and the relevant planning documents. I consider the following documents to be relevant to the NZTA and PCC's applications:
- 25.1 New Zealand Coastal Policy Statement;
 - 25.2 National Policy Statement for Freshwater Management;
 - 25.3 National Policy Statement for Electricity Transmission;
 - 25.4 National Environmental Standard for Air Quality;
 - 25.5 National Environmental Standard for Sources of Human Drinking Water;
 - 25.6 Wellington Regional Policy Statement 1995;
 - 25.7 Proposed Wellington Regional Policy Statement;
 - 25.8 Wellington Regional Freshwater Plan;
 - 25.9 Wellington Regional Air Quality Plan;
 - 25.10 Wellington Regional Coastal Plan;

- 25.11 Wellington Regional Plan for Discharges to Land;
- 25.12 Wellington Regional Soil Plan;
- 25.13 Kapiti Coast District Plan;
- 25.14 Porirua District Plan;
- 25.15 Upper Hutt City District Plan;
- 25.16 Wellington City District Plan.
- 26 The following key conclusions are made in the planning assessment, relevant to the Notices of Requirement:
- 26.1 I have undertaken a thorough assessment of the Project and its effects against the relevant objectives and policies of national and regional policy statements, national environmental standards, and regional and district plans (refer to Figure 32.1 page 566 of the AEE and below);
- 26.2 The AEE and the evidence presented in relation to the Project (particularly the evidence of **Mr James, Mr Nicholson** and **Mr Kelly**) demonstrate that it is a work reasonably necessary for the NZTA to achieve its objectives, in that it is a critical part of the Wellington Northern Corridor Road of National Significance; providing an alternative strategic route north of Wellington and improved route resilience; delivering improved journey time reliability and enhancing the efficiency of the State highway and surrounding transport network, which will create opportunities for enhanced economic growth. The evidence of **Mr Bailey** and **Ms Lawler** sets out how the link roads are a key part of the local roading network and are consistent with the strategic vision PCC has for its District;
- 26.3 With reference to section 171(1)(b), there has been a robust assessment of the alternatives that could achieve the relevant requiring authority's project objectives, and based on my knowledge of and involvement in the development of the design of the Project, it is my opinion that appropriate decisions have been made on the option chosen.
- Additional statutory planning documents**
- 27 Since preparation of the AEE, the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health has been promulgated and will come into effect on 1st January 2012. All territorial authorities will be required to give effect to and enforce the requirements of the NES. In anticipation of the regulations coming into effect, I make the following observations:

- 27.1 The NES sets a regime of permitted, controlled, restricted discretionary and discretionary activities. It controls activities which are "removing or replacing a fuel storage system, sampling the soil, disturbing the soil, subdividing land, and changing the use of the piece of land"³;
- 27.2 The NES does not deal with regional council functions under section 30 of the RMA – it deals with territorial council functions under section 31 of the Act;
- 27.3 I understand that the NES will prevail over any designations confirmed for the Project,⁴ and accordingly the designations will not authorise the soil sampling and disturbance regulated by the NES;
- 27.4 The NZTA and PCC are likely to require resource consents under the NES, and these will be sought at a later date (once the NES has come into force and its requirements have been thoroughly assessed);
- 27.5 On the basis of the above, I suggest that conditions relating to contaminated land are not imposed on the designations (as suggested in the AEE), but are instead imposed on the relevant regional consents.

PLANNING DOCUMENTS WHICH ARE "OTHER MATTERS" FOR THE PURPOSES OF SECTIONS 171 AND 104

- 28 In addition to the statutory planning documents listed in Figure 32.1 of the AEE, there are also a number of non-statutory documents that I consider to be relevant "other matters" in terms of sections 171 and 104 of the RMA. I list these in Section 32.15 of the AEE. I prepared an assessment against each of these documents in the AEE. Particular points I wish to highlight are:
- 28.1 The Government Policy Statement on Land Transport funding introduced the seven Roads of National Significance (*RoNS*), and the Transmission Gully Project is part of the Wellington Northern Corridor RoNS. I conclude in my assessment that both the main alignment and the link roads are a critical part of the RoNS and are therefore consistent with the GPS. The National Infrastructure Plan 2011 also recognises the RoNS projects as one of its five key infrastructure priorities;
- 28.2 There are a number of relevant transport strategy documents that I have considered, all of which have overarching focus on economic and regional development and safety, along with

³ From explanatory note.

⁴ Section 43D(4) of the RMA.

environmental sustainability. At the regional level, the documents recognise the Project as a critical transport improvement (e.g. in the Regional Land Transport Strategy) and the relevant statutory documents are required to be consistent with this. I am of the opinion that the Project will be entirely consistent with these aims;

28.3 The PCC has a number of relevant strategy documents – and I rely on the evidence of **Ms Lawler** which sets out how the Project will be consistent with the aims of the Council. KCDC also has a transport strategy which I conclude the Project will be consistent with because it will enhance accessibility for the Kapiti Coast;

28.4 I also note that the importance of the regional park network, recreational assets and the Porirua Harbour are well recognised in non-statutory documents, and that the Project will not be inconsistent with these.

29 I also consider the NZTA’s Plan Change to the RFWP to be an “other matter” in terms of Section 104(1)(c).

30 Overall, I concluded that the Project will not be contrary to the relevant provisions, direction and focus of these “other matters”.

Additional documents that are “other matters”

31 Since lodgement of the applications, the “Porirua Harbour and Catchment Strategy and Action Plan” has been released. I consider this to be a relevant “other matter” for the purposes of section 171 and section 104. The Strategy outlines the history and significance of Porirua Harbour and the Strategy, and the three key objectives for restoring the harbour – reduce sedimentation, reduce pollutants, and ecological restoration. I consider the Project will not be contrary to the strategic direction set out in this document.

SUMMARY OF ASSESSMENT OF ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

32 Table 11.1 at page 219 of the AEE report provides an overview summary of the actual and potential effects of the Project on the environment. I developed the format for this summary table and facilitated a workshop with relevant experts from the multi-disciplinary project team following which this summary was prepared and agreed. I am of the opinion that it gives a simple and clear overview of the key effects of the Project. In particular, the table sets out a summary of both positive and adverse effects, and the scale on which they might be experienced (local, regional, national). It also identifies the relevant phases of the Project – construction and operation.

33 In my opinion, the AEE provides a comprehensive and complete identification and assessment of the actual and potential effects of the Project on the environment. The assessment considers the effects on the immediate route, the immediately surrounding environment and the wider local and regional environment. Both potentially positive and adverse effects on the environment have been identified and considered, along with temporary construction effects and the ongoing operational effects of the Project.

34 I will not repeat that assessment in full in this evidence, but will highlight some of the key findings. In making my assessments, I rely also on the technical assessments and evidence of other witnesses. I note that I have not covered all the specific matters identified in the evidence of all the other witnesses, and acknowledge that there are other more minor actual and potential effects of relevance.

Actual and potential positive effects

35 Because of the way the RMA is written, with a focus on avoiding, remedying and mitigating adverse effects, my experience is that there is often more attention paid to the adverse effects of a Project. Under the balancing approach of Part 2, it is relevant to have regard to all effects of a Project, and this includes positive effects. It is my opinion that there are significant benefits that will arise from this Project, and I base this both on the evidence of others and on my overall balanced planning analysis.

36 The NZTA's project objectives have a strong focus on route security and network reliance. I rely on the evidence of **Mr Kelly** and **Mr Brabhakaran** who set out how the Project will improve the resilience of the roading network, and route security from a geotechnical perspective, respectively. Both these witnesses' evidence demonstrates that the goals of improved route security and resilience for the Wellington Region can be met by the Project.

37 Further, the evidence of **Ms Lawler** of the PCC sets out how important the Project is to enable the PCC to achieve its strategic objectives for future growth, and how the assumed presence of the Project has been a key driver for some of its policy decisions.

38 **Mr McCombs** and **Mr Kelly** discuss the wider regional transport benefits in their evidence. In short, and I have discussed these elsewhere in my evidence, these include improved cross- and through- regional accessibility. For example the communities of Porirua and Kapiti will gain better accessibility to the Hutt Valley (and vice versa); there will be reduced traffic and congestion on local roads particularly in the coastal communities (e.g. along Mana esplanade); and travel times will be improved into and out of Wellington.

- 39 From a land use planning perspective, I note in particular the opportunities to enhance accessibility throughout the region, and the potential benefits of this relationship. The integrated land use and transportation assessment approach is discussed further in the evidence of **Mr Kelly**.
- 40 I rely on the economic evidence prepared by **Mr Copeland** which concludes that the Project will give rise to economic benefits through spend during construction and improved regional transport benefits during operation.
- 41 Further to the wider positive effects – which largely arise once the Project has been built, construction activity is expected to also bring some benefits to local communities, principally through increased spending and employment opportunities locally. **Mr Rae** discusses this in his evidence, and I agree with his statements in this regard. It is certainly my experience from working on construction sites, that local communities can benefit, both from employment opportunities on site, and from the simple impact of more people present in the community spending money – e.g. renting accommodation and buying lunch.
- 42 Overall, I consider that there are significant positive effects that balance the actual and potential adverse effects.

Actual and potential adverse effects - Construction

- 43 The AEE documentation separates out the actual and potential adverse effects into the construction and operational phases. This was a specific choice because there are clear distinctions and differences between construction effects and ongoing operation. During construction, the Project will effectively be a large earthworks site (or sites), and many of the adverse effects during construction are related to the earthworks and related activities.
- 44 I acknowledge that understanding the assessment of construction effects is tricky. To best understand the linkages between all the disciplines that contribute to the assessment of the wide range of effects related to earthworks and construction, I found it useful to prepare a “flow” of who does what and how their assessments link with each other. In very simplistic terms, this is how I see it:
- 44.1 **Mr Edwards** has led the design of the Project with inputs from other technical disciplines including urban design (**Ms Hancock**), ecology (**Mr Fuller** and **Dr Keesing**) landscape and visual (**Mr Lister**), water quantity management including flooding and stream flows (**Mr Martell**) and water quality management (**Ms Malcolm** and **Mr Gough**);

- 44.2 Quantifying the baseline/existing water quality environment was a combination of water engineering and ecology inputs;
- 44.3 Design of erosion and sediment management devices and water management (flooding) is undertaken by **Mr Gough** and **Mr Martell**;
- 44.4 **Ms Malcolm** also assesses effects on water quality arising from earthworks from an engineering perspective. **Dr Keesing** assesses the effects on ecology resulting from changes in water quality;
- 44.5 **Mr Fuller** assesses effects on terrestrial ecology, provides an holistic view of the ecological effects, and provides an integrated mitigation and effects management input to the design;
- 44.6 **Mr Roberts** has studied the behaviour of the processes within the Porirua Harbour (through modelling) and this assists with the assessment of what will happen to sediment once it gets there, where **Ms Malcolm** advises on sediment inputs into the Harbour;
- 44.7 **Dr De Luca** then assesses the effects on the marine environment and she is at the end of the “chain” of experts;
- 44.8 All these assessments have been assisted by a statistical analysis by **Dr Sim** regarding the probability of a variety of events coinciding to cause an adverse effect based on the parameters provided by the other experts.
- 45 Erosion and sediment management have, rightly in my opinion, been one of the activities with potential adverse effects that have gained the most attention in this Project. **Mr Edwards’** evidence discusses options for managing construction staging across the whole of the Project life – which is critical to managing the effects of earthworks. He concludes that there are ways in which to stage the construction of the Project in order to manage the size of “open areas” of earthworks at one time in each catchment – with a particular focus on managing “open areas” in the Porirua Harbour catchments. **Mr Edwards** advises that in order to construct the Project in an efficient manner, there would need to be several separate construction “fronts” operating at one time along the 27 kilometre route, meaning construction will occur in a number of different locations at once.
- 46 Erosion and sediment management, design of flood management methods, and related effects on freshwater (in summary, all the effects on water quality and water quantity) are closely related to the matters that **Mr Edwards** discusses in his evidence. I rely on

the reports and evidence of **Ms Malcolm** and **Mr Martell**, as well as the specific erosion and sediment control focussed evidence of **Mr Gough** in this regard. They discuss the specific design methods and techniques that are industry best practice that must be used to maintain a high level of effects management.

- 47 With respect to effects on ecology, I rely on the evidence of **Mr Fuller**, **Dr Keesing** and **Dr De Luca**. Some key points I consider relevant in their evidence in combination are:
- 47.1 **Dr Keesing** states that there will be adverse effects on the ecology of streams and waterways, but notes that the existing freshwater ecology comprises hardy specimens that are used to high levels of sediment already;
- 47.2 **Mr Fuller** has assessed the amount of mitigation planting, riparian planting, land retirement and other ecological mitigation required to achieve appropriate responses to the effects generated by the Project. He concludes that there will be short term adverse ecological effects which will be adequately addressed by long term ecological benefits;
- 47.3 **Dr De Luca** has assessed the existing environment of the Porirua Harbour and identified the thresholds at which adverse effects would occur (from sedimentation).
- 48 I acknowledge that the complexity of both the assessment of effects on the Porirua Harbour marine environment, and the combinations of natural weather events that would need to occur for there to be a more than minor effect, means it is difficult to set rigid performance standards to manage these effects. **Mr Fuller** discusses the concept of adaptive management in his evidence, and his experience of using this on other projects. In principle, I agree that adaptive management has direct relevance to managing effects for this Project. In drafting the proposed consent conditions, I have provided for an adaptive management regime for the management of some environmental effects (ecological). The conditions and management plan framework allow for the evolution of management measures over time as the Project progresses, and the understanding of how all the effects management measures are working together. This requires ongoing liaison with regional council officers, and, in my opinion, an achievable regime of monitoring, management and reporting.
- 49 Other effects arising from earthworks and construction activities include nuisance effects on people such as general amenity impacts, including construction noise, construction traffic coming and going, air quality (dust) and overall visual amenity associated with the presence of construction.

- 50 With respect to noise, I rely on the report and evidence of **Dr Chiles**. Subject to conditions (which include the communications plan I discuss below), his evidence concludes that any adverse noise effects from the construction of the Project will be able to adequately managed. In reaching this conclusion, **Dr Chiles** states that in some instances the permanent noise barriers proposed should be erected early in order to provide construction noise benefits. Wherever this is able to be achieved in conjunction with the construction programme, I agree with this position.
- 51 With respect to construction traffic effects, I rely on the evidence of **Mr Kelly**. In my opinion the conditions recommended in the Assessment of Traffic and Transportation Effects report are an appropriate way to manage the adverse traffic effects arising from the construction of the Project and to ensure the immediate intersections and local roads that will be used for construction traffic maintain an acceptable level of service.
- 52 With respect to social effects and related overall nuisance and amenity effects, I rely on the evidence of **Mr Rae**. He comments that there will be some adverse social effects during construction, and that “managing expectations” is a key tool to address these. I agree with his conclusions. In my experience of construction environments, along with robust and “tidy” site environmental management, one of the most important tools for managing construction effects is a robust and regularly reviewed Consultation and Communications Plan. In short, managing expectations is one of the best tools for managing effects. This Plan is a requirement under the consent and designation conditions. Since lodgement of the documentation I have been involved in discussions with council officers, and some minor changes to the communications conditions have been discussed – to ensure that the feedback loop for complaints is clear.
- Actual and potential adverse effects – operation**
- 53 I acknowledge that the scale of the work and its extent within a largely “greenfields” environment will result in a significant change in that environment, generating adverse effects. Adverse effects arise simply from the presence of the roads where there is currently open country (for much of the route). I rely on the evidence of **Mr Lister** which discusses how consideration has been given both to managing the development of the design from a visual and landscape perspective, and how landscape mitigation will be used to further manage effects. He concludes that the Project will result in a significant “change in landscape character because the road will be aligned through a greenfields landscape”⁵, but that the adverse effects can be managed to an acceptable level through good design and landscape mitigation.

⁵ **Mr Lister** evidence, Summary of Conclusions.

- 54 Subject to the minor changes and clarifications recommended in the evidence of **Mr Lister**, the proposed consent and designation conditions in my opinion build in an appropriate degree of flexibility to allow the actual design of the visual mitigation and ecological planting to respond to the final form and location of both the NZTA's and PCC's roads once they are fully detailed.
- 55 I rely on the evidence of **Dr Chiles** with regard to operational noise. He discusses the proposed operational noise conditions (for the NZTA) in his evidence. I acknowledge that these are complex conditions and can be difficult for lay-people to understand – and this is clear from the nature of some of the submissions received. These conditions are based on the NZS 6806:2010 *Acoustics – Road traffic noise – New and altered roads*, and require specific assessment of properties in close proximity to the route, and for mitigation in instances where noise is predicted to be higher than the accepted standard. I rely on the conclusions of **Dr Chiles** which are that operational noise effects will be minor subject to conditions.
- 56 Operational effects also include the ongoing maintenance and management of the road. My understanding is that the NZTA and PCC will use their normal maintenance contracts to carry out maintenance on the roads once they are constructed, and that the contractors will be required to comply with relevant consent conditions. In this regard, **Ms Malcolm** discusses the operational management regime proposed for the road, including operational stormwater management and the monitoring and maintenance conditions that set the parameters for achieving appropriate effects management.

PART 2 ANALYSIS

- 57 Part I (Section 32.18) of the AEE provides an assessment of the Project against Part 2 of the RMA and I conclude that the Project will not be contrary to Part 2. Having reviewed the additional information presented in submissions and evidence, I continue to support the conclusion made in Section 32.18 of the AEE that the Project meets the sustainable management purpose of the Act as provided in section 5, appropriately recognises and provides for the relevant matters of section 6, has particular regard to the matters of section 7, and meets the requirement of section 8 of the RMA (as elaborated on in that section of the AEE).
- 58 I acknowledge that the Project will adversely affect some parties, particularly those immediately neighbouring the Project. However, I consider that the mitigation and management methods proposed (and reflected in the consent conditions) will achieve sustainable management of natural and physical resources and are consistent with the purpose and principles of the RMA.

Section 5

- 59 The Project represents a significant infrastructure development that will benefit transportation and economic growth for the region (as described by **Mr Copeland**). This is recognised in the identified economic, transportation, growth and accessibility benefits that have been identified in the AEE, technical reports and expert evidence presented.
- 60 In particular, I consider that for the designation of a major public work as is proposed by this Project, the balance involves considering the regional and national benefits of the work for the wider community alongside the more localised adverse effects on the community upon which the Project impacts. I consider that this balance has been appropriately met.
- 61 I acknowledge that there will be adverse effects on the natural environment – including on streams and waterways traversing and traversed by the route, and potentially on the Porirua Harbour. However these are largely construction related and in the longer term there will be some significant benefits arising from mitigation measures including upstream riparian planting, revegetation and land retirement.
- 62 The Project will enable people and communities to provide for their social, economic and cultural well-being and for their health and safety by providing for improved accessibility and connectivity around the Wellington region, and providing resilience to the transport network. The evidence of **Mr Kelly** also demonstrates that the Project will result in traffic safety improvements, and the evidence of **Ms Lawler** and **Mr Rae** indicates that there may be some localised social benefits arising from the presence of the link roads. With the assistance and advice of Ngati Toa, the Project recognises the social and cultural heritage of the area insofar as key heritage features are recognised, preserved and made more accessible (e.g. brick fuel tank) by the Project.

Section 6

- 63 I am of the opinion that the Project recognises and provides for the matters within section 6 of the RMA, and make the following key points:
- 63.1 The Project will, for the most part, have no more than a minor adverse effect on the natural character of the Coastal Marine Area. As discussed by **Dr Sim**, there is a low probability of an extreme weather event coinciding with construction activities and wind and wave patterns that may cause some loss of marine communities in the Porirua Harbour. Further, and as a direct result of the Project, water quality will be improved as a result of less sediment run off;

- 63.2 The Project protects and in some cases will enhance areas of natural character, particularly the margins of wetlands and rivers, and the upper reaches of the Horokiri and Duck Streams – as discussed in the evidence of **Mr Fuller** and **Dr Keesing**;
- 63.3 Further, **Dr Keesing** concludes that in some cases the long term water quality of streams will be enhanced, and the quality of instream habitats will be improved;
- 63.4 **Mr Lister** discusses the Tararua foothills in his evidence and report – an outstanding natural landscape feature in the Kapiti Coast District Plan – and concludes that the Project does not adversely affect this feature;
- 63.5 Some submitters consider the Pauatahanui Inlet to be an outstanding natural feature, and based on their comments and the evidence of **Dr De Luca** I accept this position. As discussed in the assessments above and in the technical reports, it is acknowledged that there will be some additional contribution of sediment to the Inlet during construction, but that in the context of the overall sediment already reaching the Inlet, this is a small percentage. It is acknowledged in the evidence, AEE and technical reports that the Inlet is of importance both ecologically and socially (people and communities are very actively interested and involved in its management), and this is recognised and provided for in the high level of scrutiny and effects management methods proposed;
- 63.6 An assessment has been undertaken of the ecology of the Project area. Areas of significant indigenous vegetation are generally avoided by the designations. Where such areas are located within the designation footprint, there will be an emphasis on their protection (although the assessments have conservatively assumed they will not be protected). The conditions will require mitigation of effects on ecology, including recreation of important habitat (including for leptinella tenella and translocating lizards and peripatus), and enrichment, retirement and new planting. **Mr Fuller** demonstrates that the Project overall does not result in any significant effects on habitats of indigenous fauna;
- 63.7 The maintenance and enhancement of public access to and along the streams adjacent to the route is provided for by the construction of new and replacement walking, cycling and horse riding paths;
- 63.8 The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other

taonga has been provided for through the implementation of protocols for engagement with tangata whenua – and I understand that a Memorandum of Understanding has been signed (between the NZTA and Ngati Toa);

63.9 The protection of historic heritage has been provided for, particularly through redesigning of the route to avoid one notable heritage structure (brick fuel tank) and by providing an access to that structure (where none is currently provided⁶) and by the careful management of construction activities to avoid adverse effects on St Josephs Church. The Project will have a positive benefit for the church insofar as its access will be realigned for improved safety and visibility for visitors;

63.10 I am not aware of any impacts on any recognised customary activities.

64 Overall, I am of the opinion that the applications recognise and provide for the relevant matters in Part 6.

Section 7

65 It is my opinion that the Project has also had particular regard to, and has appropriately responded to the matters in, section 7 of the Act. I consider the following points to be particularly relevant:

65.1 The kaitiakitanga of tangata whenua has been recognised in seeking specific cultural impact statements from mana whenua in the Project area;

65.2 The ethic of stewardship has been recognised through engagement with and participation of tangata whenua in workshops and working groups early in the Project's development process, and engagement with community groups who have specific interest in and who have exercised stewardship over particular resources. This includes the Maraeroa community marae at Waitangirua, and the various community groups who are interested in the protection of the Pauatahanui Inlet;

65.3 The efficient use and development of the rest of the existing State highway network and the potential to improve the use of the network has also been recognised in providing for better connections to SH58 and existing SH1, along with local roads. I rely on the evidence of **Mr Kelly** which demonstrates that the Project will improve the functioning and use of the wider network;

⁶ **Mr Bowman** discusses preparation of a Conservation Plan for the tank in his evidence, and this would help to determine if access is needed and in what form.

65.4 I consider that an appropriate level of recognition has been given to the maintenance and enhancement of amenity values, particularly for residential communities through the assessment of noise emissions (and resulting noise mitigation), air quality, CEMP, the landscape and visual assessment (and the resulting planning for landscape and urban design mitigation) and in the assessment of alternatives for the Project;

65.5 **Mr Lister** acknowledges that there are amenity impacts of the Project, particularly for rural communities who currently enjoy a “green” outlook where they will in future look out onto a road. While these are not outstanding landscape areas, the works do represent a significant impact (in the short and medium term), on these visual catchments. There will also be amenity effects associated with noise emissions for residents, and **Dr Chiles** discusses methods to manage operational noise to an appropriate level.

66 While the planting and other mitigation proposed will mitigate these effects in the long term, the Project represents a permanent and considerable change to the amenity for these communities. I am confident that regard has been had to these relevant matters, and that appropriate methods to manage effects are proposed.

Section 8

67 With respect to Part 8, I understand that there are no relevant Treaty of Waitangi matters that are of relevance⁷.

METHODS TO MANAGE EFFECTS ON THE ENVIRONMENT

Design and alignment

68 A key aspect to avoiding, remedying and mitigating the adverse effects on the environment was the design and alignment of the Project. The assessment of alternative design features is provided in Chapter 9 of the AEE and the evidence of **Mr Edwards** has provided an overview of the design and design refinement process he has been involved in over the past five to six years.

69 In particular, I note the following key design features as those I consider to be significant recent changes that have been made to better manage adverse effects:

69.1 A general shift of the road alignment to the west through Te Puka, Horokiri and Battle Hill to better manage effects on watercourses by reducing the amount of reclamation and realignment required;

⁷ Refer to the evidence of **Ms Pomare** and the Cultural Heritage report.

- 69.2 The use of earth embankments instead of bridges in the Te Puka valley which are expected to perform significantly better in an earthquake, thus providing better route security, one of the key Project objectives. I note that Bridge 3 is proposed in order to better protect the ecology of the stream in the lower reaches of the alignment (which is important due to the extent of the works proposed upstream);
- 69.3 Realignment of the proposed alignment at the bottom of the Te Puka valley to avoid destruction of a heritage feature (Brick fuel tank);
- 69.4 Change from a round-about to a signalised intersection at the proposed Waitangirua Link Road intersection with Warspite Avenue to provide for safer pedestrian and cyclist movements;
- 69.5 **Mr Edwards** sets out further changes that have been made to the design in his evidence.

Management and monitoring methods

- 70 A variety of environmental management and monitoring methods are also proposed for the Project, as set out in Chapter 28 of the AEE report. I have used the term “environmental management” to encompass a wide range of measures that seek to avoid, remedy or mitigate actual and potential adverse effects on the environment. The approach of offset mitigation was introduced through the NZTA’s plan change and was discussed at length in that hearing. I am of the opinion that offsetting is an important part of the suite of measures to manage effects, that includes avoiding, remedying or mitigating. However, I consider it is important not to focus on whether a method is appropriately labelled as one or other of these. My experience is that there is commonly more of a focus on mitigation measures, than on the measures that have been used to avoid or remedy effects. More importantly, I consider that it is appropriate to use the best means available to manage the actual and potential effects of a project.
- 71 As set out in my first statement of evidence, I have recently had the benefit of spending time on site on a number of transportation construction projects – including four major projects being built for the NZTA (or Transit NZ) using a Project Alliance framework.
- 72 My experience with writing, developing and implementing management plans has developed over approximately six years of experience on these differing projects, and I consider I have a good understanding of how these management plans work in practice. I prepared a diagram (Figure 28.1, page 460 of the AEE report) which sets out key stages through from concept to construction, and how, from my experience, the management plans fit into this project

delivery process. This process demonstrates that once a construction team is appointed to build a major project, there is a process of further refinement and detailing of management plans and outline plans that needs to occur before physical works can start.

- 73 In short, my experience is that the construction team are looking for the most succinct suite of documentation to refer to. Whilst a lot of work is done in preparing documentation at the consenting and approvals stage (i.e. where we are currently at), it is the consent and designation conditions and management plans, finalised once consents and approvals are obtained, which get the most attention during the construction phase. Consequently, I consider the conditions and draft management plans are a key focus for understanding how the Project will be delivered when on site – and therefore how the effects on the environment will be managed.

Consent and designation conditions

- 74 Firstly, it is important to reiterate that the AEE documents remain an important part of the Project as they are referenced in the conditions. The AEE documents set the parameters for the consideration of effects and remain a constant reference.
- 75 My experience is that a robust conditions framework is a very good method by which effects on the environment can be managed and that these complement the measures that have been incorporated into the design to manage effects. Whilst reference should always be made back to the suite of AEE and supporting documentation, the conditions can also be used to highlight particularly important issues that need special attention. In the case of this Project, an example of this is the specific limits on “open areas” of earthworks which are controlled through Conditions E.1. and E.2. (page 524 of the AEE).
- 76 I was the overall author (though in some instances, the collator), of all the consent and designation conditions, and I used a number of different methods to pull the suite of conditions together:
- 76.1 I had regard to the various relevant technical reports and their recommendations regarding conditions. I specifically asked the technical report authors not to draft conditions, but rather to set out the content of what any conditions would need to say. I then drafted conditions and confirmed that they were what the technical author had proposed. I understand that the technical experts all support the conditions which relate to their areas of expertise, noting that there are some proposed amendments post-lodgement as a result of undertaking further work and consultation;

- 76.2 I considered a range of relevant conditions that the NZTA has on its other designations around the country – with a particular focus on recently “consented” projects in greenfields environments;
- 76.3 I reviewed the NZTA’s CS-Vue database for conditions. This is a database of conditions which the NZTA maintains for projects countrywide for all its consents and designations. I have had experience using it to manage compliance with conditions on the Newmarket Viaduct and Victoria Park Tunnel projects;
- 76.4 I met with the Greater Wellington Regional Council staff to discuss the potential content of conditions, and obtained their sets of “standard” conditions. Where they were relevant, I used these as a basis to start developing the set of proposed conditions that was submitted with the applications and NoRs.
- 77 I make the following key points about the conditions:
- 77.1 I have drafted all the conditions using consistent wording where possible. For example, the archaeological conditions regarding accidental discovery have consistent wording;
- 77.2 For the regional consents, I have formatted them using a set of “General” conditions that would apply to all the permits, and then a set of specific conditions for each individual permit. I have used the same approach for both the NZTA and PCC consents. Once a decision has been made on the applications, and assuming they are granted, it may be desirable to “split” all the regional consents out into separate permits in accordance with the usual format used by the Greater Wellington Regional Council;
- 77.3 In some instances a condition uses common wording across designation and resource consent conditions meaning that there are some environmental matters that are covered within both regional and district jurisdictions. This is particularly true with the Construction Environmental Management Plan. Whilst not ideal to cover off issues in a regional consent that would normally appear in a district consent or designation, I consider that achieving consistent wording is a priority to ensure easy project delivery at the construction phase insofar as it minimises confusion and reduces the risk of either gaps or duplication;
- 77.4 In my approach to the regional consent conditions, I recognise that during the construction phase, the Project is essentially a large earthworks project. For this reason the majority of the regional consent conditions are on the

earthworks consent. This seemed a logical approach to me as the earthworks permit will be applicable both at the start and the finish of the Project and therefore the conditions within it will be applicable across the whole site until completion.

78 Since completion and lodgement of the applications, I and the rest of the technical team have been continuing to undertake further work on the Project in response to questions and comments raised through consultation and discussions with the various Council officers. Consequently, the conditions have continued to be analysed over this period, and further changes are recommended. These include:

78.1 **Ms Hancock** recommends that the LMP becomes a Landscape and Urban Design Management Plan (*LUDMP*) in order to recognise that there is urban design content, and that specific references to the ULDF design principles are embedded in the conditions;

78.2 **Mr Lister** recommends:

- (a) that the "Landscape Plans LA01-LA21 (Isthmus 2011)" (in the Plan Set) are specifically referenced in the conditions in order to provide certainty as to the status of these plans when the LUDMP is prepared;
- (b) planting between the brick storage tank and the alignment;
- (c) a number of changes in response to individual submitters including some changes to proposed planting, timing of planting; and
- (d) consultation with individual submitters prior to the development of ULDMs, including in relation to specific planting proposed on individual properties.

78.3 **Dr Keesing** recommends additional measures to manage the freshwater ecological effects of temporary culverts, and also discusses potential for additional monitoring and trigger levels to be embedded in conditions – a response to matters raised in submissions. I recommend that further consultation is undertaken with the submitters who have raised these issues in order to further discuss trigger levels and monitoring;

78.4 **Mr Fuller** also recommends an addition to existing Condition E.24. requiring monitoring of the success of mitigation activities;

- 78.5 **Dr De Luca** recommends a number of additional conditions which comprise a comprehensive monitoring and reporting programme for the marine environment;
- 78.6 **Mr Martell** recommends additional conditions to better manage water storage behind culverts to moderate peak flows, including new conditions:
- (a) to manage works on the Pauatahanui, Horokiri and Te Puka streams, based on hydraulic modelling of the respective water courses. The specific conditions will stipulate the minimum design levels and dimensions of bridges and diversions;
 - (b) to limit the downstream flood risk in the Duck, Kenepuru/Porirua and Waitangirua networks in large storm events to pre-construction levels.
- 78.7 **Mr Gough** recommends changes to conditions to reflect the desire to use the Best Practicable Option (for erosion and sediment control) on the whole Project, rather than just where highly erodible materials are found. He also recommends the deletion of the words "as far as practicable" from Condition E.5, and a range of other condition amendments designed to ensure the erosion and sediment control measures perform effectively;
- 78.8 **Ms Pomare** recommends a new condition regarding development of a specific monitoring plan with Ngati Toa regarding the loss of fisheries;
- 78.9 **Mr Fisher** notes the minor change requested by Transpower – replacing the word "lines" with "assets" in relation to construction management activities;
- 78.10 I recommend the proposed conditions relating to contaminated land be transferred from the designations to the regional consents, given that local authority consents will later be required under the new NES for the testing and disturbance of soil which is likely to be contaminated;
- 78.11 A change to the title of the "Archaeological Management Plan" to be the "Heritage Management Plan" is proposed in response to discussions with NZ Historic Places Trust which sought clarity over the range of matters that the Plan would cover (noting that the term "historic heritage" in the RMA also

includes archaeology⁸). **Mr Bowman** discusses this in his evidence;

78.12 Discussions held thus far with Council officers indicate a rearrangement and rewording of a number of conditions would help readability, improve clarity and avoid repetition – though this is currently a work in progress;

78.13 I also expect there may be changes to the Network Utilities Management Plan (*NUMP*) conditions (refer to my discussion later in my evidence under “Response to Submissions”), after further discussions with Powerco and Transpower.

79 My experience with projects like this which have a large suite of interrelated conditions is that various versions of “track changes” conditions can become unwieldy and confusing. Consequently I propose to prepare a further version of the conditions prior to the commencement of the hearing in order to incorporate matters raised through expert conferencing, discussions with Council officers, discussions with submitters and general ongoing communication with interested parties. The above comments set out the general nature of changes proposed thus far and will be reflected in the next version of conditions.

80 Any further changes to conditions will be recorded in documents that emerge from those processes as appropriate, for example, signed / agreed conferencing statements, meeting minutes and correspondence with submitters. All of these will be made available to the Board. I intend to keep a specific record of when track changes were made and why they were made, so that it is clear to the Board and all other relevant parties.

Management plans

81 Over a succession of major projects, it has been my experience⁹ that a management plan approval process very similar to that now proposed for the Project has worked extremely well and without inherent problems. The only exception to this has been around the “sign off” process with Councils. The two key issues have been:

81.1 The amount of time that the Councils get to review the management plans; and

81.2 Whether they are giving “approval” or “confirmation of compliance”. This concern also relates to the proposed conditions framework that sees management plans submitted

⁸ RMA Section 2.

⁹ For example: Northern Gateway toll road (ALPURT B2), Manukau Harbour Crossing, Newmarket Viaduct Replacement Project and Victoria Park Tunnel.

as part of an Outline Plan process – which I discuss later in my evidence.

- 82 Historically I am aware that there have been concerns about conditions that require actions to be undertaken by a third party in order to achieve compliance. In other words, the question of whether the Council officers have been incorrectly delegated with the task of essentially carrying out an effects assessment.
- 83 However the principle of management plans being “approved” by a Council – which is still a third party – has become more and more acceptable. I have been involved in projects recently¹⁰ where approval has been required. In order to address the concern about timing, my approach with these conditions has been to, wherever possible, include a timeframe within the conditions stipulating that the relevant management plan must be submitted to the Council within a particular timeframe.
- 84 I also note that it is a deliberate intention in the drafting of the conditions for some of the management plans to be submitted as a part of an Outline Plan. These plans (refer to Conditions NZTA.6. and PCC.6.) are:
- 84.1 Archaeological Management Plan;
 - 84.2 Construction Environmental Management Plan – which fulfils a component of the requirements of section 176A(3)(a) and (b) (see my comments below proposing that this be removed for the Outline Plan process);
 - 84.3 Construction Traffic Management Plan – with reference to section 176A(3)(d);
 - 84.4 Landscape and Urban Design Management Plan – with reference to both section 176A(3)(a) and (e).
- 85 This would mean that the Councils would have to assess these plans as part of the Outline Plan using the normal statutory process and within 20 working days (unless timeframes are extended). I acknowledge that the Council officers have expressed some concerns about this approach in their Section 149G reports.
- 86 Having discussed this with the Council officers, I still consider this to be an appropriate approach for the following reasons:
- 86.1 The proposed format provides clarity that the Management Plans (where relevant) can fulfil the function of meeting the Outline Plan information requirements without the need to

¹⁰ Newmarket Viaduct Replacement Project and Victoria Park Tunnel.

produce separate documents for different purposes, and which may lead to inconsistencies;

- 86.2 The format provides clarity as to the timeframes for responses to the submission of information and 20 working days provides reasonable time for the Council to consider documents;
- 86.3 There is a well-established statutory process for Outline Plans.
- 87 In my experience, preparation of management plans and outline plans is often undertaken in collaboration with Councils, with drafts of such documents shared prior to submission. **Mr Nicholson** states in his evidence that this is the NZTA's intention. Nevertheless, one change that I do recommend, however, is that the CEMP is not submitted as part of the Outline Plan process. This is because it is also submitted to the Regional Council to fulfil requirements of consent conditions, and there is the potential for different responses to be received from both Councils leading to rework and repeating processes. I therefore recommend that the CEMP is submitted to the relevant District/City Council and Regional Council for "approval".
- 88 In recognition of the significant amount of work that is required for Council officers in processing management plans, the concept of an "independent professional advisor" (refer to Condition G.4 page 518 of the AEE) has been used for the regional consents. This condition has been designed to recognise and make explicit that the management plan framework will require significant staff resources to "turn around" the documents. I considered that this condition would make it clear that this issue is recognised, and that an independent consultant (reporting to the Council) may be chosen to undertake the work instead of Council staff. Further discussions with Greater Wellington (post-lodgement) indicate that this condition may not be necessary because it simply duplicates section 36 of the Act.
- 89 Further complementing this approach is the requirement¹¹ for the applicants to regularly submit staging plans throughout the Project, and this will signal key stages to the Councils where they will need to set aside resources to review documents.
- 90 Another matter raised by Councils was the question of whether all management plans should be "approved" by the relevant Council. In my opinion, not all the management plans are appropriate to be

¹¹ NZTA Proposed Regional Consent Conditions G.8, G.9 and G.12 (para 2) and PCC Proposed Regional Consent Conditions G.29, G.30 and G.33 (para 2); Proposed NZTA designation Condition NZTA.12. and proposed PCC designation Condition PCC.11.

submitted to the Council for "approval". The Network Utilities Management Plan (*NUMP*) is an example of this. The NUMP requires the NZTA to undertake consultation with the relevant utilities affected by the Project. In my opinion it would not be relevant for a Council to "approve" this management plan, though it should be submitted to the Council to demonstrate that the condition has been complied with.

- 91 The ultimate solution to the concerns about whether the management plans are being submitted for approval or otherwise, is addressed by providing clarity in respect of this in the relevant conditions.
- 92 There have been a number of concerns raised both by Councils and in submissions, about the level of detail covered in the management plans. There is an inference in some of the submissions (e.g. KCDC) that the use of management plans is a way to defer making assessments of effects until later on.
- 93 Very few of the projects I have worked on have had all draft management plans lodged with the application. In the case of the current Project, many of the draft management plans are already before the Board of Inquiry to review, and these provide a good level of certainty as to the manner in which the effects of the Project are to be managed.
- 94 Where management plans have not been supplied, a high degree of detail is contained in the proposed conditions so that there is both a lot of guidance for the persons drafting conditions, and details for the compliance officers from the Councils to check back on compliance when they receive the drafted plan for review. An example of this is the proposed Concrete Batching Plant Management Plan. The concrete batching plant requires consents for discharges of water and discharges to air. Therefore it is recommended that a management plan is the best way to combine the environmental management measures for this site into one document. The conditions include provisions to manage both discharges to air and land and require a high level of detail about how the site will be managed.
- 95 I consider it is also important to note that in order to be effective, management plans have to retain a degree of flexibility to allow for unforeseen circumstances (eg. an encountered difference in ground conditions). The proposed conditions provide for staged submission of management plans, and ongoing review, along with performance standards rather than prescriptive requirements, and I consider that all these demonstrate a good level of flexibility. This flexibility for construction purposes is not available as a mechanism to be used to alter the effects on the environment or the conditions *per se*. As I

have stated above, the conditions still need to be met and a high level of environmental performance needs to be met.

- 96 A key element of the mitigation proposed for construction is those measures to manage potential adverse effects as provided for in the Construction Environmental Management Plan (*CEMP*)¹². The CEMP covers all anticipated construction elements and presents a framework of principles, environmental policy, objectives and performance standards. The CEMP includes a number of specific management plans, which provide appropriate mitigation for land use impacts during construction. These include noise and vibration, construction traffic, erosion and sediment control, ecological and landscape management. The full suite of management plans is set out in Figure 28.2 on page 462 of the AEE report.
- 97 The CEMP specifies the structure and systems for environmental management and monitoring to be implemented during the Project's construction phase. Implementation of the CEMP will manage the delivery of the commitments that are given in obtaining approvals for the Project and make sure they are carried out and that appropriate environmental management practices are followed.
- 98 The CEMP will enable the NZTA and its contractors to construct the Project with the least adverse environmental effect. Overall, implementation of the CEMP will assist in delivering:
- 98.1 Compliance with the conditions of resource consents and designations;
 - 98.2 Compliance with environmental legislation;
 - 98.3 Adherence to the NZTA's social and environmental objectives; and
 - 98.4 A high level of management of environmental risks associated with the Project.
- 99 This CEMP and its sub-plans are consistent with and complement the Project's AEE. The many technical assessment reports contained in the AEE inform the specific environmental management, monitoring and mitigation measures described within the sub-plans for the contractor to implement to manage actual and potential environmental effects during construction.
- 100 Site Specific Environmental Management Plans (*SSEMP*) were also prepared for the Project. These take the methods for managing effects that are set out in the CEMP and other management plans,

¹² Condition G.12, and G.33 (proposed regional conditions) and Condition NZTA.11. and NZTA.12. & PCC.10. and PCC.11.

and apply the methods to key locations along the route. I facilitated a workshop with the technical team where we chose the locations for the SSEMPs using a set of criteria. The criteria included: whether the site was likely to be technically difficult to construct; highly visible to the public; close to residential and other sensitive receptors; had a high degree of interface with people; had particularly high quality streams or other notable natural environmental features; and specific erosion and sediment control requirements. The SSEMPs combine a greater design detailing at these key locations with the application of the methods and techniques in the suite of management plans to come up with an integrated design approach. When construction starts, the conditions require that SSEMPs are prepared for the whole route, to demonstrate this integrated approach to design and environmental management.

Use of the term “practicable”

101 The term “practicable” is used in a number of places in the application documents and in particular in the consent conditions. This is deliberate, and I make the following comments in this regard:

101.1 I note that there are similarities between this term and the term “Best Practicable Option” which is used in the RMA (Section 2) in relation to discharge of contaminants or an emission of noise;

101.2 In my experience this is a relatively common term used in consent and designation conditions. In my opinion, I consider the word practicable to be appropriate in consent conditions. There is concern raised in submissions (as I discuss below) that it is not a clear enough term and does not provide certainty;

101.3 The definition of Best Practicable Option¹³ in the RMA takes into account:

- (a) The nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and
- (b) The financial implications, and the effects on the environment, of that option when compared with other options; and
- (c) The current state of technical knowledge and the likelihood that the option can be successfully applied.

¹³ Section 2 RMA.

101.4 It is my opinion that the word does, in fact, require an active demonstration that options have been considered and an explanation of the reasons why the particular option has been chosen. The consent holder/requiring authority (i.e. the applicant(s)) will be required to document and demonstrate their decision-making process and clearly show that the option chosen is the best practicable. It will be up to the judgment of the compliance officer of the Council to determine that the NZTA or PCC has adequately demonstrated that "practicable" has been appropriately applied;

101.5 Whilst this is an application that is for a wide range of activities associated with road construction (not just noise and discharges) I consider that these factors can usefully be applied by decision makers (e.g. Council compliance officers) when considering whether the consent holder/requiring authority has in fact achieved the test of "practicable".

Request to undertake officer conferencing

102 In response to the Board's direction dated 6/10/11, I undertook to arrange meetings with the relevant Council officers. The purpose of the meetings was to discuss conditions with a particular focus on whether (should applications be granted) the conditions were workable and the form of the conditions was appropriate.

103 Meetings were held on 1st November with the Regional Council and 2nd November with the District/City Councils. Consistent themes from both meetings were:

103.1 The format of the conditions using tables and differential numbering was appreciated by each of the Council officers because it reduces confusion (e.g. there is not multiple "Condition 1");

103.2 All were happy with my suggestion that we should minimize the number of versions of "track changes" conditions as much as possible and agreed that a collated set of comments would be best timed to be submitted prior to the start of the hearing.

104 I note the following with respect to the 1st November meeting:

104.1 The meeting with the Regional Council was constructive and useful. We all agreed on a common sense approach to the meeting and that the applicants' representatives should be present as well as the experts. Representatives were present from NZTA and PCC as applicants (Transpower has not applied for regional consents). Therefore it was agreed that

the meeting did not constitute "conferencing" in accordance with the Environment Courts' practice note;

- 104.2 It was agreed that the topic areas covered by the conditions was complete. We agreed that it was not appropriate to address the detail of the conditions as that was a better dealt with by experts;
- 104.3 We had a lot of discussion about the use of "objectives" in conditions, and how they could be effectively measured and enforced. This discussion remains a work in progress at the time of writing my evidence;
- 104.4 Overall, my feeling is optimistic about being able to reach general agreement on the form of conditions.
- 105 I note the following with respect to the 2nd November meeting:
- 105.1 Again, we all agreed on a common sense approach to the meeting and that the applicants' representatives should be present as well as the experts. Representatives were present from NZTA, PCC and Transpower as applicants;
- 105.2 Again, it was agreed that the meeting did not constitute "conferencing" in accordance with the Environment Courts' practice note. A key difference in this meeting was that the KCDC was represented by three people, one as a regulatory officer, and two who were involved in preparing KCDC submission on the applications. It remains my opinion that the Board's direction did not anticipate these meetings to address matters raised via submission, but we agreed to proceed with the meeting anyway;
- 105.3 Again, the meeting was useful, and it was generally agreed that the topics covered by the conditions was complete. We did not discuss the minute detail of specific conditions, but went through all the general form of conditions;
- 105.4 We had a discussion about perceived ambiguity of language, and discussed the term "practicable". I address this separately in my evidence (above), but note that this discussion with officers is a work in progress at the time of writing my evidence;
- 105.5 Again, coming away from that meeting, I am optimistic that the general form of conditions could be agreed, though there are still a number of questions regarding the more detailed content, including that which was requested be addressed via a separate meeting with officers of KCDC.

- 106 In summary, further meetings will be held to continue these discussions. The next meeting is intended to be a joint meeting with all Councils represented to ensure any "cross-over" issues are properly addressed.

RESPONSE TO SECTION 149G(3) REPORTS

Management plans and conditions

- 107 Some of the Section 149G(3) reports raise concerns and questions with respect to the adequacy of the management plan process and the associated conditions. I do not agree that there is such a high degree of uncertainty as to (a) be a significant concern; and (b) that the environmental management methods are effectively left to a contractor to implement later (and that this is problematic). The management plans set out "how" the environmental performance will be achieved. The bottom lines, in other words the "what" are specified in the conditions and are not left to be developed in management plans. I consider it is appropriate to, within the parameters of the conditions, leave sufficient flexibility to allow the best environmental management method to be adopted. There are a number of additional comments I wish to make:

107.1 The conditions specify "objectives" that the management plans must as far as practicable meet – refer to proposed Condition E.3. (Chapter 30 page 524). This means there is always a "check back" mechanism for the Councils to review the management plans against;

107.2 With further detailed design there is always new information that becomes available, so a good level of flexibility must be built into the project parameters to enable minor changes to be made;

107.3 This Project will not be built for several years and there is the potential for new techniques to be developed for managing environmental effects on large earthworks sites that would be readily applicable to this site;

107.4 Further, my experience is that the NZTA is very conscious of its role as a Crown agency and being "a good corporate citizen". It is always very concerned to maintain a good reputation in the public arena, and avoid any accusations of causing unexpected adverse environmental effects. I consider the NZTA is quite risk averse when it comes to compliance and places these high expectations on its contractors as well;

107.5 In my experience, the relationship between the NZTA and the Councils (as the consent authority) during project construction has always been professional, helpful and

transparent. I have no reason to believe the TG Project will be any different;

107.6 Finally, the NZTA has a statutory duty under the LTMA section 96(1)(a) to "exhibit a sense of social and environmental responsibility". Therefore, I am of the view, that the NZTA is different to other (in particular non-Crown) applicants. Whilst I have not worked with PCC on a construction project, my expectation is that a similar level of attention to environmental issues is likely given it is also a public entity.

108 In addition to this, I consider it is important to remember that the management plans submitted with the applications are in draft form, and are required to be completed prior to commencement of works. These plans are complemented by the suite of proposed consent conditions which detail the information that they must contain, and the environmental performance they must be designed to meet.

109 As I have discussed above, there are further meetings proposed with the Council officers in order to address these concerns raised as best as can be done.

Permitted baseline

110 The Porirua City Council report indicates that the EPA has requested that the Councils give consideration to the permitted baseline. All the Section 149G(3) reports have a section entitled "Permitted Baseline".

111 The Kapiti Coast District Council in particular, dedicates a lot of space to the consideration of the permitted baseline.

112 The reports may imply that a permitted baseline assessment is relevant. Designations by their nature "supersede" underlying zonings and associated rules. In my opinion, "permitted baseline" issues are not relevant to designations. This represents a confusion as to the relevant tests that apply to designations and resource consents.

113 Conversely, the GW report does give some relevant consideration to permitted baseline, and helpfully sets out permitted activities that are relevant to the Project.

AEE has omitted reference to relevant provisions

114 Some of the Section 149G(3) reports state that my statutory assessment has omitted relevant provisions from statutory planning documents. I concur that some of the provisions have been omitted from the typed lists of provisions in Technical Report 21 and this is unfortunate. However, my statutory assessment was based on a review and reference to the statutory documents in their entirety. I

have been through all the omitted points and confirm that I still consider that the Project is not contrary to the relevant provisions.

- 115 I note that some of the submitters – and in particular the Department of Conservation (*DOC*) and KCDC which I discuss below – appear to rely on these Section 149G reports and their comments on the omissions to relevant provisions to support their reasons for submission.

RESPONSE TO SUBMISSIONS

- 116 For the most part, I have grouped the submissions by topic and respond to key issues that are relevant to planning. I also respond specifically to the submissions of DOC and KCDC. Matters raised in submissions relating whether all relevant planning provisions have been considered, the relevance of the plan change to the RFWP, use of the phrase “as far as practicable”, and concerns about use of the Outline Plan process have been addressed in the main part of my evidence.

Powerco and Transpower

- 117 Submissions have been received from both Powerco and Transpower that make reference to the proposed Network Utilities Management Plan (NUMP) conditions¹⁴. Both submitters recommend changes to the proposed NUMP condition. I consider both these submissions to be very helpful as they are clear about what is being requested, and both submissions provide a clear basis for further discussions.
- 118 I am aware that discussions are being held, or are planned to be held with both these submitters, with a view to reaching a mutually acceptable outcome. I intend to report on progress in this regard prior to the commencement of the hearing.

Greater Wellington Regional Council

- 119 The Wellington Regional Council submission appears to be largely to ensure an ongoing role in the process for the purpose of ensuring consent conditions and management plan frameworks are enforceable (should the applications be granted consent). As I have discussed above, I have been involved in constructive and helpful meetings with the Regional Council regarding the form and content of the conditions, and expect this process to continue.

Department of Conservation (DOC)

- 120 Whilst the DOC submission states that the Department is not opposed to a second main arterial route, the submission raises concerns about, primarily, construction effects. Other witnesses respond to the environmental concerns raised by the DOC

¹⁴ Refer to proposed Conditions NZTA.17. to NZTA.20. and PCC.16. to PCC.19.

submission. However, it makes a number of planning related points that I wish to respond to:

- 120.1 Clause 21 states that there are some activities for which consents have not been applied for, and that the effects of these activities have not been assessed. In response: permanent access tracks are applied for under permit RC 14 (refer to Conditions S.12, S.13 and S.14); **Ms Hopkins** discusses the construction works associated with the Transpower line relocation; it is anticipated that water for concrete batching and dust control will be sourced from a consented water supply or town supply and carted onto site. Any alternative water supply methodology involving abstraction on site from an unconsented source would require a further consent;
- 120.2 In Clause 24, the submission states that some relevant provisions have been omitted from my assessment. As discussed (under my comments on the Section 149G reports) I have reviewed the provisions identified by the Council officers, and DOC and commented on these where I agree that there was an omission. I conclude that these assessments do not change my overall conclusions;
- 120.3 The submission states that a key omission is reference to Policy 5A of the PRPS which states "Recognising the regional significance of Porirua Harbour (including Pauatahanui Inlet and Onepoto Arm)". For the reasons discussed earlier in my evidence I consider that the significance of the Porirua Harbour has been well recognised and consequently it is a key focus of many of the technical reports and evidence before the Board;
- 120.4 The submission states that the Proposal is contrary to some of the provisions of the RFWP and places particular emphasis on Policy 4.2.13. As I have discussed above in my evidence and in the AEE, I am of the opinion that the Project will not be contrary to the relevant provisions of the Plan. I acknowledge that the proposed plan change is not yet operative, and have undertaken my assessment without relying on it;
- 120.5 I disagree with the statement that the Proposal will be inconsistent with the NZCPS and the NPS for Freshwater Management (submission clause 26) for the reasons stated in the AEE in Sections 32.4 and 32.2;
- 120.6 The Porirua Harbour and Catchment Strategy and Action Plan was released after the applications were lodged. Nonetheless, I acknowledge this document as a relevant

“other matter” and have addressed it earlier in my evidence. I disagree with the DOC submission (Clause 27) that the effects of the TG Project are inconsistent with parts of the document;

120.7 The DOC submission also states that there are a number of deficiencies in the draft conditions and management plans. At the time of writing this evidence, I am in the process of trying to establish more detail about the specific concerns in this regard so that I can better address these. I note that **Mr Fuller** also discusses this in his evidence and discusses the proposed conditions referring to the Draft Ecological Management and Monitoring Plan.

Kapiti Coast District Council (KCDC)

121 The KCDC submission makes a number of points that I wish to respond to:

121.1 I was disappointed at the comments stating that there has been minimal consultation (para 2), and then comparing the TG Project to other NZTA projects. The statement that “To date the Council’s recent involvement in this proposal has been limited to completing (as a relevant local authority) the statutory ‘fit for purpose’ check...” is in my view inaccurate;

121.2 **Mr Nicholson** sets out other examples of engagement with KCDC. I have been involved myself in the RATAG meetings that have been held regularly (generally monthly and more frequently when required) since mid 2009 until prior to lodgement;

121.3 Another example of engagement is the two major full day workshops that I arranged and facilitated, at which all Councils and their technical advisors were able to have meaningful inputs into the design and development of the Site Specific Environmental Management Plans. KCDC staff and RATAG technical reviewers were present at those sessions;

121.4 I also arranged and facilitated two working sessions about consent and designation conditions, and have attended numerous sessions where conditions and management plans were discussed. KCDC staff were present there;

121.5 I therefore do not agree that there has been limited consultation;

121.6 In Clause 3, the Council also attempts to infer that funding might have an impact on the level and nature of mitigation needed to address adverse effects. **Mr Bailey** and

Mr Nicholson are best placed to address funding (or otherwise) in their evidence. However I note that regardless of the level at which a project is funded, that it would still need to comply with the conditions of consent and designation and achieve the outcomes in the submitted documentation;

121.7 The submission raises concern of the use of the word "practicable" (page 5). As I have stated above, I consider this word to be appropriate and measurable;

121.8 The submission also states that there is a lack of clarity around which standards are being used. I do not agree with this, apart from, that is, that I agree that it would be useful to reflect dated reference documents with correct revision numbers in conditions. I will attend to this in the "track changes" version of conditions to be released prior to commencement of the hearing.



Andrea Judith Rickard
16 November 2011