

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

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*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 Supplementary statement of evidence of Andrea Judith Rickard  
(Planning) for the NZ Transport Agency and Porirua City Council

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Dated: 20 February 2012

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

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

**INTRODUCTION**

- 1 My full name is Andrea Judith Rickard.
- 2 I have the qualifications and experience set out at paragraphs 1-5 of my first statement of evidence in chief, dated 16 November 2011 (*EIC*).
- 3 I repeat the confirmation given in my EIC that I have read, and agree to comply with, the Code of Conduct for Expert Witnesses (Consolidated Practice Note 2011).
- 4 This statement is to provide the Board of Inquiry (*the Board*) with the following:
  - 4.1 A response to questions concerning the Outline Plan process, including in Mr Kyle's section 42A report and the Board's questions in opening submissions and of various witnesses (including **Mr Nicholson** and **Mr Lister**):
    - (a) Comments on my experience with the Outline Plan (*OP*) process, both at the "consenting" phase, how it influences conditions, and how it works in practice; and
    - (b) A response to questions as to differences between resource consents and designations;
  - 4.2 A further explanation of management plans and conditions, to clarify the intended structure of management plans as a means of implementing the conditions;
  - 4.3 Comments on recommendations of Mr Kyle in his February 2012 section 42A report; and
  - 4.4 Responds to questions asked by Deputy Chairman David McMahon of Dr De Luca, on 20 February 2012. I provide an outline of suggested changes to Condition M.7. and the creation of a new Condition M.8.

**THE OUTLINE PLAN PROCESS**

- 5 In his section 42A reports, and latterly in comments he has made to planning witnesses on conditions, Mr Kyle has indicated that further information about the OP and designation provisions and the role of

RAs<sup>1</sup> could be useful. Questions by the Board have also indicated that practical examples of how OPs work in practice would be useful.

- 6 This statement draws on my planning experience and my planning view of the designation and OP provisions, and leaves for counsel to address any legal issues.
- 7 Designations and OPs are an area of planning that are quite specific and have specific and separate provisions related to them – distinct from resource consents. They are, in my view, a specialist area of planning, and they are an area that I have a lot of experience in, both in the “consenting” phase (i.e. where we are now for the Transmission Gully Project (*TGP or the Project*) and in the construction/implementation phase.
- 8 I have practical experience in the implementation phase of several major roading projects and give examples of these later in this statement, and in particular as to how the OP process worked. I have also presented a “designation roadshow” for the NZPI<sup>2</sup> on the topic of designations and OPs.

#### **Background and process**

- 9 The OP provisions in the RMA originated from the Town and Country Planning Act 1977. The concept of an OP has been around for a long time, however the provision for OPs under the RMA have undergone some revisions.
- 10 Because they relate to all RAs (which are defined in Section 166 of the RMA), the provisions are necessarily broad and general. There is a huge range of agencies who are RAs and these are listed on the MfE website<sup>3</sup>. By way of illustration of this point, I have knowledge and experience of the use of designation powers for a new classroom at a school, an underground service such as a gas pipe or watermain, road and rail corridor widening works, new local roads and motorways, a community library, and a police station.
- 11 It may be interesting to note that this building – the Wellington District Court – is authorised by a designation.
- 12 The contents of an OP includes a plan and/or a description of works, and, as set out in section 176A(3) of the Act an OP must show, as a minimum:
- a) *the height, shape, and bulk of the public work, project, or work; and*

<sup>1</sup> Requiring Authorities – the NZTA and PCC are both RAs.

<sup>2</sup> NZ Planning Institute

<sup>3</sup> <http://www.mfe.govt.nz/rma/central/designations/requiring-authorities-table.html>

- b) *the location on the site of the public work, project, or work; and*
  - c) *the likely finished contour of the site; and*
  - d) *the vehicular access, circulation, and the provision for parking; and*
  - e) *the landscaping proposed; and*
  - f) *any other matters to avoid, remedy, or mitigate any adverse effects on the environment.*
- 13 The contents of the OP under section 176A have influenced the structure of the proposed designation conditions that I have drafted for the TGP. For example, I have deliberately tied the Construction Traffic Management Plan (CTMP) and the Landscape and Urban Design Management Plan (LUDMP) to the OP process. This is because traffic and landscaping are matters required to be provided for in the OP – items (d) and (e) respectively. Using a “management plan” is, in my view, a good way to collect all this information into a single place – or effectively as a “chapter” of the OP. The Urban and Landscape Design Framework (ULDF) will be used to inform the OP via detailed design of the LUDMP<sup>4</sup>.
- 14 In pragmatic terms, this allows the Council to receive the OP and undertake the appropriate review efficiently – by sending the separate parts out to their various specialists. I see no point in producing two separate sets of documents (an OP and a Management Plan) when one set will meet the RMA requirements. Both **Mr Lister** and **Ms Hancock** were in agreement with my view on this process, in their presentations to the Board. That is, that a single process is appropriate.
- 15 A key benefit of having designations is their ability to manage projects that cross multiple Council boundaries. An example to illustrate my point is the LUDMP. The ULDF, which is supported by **Mr Lister** and **Ms Hancock** as a guiding document, promotes an holistic and consistent approach to the urban design and landscape treatments along the alignment (which is picked up in the detail of the LUDMP). This approach would be potentially at risk were the various Councils to seek to impose different regimes in a double process. The OP process allows the RA to manage this appropriately.
- 16 Clause (f) of section 176A(3) is often used to provide a wide range of additional information to Councils through the OP process. In the various iterations of the OP process as it has appeared in the

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<sup>4</sup> NZTA. 46

legislation, this clause is a relatively late addition – and in my view reflects a focus of the RMA on avoiding, remedying and mitigating effects.

- 17 An example of the type of information that might fall under clause (f) is noise management. I am supportive of the Construction Noise and Vibration Management Plan (*CNVMP*) forming part of the OP process on this basis. It is appropriate for noise and air (i.e. dust) to be within the OP because it is regulated by the designation rather than the resource consents. I note that, because of what seem like minor changes that have been made to conditions through conferencing, a flow on result is that the *CNVMP* is now not shown as part of the OP process as the proposed conditions are worded. I still expect the *CNVMP* to be submitted with the OP as it is clearly an “other matter”. I would support a change to address this, again to avoid any doubling up issue. I have many experiences of instances where noise matters have been dealt with through the OP process.
- 18 I consider it is relevant that, given the stage of the Project, the conditions set the framework/standards, and the OP then provides the mechanism for more detail and more practical information at later stages. At the implementation stage, this allows for flexibility in how the framework/standards are met, and in my experience can lead to improved environmental outcomes.
- 19 Once the OP documents are assembled, the RA then submits the OP to the Council and the Council has 20 working days to either accept the OP or request changes. The timeframes can be extended by agreement with the RA (though not under section 37) – and this is common in my experience, especially in the case of complex or substantial documentation. Whilst not a statutory requirement, my experience is that it is also normal for the RAs to work with and advise the Councils on timing prior to submission of an OP. Hence, Condition NZTA48 makes it clear that the RA is required to consult with a number of parties including the relevant Council in relation to its preparation.
- 20 When it has received a request for changes (or when there are no changes requested), the RA needs to formally advise the Council of its decision either way.
- 21 If the Council and the RA cannot agree, the Council has the option of taking the matter to the Environment Court. In my experience this does not tend to happen. In fact, the prospect for a Court process is, in my view, a good incentive to work things out. The RAs work with the Councils in order to resolve matters. Most OPs track through the Council process with very few problems.

- 22 The RMA also allows for waiver of the need to submit an OP<sup>5</sup> if all the necessary details are already included in the designation. OP “waivers” are, in my experience, granted from time to time where there is another process agreed for receipt of detailed information. While the Board has the ability to grant an OP waiver, no waiver is sought by the NZTA or PCC for the TGP.
- 23 I am concerned at the suggestion that Ms Thomson makes in her evidence<sup>6</sup> that there be two Council processes required for submission of information, such as getting management plans certified first before the same information was then submitted in an OP. Ms Thompson’s concern appears to, in part, relate to ensuring Council input. However, the OP process already involves substantial Council input along with the ability to take matters through to the Environment Court. The RMA provides for the OP process in relation to designations. It is, in my view, the appropriate way to deal with the matters referred to in section 176A, and no duplicate process is needed.
- 24 I note that, on a strict reading, section 176A does not refer to designation conditions but, as I note above, section 176A(3)(f) refers to “adverse environmental effects” and in practice this is typically where designation conditions are addressed.
- 25 In practice, this can be an “envelope” type approach. The designation condition can set the framework (or minimum standard) in relation to what must be met, but the OP process then provides for *how* those effects can be appropriately managed and this may be able to be varied or managed to enable efficiencies, innovation and better outcomes within that “envelope”. The ALPURT B2 project had some good examples of this such as a bridge replacing culverts and fill embankments.
- 26 Notwithstanding that there are resource consents for other environmental matters, the designation is about allowing for a specific activity within a footprint within a district plan – similar to a zone and permitted / controlled activity resource consent status. The difference is that the activity is specific and, if confirmed, the designation permits the activity under a framework of conditions. The OP provides the detail as to how it will comply with the permitted / controlled type framework.
- 27 I note that a designation applies to land use matters (i.e. those matters restricted under Section 9(3) of the Act), and does not override the need for regional consents if they are required.

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<sup>5</sup> Section 176A(2)(b).

<sup>6</sup> Thomson EIC para 8.9(h).

**Examples of Outline Plans in practice**

- 28 As set out in my EIC, I have been involved in the approvals and the implementation of a number of projects that involve designations and OP processes. Given recent discussions in the hearing, I understand that more detail about how the OP process works in practice from a planning perspective may be useful. I set out some examples in **Appendix A** to this statement of evidence.

**Concluding comment on the OP process**

- 29 I am in favour of the OP process in the case of TGP because it is a well-established process, that is clearly set out in the Act, it recognises the role of a RA as delivering public works, and it has a process to seek recourse through the Environment Court if the Council and RA cannot reach agreement. As I have said above, in practice, I am not aware of any OP disagreements reaching Environment Court hearing stages – the RA and Councils tend to sort things out amongst themselves.
- 30 I also support issues raised by other submitters being accurately reflected in conditions in accordance with the agreements made, so that these are appropriately protected in future.

**NOTABLE DIFFERENCES BETWEEN RESOURCE CONSENTS AND DESIGNATIONS**

- 31 I noted the comments and questions put to Counsel in relation to designations. I agree with his response that there are benefits to the public from the use of designations, and that one very important one is that, unlike resource consents, a designation is shown on a District Plan map. An answer to a question by the Deputy Chairman clarified that a designation that directly affects a property would show up on a LIM, as would any resource consent affecting that property. However, a resource consent that applied to adjacent or nearby land would probably not show on a LIM – because a LIM is site specific. The District Plan map is another place people are likely to check to see what might affect a property, and because designations are shown on planning maps, this is a key public benefit to a designation in my view. I believe a designation better allows people, including Councils and other public agencies, to take the project or activity into account in making their decisions, and to adjust to it.
- 32 Another point that I consider useful to note is that there is a link to the Public Works Act 1981 and land acquisition processes through the designation process. What a designation and a NoR do is, subject to their meeting certain statutory requirements, give affected landowners access to the right to apply to the Environment Court for an order requiring any land that is subject to the designation or NoR be acquired.

- 33 In the case of TGP, where the alignment crosses four district council boundaries, I consider the designation process has a lot of benefits, not the least of which (as noted above) is that the designation will be shown in all the relevant district plans. The RA still retains some ability to get a consistent approach along the alignment to, for example, the landscape and urban design concepts that are applied to the route. As I have said, **Ms Hancock** and **Mr Lister** are both supportive of a consistent approach route wide.
- 34 The OP process as it is proposed will allow the RA (in consultation with the four Territorial Authorities (TAs) and the Regional Council) to manage a consistent outcome for TGP. Whilst the RAs will need to take into account any comments and requests for changes from the TAs, it will still be better able to maintain that desired consistency across jurisdictions and the linkages to the regional consent conditions that were supported by **Mr Lister**. There is a clear linkage through to the regional context via the management plans as proposed in the conditions, and again, a good example of this is the linkage between landscape planting and ecological planting and the requirement that they be consistent, along with the relevant experts working together.

#### **STRUCTURE OF THE MANAGEMENT PLAN FRAMEWORK**

- 35 Below, I seek to clarify the structure of the management plan framework and build on the description in my earlier statement of EIC. There have been a number of changes to conditions, since lodgement of the applications, and the rearrangement of conditions is pending.

#### **Background thinking**

- 36 In terms of the level of detail, the intended relationship between conditions and management plans is as between "Control" (ie standards and limits, as set by conditions) and "Management" (ie management plans as means of implementing controls). There are three "tiers" of management plans provided:

##### 36.1 Tier 1 – "Overarching" management plans

The CEMP is a high level plan intended as an "umbrella" containing overarching principles and a programme. In preparation of all other plans, reference back to the CEMP is required to check for consistency.

##### 36.2 Tier 2 – "How" management plans

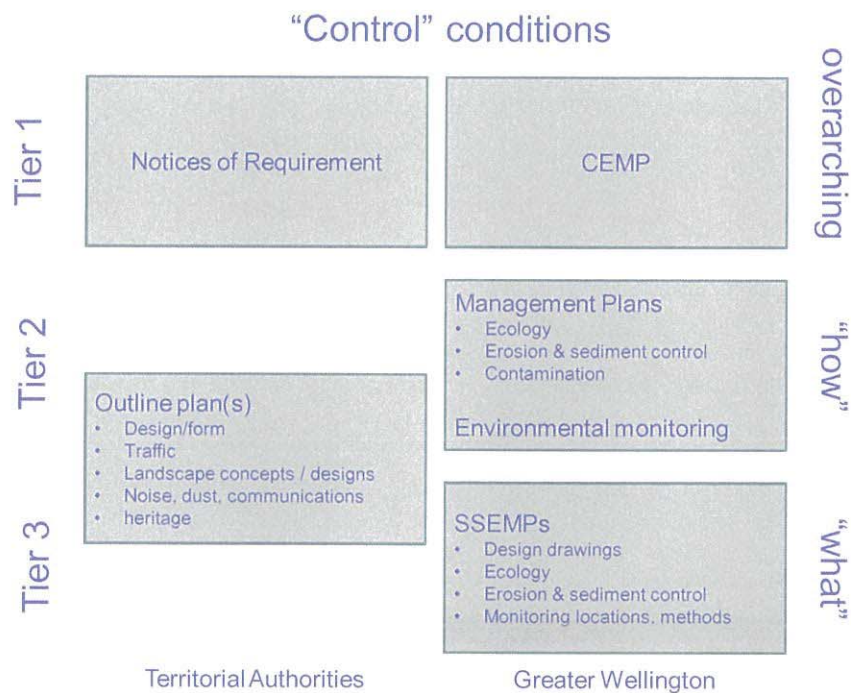
Principles that are applied site wide, setting out how design criteria and performance standards will be met.

##### 36.3 Tier 3 – "What" management plans



Detailed and specific plans containing a high level of detailed design, details of appropriate monitoring positions/locations, environmental management measures such as type of sediment management device.

- 37 **Figure 1** below shows how the tiers of management plans apply to the designation and resource consent conditions.



***Relationship of management plans to control conditions***

- 38 Overarching the management plans are the primary conditions of consent which specify standards and controls and benchmarks for environmental performance. An example of this is Condition G.1, E.1 and E.2.

***Applicability of management plan regime to the Regional Consents***

- 39 Tier 1 is the CEMP – which provides high level information about the project including the overall staging plan. There have been two key changes to the proposed conditions since lodgement:

39.1 I had originally envisaged the potential for a series of staged CEMPs, but Ms Grant is keen to see a single plan, and having heard her reasons, I am happy to accept her view on this.

- 39.2 I had also envisaged the CEMP being submitted as part of an Outline Plan, but as discussed in planner and in officer, conferencing the preference was that a clear line is needed between Council roles, and that GW should have the certification role. Because I have moved the CEMP in the conditions structure, and because the conditions were all carefully interlinked, there have been some flow on effects which I discuss below.
- 39.3 My structure also had the second "tier" plans as chapters of the CEMP, and the rearrangement of conditions has made this confusing in some instances.
- 40 My vision is that the CEMP would not be dissimilar to the one lodged as a draft, albeit with obvious gaps filled and containing far less generic information given that the contractor will have been engaged. The high level overall staging plan would also be part of this – something similar to the document attached to Mr Edwards's evidence.
- 41 The CEMP will be submitted to GW for certification early in the process of preparing to start construction.
- 42 Tier two are the more detailed management and monitoring plans that set out the detail of "what" will be done. I envisage these potentially being prepared in stages. These set out the standards to be met when working on site.
- 43 There are two categories of activities addressed by tier two management plans - management (of effects) and monitoring. The management of effects sits broadly in two categories: ecology and earthworks. The two main tier two management plans cover ecology and erosion and sediment control, and both have sub-topics relating to them (e.g. chemical treatment). It is noted that the Concrete Batching Plant Management Plan encompasses "Tier 2" and "Tier 3" matters.
- 44 Tier three of the management plans is the SSEMPs which contain the most detail and cover multiple topics. They provide a practical demonstration of "how" the project will be built. They draw together all the environmental management information from the management and monitoring plans, and the design details, and are presented in a very simple format. They will include a simple drawing or drawings, that a contractor could have in the cab of their vehicle on site. The Plans will also highlight "no go areas", and these might be special vegetation or a heritage feature as an example.

- 45 I consider it best planning practice that the conditions be integrated and holistic. I am confident that the structure will come back together with a little polishing.

***Comparison with the Designation Conditions***

- 46 In the case of the designation, the equivalent Control and Management relationship is as between the proposed designation conditions (Control) and the intentions for use of the Outline Plan (Management) .
- 47 The Outline Plan operates much like a "Tier 2" management plan in the regional consent conditions, in that it will demonstrate "what" the project will look like. However, it also crosses over into other methods to manage effects. By contrast to a Tier 2 regional consent management plan, the OP will also have a high level of detail describing "what" will happen. This may be confusing from the way in which I have drawn the wiring diagram<sup>7</sup>. I consider the OP to be a really important document as it required under the RMA, so naturally put it at the top of the page. The Management Plans, including the traffic, landscape and urban design, noise and dust would all be a part of this.
- 48 In some instances I have seen a further level of detailed design plans prepared that set out "what" will be done.
- 49 The OP contains elements of construction management but is primarily focussed on detailed design. As I discuss above, the OP will contain design information down to detail such as road furniture, median barriers, planting details, species types and mixes, batter treatments, noise barriers. This is why I am of the view that the MPs required under the designation form a natural part of the OP.
- 50 There was a question asked earlier by Mr McMahon about sediment ponds in the context of the OP. The Regional Council is, in my view, the relevant agency in this regard (and ponds would appear in SSEMPs and ESCMP), because they are responsible for assessing the functionality of ponds and carrying out compliance. With respect to the "form" of the site, I see the OP as more about the final appearance. Of course, if ponds were part of the final design, then they would be shown.

**Effect of changes to conditions**

- 51 With the number of changes that have occurred to conditions, the relationships and "tiers" of all the plans have become unclear. For example, the de-linking of the relationship between the CEMP and the OP has meant the CNVMP and the CAQMP have moved unintentionally. As I say above, the conditions would benefit from a

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<sup>7</sup> Appendix A to my rebuttal dated 20/1/12 and supplementary evidence dated 15/2/12

thorough reorganisation and polishing to enhance the clarity of the relationship between them.

### **SUPPLEMENTARY RESPONSES TO SECOND S.42A REPORT**

52 Since I wrote my rebuttal evidence, Mr John Kyle's February 2012 section 42A report became available. I respond to various matters in this report as follows.

#### **#51 Paremata-Haywards Road (p 32, last para)**

53 I understand that this property (#51 Paremata-Haywards Rd) was included in the designation because Mr Chiles was of the view that the noise effects could not be mitigated.

54 There have been recent meetings with this owner and he has advised that he may stay living in the house of his own choice, to see if it is too noisy. He has been given the opportunity to have his house rented during the construction of the Project – and appropriate arrangements would be made for this via mutual agreement, or through the PWA.

#### **Dust management (p 34, last para)**

55 Mr Kyle's report suggests trigger levels for dust are needed.

56 I agree with the evidence which Mr Gavin Fisher gave at the hearing last week, namely that trigger levels would not be useful or appropriate to manage the effects of dust. On the basis of his evidence, I consider it is better to both manage at source, and communicate widely.

#### **Condition 1 etc (p 47,para 3)**

57 At paragraph 3 of his report, Mr Kyle discusses proposed Condition 1 of the designation and consent conditions – ie as to requiring general accordant with relevant application documents. He cautions against over-reliance on such a condition – referring to administration and expectation it could place on lay people. He goes on to make the observation that it would be more helpful for a given condition to properly set out the actions necessary to give effect to a given mitigation proposal.

58 I agree this would be ideal, but do not think it is practicable. An over-simplification could run the risk of detail and meaning being lost, and I consider it is more important that the conditions contain as much detail as they need in order to achieve the desired result. Most lay-people struggle to understand what a resource consent is or even a designation. Conditions do need to be effective and enforceable and I think this is a top priority.

**Amenity planting at St Joseph's (p 49, para 4).**

59 Mr Kyle refers to Mr Bowman's earlier advice as to the desirability of amenity planting at St Joseph's Church.

60 I note that Mr Bowman clarified in his rebuttal evidence that amenity planting is not needed. I agree with Mr Bowman on this.

**Various matters concerning conditions and management plans**

***CEMP, CNVMP, CAQMP – (p 49, para 5)***

61 Mr Kyle refers to amendments to the conditions on the Construction Environmental Management Plan in my evidence, and notes his support for this, in particular my rearrangement of the condition. He goes on to refer to the Construction Noise & Vibration Management Plan and the Construction Air Quality Management Plan and supports these being separate conditions.

62 I originally had conditions concerning the CNVMP and CAQMP as part of the CEMP (like chapters), and anticipated that these would be attached to the OP process.

63 I understand from discussions with Ms Grant (the planner for Greater Wellington Regional Council, *GW*) that she has a preference for instead ensuring that the certification process clearly sits with *GW*. I agree with Ms Grant on this, and changed the structure of these conditions accordingly. This has led to an unintended de-linking of the CNVMP and the CAQMP from the OP process – I consider this needs to be rectified and that they need to be re-linked. In terms of the OP process, I consider that these are both properly "other matters" under s.176A(f).

***SSTMP and SSEMP specificity in location (p 50 para 5, p 53 para 4)***

64 Mr Kyle's report suggests that conditions relating to the Site Specific Traffic Management Plans specify the locations (or sections of route) to where they would apply (page 50, para 5). Then, at page 53 (para 4), he recommends the condition for the Site Specific Environmental Management Plans would benefit from being specific as to the locations that they will be provided along the route for each SSEMP.

65 I disagree with these suggestions. This is because the staging and construction programme will not be set until a contractor is appointed. As Mr Edwards said, his suggestion of a programme is one option, the McDonald International plan is another. Another contractor would likely come up with a different option.

***Suggestions for independent peer review (p 52 para 4)***

66 I do not agree with Mr Kyle's suggestion that the management plans should be peer reviewed by an independent expert.

67 In my view GW is suitably independent and expert. A PRP is proposed for sediment management, in recognition of the high degree of interest in sediment management and in the Pauatahanui Inlet. Regardless of this, I am confident that GW has a very good knowledge of the issues, and well-qualified professionals with experience in the region – that will provide a suitable degree of independent review. My discussions with Ms Grant indicate she has confidence in both their expertise in-house and that they have access to suitable consultants should this be needed, particularly in relation to sediment and ecology matters.

***Traffic management – Kenepuru Link (p 50 para 7)***

68 Mr Kyle notes his understanding that there are ongoing commitments in relation to management of the traffic network once TGP is operational (citing the example of monitoring of the proposed Kenepuru Link intersection). He notes such commitments have not yet been carried into conditions.

69 In my opinion, conditions on this matter are not necessary or appropriate. It would also affect land outside the designation. Mr Bailey has already indicated that he thinks there is sufficient road reserve to undertake changes here. I am confident that this can be settled outside of a conditions framework.

***Suggestions as to ecology matters (pp 53 and 54)***

70 I agree with the suggestion Mr Kyle makes that some ecology conditions are appropriate on the designation.

71 My suggestion is that the covenant condition on the designation – regarding protection of retirement areas – be duplicated for this purpose.

72 I note that there has been suggestion that the “bats” condition (currently G15.I) should be included in the designation conditions, and I think this would be appropriate also. I consider it would be appropriate to confirm the District Council planners are happy with this approach.

73 However, I think it is important to maintain clarity as to responsibility for certification, and this should be clearly separated out. In terms of this, in my view, responsibility for certification of the EMMP should remain with regional council, the body with the relevant RMA responsibilities for this matter. There should be no implication that some documents would need sign off from both GW and the TAs as that poses a risk of differences of view arising as well as unnecessary duplication.

74 I have discussed the EMMP certification process with both Mr Fuller and Ms Grant, and I understand they both share my opinion. Mr

Fuller advises that his EMMPs in the Wellington Region have always been certified by GW.

***Operational stormwater (p 54 para 6)***

- 75 My Kyle suggests that conditions relating to operational stormwater should be placed on the consents.
- 76 The Regional Plan (RFPW<sup>8</sup>) already compels the NZTA to comply with the permitted activity performance standards. Hence, including such matters in consent conditions would not enhance the ability of the Council to take enforcement action. There is already a duty to manage effects, and the NZTA does this through its network maintenance programme with the same permitted activity standards applying across the region, so there should already be a consistent approach.
- 77 I can see a benefit of Mr Kyle's suggestion would be to have all the conditions that apply to the project in one place to remind the consent holder that there is a range of responsibilities, not just the consent conditions. From that perspective, I do not have an issue as such with the imposition of conditions relating to permitted activities. However, a more practical issue is where should any such conditions should go? I have not been able to identify a suitable consent applied for to which they could be attached. I have discussed this with Ms Grant and understand she agrees with this position.
- 78 On balance, therefore, I do not favour such conditions being included. I have discussed this with Ms Grant, and I understand that she agrees with me.

**CONDITION M.7**

- 79 Commissioner McMahon asked a question of Dr De Luca about Condition M.7. and how offset mitigation would work, in other words, the process. I note that Dr De Luca made a correction to the condition that I support (that the listed items are offsetting options not contingency or remedial measures). I also support her suggestion of expanding the condition to include consultation with the Department of Conservation and community groups, in the development of offsetting measures.
- 80 In answer to Commissioner McMahon's question, and given that the condition has had multiple changes and edits over the past months along with these additional suggestions, I consider this condition would benefit from a reordering and additions to make it clearer. The Manager is already required to be involved with the implementation, and that intent would remain. I propose to expand

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<sup>8</sup> Regional Fresh Water Plan Rule 2

this to DOC and other groups as discussed by Dr De Luca and add a clearer process to it.

- 81 I suggest this revised wording for Condition M.7.:

**Condition M.7.:**

*The consent holder shall review the marine benthic habitat monitoring results (pursuant to Conditions M.3 to M.6) and in the event that adverse effects are identified that can be attributed to the Project, the consent holder shall develop and implement appropriate contingency plans and/or remedial measures that are commensurate to the scale and nature of the effects generated, but allowing for measures offered as part of the Project.*

- 82 I suggest the below is separated from the existing Condition M.7. into a new Condition M.8:

**Condition M.8.:**

*If, in the opinion of a suitably qualified and experienced ecologist, it is not practicable to implement appropriate contingency plans and/or remedial measures, the consent holder shall develop and implement an appropriate programme of mitigation. This mitigation shall be developed by a suitably qualified and experienced ecologist in consultation with the Manager, the Director General of Conservation (or their nominee), the Porirua City Council, and any other community interest group(s) that, in the opinion of the Manager or consent holder, should also be consulted. The consent holder shall submit a report to the Manager for certification that sets out who has been consulted, the options that were considered, the option or options that have been chosen and the reasons why, and a programme for implementation.*

*The mitigation measures shall be implemented as soon as practicable following the certification of the mitigation programme, to the satisfaction of the Manager.*

*Options for appropriate mitigation could include treatments such as:*

- *Revegetation of stream margins in catchments such as Duck Creek;*
- *Restoration of harbour margins to a more natural state, such as declamation and restoration of saltmarsh;*
- *Treatment of other discharges to the harbour that may cause adverse effects on marine ecological areas such as road runoff;*
- *Seagrass restoration.*



83 Because Condition G.15MM applies a similar approach (to Te Puka stream reconstruction), I also recommend a similar structure to the above.



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Andrea Judith Rickard  
20 February 2012

## APPENDIX A – EXAMPLES OF OUTLINE PLANS

### ***ALPURT B2 (Northern Gateway toll road)***

- 1 I wrote the OP for this project in 2004 – there was one single OP for the whole 7.5km long motorway project and it comprised a written document approximately 2-3cm thick with accompanying drawings. This designation had a number of conditions (which relate to the whole of the Albany to Puhoi realignment of SH1) – though they are a lot shorter and less detailed than the ones that are proposed for the TGP. That project has similarities in that it passed through largely rural land with connections to coastal urban areas and potentially affecting sensitive natural environments. There were also a number of alterations to the designation made at the same time as the OP process, and these were shown on the same drawings, along with parallel submission of documents. These were processed as minor alterations under section 181(3) of the Act. This was able to be achieved for a number of reasons, including that the Crown owned the land.
- 2 There were clauses in the conditions that included wording such as “minimise disturbance”, which is similar in some respects to what is proposed for TGP, but with a lot less detail. One of the interpretations of this resulted in a major bridge rather than an embankment being used – which I believe is generally accepted as a significant environmental benefit over previous designs. This was largely achievable because of the flexibility that the OP process offered, and I can see some potential parallels with the TGP.
- 3 Changes were made in consultation with the former Rodney District Council, and I consider the process successful.

### ***Newmarket Viaduct replacement project***

- 4 This was a relatively new designation (less than 5 years old at the time construction started) and it contained a number of conditions setting out a management plan framework, again with some similarities to the one proposed for the TGP. This is an urban project involving replacement of one of the busiest parts of SH1 in the country and naturally traffic management and management of effects on urban neighbours were a focus. The conditions contained a specific option to seek an OP waiver in them, and to submit detailed information using a management plan framework.
- 5 An OP waiver was granted by the Council and management plans were submitted. These included an overarching Project Management Plan which set the scene and the framework of the other management plans which were then prepared as chapters, and each was subject to a single certification process.
- 6 Again, these documents were complex and sizeable. With a pre-advice process (similar to that proposed with the staging plan

conditions) the Councils were able to plan ahead and resource the processing of these plans in a timely manner.

***Victoria Park Tunnel project***

- 7 In this case, the designations were the result of a fairly recent process – there had been a combination of alterations to existing designations and new designations affecting two District Plans.
- 8 Again, the conditions contained a specific option to seek an OP waiver in them. I met with the Auckland City Council early in the process and resolved to manage things through the submission of management plans as an alternative to the OP process. I was the author of a letter to the Council requesting an OP waiver and this was granted.
- 9 The project team then proceeded to get a series of plans in place in a staged manner. At that time, there was a focus on getting the project going quickly for a number of reasons, including economic stimulus and the Rugby World Cup. These drivers meant a staged approach to management plans was appropriate, with construction work being able to start with submission of a few aspects of the required management plans, whilst quite substantial detail was still being worked through with Council.
- 10 This was a result of a practical response from all parties working together, and I consider it was successful. Final landscape plans were not finalised until well after construction started and were done with a substantial amount of iwi, Council and stakeholder involvement. As an example, this was the first project I have heard of to have a skatepark working group who convened to oversee the design of a new skatepark!

***Waterview Connection project***

- 11 As the Board will be aware, this is a recently “consented” project which involved a number of designations and resource consents. An OP waiver was sought with the NoR and this was granted in the Board of Inquiry’s decision with the exception of there being an OP requirement imposed for some specific items.
- 12 As already noted, OP waiver has been requested for the TGP project, and this is, in my view, a significant difference to Waterview, and I consider it is important not to compare the two applications in this regard.

***Other “non-road” examples***

- 13 The North Auckland rail duplication involved the construction of a new line alongside the existing single rail track. Another component I was involved with was a major revamp and upgrade of Newmarket train station. This is a situation where an “old fashioned” designation exists. The designation is for railway purposes, has

existed for many decades, and has no conditions attached. The OP documents included a plan set, and a substantial report. In the case of the station, the report was extensive and included a noise management plan. The RA is NZ Railways Corporation.

- 14 The Whitford Landfill has a suite of conditions attached to the designation (and contained in the District Plan). An OP is required for some of the activities depending on the nature of the activities and their location within separate "zones" on the site. I was responsible for preparing the applications for an alteration to designation and new (replacement) consents to increase the life of the landfill, and have in the past prepared OPs for the site. The RA is the (former) Manukau City Council.