BEFORE A BOARD OF INQUIRY
PEKA PEKA TO NORTH ŌTAKI EXPRESSWAY PROJECT

In the matter of the Resource Management Act 1991

And

In the matter of a notice of requirement and resource consent applications by the NZ Transport Agency for the Peka Peka to North Ōtaki Expressway Project

And

In the matter of a notice of requirement by New Zealand Railways Corporation / KiwiRail Holdings Limited (trading as KiwiRail) for the realignment of a section of the North Island Main Trunk railway line through Ōtaki

OPENING SUBMISSIONS ON BEHALF OF THE NZ TRANSPORT AGENCY
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MAY IT PLEASE THE BOARD:

PART A  INTRODUCTION

1. On 18 March 2013 the NZ Transport Agency ("NZTA") lodged resource consent applications and a notice of requirement for a designation ("NoR") in relation to a future section of State Highway 1 ("SH1"), formed to an expressway standard, from Peka Peka to north Ōtaki (the "Expressway").

2. A short section\(^1\) of the North Island Main Trunk Railway ("NIMT") through Ōtaki is proposed to be realigned to accommodate construction of the Expressway; this section is the subject of the NoR lodged by KiwiRail.

3. On 3 April 2013, the Minister for the Environment determined the Expressway and NIMT realignment (together, the "Project") to be of national significance and directed that it be referred to this Board for determination.

4. The purpose of these submissions is to provide an overview of the NZTA's case, including the evidence to be called by the NZTA.

STRUCTURE OF SUBMISSIONS

5. These submissions:

   (a) set out the background and context to the Project;

   (b) describe the statutory framework for the Board's decision;

   (c) summarise the evidence filed in relation to the Project's environmental effects, and the outcomes of expert conferencing, and highlight key issues for determination by the Board;

   (d) identify key relevant district and regional planning documents;

   (e) address other matters relevant to the Board's decision;

   (f) address the conditions proposed to attach to the designations and resource consents, if confirmed and granted;

   (g) address the application of Part 2 of the Resource Management Act 1991 ("RMA") to the proposal; and

   (h) identify the witnesses for the applicants.

\(^1\) The length of the designation sought is approximately 1.2km.
PART B  BACKGROUND AND CONTEXT TO APPLICATIONS

BACKGROUND AND CONTEXT

6. The NZTA has over many years undertaken an extensive process of investigation, design and engagement with iwi, councils, stakeholders and the communities. This has allowed the NZTA to appreciate the issues arising from the Project for those parties and, in many cases, to modify the design accordingly. The input of these parties has been a significant contributor to the nature of the Project as presented to this Board of Inquiry.

History

7. The Project represents the culmination of decades of consideration of how best to provide a safe, efficient, long-term route for traffic moving through the Kāpiti district, one of the fastest growing parts of the Wellington region.

8. Planning for a route through the Kāpiti district started in the 1950s, with the “Sandhills Route” approved in 1956. From 1998 there were a number of studies commissioned (with key reports published in 1998, 2000, 2001, 2003, and 2005, and from 2007 to 2009) in relation to upgrading SH1 through the Kāpiti district.\(^2\)

Pre-lodgement processes

9. In March 2009, the Government Policy Statement on Land Transport Funding identified the Peka Peka to north Ōtaki section of SH1 as part of the Wellington Northern Corridor Road of National Significance (“RoNS”), one of seven major State highways prioritised for enhancements in order to reduce congestion, increase transport efficiency, improve safety, and support economic growth.

10. Since 2009 the NZTA has undertaken an extensive process of investigation, design and community engagement in relation to this proposal.

11. A robust approach has been adopted to develop and assess the Project for consistency with the Project objectives and to respond appropriately to environmental factors. This has involved staged and progressive inputs from technical, environmental, social, cultural, and other specialists, and from iwi, local authorities, stakeholders, and members of the communities through which the Project passes.

12. This iterative and inclusive process has led to a proposal that provides an appropriate balance between the Expressway form and function and integration with the local transport network, environment, and communities.

13. This process since 2009 has included:

   (a) successive phases of public consultation where information has been disseminated and received through consultation brochures, newsletters, open days and meetings as follows:

\(^2\) James EIC, paragraphs 45-55.
(i) 2009: it was announced that investigations relating to a "Kāpiti Expressway" would be continued; further information was provided to the community and feedback sought;

(ii) 2011: consultation on the form, function and location of interchanges and local road connections, and seeking general feedback on the Project;

(iii) 2012: consultation to share proposed mitigation measures and seek community feedback;

(b) a range of other specific meetings with stakeholders including:

(i) Project briefings and workshops with Ngāti Raukawa, Nga Hapū-o-Ōtaki, and Muaūpoko;

(ii) open days for the wider community;

(iii) multiple visits to directly affected landowners by the Project team (which are still ongoing);

(iv) workshops, technical meetings and high level relationship discussions with local authorities;

(v) meetings with the Ōtaki Community Board and statutory agencies, such as the Department of Conservation, Ministry for the Environment, and the New Zealand Historic Places Trust / Pouhere Taonga ("NZHPT");

(vi) meetings with emergency services; and

(vii) numerous other meetings with community, business, and interest groups;

(c) a process of expert assessment and reporting involving 23 primary experts commissioned by the NZTA in a wide range of disciplines;

(d) a specific process in relation to the consideration of alternative routes for the Expressway (led by Ms Sylvia Allan); and

(e) further processes to consider alternative interchanges, local connections, and refinements to the Expressway alignment (led by Mr Tony Coulman).

14. The pre-application processes referred to above provided an opportunity for the NZTA to hear and address issues raised by the community and particular interest groups. For example:

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3 The Kāpiti Expressway is made up of this Project and the MacKays to Peka Peka proposal.
4 A total of 473 submissions were received as part of this consultation process.
5 See Chapter 10, Table 10-5 of the AEE for further information on the consultation and engagement with some of the key stakeholders as part of the Project development process.
6 These experts have in many cases been assisted by other technical specialists and guided by expert peer reviewers.
(a) at Te Horo, in response to feedback from the local community and key stakeholders, the NZTA changed its preferred option for the local road crossing for a bridge connection across the Expressway to the north of Te Horo Beach Road, as this would have less impact on the local community, the Red House Café, other local businesses and dwellings at School Road;

(b) the cultural significance of dunes to the north of Ōtaki led the team to consider further refinements to the northbound on-ramp at north Ōtaki to reduce effects on those dunes;

(c) an at-grade link from Old Hautere Road back to the south Ōtaki interchange was added to the Project design following feedback from the local community and stakeholders regarding concerns around the loss of connectivity;

(d) the NZTA altered the Rahui Road underpass from a pedestrian/cycle only bridge to a vehicular and pedestrian/cycle bridge following community and stakeholder feedback;

(e) the NZTA undertook further improvements to the alignment and grades of the proposed Rahui Road underpass to reduce the bridge height, provide an increased buffer to the former Rahui Milk Treatment Station, and better serve the Ōtaki Māori Racing Club;

(f) identification of the significance of the Mary Crest bush remnant led the NZTA to alter the Expressway alignment to avoid it; and

(g) feedback from the NZHPT helped to inform the development of proposed mitigation for archaeological and heritage values within the Project, which led to the following submission on the Project from the NZHPT:

"NZHPT acknowledges the willingness of NZTA to engage with NZHPT on this project prior to lodgement of the application with the EPA. In relation to the effects on archaeology and built heritage NZHPT is satisfied that avoidance and mitigation offered by the applicant is sufficient to ensure the effects on archaeology and built heritage over the entire route are less than minor. This agreement is in no small part as a result of the meaningful engagement and consultation that occurred prior to lodgement" (emphasis added).  

Lodgement of applications

15. As noted above, in March 2013 the NZTA lodged resource consent applications and a NoR for a designation in relation to the Expressway, and KiwiRail lodged a NoR in relation to the NIMT realignment. These applications and the NoRs were accompanied by an Assessment of Environmental Effects ("AEE") and 23 technical reports.

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7 Submission of the New Zealand Historic Places Trust / Pouhere Taonga (102893), paragraph 15.
16. The applications were notified on 18 May 2013 and there were 58 submissions received. Of those:  
   (a) 21 submitters (36.2%) opposed the proposal in full or in part;  
   (b) 25 submitters (43.1%) supported the proposal in full or in part;  
   (c) eight submitters (13.8%) were neutral; and  
   (d) four submitters (6.9%) had mixed positions.

17. On 12 July 2013 the NZTA filed 23 statements of expert evidence and two other statements of evidence-in-chief. Following receipt of evidence from submitters, on 6 September 2013 the NZTA filed 16 statements of rebuttal evidence.

18. The Board directed that nine expert conferences be undertaken, and experts have also participated in a number of informal conferencing sessions. The conferencing process has allowed the experts to resolve and/or narrow issues between them. For example, as a result of expert conferencing:
   (a) the ecology experts have agreed that an enhanced Mary Crest ecological offset will have significant ecological benefits;
   (b) the groundwater, urban design, and social and community experts were able to reach agreement on all issues within their respective disciplines;
   (c) the planning experts for the NZTA and Councils agreed that, with an appropriate set of conditions, the applications should be approved; and
   (d) the input of planning experts at expert conferencing (and subsequently) has further refined and improved the proposed conditions.

19. The NZTA has continued to work closely with iwi, the Councils, communities, and stakeholders right up to the commencement of this hearing, with a view to resolving outstanding concerns as far as is practicable. By way of example:
   (a) a memorandum of partnership (“MoP”) was signed between the NZTA and Nga Hapū-o-Ōtaki on 2 August 2013;
   (b) the NZTA reached an agreement with the Kāpiti Coast District Council (“KCDC”) regarding the approach to certification of management plans on 27 August 2013 – this was a key issue in the evidence filed on behalf of KCDC;
   (c) the NZTA signed an agreement with KCDC on 27 August 2013 regarding the future process for the revocation of the State highway status of existing SH1.

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8 Summary of Submissions: Peka Peka to North Ōtaki Proposal, June 2013, section 5.1.
9 12 submitters filed evidence.
10 KiwiRail has also filed evidence-in-chief and rebuttal evidence of Ms Pamela Butler.
11 There was one outstanding issue in relation to urban design, relating to council certification of the relevant management plan under the proposed conditions, but this has been resolved subsequently.
12 The MoP is attached to the rebuttal evidence of Mr Rod James as Annexure A.
between Peka Peka and Ōtaki (including the provision of cycling facilities as part of that process);\(^{13}\)

(d) the NZTA has reached agreement with Mr Richard Caughley about design issues relating to the south Ōtaki interchange roundabout, which affects Mr Caughley’s property;

(e) the NZTA has provided information addressing the concerns of the owners of the Arcus Road Water Scheme, which led to that submitter withdrawing its request to appear before the Board; and

(f) post-expert conferencing, the NZTA has continued to work with KCDC and Greater Wellington Regional Council (“GWRC”) to narrow issues and refine proposed conditions.

20. While there are some issues that remain in contention, the NZTA has appreciated the willingness of a wide range of parties (many of whom are no longer involved in the proceedings) to engage in a constructive manner, which has allowed numerous issues to be resolved.

WHAT IS THE NZTA SEEKING TO ADDRESS THROUGH THE PROJECT?

21. As the only south-north route through the Kāpiti district, SH1 currently carries all through traffic, as well as numerous vehicles making local trips. Given population growth trends, and the general increase nationwide in vehicle and trip numbers, existing issues of traffic congestion, delays, and accidents are expected to worsen. The NZTA is seeking to address these current and future issues through this Project.

22. Various strategic studies and investigations have highlighted that the current configuration of SH1 from Peka Peka to Ōtaki gives rise to a number of significant issues:

(a) Road safety is compromised along current SH1 because the road performs a dual function, providing for both local traffic and movements of through-traffic (including heavy vehicles). Over the five year period assessed as part of the Integrated Transport Assessment (2007-11) there were two fatal crashes, 12 serious injury crashes, 36 minor injury crashes and 114 non-injury crashes.\(^{14}\) In addition, at paragraph 50 of his EIC, Mr Dunlop explains that in 2012 there was one fatal crash, three serious injury crashes, eight minor injury crashes, and 36 non-injury crashes.

(b) SH1 experiences severe congestion, in particular through Ōtaki, during weekends and over public holidays. This contributes to unreliable journey times, which affect freight, commuter, and other road movements.

(c) In the event of a serious accident or emergency on SH1 through the Project area, there are limited alternative routes that can be used. If a significant

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\(^{13}\) This agreement is subject to formal ratification by the Council.

\(^{14}\) Dunlop EIC, paragraph 48.
Earthquake or flood were to compromise use of the Ōtaki River Bridge, for example, it would close access along SH1 and require a lengthy detour via SH2 through the Wairarapa.

(d) Shopping activity in the Ōtaki Railway Retail area (such as on-street parking with high turnover, vehicle turning movements, and pedestrians crossing the road) creates conflict with through-traffic and causes significant delays. Equally, high volumes of through-traffic result in a poor environment for pedestrians and shoppers.

(e) There is currently very little provision along SH1 for non-motorised users such as pedestrians and cyclists. That lack of facilities, combined with traffic volumes and high vehicle speeds, makes travelling along the existing SH1 undesirable for most non-motorised road users.

(f) The population of Ōtaki is expected to grow, and increased demand on SH1 would exacerbate the issues it experiences currently. It is also expected that road-based freight movements will increase significantly in the coming years.15

23. It is NZTA’s case that a number of these issues will be addressed through the Project, including by:

(a) significantly improving road safety;16

(b) reducing congestion and average travel times through the Project area;17

(c) providing greater resilience through an alternative route in the event of a natural hazard or road accident;18

(d) reducing traffic flows in the Ōtaki Railway Retail area, which will improve the environment for pedestrians and shoppers;19 and

(e) removing traffic from the existing SH1 and creating new routes to deal with the predicted demand. The Project will also significantly reduce heavy vehicle usage through the Ōtaki Railway Retail area and Te Horo.20

24. In addition, cycle and pedestrian facilities on the existing SH1 will be enhanced through the State highway revocation process, which will improve safety and amenity for non-motorised users.21

15 At paragraph 101 of his evidence-in-chief Mr Dunlop estimates that heavy commercial vehicles are currently between 12% and 14% of the traffic on the existing SH1 and without the Project this is expected to grow to between 17% and 28% by 2031.
16 Dunlop EIC, paragraph 132.
17 Dunlop EIC, paragraph 104-119.
18 Dunlop EIC, paragraph 126-129.
19 Dunlop EIC, paragraph 103.
20 Dunlop EIC, paragraph 101.
21 Dunlop EIC, paragraph 140, Blackmore rebuttal, paragraph 7.
PART C  STATUTORY FRAMEWORK FOR THE BOARD'S DECISION

25. This section sets out the statutory framework for the Board's decision on the NoRs and the resource consent applications. The full statutory provisions referred to in this section are set out in Appendix A.

DESIGNATION SOUGHT BY THE NZTA

26. The NZTA is a requiring authority under section 167 of the RMA.\(^\text{22}\)

27. Should the Board confirm the designation sought by the NZTA to construct, maintain and operate the Expressway (and associated roading aspects), the designation will be included in the Kāpiti Coast District Plan.\(^\text{23}\)

28. The NZTA and KiwiRail have each lodged a NoR, and the NZTA has lodged resource consent applications in respect of the Project as a whole.\(^\text{24}\)

RESOURCE CONSENTS SOUGHT BY THE NZTA

29. The NZTA is seeking 49 regional consents, comprising:

(a) 24 land use consents;\(^\text{25}\)

(b) 19 water permits;\(^\text{26}\) and

(c) 6 discharge permits.\(^\text{27}\)

30. Resource consents under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health may be required for the Project; if so, they will be sought at a later date, prior to construction. This approach has been taken for various reasons, including because the NZTA does not currently own the necessary land to undertake the assessments required for these resource consents.\(^\text{28}\)

31. The resource consent applications are for activities which, taken together, are classified as discretionary activities.\(^\text{29}\)

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\(^{22}\) The NZTA's predecessor, Transit New Zealand, was approved as a requiring authority on 3 March 1994.
\(^{23}\) Under s175(2), should the Board confirm the designation sought, KCDC must, as soon as practicable, include the designation in its operative and proposed district plans.
\(^{24}\) There are no resource consents sought in this application by KiwiRail in relation to the Project. As explained in a joint memorandum of counsel for the applicants to the Board of Inquiry dated 25 June 2013, if consents are granted, the NZTA would be the consent holder and would be bound by the conditions of the consents.
\(^{25}\) The land use consents sought relate to bulk earthworks, vegetation clearance, the construction of bores, the disturbance and reclamation of river beds and the bed of a wetland, the placement of structures in river beds, the removal of structures (culverts in river beds), and the removal of vegetation in river beds and a wetland.
\(^{26}\) The water permits sought relate to temporary damming and diversion of water during construction works (surface water and groundwater), permanent damming and diversion of water (surface water and groundwater), and the take and use of water for construction activities.
\(^{27}\) The permits sought relate to the discharge of sediment and chemical flocculants (during construction) in treated stormwater to water and to land where it may enter water, and the discharge of treated cement water to water and to land where it may enter water.
\(^{28}\) Haldane EIC, paragraph 18; expert planning witnesses agreed at conferencing that 'secondary' resource consents, such as under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health, may be required at a later date (which is not an uncommon practice); see Annexure A of the "Joint Statement of Planning and Conditions Experts", dated 30 August 2013.
\(^{29}\) This accords with the common practice of 'bundling' consents, whereby multiple consent applications (for the same project) are assessed together based on the most stringent activity status.
THE BOARD’S JURISDICTION

32. The Board's jurisdiction in this matter is governed by Part 6AA of the RMA.

33. Section 149P sets out the requirements for the Board in considering the NoRs and resource consent applications.

MINISTER’S DECISION

34. Under section 149P(1)(a) the Board must have regard to the Minister’s reasons for making a direction in relation to the matter.\textsuperscript{30}

SECTION 149G

35. Under section 149P(1)(b) the Board must consider any information provided to it by the EPA under section 149G.\textsuperscript{31}

NOTICES OF REQUIREMENT

36. Section 149P(4)(a) states that the Board must, when considering NoRs, “have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority”.

37. Section 171(1) states that the Board must, when considering the NoRs and any submissions, subject to Part 2 of the RMA, consider the effects on the environment of allowing the requirement, having particular regard to:

(a) any relevant provisions of:
   (i) a national policy statement;
   (ii) a New Zealand coastal policy statement;
   (iii) a regional policy statement or proposed regional policy statement; and
   (iv) a plan or proposed plan;
(b) whether adequate consideration has been given to alternative sites, routes, or methods;
(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

38. Section 149P(4)(b) states that the Board may:

(a) cancel the requirement;
(b) confirm the requirement; or

\textsuperscript{30} The reasons are discussed further in Part F of these submissions below.
\textsuperscript{31} KCDC and GWRC each provided a report under section 149G(3); these are discussed further in Part F below.
(c) confirm the requirement, but modify it or impose conditions on it as the Board thinks fit.

APPLICATIONS FOR RESOURCE CONSENT

39. Section 149P(2) states that the Board must, when considering the applications for resource consent, "apply sections 104 to 112 and 138A as if it were a consent authority".

40. Section 104(1) provides that the Board must, when considering the applications for resource consent and any submissions, subject to Part 2 of the RMA, have regard to:

(a) any actual and potential effects on the environment of allowing the activity; and

(b) any relevant provisions of:

(i) a national environmental standard;

(ii) other regulations;

(iii) a national policy statement;

(iv) a New Zealand coastal policy statement;

(v) a regional policy statement or proposed regional policy statement;

(vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

41. Section 104B is relevant to the inquiry as the resource consent applications are for activities which, taken together, are classified as discretionary activities. Section 104B states that the Board may:

(a) grant or refuse the applications; and

(b) if it grants the applications, impose conditions under section 108.

42. Other provisions relevant to this inquiry include: 32

(a) sections 105 and 107, specifying further considerations and restrictions in relation to consideration and determination of applications for discharge permits; and

(b) section 108, which relates to conditions.

32 Sections 104D, 104E, 104F, 106, 107F, 108A 109, 110, 111, 112 and 138A are not relevant to the present applications.
PART 2 OF THE RMA

43. Ultimately, the Board must exercise an overall broad judgment and determine whether confirming the requirement and granting the resource consents meets the sustainable management purpose of the RMA, as set out in section 5:

5 Purpose

"(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remediating, or mitigating any adverse effects of activities on the environment."

44. That overall broad judgment by the Board is informed by the principles of the RMA as set out in section 6 (matters of national importance), section 7 (other matters) and section 8 (Treaty of Waitangi).

45. Section 6 requires that the Board, in achieving the sustainable management purpose of the RMA, "recognise and provide for" the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development;

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers;

(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;

(f) the protection of historic heritage from inappropriate subdivision, use, and development; and
46. Section 7 requires that the Board, in achieving the sustainable management purpose of the RMA, "have particular regard to":

(a) kaitiakitanga;

(aa) the ethic of stewardship;

(b) the efficient use and development of natural and physical resources;

(c) the efficiency of the end use of energy;

(d) the maintenance and enhancement of amenity values;

(e) intrinsic values of ecosystems;

(f) maintenance and enhancement of the quality of the environment;

(g) any finite characteristics of natural and physical resources;

(h) the protection of the habitat of trout and salmon;

(i) the effects of climate change; and

(j) the benefits to be derived from the use and development of renewable energy.

47. Section 8 requires that the Board, in achieving the sustainable management purpose of the RMA, "take into account" the principles of the Treaty of Waitangi.
PART D  EFFECTS ON THE ENVIRONMENT

48. Under sections 104 and 171 the Board is to have regard to/consider the effects on the environment of confirming the NoRs and granting the resource consents.

49. Section 5(2)(c) also refers to "avoiding, remedying, or mitigating any adverse effects of activities on the environment" as part of the sustainable management purpose of the RMA.

50. The RMA defines "effect" as follows:

"In this Act, unless the context otherwise requires, the term effect includes—

(a) Any positive or adverse effect; and

(b) Any temporary or permanent effect; and

(c) Any past, present, or future effect; and

(d) Any cumulative effect which arises over time or in combination with other effects—

regardless of the scale, intensity, duration, or frequency of the effect, and also includes—

(e) Any potential effect of high probability; and

(f) Any potential effect of low probability which has a high potential impact."

51. The RMA defines "environment" as follows:

"environment includes—

(a) Ecosystems and their constituent parts, including people and communities; and

(b) All natural and physical resources; and

(c) Amenity values; and

(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters"

52. It is important to emphasise that, in considering effects, the Board is to consider both positive and adverse effects that may arise from the Project.

TRAFFIC AND TRANSPORT

53. Traffic and transportation issues are central to this inquiry. The Project objectives are focused on delivering improved traffic and transportation outcomes, both within the immediate Project area, and for the wider Kāpiti district and Wellington region. Many

33 Chapter 2.6 of the AEE.
of the benefits of the Project relate to the Project's positive traffic and transportation effects.

54. As discussed above, the Project is needed because traffic volumes are predicted to increase by 26-36% by 2031, to around 20,000 vehicles per day,\(^{34}\) which will exacerbate issues that already exist in relation to road and rail safety, congestion, and a lack of resilience in the network.

55. The evidence of Mr Dunlop is that the Project will achieve significant safety improvements for users of transport networks, through:

(a) the separation of local traffic from State highway traffic;

(b) improved road standards (relative to the existing SH1); and

(c) an enhanced traffic environment on the local road network, due to:

(i) fewer vehicles using the current SH1;

(ii) the provision of grade-separated local road connections (i.e. bridges) across the Expressway and NIMT; and

(iii) the removal of five of the eight level crossings of the NIMT in the Project area.\(^{35}\)

56. Mr Dunlop's assessment is that 'crash costs' relative to the existing stretch of SH1 will reduce by approximately 60% as a result of the Project.\(^{36}\)

57. The Project will also result in reduced and more reliable travel times along key routes, and reduced traffic congestion.\(^{37}\)

58. The Project will improve route security and resilience of the road network in the event of a significant earthquake, road accidents, or other disruption, by providing a high-quality alternative route between Peka Peka and Ōtaki (including two new bridge crossings of the Ōtaki River).\(^{38}\)

59. Traffic associated with construction of the Expressway has the potential to affect operation of the at-grade intersections between the existing SH1 and Ōtaki Gorge Road, Old Hautere Road and School Road. Mr Dunlop's evidence is that this will be managed effectively through the Construction Traffic Management Plan ("CTMP") and associated conditions which provide for minimum standards of intersection performance.

60. Connecting the Expressway and the rest of the Project with existing transport networks is proposed to be achieved through implementation of a Network Integration Plan ("NIP").

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\(^{34}\) Dunlop EIC, paragraph 92.
\(^{35}\) Dunlop EIC, paragraph 189.
\(^{36}\) Dunlop EIC, paragraph 132.
\(^{37}\) Dunlop EIC, paragraph 184.
\(^{38}\) Brabhaharan EIC, paragraphs 17, 33 - 43, 153 and Dunlop EIC, paragraphs 41, 126, 129, Table 5.
Results of expert conferencing

61. Mr Dunlop and Mr Coulman took part in expert conferencing with Mr Wignall (on behalf of KCDC) and Mr Mellor (for the Rational Transport Society), and signed a joint witness statement identifying points of agreement and disagreement between them.\(^{40}\)

62. The experts reached agreement on most traffic and transportation issues, including:

   (a) the appropriate process for developing the CTMP, NIP, and Site-Specific Traffic Management Plans ("SSTMPs");

   (b) the content of the CTMP, NIP, and SSTMPs; and

   (c) a high-level assessment of the Project against the outcomes sought in the Regional Land Transport Strategy.

63. The limited areas of disagreement between the experts relate to:

   (a) appropriate performance standards (or 'Levels of Service' ("LOS");)

   (b) whether it is necessary and appropriate to specify a performance standard for local roads and intersections once the Project is operational; and

   (c) design in relation to the Mary Crest rail crossing.

64. Mr Coulman also took part in expert conferencing with Mr Tim Kelly (for Mr and Mrs Caughley), and a separate joint statement identifies points of agreement and disagreement in relation to the need for (and land requirement associated with) a fourth arm off the proposed south Ōtaki interchange roundabout.\(^{41}\)

65. The key agreement between these experts was that the final design of the south Ōtaki interchange roundabout will be generally in accordance with the plans attached to the joint statement, subject to flexibility required for detailed design (including a safety audit). Ongoing consultation is recommended between the NZTA, KCDC, GWRC, and the Caughleys during the detailed design process.

Other evidence

66. Other submitter witnesses will give evidence relating to traffic and transport.

67. Various submitters, and witnesses including Mr Schofield for KCDC and Mr Morgan for the Rational Transport Society, seek to ensure that provision is made for cyclists as part of the Project.\(^{43}\) The NZTA and KCDC have reached an agreement about the

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\(^{39}\) Mr Coulman is an expert witness for the NZTA on design matters that relate to transportation and rail, as well as providing evidence on other Project matters including consultation, property access issues, and the consideration of alternatives.

\(^{40}\) The "Joint Statement of Traffic and Transportation Experts", dated 20 August 2013.

\(^{41}\) The "Joint Statement on Ōtaki Interchange" dated 28 August 2013.

\(^{42}\) Beals rebuttal, Annexure A, proposed designation condition 1.

\(^{43}\) Schofield evidence, paragraph 117; Morgan evidence, paragraphs 1-4. Mr Morgan also seeks that NZTA’s pedestrian guidelines be applied to the Project, which Mr Dunlop confirms at paragraph 40 of his rebuttal evidence. A number of submitters also sought provision for cyclists, including Kāpiti Cycling Incorporated (102873), Ōtaki Community Board (102894), and Greg Elliott – the Lorax Partnership (102896).
State highway revocation process, which specifically provides for a cycle facility to be created along the existing SH1.  

68. Other witnesses and submitters question the transport-based rationale for the Project, or consider the benefits to be overstated by the NZTA’s witnesses. They include the following:

(a) Ms Paula Warren, on behalf of the Rational Transport Society, raises ‘induced traffic’ effects as an issue. Vehicle trip numbers are expected to increase by about 1% as a result of the Project, which is not considered by Mr Dunlop to be a material adverse effect.

(b) Mr Greg Elliott asserts that previous predictions about increasing traffic volumes have not eventuated, that existing safety issues could be addressed in other ways, and that public transport options will be disadvantaged by the Project. Mr Dunlop considers that:

(i) the predicted traffic figures are robust;

(ii) the Expressway is needed to remove the current conflict between traffic passing through the area and traffic making local trips (while acknowledging that some other options exist to improve current safety, though to a lesser degree than the Expressway); and

(iii) users of public transport will also benefit from the Project, through improved accessibility to services, and other efficiencies.

(c) Mr Paul Young on behalf of Generation Zero suggests that the economic effects of climate change do not appear to have been taken into account in relation to transport modelling. Mr Dunlop notes that a number of inputs relating to fuel pricing and vehicle efficiency have been used for the transport modelling and future forecasting.

(d) In challenging the Project’s ‘benefit-cost ratio’, Dr Michael Pickford contends that route reliability and security improvements as a result of the Project are likely to be relatively small, and that travel time delays during construction should be counted as a cost against the Project. Mr Dunlop considers these arguments misconceived, as he clarifies in his rebuttal evidence.

44 Blackmore rebuttal, paragraph 12 and Dunlop rebuttal, paragraphs 33 - 34. Such facilities also include cycling and footpaths on all cross-corridor bridges proposed as part of the Project. Curtain, paragraph 32(a) and Coulman EIC, paragraphs 27, 29, 82 and 219.


46 Dunlop rebuttal, paragraph 46-50.

47 Elliott evidence, page 3.

48 Dunlop EIC, paragraph 226.

49 Dunlop rebuttal, paragraph 55.

50 Dunlop rebuttal, paragraph 57.

51 Young evidence, paragraph 15-18.

52 Dunlop rebuttal, paragraph 63.

53 Pickford evidence, paragraphs 56-57.

54 Dunlop rebuttal, paragraph 65.
69. A number of submitters expressed a desire for the Project to include an interchange at Te Horo.\textsuperscript{55} The principal reason why no interchange is proposed at Te Horo, as discussed in the planning evidence of Mr Coop, is that such access would create growth pressures in areas where growth is not anticipated or provided for by the district planning framework.\textsuperscript{56} Providing an interchange at Te Horo would therefore not achieve the NZTA’s Project objective of aligning the Project with current and future land settlement patterns.

The NZTA’s case on the issues before the Board

70. The Project will bring significant transport and associated benefits at a local, regional, and national level, and will contribute to a safer, more effective, and more efficient transport network. The potential adverse effects of construction traffic will be temporary, and appropriately managed through management plans and other conditions.

71. In relation to the issues in dispute among the experts, the NZTA’s case is that:

(a) it is not reasonable to require the NZTA to achieve LOS C (or better) on local roads and junctions during their use by Expressway-related construction traffic, because certain intersections do not perform to that standard currently;\textsuperscript{57}

(b) the Project is predicted to improve the performance of local roads and intersections, such that they will achieve LOS C (or better), but it is inappropriate to enshrine this as a conditioned requirement because factors outside the NZTA’s control may make it impossible to achieve;\textsuperscript{58} and

(c) the Project does not significantly affect the existing safety issue relating to the Mary Crest rail crossing, which is unrelated to the Project and is being worked through by the various parties in any event.\textsuperscript{59}

GEOTECHNICAL RESILIENCE

72. Mr Pathmanathan Brabhaharan is the only expert witness to present evidence on geotechnical resilience. The geotechnical conditions along the route have been closely considered in the development of the Project, which is important given that the existing routes into Wellington have poor resilience, meaning that the Wellington region is likely to be isolated in the event of a large earthquake.

73. The Expressway, in conjunction with the Transmission Gully project, will considerably reduce this risk.\textsuperscript{60}

\textsuperscript{55} Including the submissions of Sue Ineson (102871), Caitlin Taylor (102879), Ian Cassels (102890), Paul Pretty (102891), and John Harper (102851).
\textsuperscript{56} Coop EIC, paragraph 151.
\textsuperscript{57} Dunlop rebuttal, paragraph 10 and 19.
\textsuperscript{58} Dunlop rebuttal, paragraph 23.
\textsuperscript{59} Dunlop rebuttal, paragraph 25 - 31.
\textsuperscript{60} Brabhaharan EIC, paragraph 43.
GROUNDWATER AND GROUND SETTLEMENT

74. Mr Brabhaharan’s evidence also addresses groundwater effects. His view is that there is the potential for minor adverse groundwater effects to arise from the Project works, and that these will be appropriately addressed through various mitigation measures.61

75. Some ground settlement is anticipated in discrete areas (where there are no buildings), due to groundwater drawdown, fill embankments, or the construction of bridge foundations. This will be monitored and managed through well accepted construction techniques. Settlement of adjacent facilities such as the existing SH1 and NIMT railway line will be monitored by regular surveying of settlement stations installed for that purpose during construction.62

76. Effects on local water abstraction are unlikely to be significant. However, precautionary conditions are proposed which will ensure that there is no permanent change to the ability of any existing bore owners to abstract water from their existing groundwater supply bores, and that any short-term effects are remedied through replacement supply.63

Results of expert conferencing

77. Mr Brabhaharan took part in expert conferencing with Mr Brydon Hughes (on behalf of KCDC), and the experts signed a joint witness statement.64

78. Mr Brabhaharan and Mr Hughes reached an agreed position on all groundwater issues. The experts agreed that the Project is unlikely to have significant effects on groundwater, but that it would be prudent to monitor groundwater levels during construction and that this requirement should be set out and reported through a specific Groundwater Monitoring Plan.65

Other issues raised in evidence

79. Ms Gyllian Hart and Mr Barry Hart, and Mr John Camm and Ms Christine Stone, express concern in their evidence about potential effects on bores used on their respective properties.66 Again, the proposed conditions require monitoring and for an alternative supply to be provided, in the unlikely event of any adverse effects.67

The NZTA’s case on the issues before the Board

80. The Project design and proposed mitigation in relation to geotechnical engineering and groundwater will provide appropriate safeguards for the management, control and
mitigation of any ground settlement or groundwater effects arising from the construction and operation of the Project.

URBAN DESIGN

81. The Project spans a predominantly rural landscape, and passes through settlements at Te Horo and Ōtaki. Mr Bruce Curtain identifies that, from an urban design perspective, the key issues for the Project relate to underlying urban form and land use patterns, amenity, community severance, connectivity (with and across the Expressway), and effects on the existing SH1.68

82. It is the evidence of Mr Curtain that the urban design effects of the Project are positive. This is because:

(a) the Project has been carefully designed to respond to potential issues, in accordance with best practice urban design principles, as reflected in the Urban and Landscape Design Framework ("ULDF");

(b) the existing urban form and land use patterns are not significantly disrupted, as the Expressway broadly follows the existing rail corridor on what is predominantly rural land;

(c) the separation of the Expressway corridor from the Ōtaki town centre and other settlements improves the underlying urban environment; and

(d) the potentially negative effects of the Project in the urban design context (such as severance effects) have largely been avoided or remedied through design, or will be mitigated to an acceptable level.

Results of expert conferencing

83. Mr Curtain took part in expert conferencing with Ms Julia Williams (on behalf of KCDC), and they prepared a joint witness statement.70 There was broad agreement between Ms Williams and Mr Curtain on urban design issues, and some changes to the conditions are proposed as a result.71

84. The only area of outstanding disagreement identified was the issue of certification of the Landscape and Urban Design Plan ("LUDP"), which has since been resolved between the NZTA and KCDC.72

Other issues raised in evidence

85. Rahui Enterprises Limited is concerned about the effects of the Rahui Road underpass (Bridge 4), and in his evidence for that submitter Mr Bryce Holmes queries

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68 Curtain EIC, paragraph 16.
69 Curtain EIC, paragraphs 17 - 19.
71 For example, changes have been made to proposed designation conditions 25, 75, and 81.
72 James rebuttal, paragraph 8. The LUDP is proposed to be certified by KCDC under proposed designation condition 74. See Beals rebuttal, Annexure A.
whether the "urban design purposes of Bridge 4 could instead be accommodated through the County Road intersection".73

86. Mr Curtain's opinion is that removing the proposed bridge from the Project and instead requiring traffic to use the existing County Road intersection would not provide the level or diversity of connectivity, or the level of amenity, that Ōtaki residents currently enjoy.74

87. Nonetheless it is acknowledged that the potential for construction works to affect this property needs to be the subject of particular consideration by the NZTA and its contractors. Enhanced mitigation (such as a screen fence and planting) and ongoing consultation with the landowner through the detailed design and construction phases are among the measures proposed to mitigate the adverse effects on this property.75

The NZTA's case on the issues before the Board

88. The Project has been appropriately designed to integrate with and complement the existing urban form, and the conditions proposed will ensure that this continues through the detailed design process.

LANDSCAPE AND VISUAL

89. The Project will introduce changes to the landscape of a varying nature and scale along its route. The evidence of Mr David McKenzie, however, is that through sensitive design, the landscape and visual effects of the Project will be successfully mitigated to an acceptable level.76

90. Various measures have been incorporated into the design of the Project to this end. Key in this process has been development of the Project's ULDF, which provides corridor-wide design principles and objectives and thus 'sets the scene' for effective design and mitigation measures.77

91. The LUDP will be an important vehicle for input by stakeholders into the Project's finer design details, including in areas such as the Pare-o-Matangi reserve and the 'gateway' zones to Ōtaki.78

92. Native plants and bunds are proposed to screen the Expressway visually; over 38 hectares of land will be planted in native grasses, shrubs, and trees as part of the measures to mitigate the Project's landscape and visual effects.79

73 Holmes evidence, paragraph 19.
74 Curtain rebuttal, paragraph 18. Mr Coulman also notes at paragraph 165 of his EIC that there was considerable public feedback provided during consultation about the importance of maintaining a vehicular connection at Rahui Road.
75 For example, recommendations for proposed designation conditions 7, 25A, and 75 in the EIC of Mr Holmes have been adopted. See also proposed designation conditions 50 and 55 in Annexure A of Ms Beals' rebuttal evidence.
76 McKenzie EIC, paragraph 159.
77 McKenzie EIC, paragraph 39 and Beals rebuttal, Annexure A, proposed designation condition 76.
78 Beals rebuttal, Annexure A, proposed designation condition 75.
79 McKenzie rebuttal, paragraph 32(a).
Results of expert conferencing

93. Mr McKenzie took part in expert conferencing with Ms Williams, and a joint witness statement identifies points of agreement and disagreement between the witnesses.\textsuperscript{80}

94. Ms Williams and Mr McKenzie reached agreement in a number of areas, including that:

(a) the assessment methodology used is appropriate to the scale and extent of the urban and landscape context of the Project;\textsuperscript{81}

(b) there are no outstanding natural landscapes or features within or adjacent to the designation corridor;\textsuperscript{82} and

(c) it is necessary to incorporate the L-shaped block of land next to the Pare-o-Matangi reserve, associated with the Ōtaki Motel, into the reconfigured reserve to mitigate the Project’s effects.\textsuperscript{83}

95. The experts disagreed on whether it was necessary for KCDC to certify the LUDP, which is a matter that has since been resolved. The residual outstanding areas of disagreement are:

(a) whether further mitigation is required along the ‘Te Horo Straight’, between NIMT rail corridor and existing SH1 (and thus outside the proposed Expressway designation);

(b) whether further mitigation sought by Ms Williams associated with the existing SH1 corridor is necessary (and, if so, whether it can lawfully be imposed through a condition – the view of the expert planning witnesses is that such a condition would not be appropriate\textsuperscript{84});

(c) whether the mitigation proposed for properties east of designation along the ‘Te Horo Straight’ is appropriate;

(d) whether ‘landlocked sites’ identified by Ms Williams can and should be used for landscape mitigation; and

(e) whether the required period of maintenance for landscape planting is appropriate.

\textsuperscript{80} The “Expert Conferencing Joint Witness Statement to the Board of Inquiry – Landscape and Urban Design”, dated 20 August 2013.
\textsuperscript{81} The “Expert Conferencing Joint Witness Statement to the Board of Inquiry – Landscape and Urban Design”, dated 20 August 2013, paragraphs 7 - 8.
\textsuperscript{82} The “Expert Conferencing Joint Witness Statement to the Board of Inquiry – Landscape and Urban Design”, dated 20 August 2013, paragraph 18.
\textsuperscript{83} The “Expert Conferencing Joint Witness Statement to the Board of Inquiry – Landscape and Urban Design”, dated 20 August 2013, paragraph 24.
\textsuperscript{84} Beals rebuttal, Annexure A, proposed designation condition 75 and sections 2.9.8 - 2.9.9 of the Section 42A Report (First Edition).
Other issues raised in evidence

96. The evidence of Mr Schofield included some suggested amendments relating to landscape conditions that relied on the evidence of Ms Williams. Except where related to the issues in dispute, these recommendations have generally been adopted in the proposed conditions, as explained in Annexure A to the rebuttal evidence of Ms Beals. For example, recommendations for designation conditions 25, 25B, 75, 76, and 78 in the EIC of Mr Schofield have been adopted so far as they relate to issues not in dispute, and with additional changes agreed at expert planning conferencing, and other minor practical changes.

97. As noted above, Mr Holmes on behalf of Rahui Enterprises discusses the potential amenity effects of the Rahui Road underpass on the former Rahui Milk Treatment Station. A combination of a screen fence and planting is proposed between the Expressway and the Former Rahui Milk Treatment Station, and various enhancements to the proposed conditions suggested by Mr Holmes have been incorporated.

The NZTA's case on the issues before the Board

98. The Project’s design and the proposed conditions will appropriately mitigate adverse landscape and visual effects. In particular:

(a) adverse visual effects on properties to the west of existing SH1 along the Te Horo Straight are acceptable, given:

(i) the screen planting that is proposed along the earthworks batters of the Expressway;

(ii) the degree of separation to the Expressway, and the intervening views of existing SH1 and the NIMT railway line; and

(iii) the existing screening that currently blocks views from a number of those properties towards SH1 and further to the east;

(b) properties to the east of the Expressway along the Te Horo Straight will be screened by a proposed bund, screen planting along the eastern edge of the designation, and restoration of existing shelterbelts;

(c) the 'landlocked sites' identified by Ms Williams (many of which are in private ownership, with a current use that will be unaffected by the Project) are not necessary for the NZTA to acquire or enhance in order to mitigate the Project’s landscape effects, and

(d) all landscape plantings – as noted above, mitigation comprises approximately 38 hectares of native plants – are proposed to be maintained for a period of two years.

85 For example, recommendations for designation conditions 25, 25B, 75, 76, and 78 in the EIC of Mr Schofield have been adopted so far as they relate to issues not in dispute, and with additional changes agreed at expert planning conferencing, and other minor practical changes.
86 For example designation conditions 7, 25A, 55, and 75 have been amended to specifically address Rahui Enterprises concerns.
87 McKenzie rebuttal, paragraphs 18-23.
88 McKenzie rebuttal, paragraphs 24-30.
89 McKenzie rebuttal, paragraph s 31-33.
years (for terrestrial plants) or five years (for riparian plants) to ensure effectiveness.90

FLOODING EFFECTS

99. The Project crosses four main catchments and numerous smaller catchments, which currently flood from time to time. The Expressway will therefore be exposed to the same flood hazards as the existing SH1, which will require it to be elevated above existing ground levels to achieve the required level of service.

100. As an elevated transport structure, the Project has the potential to interfere with the natural drainage function of the watercourses along its length. Hydrological modelling has therefore played a key part in the Project’s design, with a view to achieving ‘hydraulic neutrality’, i.e. not exacerbating the existing flood situation.91

101. Designing the Project to respond appropriately to the likely volume and paths of flood flows has been a complex process. Nonetheless, it is the evidence of Dr Grant Webby (in respect of the four main watercourses crossed by the Project) and Mr Warren Bird (in respect of the smaller watercourse crossings) that, in practical terms, hydraulic neutrality has been achieved through the Project design process; in other words, the Project’s effects on existing flood hazards will be minimal and acceptable.92

102. The Project slightly reduces some existing flooding risks in populated areas, and slightly exacerbates risks in others.93 Those areas where effects will be greater are uninhabited areas of pasture, and the effects will be rare and temporary.94 Effects on populated areas will generally be no worse than in the existing situation.95

103. To the extent that the flooding effects of the Project result in any quantifiable loss or ‘injurious affection’ on land adjoining the Project, compensation is payable under the Public Works Act 1981 ("PWA").96

104. The nature of the effects that have been modelled can be assured because:

(a) the modelling process has been conservative and robust, taking into account the predicted effects of climate change on flooding events out to 2130 (well beyond any published guidance on such effects),97 and

(b) the proposed conditions require further modelling and sensitivity tests to be undertaken, specific performance standards to be met, and a detailed peer review to be carried out.98

90 In accordance with the NZTA’s Standard Specification for Highway Landscape Treatments (v2 – 10 July 2013).
91 ‘Hydraulic neutrality’ is not a requirement of the Operative or Proposed District Plans, however; Coop EIC, paragraph 109.
92 Webby EIC, paragraph 257 and Bird EIC, paragraph 131.
93 Updated Project Drainage Plans are appended to Dr Webby’s rebuttal evidence as Annexure B. The light blue areas show existing flood areas eliminated by the Project; the pink areas show additional areas of flooding as a result of the Project (in the modelled 1% AEP event).
94 Webby rebuttal, Annexure C - table describing land affected by flooding as a result of the Project.
95 Webby EIC, paragraph 18.
96 Section 60, PWA. Relevant information in respect of land ownership is set out in Mr Blackmore’s rebuttal at paragraphs 18-20 and in Annexure A.
97 Webby rebuttal, Annexure A, section 2.6.
105. In their evidence, Ms Sharyn Westlake (on behalf of GWRC) and Mr Robert van Bentum (on behalf of KCDC) raise a number of technical issues in relation to the design philosophy and methodology for assessing the Project's effects on flooding risk. Mr van Bentum also expresses the view that the Project has the potential to cause "significant" flooding effects.99

Results of initial expert conferencing

106. Dr Webby, Mr Bird, and Dr Jack McConchie took part in expert conferencing with Ms Westlake on 22 August 2013, and the experts signed a joint witness statement.100 Mr van Bentum was unable to take part in this initial expert conferencing.

107. Many of the issues raised in Ms Westlake's evidence were resolved. The experts agreed that further modelling would take into account climate change effects to 2130, with appropriate sensitivity tests, which provided a pragmatic solution to Ms Westlake's queries about the modelling methodology. The experts also agreed on the appropriateness of the detailed design of the Project being peer reviewed.

108. Other matters agreed at conferencing include that:

(a) it is important for GWRC to retain access to the banks of the Waitohu Stream and the Ōtaki River, so that flood protection works can be carried out;101 and

(b) while it may be appropriate for the Project's residual flooding effects (ie those that the engineering design has been unable to avoid) to be remedied or mitigated in some other way, that is outside of the expertise of the experts.102

Rebuttal evidence

109. In their rebuttal evidence Dr Webby, Dr McConchie, and Mr Bird clarify a number of unresolved matters relating to their flood assessment methodology and effects assessment.103

110. Dr Webby also summarises the additional flooding assessments carried out, taking into account the possible effects of climate change to 2130. These investigations confirmed Dr Webby's previous conclusions with respect to floods adjusted for possible climate change to 2090; in his view, effects are minimal and acceptable.104

Results of second expert conferencing

111. Further conferencing took place between the experts, including Mr van Bentum, on 12 September 2013 and the experts signed a revised joint witness statement.105 Mr van Bentum agreed with a number of positions reached by the experts in the prior joint conferencing.

98 Beals rebuttal, Annexure A, proposed consent condition SW.2.
99 Van Bentum evidence, paragraph 66.
101 A condition is proposed to reflect this; see the table in Appendix D.
102 The NZTA's case is that compensation under section 60 of the PWA is payable, if the flooding effects of the Project are material; Blackmore rebuttal, paragraphs 18-20. This section of the PWA is set out in Annexure A.
103 A number of issues were essentially unresolved because Mr van Bentum had not attended the initial conferencing.
104 Webby rebuttal, paragraph 200.
witness statement. This included an agreement that modelling taking into account climate change effects to 2130, with appropriate sensitivity tests, provides a pragmatic solution to Mr van Bentum’s queries about the modelling methodology.\textsuperscript{106}

112. The experts agreed that condition SW.2(c)(ii) should be amended so that this clause refers to the predicted maximum extent and peak levels of flood inundation due to the Project being contained within 50mm of the pre-development situation for the Mangapouri Stream Catchment.

113. Mr van Bentum considers there is “further opportunity for engineering mitigation of flooding effects in some locations”.\textsuperscript{107} Dr Webby and Mr Bird consider that the engineering design appropriately mitigates the flooding effects of the Project; nonetheless, the proposed conditions provide for additional work at the detailed design stage, which will be subject to a robust peer review process.

114. Mr van Bentum also considers that where there are residual flooding effects “then the designation should be extended to encompass the flooding areas.”

Other issues raised in evidence

115. Mr and Ms Hart, and Mr Camm and Ms Stone, live near the Mangaone Stream in Te Horo, which has flooded regularly in recent years. They are understandably concerned to ensure that the Project will not worsen the effects of flooding on their property.\textsuperscript{108}

116. Dr Webby explains in his rebuttal that care has been taken in designing the Project by reference to the Mangaone Stream and alluvial fan, with the aim of ensuring that downstream effects as a result of the Project will be no worse than in the current situation.\textsuperscript{109}

117. Dr Boothroyd for KCDC and GWRC queries the methodology for and effects of using temporary causeways, constructed of river-won materials, to build the bridges over the Ōtaki River and Waitohu Stream. Those matters are clarified through Dr Webby’s rebuttal evidence.\textsuperscript{110}

The NZTA’s case on the issues before the Board

118. The methodology used to assess the flooding effects of this Project has been robust; in particular, the consideration of possible climate change effects to 2130 in the modelling is unprecedented in this country, to the best of counsel’s knowledge.

\textsuperscript{106} The statement at paragraph 2.2.14 of the Section 42A Report (Second Edition) that “the key question for the Board is whether it considers it has sufficient information to suitably understand the potential nature of the flooding... effects of the Project” was made prior to this agreement being reached in the (revised) Joint Statement of Hydrology and Stormwater Experts.

\textsuperscript{107} (revised) Joint Statement of Hydrology and Stormwater Experts, Annexure B.

\textsuperscript{108}Hart evidence, paragraph 4 - 17 and Camm and Stone evidence, page 2. Other submitters also raised concern about potential flooding effects in relation to the Mangaone Stream, including Wayne Jarvis (102869), Paul Howard (102876), and Barry Lucinsky (102849).

\textsuperscript{109}Webby rebuttal, paragraph 165.

\textsuperscript{110}Webby rebuttal, paragraphs 16 and 129 - 134.
119. For the most part, the Project will not exacerbate existing flooding risks, and therefore will achieve ‘hydraulic neutrality’. Hydraulic neutrality is not a concept referred to in the operative district plan, so no particular rule is breached or obligation on the NZTA triggered through there being several areas of increased flooding risk. Rather, those areas of additional flooding are adverse effects to be considered by the Board as part of its overall assessment.

120. The NZTA’s case is that:

(a) those effects are acceptable, without additional mitigation, because of their limited area, their rarity, the temporary nature of the effects, and the fact that the affected areas are in pasture; and

(b) if that is not correct, and the effects are a material, quantifiable, ‘injurious affection’ on the adjoining land, then the effects will be compensated through the PWA process.

STORMWATER

121. The evidence of Mr Bird is that the design standards for the Project satisfy the stormwater requirements of GWRC and KCDC, and of the NZTA and KiwiRail. The Project has been designed to avoid potential adverse stormwater effects, such as increased flooding due to runoff and constraints on the passage of flood flows, as well as the discharge of contaminated stormwater.

122. The Project will bring about a net improvement in the level of contaminants entering local stream and river systems, as the Expressway design incorporates formal treatment of run-off, which is lacking on the existing SH1.

123. Mr Bird’s evidence is also that the erosion and sediment control measures proposed to be used during construction – originally developed from the conditions imposed on the MacKays to Peka Peka project, but subsequently changed by agreement between the experts – will meet best practice standards and accord with GWRC and NZTA requirements.

124. These measures will limit the amount of sediment entering streams and, consequently:

(a) water quality effects during construction are predicted to be minor; and

(b) drainage devices will function properly because sediment blockages will be appropriately avoided or mitigated.

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111 Coop EIC at paragraph 195. See also section 2.14.18 of Section 42A Report (First Edition).
112 The concept is referred to in the proposed district plan, but only to the extent that a proposal in a ‘flood storage’ or ‘fill control’ area that exacerbates flooding levels must be assessed as a discretionary activity.
113 Bird EIC, paragraph 27.
114 Bird EIC, paragraph 16 - 17.
115 Bird EIC, paragraph 52.
116 Bird EIC, paragraph 27(b).
117 Bird EIC, paragraphs 120(c), 201 and Larned EIC, paragraph 17.
118 Bird EIC, paragraph 14, 20.
Results of expert conferencing

125. Mr Bird and Dr McConchie took part in expert conferencing with Mr Gregor McLean (on behalf of GWRC) on 22 August 2013, and those experts signed a joint witness statement. Mr van Bentum was unable to be present for the initial conferencing session, but signed an un-amended joint witness statement following the second expert witness conference.

126. Matters agreed at conferencing included that:

(a) chemical treatment should be applied to all sediment ponds, unless demonstrated by testing to be unnecessary; and

(b) an alternative approach was required to be reflected in the proposed conditions for monitoring water turbidity in watercourses (used as a proxy for the effectiveness of erosion and sediment control devices).

127. Mr Bird and Dr Scott Larned took part in additional expert conferencing with Dr Ian Boothroyd (on behalf of GWRC and KCDC) and Mr McLean in relation to turbidity monitoring. Those experts signed a joint witness statement on 19 September 2013. The experts agreed on an altered regime for turbidity monitoring, “based on regular and rigorous inspection of ESC measures, in conjunction with a cascade of follow-up measures in response to rainfall and turbidity triggers.”

128. Through these three expert conferencing sessions, agreement has been reached between Mr Bird, Mr McLean, and Mr van Bentum (and Dr Larned and Dr Boothroyd) on all issues relating to stormwater and erosion and sediment control.

Other issues raised in evidence

129. At paragraph 49 of his evidence, Mr Hughes questions whether the effects of infiltration of road runoff have been adequately assessed. Mr Bird considers that contaminants of concern for groundwater in New Zealand are not significant in road runoff.

The NZTA’s case on the issues before the Board

130. The Project design and proposed conditions appropriately mitigate the stormwater and erosion and sediment control effects of the Project.

TERRESTRIAL ECOLOGY

131. The evidence of Mr John Turner is that most of the area affected by the Project is a highly modified landscape supporting little or no indigenous vegetation and no
significant habitat of indigenous fauna for terrestrial or wetland species. The Project's effects on significant vegetation and habitat are therefore limited in their extent.\footnote{Turner EIC, paragraph 21.}

132. Effects on a significant ecological area at Mary Crest have been avoided through the re-alignment of the Expressway during the route refinement process.\footnote{Turner EIC, paragraphs 13, 39.}

133. A few areas of significant vegetation have not, however, been avoided despite further changes to the road alignment and Project footprint. The affected areas are the edges of three stands of native bush, resulting in a total loss of c.0.45ha, and the greater part of the Ōtaki Railway Wetland, resulting in a total loss of c.0.5ha of wetland.\footnote{Turner EIC, paragraph 41-45.}

134. To account for the loss of native bush it is proposed either to:

(a) protect an existing area of bush at Cottle’s Bush (a minimum area of 1.0ha is considered by Mr Turner to be an effective offset,\footnote{Recently, the High Court in \textit{Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council and West Coast Regional Council} [2013] NZRMA 293 (HC) clarified that offsets should not be considered as mitigation of the adverse effects of a proposal, but as a benefit of a proposal that can be considered as part of the overall assessment of an application. At paragraphs [123] and [124], Fogarty J did not find that mitigation considerations should have a greater weighting that offset considerations, as “it all depends on the context, including the degree of mitigation and the scale and qualities of the offset”.\footnote{Turner EIC, paragraph 28.} although the area proposed to be protected is approximately 1.4ha), which is not legally protected and is currently recovering from grazing and weed infestation;\footnote{Turner EIC, paragraphs 28.} or

(b) plant at least 1.5ha of new bush on the Hautere Plains between Mary Crest and the Ōtaki River.\footnote{Turner EIC, paragraph 16, Turner rebuttal, paragraph 23 and Beals rebuttal, Annexure A, proposed consent conditions G.34, G.43 and section 6.1 of the Draft EMP.}

135. To offset the loss of wetland, it is proposed to create two new areas of wetland within the designation (total area c.1.1ha). The area of the Ōtaki Railway Wetland remaining following construction (c.0.3ha) will be also be restored.\footnote{Turner EIC, paragraphs 15, 68 - 78 and Beals rebuttal, Annexure A, proposed designation condition G.34.}

136. It is the evidence of Mr Turner that, with these proposed offsets, the Project will give rise to no net loss in ecological values in respect of terrestrial ecology. Indeed, taking into account the enhanced Mary Crest offset package, as well as substantial native landscape planting proposed (both described below), Mr Turner’s view is that the Project will give rise to significant ecological benefits.\footnote{Turner rebuttal, paragraphs 14, 32 and 105.}

**Enhanced Mary Crest offset**

137. Since the exchange of evidence-in-chief, a key issue discussed between the experts has been a proposal for an enhanced offset package at Mary Crest. The enhanced proposal consists of different ecological components (riparian, wetland, attenuation basin, and surrounding swamp forest), which would occupy the entire area within the proposed designation at Mary Crest.\footnote{Turner rebuttal, paragraph 44. In all, around 15ha of native trees and shrubs are proposed to be planted (in addition to approximately 23ha of native grasses) as landscape mitigation, as discussed further below (Turner
138. All experts agree that implementing the enhanced Mary Crest proposal would provide significant ecological benefits. The experts advising KCDC and GWRC all agree that the enhanced Mary Crest proposal, in addition to other mitigation proposed (such as the wetland offset noted above, and riparian planting discussed below), and in conjunction with appropriate consent conditions, would appropriately account for loss or alteration of wetland and waterway habitat due to the Project.  

139. The NZTA has committed to implementing the enhanced Mary Crest proposal as part of the Project.

**Clarification of landscape planting**

140. Ms Myers and Ms Marks sought in evidence an offset for the loss of 40 mature native trees within the designation. As set out in Mr Turner's evidence the loss and the effect of appropriately 40 mature native trees was assessed as low. Offsetting was therefore not proposed. Mr Turner clarified through his rebuttal evidence that, as part of landscape planting, it is proposed to plant a substantial part of the Project area (c.15ha) with native trees and shrubs (as well as around 23ha of native grasses). Proposed condition 78 has been amended to require planting of at least 1,000 totara trees, 100 titoki trees and 100 matai on the Hautere Plains as part of these mitigation works; this will mean, in effect, that the 40 mature native trees lost due to the Project will be replaced 30 times over. These plantings were not included in Mr Turner's calculations for ecological offsetting, but he considers that they will provide a substantial boost to the biodiversity, and will significantly increase connectivity, along the Expressway corridor.

141. It is Mr Turner's opinion that, when the above landscape planting is combined with the protection of Cottle's Bush (or suitable alternative planting/bush protection) and the enhanced Mary Crest offset, the terrestrial ecology values created by the Project will substantially outweigh any such values lost.

**Other results of expert conferencing**

142. Mr Turner and Dr Larned took part in expert ecology conferencing with Ms Crisp and Ms Marks (on behalf of GWRC), Ms Myers (on behalf of KCDC), and Dr Boothroyd, and Ms Warren (on behalf of the Rational Transport Society), and those experts prepared a joint witness statement.

143. Areas agreed by the relevant experts include that:
(a) the enhanced Mary Crest proposal would deliver significant ecological benefits;\textsuperscript{142}

(b) a banded dotterel survey is required prior to construction of the Ōtaki River Bridge and upstream replacement habitat is required;\textsuperscript{143}

(c) a pipit survey is required in likely habitats, and if pipits are found to be potentially affected, provision must be made in the EMP to avoid mortality through habitat manipulation;\textsuperscript{144} and

(d) there should be input from an ecologist into the LUDP.\textsuperscript{145}

144. The experts were unable to reach agreement on a number of issues, including:

(a) whether offsets for the loss of indigenous vegetation are adequate;

(b) whether an additional offset proposal for bush loss and effects on scattered trees (proposed by the Council experts) is necessary;

(c) whether surveys undertaken for biotic groups are adequate;

(d) whether a lizard management plan is required; and

(e) the level of predator control necessary.

Other issues raised in evidence

145. There were additional issues raised in the evidence of Ms Myers and Ms Crisp that were not the subject of any recorded position in the joint witness statement. These issues, which are addressed in the rebuttal evidence of Mr Turner, are:

(a) whether the 'significance' assessment used in assessing effects is appropriate; and

(b) whether proposed measures to reduce 'edge effects' are adequate.

146. Ms Myers recommends monitoring the effects of the Expressway on the hydrology of the wetlands. Sections 8.1.4 and 9.10 of the draft EMP require such monitoring.

147. The evidence of Mr Schofield and Mr Percy both include suggested amendments to conditions that rely on the evidence of Ms Myers and Ms Crisp, respectively. Except where related to the issues in dispute, these recommendations have generally been adopted in the proposed conditions, as explained in Annexure A to the rebuttal evidence of Ms Beals.\textsuperscript{146}

\textsuperscript{142} The "Joint Witness Statement of Ecology Experts", dated 28 August 2013, Row 11.
\textsuperscript{143} Proposed condition G.38 and the draft EMP have been updated accordingly.
\textsuperscript{144} Proposed condition G.38 and the draft EMP have been updated accordingly.
\textsuperscript{145} This is now provided for by proposed condition 76.
\textsuperscript{146} For example, recommendations for proposed designation conditions 23 and 25, and proposed consent conditions G28, G30, and G32 in the EIC of Mr Schofield have been adopted, though with additional changes agreed at expert planning conferencing, and other minor practical changes.
The NZTA’s case on the issues before the Board

148. The NZTA’s case is that through the enhanced Mary Crest offset, the protection of Cottle’s Bush (or suitable alternative planting/bush protection), and the proposed landscape planting, the overall ecological benefits created by the Project will substantially outweigh any ecological losses that result from the Project. In relation to the residual issues between the experts:

(a) robust investigations have been undertaken to assess the effects of the Project on terrestrial ecology, with the enhanced conditions providing for further surveys of banded dotterel and pipits;\textsuperscript{147}

(b) the assessments of habitat significance have appropriately considered the Regional Policy Statement criteria;\textsuperscript{148}

(c) the Mary Crest proposal, the protection of Cottle’s Bush (or suitable alternative planting/bush protection), and the proposed landscape planting provide a generous package to account for the loss of indigenous vegetation, and will lead to a net gain in ecological values;\textsuperscript{149}

(d) the planting of c.15ha of native trees and shrubs associated with the Project will substantially offset the loss of 40 mature native trees;\textsuperscript{150}

(e) Ms Myers’ recommendation for a 6:1 compensation ratio for habitats lost to the Project is excessive and does not reflect the nature and scale of effects of the Project;\textsuperscript{151}

(f) the measures proposed to reduce ‘edge effects’\textsuperscript{152} are appropriate, and an additional requirement for 40m buffer is out of proportion to the effect and would be impractical given the small size of the bush fragments;\textsuperscript{153}

(g) based on the results of Mr Turner’s surveys, there is no evidence to suggest that a lizard management plan is necessary; however, further surveys prior to construction may be required by the Department of Conservation to satisfy potential permit conditions under the Wildlife Act 1953;\textsuperscript{154} and

(h) the level of predator control proposed for the Project is adequate, as long-term predator control beyond five years has been shown to be ineffective for small bush fragments.\textsuperscript{155}

\textsuperscript{147} Turner rebuttal, paragraphs 11, 62.
\textsuperscript{148} Turner rebuttal, paragraphs 58 –60.
\textsuperscript{149} Turner rebuttal, paragraphs 15, 41, 105.
\textsuperscript{150} Turner rebuttal, paragraphs 27-30, 104.
\textsuperscript{151} Turner rebuttal, paragraph 54.
\textsuperscript{152} As set out in section 4.2 of the draft EMP.
\textsuperscript{153} Turner rebuttal, paragraphs 56 and 57.
\textsuperscript{154} Turner rebuttal, paragraphs 73 and 77.
\textsuperscript{155} Turner rebuttal, paragraphs 18 and 19.
AQUATIC ECOLOGY

149. Dr Scott Larned has identified a number of potential adverse effects of the Project on waterways and aquatic ecology. Detailed mitigation measures are proposed for each potential adverse effect.

150. Sediment run-off from earthworks during construction has the potential to have adverse effects on freshwater habitats and species. The combination of erosion and sediment control measures (discussed in the stormwater section above), monitoring during and post-construction, fish rescue and relocation, and the low risk of elevated sediment input to waterways with high ecological values, means that the effects of Project construction on waterways are expected to be low and acceptable.\(^{156}\)

151. Run-off from roads can affect water quality but, as noted in the stormwater section above, the Project will bring about a net improvement in the level of contaminants entering local stream and river systems (as the Expressway design incorporates formal treatment of run-off that the existing SH1 does not do).\(^{157}\)

152. The use of culverts in watercourses has the potential to impair fish migration, so appropriate measures to provide for the passage of fish will be incorporated into the design of all culverts where streams have the potential to carry native fish. Dr Larned’s evidence is that the effects of the Project on fish passage will be low and acceptable.\(^{158}\)

153. The Project will bring about the loss or alteration of stream beds and wetlands. Extensive riparian planting will be established to offset stream bed effects, and wetland restoration will be carried out to address effects on wetland habitat. Dr Larned’s evidence is that these offsets will appropriately address the effects of the Project on aquatic habitat.\(^{159}\)

154. As discussed above, an enhanced ecological offset for Mary Crest has been proposed by the NZTA, which the Councils’ experts agree would provide significant ecological benefits.\(^{160}\) The experts advising KCDC and GWRC all agree that the enhanced Mary Crest proposal, in addition to other mitigation proposed (such as the wetland offset noted above, and riparian planting discussed below) and in conjunction with appropriate consent conditions, would meet the mitigation requirements for loss or alteration of wetland and waterway habitat due to the Project.\(^{161}\)

155. In his rebuttal evidence, Dr Larned states that, collectively, the offset proposal set out in the draft EMP and the enhanced Mary Crest proposal will provide significant ecological benefits to aquatic ecosystems in the Project area.\(^{162}\)

\(^{156}\) Larned rebuttal, paragraphs 16, 17 and 73.
\(^{157}\) Larned EIC, paragraphs 19, 72, 181(c).
\(^{158}\) Larned EIC, paragraph 77 - 81, 181(b).
\(^{159}\) Larned EIC, paragraphs 23, 102 - 111; 116 - 117.
\(^{161}\) Larned rebuttal, paragraph 32.
\(^{162}\) Larned rebuttal, paragraphs 29 and 32.
Other issues raised in evidence

156. Mr Schofield and Mr Percy both suggest amendments to the relevant conditions in their evidence, most of which rely on the evidence of Dr Boothroyd. These recommendations have generally been adopted in the proposed conditions, as explained in Annexure A to the rebuttal evidence of Ms Beals.\(^\text{163}\)

157. Ms Warren raises a number of concerns with the aquatic ecology assessments. In response, Dr Larned's rebuttal evidence explains that the surveys used for the Project were appropriate and provided data for robust and reliable assessments. This position is supported by Dr Boothroyd.\(^\text{164}\) Dr Larned also disagrees with Ms Warren that no mitigation is possible for some biodiversity elements.\(^\text{165}\)

158. In their evidence Mr and Ms Hart, and Mr Camm and Ms Stone, consider that the frequency and duration of riparian planting maintenance will be insufficient, particularly with regard to weed control.\(^\text{166}\) Dr Larned is of the view that the monitoring and maintenance of riparian planting is required for five years, and that the proposed riparian planting is intended to reduce existing weed problems, prevent weed infestations, and provide substantial ecological benefit.\(^\text{167}\)

159. Ms Kelly Donovan and Mr Jarrod Lill are opposed to riparian mitigation planting on their property at 40 Te Horo Beach Road.\(^\text{168}\) It is the evidence of Dr Larned that the riparian planting proposed is necessary to mitigate the Project's effects appropriately,\(^\text{169}\) and that the proposed planting at 40 Te Horo Beach Road will be designed to complement the owners' existing planting and should further enhance birdlife on their property (and in the surrounding area).\(^\text{170}\)

The NZTA's case on the issues before the Board

160. The offset proposal, which entails extensive plantings in riparian areas and recreated wetlands, stock exclusion and maintenance, along with the enhanced Mary Crest proposal, will provide significant ecological benefits to aquatic ecosystems in the Project area.\(^\text{171}\)

AIR QUALITY

161. Mr Andrew Curtis is the only expert witness to present evidence on air quality. In relation to operational air quality effects, his evidence is that the Expressway will result in an overall reduction in vehicle emissions along the route and an overall

\(^\text{163}\) For example, recommendations for proposed designation conditions 23, 25 and 76, and proposed consent conditions G28, G30, G33, and WS.3 in the EIC of Mr Schofield have been adopted, though with additional changes agreed at expert planning conferencing, and other minor practical changes.


\(^\text{165}\) Larned rebuttal, paragraph 73.

\(^\text{166}\) Mr and Mrs Hart appear to have understood that a three-year monitoring and maintenance period was proposed, to be conducted biannually (see paragraph 74 of Mr Larned's rebuttal evidence)

\(^\text{167}\) Larned rebuttal, paragraphs 75, 76, 78 - 80.

\(^\text{168}\) Submitter No. 102887.

\(^\text{169}\) Larned EIC, paragraph 176.

\(^\text{170}\) Larned EIC, paragraph 175.

\(^\text{171}\) Larned rebuttal, paragraphs 29 and 32.
improvement in ambient air quality, particularly within the urban areas of Otaki and Te Horo.\textsuperscript{172}

162. In relation to construction air quality effects, Mr Curtis' evidence is that, while there is the potential for nuisance dust effects in some locations, this can be addressed through the use of mitigation measures (including those outlined in the draft Construction Air Quality Management Plan).

The NZTA's case on the issues before the Board

163. An improvement in vehicle emissions is expected once the Project is commissioned, and any construction effects will be appropriately addressed.

NOISE AND VIBRATION

164. The Project's construction and operation will inevitably give rise to noise effects, which are an important consideration of the amenity effects of the Project. A number of submitters feel strongly about such effects, and potential noise issues have been considered carefully by the NZTA.

165. Broadly speaking, the Project follows an existing transport corridor through a predominantly rural environment, though, and there seem to be few material noise issues in contention between the experts on the assessments carried out and the mitigation proposed.

166. The evidence of Dr Stephen Chiles for the NZTA is that, with the management techniques provided for by the proposed designation conditions in place, construction noise and vibration effects will be managed appropriately. Proposed mitigation includes:

(a) preparation of a Construction Noise and Vibration Management Plan ("CNVMP"), which will provide a framework to manage construction noise and vibration appropriately for the variety of circumstances within the Project area by outlining the measures, procedures and standards for mitigating the effects of noise and vibration during construction of the Project;\textsuperscript{173}

(b) preparation of schedules to the CNVMP, describing detailed measures for addressing site-specific issues;\textsuperscript{174} and

(c) for the former Rahui Milk Treatment Station and former Rahui Factory Social Hall, close monitoring to identify and repair any cosmetic damage from construction vibration.\textsuperscript{175}

167. In relation to operational noise effects, Dr Chiles' evidence is that, with the mitigation proposed, effects will be acceptable in that the Project will maintain a reasonable level

\textsuperscript{172} Curtis EIC, paragraph 138.
\textsuperscript{173} Beals rebuttal, Annexure A, proposed designation condition 36.
\textsuperscript{174} Beals rebuttal, Annexure A, proposed designation condition 37(f).
\textsuperscript{175} Beals rebuttal, Annexure A, proposed designation condition 37(e).
of amenity and provide protection from sleep disturbance. The Project will result in some increases and some decreases in noise levels, but the changes are not substantial in most locations and resulting levels are reasonable without mitigation. Mitigation proposed includes:

(a) the use of a low-noise road surface for one kilometre of the Expressway through Ōtaki;¹⁷⁷

(b) acoustic treatment for one property due to Expressway noise;¹⁷⁸ and

(c) acoustic treatment for two additional properties due to rail noise.¹⁷⁹

168. Dr Chiles’ evidence is that vibration from the Expressway will be negligible and vibration from the realigned railway will be at a reasonable level without mitigation.¹⁸⁰

Expert conferencing

169. Dr Chiles took part in expert conferencing with Mr Malcolm Hunt (on behalf of KCDC), and the experts prepared a joint witness statement.¹⁸¹

170. In relation to construction effects, there is broad agreement between Dr Chiles and Mr Hunt with respect to the contents of the CNVMP.¹⁸² Whether the CNVMP should be certified by KCDC was a matter not agreed at conferencing, but this has been resolved subsequently.¹⁸³ Following conferencing in relation to the conditions, it is unclear whether there is any material disagreement about specific conditions around construction noise and vibration.

171. In relation to the operational noise effects of the Project, Dr Chiles and Mr Hunt again broadly agree that:

(a) the effects have been appropriately assessed;¹⁸⁴

(b) the designation corridor width has not constrained noise barrier options immediately adjacent to the Expressway, and that most other houses are a significant distance from the Expressway (such that it would not be practical to consider extending the designation to allow construction of barriers near to houses);¹⁸⁵ and

¹⁷⁶ Chiles EIC (operational), paragraph 21.
¹⁷⁷ At chainage 01300 to 2350 (Chiles EIC (operational), paragraph 34). See Beals rebuttal, Annexure A, proposed designation condition 63.
¹⁷⁸ 14 Old Hautere Road, see Chiles EIC (operational), paragraph 61.
¹⁷⁹ Ōtaki Motel and 230 Main Highway, see Chiles EIC (operational), paragraph 47.
¹⁸⁰ Chiles EIC (operational), paragraph 19.
¹⁸³ Chiles rebuttal, paragraph 24 and Beals rebuttal, Annexure A, proposed designation condition 16.
¹⁸⁴ Chiles rebuttal, paragraph 16.
(c) the requirements for a low-noise road surface in Ōtaki and for maintaining its noise reducing properties are adequately addressed in proposed designation conditions 62 and 72 attached to the rebuttal evidence of Ms Beals.

172. There is disagreement about the weighting that should be given to visual effects for road users when assessing options for noise barriers, but Dr Chiles’ view is that this has had no practical effect on the assessments undertaken.\(^{186}\)

173. In relation to operational vibration effects of the Expressway, there is disagreement on the appropriate procedure to be followed in the event of a complaint\(^ {187}\) (although it is agreed that complaints are unlikely\(^ {188}\)).

174. In relation to rail noise and vibration, there is disagreement about appropriate methods for the assessment of combined road and rail noise in Ōtaki (although Dr Chiles again considers that a different assessment approach would not lead to a different mitigation outcome to that proposed).\(^ {189}\)

**Other issues raised in evidence**

175. The evidence of Mr Schofield and Ms Williams on behalf of KCDC also addresses noise and vibration effects, as does that of Mr Bryce Holmes on behalf of Rahui Enterprises.

176. Matters raised in the KCDC evidence were discussed in the conferencing summarised above.

177. The evidence of Mr Holmes in respect of noise and vibration relates to effects on the former Rahui Milk Treatment Station and former Rahui Factory Social Hall. Mr Holmes recommends changes to the proposed conditions so a particular focus is brought to bear on that property leading up to and during the construction process. Enhanced conditions are now proposed which are intended to achieve this.\(^ {190}\)

**The NZTA’s case on the issues before the Board**

178. The Project design and proposed conditions are such that the noise and vibration effects of the Project will be appropriately managed. In particular:

(a) the CNVMP is a commonly-used and effective mechanism (and the conditions now explicitly provide for the plan to address a comprehensive list of matters set out in the applicable standard\(^ {191}\));

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\(^{186}\) Chiles rebuttal, paragraph 18 and paragraph 22 of the “Expert Conferencing Joint Witness Statement to the Board of Inquiry – construction and operational noise and vibration”, dated 26 August.

\(^{187}\) Chiles rebuttal, paragraph 19 and paragraph 24 of the “Expert Conferencing Joint Witness Statement to the Board of Inquiry – construction and operational noise and vibration”, dated 26 August.

\(^{188}\) The “Expert Conferencing Joint Witness Statement to the Board of Inquiry – construction and operational noise and vibration”, dated 26 August 2013, paragraph 23.


\(^{190}\) Chiles rebuttal, paragraphs 37 - 39 and Beals rebuttal, Annexure A, proposed designation conditions 7 and 75.

\(^{191}\) These are in Annex E to NZS 6803:1999 and the NZTA State highway construction and maintenance noise and vibration guide. See Proposed Designation Condition 35(c).
(b) the measures proposed to address operational noise effects are appropriate, and residual areas of disagreement between the experts would make no practical difference to that mitigation, including factors such as:

(i) the weighting given to visual effects for road users; and

(ii) alternative methods for combining road and rail noise levels;

(c) noise monitoring once the Expressway is operational is unnecessary and would be of limited effectiveness;

(d) there is negligible potential for operational vibration levels to exceed the relevant criterion and any vibration complaints can be adequately addressed by standard complaint handling procedures; and

(e) specific regard will be had to addressing the potential for adverse noise and vibration effects on the former Rahui Milk Treatment Station and former Rahui Factory Social Hall, which is appropriate in the circumstances.

CONTAMINATED LAND

179. Contaminated land is not a significant issue for the inquiry. Mr Greg Haldane is giving evidence on contaminated land matters for the applicants. While there is potential for contamination to be encountered during construction, Mr Haldane’s evidence is that the Bulk Earthworks and Contaminated Land Management Plan ("BECLMP") provides a sufficiently robust framework for avoiding or addressing any such effects.\(^\text{192}\)

180. The BECLMP also provides guidance for obtaining resource consents, if required, for soil disturbance and other activities related to management or assessment of contaminated land.\(^\text{193}\)

181. The evidence of Councils’ experts supports the proposed conditions (with minor amendments, which have been made) and the general approach taken by the applicants.\(^\text{195}\)

TANGATA WHENUA AND CULTURAL HERITAGE

182. The NZTA is privileged to enjoy a close working relationship with Nga Hapū-o-Ōtaki\(^\text{196}\) in relation to the Project, which has developed thanks to the generosity of time, expertise, and spirit shown by that group, and a respectful approach on the part of the

\(^{192}\) Chile’s rebuttal, paragraphs 32 - 33.

\(^{193}\) Haldane EIC, paragraph 16. The NZTA may require further resource consents prior to construction relating to soil disturbance and other activities related to management or assessment of contaminated land. This may include consents required by the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

\(^{194}\) Haldane EIC, paragraph 14.

\(^{195}\) Percy evidence, paragraphs 71-72; Hughes evidence, paragraphs 50-52; Schofield evidence, paragraphs 80-82 and Beals rebuttal, Annexure A, proposed consent condition E.10(d).

\(^{196}\) Nga Hapū-o-Ōtaki is a collective of group of five local Ōtaki hapū of Ngāti Raukawa, who often represent Ngāti Raukawa in resource management matters. Nga Hapū-o-Ōtaki was mandated by Te Runanga o Raukawa and Muaūpoko Iwi Authority to represent their interests in relation to the Project.
NZTA. Key tenets of this relationship are enshrined in a MoP signed by the parties on 2 August 2013.

183. Mr Niketi Toataua has presented evidence on tangata whenua and cultural matters. Mr Toataua’s evidence, informed in part by a cultural impact assessment prepared by Nga Hapū-o-Ōtaki representatives, is that although the Project has the potential to give rise to various adverse cultural effects:

(a) some of those effects have been avoided through Project design, such as effects on a culturally significant area near Mary Crest; and

(b) residual effects will be addressed effectively through the mitigation measures provided for in the proposed conditions.

184. In particular, the conditions recognise and provide for the kaitiaki role of the tangata whenua by seeking to draw on their knowledge in finalising and implementing the Project’s design and mitigation measures. The proposed conditions reflect the NZTA’s desire to seek further guidance from the tangata whenua in various ways, including:

(a) consultation with Nga Hapū-o-Ōtaki in finalising:

(i) the EMP, which will guide the implementation of ecological mitigation;

(ii) the ESCP, to address potential effects of sedimentation in streams; and

(iii) the LUDP, as it relates to reconfiguration of the Pare-o-Matangi reserve, and in landscaping proposed for “gateway” areas along the Expressway to the north and south of Ōtaki;

(b) through representation on the Community Liaison Group (“CLG”), where one matter for discussion will be the extent of opportunities for tangata whenua (and the wider community) to be involved in implementing mitigation, monitoring environmental effects, and naming areas or sites created by the Project;

(c) in respect of further pre-construction archaeological surveys, and publishing any information gathered about archaeological sites; and

(d) to observe appropriate cultural protocols in the event of discovery of significant sites.

185. The conditions also highlight an opportunity for native logs salvaged during construction to be used for cultural purposes.
The NZTA’s case on the issues before the Board

186. A partnership based on mutual respect has been forged by the NZTA and the tangata whenua in relation to the Project, and this is reflected in the measures proposed to mitigate any adverse cultural effects.

187. Cultural effects in the context of Part 2 of the RMA are discussed further below.

ARCHAEOLOGY

188. Ms Cathryn Barr is the only expert witness to present evidence on archaeology. Ms Barr’s evidence is that the adverse effects of the Project on the archaeological resource of the Project area are acceptable and, while two archaeological sites will be affected as a result of the Project and other effects are likely, any effects will be appropriately mitigated.

189. The proposed conditions provide for the development of accidental discovery protocols in consultation with Nga Hapū-o-Ōtaki, as well as an archaeological management plan, which will be linked with the conditions of any authority to modify archaeological sites that may be granted by the New Zealand Historic Places Trust / Pouhere Taonga. The submission of the Trust supports the proposed conditions.

BUILT HERITAGE

190. Mr Ian Bowman is the only expert witness to present evidence on built heritage. His evidence is that, in light of the mitigation proposed, the effects of the Project on built historic heritage are acceptable.

191. The mitigation measures proposed include:

(a) realigning the Ōtaki Railway Station to maintain its current visual and physical connection with the NIMT railway line, in accordance with an updated conservation plan;

(b) relocating the Mirek Smišek pottery kilns, recording them on their current site, preparing interpretation material, screening the Project, and allowing for public viewing of the site and remaining structures; and

(c) relocating Clifden Cottage to a suitable site.

192. Mr Bowman’s evidence is that adverse effects on other heritage buildings, including the former Rahui Milk Treatment Station and the former Rahui Factory Social Hall, do not require any heritage-specific mitigation.

206 Beals rebuttal, Annexure A, proposed designation condition 33(h).
207 Prior to earthworks commencing, the NZTA will apply for an authority to modify archaeological sites under the Historic Places Act 1993 (or under any new legislation resulting from the Heritage New Zealand Pouhere Taonga Bill).
208 Beals rebuttal, Annexure A, proposed designation conditions 16(a) - 16(c).
209 Beals rebuttal, Annexure A, proposed designation condition 33(h).
210 Beals rebuttal, Annexure A, proposed designation conditions 16(a) - 16(c).
211 Bowman EIC, paragraph 18.
SOCIAL AND COMMUNITY

193. Ms Wendy Turvey's evidence is that the effects of the Project will be positive for people and communities, and that the Project will lead to net benefits in social terms.\textsuperscript{212}

194. The positive social effects of the Project include providing a safer transport environment, improvements in regional and local connectivity, reduced commuting times to places of employment and community facilities and services, and positive health benefits for pedestrians and cyclists.\textsuperscript{213}

195. There are some negative social effects of the Project, including the loss of private land, economic effects on local businesses that rely on passing trade, and temporary construction effects. However, these effects have been addressed by the sensitive design of the Project and the proposed mitigation, which includes a number of social effect-specific measures, including:

(a) a community liaison person, to be appointed for the period during construction and for the first 12 months of the Project's operation;\textsuperscript{214}

(b) a Stakeholder Communications Management Plan ("SCMP"), to be established prior to commencement of the Project's construction phase;\textsuperscript{215}

(c) the CLG, to be established prior to construction commencing, which will provide a means for monitoring the effects of construction on the community and a forum for imparting information and addressing issues and concerns;\textsuperscript{216} and

(d) a complaints register, which will be established to manage complaints and to ensure prompt investigation and response.\textsuperscript{217}

Expert conferencing

196. Ms Turvey took part in expert conferencing with Ms Mary-Jane Rivers (on behalf of KCDC). The "Joint Statement of Social Impact Experts", dated 26 August 2013, records that these experts reached agreement on all matters discussed.

Other evidence

197. The evidence of Mr Schofield includes suggested amendments relating to social effects conditions, which rely on the evidence of Ms Rivers. These recommendations have generally been adopted in the proposed conditions, as explained in Annexure A to the rebuttal evidence of Ms Beals.\textsuperscript{218}

\textsuperscript{212} Turvey EIC, paragraph 15.
\textsuperscript{213} Turvey EIC, paragraph 167.
\textsuperscript{214} Beals rebuttal, Annexure A, proposed designation condition 6.
\textsuperscript{215} Beals rebuttal, Annexure A, proposed designation condition 7.
\textsuperscript{216} Beals rebuttal, Annexure A, proposed designation condition 8.
\textsuperscript{217} Beals rebuttal, Annexure A, proposed designation conditions 10 - 11.
\textsuperscript{218} For example, recommendations for proposed designation conditions 7, 8, and 10 in the EIC of Mr Schofield have been adopted, though with additional changes agreed at expert planning conferencing, and other minor practical changes.
198. Other submitters have queried the potential social effects of the Project, including Mr Greg Elliott in his evidence.

The NZTA's case on the issues before the Board

199. The NZTA's case is that the Project will be of considerable benefit to the Kāpiti district (as well as the wider region) and its local communities. Potential issues that could have arisen, such as effects on connectivity across the transport corridor, have been addressed through design, drawing on community feedback provided through extensive consultation processes.

ECONOMICS

200. Economic effects are a relevant consideration in relation to enabling people and communities to provide for their economic wellbeing, and having particular regard to the efficient use and development of natural and physical resources (sections 5 and 7(b)).

201. Mr Michael Copeland's evidence is that the Project will enable people and communities to provide for their economic well-being and represents an efficient use of resources. 219

202. The economic benefits of the Project include:

(a) during construction, increased expenditure, employment, and incomes, with associated economic benefits for local and regional businesses and residents; and

(b) once operational, economic benefits to local and regional businesses and residents as a consequence of:

(i) savings in travel time costs and accident costs;

(ii) improvements in trip time reliability; and

(iii) increased business development and population growth.220

203. There are likely to be negative 'business redistribution' effects experienced by:

(a) a small number of businesses on or near SH1 at Te Horo, and on SH1 between Te Horo and South Ōtaki; and

(b) a small minority of the businesses within the Ōtaki Railway Retail area.221

204. Appropriate signage at exit points on the Expressway will provide some mitigation against negative business redistribution effects,222 although it is acknowledged that this is likely to be more effective for businesses in the Ōtaki Railway Retail area than for businesses heavily reliant on passing trade around Te Horo.

219 Copeland EIC, paragraph 12.
220 Copeland EIC, paragraph 14.
221 Copeland EIC, paragraph 15.
222 Beals rebuttal, Annexure A, proposed designation condition 81.
205. The evidence of Mr Selwyn Blackmore explains the Economic Evaluation Model ("EEM") and Benefit-Cost Ratio ("BCR") tools used by the NZTA for the evaluation and ranking of projects within the Land Transport Management Act 2003 ("LTMA") framework. Economic efficiency (as expressed by the BCR) is relevant to project funding, but is only one of three criteria used to determine the assessment profile (alongside 'effectiveness' and 'strategic fit'), which in turn determines the priority for programming (and funding) for a proposed activity.\(^{223}\)

206. Current assessments for the Project in relation to internal NZTA evaluation and ranking of projects are:

(a) the Wellington Northern Corridor Detailed Business Case was evaluated in 2009 as having 'high' (H) strategic fit, 'high' (H) effectiveness and 'low' (L) efficiency;

(b) the latest estimated BCR for the whole of the Wellington Northern Corridor RoNS investment package is 1.6 to 1.8; and

(c) the latest estimated BCR for the Project is 0.8.\(^{224}\)

**Expert conferencing**

207. Mr Copeland took part in expert conferencing with Dr Michael Pickford, and the experts prepared a joint witness statement.\(^{225}\)

208. Mr Copeland and Dr Pickford hold differing opinions on the role of the BCR and its relevance to the Board's inquiry. Areas of disagreement include:

(a) whether the NZTA should adopt a BCR of 1 as a minimum funding threshold, and/or base its project selection primarily on economic efficiency;

(b) whether the NZTA's process for calculating BCRs should incorporate adjustments recommended by Dr Pickford;

(c) the weighting to be given to economic efficiency under the RMA; and

(d) the relevance of local economic effects.

**Other issues raised in evidence**

209. Mr Elliott expresses concern in his evidence that the Project represents an inefficient use of resources, and will divert funding away from public transport funding in the Kāpiti district. However, as Mr Blackmore and Mr Copeland explain, it cannot be assumed that, should the Project not proceed, there will be an increase in available funds for public transport (or other) projects that will benefit local residents.

\(^{223}\) Blackmore EIC, paragraph 15.

\(^{224}\) Blackmore EIC, paragraph 21.

\(^{225}\) The "Expert Conferencing Joint Witness Statement to the Board of Inquiry – economics", dated 26 August 2013.
The NZTA's case on the issues before the Board

210. It is respectfully submitted that the NZTA's project selection criteria are not a relevant consideration for the Board of Inquiry in making its decision under the RMA. The Board is not tasked with deciding whether the Project should receive funding. When allocating funding, the NZTA is required to follow legislative directives under the LTMA.

211. While economic efficiency is a relevant consideration under section 7(b), these directives must be considered in light of the balancing of considerations required by Part 2. Within Part 2, economic efficiency is one of many factors to be considered when forming an overall judgment on whether the sustainable management purpose will be achieved.

212. Nor is the NZTA's BCR calculation intended as a definitive tool to determine whether or not a Project enables community economic wellbeing or represents an efficient use of natural and physical resources in an RMA sense. Mr Copeland explains (and indeed Dr Pickford accepts) that quantified BCR analyses do not always capture all of the positive and negative effects of road projects.

213. However, to the extent that it is relevant, the Boards of Inquiry into the Transmission Gully\(^\text{226}\) and MacKays to Peka Peka\(^\text{227}\) proposals considered that the BCR for those projects ought to be considered on the basis that they form part of the wider Wellington Northern Corridor RoNS. That is equally the case for the current Project.

214. In this respect the following observations in the Section 42A Report are endorsed:

"In our view, issues relating to the benefit-cost ratio are primarily matters for the NZTA in determining whether construction of the Expressway represents a 'good' investment for it in carrying out its functions. We also note that although this Project has a benefit-cost ratio of 0.8, it is an integral part of the Wellington Northern Corridor RoNS – which has a benefit-cost ratio ranging between 1.6 and 1.8"\(^\text{228}\).

215. While the NZTA’s estimation of the BCR for the Project takes a national viewpoint, the perspective from the Kāpiti district or Wellington region is particularly relevant in relation to the Project. There will be economic benefits to local and regional businesses and residents as a result of the construction and operation of the Project. The BCR would be much higher if assessed from a local perspective, as the district and region will receive most of the Project's benefits but only meet a small proportion of its costs.\(^\text{229}\)

\(^{226}\) Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal, at para [245].
\(^{227}\) Final Report and Decision of the Board of Inquiry into the MacKays to Peka Peka Expressway Project, at para [1137].
\(^{228}\) Section 42A Report (First Edition), at 2.10.3.
\(^{229}\) Copeland EIC, paragraph 20.
216. Nor are the Project's potential effects on property values – positive or negative – relevant to the Board's inquiry;\textsuperscript{230} as noted in the following observations in the Section 42A Report:

"In our experience, the RMA does not require decision-makers to have a direct concern with the effects of a proposal on the value of property. This matter has been contemplated by the Courts on numerous occasions. In this regard, the Courts [have] been cautious as very often any drop in property value will be the result of the effects of a given project (e.g. effects on amenity values or traffic movements outside a property), rather than an effect in itself. As such, to account for the value effect as well as the effect which has led to it, is tantamount to a 'double counting' of effects."\textsuperscript{231}

PUBLIC HEALTH

217. Dr David Black is the only expert witness to submit evidence on the public health effects of the Project. It is the evidence of Dr Black, and the NZTA's case, that such effects will be minor and acceptable with the proposed mitigation measures in place, and that there are a number of positive public health benefits of the Project.

LAND ACQUISITION AND PROPERTY ACCESS

218. The PWA sets out the framework through which the Crown may acquire land for public works. Under the PWA regime, compensation is paid to landowners for the value of any property acquired (and in relation to various other matters) at market rates. The Crown intends to purchase and provide compensation for any land required for the Project in accordance with the PWA.\textsuperscript{232}

219. The PWA regime also provides for compensation to be paid to landowners who have part of their land acquired and also suffer 'injurious affection' (i.e. depreciation in value) to any retained land.\textsuperscript{233} For example, landowners may be eligible for compensation where part of their land is acquired for the Project and where certain adverse effects of the Project (such as increased flooding risk) causes depreciation in the value of any retained land.\textsuperscript{234}

220. The construction of the Expressway would require re-configuration of private access for a number of properties whose current access is onto the existing SH1. In his evidence, Mr Coulman describes options to provide alternative access for these properties, which have been or will be developed in consultation with the affected parties and KCDC.\textsuperscript{235} The NZTA will continue to work with affected landowners and KCDC to finalise details of the reinstated or reconfigured property accesses.\textsuperscript{236}

\textsuperscript{230} For example, Foot v Wellington City Council, W73/98, 2 September 1998 (EnvC).
\textsuperscript{231} Section 42A Report (First Edition), at 2.10.9.
\textsuperscript{232} Blackmore EIC, paragraph 41.
\textsuperscript{233} Public Works Act 1981, ss60, 62, and 64.
\textsuperscript{234} Blackmore rebuttal, paragraph 19.
\textsuperscript{235} Coulman EIC, paragraphs 91-101.
\textsuperscript{236} Coulman EIC, paragraph 101.
PART E  PLANNING DOCUMENTS

221. The Board is directed by sections 104 and 171 to have regard to/consider relevant provisions of certain statutory planning documents.

222. The key planning documents relevant to this inquiry are identified in the AEE and evidence of Mr Coop. These are:

(a) National Environmental Standards:
   (i) National Environmental Standard for Air Quality 2004163.
   (ii) National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2012.
   (iii) National Environmental Standard for Sources of Human Drinking Water 2007.

(b) National Policy Statements:

(c) Regional Policy Statements:

(d) Regional Plans:
   (i) Wellington Regional Freshwater Plan 1999.
   (iii) Wellington Regional Coastal Plan 2000.

(e) District Plans:
   (i) Kāpiti Coast District Plan 1999.
   (ii) Proposed Kāpiti Coast District Plan 2012.

223. Mr Coop and Ms Beals took part in expert conferencing with Mr Schofield, Mr Percy, and the Board’s independent planning advisor, Mr John Kyle. The experts reached broad agreement on planning matters. All experts agreed that all relevant plans and policies have been identified and assessed.\textsuperscript{238}

\textsuperscript{237} AEE Chapter 33; Coop EIC, paragraph 165-178.
\textsuperscript{238} The "Joint Statement of Planning and Conditions Experts", dated 30 August 2013, Annexure A.
PART F OTHER MATTERS

224. This Part addresses:

(a) the Minister's reasons for referring this matter to the Board;
(b) the section 149G reports provided by KCDC and GWRC;
(c) the NZTA's consideration of alternatives;
(d) the issue of whether the designation and work are reasonably necessary to achieve the NZTA objectives;
(e) further considerations in relation to discharge consents;
(f) outline plans; and
(g) revocation of the State highway status of existing SH1.

MINISTER’S REASONS FOR REFERRAL TO THE BOARD

225. The Minister's decision is attached to these submissions as Appendix B.

226. The Minister’s reasons for directing that the Project be heard by the Board are wide-ranging. The reasons include that the Project:

(a) is likely to result in the significant use of natural and physical resources;
(b) has aroused widespread public interest regarding actual or likely effects on the environment; and
(c) will, as part of the wider Wellington Northern Corridor RoNS, assist the Crown in fulfilling its public health, welfare, security, or safety obligations or functions by providing a safe, reliable, secure and resilient road, as an alternative route into and out of Wellington, with the ability to withstand natural hazards.

SECTION 149G REPORTS

227. Under section 149P(1)(b), in considering this matter the Board must "consider any information provided to it by the EPA under section 149G". In particular, this includes the section 149G(3) reports provided by KCDC and GWRC. The evidence of the witnesses for the applicants addresses the matters raised in these reports.

CONSIDERATION OF ALTERNATIVES

228. In relation to the NoRs, section 171(1)(b) requires the Board to have particular regard to:

"whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work".

229. This provision applies if either:

(a) the requiring authority does not have an interest in land sufficient for undertaking the work; or

(b) it is likely that the work will have a significant adverse effect on the environment.

230. The NZTA accepts that section 171(1)(b)(i) applies, as at this stage the NZTA does not have an interest in land sufficient to undertake the work.240

231. The NZTA is not required to demonstrate that it has considered all possible alternatives, or that it has selected the best of all available alternatives.241 The approach to section 171(1)(b) is well settled. In MacKays to Peka Peka Expressway Project the Board of Inquiry noted:242

"a) the focus is on the process, not the outcome: whether the requiring authority has made sufficient investigations of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration

b) the question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods

c) that there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant

d) the Act does not entrust to the decision-maker the policy function of deciding the most suitable site; the executive responsibility for selecting the site remains with the requiring authority

e) the Act does not require every alternative, however speculative, to have been fully considered; the requiring authority is not required to eliminate speculative alternatives or suppositious options."

232. The evidence of Mr Rod James and Ms Sylvia Allan is that the NZTA (and its predecessors) carried out (or commissioned) numerous historical assessments of alternative State highway routes between Peka Peka and Ōtaki, and that this historical work was examined and brought up to date for the Project. The updated assessment involved detailed multi-criteria analysis of four alternative routes.

233. The evidence of Mr Coulman is that there has also been extensive consideration given to alternative alignments, interchanges, and cross-corridor connections for the

240 The land purchased by the NZTA for the Project as at 12 July 2013 was shown on plans attached the EIC of Mr Blackmore as Annexure A.
242 This passage was originally a submission by counsel for Transpower cited in the Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project [2009], at [177]. It has since been cited as an accurate summary of the law in Re Queenstown Airport Corporation Ltd [2012] NZEnvC 206 at [50] and the Final Report and Decision of the Board of Inquiry into the MacKays to Peka Peka Expressway Project at [1424].
Expressway route, drawing extensively on multi-criteria analysis and feedback from members of the public and other stakeholders.

234. The planning evidence of Mr Coop is that there has been a "robust process of consideration of alternatives, beyond that required by section 171(1)(b)." 243

235. In the Section 42A Report the authors state:

"(...) it is our view that the NZTA / KiwiRail has adequately assessed alternatives in preparing the NoR. The assessment in our view demonstrates that the NZTA / KiwiRail went through a fulsome and systematic selection basis before finally coming to a conclusion about the preferred alignment." 244

236. The NZTA's case is that there has been adequate consideration of alternatives for the purposes of section 171(1)(b) of the RMA.

**REASONABLY NECESSARY FOR ACHIEVING PROJECT OBJECTIVES**

237. Section 171(1)(c) requires the Board to consider:

"whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought."

238. The NZTA's objectives for the Project are as follows: 245

"The overall Project objectives for NZTA can be summarised as follows:

To provide a modern 4-lane expressway that will support economic development by providing a strategic arterial route to improve trip reliability and efficiency through the Wellington region. The Project will provide legible connections to Ōtaki township, and provide for community connections across the corridor. The expressway is to be integrated with the Greater Ōtaki Vision, and opportunities to enhance urban and landscape outcomes are to be explored.

The Project-specific objectives for the NZTA components of the Project are:

(a) to:

(i) enhance inter-regional and national economic growth and productivity;

(ii) enhance efficiency and journey time reliability from, to and through the Kāpiti district, Wellington's CBD, key industrial and employment centres, the port, airport and hospital;

(iii) enhance safety of travel on SH1; and

(iv) appropriately balance the competing functional performance requirements of interregional and local traffic movements, and to facilitate

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243 Coop EIC, paragraph 52.
244 Section 42A Report (First Edition), at 4.5.4.
245 Chapter 2.6 of the AEE.
others to provide modal choice opportunities, to enable local facilities and amenities in the Kāpiti district to be efficiently accessed;

by developing and constructing a cost-efficient new State highway to expressway standards between Peka Peka and north of Ōtaki.

(b) to manage the immediate and long-term social, cultural, land use and other environmental effects of the Project on the Kāpiti district and its communities by, so far as reasonably practicable, avoiding, remedying or mitigating any adverse effects through route and alignment selection, expressway design and conditions;

(c) to integrate the Expressway into the form of Kāpiti district by taking into account current and planned future land use and development in route and alignment selection, expressway design and conditions;

(d) to work with KiwiRail to achieve an integrated design for both the Expressway and the realigned NIMT; and

(e) to efficiently serve Ōtaki and its future development by providing appropriate vehicle access and signage to and from the Expressway.”

239. In considering whether a work and designation are reasonably necessary to achieve the requiring authority’s objectives, the High Court in Countdown Properties (Northlands) v Dunedin City Council held that ‘necessary’ has a meaning similar to ‘expedient’ or ‘desirable’, rather than ‘essential’.246

240. In MacKays to Peka Peka Expressway Project the Board of Inquiry accepted that interpretation and stated:247

“[1433] We concur, and like the Board in TGP, we propose to adopt a similar meaning of ‘necessary’ in this proceeding. s171(1)(c) is to be interpreted as that of NZTA seeking to undertake their statutory functions and exercising judgment and discretion in so doing. We agree with the following passage from TGP:

‘[104] Use of the term reasonably necessary (...) in s171(1)(c) indicates that something less than absolute necessity or essentiality is contemplated in application of the provision. In any event, the evidence of NZTA and PCC satisfied us that the construction of TGP was essential to achieve the objectives of the two authorities in this case and so would satisfy any higher test if we were found to be mistaken in our interpretation of the term reasonably necessary.’

[1434] First, we agree with the first sentence cited above. Secondly, we would also be satisfied on the evidence before us in this matter that the construction of the project is essential to achieve the objectives of NZTA. So like TGP, the

246 Countdown Properties (Northlands) Ltd v Dunedin City Council [1994] 1B ELRNZ 150 (HC) at page 185.
247 Final Report and Decision of the Board of Inquiry into the MacKays to Peka Peka Expressway Project at [1433].
241. The Board is not required to consider whether the NZTA’s project objectives are consistent with the NZTA’s statutory objectives (and, by extension, whether the Project is itself necessary). 248

242. In respect of the MacKays to Peka Peka and Transmission Gully proposals, however, the Boards did turn their minds to the NZTA’s statutory objectives, and held that the project objectives were consistent with them. 249

243. The NZTA’s statutory objective is set out in section 94 of the Land Transport Management Act 2003:

“The objective of the Agency is to undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest.”

244. If the Board is minded to consider this issue, it is submitted that the project objectives are clearly consistent with the NZTA’s statutory objective.

245. The evidence of Mr James, 250 Mr Coop and Mr Dunlop (among others) is that the work is reasonably necessary in order to achieve the Project objectives.

246. By way of example, the Project:

(a) will create opportunities for enhanced economic growth, both locally and inter-regionally (as outlined in the evidence of Mr Copeland);

(b) enhances the efficiency of the State highway and surrounding transport network;

(c) delivers improved journey time reliability to and from Wellington’s central business district, key industrial and employment centres, port and airport;

(d) improves route security and resilience of the road network in the event of a significant earthquake, road accidents, or other disruption, by providing a high quality alternative route between Peka Peka and north Ōtaki;

(e) delivers significant safety improvements for travellers on SH1;

(f) addresses the immediate and long-term social, cultural, land use and other impacts on the Kāpiti district and its communities by avoiding, remedying or mitigating any such effects through route and alignment selection, Expressway

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248 See, for example, Gavin H Wallace Ltd v Auckland Council [2012] NZEnvC 120 at [184]: “We are also aware of the limits of any enquiry into the merits of the objectives. It is now well settled that the Act neither requires or allows the merits of the objectives themselves to be judged by the Court.” See also the High Court decision in Wymondley Against the Motorway Action Group Inc v Transit New Zealand [2004] NZRMA 162 (HC) at [15–33].


250 James EIC, paragraphs 56 – 58.
design and conditions (as outlined in the evidence of Ms Turvey, Mr Curtain and Mr Toataua);

(g) will be integrated into the form of the Kāpiti Coast, the current form of which has largely developed around a major transport corridor, and has taken into account future patterns of urban development (as outlined in the evidence of Mr Curtain and Mr Coop);

(h) will achieve an integrated design for both the Expressway and the realigned NIMT (as outlined in the evidence of Ms Butler (for KiwiRail) and Mr Dunlop); and

(i) will efficiently serve Ōtaki and its future development by providing appropriate vehicle access and signage to and from the Expressway (as outlined in the evidence of Mr Dunlop and Mr Copeland).

247. The use of a designation as a planning tool for the Project is reasonably necessary to achieve the NZTA's objectives. Designations are preferable to resource consents as a means of authorising the construction, operation and maintenance of the Project, because designations:

(a) are more appropriate for large infrastructure projects that extend across a wide area (such as roads or transmission lines);

(b) are shown in the district plan, and therefore alert the public to the Project's existence, and

(c) prevent others from doing anything in relation to land subject to the designation that would prevent or hinder the Project.

FURTHER CONSIDERATIONS FOR DISCHARGE CONSENTS

248. In relation to the discharge permits sought for the Project, section 105 requires the Board to have regard to:

(a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects;

(b) the applicant's reasons for the discharge; and

(c) any possible alternative methods of discharge, including discharge into any other receiving environment.

249. Section 107 restricts the grant of certain discharge permits that would contravene sections 15 or 15A of the RMA (which relate to the discharge of contaminants into the environment).

251. Section 175 RMA.
252. Section 176(1)(b) RMA.
253. Discharge permits are sought: (i) under section 15(1)(a) for (a) the discharge of sediment-laden (including chemically treated) water to water and (b) the discharge of concrete-laden water to water; and (ii) under section 15(1)(b) for (a) the discharge of sediment-laden (including chemically-treated) water to land that may enter water, and (b) for the discharge of concrete-laden water to land that may enter water.
250. It is the evidence of Mr Coop that sections 105 and 107 have been satisfied by the Project.\textsuperscript{254} This view is based on the evidence of Mr Bird and Mr Holmes (in relation to sediment and stormwater discharges), Dr Larned (in relation to the sensitivity of the receiving environment for sediment and stormwater discharges), and Mr Curtis (in relation to discharges to air, and the receiving environment for those).

OUTLINE PLANS

251. Section 176A of the RMA provides that the NZTA must submit outline plans of the works to be constructed on designated land to KCDC, to allow the Council to request changes before construction commences, unless:

(a) the proposed public work, project, or work has been otherwise approved under the RMA;

(b) the details of the proposed public work, project, or work are incorporated into the designation; or

(c) the territorial authority waives the requirement for an outline plan.

252. Section 149P(4)(c) also allows the Board to waive the requirement for an outline plan. The NZTA has not requested that the Board waive the requirement to provide an outline plan for the Project.

253. In his evidence on behalf of KCDC, however, Mr Schofield indicated that KCDC would waive the requirement for an outline plan if the designation conditions provide for the Council to certify the following management plans:\textsuperscript{255}

(a) Construction Traffic Management Plan;

(b) Landscape and Urban Design Plan;

(c) Construction Noise and Vibration Management Plan;

(d) Construction Air Quality Management Plan; and

(e) Network Integration Plan.

254. The NZTA and KCDC have subsequently reached an agreement on this issue, as discussed in the rebuttal evidence of Mr James and reflected in the Joint Statement of Planning and Conditions Experts, the rebuttal evidence of Ms Beals, and the conditions now proposed by the applicants.

255. The NZTA considers that this certification role is appropriate in the circumstances of this case, primarily because a similar process was confirmed by the Board of Inquiry for the MacKays to Peka Peka Expressway Project. The NZTA recognises the close proximity and relationship between this Project and the MacKays project immediately

\textsuperscript{254} Coop EIC, paragraph 164.
\textsuperscript{255} Schofield evidence, paragraph 63.
to the south, and considers there would be benefits in having consistency of process in relation to the certification of management plans.

256. The conditions proposed by the applicants therefore no longer refer to the outline plan process, but provide an additional certification role for KCDC in respect of the management plans listed above. This does not mean that the NZTA now seeks a waiver of the outline plan process by the Board under s149P(4)(c) and, should the Board confirm the notices of requirement with conditions as proposed, the NZTA would still need to submit an outline plan unless this is waived by KCDC under s176A.

257. However, the NZTA and KCDC have agreed that, should the notices of requirement be confirmed, KCDC intends to subsequently waive the outline plan requirement under s176A(2)(c) if the approved conditions provide for a certification of the above listed management plans by KCDC, and for the additional information that would otherwise be submitted in an outline plan to be provided to KCDC. 256

REVOCA TION

258. Once the Expressway is operational, the current section of SH1 between Te Kowhai Road (in Peka Peka) and Taylors Road (just north of Ōtaki) will cease to function as the State highway for traffic through this part of Kāpiti district.

259. Under the June 2013 amendments to the LTMA, the NZTA may, with consent of the Chief Executive of the Ministry of Transport, revoke the State highway status of this section of SH1. 257 Consultation with KCDC is required before SH1 status can be revoked. 258 Once State highway status is revoked, the existing State highway would become a local road, and the responsibility KCDC. 259

260. The NZTA signed an agreement with KCDC on 27 August 2013 regarding the future revocation process, which will include the provision of cycling facilities as part of that process. 260

261. Mr Blackmore explains in his evidence that under the NZTA’s State Highway Revocation Policy and Guidance, 261 prior to revocation, works would be undertaken (to the extent necessary) to ensure that the road is safe and fit for its new purpose as part of the local road network. 262

262. It is respectfully submitted that the State highway revocation process is not a matter for the Board to address in these proceedings, as that process is governed by a separate statutory process under the LTMA. Further, the NZTA and KCDC have reached an agreement on the issues around the future revocation of SH1.

256 This includes the height, shape, and bulk of the works, their location, and the like finished contour of the site, as provided for in proposed designation condition 12.
257 Land Transport Management Act 2003, section 103.
258 Land Transport Management Act 2003, section 103.
259 Land Transport Management Act 2003, section 103.
260 This agreement is subject to formal ratification by the Council.
261 August 2013.
262 Blackmore EIC, paragraph 31.
PART G CONDITIONS

263. Sections 171(2)(c) and 108 provide that the Board may impose conditions on a NoR (if confirmed) and resource consents (if granted). Conditions are an important means for ensuring that effects are able to be managed appropriately through the construction and operational phases of the Project.

264. The applicants have proposed an extensive set of conditions to be imposed should the Board be minded to confirm the requirements and grant the resource consent applications. Those conditions were included in the evidence-in-chief of Ms Beals and have been refined subsequently through the conferencing process, as described in Ms Beals’ rebuttal evidence.

GENERAL PRINCIPLES

265. To be valid, a condition must:

(a) be for a resource management purpose and not for any ulterior purpose;

(b) fairly and reasonably relate to the proposal which is the subject of consent or designation;

(c) not be so unreasonable that no reasonable decision-maker could have approved it; and

(d) not involve an unlawful delegation of the decision-maker’s duties.

MANAGEMENT PLANS

266. Management plans commonly form part of the conditions framework for designations and resource consents for large projects, as they provide a means for appropriately managing construction effects through the subsequent construction and operational phases of a project. The generally accepted approach is for conditions to be imposed:

(a) requiring the requiring authority or consent holder to finalise the management plan in general accordance with a draft provided in the application documentation;

(b) requiring the management plan to specify how certain outcomes (often prescribed through conditions) will be achieved; and

(c) providing for the relevant local authority to have a degree of oversight in respect of the finalised plan, either certifying that it achieves the necessary outcomes prescribed through conditions, or commenting on its contents and requesting changes as part of an outline plan process.

267. The Board of Inquiry into the Transmission Gully proposal emphasised the importance of conditions of consent if a management plan regime is to operate properly.

263 Newbury District Council v Secretary of State for the Environment [1980] 1 All ER 731 (HL) at [739], endorsed in the context of the RMA in Housing NZ Ltd v Waitakere City Council [2001] NZRMA 202 (CA) at [18].
Conditions should contain quantifiable standards and performance criteria against which proposed management plans can be assessed and subsequent operation of the management plans can be measured.\(^{264}\)

268. As is the case for this Project, draft management plans are generally included as part of the application documentation. Various management plans are provided for in the proposed conditions for the Project. It is important that the management plans are sufficiently flexible to adapt to new or changing information (or circumstances) up to and during the construction process, while incorporating sufficient certainty as to the level of adverse effects and the measures to address them.

269. Three tiers of management plan are proposed for the Project as follows:

   (a) the first tier is an overarching Construction Environmental Management Plan ("CEMP");
   (b) the second tier contains a series of topic-specific management plans, which are proposed to be appendices to the CEMP (for example, plans which address construction noise, air quality effects, construction traffic, groundwater, and erosion and sediment control); and
   (c) the third tier contains Site-Specific Environmental Management Plans ("SSEMPs"), which will incorporate detailed information about the suite of environmental management measures applied to a specific site, and will incorporate relevant aspects of the management plans in the first two tiers into one document. The SSEMPs, taken together, will cover the entire Project area and will encompass the entirety of the Project construction works.

270. To assist the Board, a diagram setting out the proposed management plan structure for the Project is attached as Appendix C.

CERTIFICATION

271. A key element of a management planning approach is that:

   (a) further detailed design can be undertaken closer to construction and as part of that process further detail can be provided on how effects on the environment will be managed;
   (b) further information on effects management must comply with parameters set in conditions and the draft management plans;
   (c) an appropriate range of experts and other parties are involved in the preparation of the management plans; and
   (d) the local authorities have input into and/or oversight of the management plans.

272. The proposal in this case is that:

\(^{264}\) Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal, at paragraphs [186 – 187].
(a) GWRC will certify:
(i) the Construction Air Quality Management Plan;
(ii) the Bulk Earthworks Contaminated Land Management Plan;
(iii) the Ecological Management Plan;
(iv) the Erosion and Sediment Control Plan; and
(v) the Groundwater Management Plan;
(b) KCDC will certify:
(i) the Construction Traffic Management Plan;
(ii) the Landscape and Urban Design Plan;
(iii) the Construction Noise and Vibration Management Plan;
(iv) the Construction Air Quality Management Plan; and
(v) the Network Integration Plan; and
(c) both GWRC and KCDC will certify the Site-Specific Environmental Management Plans, in respect of matters relating to their respective statutory functions.

273. It is submitted that this is a robust management plan approach that should provide the Board with confidence that effects can be managed effectively through the subsequent stages of the Project.

UPDATED CONDITIONS

274. To assist the Board, the NZTA has prepared an updated set of conditions which are proposed to be attached to the NoRs and consents. The latest iteration of the proposed conditions is attached to Ms Beals’ rebuttal evidence.

275. Ms Beals’ evidence-in-chief and rebuttal evidence explain the approach to conditions and the various iterations which have been developed, in response to submissions, submitter evidence, expert witness conferencing, the Section 42A Report, and other input from submitters and their expert advisors.
276. The authors of the Section 42A Report (Second Edition) state that they "generally agree with the conclusion reached by Ms Beals that the conditions form a robust suite of measures which would be effective at appropriately mitigating the adverse effects of the project's construction and operation (...)". A number of helpful condition amendments were also suggested in the report, which are currently being considered by Ms Beals.

277. Appendix D sets out some further proposed amendments to the conditions as attached to Ms Beals’ rebuttal evidence.

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265 Section 42A Report (Second Edition), at 3.0.4.
PART H  OVERALL PART 2 RMA ASSESSMENT

278. The Board's ultimate decision on the NoRs and resource consent applications is to be made under Part 2 of the RMA, which sets out the purpose and principles of the RMA. The NZTA's case as it relates to Part 2 is set out below.

279. The overriding purpose of the RMA is to "promote the sustainable management of natural and physical resources". Sustainable management is defined in section 5(2) of the RMA and is discussed in more detail below.

SECTION 6 MATTERS OF NATIONAL IMPORTANCE

280. Section 6 provides that the Board shall, in achieving the sustainable management purpose under section 5, recognise and provide for the matters of national importance set out in that section. The matters relevant to the Project are addressed below.

Section 6(a)

"the preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins"

281. The Project preserves the natural character of wetlands through the proposed restoration of part the Ōtaki Railway Wetland, along with the creation of two new areas of wetland within the designation (total area c.1.1ha). Mr McKenzie considers that, in relation to wetlands, the landscape and ecological mitigation planting that will be carried out will result in a noticeable degree of natural character enhancement.

282. The natural character of the area of Ōtaki River crossed by the Project is limited due to existence of two other large bridges. However, the Ōtaki River bridges have been designed to sit low in the landscape, to reduce their visual effect. It is the evidence of Mr McKenzie that the proposed bridges will have little effect on the natural braided flow of the Ōtaki River itself. Further, the extensive riparian planting proposed as part of the Project provides an opportunity to enhance the natural character of the margins of those streams.

283. While the Project area is a significant distance from the coast, it is recognised that sedimentation from construction activities may reach the coastal marine area via rivers and streams. Erosion and sediment control measures will ensure that any adverse effects on the natural character of the coastal environment will be negligible.

266 Turner EIC, paragraphs 15, 68 - 78 and Beals rebuttal, Annexure A, proposed designation condition G.34.
267 McKenzie EIC, paragraph 59.
268 Technical Report 8, section 6.3.
269 McKenzie EIC, paragraph 64.
270 McKenzie EIC, paragraphs 60 – 66.
Section 6(b)

"the protection of outstanding natural features and landscapes"

284. The landscape witnesses agree that there are no outstanding natural landscapes or features within or adjacent to the designation corridor.271

Section 6(c)

"the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna"

285. The Project design has sought to protect areas of significant indigenous vegetation. In particular, the Expressway alignment was changed to avoid a significant area of indigenous bush and wetland at Mary Crest.272

286. A total of 0.45ha of native bush and c.0.5ha of wetland will be lost as a result of the Project. However, the proposed offsets described in the ecological effects section above will ensure that there will be no net loss in ecological values arising from the Project. In fact, there will be an overall net gain in terrestrial and aquatic ecological values as a result of the Project.273 All ecological experts agree that the enhanced Mary Crest offset will have significant ecological benefits.274

Section 6(d)

"the maintenance and enhancement of public access to and along rivers"

287. The Project will maintain and enhance public access to and along the Ōtaki River. The evidence of Mr Curtain is that improved recreational access to both sides of the Ōtaki River is a benefit of the Project.275

Section 6(e)

"the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga"

288. The relationship of Māori and their culture and traditions with the matters set out in section 6(e) has been addressed by the close working relationship the NZTA has formed with tangata whenua including Nga Hapū-ō-Ōtaki. Tangata whenua have been engaged during all development phases of the Project and, in particular, the NZTA commissioned representatives of Nga Hapū-ō-Ōtaki to prepare a cultural impact assessment. A memorandum of partnership between the NZTA and Nga Hapū-ō-Ōtaki was signed on 2 August 2013.276 It is the evidence of Mr Toataua that the

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272 Turner EIC, paragraphs 13, 39.
273 Larned rebuttal, paragraphs 29 and 32; Turner rebuttal, paragraphs 14, 32 and 105.
275 Curtain EIC, paragraphs 83 and 84.
276 The MoP is attached to the rebuttal evidence of Mr Rod James as Annexure A.
measures proposed through conditions will effectively mitigate any adverse cultural effects.\textsuperscript{277}

289. Recognition of the kaitiaki role of tangata whenua is discussed further under section 7(a) below.

**Section 6(f)**

*"the protection of historic heritage"

290. The Project will protect historic heritage. Mitigation measures are proposed in order to protect the historic heritage values of Ōtaki Railway Station, the Mirek Smíšek pottery kilns, and Clifden Cottage.\textsuperscript{278} Other sites of cultural and historic heritage have been avoided by the Project alignment.

291. Archaeological resources in the Project area will be effectively managed through the proposed conditions and the archaeological authority application process under the Historic Places Act.\textsuperscript{279}

292. Further, the submission of the NZHPT states that the "avoidance and mitigation offered by the applicant is sufficient to ensure the effects on archaeology and built heritage over the entire route are less than minor."\textsuperscript{280}

**SECTION 7 OTHER MATTERS**

293. Section 7 provides that the Board shall, in achieving the sustainable management purpose under section 5 of the RMA, have particular regard to the matters set out in that section. The matters relevant to the Project are addressed below.

**Section 7(a)**

*"kaitiakitanga"

294. The kaitiaki role of tangata whenua has been reflected in the close working relationship formed between the NZTA and Nga Hapū-o-Ōtaki. The conditions also recognise and provide for the kaitiaki role of the tangata whenua by seeking to draw on the knowledge and skill of kaitiaki in finalising and implementing the Project’s mitigation measures, and through other measures such as accidental discovery protocols.\textsuperscript{281}

\textsuperscript{277} Toataua EIC, paragraph 14.
\textsuperscript{278} Bowman EIC, paragraph 18.
\textsuperscript{279} Prior to earthworks commencing, the NZTA will apply for an authority to modify archaeological sites under the Historic Places Act 1993 (or under any new legislation resulting from the Heritage New Zealand Pouhere Taonga Bill).
\textsuperscript{280} Submission of the New Zealand Historic Places Trust / Pouhere Taonga (102893), paragraph 15.
\textsuperscript{281} Beals rebuttal, Annexure A, proposed consent conditions G.31 - G.35 and E.1; proposed designation conditions 8, 33(h), 52, 53, 75, and 81.
Section 7(aa)

"the ethic of stewardship"

295. The ethic of stewardship has been promoted through the involvement of the community in consultation processes and through conditions requiring further consultation with a number of groups as the Project proceeds through to detailed design, construction, and operation.  

Section 7(b)

"the efficient use and development of natural and physical resources"

296. The Project promotes the efficient use and development of natural resources, particularly by addressing inadequacies of the existing SH1. Those inadequacies include congestion, safety concerns, and vulnerability to closure in the event of earthquake or serious crashes.  

297. From an economic perspective, Mr Copeland concludes that the Project represents an efficient use of resources, through providing:

(a) economic benefits for local and regional businesses and residents during construction;
(b) savings in travel time costs and accident costs;
(c) improvements in trip travel time reliability; and
(d) increased business development and population growth.

Section 7(c)

"the maintenance and enhancement of amenity values"

298. The Project will maintain amenity values, including in the following ways:

(a) the existing urban form and land use patterns are not significantly disrupted by the Project;
(b) the landscape and visual effects of the Project will be successfully mitigated to an acceptable level; and
(c) the Project will maintain a reasonable level of amenity and provide protection from sleep disturbance.

282 For example, the ongoing stewardship of Keep Ōtaki Beautiful over the Pare-o-Matangi reserve is provided for by proposed designation condition 75 in Beals rebuttal, Annexure A.
283 James EIC, paragraph 57
284 Dunlop EIC, paragraph 184.
285 Copeland EIC, paragraph 12.
286 Copeland EIC, paragraph 14.
287 Curtain EIC, paragraphs 17 - 19.
288 McKenzie EIC, paragraph 19.
299. The Project will enhance amenity values, including in the following ways:

(a) the Expressway will result in an overall reduction in vehicle emissions along the route and an overall improvement in ambient air quality, particularly within the urban areas of Ōtaki and Te Horo;²⁹⁰

(b) there will be improvements in regional and local connectivity, reduced commuting times to places of employment and community facilities and services, and positive health benefits for pedestrians and cyclists;²⁹¹

(c) the separation of the Expressway corridor from the Ōtaki town centre and other settlements will improve the underlying urban environment;²⁹² and

(d) the Project will provide a safer transport environment, reduced and more reliable travel times along key routes, and reduced traffic congestion.²⁹³

300. There will be adverse effects on the amenity values of some residents during both the construction and operation of the Project. These include noise, visual, and social effects. These effects have been avoided and appropriately remedied through route selection and Project design and, with the measures contained in the proposed conditions, residual effects will be mitigated to acceptable levels.

Section 7(d)

"intrinsic values of ecosystems"

301. The intrinsic values of ecosystems will be recognised and enhanced by the Project.

302. It is Mr Turner's opinion that the terrestrial ecology values created by the Project will substantially outweigh any such values lost.²⁹⁴

303. It is Dr Larned's opinion that the Project will provide significant ecological benefits to aquatic ecosystems in the Project area.²⁹⁵

Section 7(f)

"maintenance and enhancement of the quality of the environment"

304. The Project will maintain and enhance the quality of the environment for the reasons listed under the other section 6 and 7 headings. Where there are residual adverse effects on the environment, these are proposed to be remedied and mitigated through an extensive suite of measures in the conditions.

²⁹⁰ Chiles EIC (operational), paragraph 21.
²⁹¹ Curtis EIC, paragraph 138.
²⁹² Turvey EIC, paragraph 167.
²⁹³ Curtain EIC, paragraphs 17 - 19.
²⁹⁴ Dunlop EIC, paragraph 184.
²⁹⁵ Turner rebuttal, paragraphs 14, 32 and 105.
²⁹⁶ Larned rebuttal, paragraphs 29 and 32.
Section 7(i)

"the effects of climate change"

305. The potential effects of climate change have been taken into account in the design and proposed mitigation for the Expressway. In particular, the flood modelling that has informed the design and effects assessment of the Project has taken into account the potential increase in rainfall and flood events due to climate change to 2130.296

SECTION 8 TREATY OF WAITANGI

306. Section 8 provides that the Board shall, in achieving the sustainable management purpose under section 5 of the RMA, take into account the principles of the Treaty of Waitangi.

307. In taking into account the principles of the Treaty of Waitangi, the following aspects of the Project are relevant to the Board's consideration:

(a) tangata whenua have been engaged during all development phases of the Project;297

(b) the NZTA has formed a close working relationship with Nga Hapū-o-Ōtaki, including signing a memorandum of partnership between the NZTA and Nga Hapū-o-Ōtaki on 2 August 2013;298

(c) the NZTA commissioned representatives of Nga Hapū-o-Ōtaki to prepare a cultural impact assessment;

(d) the conditions recognise and provide for the kaitiaki role of the tangata whenua by seeking to draw on their knowledge and skill in finalising and implementing the Project's mitigation measures and through other measures such as accidental discovery protocols;299 and

(e) the measures proposed through conditions will effectively mitigate any adverse cultural effects.300

SECTION 5 SUSTAINABLE MANAGEMENT PURPOSE OF THE RMA

308. The ultimate question for the Board is whether confirming the notices of requirement and granting the resource consent applications will promote the sustainable management purpose of the RMA.

296 Webby rebuttal, paragraph 200.
297 Some details of the engagement over time are set out in Mr Toataua's EIC, at paragraphs 22 - 28 and in Annexure A.
298 The MoP is attached to the rebuttal evidence of Mr Rod James as Annexure A.
299 Beals rebuttal, Annexure A, proposed designation conditions 8, 33(h), 52, 53, 75 and 81, and proposed consent conditions E.1 and G.31 - G.35.
300 Toataua EIC, paragraph 14.
Section 5 of the RMA states:

5 Purpose

"(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment."

The Environment Court in North Shore City Council v Auckland City Council described the application of section 5 as follows: 301

"The method of applying s5 then involves an overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources. That recognises that the Act has a single purpose. Such a judgment allows for comparison of conflicting considerations and the scale or degree of them, and their relative significance or proportion in the final outcome."

The matters in sections 6 to 8 inform and assist the consideration of the section 5 purpose: 302

"The remaining sections in Part 2, subsequent to s5, inform and assist the purpose of the Act. We may accord such weight as we think fit to any competing consideration under Part 2, bearing in mind the purpose of the Act. These subsequent sections must not be allowed to obscure the sustainable management purpose of the Act. Rather, they should be approached as factors in the overall balancing exercise to be conducted by the Court."

As noted above, the North Shore approach requires a comparison of conflicting considerations, positive and negative, and a weighing of their relative significance or proportion in the final outcome. In considering adverse effects, it is accepted in case law that the RMA is not a ‘no effects’ statute. For example, the recent of Board of

301 (1996) 2 ELRNZ 305 (EnvC) at 347.
302 Genesis Power Limited v Franklin District Council [2005] NZRMA 541 (EnvC), at [53].
Inquiry decision in respect of the Transmission Gully proposal stated, in relation to ecological effects:\footnote{303 \textit{Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal}, at para [462].}

“Secondly, while we recognise the desirability of achieving a situation of no net loss of biodiversity from a project, we do not believe that it is a requirement of RMA that no net loss be achieved in any given case. The principle of sustainable management requires a broad consideration of a range of sometimes competing factors. A consent authority is entitled to conclude that consent ought to be granted to a proposal notwithstanding that all adverse effects of the proposal have not been avoided, remedied or mitigated. In other words there may be a net loss of some values or aspects of the environment.”

313. It is respectfully submitted that the Project will achieve the sustainable management purpose of the RMA. In particular:

(a) the Project will introduce a safer, more efficient and resilient route for SH1 which will enable people and communities to provide for their social, cultural, and economic wellbeing, and for their health and safety;

(b) the Project will sustain the potential of natural and physical resources to meet the needs of future generations, including the need for an effective SH1 transport route through this area;

(c) the Project will safeguard, and in many cases enhance, the life-supporting capacity of air, water, soil, and ecosystems in the Project area;

(d) while inevitably there will be some residual adverse effects, these are at an acceptable level, and the scale and degree of such effects do not outweigh the benefits identified; and

(e) the NZTA have gone to significant lengths to ensure that adverse effects on the environment are avoided, remedied, or mitigated; where avoidance has not been achieved, there are significant remediation or mitigation measures proposed through the conditions and management plan framework. In a number of instances these measures will lead to positive effects on the environment.

314. Ultimately, the Project presents an opportunity to address the longstanding problem of the transport route through this part of the Kāpiti district, which combines SH1 with the local roading network. The Project as presented to this Board addresses that problem in a responsible manner from an environmental, cultural, social and economic perspective. Again, it is respectfully submitted that the Project will achieve the sustainable management purpose of the RMA and, for that reason, the notices of requirement should be confirmed and the resource consent applications granted.
PART I  EVIDENCE TO BE PRESENTED

315. Appendix E to these submissions identifies the applicants' expert and other witnesses.

_________________________________________
Paul Beverley / David Randal / Mark Mulholland

Counsel for the NZ Transport Agency

23 September 2013
APPENDIX A: RELEVANT STATUTORY PROVISIONS

RESOURCE MANAGEMENT ACT 1991

Part 2

Purpose and principles

5 Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

(f) the protection of historic heritage from inappropriate subdivision, use, and development:

(g) the protection of protected customary rights.
7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) kaitiakitanga:

(aa) the ethic of stewardship:

(b) the efficient use and development of natural and physical resources:

(ba) the efficiency of the end use of energy:

(c) the maintenance and enhancement of amenity values:

(d) intrinsic values of ecosystems:

(e) [Repealed]

(f) maintenance and enhancement of the quality of the environment:

(g) any finite characteristics of natural and physical resources:

(h) the protection of the habitat of trout and salmon:

(i) the effects of climate change:

(j) the benefits to be derived from the use and development

(k) of renewable energy.

8 Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

15 Discharge of contaminants into environment

(1) No person may discharge any—

(a) contaminant or water into water; or

(b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or

(c) contaminant from any industrial or trade premises into air; or

(d) contaminant from any industrial or trade premises onto or into land—

unless the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.
(2) No person may discharge a contaminant into the air, or into or onto land, from a place or any other source, whether moveable or not, in a manner that contravenes a national environmental standard unless the discharge—

(a) is expressly allowed by other regulations; or
(b) is expressly allowed by a resource consent; or
(c) is an activity allowed by section 20A.

(2A) No person may discharge a contaminant into the air, or into or onto land, from a place or any other source, whether moveable or not, in a manner that contravenes a regional rule unless the discharge—

(a) is expressly allowed by a national environmental standard or other regulations; or
(b) is expressly allowed by a resource consent; or
(c) is an activity allowed by section 20A.

(3) This section shall not apply to anything to which section 15A or section 15B applies.

15A Restrictions on dumping and incineration of waste or other matter in coastal marine area

(1) No person may, in the coastal marine area,—

(a) dump any waste or other matter from any ship, aircraft, or offshore installation; or
(b) incinerate any waste or other matter in any marine incineration facility—

unless the dumping or incineration is expressly allowed by a resource consent.

(2) No person may dump, in the coastal marine area, any ship, aircraft, or offshore installation unless expressly allowed to do so by a resource consent.

(3) Nothing in this section permits the dumping of radioactive waste or radioactive matter (to which section 15C applies) or any discharge of a harmful substance that would contravene section 15B.

42A Reports to local authority

(1) At any reasonable time before a hearing or, if no hearing is to be held, before the decision is made, a local authority (as local authority is defined in section 42(6)(b)) may require preparation of a report on information provided on any matter described in section 39(1) by the applicant or any person who made a submission.

(1AA) The local authority may—

(a) require an officer of the local authority to prepare the report; or
(b) commission a consultant or any other person employed for the purpose to prepare the report.

(1A) The report does not need to repeat material from an assessment of environmental effects provided by the applicant.

(1B) Instead, the report may—
(a) adopt the whole assessment; or
(b) adopt any part of the assessment by referring to the part adopted.

(2) Any report prepared under subsection (1) may be considered at any hearing conducted by the local authority.

(3) If the report is in writing, the local authority must provide a copy of it to the applicant, and to every person who made a submission and stated a wish to be heard at the hearing, so that they receive the copy—

(a) at least 15 working days before the hearing, if the authority gives a direction under section 41B; or
(b) at least 5 working days before the hearing, if the authority does not give a direction under section 41B.

(4) If the report is in writing, the authority must—

(a) make the report available at its office to any person who made a submission and did not state a wish to be heard; and
(b) give written or electronic notice to those submitters that the report is available at the authority’s office.

(5) The local authority may waive compliance with—

(a) subsection (3) if it is satisfied that there is no material prejudice, or is not aware of any material prejudice, to any person who should have been provided with a copy of the report under that subsection; or
(b) subsection (4)(b) if it is satisfied that there is no material prejudice, or is not aware of any material prejudice, to any person who should have been given notice of the report under that paragraph.

104 Consideration of applications

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

(a) any actual and potential effects on the environment of allowing the activity; and
(b) any relevant provisions of—

(i) a national environmental standard:
(ii) other regulations:
(iii) a national policy statement:
(iv) a New Zealand coastal policy statement:
(v) a regional policy statement or proposed regional policy statement:
(vi) a plan or proposed plan; and
(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

(2A) When considering an application affected by section 124 or 165ZH(1)(c), the consent authority must have regard to the value of the investment of the existing consent holder.

(2B) When considering a resource consent application for an activity in an area within the scope of a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, a consent authority must have regard to any resource management matters set out in that planning document.

(2C) Subsection (2B) applies until such time as the regional council, in the case of a consent authority that is a regional council, has completed its obligations in relation to its regional planning documents under section 93 of the Marine and Coastal Area (Takutai Moana) Act 2011.

(3) A consent authority must not,—

(a) when considering an application, have regard to—

(i) trade competition or the effects of trade competition; or

(ii) any effect on a person who has given written approval to the application:

(b) [Repealed]

(c) grant a resource consent contrary to—

(i) section 107, 107A, or 217:

(ii) an Order in Council in force under section 152:

(iii) any regulations:

(iv) wāhi tapu conditions included in a customary marine title order or agreement:

(v) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011:

(d) grant a resource consent if the application should have been notified and was not.

(4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.

(5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

(6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.
(7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.

104B Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

(a) may grant or refuse the application; and

(b) if it grants the application may impose conditions under section 108.

105 Matters relevant to certain applications

(1) If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), have regard to—

(a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and

(b) the applicant’s reasons for the proposed choice; and

(c) any possible alternative methods of discharge, including discharge into any other receiving environment.

(2) If an application is for a resource consent for a reclamation, the consent authority must, in addition to the matters in section 104(1) consider whether an esplanade reserve or esplanade strip is appropriate and, if so, impose a condition under section 108(2)(g) on the resource consent.

107 Restriction on grant of certain discharge permits

(1) Except as provided in subsection (2), a consent authority shall not grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A allowing—

(a) the discharge of a contaminant or water into water; or

(b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or

(ba) the dumping in the coastal marine area from any ship, aircraft, or offshore installation of any waste or other matter that is a contaminant,— if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:

(c) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:

(d) any conspicuous change in the colour or visual clarity:
(e) any emission of objectionable odour:

(f) the rendering of fresh water unsuitable for consumption by farm animals:

(g) any significant adverse effects on aquatic life.

(2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied—

(a) that exceptional circumstances justify the granting of the permit; or

(b) that the discharge is of a temporary nature; or

(c) that the discharge is associated with necessary maintenance work— and that it is consistent with the purpose of this Act to do so.

(3) In addition to any other conditions imposed under this Act, a discharge permit or coastal permit may include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure that upon the expiry of the permit the holder can meet the requirements of subsection (1) and of any relevant regional rules.

108 Conditions of resource consents

(1) Except as expressly provided in this section and subject to any regulations, a resource consent may be granted on any condition that the consent authority considers appropriate, including any condition of a kind referred to in subsection (2).

(2) A resource consent may include any 1 or more of the following conditions:

(a) subject to subsection (10), a condition requiring that a financial contribution be made:

(b) a condition requiring provision of a bond (and describing the terms of that bond) in accordance with section 108A;

(c) a condition requiring that services or works, including (but without limitation) the protection, planting, or replanting of any tree or other vegetation or the protection, restoration, or enhancement of any natural or physical resource, be provided;

(d) in respect of any resource consent (other than a subdivision consent), a condition requiring that a covenant be entered into, in favour of the consent authority, in respect of the performance of any condition of the resource consent (being a condition which relates to the use of land to which the consent relates);

(e) subject to subsection (8), in respect of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or section 15B, a condition requiring the holder to adopt the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of the discharge and other discharges (if any) made by the person from the same site or source;

(f) in respect of a subdivision consent, any condition described in section 220 (notwithstanding any limitation on the imposition of conditions provided for by section 87A(2)(b) or (3)(a)):
(g) in respect of any resource consent for reclamation granted by the relevant consent authority, a condition requiring an esplanade reserve or esplanade strip of any specified width to be set aside or created under Part 10;

(h) in respect of any coastal permit to occupy any part of the common marine and coastal area, a condition—
   (i) detailing the extent of the exclusion of other persons:
   (ii) specifying any coastal occupation charge.

(3) A consent authority may include as a condition of a resource consent a requirement that the holder of a resource consent supply to the consent authority information relating to the exercise of the resource consent.

(4) Without limiting subsection (3), a condition made under that subsection may require the holder of the resource consent to do 1 or more of the following:
   (a) to make and record measurements;
   (b) to take and supply samples;
   (c) to carry out analyses, surveys, investigations, inspections, or other specified tests;
   (d) to carry out measurements, samples, analyses, surveys, investigations, inspections, or other specified tests in a specified manner;
   (e) to provide information to the consent authority at a specified time or times;
   (f) to provide information to the consent authority in a specified manner;
   (g) to comply with the condition at the holder of the resource consent’s expense.

(5) Any conditions of a kind referred to in subsection (3) that were made before the commencement of this subsection, and any action taken or decision made as a result of such a condition, are hereby declared to be, and to have always been, as valid as they would have been if subsections (3) and (4) had been included in this Act when the conditions were made, or the action was taken, or the decision was made.

(6) [Repealed]

(7) Any condition under subsection (2)(d) may, among other things, provide that the covenant may be varied or cancelled or renewed at any time by agreement between the consent holder and the consent authority.

(8) Before deciding to grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or 15B subject to a condition described in subsection (2)(e), the consent authority shall be satisfied that, in the particular circumstances and having regard to—
   (a) the nature of the discharge and the receiving environment; and
   (b) other alternatives, including any condition requiring the observance of minimum standards of quality of the receiving environment— the inclusion of that condition is the most efficient and
effective means of preventing or minimising any actual or likely adverse effect on the environment.

(9) In this section, financial contribution means a contribution of—

(a) money; or

(b) land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Maori land within the meaning of Te Ture Whenua Maori Act 1993 unless that Act provides otherwise; or

(c) a combination of money and land.

(10) A consent authority must not include a condition in a resource consent requiring a financial contribution unless—

(a) the condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and

(b) the level of contribution is determined in the manner described in the plan or proposed plan.

149G EPA must provide board or court with necessary information

(1) This section applies if a matter is referred to a board of inquiry or the Environment Court under this Part.

(2) The EPA must provide the board of inquiry or Environment Court, as the case may be, with each of the following things as soon as is reasonably practicable after receiving it:

(a) the matter;

(b) all the information received by the EPA that relates to the matter;

(c) the submissions received by the EPA on the matter.

(3) The EPA must also commission the local authority to prepare a report on the key issues in relation to the matter that includes—

(a) any relevant provisions of a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, and a plan or proposed plan; and

(b) a statement on whether all required resource consents in relation to the proposal to which the matter relates have been applied for; and

(c) if applicable, the activity status of all proposed activities in relation to the matter.

(4) The EPA must provide a copy of the report to—

(a) the board of inquiry or the Environment Court, as the case may be; and

(b) the applicant; and

(c) every person who made a submission on the matter.
149P Consideration of matter by board

(1) A board of inquiry considering a matter must—

(a) have regard to the Minister’s reasons for making a direction in relation to the matter; and
(b) consider any information provided to it by the EPA under section 149G; and
(c) act in accordance with subsection (2), (3), (4), (5), (6), (7), (8), or (9) as the case may be.

(2) A board of inquiry considering a matter that is an application for a resource consent must apply sections 104 to 112 and 138A as if it were a consent authority.

(3) A board of inquiry considering a matter that is an application for a change to or cancellation of the conditions of a resource consent must apply sections 104 to 112 as if—

(a) it were a consent authority and the application were an application for resource consent for a discretionary activity; and
(b) every reference to a resource consent and to the effects of the activity were a reference to the change or cancellation of a condition and the effects of the change or cancellation, respectively.

(4) A board of inquiry considering a matter that is a notice of requirement for a designation or to alter a designation—

(a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
(b) may—

(i) cancel the requirement; or
(ii) confirm the requirement; or
(iii) confirm the requirement, but modify it or impose conditions on it as the board thinks fit; and
(c) may waive the requirement for an outline plan to be submitted under section 176A.

(5) A board of inquiry considering a matter that is a notice of requirement for a heritage order or to alter a heritage order—

(a) must have regard to the matters set out in section 191(1); and
(b) may—

(i) cancel the requirement; or
(ii) confirm the requirement; or
(iii) confirm the requirement, but modify it or impose conditions on it as the board thinks fit (including a condition that the heritage protection authority reimburse the owner of the place concerned for any additional costs of upkeep of the place resulting from the making or the modifying of the order).
(6) A board of inquiry considering a matter that is a variation to a proposed regional plan, a proposed regional plan, or a change to a regional plan—
   (a) must apply clause 10(1) to (3) of Schedule 1 as if it were a local authority; and
   (b) may exercise the powers under section 293 as if it were the Environment Court; and
   (c) must apply sections 66 to 70B and 77A to 77D as if it were a regional council; and
   (d) must apply section 165H as if it were a regional council, if the matter involves a rule in a regional coastal plan or proposed regional coastal plan that relates to the allocation of space in a common marine and coastal area for the purposes of an activity.

(7) A board of inquiry considering a matter that is a change to a district plan or a variation to a proposed district plan—
   (a) must apply clause 10(1) to (3) of Schedule 1 as if it were a local authority; and
   (b) may exercise the powers under section 293 as if it were the Environment Court; and
   (c) must apply sections 74 to 77D as if it were a territorial authority.

(8) A board of inquiry considering a plan change request and its concurrent application made under subpart 4 of Part 7A must—
   (a) firstly, determine matters in relation to the plan change request; and
   (b) secondly, determine matters in relation to the concurrent application, based on its determination of matters in relation to the plan change request.

(9) For the purposes of subsection (8)(b), a board of inquiry must process, consider, and determine the concurrent application as if it were a regional council acting under section 165ZW and that section applies accordingly with all necessary modifications.

(10) A board of inquiry must decline a concurrent application if, as a result of the board’s determination on the plan change request, the aquaculture activity that the concurrent application relates to remains a prohibited activity.

167 Application to become requiring authority

(1) A network utility operator may apply to the Minister in the prescribed form for approval as a requiring authority.

(2) The Minister may make such inquiry into the application and request such information as he or she considers necessary.

(3) The Minister may, by notice in the Gazette, approve an applicant under subsection (1) as a requiring authority for the purposes of—
   (a) a particular project or work; or
   (b) a particular network utility operation—on such terms and conditions (including provision of a bond) as are specified in the notice.

(4) The Minister shall not issue a notice under subsection (3) unless he or she is satisfied that—
(a) the approval of the applicant as a requiring authority is appropriate for the purposes of carrying on the project, work, or network utility operation; and

(b) the applicant is likely to satisfactorily carry out all the responsibilities (including financial responsibilities) of a requiring authority under this Act and will give proper regard to the interests of those affected and to the interests of the environment.

(5) Where the Minister is satisfied that—

(a) a requiring authority is unlikely to undertake or complete a project, work, or network utility operation for which approval as a requiring authority was given; or

(b) a requiring authority is unlikely to satisfactorily carry out any responsibility as a requiring authority under this Act; or

(c) a requiring authority is no longer a network utility operator—

the Minister shall, by notice in the Gazette, revoke the relevant approval given under subsection (3).

(6) Upon the revocation of an approval under subsection (5), all functions, powers, and duties of the former requiring authority under this Act in relation to any designation, or any requirement for a designation, shall be deemed to be transferred to the Minister under section 180.

171 Recommendation by territorial authority

(1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.

(1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—

(a) any relevant provisions of—

(i) a national policy statement:

(ii) a New Zealand coastal policy statement:

(iii) a regional policy statement or proposed regional policy statement:

(iv) a plan or proposed plan; and

(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—

(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or

(ii) it is likely that the work will have a significant adverse effect on the environment; and

(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and

(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.
(2) The territorial authority may recommend to the requiring authority that it—
   (a) confirm the requirement:
   (b) modify the requirement:
   (c) impose conditions:
   (d) withdraw the requirement.

(3) The territorial authority must give reasons for its recommendation under subsection (2).

176A Outline plan

(1) Subject to subsection (2), an outline plan of the public work, project, or work to be constructed on designated land must be submitted by the requiring authority to the territorial authority to allow the territorial authority to request changes before construction is commenced.

(2) An outline plan need not be submitted to the territorial authority if—
   (a) the proposed public work, project, or work has been otherwise approved under this Act; or
   (b) the details of the proposed public work, project, or work, as referred to in subsection (3), are incorporated into the designation; or
   (c) the territorial authority waives the requirement for an outline plan.

(3) An outline plan must show—
   (a) the height, shape, and bulk of the public work, project, or work; and
   (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.

(4) Within 20 working days after receiving the outline plan, the territorial authority may request the requiring authority to make changes to the outline plan.

(5) If the requiring authority decides not to make the changes requested under subsection (4), the territorial authority may, within 15 working days after being notified of the requiring authority’s decision, appeal against the decision to the Environment Court.

(6) In determining any such appeal, the Environment Court must consider whether the changes requested by the territorial authority will give effect to the purpose of this Act.

(7) This section applies, with all necessary modifications, to public works, projects, or works to be constructed on designated land by a territorial authority.
60 Basic entitlement to compensation

(1) Where under this Act any land—

(a) is acquired or taken for any public work; or

(b) suffers any injurious affection resulting from the acquisition or taking of any other land of the owner for any public work; or

(c) suffers any damage from the exercise (whether proper or improper and whether normal or excessive) of—

(i) any power under this Act; or

(ii) any power which relates to a public work and is contained in any other Act— and no other provision is made under this or any other Act for compensation for that acquisition, taking, injurious affection, or damage, the owner of that land shall be entitled to full compensation from the Crown (acting through the Minister) or local authority, as the case may be, for such acquisition, taking, injurious affection, or damage.

and no other provision is made under this or any other Act for compensation for that acquisition, taking, injurious affection, or damage, the owner of that land shall be entitled to full compensation from the Crown (acting through the Minister) or local authority, as the case may be, for such acquisition, taking, injurious affection, or damage.

(2) Where any compensation is payable under subsection (1) to any person who is the lessee under any lease granted by the Crown or the local authority that acquired or took any land that is subject to the lease, that person shall not be entitled to any damages arising from the breach of any express or implied—

(a) covenant for quiet enjoyment; or

(b) covenant not to derogate from the grant contained in that lease.

62 Assessment of compensation

(1) The amount of compensation payable under this Act, whether for land taken, land injuriously affected, or otherwise, shall be assessed in accordance with the following provisions:

(a) subject to the provisions of sections 72 to 76, no allowance shall be made on account of the taking of any land being compulsory:

(b) the value of land shall, except as otherwise provided, be taken to be that amount which the land if sold in the open market by a willing seller to a willing buyer on the specified date might be expected to realise, unless—

(i) the assessment of compensation relates to any matter which is not directly based on the value of land and in respect of which a right to compensation is conferred under this or any other Act; or
(ii) only part of the land of an owner is taken or acquired under this Act and that part is of a size, shape, or nature for which there is no general demand or market, in which case the compensation for such land and the injurious affection caused by such taking or acquisition may be assessed by determining the market value of the whole of the owner’s land and deducting from it the market value of the balance of the owner’s land after the taking or acquisition:

(c) where the value of the land taken for any public work has, on or before the specified date, been increased or reduced by the work or the prospect of the work, the amount of that increase or reduction shall not be taken into account:

(d) the special suitability or adaptability of the land, or of any natural material acquired or taken under section 27, for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only pursuant to statutory powers, or a purpose for which there is no market apart from the special needs of a particular purchaser or the requirements of any government department or of any local authority:

(e) the Tribunal shall take into account by way of deduction from that part of the total amount of compensation that would otherwise be awarded on any claim in respect of a public work that comprises the market value of the land taken and any injurious affection to land arising out of the taking, any increase in the value of any land of the claimant that is injuriously affected, or in the value of any other land in which the claimant has an interest, caused before the specified date or likely to be caused after that date by the work or the prospect of the work:

(f) the Tribunal shall take into account, by way of deduction from the total amount of compensation that would otherwise be awarded, any increase in the value of the parcel of land in respect of which compensation is claimed that has occurred as a result of the exercise by the New Zealand Transport Agency of any power under section 91 of the Government Roading Powers Act 1989.

(2) In this section, the term specified date means—

(a) in the case of any claim in respect of land of the claimant which has been taken pursuant to section 26, the date on which the land became vested in the Crown or in the local authority, as the case may be:

(b) where compensation is claimed under section 80 and the Minister or the local authority has (before the issue of the Proclamation) notified the Tribunal what land he or it proposes to take—

(i) the date of that notification; or

(ii) the date of the first entry upon the land for construction purposes; or

(iii) the date on which the land is first injuriously affected by the work; or

(iv) the date of any agreement made under section 80(1)(c) or any date specified in such an agreement—

whichever is the earliest:
(c) in the case of any other claim in respect of land of the claimant which has been or is proposed to be taken for any work, the date on which the land became by Proclamation or declaration vested in the Crown or in the local authority, as the case may be, or the date on which the land was first entered upon for the purpose of the construction or the carrying out of the work, whichever is the earliest:

(d) in the case of any claim in respect of any work for which no land of the claimant has been taken and no land of the claimant is proposed to be taken, the date of the commencement of the execution of the portion of the work that causes damage to or injuriously affects the land of the claimant:

(e) [Repealed]

(3) Where any lessor’s or lessee’s estate or interest in any land is taken or acquired under this Act, such estate or interest may, if required by its owner, for the purpose of assessing compensation under this Act, be valued separately from the freehold.

64 Compensation for injurious affection to be assessed by reference to whole work

(1) Where land is taken or acquired from any person for the purpose of constructing any public work which is to be situated partly on that land and partly on other land, compensation for injurious affection of the land retained by that person shall be assessed by reference to the effect of the whole of the public work on the land so retained and not only to the part situated on the land taken or acquired from that person.

LAND TRANSPORT MANAGEMENT ACT 2003

94 Objective of Agency

The objective of the Agency is to undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest.
APPENDIX B: MINISTER'S REASONS FOR REFERRAL TO THIS BOARD

Ministerial direction to refer the New Zealand Transport Agency’s and KiwiRail’s two Notices of Requirement and 49 resource consent applications for the Peka Peka to North Ōtaki Expressway Proposal (the matters) to a Board of Inquiry

I consider that the matters lodged by the New Zealand Transport Agency (NZTA) and KiwiRail, being two Notices of Requirement and 49 resource consent applications relating to the construction, operation and maintenance of the Peka Peka to North Ōtaki Expressway proposal ("the matters") are a proposal of national significance and under section 147 of the RMA direct those matters to be referred to a board of inquiry for decision. My reasons for directing the matters involved in the Peka Peka to North Ōtaki Expressway proposal to a board of inquiry are as follows:

National significance

The matters proposed by NZTA and KiwiRail are a proposal of national significance having given regard to the following relevant factors in section 142(3) of the RMA:

- The proposal “results or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment)” (section 142(3)(a)(v)), through the addition of an expressway to the largely rural environment with large structural and elevated components including a new bridge over the Ōtaki River.

- The proposal has a construction footprint of 152 hectares and is likely to result in the significant use of natural and physical resources (section 142(3)(a)(ii)). Associated earthworks will require approximately 800,000m³ of cut converted to fill, and 45,000 m³ of imported fill. The estimated cost of construction is $252 million and the proposal requires the acquisition of 122 land interests and the potential removal of 30 houses.

- Based on the many attendees at public meetings, culminating in submissions received during consultation (mostly in support of an expressway), the variety of concerns raised and media coverage on the Wellington Northern Corridor generally, the proposal has aroused widespread public interest regarding its actual or likely effect on the environment (section 142(3)(a)(i)).

- The proposal “affects or is likely to affect more than 1 region or district” and “relates to a network utility operation that extends or is proposed to extend to more than 1 district or region” (sections 142(3)(a)(ix) and 142(3)(a)(x)) as it is a network utility operation that whilst physically contained within the boundaries of the Kāpiti Coast District also falls within the jurisdiction of the Greater Wellington Regional Council. The proposal is also a key section of the wider Wellington Northern Corridor Road of National Significance, which will affect six districts and two regions in its entirety. The proposal also affects the North Island Main Trunk railway line, linking Auckland and Wellington, a critical part of KiwiRail’s key freight route from Auckland to Christchurch.

- The Wellington Northern Corridor is identified in the Government Policy Statement on Land Transport Funding 2012 as one of seven Roads of National Significance requiring significant

development to reduce congestion, improve safety and support economic growth. The proposal, as part of the wider Wellington Northern Corridor Road of National Significance, will assist the Crown in fulfilling its public health, welfare, security, or safety obligations or functions (section 142(3)(a)(viii)) by providing a safe, reliable, secure and resilient road, as an alternative route into and out of Wellington, with the ability to withstand natural hazards.

- Greater Wellington Regional Council is of the view that the proposal is of national significance.

Direction to a Board of Inquiry

Before reaching my decision to direct the Peka Peka to North Ōtaki Expressway proposal to be referred to a board of inquiry for decision I considered the following relevant factors:

- The Environmental Protection Authority recommendation that I refer the matter to a board of inquiry.

- The Government has indicated, through the National Infrastructure Plan and the GPS, the continued funding of the seven Roads of National Significance that are critical to support New Zealand’s economic growth aspirations. The Wellington Northern Corridor, of which the Peka Peka to North Ōtaki Expressway proposal is part, is one of these Roads of National Significance.

Directing this proposal to a board of inquiry will provide a decision-making body consistent with that used for the Transmission Gully and MacKays to Peka Peka proposals (as previous sections of the Wellington Northern Corridor).

- The board of inquiry process will provide for a comprehensive assessment of the Notices of Requirement and resource consent applications within a streamlined process.

- The board of inquiry process allows the public the opportunity to have their views considered in front of a panel of skilled decision makers.

- The board of inquiry process will provide greater certainty for all parties to the application as a decision is required within nine months. The Environment Court or the relevant local authorities are not subject to this timeframe.

- The views of the applicant and the relevant local authorities that would have processed and decided the matters if I had not directed the matters to be referred to a board of inquiry for decision; and

- The capacity of those relevant local authorities.

Dated at Wellington this 3rd day of April 2013

Hon Amy Adams
Minister for the Environment
APPENDIX C: PROPOSED MANAGEMENT PLAN STRUCTURE

Construction Environmental Management Plan

Topic-Specific Management Plans

- Erosion & Sediment Control Plan (certified by GWRC)
- Ecological Management Plan (certified by GWRC)
- Bulk Earthworks Contaminated Land Management Plan (certified by GWRC)
- Construction Air Quality Management Plan (certified by GWRC)
- Groundwater Management Plan (certified by GWRC)
- Landscape and Urban Design Plan (certified by KCDC)
- Construction Traffic Management Plan (certified by KCDC)
- Network Integration Plan (certified by KCDC)
- Construction Noise & Vibration Plan (certified by KCDC)
- Network Utilities Management Plan
- Stakeholder and Communications Management Plan

Site-Specific Environmental Management Plans
(certified by GWRC and KCDC)
APPENDIX D: PROPOSED CONDITION AMENDMENTS

(Changes proposed to the conditions presented through the rebuttal evidence of Ms Beals)

<table>
<thead>
<tr>
<th>Designation conditions</th>
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<tbody>
<tr>
<td><strong>Condition</strong></td>
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<tr>
<td><strong>General Conditions and Administration</strong></td>
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<tr>
<td>1(a)</td>
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<tr>
<td><strong>Site Specific Environmental Management Plans</strong></td>
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<td>24(c)</td>
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<td>25(ae)</td>
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<td>27(a)</td>
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<tr>
<th>Resource consent conditions</th>
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<tr>
<td><strong>General Conditions and Administration</strong></td>
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<tr>
<td>G.1(a)</td>
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<tr>
<td>G.30(af) (new)</td>
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<tr>
<td><strong>Ecological Monitoring</strong></td>
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<td>G.33</td>
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<td>G.43</td>
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<tr>
<th>Stormwater Conditions</th>
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| SW.3 (new) | Add: "Post-construction, the consent holder shall ensure that WRC Flood Protection is provided with reasonable access to watercourses for river/stream maintenance purposes as follows: a) Physical and legal access shall be provided to the Waitohu Stream; and b) Physical access along the Otaki River shall be provided upriver from SH1 along the true right bank and downriver from SH1 on the
true left bank, suitable for heavy vehicles (including laden truck and trailer units), including during flood conditions."

<table>
<thead>
<tr>
<th>SW.4 (new)</th>
<th>Add:</th>
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<td></td>
<td>&quot;The consent holder will consult with the Council about maintenance schedules for the Waitohu Stream, Mangapouri Stream, Ōtaki River, and Mangaone Stream works. The consent holder shall use its best endeavours to enter into a maintenance agreement to ensure that the maintenance around bridges is consistent with Council's maintenance regime up and downstream of the bridges.&quot;</td>
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## APPENDIX E: WITNESSES FOR THE APPLICANTS

<table>
<thead>
<tr>
<th>WITNESS NAME</th>
<th>TOPIC</th>
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<tbody>
<tr>
<td>1 Rod James</td>
<td>NZTA – Regional State Highway Manager</td>
</tr>
<tr>
<td>2 Selwyn Blackmore</td>
<td>NZTA – Principal Project Manager – RoNS Development</td>
</tr>
<tr>
<td>3 Pamela Butler</td>
<td>KiwiRail</td>
</tr>
<tr>
<td>4 Tony Coulman</td>
<td>Project design and Consultation</td>
</tr>
<tr>
<td>5 Sylvia Allan*</td>
<td>Alternative Route Assessment</td>
</tr>
<tr>
<td>6 David Dunlop</td>
<td>Transportation</td>
</tr>
<tr>
<td>7 Derek Holmes</td>
<td>Project Construction</td>
</tr>
<tr>
<td>8 Pathmanathan Brabaharan</td>
<td>Geotechnical Engineering</td>
</tr>
<tr>
<td>9 Dr Grant Webby</td>
<td>Flood Hydrology</td>
</tr>
<tr>
<td>9A Dr John (Jack) McConchie</td>
<td>Flood Hydrology</td>
</tr>
<tr>
<td>10 Warren Bird</td>
<td>Stormwater</td>
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<tr>
<td>11 Gregory Haldane*</td>
<td>Contaminated Land</td>
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<tr>
<td>12 Dr Stephen Chiles</td>
<td>Noise - Construction</td>
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<tr>
<td>13 Dr Stephen Chiles</td>
<td>Noise - Operation</td>
</tr>
<tr>
<td>14 David McKenzie</td>
<td>Landscape</td>
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<tr>
<td>15 Bruce Curtain</td>
<td>Urban Design</td>
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<tr>
<td>16 Cathryn Barr*</td>
<td>Archaeology</td>
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<tr>
<td>17 Ian Bowman*</td>
<td>Heritage</td>
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<tr>
<td>18 Niketi Toataua*</td>
<td>Cultural</td>
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<tr>
<td>19 Andrew Curtis*</td>
<td>Air Quality</td>
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<tr>
<td>20 Dr David Black*</td>
<td>Public Health</td>
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<tr>
<td>21 John Turner</td>
<td>Terrestrial Ecology</td>
</tr>
<tr>
<td>22 Dr Scott Larned</td>
<td>Aquatic Ecology</td>
</tr>
<tr>
<td>23 Wendy Turvey</td>
<td>Social</td>
</tr>
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<td>24 Michael Copeland</td>
<td>Economics</td>
</tr>
<tr>
<td>25 Rebecca Beals</td>
<td>Conditions</td>
</tr>
<tr>
<td>26 Peter Coop</td>
<td>Planning</td>
</tr>
</tbody>
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* The Board has excused these witnesses from appearing at the hearing