BOARD OF INQUIRY

Northern Corridor Improvements Proposal

IN THE MATTER	of the Resource Management Act 1991 (the RMA)
AND	
IN THE MATTER	of a Board of Inquiry appointed under s149J of the Resource Management Act 1991 to consider notices of requirement and resource consents made by the New Zealand Transport Agency in relation to the Northern Corridor Improvements Proposal.

OUTLINE OF CLOSING LEGAL SUBMISSIONS OF

COUNSEL ASSISTING THE BOARD

14 August 2017

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1. INTRODUCTION

1.1 The Board of Inquiry ("Board") in relation to the Northern Corridor Improvements Proposal ("NCI Project" or "Project") has requested Counsel Assisting the Board to present closing submissions on a limited number of issues.

1.2 Procedural issues relevant to the Waste Management settlement are now resolved. These submissions therefore address the remaining issues that the Board has raised with Counsel Assisting, or vice versa, as follows:

(a) Proposed conditions generally – including the outcome of discussions in relation to which conditions should attach to which consents, management plan conditions and issues that the Board raised with the parties on 10 August 2017 (Section 2);

(b) Noise and vibration conditions (Section 3);

(c) The scope of Board's jurisdiction to require NZTA to upgrade the Alexandra Stream underpass should it wish to (Section 4); and

(d) The scope of the Board's jurisdiction to require mitigation for the closing of the Unsworth Road off ramp at Greenwich Way, despite a lack of submissions on that issue (Section 5).

2. PROPOSED CONDITIONS

2.1 Counsel Assisting attended meetings with other counsel and planning consultants in relation to conditions on:

(a) Wednesday 26 July 2017, relating to conditions generally; and

(b) Thursday 27 July 2017, relating specifically to the noise and vibration conditions. (The outcome of discussions relating to the noise and vibration conditions is addressed in the section which follows.)

2.2 In addition, various other communications have taken place via telephone or email in what has been a very productive process.

2.3 Counsel for the Agency helpfully circulated a number of revised versions of the proposed conditions on 29 July 2017. We reviewed these and provided further input. NZTA filed supplementary evidence of Mr McGahan on 4 August 2017 which attaches NZTA's final set of proposed conditions.

Issues raised by Counsel Assisting

2.4 In our Opening submissions, we raised a number of issues of issues in relation to the structure and drafting of the conditions proposed by the Agency. These issues related to:

(a) Management plan conditions – whether there should be a rubric obligation that NZTA has to meet in respect of which the management plan (which is required by a separate condition) should describe the processes or methods in order to meet that overall obligation.

(b) "Hard and fast" requirements – whether "hard and fast" requirements, including monitoring conditions, should be contained in separate conditions or in the management plan itself.

(c) Which conditions should attach to which consents – whether conditions that manage temporary construction effects should be attached to the (regional) resource consents and only conditions that relate to the Project's ongoing operational effects should attach to the designations.

Issues addressed by revised conditions

2.5 For the most part, the issues that we raised in our Opening submissions have been addressed by NZTA.

Management plan conditions

2.6 As we noted in our Opening submissions, Mr McGarr raised our concerns with respect to the management plan conditions at the Planners' conferencing and, as a result, the conditions now contain more specific obligations to, at least, avoid or minimise adverse effects rather than "manage" effects of the Project.

2.7 The key remaining issue that we saw as being out of step with *Wood* related to the fact that many management plan conditions contained "hard and fast requirements" that we considered to be more appropriate as a condition in their own right. Having said that, we also submitted that obligations contained in management plans would likely be enforceable given that the management plan must be certified by Auckland Council ("Council" or "AC").

2.8 In light of the fact that the conditions would be enforceable, we have generally deliberately taken a "light-handed" approach to seeking amendments to those conditions.

Dust Management Plan

2.9 We raised an issue at the conditions workshop with respect to the obligations contained in the Dust Management Plan, because it was not entirely clear to us whether those obligations were intended to be absolute obligations, guidelines or trigger levels for further action.

2.10 NZTA now propose an amendment to the Dust Management Plan conditions to include a new DMP.1A which imposes the obligations as hard and fast requirements. We are now satisfied with that condition.

Which conditions attach to which consents?

2.11 NZTA has restructured the conditions in order to relocate various conditions previously attached to the resource consents to the designations. These are set out in Mr McGahan's supplementary evidence.[1] Mr McGahan now considers that all conditions remaining on the resource consents are to address effects generated by the activities authorised by the regional consents.

2.12 Counsel for Auckland Council has indicated that Auckland Council agrees with the approach proposed by Mr McGahan. Given that Auckland Council is now comfortable with the location of the conditions, Counsel Assisting is satisfied that this issue has now been appropriately addressed.

2.13 NZTA have also proposed a "sunset" condition on the designation, which ensures that conditions which have been imposed to address effects of the construction of the Project (as distinct from operational matters) cease to have effect. Counsel Assisting was involved in developing that condition and is satisfied that it is appropriate and within the jurisdiction of the Board.

[1] McGahan supplementary, 4 August 2017, at [5.1].

Issues raised with the Board

2.14 Counsel noted via email to the EPA dated 9 August 2017 that the Board may wish to address the following issues with NZTA's witnesses and counsel:

(a) Whether there ought to be a condition requiring monitoring of traffic effects during the construction period; and

(b) Whether conditions should be imposed requiring amendments to the Project which NZTA has agreed to including additional SUP connections, provision of stairs in addition to a ramp at Rosedale Road and extension of an existing T2 lane.

2.15 The Board raised these issues with counsel on 10 August 2017 and the EPA forwarded our email to counsel on that date.

2.16 We address each of these below.

Monitoring of construction traffic effects

2.17 In our Opening submissions, we noted that:[2]

> "*Some aspects of the proposal do not have monitoring conditions at all. One example of that is construction traffic effects. We would have thought that these effects should be monitored and amendments made to the Construction Traffic Management Plan if the effects are unacceptable. This is the approach taken in the Waterview conditions and it is not clear to us why that approach is not taken here."*

2.18 We raised this issue with NZTA at the conditions workshop on 27 July 2017. Mr Clark has now provided supplementary evidence on this issue.[3] His evidence is that:[4]

> *"The main transport effects of the construction works were set out in paragraph 11.2 of my EIC. These are:*
>
> *a Temporary speed limits;*
>
> *b Temporary lane width reductions along SH1 and SH18;*
>
> *c Temporary works along Rosedale Road;*
>
> *d Temporary right turn bans to/from Paul Matthews Road.*
>
> *e Effects of construction related traffic, to and from the work sites."*

2.19 Mr Clark's evidence sets out the reasons why he considers that a monitoring condition is not required in relation to the effects identified. In doing so, he distinguishes between the NCI Project and other projects, including Waterview, where monitoring of construction traffic effects was required. In relation to this Project and concludes:[5]

> *"…while I have supported the concept of traffic monitoring in other locations, I consider that the benefit of introducing further monitoring in the NCI conditions will offer limited value. If any condition is to be considered, it should relate to the period of time when right turns are*

[2] Opening submissions, at [8.14].
[3] Clark supplementary, 12 August 2017.
[4] Clark supplementary, at [3.2].
[5] Clark supplementary, at [3.10].

banned between SH18 and Paul Matthews Road."

2.20 The Board will need to assess Mr Clark's evidence in light of the submissions and evidence that it has heard and determine whether monitoring of traffic during construction is required.

Potential issues re "general accordance" condition

2.21 In our Opening submissions, we raised the possibility that the Board may wish to "pin down" by way of specific conditions particular aspects of the proposal, for example, where a change in design may result in unacceptable adverse effects, including by way of a requirement to undertake the work in accordance with a particular plan.[6] It may also be appropriate for the Board to "pin down" aspects of the Project which NZTA has agreed to undertake.

2.22 One such example relates to the Alexandra Underpass. Notwithstanding the finding that the Board ultimately makes with respect to the upgrade required at Alexandra Underpass, NZTA has offered to make some improvements to the Underpass, namely:

(a) Realignment of the path on the southern side of the Underpass; and

(b) Lighting and CCTV in the Underpass to improve safety.

2.23 In response to our discussions with NZTA, new conditions are proposed by which these improvements will be required by those conditions. Conditions UDL.13 and UDL.14 say:

> *"UDL.13 The Requiring Authority shall implement the following measures to address public safety concerns associated with the Alexandra Stream Underpass:*
>
> *a. Path realignment on the southern side of the underpass (i.e, the approach to the southern entrance to the underpass);*
>
> *b. Improved lighting within the underpass; and*
>
> *c. Inclusion of CCTV within the underpass.*
>
> *UDL. 14 The measures outlines in UDL.13 shall be designed and implemented in consultation with Council Parks and Auckland Transport."*

2.24 We support the inclusion of these conditions, although submit that the UDL.13 could be improved by providing greater certainty as to the purpose of the path realignment. We have raised this issue with counsel for NZTA who has advised that the Minimum Requirements provide that the realignment to the underpass shall suit a minimum cyclist design speed of 15km/h but that NZTA would prefer that the condition be amended as follows:

> *"The Requiring Authority shall implement the following measures to address public safety concerns associated with the Alexandra Stream Underpass:*
>
> *a. Path realignment on the southern side of the underpass (i.e, the approach to the southern entrance to the underpass) to suit a minimum cyclist design speed of 15km/h, provided realignment works do not impact Alexandra Stream."*

2.25 In our view this is a sensible and appropriate amendment to the condition.

[6] Opening submissions, at [7.9].

2.26 We raised other issues relating to:

(a) Amendments to SUP connections. We understand that some of these amendments will be provided for via the side agreement with Auckland Transport and some will be provided for in the UDLF. This will be clarified by counsel for NZTA in closing.

(b) Auckland Transport ("AT") sought the inclusion of stairs in addition to the ramp at the SUP connection at Rosedale Road. NZTA agreed to that solution and suggested that it be included at detailed design stage in consultation with AT. [7]

(c) Mr Fogarty sought certainty that the existing T2 lane will be extended once the existing bus ramp into Constellation Bus Station is removed.

2.27 There are no conditions requiring any of the specific amendments to the Project referred to at (a) to (c) above. Whether this should be required depends upon the Board's view as to their importance. In other words:

(a) If the Board considers that they are "nice to have" but not necessary, then a specific condition is not required;

(b) If the Board wishes to ensure that these amendments are made, then the Board can and should impose conditions requiring them. In that case, we suggest that the Board request that NZTA provide proposed wording for its consideration.

3. NOISE AND VIBRATION CONDITIONS

3.1 By the time the noise and vibration experts presented evidence the proposed conditions relating to noise and vibration had been agreed between the noise and vibration experts and the planners.

Changes to CNV.6 and CNV.7

3.2 At the hearing, Mr Styles noticed that proposed Conditions CNV.6 and CNV.7 relating to Site Specific Construction Noise Management Plans ("SSCNMPs") had been linked to the outline plan of works process and that that would not be workable. Mr Hegley and Ms Wilkening agreed.

3.3 As a result of that agreement, when Mr Hegley presented his evidence at the hearing he outlined the further amendments to proposed Conditions CNV.6 and CNV.7 that had been agreed. Those further amendments were as follows:

(a) Deletion of the link to the outline plan of works process; and

(b) Reinstatement of the certification process for SSCNMPs.

3.4 The amendments are shown on the version of CNV.6 and CNV.7 **attached** as **Appendix 1** to these submissions.

Operation of Condition CNV.6(a) and (b)

3.5 The members of the Board raised a number of issues with the noise and vibration experts regarding the meaning and operation of Condition CNV.6(a) and (b). All of the experts agreed that Condition CNV.6(a) and (b) meant that a

[7] Moore, Rebuttal.

SSCNMP was not required if the construction noise standards in Table CNV.A were exceeded by up to 5 decibels:

(a) During the day time (0700 – 2200) for up to 14 consecutive days; or

(b) During the night time (2200 – 0700) for up to two consecutive nights.

3.6 All of the experts considered that the exception to the requirement for a SSCNMP was acceptable. Ms Wilkening noted that exceedances would not be continuous, given the nature of construction, and Mr Styles noted that he considered the exception to the requirement for a SSCNMP would only result in minor adverse effects.

3.7 In response to questions from the Board, Mr Styles read out possible new wording for Condition CNV.6(a) and (b) to make them clearer while noting that the wording he was reading was a work in progress. After Mr Styles presented his evidence, he prepared amendments to Condition CNV.6(a) and (b) to make them clearer and those amendments were circulated to counsel for NZTA and Council on Friday, 11 August 2017 and provided to the Board on the same day. The proposed amendments are also shown in Appendix 1 to these submissions and NZTA and Council have advised that the amendments are acceptable.

4. ALEXANDRA UNDERPASS

4.1 The Alexandra Underpass is an existing underpass which provides a cycling and walking connection beneath SH 18 between the residential areas of Unsworth Heights and Rook Reserve to the industrial area to the north of SH18. NZTA proposes a Shared Use Path ("SUP") along the northern side of SH 18 which will pass close to the underpass, thus providing increased access to it.

4.2 All relevant parties acknowledge that the existing state of the underpass is less than desirable, particularly in terms of its width, angle and substandard sightlines which may affect the safety of its users in terms of CPTED principles.

4.3 The Council has taken the position that the underpass should be upgraded as part of NZTA's project, particularly given that it would be very difficult and expensive to undertake an upgrade once the Project is complete and SH18 has itself been upgraded.

4.4 NZTA's position is that the underpass has existing CPTED issues and an upgrade is not required to address adverse effects of the Project, nor is the Project required to perfectly fulfil all of NZTA's objectives.

Key issue

4.5 The Board has sought that we address whether it has jurisdiction to impose conditions granting the relief sought by AC. We first summarise the respective positions of the parties and then consider the legal position in light of those evidence and submissions.

Auckland Council position

4.6 AC has taken the position that the underpass should be upgraded as part of NZTA's project, particularly given that it would be very difficult and expensive to undertake an upgrade once the Project is complete and SH18 has itself been upgraded.

4.7 Mr Bangma's Opening submissions for AC[8] on this issue stated:

> *"The Council considers that the underpass should be upgraded as part of the Proposal because:*
>
> *Usage of the underpass may increase as a result of the Proposal, as users will be attracted to travel from Unsworth Heights, through the underpass under SH18, to get to the proposed SUP. This will require users to travel through an underpass that is acknowledged by all experts to not comply with CPTED principles, and is therefore potentially unsafe.*
>
> *It would be a more efficient use of resources under section 7(b) of the RMA to upgrade the underpass now, as part of this Proposal (rather than later) because:*
>
> *Upgrading the underpass later will be significantly more expensive than undertaking the upgrade now as part of this Proposal. This is due to the need to provide for a separate construction yard, project office, and, in particular, separate traffic management measure for State Highway 18 if the underpass is upgraded later (compared to having these provided now, as part of this Proposal, at negligible extra cost);*
>
> *With respect to traffic, the upgrade of the underpass would require the partial closure of State Highway 18. The upgrade of the underpass could be undertaken as part of existing traffic management measures associated with this Proposal, resulting in little or no further disruption to traffic. Whereas, if the underpass was upgraded later, it would require partial closure of State Highway 18, for a second time. Traffic flows on State Highway 18 are predicted to increase as a result of this Proposal (meaning there would be potentially even greater disruption to traffic if the underpass was upgraded at a later date);*
>
> *If the underpass is not upgraded now, it may never be upgraded, given the underpass is a structural part of State Highway 18, NZTA's agreement would be required. NZTA may not provide this, due to the disruption the upgrade would cause to traffic on State Highway 18."*

4.8 AC has presented evidence from two experts relevant to this issue:

(a) Stephen Brown (landscape architect); and

(b) Duncan Tindall (transport planner).

Stephen Brown evidence

4.9 Mr Brown's evidence is that the Alexandra Underpass:[9]

> *"…could afford meaningful connection between Unsworth Heights and the new SUP, but is not suitable for that role at present. It is quite inadequate functionally, in terms of CPTED and pedestrian / cyclist amenity…"*

4.10 In addition to the lack of aesthetic appeal and potential safety issues,[10] Mr Brown considers that the current underpass would provide one of only two connections between the large residential catchment of Unsworth Heights and the proposed Shared Use Path proposed for the northern side of SH18, so that:

> *"it is an integral component of the proposed walkway / cycleway network proposed by NZTA".*[11]

[8] AC Opening Submissions at [3.16].
[9] Brown EIC at [4(b)].
[10] Brown EIC at [15(b)].
[11] Brown EIC at [15(b)].

4.11 In Mr Brown's view, the failure to upgrade the underpass exacerbates the isolation of the SUP from the Unsworth Heights residential area and its reserve network.[12]

4.12 Under cross examination, Mr Brown indicated that he considered that the existence of the SUP, by its presence, will generate more traffic that the underpass would need to accommodate.[13] His opinion is that the Unsworth Heights catchment and the broader catchment extending towards Glenfield would generate both daily commute and recreational use. He also considered that weekend recreational cyclists who do a circuit around Upper Harbour would use the SUP.[14] His conclusions were based on general and personal knowledge (as a recreational cyclist who cycles in the area) rather than surveys of existing users or predictions of future use generated by the SUP.[15]

4.13 When cross examined about whether the lack of upgrade to the underpass would curtail any increase in numbers using the underpass, Mr Brown considered that if there are more people using the SUP, it may still be subject to an increased level of use.[16]

4.14 In response to questions from the Board, Mr Brown was resolute in his view that the existence of the SUP would create pressure to improve the underpass and that the increase in number of users of a substandard underpass is an adverse effect of the proposal that should be mitigated.[17]

4.15 Mr Brown considered that the short survey of users undertaken by NZTA was inadequate insofar as it did not capture the potential for the SUP to generate considerable amounts of traffic intermittently.[18] He also maintained his opinion that the upgrade of SH 18 would result in severance effects that should be mitigated by upgrading the Alexandra Street underpass.[19]

4.16 In considering these points, the Board may wish to reflect on the fact that Mr Brown is presenting evidence as a landscape architect but also has planning qualifications.

Duncan Tindall evidence

4.17 Mr Tindall's evidence is to the effect that an upgrade of the underpass is required in order to mitigate the increased severance effects arising from the proposed new form of SH18,[20] particularly in light of the fact that the cyclists would be prohibited from riding on the upgraded SH18 and would therefore be limited to crossing SH18 at specific sites.[21]

4.18 In response to cross examination as to how easy it would be for cyclists to cross SH18 in the current environment, Mr Tindall conceded that while he considers there to be a loss of connectivity arising from the upgrade of SH18, that loss of connectivity is *"from a level of a relatively hostile or a hostile environment to nothing at all".*[22]

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[12] Brown EIC at 97.
[13] Hearing Transcript, page 442, line 8.
[14] Hearing Transcript, page 442, line 15.
[15] Hearing Transcript, page 442, line 26.
[16] Hearing Transcript, page 443, line 11.
[17] Hearing Transcript, page 446, line 11 and page 449, line 18 to page 451, line 4.
[18] Hearing Transcript, page 450, line 23.
[19] Hearing Transcript, page 446, line 25 to page 447, line 15.
[20] Tindall EIC, at 7.46.
[21] Hearing Transcript, page 372, line 28 to page 373, line 3.
[22] Hearing Transcript, page 375, line 25.

4.19 In response to questions from the Board, Mr Tindall acknowledged that the crossing facilities at Paul Matthews Drive and the Alexandra underpass were safer than using SH18 itself.[23]

4.20 Mr Tindall considers that the upgrade of the underpass is required to deliver the objectives of the Project to deliver a shared use path and connections to local transport and the local network.[24] He elaborated on that in response to questioning from Your Honour, noting that in order to deliver safe walking and cycling facilities, the communities on either side of SH18 who wish to use the SUP would need to be able to get on to it via the Alexandra Underpass.[25]

4.21 However, in response to questions from the Board in relation to whether the improvements proposed by NZTA would offset or mitigate any adverse effects that might arise through the Project, Mr Tindall said:[26]

> *"My view of the adverse effects relate to the difficulty in providing a wider, straighter underpass at this location in the future and the significant costs that would arise resulting from that. The provision of the lighting in the underpass I would not, from a traffic and transport perspective, see that as a significant offsetting of that, no."*

NZTA position

4.22 The Agency takes the position that the Underpass should not be upgraded as part of NZTA's project, that the works requested by AC do not represent an adverse effect that needs to be addressed and that the objectives of the Project are not required to be fulfilled "perfectly". NZTA's Opening submissions on this issue stated:[27]

> *"One of the Project objectives is to provide "safe walking and cycling facilities adjacent to SH1 and SH18 and connections to local transport networks". The emphasis of this objective is on providing safe facilities, in this case the SUP along the north side of SH18. The Transport Agency is not required to upgrade existing components of the local network.*
>
> *Even if the Board was to accept that upgrading the existing Alexandra Stream Underpass would assist the Transport Agency to achieve the Project objectives, that does not mean that this additional work must be added to the Project, or that the work that is proposed is not 'reasonably necessary'. The Transport Agency is not required to demonstrate that its proposed work will completely or perfectly fulfil its objectives (as discussed in paragraph 4.18 above)."*

4.23 The key evidence from NZTA on this issue is from:[28]

(a) Shannon Bray (landscape architect); and

(b) Ian Clark (transport planner).

4.24 Other witnesses were questioned in relation to this issue, including Mr Schofield.

[23] Hearing Transcript, page 380, lines 7 – 12.
[24] Hearing Transcript, page 376, line 1.
[25] Hearing Transcript, page 383, lines 11 – 30.
[26] Hearing Transcript, page 380, lines 21 – 25.
[27] NZTA Opening Submissions, at [6.9] – [6.10].
[28] Other witnesses were questioned about this issue, including Mr Schofield in respect of the cost of upgrading the underpass, Mr Hale in relation to the efficiency of undertaking the upgrade as part of the Project and Mr Moore in relation to the options assessment.

Shannon Bray evidence

4.25 Mr Bray's evidence in chief is that:[29]

> *"The existing underpass at Alexandra Creek (Rook Reserve) is proposed to be retained. I recognise that the current design of this underpass is less desirable from a CPTED perspective, and that a widened facility (at least 3m width by 3m height) would be beneficial (as well as increased visibility on the south side)."*

4.26 In his rebuttal, Mr Bray referred to the rebuttal evidence of Mr Clark which is to the effect that while the demand for the underpass may increase as a result of the SUP, that would be offset by the reassignment of some walking/cycling trips to the new connection on the Paul Matthews Road overbridge and the existing connection to the Alexandra Creek path from Omega Street.[30]

4.27 Under cross examination by counsel for AC, Mr Bray acknowledged that NZTA's proposed upgrade of the underpass (i.e., to include lighting, alter the southern entrance and include CCTV) is not consistent with NZTA's UDLF.[31] AC's preferred upgrade option would better achieve the UDLF.[32]

4.28 Mr Bray conceded that the underpass would not achieve NZTA's objective to provide safe walking and cycling facilities but considered that NZTA's objectives in terms of connectivity were being met overall and improving the current situation.[33]. He considered that those objectives have to be viewed in terms of the Project as a whole. We note here that Mr Bray is a landscape architect, not a planner, and we query whether Mr Bray is sufficiently qualified to undertake this assessment with respect to the Project as a whole, as opposed to in the context of landscape and design matters.

4.29 We note for completeness that we have observed that, in relation to many amendments or additions proposed by various parties, the NZTA witnesses express the same view that the proposed amendment is not part of the Project and is not required to mitigate an effect of the Project. This is true of the witnesses that address the Alexandra Underpass. Whether the amendments proposed by other parties are within the scope of the Project, or within the scope of the Board's jurisdiction to modify the proposal or impose conditions, is a legal issue. The Board may wish to consider this in assigning the weight to be accorded to the evidence.

Ian Clark evidence

4.30 Mr Clark's evidence is that there was no need to mitigate adverse effects related to severance because the Project will reduce and not increase transportation severance across SH18, between Unsworth Heights and Rosedale.[34] No further cross examination was undertaken of Mr Clark in relation to this issue.

The Board's jurisdiction

4.31 The Board's jurisdiction and discretion to impose a condition requiring the type of works is governed by the provisions of the RMA in light of the interpretation of those provisions by the Courts. Your Honour will be well familiar with the

[29] Bray EIC at [11.30].
[30] Bray Rebuttal at [6.6 – 6.7]; Clark rebuttal at [3.5].
[31] Hearing Transcript, page 424, line 1 and lines 9 – 13.
[32] Hearing Transcript, page 424, line 28.
[33] Hearing Transcript, page 427, lines 7 – 21.
[34] Clark Rebuttal, at [3.4].

statutory provisions and legal tests, but we have set them out for completeness below.

Power to impose conditions - section 149P

4.32 We addressed the Board's power to impose conditions in our Opening[35] and will not repeat it here. Suffice to say that the language of section 149P is similar to section 108 of the RMA and cases under that provision can therefore be considered in addressing general issues.

4.33 The Board has a broad discretion to impose conditions on a designation. However, that broad discretion is limited by the Administrative law principles which govern the validity of conditions. We turn to those now.

Relevant legal authorities

4.34 The starting point for determining whether a condition is valid in law are the tests set out in *Newbury v Secretary of State for the Environment*[36]. As noted in our Opening:

> "*6.14 There are various legal authorities on this issue. Your Honour succinctly encapsulated the relevant legal tests regarding the Board's power to impose conditions on both designations and resource consents in the Final Report and Decision of the Board of Inquiry into the Proposed Men's Correctional Facility at Wiri[37] as follows:*
>
> > *"[25] The Board's power to impose conditions was also a topic of submission, particularly for the Council and the Local Board. It is accepted that the Board may impose such conditions as it thinks fit, but clearly also the usual tests for validity of conditions apply. We agree that conditions must:*
> >
> > *(a) Be for a resource management purpose and not for an ulterior one;*
> >
> > *(b) Be fairly and reasonably related to the proposed work;*
> >
> > *(c) Not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have imposed it (or so unreasonable that Parliament clearly could not have intended that such a condition should be imposed);*
> >
> > *(d) Not be ultra vires;*
> >
> > *(e) Not involve a delegation of the Board's duty;*
> >
> > *(f) Be enforceable (eg a condition will be unenforceable if it relies on compliance by third parties);*
> >
> > *(g) Not lack finality.*
> >
> > *In addition, there needs to be a logical connection between the proposed development and a particular proposed condition. [*Waitakere City Council v Estate Homes Limited *[2007] NZRMA 137, paragraph [66]]."*

[35] Opening submissions at [6.10] – [6.14].
[36] [1981] AC 578.
[37] Publication No: EPA 0056, September 2011 at [25].

4.35 Those principles were endorsed by the Supreme Court in *Waitakere City Council v Estate Homes Ltd,*[38] which clarified the second limb of the *Newbury* test as follows:[39]

> *"We consider that the application of common law principles to New Zealand's statutory planning law does not require a greater connection between the proposed development and conditions of consent than that they are logically connected to the development. This limit on the scope of the broadly expressed discretion to impose conditions under s 108 is simply that the Council must ensure that conditions it imposes are not unrelated to the [proposal]. They must not for example relate to external or ulterior concerns. The limit does not require that the condition be required for the purpose of the subdivision. Such a relationship of causal connection may, or course, be required by the statute conferring the power to impose conditions, but section 108(2) does not do so."*
>
> (Emphasis ours.)

4.36 The High Court (Priestley J) noted in *Morgan v Whangarei District Council*[40] that:

> *"…the Supreme Court's imprimatur has been given to the proposition that the "broadly expressed" power to impose conditions conferred by s 108 must be "logically connected" with the development. It need not be essential for a subdivision's purpose."*
>
> (Emphasis ours.)

Scope of Board's jurisdiction - analysis

4.37 We turn now to the *Newbury* tests as a starting point for assessing the scope of the Board's jurisdiction and how it might approach this issue in light of the respective positions of AC and NZTA, addressing the first and third limbs at the outset given that they can easily be dealt with.

First limb – resource management purpose

4.38 In terms of the first limb of the test enunciated above, Counsel Assisting submit that the upgrade of the Alexandra Underpass requested by AC would address issues relating to a resource management or planning purpose, namely:

(a) The amenity and fitness for purpose of the underpass; and

(b) Arguably, the efficient use of resources given the evidence that an upgrade will be more difficult later.

4.39 Counsel for the Agency may be tempted to argue that the AC condition is not for a resource management purpose because it does not address an adverse effect of the Project – however, that is not the issue, as our consideration of the second limb demonstrates.

4.40 The relevance or weight to be accorded to these issues is obviously for the Board to assess and determine.

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38 13 ELRNZ 33

39 *Waitakere v Estate Homes,* paragraph 66, following the High Court decision in *Housing New Zealand v Waitakere City Council* (2000) 6 ELRNZ 374.

40 14 ELRNZ 35

Third limb – "not unreasonable"

4.41 In terms of the third limb, we consider that such a condition would not be considered so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have imposed it in the Wednesbury sense, particularly in light of the concerns expressed by submitters and the acknowledgment by NZTA that the underpass requires an upgrade (irrespective of the Project).

4.42 The one issue that the Board may wish to reflect on in that regard is whether it is reasonable to require NZTA to bear the entire cost of the upgrade. Counsel raised that issue with Mr Bangma who advises that no discussions have taken place between NZTA and AC re cost sharing or issues of that nature.

Second limb – "fairly and reasonably related" to the proposed work

4.43 In terms of the second limb, the fact that the upgrade is not required to address the adverse effects of the proposal (if the Board accepts NZTA's evidence) does not in and of itself lead to the conclusion that the Board cannot impose a condition requiring the upgrade on the basis of the *Waitakere* and *Morgan* cases, i.e., that the condition need not be essential for the purpose of the Project. However, the condition must be logically connected to the Project, not unrelated and not related to external or ulterior concerns.

4.44 We have reviewed the case law relating to the second limb of the *Newbury* test to ascertain whether any provide useful guidance as to whether the underpass may be considered to fairly and reasonably relate to the proposal, i.e. it is logically connected, not unrelated or related to external or exterior concerns. Two cases are worth noting in that regard.

4.45 *Retail Projects Limited v Papakura District Council*[41] concerned an appeal against conditions of consent for earthworks required for the construction of a commercial development. The conditions included a requirement to improve the stormwater network to cater for stormwater flows from land upstream of the application site. The Court found that this was not fairly and reasonably connected to the proposal, noting that:[42]

> *"Any condition must fairly and reasonably relate to the development permitted, in accordance with general principles of consent validity. That principle, articulated in Housing NZ Limited v Waitakere City Council [2001] NZRMA 202 confirmed the general applicability of the test in Newbury District Council v Secretary of State for the Environment [1980] 1 All ER 731 (HL). We heard no justification arising from the effects of the development, the plan provisions and Part II RMA, for a condition requiring RPL to provide for stormwater works for the wider upstream catchment beyond the demands of its site. Such a condition therefore does not fairly and reasonably relate to the development. That would mean that the Council must either pay for additional works to the standard desired by the Council for its own purposes, or accept a reduced capacity and level of service."*
>
> (Emphasis ours.)

4.46 In *Upper Clutha Tracks Trust v Queenstown Lakes District* Council[43], the Environment Court considered the grant of a resource consent for the

[41] W28/06
[42] *Retail Projects Limited v Papakura District Counci* at [14].
[43] [2012] NZEnvC 43

construction of a golf course. An interim decision indicated that on the basis of the available evidence, the Court was not satisfied that the proposal would achieve the purpose of the RMA. However, it allowed the applicant additional time to lodge further evidence and a new proposal for mitigation and/or environmental compensation.

4.47 The applicant proposed additional environmental compensation with respect to off-site weed management and water quality. This was challenged by one of the appellants who argued that the applicant was "buying a consent", or doing almost anything to secure the desired outcome. The Court rejected this view and said that:

> *"…the test for environmental compensation is whether it is reasonably related to the natural and physical resources being used in the application. Whether that test is satisfied as a mixed matter of fact, opinion and degree we should assess on an issue by issue basis. However, the PBPL's proposal is not like the cases where an applicant offered a $4 million fund plus $250,000 per year to a district council for "…investigating recreational possibilities…": see the North Bank Tunnel case. The court has described its concern about that approach. In these proceedings the environmental compensation is all "logically connected to the development" to use the test state by the Supreme Court in Waitakere City Council v Estate Homes Limited because it remedies problems (water quality, weeds) on both the golf course site and adjacent land, it is close to the site and with fencing is likely to be effective." [Emphasis added]*

4.48 It is of course highly relevant that it was the applicant proactively volunteering compensatory measures on the basis that it would accept conditions to that effect. In this case, NZTA is not volunteering any measures to address the Alexandra Underpass issues.

Analysis

4.49 The key legal issue is whether the upgrade of the Alexandra Underpass is "logically connected" to or "related to" the proposed new motorway and / or SUP in terms of the second limb of the *Newbury* test.

4.50 If the Board accepts the evidence that there will be increased usage of the Underpass as a result of this project, that could be seen as justifying a finding that there is a clear and logical connection between the two and that the upgrade may be required to address potential adverse effects – bearing in mind that there is limited evidence as to the extent to which usage will increase.

4.51 Even in the absence of sufficient evidence that the usage of the Underpass will increase, the Board may consider that the upgrade is logically connected to the proposal, particularly in light of the minor upgrade proposed by NZTA to improve the alignment of the southern pathway and include lighting and CCTV inside the Underpass. In our view, these circumstances are similar to those in the *Waitakere* case, where the applicant had proposed the inclusion of a road which was not required to mitigate adverse effects of its own project.

4.52 As addressed in Mr Bangma's Closing submissions for AC, the Supreme Court held that the road did not need to be required for the purpose of the subdivision – it was sufficient that it was logically connected to the proposal and including the road in the proposal was sufficient to demonstrate that connection.

4.53 We consider that the issues are finely balanced in this case.

4.54 The factors weighing in favour of the Council's position are that:

(a) The existence of the SUP may generate increased demand for the Underpass;

(b) Upgrading the Underpass in accordance with Option 3 would increase safety of the Underpass and be more compliant with CPTED principles, the UDLF and better give effect to the objectives of the Project;

(c) It would be more efficient to undertake the upgrade now, to the tune of around $1.5 million;

(d) If the upgrade is not undertaken now, it may never be undertaken given the cost of undertaking the upgrade separately, the extensive works required and the disruption to traffic which would result.

4.55 The factors weighing in favour of NZTA's position are that:

(a) The extent to which there will be an increase in demand to use the Alexandra Underpass is uncertain; and

(b) Requiring the upgrade now will force NZTA to bear the full cost of the upgrade, to the tune of approximately $5 million.

4.56 As regards NZTA's position, we do not consider, in light of the legal authorities, that it is determinative that the upgrade is not required to address adverse effects and the objectives of the Project are not required to be fulfilled. Further, the suggestion that the failure to upgrade the Underpass will ensure that demand does not increase seems entirely at odds with the purpose of including an SUP altogether.

4.57 In light of the above, Counsel Assisting consider that if the Board is sufficiently persuaded by the evidence that upgrading the underpass would better promote the purpose of the RMA (including by reference to efficiency issues), the upgrade is sufficiently connected to the proposal for the Board to validly impose conditions in that regard.

5. UNSWORTH OFF RAMP – POTENTIAL EFFECT ON BUSINESSES

Overview of proposal

5.1 The Project will upgrade the existing dual-carriageway section of State Highway 18 ("SH18") to full motorway status. To achieve this, existing connections to local roads will be closed, including two off-ramp connections from SH18 to Unsworth Drive and a Z fuel station.

5.2 During consultations with affected neighbours, the owners of businesses on Greenwich Way expressed their concern that without direct access to/from SH18, they will not be able to tenant their shops or operate their businesses.

5.3 A record of a meeting with Greenwich Way shop owners, dated 28 September 2016[44] records that the Greenwich Way shop owners were concerned that:

(a) The closure will affect convenient access for local residents;

(b) Tenants will leave the shops and it will be a vacant block;

[44] Brock Supplementary evidence, 3 August 2017, Annexure E.

(c) There will be a loss in commercial trade, which mainly comes from passing local traffic at peak times;

(d) House prices in Unsworth Heights will drop;

(e) Shop owners will not be able to get tenants; and

(f) The block of shops feels land locked.

5.4 The shop owners requested that NZTA investigate options to provide connectivity between SH18 and Unsworth Drive. The two main options requested to be considered were:

(a) Connection from SH18 to Unsworth Drive; and

(b) Connection from Unsworth Heights to the existing SH18 Albany Highway westbound off-ramp.

5.5 Due to potential significant risks to safety, traffic operations, planning, environmental and property acquisitions, NZTA determined not to provide an additional connection.

Issue

5.6 The Board's concern was indicated via its questions to Ms Strogan on Day 3 of the hearing.[45] That concern can be summarised as follows:

(a) Despite the lack of submissions from shop owners and tenants at Greenwich Way, there is a concern that the closure of the Unsworth off ramp will adversely effect businesses at Greenwich Way.

(b) While NZTA considered options to mitigate that effect, none have been proposed.

(c) Ms Strogan indicated that mitigation such as advertising, signage, distribution of flyers to communicate that the Greenwich Way shops are still open could be undertaken, but that there was no requirement for such mitigation in the conditions.

(d) Even if such mitigation was undertaken, there is no mechanism for addressing the adverse effect if that mitigation does not work (i.e., no compensation to shop owners given that there is no Public Works Act acquisition).

5.7 In light of that, the Board has asked us to address the scope of its jurisdiction to impose such conditions or require that the off ramp remain open.

Board's jurisdiction

Jurisdiction to impose conditions requiring mitigation measures

5.8 In terms of the Board's jurisdiction to impose conditions requiring mitigation measures such as advertising, signage and distribution of flyers to communicate that the Greenwich Way shops are still open, we consider that conditions of this nature can be imposed by the Board if it considers that that is appropriate and would better promote the purpose of the RMA.

[45] Hearing transcript, pages 250 – 263.

5.9 In that regard, the absence of submissions from these parties does not preclude the Board from imposing conditions to mitigate an adverse effect of the Project - which only need to meet the *Newbury* tests insofar as they are for a resource management purpose, fairly and reasonably relate to the proposal and it is not unreasonable to impose them.

Jurisdiction to require the on ramp to remain open – relevant evidence

5.10 Mr Clark's supplementary evidence notes the rationale for the closure of the off ramp as follows:[46]

> *"The Project includes the permanent closure of the existing off ramp from SH18 to Unsworth Drive. This is due to the proximity of the off ramp to the new on ramp from the Paul Matthews Road/Caribbean Drive intersection."*

5.11 The Technical Note prepared by Aurecon (dated 25 November 2016) that Mr Clark refers to as providing reasons for the closure is attached at Ms Brock's supplementary evidence at Annexure D. We understand from that Technical Note that leaving the off ramp open would in fact require a new connection to be built, given that SH18 is to be realigned in that area. The Note addresses two options.

5.12 Option 1 is a connection from the realigned SH18 to Unsworth Drive and the Note sets out the "significant safety issues" associated with that Option as follows:[47]

> *"There is approximately 600 metres between the Paul Matthews Road on-ramp and a potential off-ramp to Unsworth Drive on SH18. In this short length of motorway, vehicles will be accelerating from the Paul Matthews Road on-ramp to merge with SH18, while vehicles wishing to use the Unsworth Drive off-ramp would be decelerating in preparation to negotiate the tight radius curve at the end of the ramp. Based on a simple exit with diverge taper, vehicles would need to undertake most of their deceleration on the SH18 motorway. The speed differential between these accelerating and decelerating vehicles would result in significant safety issues e.g. introduce a significant risk of rearend collisions."*

5.13 It goes on to say that in order to mitigate the operational and safety issues, it would be necessary to provide an additional lane, which presents:

> *"…significant planning and property risks to the project, as it requires extending the project designation and acquiring additional property. The proposal would require acquiring and demolishing all or part of an existing building in the north-east corner of Metlifecare's Greenwich Gardens retirement village. It would also require additional land at 13, and 14 Wren Place and Auckland Council's Rook Reserve."*

5.14 Option 2 assessed in the Technical Note, which would involve connecting Unsworth Drive to the existing Albany Highway off-ramp, would also require extending the project designation, acquiring additional property and construction through an existing densely vegetated watercourse in Bluebird Reserve.[48]

[46] Clark supplementary, at [4.1].
[47] Brock supplementary, Annexure D at page 1.
[48] Brock supplementary, Annexure D at page 2.

5.15 In light of that, Aurecon recommended that:

> *"Due to potential significant risks to safety, traffic operations, planning, environmental and property acquisitions, it is recommended that the current NCI design is retained and no additional connection is provided.*
>
> *Access between the Greenwich shops and SH18 can be gained through the proposed interchange at Paul Matthews Road / Caribbean Drive, via Barbados Drive."*

5.16 We also note Mr Clark's evidence that the loss of through traffic resulting from the closure of the off ramp will be partly offset by a slight increase in flows on Barbados Drive.[49]

Jurisdiction to require the on ramp to remain open – relevant law

5.17 To the extent that the options for replacing the current off ramp would require the extension of the designation and would affect a new set of property owners, the law in relation to the scope of permissible modifications to NoRs applies.

5.18 As noted above, the Board's powers in relation to NoRs is set out in section 149P(4) of the RMA. The relevant aspect of 149P(4) is that the Board is entitled to "modify or impose conditions on [the NoR] as the board thinks fit".

5.19 The term "modify" is not defined in the RMA, but there is a significant body of case law in respect of the correct approach to its interpretation. A useful summary of the legal position is set out in *Hope t/a Victoria Lodge v Rotorua District Council*,[50] in which the Environment Court considered whether it was within the Court's power to consider alterations to the NoR for the Victoria Street Expressway in Rotorua without the need for a new NoR. The Court said:[51]

> *"[40] The power of the Court to modify the requirement does not have any particular explicit limitations I agree that in circumstances where new parties are involved then the power to modify could not encompass such substantive change. In Quay Property Management Limited v Transit New Zealand:*
>
> > *A "modification" is defined as "an act of making changes to something without altering its essential nature or character."*
>
> *With respect, I adopt that as an appropriate test in this case.*
>
> *[41] If the court reaches the conclusion suggested by the Council that the changes are minor, there is a lessening of environmental impact, and that affected landowners remain unchanged, the court would have power to make such modifications.*
>
> *[42] The exact scope of that is a matter than needs to be addressed at a hearing."*

5.20 The key principles that can be derived from the relevant case law can be summarised as follows:

(a) To qualify as a "modification" the proposed change must not alter the "essential nature or character" of the proposal.[52] In applying this test:

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[49] Clark supplementary, at paragraph [4.3].
[50] [2010] NZ EnvC 7.
[51] [2010] NZ EnvC 7, at paragraph [40] – [42].
[52] *Quay Property Management Limited v Transit New Zealand* W02/00; *Hope t/a Victoria Lodge v Rotorua District Council* [2010] NZ EnvC 7.

(i) The Court in *Quay Property Management Ltd*[53] found that a proposed alternative alignment which obliterated a motorcamp and brought the alignment close to a substantial number of residents was considered to be more than a modification; and

(ii) The Board, in the Mackays to Peka Peka Expressway Board of Inquiry, accepted some modifications to the designation boundary to either reduce the footprint or include land so that it could be purchased, but considered that an alternative roading layout involving an additional bridge and amended interchange design was beyond the scope of a permissible modification.[54]

(b) The proposed change must not give rise to a greater environmental impact or new effects on landowners or the public. The legal authorities make clear that the Board's power to modify the proposal is limited by the need to ensure procedural fairness and modifications should not be made unless the Board is satisfied that it is not plausible that any stakeholder or member of the public would have made a submission had the proposal been modified in its modified form[55]; and

(c) When exercising its power to modify an NoR, the Board must bear in mind that:

(i) It is beyond the Board's jurisdiction to find that the requiring authority has selected the "wrong" alternative and to adopt an alternative proposal – it only has the power to modify the existing proposal to the extent permissible having regard to (a) and (b).[56]

(ii) If the proposal is not acceptable to the Board following permissible modifications, the only option would be for the NoR to be cancelled and for NZTA to re-notify an amended proposal if it wishes to do so.[57]

Jurisdiction to require the on ramp to remain open – summary of legal position and analysis

5.21 Having regard to the relevant authorities:

(a) The Board has jurisdiction under section 149P(4) to modify the designation sought as long as the modification does not alter the essential nature or character of the proposal. Whether adopting one of the options available for retaining a connection to Unsworth Drive is such a modification will be a question of fact for the Board to determine.

(b) However, changes that take the alignment outside of the designation footprint or require significant construction works to be undertaken outside of the designation boundary as proposed have been held to exceed the Court or Board's power to modify. In this case, both of the options for retaining a connection to Unsworth Drive will require an extension of the designation and the taking of additional land and fall into this category.

[53] Decision W02/00, at paragraph [167].
[54] Final Report and Decision of the Board of Inquiry Concerning a Request for Notice of Requirement and Applications for Resource Consents to allow the McKays to Peka Peka Expressway Project, 12 April 2013.
[55] *Norwest Community Action Group Incorporated v Rodney District Council*, A113/ 01; *Wellington International Airport Limited v Bridge Street/ Coutts Street Subcommittee and Ors,* W75/99.
[56] *Takamore Trustees v Kapiti Coast District Council* [2003] 3 NZLR 496.
[57] *Takamore Trustees v Kapiti Coast District Council* [2003] 3 NZLR 496.

(c) Further, the power to modify the NoR is limited by the need to ensure procedural fairness. Given the need to alter the designation boundary and take additional land, we consider it very probable that third parties might have lodged a submission if they were aware of the proposed alterations.

Analysis

5.22 The options available to the Board to impose conditions to mitigate adverse effects on the Greenwich Way shop owners are limited to the type of condition discussed by Ms Strogan, namely requiring advertising, signage, flyers and the like, for the purpose of advising the public that the Greenwich Way shops are still open.

5.23 The Board expressed some concern that there may be no further recourse if those measures are unsuccessful. That is one of the matters that the Board will need to take into account in considering whether, overall, the benefits of the Project are such that the purpose of the Act will be met even in the event that there may be some residual adverse effects of the Project. In that regard, it is not uncommon for adverse effects to arise in relation to businesses and even entire towns that are bypassed as a result of a new motorway being built.

5.24 If the Board considers that the adverse effects on the Greenwich Way shopowners are unacceptable, it can turn the proposal down. However, in our view it could not require NZTA to adopt an alternative connection to Unsworth Drive given the need to extend the designation in order to address safety issues and potential effects on third parties.

5.25 Counsel suspect that the potential adverse effects arising in this context falls within the general category of potential "collateral damage" that there is little the Board will ultimately be able to address.

Final comment

5.26 Counsel Assisting have enjoyed assisting the Board and wish it well for its deliberations. We also wish to thank members of the EPA and to acknowledge and thank fellow counsel and experts for the constructive and collegial approach that has been apparent throughout this process.

DATED at **AUCKLAND** on the 14th day of August 2017

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S J Berry / Jen Vella
Counsel Assisting the Board of Inquiry

APPENDIX 1

AMENDMENTS TO CONDITIONS CNV.6 AND CNV.7

Key

Amendments per Mr McGahan's supplementary evidence shown in red underlining and ~~strike through~~

Amendments agreed at the hearing shown in blue ~~strike through~~

Reinstatement of wording agreed at the hearing shown in this colour wash

Amendments proposed by Mr Styles shown in underlining and ~~strike through~~ in grey wash

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CNV.6 A ~~Site Specific Construction Noise Management Plan (~~SSCNMP~~)~~ shall be prepared ~~and submitted with any relevant OP~~ when construction noise is either predicted or measured to exceed the standards in Table CNV.A, except where the exceedance of the standards in Table CNV.A is no greater than 5 decibels and ~~does not exceed~~:

a. ~~0700-2200: 1 period of up to 2 consecutive weeks in any rolling 8 week period~~ For day time between 0700 and 2200 - the exceedance of the standards in Table CNV.A does not occur on more than 14 consecutive days in any rolling 8 week period; or

b. ~~2200-0700: 1 period of up to 2 consecutive nights in any rolling 10 day period~~ For night time between 2200 and 0700 - the exceedance of the standards in Table CNV.A does not occur on more than 2 consecutive nights in any rolling 10 day period.

The objective of the SSCNMP is to set out the BPO for the minimisation of noise effects of the construction activity. The SSCNMP shall as a minimum set out:

a. Construction activity location, start and finish dates;

b. The predicted noise level for the construction activity;

c. Noise limits to be complied with for the duration of the activity;

d. The mitigation options that have been selected and the options that have been discounted as being impracticable;

e. The proposed noise monitoring regime; and

f. The consultation undertaken with owners and occupiers of sites subject to the SSCNMP, and how consultation outcomes have and have not been taken into account.

The SSCNMP shall be submitted to the Council for certification at least 7 working days in advance of Construction Works which are covered by the scope of the SSCNMP. If the Council does not respond within 5 working days (excluding time associated with requesting and receiving further information) then certification is deemed to have been given.

CNV.7 A ~~Site Specific Construction Vibration Management Plan (~~SSCVMP~~)~~ shall be prepared ~~and submitted with any relevant OP~~ when construction vibration is either predicted or measured to exceed the Category B standards in Table CNV.B and the standards in Table CNV.C. The objective of the SSCVMP is to set out the BPO ~~best practicable option~~ for the minimisation of vibration effects of the construction activity. The SSCVMP shall as a minimum set out:

a. The relevant construction activity location, start and finish dates;

b. The predicted vibration level for the construction activity;

c. The pre-condition surveys of buildings and pipe work which document their current condition and any existing damage;

d. An assessment of each building and any pipe work to determine susceptibility to damage from vibration and define acceptable vibration limits that the works must comply with to avoid damage;

e. The mitigation options that have been selected and the options that have been discounted as being impracticable;

f. The proposed vibration monitoring regime;

g. The methods adopted to minimise amenity effects on buildings which remain occupied during the works;

h. The consultation undertaken with owners and occupiers of sites subject to the SSCVMP, and how consultation outcomes have and have not been taken into account.

The SSCVMP shall be submitted to the Council for certification at least 7 working days in advance of Construction Works which are covered by the scope of the SSCVMP. If the Council does not respond within 7 5 working days (excluding time associated with requesting and receiving further information) then certification is deemed to have been given.