

**BEFORE AN EXPERT CONSENTING PANEL
STAGE 1B1 OF THE PAKAKURA TO DRURY SOUTH PROJECT**

UNDER the COVID-19 Recovery (Fast-track Consenting) Act 2020

IN THE MATTER OF an application for resource consents and notices of requirement by Waka Kotahi NZ Transport Agency for activities associated with Stage 1B1 of listed project LP15, the Papakura to Drury South State Highway 1 Improvements Project

**ANALYSIS OF LEGAL FRAMEWORK APPLYING TO THE APPLICATION
FOR RESOURCE CONSENTS AND NOTICES OF REQUIREMENT LODGED
BY WAKA KOTAHI NZ TRANSPORT AGENCY**

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PART A INTRODUCTION AND BACKGROUND TO THE PROJECT

INTRODUCTION

1. Waka Kotahi NZ Transport Agency (**Waka Kotahi**) is lodging an application for resource consents and notices of requirement (**NoRs**) to enable the Papakura to Drury South State Highway 1 Improvements Project (**P2DS Project**), which is a listed project 'LP15'¹ under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**COVID-19 Recovery Act**).
2. The COVID-19 Recovery Act establishes a new consenting framework within which the P2DS Project falls to be considered. This document seeks to assist the Panel by summarising that framework and evaluating the application against its key tests. Detailed information is provided in the Assessment of Effects on the Environment (**AEE**) that accompanies the application.
3. The structure of this document is as follows:
 - (a) This **Part A** introduces the P2DS Project, discusses the staged nature of the P2DS Project and the engagement process undertaken to date;
 - (b) **Part B** summarises the legal framework for the Panel's decision;
 - (c) **Part C** addresses in more detail the two grounds on which a listed project can be declined and explains why the Panel should not, with respect, refuse consent or cancel the NoRs for this application;
 - (d) **Part D** addresses the Panel's power to make conditions; and
 - (e) **Part E** contains a brief conclusion.

SCOPE OF THIS APPLICATION

4. Applications for the P2DS Project are intended to be lodged in stages, with this application pertaining to Stage 1B1 of the P2DS Project, which runs from the Bremner Road Bridge to the Quarry Road Bridge. Stage 1B1 also includes provision of a shared use path (**SUP**) for cyclists and pedestrians from Papakura Interchange to north of the Otūwairoa Bridges,² and from Bremner Road to south of the Drury Interchange. The P2DS Project is part of the wider Papakura to Bombay Project (**P2B**) which Waka Kotahi has broken down as follows:

¹ The Project is described in LP15 as "Upgrade of SH1 between Papakura and Drury South to improve travel reliability, access, and safety, including providing new walking and cycling facilities and allowing for planned rail improvements at Drury. Works on assets owned and operated by Transpower New Zealand Limited necessary for the above works to be carried out."

² Which forms part of Stage 1B2 of the P2DS Project.

- (a) **Stage 1A:**³ This stage has already been consented, and construction commenced in early 2021;
 - (b) **Stages 1B1, 1B2 and 2:** These stages are intended to be lodged under the COVID-19 Recovery Act, with this application for Stage 1B1 being the first; and
 - (c) **Stage 3:** This stage is a route protection project, and therefore not included within the ambit of the listed project in the COVID-19 Recovery Act. It will be advanced using conventional RMA processes.
5. While Waka Kotahi intends to lodge its applications for the P2DS Project under the COVID-19 Recovery Act in stages, it is not asking the Panel to utilise schedule 6, clause 39 of the COVID-19 Recovery Act, which provides for the Panel to release its decision on the application in stages.
6. Rather, Waka Kotahi will be seeking one decision on each application as it relates to a component of the wider listed P2DS project (in this case, Stage 1B1). A staged approach to the works is necessary to enable the appropriate sequencing of various infrastructure works. In particular, the Drury Interchange needs to be constructed and the old interchange removed by December 2023 to meet the timeframe for the electrification of the North Island Main Trunk (NIMT) between Papakura and Pukekohe. This requires construction work at Drury Interchange to start no later than January 2022.
7. In these circumstances, staged applications for the P2DS Project are considered appropriate and necessary, and are consistent with the purpose of the COVID-19 Recovery Act to promote employment and provide for certainty of investment.⁴ For the P2DS Project, allowing stages to proceed to implementation while others are being lodged and/or considered by the Panel will promote employment and greater investment certainty in respect of those stages.⁵
8. As this application only pertains to Stage 1B1 of the P2DS Project, to provide clarity and consistency in terminology used in this document:

³ Stage 1A was consented prior to the P2DS project being listed under the COVID-19 Recovery Act, but it is noted for completeness that the wording of LP15 under the Act could be seen to include Stage 1A as well.

⁴ Section 4 of the COVID-19 Recovery Act.

⁵ A staged approach to applications/projects is also provided for in the EPA's application form, which requires details of whether the project is to proceed in stages, and the indicative staging and lodgement dates for each stage. The application form also states that a new application should be lodged for each separate stage.

- (a) We have used "**Project**" to refer to Stage 1B1 of the P2DS Project (i.e. the application area);
- (b) We have used "**P2DS Project**" to refer to the wider listed project;⁶ and
- (c) Where the context requires, we have used "**P2B Project**" to refer to the full Waka Kotahi project extending to Bombay, which comprises the stages of the P2DS project, as well as Stage 3. Stage 3 will be consented separately to the COVID-19 Recovery Act.

THE PROJECT

- 9. The Project is part of the wider P2B Project, which Waka Kotahi has been developing since 2017. In January 2020, a portion of the P2B Project, between Papakura and Drury South (i.e. the P2DS Project), was identified in the New Zealand Upgrade Programme (**NZUP**); a Government funded directive to support the transformation of New Zealand's transport system to manage growth through the funding of roading projects.⁷ In July 2020, the P2DS Project was then confirmed as a listed project in the COVID-19 Recovery Act.
- 10. Stage 1B1 (the subject of this application) aims to improve accessibility along the Southern Motorway portion of SH1 between the Papakura Interchange and south of the Drury Interchange adjacent to Quarry Road, Drury, for all road users, cyclists and pedestrians. This entails a series of works, including:
 - (a) Provision of a SUP for cyclists and pedestrians from Papakura Interchange to north of the Otūwairoa Bridges,⁸ and from Bremner Road to south of the Drury Interchange;
 - (b) Modifications to the northbound on and off ramps at the Papakura Interchange;
 - (c) Demolition and replacement of the Drury Interchange bridges (including three bridges of the North Island Main Trunk Line (**NIMT**)), Great South Road Bridge on SH1, the Bremner Road Bridge and the Jesmond Bridge (over Ngakoroa Stream); and
 - (d) Construction of various stormwater management works, including ponds, swales, and proprietary devices.

⁶ As described in paragraph 1.

⁷ On 4 June 2021 the Government made an announcement regarding changes being made to the NZ Upgrade Programme. While there has been a change to the current funding of P2DS Project as a result of that announcement, Stage 1B1 is still a part of the NZ Upgrade Programme.

⁸ Which forms part of Stage 1B2 of the P2DS Project.

11. The additional lanes consented in Stage 1A will also be extended as part of Stage 1B1, with additional lanes being provided around the Drury Interchange.
12. The AEE sets out further background information regarding the Project, including:
 - (a) **objectives for the P2B Project**, which relate to improving the safety and resilience of the State highway network between Papakura and Bombay, increased transport choice and accessibility, and supporting economic growth and productivity and the inter and intra-regional movement of people and freight;⁹
 - (b) details of **the approvals sought**, including the lapse period and terms of various consents;¹⁰
 - (c) a detailed assessment of the Project's **environmental effects**, the measures proposed to address potential adverse effects, and an evaluation of the Project against relevant planning instruments and other statutory considerations;¹¹
 - (d) a summary of the processes undertaken by Waka Kotahi to assess **alternatives** to undertaking the Project.¹²
13. Section 4 of the AEE also describes the **existing environment** into which the Project is proposed to be introduced. For the purposes of the Panel's consideration of this application, we highlight the following key features about the existing environment:
 - (a) Additional lanes and widened shoulders along the length of SH1 up to Bremner Road at the Drury Interchange have already been consented as part of Stage 1A of the P2B Project. These additional/widened lanes (and the effects thereof) do not form part of this application;
 - (b) As part of Stage 1B1, a small section of additional lanes is proposed. In particular, a third lane will be provided on SH1 northbound and southbound from south of Bremner Road to north of Quarry Road. The effects of this small area of additional lanes is considered relevant to the Panel's assessment;

⁹ The full wording of the Project objectives is set out in Section 1.2.1 of the AEE.

¹⁰ Section 3 of the AEE.

¹¹ Section 6 of the AEE.

¹² Section 8.7.2 of the AEE.

- (c) For the SUP, the bulk of the works will occur within the existing SH1 designation area. However, a separate designation is being sought for the SUP works as part of this application; and
 - (d) Much of the work for the Project comprises upgrades to SH1. In some places (shown on the designation plans provided with the application), the upgrades and their effects will occur within the existing designation area. The assessment of the alteration to SH1 (and its effects) does not include works that could be undertaken within (or effects that are or could be reasonably generated by) the existing designation.
14. The Project also requires the replacement of Transpower's Tower 74 with two monopoles (referred to as structures 74A and 73B). These will be installed on either side of Tower 74, and the existing Tower 74 will be removed. This work is Transpower's responsibility and will be progressed by Transpower through a separate application under the COVID-19 Consenting Act. Waka Kotahi has worked closely with Transpower to ensure consistency between the applications.

ENGAGEMENT ON THE PROJECT

15. Waka Kotahi recognises that working with iwi and adopting a collaborative approach to developing the Project appropriately respects the mana and leadership role of iwi and the wealth of knowledge held by iwi.
16. The Southern Iwi Infrastructure Group (**SIIG**) is a forum representing iwi who have expressed an interest in Waka Kotahi projects in the south of Auckland. Waka Kotahi has been engaging with the SIIG on the Project through regular meetings since May 2019 and has worked closely with iwi to identify and incorporate measures to address the concerns that iwi have raised regarding the Project.¹³
17. The SIIG is considered to represent a forum of the relevant iwi authorities in relation to the Project Area, as defined in the COVID-19 Consenting Act. The members of the SIIG are:
- (a) Ngāi Tai ki Tāmaki;
 - (b) Te Ahiwaru Waiohau;
 - (c) Ngāti Maru;

¹³ Each of these groups receive the invitations and agendas for the SIIG monthly meetings but each iwi elects whether they need to attend. Therefore, not all iwi listed attend the monthly meetings.

- (d) Ngāti Tamaoho;
 - (e) Te Patukirikiri;
 - (f) Te Ākitai Waiohua;
 - (g) Ngaati Te Ata Waiohua;
 - (h) Te Kawerau ā Maki;
 - (i) Ngaati Whanaunga;
 - (j) Ngāti Tamaterā;
 - (k) Waikato – Tainui;
 - (l) Ngāti Paoa Trust Board; and
 - (m) Ngaati Paoa Iwi Trust.
18. The SIIG was established in mid-2014 to provide a vehicle for iwi to regularly interact with Waka Kotahi in relation to its various projects in the south Auckland region and enable meaningful and efficient engagement on projects, mindful of existing commitments and resources.¹⁴ This includes maintenance, operation and safety improvement projects in respect of the southern State Highway network. The SIIG provides a collaborative forum for information sharing and to consider how matters such as natural heritage, cultural heritage, and social impacts (including design integration) can be accounted for in project development and delivery.
19. When the P2DS Project became a "listed project" under the COVID-19 Recovery Act in July 2020, Waka Kotahi took steps to confirm its understanding that the SIIG represented a forum of the "relevant iwi authorities" (**RIA**) for the purposes of preparing a CIA and providing comments under the Act. No concerns were raised by SIIG members or other Auckland iwi authorities regarding the approach Waka Kotahi had adopted in engaging with the SIIG and being considered as RIAs.¹⁵
20. All members of the SIIG were given an early opportunity to provide a CIA for the Project, and six iwi authorities confirmed they would like to provide

¹⁴ When the SIIG was established, the iwi authorities that comprise the SIIG were identified using the Te Kāhui Māngai (**TKM**) and Auckland Council (**Council**) websites. These websites contain a list of all iwi authorities in the Auckland region, along with maps showing the boundaries of their rohe. Those iwi authorities with interests in the South Auckland area were invited to join and participate in the SIIG forum.

¹⁵ Waka Kotahi communicated its approach to all 19 iwi authorities in Auckland via a letter. Only one response was received to this letter, from Ngāti Whātua o Kaipara, who advised that they deferred to those iwi holding ahi kā (continuous occupation) in the Papakura and Drury area, namely 'Ngaati Te Ata and Ngāti Tamaoho'.

CIAs, being Ngāti Tamaoho, Te Ākitai Waiohua, Ngāi Tai Ki Tāmaki, Ngaati Whanaunga, Ngaati Te Ata and the Ngaati Paoa Iwi Trust.¹⁶

21. Three iwi authorities have provided CIAs or cultural values assessments (**CVAs**) to Waka Kotahi, being Ngāti Tamaoho, Ngaati Whanaunga and Ngaati Te Ata Waiohua. The CIAs/CVAs received from these RIAs are discussed in further detail in 5.2.3 of the AEE. Section 5.2 of the AEE also describes Waka Kotahi's proactive and constructive engagement with iwi, as well as the engagement it has had with other parties/groups such as Council, KiwiRail and Transpower.
22. Waka Kotahi wrote to the three remaining iwi authorities who indicated they would provide a CIA/CVA, confirming the proposed application lodgment date and the final date by which the CIAs/CVAs could be provided for incorporating into the application.¹⁷ These RIAs have not provided written confirmation of this position but the project team have engaged with these RIAs and understand their preference to be involved in the project via other means.

PART B LEGAL FRAMEWORK – COVID-19 RECOVERY ACT

23. The COVID-19 Recovery Act is part of the Government's response to the unprecedented challenges and hardships created by the COVID-19 pandemic. By establishing a new consenting regime for special 'listed projects', the Act seeks to promote employment, support New Zealand's recovery from the economic and social impacts of the pandemic, and support the certainty of capital investment.
24. For a listed project, where an application is made under the COVID-19 Recovery Act, the process for obtaining consent and confirming a NoR under Schedule 6 applies instead of the equivalent RMA processes.¹⁸ Beyond that, consents granted for a listed project have the same force and effect for their duration, and according to their terms and conditions, as if they were granted under the RMA.
25. Schedule 6 to the COVID-19 Recovery Act describes the information required to be provided in support of a consent application or NoR for a

¹⁶ Te Patukirikiri have also advised in writing that the P2DS area is not of interest to them, and Ngāti Maru and the Ngāti Paoa Trust Board have advised they will not be providing a CIA.

¹⁷ Described in Appendix E of the AEE.

¹⁸ Section 12 of the COVID-19 Recovery Act.

listed project, and sets the framework for the Panel's consideration of the application and NoRs for the Project.¹⁹

26. The checklist included with the respective NoR and resource consent application forms for the Project (included in *Volume 1: Legal Framework, Forms and Assessment of Effects on the Environment*) identifies where the required information is located within the application materials. Further information has been provided where requested,²⁰ or where Waka Kotahi considered the provision of additional information to be prudent.

STATUTORY CONSIDERATIONS

27. For this Project, the key statutory tests in the COVID-19 Recovery Act relate to the grounds on which an application can be declined or an NoR refused for a listed project,²¹ namely that the Panel considers that granting consent or confirming or modifying the NoR, with or without conditions, would be inconsistent with:
- (a) any national policy statement, including the NZCPS; or
 - (b) section 6 (Treaty of Waitangi).
28. These grounds are analysed below, in Part C of this document.
29. If enabling a listed project is not inconsistent with those matters it must be approved; other relevant considerations under the COVID-19 Recovery Act (specified in clauses 29, 30, and 33 of Schedule 6) are relevant to the setting of appropriate consent and designation conditions.
30. Further, while some of the resource consents sought for the Project are for non-complying activities, for listed projects the test in section 104D of the RMA must not be applied. This means that the gateways in section 104D do not need to (and indeed cannot) be considered before granting an application for a listed project under the COVID-19 Recovery Act.²²
31. The COVID-19 Recovery Act specifies numerous other considerations for resource consent applications and NoRs, which are relevant **only** to the setting of conditions for the Project (as opposed to grant or decline). These considerations include:²³
- (a) the environmental effects of allowing the Project;

¹⁹ A number of the requirements, including the grounds on which a proposal can be declined, differ significantly for 'referred projects'. Schedule 6 also addresses various matters of process.

²⁰ For example, as part of the EPA's preapplication memorandum to Waka Kotahi.

²¹ Sch 6, cl 34.

²² Sch 6, cl 30(7)(b).

²³ COVID-19 Recovery Act, ss 29 and 33.

- (b) Part 2 of the RMA (but not section 8 of the RMA, in relation to the Treaty of Waitangi, because section 6 of the COVID-19 Recovery Act must be applied instead²⁴);
 - (c) the purpose of the COVID-19 Recovery Act;
 - (d) the provisions of planning instruments (noting that national policy statements provide a ground for decline, as noted above, and are equally relevant to setting conditions);
 - (e) any other matter the Panel considers reasonably necessary in order to make its decision;
 - (f) for resource consent applications, the matters specified in clause 30 of Schedule 6; and
 - (g) for NoRs, the matters specified in clause 33 of Schedule 6, which include a requirement to have particular regard to:
 - (i) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work, if certain provisos are met (which they are in this case); and
 - (ii) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority seeking the designation.²⁵
32. More generally, the Panel may grant a resource consent or confirm or modify a designation on conditions that it considers appropriate; the Panel thus has the same broad condition-making powers as are available under the RMA.²⁶
33. These considerations and the proposed conditions are discussed further in Part D of this document. In summary, conditions of consents and designations for a listed project are a significant aspect of the Panel's evaluation in two respects:
- (a) A listed project cannot be turned down unless it is inconsistent with one of the specified matters, **with or without conditions**. Put another way, the Project must be approved if to do so would not be inconsistent with the specified matters, taking into account the conditions proposed by Waka Kotahi and any modifications or

²⁴ An assessment of the proposal against section 8 of the RMA is nonetheless (technically) an information requirement.

²⁵ Sch 6, cl 33(2).

²⁶ Clause 35(2). For designations, the Panel may impose such conditions "as the panel thinks fit"; clause 33(5)(c).

additional conditions that the Panel may lawfully impose.²⁷ Conditions therefore form an important part of considering whether or not to decline an application or refuse a NoR; and

- (b) Otherwise, conditions are important for appropriately managing the adverse environmental effects of a proposal, in the usual way.

PART C POWERS TO DECLINE LISTED PROJECTS

34. There are only two grounds on which a Panel may decline a resource consent application or cancel an NoR for a listed project, namely that (with or without relevant conditions of consent), enabling the listed project would be *"inconsistent with"*:²⁸

- (a) any national policy statement, including the NZCPS; or
- (b) section 6 (Treaty of Waitangi).

35. If enabling the Project would not be inconsistent with either of those matters, the Panel must grant the consents sought and confirm the NoRs. Further, even if one of the grounds is met, the Panel retains a discretion to approve a proposal; clause 34 states that *"a panel **may** decline (...) but only on the following grounds"* (emphasis added) rather than providing, for example, that the panel *"**must** decline (...) if one of the following grounds applies"*.

36. Two key issues of interpretation arise in respect of clause 34, as to:

- (a) the meaning of *"inconsistent with"*; and
- (b) whether a proposal must not be inconsistent with **each and every** provision of a relevant national policy statement (for example) to be approved, or whether a proposal must not be inconsistent with the relevant national direction in a broader sense.

37. These issues are discussed in turn below.

²⁷ See *Re: The Te Ara Tupua - Ngā Ūranga Ki Pito-One - Shared Path*, decision of an Expert Consenting Panel, dated 5 February 2021, at [242]: "Accordingly, the Panel finds that the Project, with the relevant conditions, is not inconsistent with the NZCPS."

²⁸ Sch 6, cl 34. This is explicit in Sch 6, cl 30(8) and cl 33(10) which specify that other matters relevant to the consideration of consent applications and NoRs; cl 33(10) are *"relevant to a panel's decisions on imposing conditions for the listed project, but are not relevant to whether a resource consent [sic] is to be granted"*. Because the potential grounds for declining a listed project are expressly limited to the matters specified in clause 34, the Panel may not, for example, decline on the grounds of inconsistency with a lower-order planning instrument.

INTERPRETATION OF "INCONSISTENT WITH ANY NATIONAL POLICY STATEMENT"

38. The meaning of the words of the COVID-19 Recovery Act, including the words "inconsistent with" in clause 34, must be ascertained from the text, in light of the purpose of the legislation.²⁹
39. In the Panel's decision on the Te Ara Tupua application, the Panel set out its interpretation of the phrase, proceeding on the basis of the meaning given to the phrase by the Environment Court which essentially adopted the dictionary definition of "*not in keeping; discordant; or incompatible*".³⁰ Waka Kotahi broadly agrees with this interpretation, noting however it is just one of a range of interpretations that have been considered and applied in case law.³¹
40. A further issue of interpretation in respect of clause 34 is whether a panel may decline a proposal if it is inconsistent with **any one** provision of any national policy statement (for example), or whether a proposal can only fail if it is inconsistent with the instrument when considered in a broader sense.
41. The scheme of the COVID-19 Recovery Act, and recent caselaw,³² suggest that a range of possible approaches are open to the Panel.
42. The contrast between the language used in clause 34 and that used in other clauses relevant to the Panel's decision suggests that the Panel may only decline a proposal if it is inconsistent with a national policy statement *as a whole*. That is, clause 34 refers to inconsistency "*with any national policy statement*" or "*with section 6*", both of which are collective terms that encompass numerous discrete considerations. By contrast, clauses 29 and 33 require the Panel to consider the same matters (among others), but to a greater degree of specificity:
- (a) the Panel must have regard³³ to "**any relevant provisions of**" national policy statements; and
 - (b) the Panel "**must apply section 6 of this Act (Treaty of Waitangi)**".

²⁹ Interpretation Act 1999, s 5.

³⁰ *Re: The Te Ara Tupua - Ngā Ūranga Ki Pito-One - Shared Path*, decision of an Expert Consenting Panel, dated 5 February 2021, at [175].

³¹ The various interpretations of this phrase are canvassed in the legal framework document provided as part of the Te Ara Tupua application lodged with the EPA.

³² See for example the High Court's finding in *Royal Forest and Bird Protection Society of New Zealand Incorporated ang Ngāti Whātua Ōrākei Whai Maia Limited v New Zealand Transport Agency* [2021] NZHC 390, at [25] – [30] that the test for the similarly-worded s104D(1)(b) required a "fair appraisal of the [relevant] objectives and policies, read as a whole..."

³³ Or "*particular regard*", in the case of a NoR.

43. Parliament has declined to use language that clearly requires a panel to undertake a forensic 'consistency check' against each provision of a national policy statement.
44. However, the Panel decision on the Te Ara Tupua application held that a project can be inconsistent with the NZCPS if it is inconsistent with only one or two policies, and that an application can be declined if it is inconsistent with a directive policy in the NZCPS, such as Policy 11.³⁴
45. In this case, the application is such that we do not need to choose a specific approach, as enabling this Project would not be inconsistent with any relevant provisions of national policy statements, with the Panel's duty to act consistently with all of the principles of the Treaty of Waitangi, or with any aspects of Treaty settlements, for the reasons explained below.

FIRST GROUND: NATIONAL POLICY STATEMENTS INCLUDING THE NZCPS

Applicable national policy statements

46. The following national policy statements are relevant to the Project:³⁵
 - (a) the NZCPS;
 - (b) the National Policy Statement for Freshwater Management 2020 (**NPSFM**);
 - (c) the National Policy Statement for Urban Development 2020 (**NPSUD**);
and
 - (d) the National Policy Statement on Electricity Transmission 2008 (**NPSET**).
47. The Project is not inconsistent with any of these documents, nor with any provision contained within them, for the reasons summarised below and set out in more detail in the AEE. It follows that, with respect, the Panel may not decline consent or cancel the NoRs for the Project on the ground in clause 34(1)(a).

The Project is not inconsistent with the NZCPS

48. The extent to which the Project area falls within the coastal environment is minimal: the coastal marine area (**CMA**) extends up Ngakoroa Stream, but Appendix 7 to the AUP provides that the CMA ends at the seaward side of

³⁴ *Re: The Te Ara Tupua - Ngā Ūranga Ki Pito-One - Shared Path, decision of an Expert Consenting Panel*, dated 5 February 2021, at [179] – [180].

³⁵ Only operative national policy statements are relevant to the ground for decline in clause 34; section 2 of the RMA provides that a "national policy statement" is one that has been issued under section 52 of that Act.

the Bremner Road Bridge (**Bridge**).³⁶ The Project's widening of the Bridge (to provide additional lane width and a SUP) will require the existing Bridge to be demolished and rebuilt, with its footprint extending downstream, into the existing CMA.

49. It is recognised that additional works outside the CMA have the potential to have adverse effects within the CMA, so it is appropriate for a detailed assessment of the NZCPS to be undertaken. The Project has been considered against all relevant NZCPS objectives and policies, and is not inconsistent with any of these. The statutory assessment in Section 8.2.1 of the AEE evaluates the Project against each relevant objective and policy of the NZCPS. In the section below we highlight how the Project has ensured it is not inconsistent with the NZCPS in terms of the key areas of effects.

Coastal processes and de-reclamation: Objective 1, Policies 1 and 10

50. Objective 1 and Policy 1 seeks to safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems. Policy 10 of the NZCPS seeks to encourage de-reclamation of redundant reclaimed land, to restore the natural character and resources of the CMA.
51. The Project's effects on the **coastal processes** of the Ngakoroa Stream have been evaluated in detail.³⁷ The relevant specialists have guided the Project's design to ensure that it avoids and otherwise mitigates the Project's adverse effects on coastal processes; the expert conclusion is that the Project's potential to result in adverse effects on coastal processes of the Ngakoroa Stream will be less than minor.³⁸ The Project thus *"safeguard[s] the integrity, form, functioning and resilience of the coastal environment"* in accordance with Objective 1 (and Policy 1) of the NZCPS.³⁹
52. Importantly, the Project is designed to be resilient to rising sea levels with Jesmond Road designed to provide sufficient clearance for the 1% AEP coastal storm-tide flows. Storm-tide flows will be able to pass unimpeded under Jesmond Bridge under all of the MfE's sea level rise scenarios up to the end of the 100-year lifecycle in 2120.⁴⁰ The removal of exotic trees and weed species and replanting of native species will also safeguard the

³⁶ Referred to as the Jesmond Bridge in the Project's documentation, which uses "Bremner Road Bridge" to describe the point at which Bremner Road bridges SH1.

³⁷ See section 8.2.1.1 of the AEE and Appendix Q.

³⁸ Section 6.4.5 of the AEE.

³⁹ Section 8.2.1.1 of the AEE.

⁴⁰ See section 8.2.1.1 of the AEE.

functioning of the coastal environment and sustain its ecosystems, consistent with Objective 1 and Policy 1.

53. Removing the redundant structures from Ngakoroa Stream and shifting the bridge piles further out of the channel will also achieve Policy 10, returning the Ngakoroa Stream to a less modified, more natural form.

Treaty of Waitangi: Objective 3, Policy 2

54. Objective 3 and Policy 2 of the NZCPS similarly require the principles of the Treaty to be taken into account, while also recognising the role of tangata whenua as kaitiaki and involving tangata whenua in the management of the coastal environment. Waka Kotahi has engaged with the SIIG from the commencement of the project design phase, to ensure mana whenua are actively involved in the development of management methodologies, and strongly promotes the outcomes sought by these provisions.
55. Paragraphs 86 - 97 below explains why enabling the Project would be consistent with the principles of the Treaty of Waitangi (as required by section 6 of the COVID-19 Recovery Act).

Use and development: Objective 6, Policy 6

56. Objective 6 enables people and communities to provide for their social, economic and cultural wellbeing, while protecting the coastal environment, recognising that protection of that environment does not preclude use and development in appropriate places. Policy 6 provides for activities in the coastal environment, including infrastructure and those associated with public open space, and recognises that infrastructure can support the wellbeing of communities.
57. The Project supports both the objective and associated policy through careful and considered design, balanced with the improved safety and accessibility improvements on the road network between Papakura to Drury as a result of the Project, and the provision of a SUP for alternative transport options. Through the provision of increased access to new (and safe) cycling and pedestrian infrastructure, the Project will provide for the economic and cultural wellbeing of Drury and the wider community. However, this has been balanced against the need to protect the coastal environment which has been achieved through various aspects of the

Project, including through its design i.e. replacement of Jesmond Bridge in the same location but at a more resilient level.⁴¹

Preservation and restoration of natural character: Policies 13 and 14

58. Policies 13 and 14 provide for the preservation and restoration of the natural character of the coastal environment. The Project has no foreseeable long-term adverse effects on the natural character of the CMA, but will have positive effects on the natural character of the coastal environment:⁴²

- (a) De-reclamation in the Ngakoroa stream (through removal of redundant structures) will restore the Stream to a more natural form, improve water flow, and remove the risk of entrapment of native birds and fish in the stream; and
- (b) Planting native vegetation in Ngakoroa stream riparian areas will have various positive effects including providing ecological corridors and connections, which will improve habitat values and the natural character of the Ngakoroa stream.

59. The Project therefore strongly promotes Policies 13 and 14 of the NZCPS.⁴³

Walking access: Policy 19

60. Policy 19 provides for the protection and enhancement of pedestrian access to the CMA. To give effect to this policy, the Project includes the addition of a SUP to Jesmond Bridge, improving pedestrian access to the CMA at Jesmond Bridge.⁴⁴

Managing discharges to water: Policies 20, 22 and 23

61. There are various NZCPS policies geared towards ensuring potential adverse effects from discharges to water are avoided, remedied, or mitigated:

- (a) Policy 20 controls the use of vehicles on beaches, foreshore, seabed, and public land.
- (b) Policy 22 requires the monitoring, minimisation, and control of sedimentation resulting from activity in coastal environments.

⁴¹ Refer to section 8.2.1.1 of the AEE.

⁴² Refer to section 8.2.1.1 of the AEE.

⁴³ Refer to section 8.2.1.1 of the AEE.

⁴⁴ Refer to section 8.2.1.1 of the AEE.

- (c) Policy 23 requires that any discharge should avoid adverse effects on ecosystems and habitats, and affect the smallest area practicable, keeping in mind the sensitivity of the receiving environment.
62. To appropriately manage coastal and stream works during construction, a number of mitigation measures have been proposed to manage construction discharges.⁴⁵ These cover erosion and sediment controls, as well as dust and debris controls, and will ensure that overland discharges into the CMA are minimised. A Coastal and Stream Works Reinstatement Management Plan will also be developed prior to commencement of construction and implemented in due course to restore the affected CMA.

Coastal hazards: Policies 24, 25 and 27

63. To address threats from coastal erosion, natural hazards, and climate change, Policies 24, 25 and 27 promote the following measures and outcomes:
- (a) identifying areas vulnerable to coastal erosion and other coastal hazards over a 100-year timeframe;⁴⁶
 - (b) in those potentially affected areas, avoiding increasing risks and encouraging risk reduction;⁴⁷ and
 - (c) undertaking risk assessments, reducing risks, and ensuring that structures are located and designed to minimise adverse effects on the coastal environment.⁴⁸
64. The Project has been developed with a comprehensive understanding of the increasing hazards over time due to climate change. The Project proposes a number of measures which are relevant to these provisions, including removing the old bridge piers at Ngakorua Stream (currently a navigation hazard) and an existing erosion control blanket (to reduce entrapment and mortality of native birds and fish). By replacing Jesmond Bridge to a height resilient to the higher flood-tide flows that will result from sea-level rise, the Project strongly promotes Policies 24 to 27 of the NZCPS.⁴⁹

⁴⁵ Refer to section 8.2.1.1 of the AEE,

⁴⁶ Policy 24 of the NZCPS.

⁴⁷ Policy 25 of the NZCPS.

⁴⁸ Policy 27 of the NZCPS.

⁴⁹ Refer to section 8.2.1.1 of the AEE.

65. Based on the findings of the technical assessment supporting the AEE, and the planning assessment contained in the AEE, the Project is not considered to be inconsistent with the NZCPS.⁵⁰

The Project is not inconsistent with the National Policy Statement for Freshwater Management 2020

66. The NPSFM is one of the relevant national policy statements for the Panel to consider under Sch 6, cl 34(1).⁵¹ Of relevance to the NPSFM, the proposed works will be undertaken in the Ngakoroa Stream environment, within existing wetland areas at culverts which outfall at 144 Park Estate Road and within a ponded area on Karaka Reserve.
67. As described in the AEE, the Project is not inconsistent with the objectives and policies of the NPSFM, as it will manage natural and physical resources in a way that prioritises the well-being of freshwater and their ecosystems.⁵² In the section below we highlight how the Project has ensured it is not inconsistent with the NPSFM in terms of the key areas of effects.

Prioritising our freshwater resources: Objective 1

68. Objective 1 states that the objective of the NPSFM is to ensure that natural and physical resources are managed in a way that prioritises first, the health and well-being of water bodies and freshwater ecosystems, second, the health needs of people, and third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.
69. The Project is not inconsistent with Objective 1 as it will manage natural and physical resources in a way that prioritises the well-being of freshwater and their ecosystems. A range of measures have been proposed to ensure the health and well-being of water bodies and freshwater ecosystems, including:
- (a) Erosion and sediment control measures to ensure the potential risk of sediment disturbances leading to runoff can be largely mitigated at source. Where possible, earthworks near waterbodies will be largely undertaken during the lower tide periods and the area secured if flooding or storm-tide events are forecast;⁵³

⁵⁰ Refer to section 8.2.1.1 of the AEE.

⁵¹ The NPSFM has replaced the previous 2014 (as amended in 2017) version.

⁵² Refer to section 8.2.1.2 of the AEE which assesses the Project against the NPSFM.

⁵³ Refer to section 8.2.1.2 of the AEE.

- (b) The Project will seek to minimise the construction footprint adjacent to Ngakoroa Stream and the CMA, to reduce the potential for habitat damage within ecosystems;⁵⁴ and
- (c) Native trees and shrubs will be planted to stabilise the banks of the Ngakoroa Stream and outfalls at the upgraded culverts, provide ecological corridors and connections to improve habitat values.⁵⁵

Te Mana o te Wai and tangata whenua involvement: Policy 1 and 2

- 70. Policy 1 provides for freshwater to be managed in a way that gives effect to Te Mana o te Wai, and Policy 2 provides for tangata whenua to be actively involved in freshwater management, and for Maori freshwater values to be identified and provided for.
- 71. The Project seeks to ensure freshwater is managed in a way that gives effect to Te Mana o te Wai, as well as ensuring tangata whenua are actively involved in freshwater management (including through the design of the Project itself). Through the SIIG, the RIAs have been and will continue to be involved in the detailed Project design and implementation, including in respect of the interaction of the Project with freshwater systems.⁵⁶

Integrated management of freshwater: Policy 3

- 72. Policy 3 seeks to ensure freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis.
- 73. The Project's stormwater management has been designed in accordance with this policy. Stormwater treatment devices, which include a combination of planted attenuation swales, wetlands and proprietary treatment devices, have been designed to improve the quality and quantity of stormwater management from SH1 compared to the existing situation. The Project will ensure 100% of the stormwater along SH1 in the Project area is appropriately managed.⁵⁷

Climate change: Policy 4

- 74. Policy 4 provides for freshwater to be managed as part of New Zealand's integrated response to climate change. In developing the Project, Jesmond Road bridge has been designed to a height that will facilitate higher water

⁵⁴ Refer to section 8.2.1.2 of the AEE.

⁵⁵ Refer to section 8.2.1.2 of the AEE.

⁵⁶ Refer to section 8.2.1.2 of the AEE.

⁵⁷ Refer to section 8.2.1.2 of the AEE.

flows due to sea level rise and increased flood events. This will ensure the bridge remains resilient against coastal hazards and the effects of climate change. Stormwater management devices for the Project have also been designed in accordance with GD01, which accounts for future scenarios resulting from climate change.⁵⁸

Avoiding loss of river extent: Policy 7

75. Policy 7 provides for no further loss of river extents and values. In recognition of this policy, works within watercourses will be limited as far as practicable and confined to the existing designation and NoR areas, which are very small areas adjacent to the current motorway. Large parts of the stream catchment have also been assessed as having low value.⁵⁹

Protecting habitats of indigenous freshwater species: Policy 9

76. Policy 9 provides for the protection of habitats of indigenous freshwater species. The Project will result in a range of positive outcomes including the improvement of indigenous biodiversity within riparian areas through planting native trees and shrubs. Other measures to ensure indigenous biodiversity is protected, include native fish recovery and relocation as necessary and the removal of harmful mesh currently in the Jesmond Bridge estuarine area.⁶⁰

Social, economic and cultural wellbeing of communities: Policy 15

77. Policy 15 of the NPSFM seeks to ensure communities are enabled to provide for their social, economic and cultural wellbeing in a way that is consistent with the NPSFM. Overall, the Project will enhance the transport network through improved travel time reliability and safety for road users and provide increased choices of active transport modes, in a way that is consistent with the NPSFM.⁶¹
78. It follows that the Project is not inconsistent with the NPSFM objective and policy framework. In line with the NPSFM provisions, the Project will prioritise the protection of the health and well-being of water bodies and freshwater ecosystem, while enabling people and communities to provide for their social, economic and cultural well-being.

⁵⁸ Refer to section 8.2.1.2 of the AEE.

⁵⁹ Refer to section 8.2.1.2 of the AEE.

⁶⁰ Refer to section 8.2.1.2 of the AEE.

⁶¹ Refer to section 8.2.1.2 of the AEE.

The Project is not inconsistent with the National Policy Statement for Urban Development 2020

79. The NPSUD recognises the national significance of having well-functioning urban environments that enable all people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety, providing sufficient development capacity to meet the different needs of people and communities.⁶² Objective 1 of the NPSUD provides this recognition, and is relevant to the Project.
80. The Project will provide for an enhanced transport network which will allow for people and communities to provide for their social, economic and cultural wellbeing, and their health and safety. By enhancing the transport network, the Project will contribute to enabling other urban areas of Auckland to be developed, consistent with Objective 1.
81. In addition to this overarching objective, the following NPSUD provisions are relevant to the Project:
- (a) Objective 5 requires that planning decisions relating to urban environments take into account the principles of the Treaty of Waitangi. This is supported by Policy 9 which sets minimum requirements for local authorities to take into account in relation to urban environments. Of particular relevance, Policy 9(c) and (d) require opportunities for Maori involvement in decision-making and "*to operate in a way that is consistent with iwi participation legislation*".⁶³ As discussed in the AEE and these legal submissions, RIAs have been active participants in the design and preparation of the application. Waka Kotahi has also considered the application of the relevant Treaty settlement documents that apply in the area, as set out in paragraphs 98 to 102 of these submissions and 8.2.2.5 of the AEE.
 - (b) Objective 8 of the NPSUD seeks to support reductions in greenhouse gas emissions and for our urban environments to be resilient to the current and future effects of climate change. This objective is supported by Policies 1(e), 1(f) and 6(e), which provide similar directions in relation to planning decisions. For this project, the improvements to SH1 and the proposed SUP are responding to urban

⁶² Ministry for the Environment, <https://www.mfe.govt.nz/about-national-policy-statement-urban-development>. Refer to section 8.2.1.3 of the AEE.

⁶³ Defined in the RMA with reference to the any legislation listed in Schedule 3 of the Treaty of Waitangi Act 1975, which lists the various settlement acts passed under this Act.

growth that has already been planned and provided for in the relevant planning documents. The infrastructure proposed as part of the Project will support that growth, and support an urban environment that is resilient to the effects of climate change and supports a reduction in greenhouse gas emissions.

- (c) Policy 1 implements the NPSUD objectives by providing that planning decisions should contribute to well-functioning urban environments, which are urban environments that have a number of features including good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport. The Project aligns with Policy 1 as the proposed SUP and enhanced crossing facilities will increase connectivity and enhance accessibility between Papakura to Drury and across SH1. Greater separation of active mode facilities from vehicle move traffic will also result in a safer environment, which is beneficial for traveller safety, health and well-being.⁶⁴
- (d) Policy 10 of the NPSUD encourages councils to work together with infrastructure providers and the development sector to achieve integrated land use and infrastructure planning. The proposal has been designed in consultation with the local authority for the area and developers in the immediate area, which is itself an area of growth and development.

82. For these reasons, Stage 1B1 is not considered to be inconsistent with the NPSUD.

The Project is not inconsistent with the National Policy Statement on Electricity Transmission 2008

- 83. The NPSET seeks to ensure that the provision of the transmission of electricity considers the operational and long-term development requirements of the network and there is consistency in the management of effects associated with the national grid by local authorities across New Zealand.
- 84. The Project area is traversed by high voltage power lines and adjacent to sub-station infrastructure under the responsibility of Transpower. The Project will not inhibit the operation or maintenance of Transpower facilities

⁶⁴ Refer to section 8.2.1.3 of the AEE.

during construction or operation, in accordance with Objective 1 and Policy 1 of the NPSET.⁶⁵

85. Consultation has been undertaken with Transpower and will continue throughout the construction of Stage 1B1. This will ensure the best design is adopted for the Project, consistent with Policy 6 of the NPSET. Based on this, Stage 1B1 is not considered to be inconsistent with the NPSET.

SECOND GROUND: THE PRINCIPLES OF THE TREATY OF WAITANGI AND TREATY SETTLEMENTS

Introduction

86. The COVID-19 Recovery Act enables the Panel to decline to grant a resource consent or cancel a NoR if, with or without conditions, the grant of such a consent or confirmation of a NoR would be inconsistent with section 6 of the COVID-19 Recovery Act.⁶⁶ Section 6 requires all persons performing functions and exercising powers under the Act to act in a manner that is consistent with the principles of the Treaty of Waitangi and Treaty settlements.

The Project is not inconsistent with the principles of Te Tiriti o Waitangi

87. The Treaty of Waitangi is a living document subject to evolving legal principles and contemporary interpretation, but a number of Treaty principles are commonly discerned. In particular, the Crown (including Waka Kotahi as a Crown entity) is expected to act consistently with the principles of partnership, active protection, and redress.⁶⁷
88. In practice, these highly contextual and complex obligations require, at a minimum, that the Crown and Māori have a positive duty to act in good faith, fairly, reasonably, and honourably towards each other (in partnership) and must take reasonable steps to make informed decisions on matters that affect Māori interests.⁶⁸ The Crown also has a positive duty actively to protect Māori property interests and taonga in accordance with what is reasonable in the prevailing circumstances,⁶⁹ and Māori have a right of redress for past wrongs.

⁶⁵ Refer to section 8.2.1.4 of the AEE.

⁶⁶ Sch 6, cl 34(b) of the COVID-19 Recovery Act.

⁶⁷ *New Zealand Māori Council v Attorney-General* (the 'Lands' case) [1987] 1 NZLR 641; *New Zealand Māori Council v Attorney-General* (the 'Broadcasting Assets' case) [1994] 1 NZLR 513 (PC); *Te Runanga o Te Wharekauri Rekohu v Attorney-General* [1993] 2 NZLR 301 (CA).

⁶⁸ *Lands*, at 683 per Richardson J; *New Zealand Māori Council v Attorney-General* [1996] 3 NZLR 140 per Thomas J at 169.

⁶⁹ *Broadcasting Assets* at [517].

89. While section 6 of the COVID-19 Recovery Act imposes obligations on the Panel (as opposed to an applicant for consent) to act in a manner consistent with the principles of the Treaty, in this case, the Panel can be assured that the Project has been developed by Waka Kotahi working alongside mana whenua, reflecting the Crown-Māori partnership formalised by the Treaty and the principles underpinning it, for the reasons summarised below. As such, enabling the Project is consistent with those principles.

Partnership with mana whenua

90. Developing the Project with engagement and input from the SIIG throughout the Project, has fostered a meaningful partnership between Waka Kotahi and mana whenua. The mutual aim of the SIIG has been to develop enduring relationships, and to ensure that the design, construction, and operation of the Project appropriately reflects cultural values and optimises cultural outcomes.
91. Through this relationship, Waka Kotahi has achieved a collaborative Project design that is informed by and appropriately responds to the comprehensive information provided about cultural values and effects, and the guidance provided by iwi about the appropriate measures to address adverse effects and opportunities to create positive cultural impacts.
92. Through the SIIG and the regular and ongoing engagement that Waka Kotahi has had (and will continue to have) with these iwi groups, Waka Kotahi has developed a strong foundation for relationships to endure throughout the construction and operation of the Project, consistent with the Treaty principle of partnership.

Participation in developing the Project

93. To ensure the RIAs were provided with opportunities to participate and contribute to the Project design and provide their own assessments of the Project, the SIIG were offered an opportunity to prepare CIAs in relation to the Project. Through their ongoing input, provided during regular SIIG meetings, the RIAs have also been able to contribute to the design of the Project (e.g. in relation to stormwater treatment and planting). Waka Kotahi will continue its engagement with the SIIG through the regular hui it holds, and it has also proposed a cultural monitoring plan condition to ensure the SIIGs ongoing participation in the Project.

Active protection in accordance with guidance provided by mana whenua

94. There are some key areas of cultural effects arising from the Project, given the historical significance of the Project area to mana whenua and the nature of the proposed works. A key theme in the CIAs/CVAs was the concept of kaitiakitanga and active protection of the environment.
95. To ensure that potential adverse effects of the Project on mana whenua values are protected, Waka Kotahi has collaborated with iwi to identify potential effects and has embraced the guidance they have provided on appropriate measures to address these. These values, and ways these have been considered as part of the Project, are discussed further in sections 5.2 and 6.3 of the AEE.

Conclusion

96. The successful relationships developed from the early stages of the Project reflect the principle of partnership, and through the SIIG and the proposed conditions, the RIAs will continue to have input into the Project. Waka Kotahi has also sought to ensure active protection of the environment, in light of the guidance provided by mana whenua through the SIIG engagement process and CIA/CVA process.
97. Enabling the Project will therefore facilitate delivery of important cultural benefits including in relation to erosion and sediment control, water quality and indigenous biodiversity, and will accord with the Panel's obligations to act in accordance with the principles of the Treaty of Waitangi.

Treaty settlement legislation and iwi planning documents

98. The Panel must act in a manner that is consistent with Treaty settlements,⁷⁰ and may decline approval for the Project if granting consent would be inconsistent with Treaty settlements.⁷¹ The COVID-19 Recovery Act also requires the Panel to:
- (a) comply with any obligation on a local authority or other decision-maker borne from a Treaty settlement, as if it were the local authority or other decision-maker;⁷² and
 - (b) seek comments from Treaty settlement entities relevant to a listed project.⁷³

⁷⁰ COVID-19 Recovery Act, s 6(b).

⁷¹ Sch 6, cl 34(1)(b).

⁷² Sch 6, cl 29(4) and cl 33(8).

⁷³ Sch 6, cl 17(4)(c).

99. Applications must also include information about any Treaty settlements that apply in the Project Area, any relevant provisions in those Treaty settlements and a summary of any redress that affects natural and physical resources relevant to the Project or Project Area.⁷⁴
100. The following claimant groups have Treaty settlement interests in the Project area:
- (a) Te Kawerau a Maki, Ngāti Tamaoho, Ngāi Tai ki Tāmaki and Ngāti Paoa, which have all reached settlements with the Crown;⁷⁵ and
 - (b) The Tamaki Collective,⁷⁶ which has reached a collective settlement with the Crown.⁷⁷
101. Within these Acts/Deed, we did not identify any relevant provisions, or redress which affects natural and physical resources, relevant to the Project or Project area. The Project is within statutory acknowledgement areas recognised in the Ngāti Tamaoho Claims Settlement Act 2018 and the Ngāi Tai ki Tāmaki Claims Settlement Act 2018, which local authorities are required to consider for the purpose of notification of applications. However, for this Project, both of these iwi groups are "relevant iwi authorities" and will be invited to comment on the application by the Panel.
102. In addition to these obligations, the FTA also requires an assessment of the activity, project or work against any planning document recognised by a RIA and lodged with a local authority. Waka Kotahi requested copies of any relevant iwi planning documents that have been lodged with a local authority from the RIAs. One document was received from Ngaati Whanaunga, and an assessment of the Project against this document did not identify any inconsistencies between the works proposed as part of the Project and the engagement process undertaken with Ngaati Whanaunga to date. This is discussed further in section 8.5.6 of the AEE.

Consideration of MACAA interests

103. In addition to Treaty settlement interests, the COVID-19 Recovery Act requires the Panel to have regard to any resource management matters in any applicable planning document prepared by a customary marine title

⁷⁴ Sch 6, cl 9(1)(i) and cl 13(1)(e).

⁷⁵ Captured in the Te Kawerau a Maki Claims Settlement Act 2015, the Ngāti Tamaoho Claims Settlement Act 2018, the Ngāi Tai ki Tāmaki Claims Settlement Act 2018, and the Ngāti Paoa Deed of Settlement respectively.

⁷⁶ The Tamaki Collective comprises Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā, Ngaati Whanaunga, Te Patukirikiri (*the Marutūāhu Rōpū*), Ngāti Whātua o Kaipara, Ngāti Whātua Ōrākei, Te Rūnanga o Ngāti Whātua (*the Ngāti Whātua Rōpū*), Ngāi Tai ki Tāmaki, Ngāti Tamaoho, Ngaati Te Ata, Te Ākitai Waiohūa and Te Kawerau ā Maki (*the Waiohūa-Tamaki Rōpū*)

⁷⁷ Captured in the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

group under the Marine and Coastal Area (Takutai Moana) Act 2011 (**MACAA**). However, the Project applications do not relate to an activity that is to occur within a customary marine title area, and no customary marine title group has produced any planning documents applicable to the Project.

104. In addition to these requirements, section 62(3) of the MACAA requires that Waka Kotahi notify and seek the views of applicants for customary marine title. Waka Kotahi has complied with this obligation by seeking the views of those applicants who have sought customary marine title in the Manukau Harbour. Section 8.6 of the AEE describes this process in further detail.

PART D CONDITIONS

105. Clauses 33(5)(c) and 35 of Schedule 6 to the COVID-19 Recovery Act provide that the Panel may impose conditions on a NoR (if confirmed) and resource consents (if granted). Conditions are an important means of ensuring that effects are able to be managed appropriately through the construction and operational phases of the Project.
106. Further, as noted above, approval cannot be refused for a listed project unless it is inconsistent with one of the specified matters, "*with or without conditions*". This means that a project must be approved if it is consistent with those matters, taking into account the conditions proposed by the applicant and any modifications or additional conditions that the Panel may lawfully impose.
107. Waka Kotahi has provided an extensive set of conditions it proposes to be imposed. These conditions have been refined over time, having had input from iwi partners and key stakeholders. In preparing these conditions, and in circumstances where a hearing may not occur, Waka Kotahi is aware of the need for robust and well-crafted conditions, and has taken care to ensure the conditions proposed appropriately manage potential adverse effects.

MATTERS RELEVANT TO IMPOSING CONDITIONS UNDER THE COVID-19 RECOVERY ACT

108. In considering the appropriate conditions to be imposed on the Project, clauses 29 and 30 (in respect of resource consents) and clause 33 (in respect of NoRs) of Schedule 6 to the COVID-19 Recovery Act set out the matters to which the Panel must have regard (or particular regard), and those matters that it may or must disregard.

109. In summary, the COVID-19 Recovery Act requires the Panel to have regard, subject to Part 2⁷⁸ and the purpose of the COVID-19 Recovery Act, to:⁷⁹
- (a) the effects on the environment of allowing the Project, including consideration of any measures proposed to ensure positive effects and to offset and compensate for any adverse effects on the environment from the Project;
 - (b) the relevant provisions of specified planning documents;⁸⁰
 - (c) in respect of NoRs:
 - (i) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work; and
 - (ii) whether the work and designation are reasonably necessary for achieving the objectives of Waka Kotahi; and
 - (d) any other matter the Panel considers relevant and reasonably necessary to determine the application.
110. For the most part, these matters will be familiar to the Panel as applying in the RMA context. However, a key difference is the inclusion of the purpose of the COVID-19 Recovery Act as an overarching consideration. The purpose in the Act contains an emphasis 'urgency' and 'certainty of ongoing investment', and the imposition of conditions which have the potential to cause undue delay or increased costs would not, without a strong sustainable management justification, promote the purpose of the Act.
111. While the Panel's consideration of many of the matters listed above is ultimately only relevant to the imposition of conditions, chapter 8 of AEE presents fulsome information on these matters in a similar manner as it would for an equivalent process under the RMA (as is an information requirement for a listed project).⁸¹

⁷⁸ With the exception of s 8, RMA (Treaty of Waitangi).

⁷⁹ COVID-19 Recovery Act, Sch 6, cl 29(1) and (2) in respect of resource consents and Sch 6, cl 33(2) in respect of NoRs.

⁸⁰ COVID-19 Recovery Act, Sch 6, cl 29(2) (for resource consents) and cl 33(3) (for NoRs): a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, a plan or proposed plan, a planning document recognised by a relevant iwi authority and lodged with a local authority. For resource consents cl 29(2) also lists: a national environmental standard, and other regulations under the RMA. While these are not listed in cl 33(3) in respect of NoRs, these are considered to potentially be relevant 'other matters' per cl 33(2)(d).

⁸¹ Sch 6, cl 9(g) and 13(d).

PART E CONCLUSION

112. Enabling the Project would not be inconsistent with national policy statements, Treaty principles, or Treaty settlements, and Waka Kotahi has proposed a robust suite of conditions factoring in a wide range of considerations, including Part 2 of the RMA.
113. The Project will provide a number of benefits including safety improvements for users of SH1 and adjacent roads, and for users of the new SUP through enhanced crossing facilities and separation from vehicle traffic. The provision of a SUP, improved connections across SH1 and upgrades/additional lanes at the Drury Interchange will provide for more travel time reliability. The Project will also improve resilience through the design of the Jesmond Road Bridge which will be raised to levels reflective of anticipated climate change impacts, and stormwater discharges from this section of SH network will be treated where currently, no formal treatment exists. Through these upgrades, the Project will ensure that infrastructure can be planned and delivered alongside projected growth in the South of Auckland (and support economic growth), while supporting New Zealand's recovery from the economic and social effects of COVID-19.

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