

**ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA
TE WHANGANUI-A-TARA**

ENV-2023-WLG-000005

Under the Resource Management Act 1991

In the matter of the direct referral of applications for resource consent and notices of requirement under sections 87G and 198E of the Act for the Ōtaki to North of Levin Project

By Waka Kotahi NZ Transport Agency

**STATEMENT OF REBUTTAL EVIDENCE OF AINSLEY JEAN MCLEOD ON
BEHALF OF WAKA KOTAHI NZ TRANSPORT AGENCY**

Dated 10 October 2023

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INTRODUCTION

1. My full name is **Ainsley Jean McLeod**.
2. I prepared a statement of evidence (**Evidence**) regarding the proposed conditions for the proposed Ōtaki to North of Levin Project (**Ō2NL Project or Project**), dated 4 July 2023.
3. My qualifications and experience are set out in my Evidence.
4. I repeat the confirmation given in my Evidence that I have read the 'Code of Conduct' for expert witnesses and that my evidence has been prepared in compliance with that Code.
5. This rebuttal evidence responds to points made in evidence by:
 - (a) Ms Anna Carter and Mrs Karen Prouse, on behalf of the Prouse Trust Partnership, and Mrs Karen and Mr Stephen Prouse.
 - (b) Ms Amelia Geary, on behalf of the Royal Forest and Bird Protection Society of New Zealand (**Forest & Bird**).
 - (c) Mr Mark St Clair, on behalf of Manawatū-Whanganui Regional Council (**Horizons**), and Greater Wellington Regional Council (**GWRC**);
 - (d) Ms Helen Anderson, on behalf of Horowhenua District Council (**HDC**) and Kapiti Coast District Council (**KCDC**).
 - (e) Mr John Bent, in his evidence filed 12 September 2023.
6. I attended expert conferencing on 10, 11 and 14 August 2023 in relation to planning with:
 - (a) Mr Grant Eccles;
 - (b) Mr St Clair;
 - (c) Ms Anderson;
 - (d) Ms Carter;
 - (e) Mr Karl Cook (representing James McDonnell Limited);
 - (f) Ms Siobhan Karaitiana (representing Muaūpoko Tribal Authority); and
 - (g) Mr Quentin Parr (representing Ngā Hapū o Ōtaki).

7. I attended further expert conferencing in relation to water abstraction and planning on 16 August 2023 with:
- (a) Dr Jack McConchie;
 - (b) Mr Eccles;
 - (c) Mr Mike Thompson (representing GWRC);
 - (d) Ms Michaela Stout (representing Horizons); and
 - (e) Mr St Clair.
8. I attached revised draft conditions as **Appendix A** to my evidence. The revisions in these conditions are made to the clean 'Mediation Version' dated 4 September 2023. The left column of the conditions includes the further amendments that are made in response to the evidence filed by section 274 parties and the Councils. The rebuttal version amendments are presented as red underlined or ~~red strikethrough~~. My evidence supports these amendments.
9. For convenience, this rebuttal version also presents amendments to conditions suggested in the evidence filed by section 274 parties and the Councils, whether supported in my evidence, or not. These are in the right column and shown as purple underlined and ~~purple strikethrough~~, with reference to the evidence seeking the amendment shown in [purple square brackets].

RESPONSE TO MS CARTER AND MRS PROUSE

Visual and landscape effects

10. In their evidence, both Mrs Prouse and Ms Carter set out a range of measures that have been offered by Waka Kotahi to address matters raised in the submission made by Mr and Mrs Prouse in respect of adverse visual and landscape effects of the Project on the Prouse property.
11. Ms Carter's evidence goes on to note that these measures have not been captured in the planting concept plans and/or outline plan requirements and therefore "*Without the certainty these works being imposed through consent conditions, the mitigation of adverse visual and landscape effects remains unresolved*".¹ Ms Carter suggests an amendment to Condition DGA6 to

¹ At paragraph 34.

ensure these measures are addressed as part of the outline plan or plans for the Project.²

12. While Mr Lister considers that the measures are not necessary to address adverse effects and may “*impact integrative design to future urban development of the paddocks south of the curtilage area*”, Mr Dalzell confirms the measures that have been offered in his rebuttal evidence.³
13. I generally support Ms Carter’s suggestion, but propose amended wording to:
 - (a) better reflect the requirement for landscaping to be described as part of the outline plan under section 176A(3)(e) of the RMA;
 - (b) omit reference to planting being within the designation on the basis that the reference is not necessary to achieve the outcome sought; and
 - (c) signal that, because the measures are not necessary to address adverse effects, the condition is offered on an Augier basis.

Noise and vibration

Best Practicable Option to mitigate road traffic noise

14. Ms Carter has concluded that she “*is not assured*” that, based on her review of evidence, the Best Practicable Option selected will achieve a minimum internal noise level “*as close to 40dB L_{Aeq(24hr)} as possible*” and considers that other options should be investigated because of the sensitivity of the receiving environment and 1024 Queen Street East.⁴ Ms Carter proposes an amendment to Condition DRN6 that has the effect of explicitly directing the requiring authority to investigate building modifications at 1024 Queen Street East.⁵ Similarly, Mrs Prouse seeks the same condition amendment.⁶
15. The effect of Ms Carter’s recommended amendment to Condition DRN6 is to treat 1024 Queen Street East as a Category B dwelling regardless of whether it is predicted as such. I understand that this amendment is sought on the basis of an acoustic report appended to Mrs Prouse’s evidence that concludes that the dwelling at 1024 Queen Street East would not achieve the

² At paragraph 90.

³ At paragraph 8.

⁴ At paragraph 50.

⁵ At paragraph 90.

⁶ At paragraph 19.

same reduction in noise levels in habitable rooms as would be achieved by a modern building.⁷

16. Mr Smith and Ms Wilkening have considered the acoustic report appended to Mrs Prouse's evidence, and agree that the results of the acoustic tests are inconclusive at best, and likely understate the performance of the façade. Mr Smith goes on to set out his understanding the noise reduction expected to be achieved at 1024 Queen Street East (in the order of 15dB to 17dB with windows ajar).
17. On this basis, it is my conclusion that there is no need for the dwelling at 1024 Queen Street East to be treated differently in Condition DRN6. Should the final design of the Project result in the 1024 Queen Street East being predicted to be a Category B dwelling, then the direction for the requiring authority to investigate building modifications will apply regardless.

Post construction review of noise mitigation

18. Ms Carter suggests the inclusion of an additional clause in Condition DRN4 requiring the post construction measurement of actual sound levels at 1024 Queen Street East (as opposed to modelled sound levels).⁸ Ms Carter does not explain the reason for this amendment in her evidence.
19. In his rebuttal evidence, Mr Smith explains the typical approach to confirming that the Project is constructed to result in an outcome that is consistent with the noise modelling. This does not include actual measurements.
20. Based on Mr Smith's conclusion and given the lack of rationale for seeking that actual measurements be taken, I do not support the amendment proposed by Ms Carter to Condition DRN4.

Flooding

21. In her evidence Ms Prouse expresses concern that the Project will cause flooding that will have more than minor adverse effects.
22. Ms Prouse acknowledges that Waka Kotahi has undertaken further flood modelling that shows what would happen if two additional culverts are included in the design and sized to convey overland flows. Further, Mr Craig has advised that during detailed design, additional improvements to approaches to culverts and their inlet and outlet structures could result in

⁷ At Appendix 3.

⁸ At paragraph 90.

further reductions in flooding at 1024 Queen Street East. Ms Prouse references, and supports, a condition amendment suggested by Mr Kinley in the Joint Witness Statement of Hydrology and Flooding Experts dated 9 August 2023.⁹

23. Ms Carter similarly supports an amendment to Condition RGA1 that mirrors the conditions wording suggested by Mr Kinley and concludes:

“Based on Mr Kinley’s evidence, all increases identified by Stantec’s ‘with scheme’ model within the Prouse property are likely to pose an increase in significant flood risks. This increase in flood depths by up to and including 50mm to 0.5m, is likely to create further adverse impacts on the Prouse property including, on their ability to access their property; and their ability to reasonably develop the property in the future.”¹⁰

24. Ms Carter also requests that the additional culverts and any improvements to culvert approaches or inlet and outlets structures are reflected in conditions of consent or addressed through the outline plan process.¹¹

25. Mr Craig, in his rebuttal evidence, confirms that the statements made by Mr Kinley that are referenced by Mrs Prouse and Ms Carter pre-date the modelling based on the addition of the two further culverts. Mr Craig details revised modelling in his rebuttal evidence.

26. Mr Craig goes on to explain that Ms Carter has misinterpreted flood level mapping and to confirm his estimate of the modelled water level at the northern corner of 1024 Queen Street East for the 1:200 AEP current climate to be approximately 0.3 metres, and less at all other locations along the boundary of the property. Mr Craig concludes that the adverse effects on the area subject to increased flood levels would be less than minor based on the receiving environment and the limited, localised increases during rare and short duration flooding. I also note that Ms Carter does not recognise that in the flood event modelled, in the without the Project scenario, flood levels across the Prouse property are in the range of 0.1m to 0.5m in depth.

27. On this basis, I do not consider that the proposed amendment to Condition RGA1 is necessary or appropriate to respond to the slight increase in flood levels at 1024 Queen Street East. That said, my proposed new condition

⁹ At paragraphs 29 to 35.

¹⁰ At paragraph 65.

¹¹ At paragraph 74.

RGA7 has the effect of 'locking in' the modelled flood levels along with requiring flood levels as a result of the Project to be further reduced as far as reasonably practicable. This responds to Ms Carter in terms of embedding the refinement suggested by Waka Kotahi in the resource consent conditions. While Ms Carter has also alluded to the outline plan process, in my view the management of stormwater and overland flows falls to the regional councils' jurisdiction and is therefore appropriately addressed through the resource consents, rather than through an outline plan.

Transport effects

Queen Street East carpark

28. Mrs Prouse¹² and Ms Carter¹³ refer to Waka Kotahi "agreeing in principle" that the Project will not include public car parking within the designation between 1024 Queen Street East and Queen Street East, as realigned, and seek that Condition DGA6 is amended to confirm this.
29. Mr Dalzell, in his rebuttal evidence, confirms that car parking will not be located between 1024 Queen Street East and realigned Queen Street East. I therefore consider that the amendment suggested by Mrs Prouse and Ms Carter is generally appropriate and I have drafted an additional clause in Condition DGA6 accordingly.

Road Layout and Access to 1024 Queen Street East

30. Ms Carter supports a further amendment to Condition DGA6 to direct that an outline plan for the Project includes "*recommendations from suitably qualified and experienced persons, regarding the design and layout of the new local roads and intersections into those roads servicing 1024 Queen Street East; the design and layout of accesses into 1024 Queen Street East.*"¹⁴ Ms Carter's evidence is that the amendment to Condition DGA1 is proposed in order to direct that the design of connections and accesses accommodate further growth.
31. In my opinion it is not appropriate or necessary for an outline plan to describe design responses to cater for future development, particularly where such future development has not been designed, and is subject to separate RMA consenting processes.

¹² At paragraph 17.

¹³ At paragraph 81.

¹⁴ At paragraph 90.

32. In respect of the design of access and connections, I do not consider that the additional wording proposed is necessary because section 176A, including section 176A(3)(d), requires the design of, and provision for, connections and vehicular access to be included in an outline plan in any case. Mr Peet in his evidence has concluded that it would be appropriate to consult with the owners of 1024 Queen Street East in respect of the design of the access and connections to their property. I understand that this engagement encapsulated in the property agreement being discussed with the owners of 1024 Queen Street East and I therefore do not consider that an amendment to conditions is necessary to provide for this engagement at this time.

Construction effects

Site Specific Construction Noise and Vibration Mitigation Plans

33. In her evidence, Ms Carter seeks that Condition DNV4 is amended to refer to *“the removal and replacement of the macrocarpa/pine hedge of trees located alongside the haul road as assessed by a suitably qualified and experienced person or persons”*.¹⁵
34. From a drafting perspective, I consider that the reference to the management of the existing vegetation, as suggested, does not fit comfortably in the context of Condition DNV4 that sets triggers for site specific mitigation (given that it is a response, rather than a trigger). That said, it is possible that the assessment of, and replacement of, the trees could form part of the site-specific mitigation. This is not prevented by the conditions as they stand.
35. In addition, I note that Mr Dalzell’s rebuttal evidence confirms that Waka Kotahi has offered to undertake an assessment of the larger trees on the western boundary of the current gardens and bush area to identify if any need to be removed. Waka Kotahi has offered to remove and to replace these trees with juvenile trees. As with property access, I understand that this tree assessment forms part of the property agreement being discussed with the owners of 1024 Queen Street East. I therefore do not consider that an amendment to conditions is necessary to provide for this engagement at this time.
36. Further, in respect of Ms Carter’s evidence generally, Ms Anderson has concluded:

¹⁵ At paragraph 90.

“In my view, the proposed designation conditions adequately address the concerns raised by Ms Carter. Where appropriate, site-specific clauses have been included in the proposed designation conditions (eg. DGA6, DNV4, Schedule 2 CNVMP, Schedule 8 CAQMP), and therefore I do not consider that the inclusion of additional site-specific clauses is necessary.”¹⁶

37. For these reasons, I do not support the proposed amendment to Condition DNV4 that is proposed by Ms Carter.

Construction Environmental Management Plan

38. Ms Carter suggests an amendment to clause(a)(x) in Schedule 2 (Clause (a)(x) to include reference to *“and on the residents of 1024 Queen Street East in consultation with the owners”*.¹⁷ Ms Carter does not explain the reason for this amendment in her evidence.
39. Clause (a)(x) in Schedule 2 has been developed to provide for the management of specific effects of the Project at, and on, a particular site (96/98 Arapaepae Road). In the absence of clear rationale that demonstrates that the management responses for 96/98 Arapaepae Road are necessary or appropriate for 1024 Queen Street East, I do not support the amendment proposed.

RESPONSE TO MS GEARY

Adequacy of conditions for landscape and natural character planting

Standards for landscape and natural character planting

40. In her evidence, Ms Geary concludes that the conditions that relate to landscape and natural character planting *“need significant improvement to ensure that they adequately address the landscape and natural character effects, as well as reduce the risk that these areas become pest and weed sources for the offset areas”*. Ms Geary seeks that the landscape and natural character mitigation planting is subject to the same targets, requirements, implementation and monitoring conditions as the ecological offset planting.¹⁸
41. Ms Geary is of the opinion that the conditions for the landscape and natural character plantings are *“severely lacking in detail and requirements to ensure*

¹⁶ At paragraph 130.

¹⁷ At paragraph 90.

¹⁸ At paragraph 54.

that the planting survives beyond five years". Her evidence goes on to identify the "problems" with Conditions DLV1 and RWB3 as:

- "a. 80% canopy coverage at five years is not a robust or realistic requirement, and there is no contingency in the conditions if this is not met;*
- b. There are no pest plant or animal requirements;*
- c. There is a complete lack of detail about implementation, monitoring and maintenance of the plantings."*¹⁹

42. Ms Geary references landscape planting associated with the Mackay's to Peka Peka state highway as rationale for this conclusion. In this regard, I note that the standards that applied in this case were 80% canopy cover for mass planting at 'Final Completion'²⁰ and a three-year maintenance period. For this Project, Condition DLV1 is more onerous with a five year timeframe and 90% survival rate required alongside the 80% canopy coverage standard.
43. Mr Lister responds to Ms Geary in his rebuttal evidence by clarifying that, while contiguous, landscape planting and planting for ecological purposes are separate. Planting to manage landscape, visual and natural character effects is managed within the District Council's jurisdiction and is subject to an outline plan process in the future. Whereas planting to address effects on indigenous biological diversity, is managed with the Regional Council's jurisdiction.
44. The differing processes partially explain the differences in the approach taken in conditions. This is because section 176A(3) of the RMA requires that an outline plan includes a description of proposed landscaping, along with any other matters to avoid, remedy or mitigate effects. The proposed designation conditions are therefore able to anticipate this subsequent process. Conversely resource consent conditions do not reserve future discretion to the Councils as regulator and therefore the conditions have been developed in a more prescriptive way.
45. In my opinion, the differing approaches can be further explained by the differing provision in the various planning instruments, as described in the

¹⁹ At paragraph 21.

²⁰ These conditions define 'Final Completion' as "*means when the site is handed over from the contractor for the Requiring Authority to maintain the planting at the end of the Defects Liability and Maintenance Period.*"

application documentation and Mr Eccles' evidence. For instance, there is a policy requirement to achieve a net gain in respect of effects on indigenous biological diversity, but not impacts on landscape or visual amenity values.

46. Ms Anderson also considers Ms Geary's evidence and notes that Ms Williams considers that Condition DLV1 "*meets current best practice for measuring planting success*".²¹ Ms Anderson, relying on the evidence of Ms Williams, goes on to agree with Ms Geary that Condition DTW5 does not provide assurance that the final planting will establish and thrive as a sustainable plant community. Ms Anderson supports amendments to Condition DTW5 to address this by adding a requirement to apply the principles in "*the Waka Kotahi Landscape Guidelines 2014*" [sic] to Condition DTW5.²²
47. I address this amendment further in response to Ms Anderson's evidence and conclude that it is appropriate to reference the current, 2018, NZTA Landscape Guidelines in Condition DGA6.
48. Subject to the new clause in Condition DGA6, I am of the view that the concerns expressed, and outcomes sought, by Ms Geary are able to be addressed and appropriately achieved respectively through the landscape design and implementation being informed by the NZTA Landscape Guidelines and described in an outline plan (and therefore being subject to consideration by the District Councils).

Planting subject to landowner approval

49. Ms Geary also queries the implications in respect of adverse effects being properly addressed where the planting required by Conditions DLV1 and RWB3 is subject to landowner approval when located on private property.²³
50. Mr Lister addressed this matter in his primary statement of evidence (dated 4 July 2023). In respect of landscape 'natural character' planting beyond the designation, Mr Lister confirms that this planting is an additional measure and notes his understanding that "*it is questionable if such areas could be designated and compulsorily acquired for that purpose as part of the*

²¹ At paragraph 120.

²² At paragraph 30.

²³ At paragraph 22.

Project".²⁴ In terms of landscape planting for visual amenity purposes, Mr Lister advises as follows:

*"To explain, my technical report recommends that the in-designation planting (as depicted on the Planting Concept Plan) be designed to mitigate for properties assessed as having 'moderate' or greater adverse visual effects. Condition DLV2 volunteers an additional offer to the owners of properties where the residual adverse effects are 'moderate-high' or greater."*²⁵

51. Based on Mr Lister's response I confirm my understanding that the planting proposed is 'additional' to that required to appropriately manage adverse effects. As such, I conclude that Ms Geary's concerns are unfounded.

RESPONSE TO MR ST CLAIR

Cultural effects

52. Mr St Clair reiterates his position in the Section 87F Report, that submissions express the view that the conditions are inadequate to address cultural effects and he concludes that residual cultural effects have not been mitigated. Mr St Clair acknowledges that Waka Kotahi, the Project Iwi Partners and submitters have been working together to refine the conditions.²⁶
53. In this regard, since my Evidence was filed, I have continued to work alongside representatives of the Project Iwi Partners to develop conditions that address adverse effects on cultural values. A working draft of the conditions is included in suite of conditions in Appendix A. My understanding is that these conditions are not yet agreed between the Project Iwi Partners and I note that:
- (a) Ms Karaitiana (for MTA) is generally supportive of these conditions; and
 - (b) Ngā hapū o Ngāti Ruakawa ki te Tonga seek that further conditions are included to address process and relationship matters.

²⁴ At paragraph 65.

²⁵ At paragraph 67.

²⁶ At paragraphs 15 and 16.

Hydrology and flooding

Inundation

54. As described by Mr St Clair, the Joint Witness Statement of Hydrology and Flooding Experts dated 9 August 2023 records the experts' agreement that:
- (a) the draft conditions do not include conditions that address the management of inundation;
 - (b) design standards for flood effects should be added to the conditions; and
 - (c) there should in a specific condition relating to habitable floor levels.
55. The experts do not agree on the standards that should be included in any such condition(s).
56. Mr St Clair, with reference to Mr Kinley, lists the following as outstanding matters:
- (a) selection of the threshold used to identify effects;
 - (b) review of whether the design meets the proposed thresholds;
 - (c) the assessment of the effects of the works on flooding of buildings; and
 - (d) request for a peer review.
57. Mr St Clair notes Mr Kinley's conclusion that the outstanding matters can be addressed through conditions and, taking the recommendations of Mr McArthur and Mr Kinley, supports a new condition that:
- (a) imposes flood level exceedance thresholds for urban and non-urban zoned land outside the designation;
 - (b) a restriction on flooding of building floors;
 - (c) requirements as to velocity; and
 - (d) the need for certification and peer review.²⁷
58. I agree to the inclusion of a specific condition in respect of flood levels that confirms the parameters within which the Project must be designed and

²⁷ At paragraph 18.

operated. I have drafted Condition RGA7 to achieve this. My Condition RGA7 differs to the condition proposed by Mr St Clair for the following reasons:

- (a) Reference to the designation: In my opinion, including explicit reference to a designation in resource consent conditions is not appropriate. This is because a designation is a district council planning tool and has no relevance to a condition applied to a resource consent required by a regional plan. This makes the resource consent condition unclear and uncertain because the condition can only be understood with reference to the designation in the district plan and because the regional council has no direct control over the extent of the designation, particularly where the designation may be amended or altered at any time. Instead, I have drafted Condition RGA7 to directly reference the modelled outcomes being achieved by the Project as a worst-case scenario.
- (b) Reference to existing floors: There is no disagreement between experts in respect of the inclusion of a standard setting a level for habitable floors. That said, Mr St Clair's condition does not refer to 'habitable'. I have drafted a condition that includes a clear requirement for the Project to not result in an increase in internal flooding level of an existing habitable floor by more than 10mm.
- (c) Zone-based flood levels: Dr McConchie and Mr Craig, in their rebuttal, have given consideration to the appropriateness of zone-based flood levels. A zone-based approach is considered problematic and is not supported because:
 - (i) such an approach is not effects-based to the extent that it does not take into account effects on the receiving environment in arriving at what might be 'acceptable'; and
 - (ii) because the zone approach would have a perverse outcome of allowing effect beyond those that are modelled (that is, the condition would allow the inundation of some areas that are not modelled to flood).

Conversely, the Condition RGA7 responds to Mr Craig's analysis of the potential effects of inundation on a site-specific basis, having regard to the receiving environment and the modelled change in water level. In all, because conditions are planning tools to manage potential adverse effects, I consider that a condition that more directly responds to

potential adverse effects (through reference to the envelope of effects established by the modelled water level change) is more appropriate than establishing a standard across district plan zones. In this regard, and akin to the issues with drafting the condition in reliance on the designation for the district plan, I consider that setting standards aligned with rural and urban zones that are established by district plans is unclear and uncertain because such a standard requires reference to a district plan and zones that may change. Further, the proposed condition may result in regulatory gaps should the Project result in inundation in a zone that is not (or no longer) rural or urban (for instance the Open Space Zone in the Horowhenua District Plan that is in rural and urban areas).

- (d) Velocity: Mr Craig addresses velocity in his rebuttal evidence and confirms that velocity concerns initially arose due to model error. He therefore concludes that a condition relating to velocity or hazard is not necessary.
- (e) Confirming compliance: Condition RGA7 and Mr St Clair's condition both require confirmation of compliance with preceding standards in the respective conditions. I am of the view that it is appropriate for the consent holder to confirm compliance however, the mechanism to confirm compliance differs between the conditions. Condition RGA7 sets a clear envelope of effects against which modelling of the design of the Project can be easily compared so that the outcome is confirmed. Conversely, Mr St Clair's condition includes a requirement for further modelling to be undertaken with reference to the Waka Kotahi Bridge Manual. In his rebuttal evidence, Mr Craig does not support such a reference. Further, from a planning perspective, I consider that Mr St Clair's condition is uncertain and inappropriate because it refers to possible future versions of the Bridge Manual that are unknown at this time.
- (f) Peer review and certification: In my opinion, the requirement for peer review **and** certification of subsequent modelling, including the process for this review and what is intended to be certified is not clearly explained in evidence or set out in the proposed condition. That is, the benefits of peer review and/or certification, or the risks managed by peer review and/or certification, have not been identified. In this regard, there is no evidence that the flood modelling that has been undertaken

is somehow less certain because it has not been through a peer review or certification process. On this basis, it is my conclusion that such requirements are unnecessary and should not be imposed through conditions.

Scour protection

59. Mr St Clair acknowledges and agrees with Mr Kinley's recommended amendment to Condition RWB2 so that remediation of erosion, scour or instability of an overland flow path caused by the Project must be remediated. The purpose of the proposed amendment is to ensure protection of ephemeral watercourses from additional scour caused by the Project.²⁸
60. I agree that, in circumstances where the proposed design causes erosion, scour or instability of an overland flow path, remediation is an appropriate response and I have generally included the minor amendment to Condition RWB2 suggested by Mr St Clair in the draft conditions in Appendix A.

Water abstraction

Inclusion of 'standard' conditions

61. Mr St Clair acknowledges that the Joint Statement of the Water Abstraction and Planning Experts dated 16 August 2023 records that:

"No agreement was reached in respect of the inclusion of standard conditions for water measuring devices/systems. It is agreed that these require further discussion between witnesses and parties."

62. With reference to the evidence of Ms Stout and Mr Thompson, Mr St Clair recommends amendments to the conditions on the basis that:
- (a) it is more practical and certain to have all of the matters related to the water takes sitting in the one set of consent conditions (rather than relying on both conditions and the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010;
 - (b) having the matters relating to water takes in conditions provides the ability for the Regional Councils to monitor compliance and undertake enforcement action; and

²⁸ At paragraphs 23 and 24.

(c) that this is the approach adopted by Regional Councils for all water take applications.²⁹

63. I do not agree with Mr St Clair's conclusion that it is more practical and certain to have all of the matters related to the water takes sitting in the one set of consent conditions (rather than relying on both conditions and the Regulations) and I note that this conclusion is inconsistent with Mr St Clair's support of the inclusion of direct reference to Resource Management (National Environmental Standards for Freshwater) Regulations 2020 in Condition RFE3.
64. In this regard, I have reviewed Mr St Clair's proposed 'standard conditions' against the regulations in the Regulations 2010 and can confirm that the matters addressed in the suggested 'standard conditions' mirror these Regulations. Because compliance with these Regulations is mandatory, I am of the view that repeating these regulations in a different form is unnecessary duplication and present interpretation risks as a result of different drafting.
65. Further, I have reviewed the 'standard conditions', alongside the Irrigation NZ publication 'The New Zealand Water Measurement Code of Practice' September 2023 (being a more recent publication than that referred to in the 'standard conditions') (**Water Measurement Code**) and can confirm that the express purpose of this document is as follows:
- “The purpose of this Code is to outline the requirements and good industry practice for the selection, installation verification, and validation of water measurement devices/systems required for water permit holders to meet their obligations under the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 (Reprint 2020)”*
66. As such, I consider that the Water Measurement Code reiterates requirements for the Regulations and provides descriptive information in respect of how compliance with these Regulations may be achieved. I do not consider that including that Water Measurement Code is necessary on the basis that it is repetitious. In addition, it does not introduce new standards that would make requiring compliance with the Water Measurement Code appropriate in the context of conditions.

²⁹ At paragraph 29.

67. Mr St Clair has noted that reference to the Regulations is not made in the conditions. I am of the opinion that such reference is not necessary because the Regulations are mandatory in any case. Including the 'standard conditions' and/or the Regulations in the conditions does not alter compliance, environmental outcomes or enforcement obligations. That said, while not necessary, I have suggested the inclusion of an additional clause in Condition RWT1 that directly references requirement to comply with the Regulations in a manner similar to Condition RFE3.

Surrender of consent

68. In his evidence, Mr St Clair:

- (a) Acknowledges that the Joint Statement of the Water Abstraction and Planning Experts, dated 16 August 2023, records that the witnesses agree with the statement in Dr McConchie's evidence that "consent should be surrendered following completion of construction, or after 10 years, whichever comes first".
- (b) agrees with the evidence of Ms Stout and Mr Thompson, that the term of the water permits sought for the abstraction of surface water should reflect the period of time the water is required for construction of the Project.

69. Mr St Clair supports:

- (a) a requirement that resource consents RC9 and RC28 expire in 10 years or expire when construction is completed whichever is the shortest; and
- (b) a new condition requiring the consent holder to notify the Regional Councils once construction has been completed for works that require the taking and use of water.³⁰

70. I understand that Ms Stout and Mr Thompson seek that the consents expire at an earlier date to provide for efficient water allocation (or prevent inefficient allocation).

³⁰ At paragraphs 33 to 35.

71. Dr McConchie, in his rebuttal evidence, considers the evidence of Ms Stout and Mr Thompson and concludes that requiring the consents to expire at an earlier date than the term sought is:
- (a) excessive given the scale of abstraction and negligible level of effects on the environment;
 - (b) with reference to the evidence of Mr Dalzell, would not provide the consent holder with water for post-construction activities that may require water such that the potential adverse effects of not having access to a small volume of water far outweighs any potential benefit of reducing the duration of the consent; and
 - (c) is not 'water banking' because a volume of water remains available for other parties in each of the catchments from which water will be abstracted.
72. While I agree that holding water permits where the water is no longer needed may not provide for efficient allocation, I do not support the recommendations of Mr St Clair because:
- (a) I consider it highly unusual to set the expiry of a resource consent based on circumstance, as opposed to a specifically stated date. In fact, over the course of my career, I have not come across an expiry direction such as this.
 - (b) In my view, the provisions of the RMA anticipate and require that the commencement and expiry of resource consents is explicitly 'tied' to a date. This is important, for instance, for establishing the statutory timeframes for the exercise of a resource consent while applying for new consent under section 124.
 - (c) Dr McConchie does not suggest, in his evidence, that the consents should expire at an earlier date. Rather, he suggests that the consents would be surrendered. In my view, surrendering a resource consent is a consent holder initiated process under section 138 of the RMA, with the consent authority having the ability to accept or refuse the surrender. I agree that when redundant to the Project, surrendering the consents would be beneficial from an allocation efficiency perspective but, consistent with the RMA, this is at the discretion of the consent holder. I do not consider that it is appropriate for the resource consents

to include a requirement that, in effect, compels the water permits to be surrendered.

- (d) The appropriate duration for construction related resource consents was considered by Waka Kotahi at the time the consents were sought, with a 10-year duration proposed. Mr Dalzell notes³¹ that construction, and subsequent maintenance activities that are required by conditions, will extend well beyond road opening and these activities will include water requirements.
- (e) The rationale given for reducing the consent duration is not related to the reduction of any adverse effects on the environment. Rather, it is suggested that the water allocation would be available to other parties who, in turn would have the same or similar adverse effects on the environment.

Cease take flow (Waikawa Stream)

- 73. Mr St Clair, based on advice from Ms Stout and Mr Brown, has proposed an amendment to Condition RWT1 to address the cessation of water take from the Waikawa Stream so that the take ceases when the minimum flow is reached at the point of abstraction as opposed to the minimum flow at the North Manakau Road flow recorder.³²
- 74. Dr McConchie explains that, consistent with the agreement in the Joint Witness Statement of Water Abstraction and Planning Experts dated 16 August 2023, the draft conditions already reflect uncertainty of instream flow at the point of abstraction by adopting the current minimum flow and reducing the potential abstraction from 10% to 9%. For this reason, I do not support the amendment to RWT1 suggested by Mr St Clair.

Operational stormwater

Certification of design

- 75. Mr St Clair adopts Mr Farrant's opinion that the requirement in Condition RSW1 for drawings that demonstrate that the design of stormwater management devices achieves the requirements of clauses (a) to (f) be provided to the Regional Council for information could result in adverse environmental outcomes due to poor detailed design. For this reason, Mr

³¹ At paragraph 20.

³² At paragraphs 40 and 41.

Farrant considers that a condition should be included requiring certification of the design of the stormwater treatment devices. Mr St Clair acknowledges that Ms Bennett also considers that a design review is required as part of the conditions of consent and an outline plan.

76. In his rebuttal evidence, Mr Keenan implies that the lack of detail suggested by Mr Farrant and Ms Bennett is overstated. He notes that the application documentation describes:
- (a) locations and orientations;
 - (b) volumes and surface areas; and
 - (c) components of the treatment train process.
77. Mr Keenan also notes that clause (a) of Condition RSW1 lists the design guidelines to be followed and concludes that:
- (a) the design guidelines incorporate best practice for stormwater management systems;
 - (b) professional designers can be expected to meet the guidelines in their final detailed designs; and
 - (c) by meeting these guidelines (in terms of water body volumes, plantings, embankment shapes and flowpaths) the designs will then achieve best practice stormwater treatment.
78. On this basis, a requirement to confirm compliance with clause (a) of Condition RSW1 (which sets out the guidelines), and also with the standards in clauses (b) to (f) addresses any risk that the design could result in adverse environmental outcomes. Therefore, I do not consider that additional conditions requiring certification of the design are necessary to manage a potential adverse effect.
79. As a final matter, Mr St Clair notes that:

"I do not necessarily agree with Ms Bennett's recommendation that the Regional Council conditions need to directly link to conditions for the Notices of Requirement or Outline Plan requirements. In my view, the monitoring and compliance function sits with the Regional Councils, and the proposed conditions serve this resource management purpose. The information sought by the District Councils could be provided on

request by Waka Kotahi, and there is nothing preventing Waka Kotahi and the District Councils making arrangements for provision of this information.”³³

80. In this regard, I agree with Mr St Clair. The management of stormwater falls to the functions of the Regional Councils.

Stormwater Operation and Maintenance Plan

81. Mr St Clair acknowledges the evidence of Mr Brown, Mr Farrant and Ms Bennett that sets out the reasons why each of them suggests a further condition requiring an operation and maintenance plan. Mr St Clair goes on to note that:

“I observe that Mr Brown considers oversight over management and maintenance to be important in ensuring that the treatment train remains efficient in terms of water quality treatment. This is particularly the case given the Project’s reliance on stormwater management and treatment as the main mechanism for managing effects (including in catchments that have identified as a higher risk as a result of stormwater discharges).”³⁴

82. In this regard, I have reviewed Mr Brown’s evidence and note that he has not explicitly identified the adverse effects that he is concerned about. In fact, in his Section 87F Report Mr Brown concludes that the Project will result in an improvement, when compared to the existing environment:

“For operational stormwater, Waka Kotahi has proposed a range of treatment devices that will treat stormwater on an ongoing basis, prior to it being discharged to the receiving environment. This is based on a treatment train approach across the proposed road corridor. Overall, this will see an improvement in the quality of stormwater when compared to the current situation. ...”³⁵

83. Mr Keenan, in his rebuttal, does not support the operation and maintenance plan conditions proposed by Mr St Clair. He states that these conditions go beyond what he envisaged as an outcome of expert witness conferencing and he notes that the associated joint witness statement does not record any agreement in respect of reviews and certification.

³³ At paragraph 46.

³⁴ At paragraph 49.

³⁵ At paragraph 16D.

84. Mr Keenan has described in further detail the operation and maintenance requirements of the documents referred to in clause (a) of Condition RSW1³⁶ and has confirmed that together these documents appropriately direct the operation and maintenance requirements for the Project.
85. The documents in Condition RSW1(a) establish a stormwater operation and maintenance framework for the Project. Subject to the amendment I proposed to Condition RSW1 to ensure that documents prepared to meet the obligations in Condition RSW1, including where they describe operation and maintenance activities, are provided to the Regional Councils, I am of the view that the conditions proposed by Mr St Clair are unnecessary and overly onerous when considered relative to:
- (a) the potential positive effects of stormwater discharges on the existing environment;
 - (b) the fact that discharges of treated stormwater, as proposed, is a permitted activity, with the exception of discharges to specified receiving environments.

75% total suspended solids (TSS) removal

86. Based on the evidence of Mr Brown, Mr St Clair recommends the inclusion of a further standard in Condition RSW1 requiring a 75% reduction in TSS.
87. Mr Keenan does not support the suggested 75% reduction performance standard on the basis that the monitoring and data collection required is complex and costly and not commensurate with the potential effects being managed. In this regard, I note that, when compared to the existing environment the management of stormwater as part of the Project will result in positive effects. Mr Keenan's rebuttal evidence provides some thoughts on better approaches to monitor performance and confirms that such approaches are provided for in Condition RSW1.

Ecology offsetting

Offsetting outcomes and performance targets

88. Mr St Clair and Mr Lambie have expressed concern that Condition REM12 *"lists the required actions as performance targets, there is insufficient certainty as to delivery of the outcomes and targets for the purpose of*

³⁶ Waka Kotahi P46 Stormwater Specification; Waka Kotahi Stormwater Treatment Standard for State Highway Infrastructure, 2010; and Wellington Water, Water Sensitive Design for Stormwater, 2019.

achieving a biodiversity net gain". Mr St Clair suggests that both the outcomes and the performance measures within the condition must be met for a biodiversity net gain to be achieved in accordance with the timeframes specified with reference to BOAM.³⁷

89. Mr Goldwater considers that the amended wording makes no material difference. On this basis I agree with the amendment suggested by Mr St Clair to Condition REM12.

Sites for offset and compensation measures

90. Mr St Clair suggests amendments to Condition REM13 on the basis that Mr Lambie and Mr Brown:
- (a) consider "*the legal arrangements should be in perpetuity in order to meet the One Plan Policy 13-4(d)(v)*"; and
 - (b) that on-going weed control is required to ensure that the offsetting remains in perpetuity for offsetting of stream loss (Mr Brown) and for 15 years for offsetting areas (Mr Lambie).
91. In terms of One Plan Policy 13-4(d)(v), this policy requires that an offset must "*have a significant likelihood of being achieved and maintained in the long term and preferably in perpetuity*". In this regard, it is not clear in the evidence of Mr St Clair, Mr Lambie or Mr Brown how clause (a) of Condition REM13 fails to meet Policy 13-4.
92. In my opinion, clause (a) clearly requires confirmation of "***enduring legal agreements or ... other authorisations necessary to allow entry onto land to carry out, continue and maintain all offset and compensation measures required by Conditions REM7, REM8, REM9, REM10 and REM11***" [my emphasis]. In my opinion, the amendments to Condition REM13 suggested by Mr St Clair are not necessary to meet Policy 13-4. I therefore do not support these amendments.
93. Further, Mr Goldwater addresses the suggestion that on-going weed control should be required and concludes that such a requirement is unusual, and goes beyond the necessary response to addressing the residual adverse effects of permanent vegetation loss in the case of this Project.

³⁷ At paragraph 53.

Timeframes for recalculation of offsetting measures

94. Mr Lambie's evidence identifies that there are no timeframes for amending the EMP in response to the requirements of Conditions REM17 and REM18. Mr St Clair has suggested amendments to address this.
95. Because the recalculation is required before the commencement of construction, the revised offsetting requirements are most likely to be included in the Ecology Management Plan that is submitted for certification. I have included amendments to Conditions REM17 and REM18 to reflect this.

Offsetting monitoring

96. Based on the evidence of Mr Lambie, Mr St Clair suggests amendments to Condition REM19 to reflect actions at fifteen years where a net indigenous biological diversity gain is not achieved. With the exception the requirement for another inspection at 25 years, which he concludes is not necessary, Mr Goldwater supports Mr St Clair's amendments. On this basis I have generally supported, and included, the suggested amendments in Condition REM19.

Planting requirements

97. Mr St Clair suggests amendments to Condition RGW3 in response to Mr Lambie's evidence that the conditions should better reflect a 90% survival rate and 80% canopy coverage for natural character planting.³⁸ It is not clear how the absolute requirement to achieve these standards (included in the draft conditions already) lacks clarity. It is my opinion that the requirement is expressed in a clear and concise manner in Condition RWB3.
98. In his rebuttal, Mr Goldwater responds to the suggestion made by Mr Lambie that conditions should require "*maintenance of the natural character plantings to ensure that they remain indigenous-dominant (more than 50% indigenous cover) in the face of on-going threats of invasive weeds*". This amendment is included in Mr St Clair's version of the conditions, but not addressed in his evidence.
99. Mr Goldwater concludes that, while desirable, it is onerous and unnecessary to include an explicit requirement in respect of natural character planting remaining indigenous dominant. He notes that residual effects of the Project are addressed through reliance on terrestrial and wetland offset planting as

³⁸ At paragraph 60.

opposed to natural character planting. On this basis, I do not support Mr Lambie's suggestion.

100. I also note that an amendment is proposed to Schedule 7 to require that the Ecology Management Plan include:

“a statement of the ecological purpose of the planting being one or a combination of mitigation of the loss of wetland natural character, stream natural character, ecological buffering, and/or improvement of ecological linkages”.

101. No explanation is given for this amendment in the Regional Councils' evidence.

102. I do not support the proposed amendment. The purpose of planting that is proposed to respond to the effects of the Project is clearly set out on 'Planting Concept Plans: RMA Purpose Type' that form part of the condition set and does not need to be repeated in the manner suggested.

Freshwater ecology

103. In his evidence, Mr St Clair notes that the Joint Statement of Freshwater Ecology Experts dated 7 August 2023 records agreement to amend Condition RFE3 to include *“explicitly require that information gathered under NES requirements is assessed against construction plans of each individual fish passage and provided through to the regional regulatory authorities”*, with *the assessment done by a suitably qualified person.*³⁹

104. *Mr St Clair* suggests that Condition RFE3 be amended because:

*“Mr Brown explains in his evidence that the provision of information as required by the NES does not include the necessary assessment of whether the culverts fulfil the stream stimulation [SIC] methods for culverts. Mr Brown is of the view that assessment of the culvert's performance should be part of the condition requirements for the Project.”*⁴⁰

105. In his rebuttal, Dr James agrees with Mr Brown and Mr St Clair. I have drafted an additional clause in Condition RFE3 that allows for confirmation that each fish passage structure has been constructed in a manner

³⁹ At paragraph 61.

⁴⁰ At paragraph 62.

consistent with the stream simulation method to be provided to the Regional Councils.

Groundwater

Material supply sites

106. The Joint Witness Statement of the Hydrogeology and Groundwater Experts dated 26 July 2023 records agreement that the conditions include “*within the certification process for borrow pits, including the construction methodology and ultimate design, a groundwater technical report that addresses:*
- *groundwater system and dynamics;*
 - *extent and duration of interactions;*
 - *potential effects on other parties;*
 - *assessment of environmental effects including both short and long term.”*
107. I do not consider that the condition suggested by the expert witnesses is necessary because it is not appropriate to include a condition that directs effects to be assessed. The effects of material supply sites have been assessed explicitly as part of the wider assessment of effects of the Project and are managed as follows:
- (a) the design or ‘look and feel’ of the material supply sites, including their rehabilitation, is a matter properly considered within the District Councils’ jurisdiction through the outline plan process;
 - (b) earthworks are managed through Condition REW2, with the effects of land disturbance further managed by the RAQ and RES conditions; and
 - (c) groundwater interactions and effects are managed through compliance with the envelope of effects established by Conditions REW1, REW2 and REW3 and as such, addresses the concerns of Mr Williamson.
108. On this basis, it is my conclusion that no further conditions are necessary to manage the effects of material supply sites. That said, I have worked with Dr McConchie to develop a condition that requires the preparation of ‘Material Supply Site Design Reports’ to provide further reassurance to the Regional Council’s that compliance with the groundwater standards in RGW2 is achieved.

Monitoring site locations

109. Mr St Clair notes that the spatial location of the monitoring sites remains an issue for Mr Williamson. Mr Williamson considers that the location devices should be where the greatest potential magnitude of effect is anticipated. He suggests that the location should be agreed in advance with the Regional Councils or be subject to peer review. Mr St Clair generally supports the approach suggested by Mr Williamson, but does not support the requirement for the Regional Councils to approve the location.⁴¹
110. I agree with Mr St Clair to the extent that the conditions should not be drafted in a way that reserves a requirement for the Regional Councils to give (or conversely, withhold) subsequent approval. With reference to the rebuttal evidence of Dr McConchie, I also agree that it is appropriate that the monitoring sites are located where there is the greatest potential adverse effect.
111. Mr St Clair has suggested that the monitoring site locations be confirmed by a peer review statement. Neither Mr St Clair or Mr Williamson clearly articulate the rationale for the peer review. That is, there is no evidence as to the risk or environmental effect that is being better managed through the insertion of a requirement to provide a 'peer review statement'. For this reason, I do not consider that requiring a 'peer review statement' is necessary.
112. I am of the view that what is important is that the monitoring locations are where there is the greatest potential adverse effect. I consider this can be achieved through an explanation of the location choice in the groundwater monitoring report required by the Conditions, rather than a peer review.

Causing or exacerbating flooding

113. The Joint Witness Statement of the Hydrogeology and Groundwater Experts dated 26 July 2023 records agreement that Condition RSW1 should include:

“the dedicated stormwater management devices required by clause (a) must be designed, located and operated in a manner that will not cause or exacerbate groundwater related flooding.”

114. In response, Mr St Clair notes that Mr Eccles has reservations about the enforceability of such a requirement, but supports the inclusion of the

⁴¹ At paragraphs 69 to 71.

additional clause in Condition RSW1.⁴² Mr St Clair and Mr Williamson have not included any consideration of the enforceability of the additional clause in their evidence.

115. I am of the view that it is not immediately clear from the evidence how compliance with the requirements in the additional clause would be ascertained. That is, there is no evidence describing how the cause of groundwater related flooding would be identified, quantified and attributed to the Project. Further, it is Dr McConchie's evidence that the modelling described in his primary statement of evidence concludes that any effects of the Project on groundwater mounding, and the potential to exacerbate flooding, can be considered 'less than minor'.⁴³ As such, I consider that there is no need for a condition to respond to an effect of this magnitude. I also note that my Condition RGA7 establishes the envelope of flooding effects for the Project. It is my view that Condition RGA7 'locks in' the Project outcome in respect of flooding and a further, less certain and less enforceable requirement in conditions is unnecessary.

Air quality

116. In his evidence, Mr St Clair relies on recommendations made by Mr Stacey in respect of the necessity of, and approach to, turbidity monitoring of roof water collection systems. Mr St Clair recommends that Condition RAQ1A be amended so that turbidity monitoring is undertaken at least monthly, as opposed to when triggered by an exceedance at dust monitors.
117. Having considered Mr Stacey's evidence, Mr Curtis generally agrees with the suggested amendments to Condition RAQ1, subject to a further amendment that has the effect of no longer requiring monitoring in situations where contingency measures are in place. Mr Curtis describes the rationale for this further amendment.
118. On this basis, I have included a requirement in Condition RAQ1A for at least monthly turbidity monitoring of roof water collection systems when located close to dust generating construction activities, unless contingency measures have been put in place.

⁴² At paragraph 74.

⁴³ At paragraph 17.

Erosion and sediment control

119. Mr St Clair, relying on the evidence of Mr Pearce and Mr Brown, considers that the requirement for escalating 'management responses' where there is poor performance of an erosion and sediment control device should be included in the conditions, rather than Schedule 8 to the Conditions.⁴⁴ Accordingly, Mr St Clair recommends amendments to RES1.
120. I generally support the suggested amendment to Condition RES1 because the inclusion of specific triggers for escalation of responses to non-performance of devices is more certain.

Other matters

Schedule 10

121. Schedule 10 to the Conditions sets out the process for certification of management plans. Mr St Clair acknowledges that Schedule 10 to the Conditions removes certification requirements from the conditions themselves with all procedural requirements described by Schedule 10. However, Mr St Clair considers that the Schedule does not resolve the concern of Councils that management plans can be deemed certified in some circumstances.⁴⁵ Mr St Clair notes that Schedule 10 includes a '*partial certification process*', which means that construction activities not affected by issues that may be raised by the Regional Councils through their certification process can commence.
122. Mr St Clair concludes that Schedule 10 is too complicated, particularly from a compliance perspective. Further Mr St Clair is concerned that the Regional Councils will only have 20 working days to certify any management plans that are submitted. Mr St Clair states that he:

"... would prefer to remove Schedule 10 and reinstate the management plan filing and certification process as within the respective conditions, but with additional amendments to:

(a) Provide sufficient time for the councils to review the submitted management plans and certify or not;

⁴⁴ At paragraph 82 and 83.

⁴⁵ At paragraph 95.

(b) Provide a mechanisms for resubmission, but not partial submission, with a shorter time frame for certification; and

*(c) Remove reference to deemed certification.*⁴⁶

123. My intention in drafting Schedule 10 was to:

- (a) respond to concerns from the Regional Councils about different processes and approaches potentially applying to different management plans and on the basis that it would be helpful from a compliance perspective for a single process to apply and for that to be shown in a flow diagram;
- (b) include new elements in the certification process, including a step that allows for partial resubmission and, importantly, for some construction activities to commence, where there are limited elements of a management plan that require revision through the certification process.

124. I do not consider that Schedule 10 is overly complicated (as suggested by Mr St Clair). It is my view that Schedule 10 is a succinct and clear representation of the certification processes. I consider that the process depicted is in essence simple comprising:

- (a) consent holder submits the management plan;
- (b) the Regional Councils review the management plan within a specified timeframe and then either:
 - (i) Certified: certify the whole of the management plan (construction activities can commence);
 - (ii) Revision: not certify the management plan and request revisions to particular parts of the management plan to be resubmitted for certification (construction activities not affected by the required revision may commence); or
 - (iii) Resubmission: not certify the management plan and require that the consent holder resubmit the management plan for certification in its entirety (construction activities cannot commence).

⁴⁶ At paragraph 99.

- (iv) Deemed certified: the management plan is considered to be certified in situations where no response is received from the Regional Councils in the specified timeframe.

125. Further, I do not consider that Mr St Clair's suggestion that Schedule 10 be deleted is a necessary response to his perceived shortcomings of the Schedule. Rather, I am of the view that the potential for amendments to Schedule 10 should be explored.
126. In this regard, Mr St Clair expresses concern in relation to the timeframes for the Regional Councils to certify the management plan. These timeframes are set out in Table SCH10-1 – Certification timeframes. Mr St Clair does not propose alternative timeframes that are acceptable to the Regional Councils. However, I consider that this concern does not necessitate the deletion of Schedule 10, rather where evidence suggests that a different timeframe is appropriate, Table SCH10-1 can be amended accordingly.
127. In terms of the complexity of the "revision" pathway, I share Mr St Clair's view that the parameters of this pathway should be made clear. The intention is that, where the Regional Council considers that a management plan is 'almost there' in terms of certification but limited amendments are required, works not impacted by the limited amendments may commence prior to the certification being complete. That is, entirely preventing the commencement of construction is not necessary where management plans are generally fit for purpose, but require refinement. In my opinion, again, Schedule 10 could be amended to better reflect this, if necessary. Mr St Clair may be overstating this complexity or lack of clarity, given that ultimately it is the Regional Councils that determine whether the 'revision' pathway is appropriate.
128. In terms of the deemed certification pathway, I accept that the conditions were initially drafted so that not all of the management plans would be deemed certified where no response from the Regional Council is received.
129. I also note that on Te Ahu a Turanga Project conditions relating to certification of management plans included deemed provisions that extended specifically to the Ecology Management Plan. The ecological issues in hand with that Project are more significant than those confronted by this Project and from my involvement in Te Ahu a Turanga I am not aware of any particular issues resulting from the deemed provisions.

130. The purpose of the deemed provisions is to recognise the importance of the need to have certainty of timeframes for the commencement of construction activities by ensuring that the commencement of construction (including activities described in the management plans) is not indefinitely prevented. After the specified timeframe the consent holder has certainty that the management responses can similarly commence as described. In my opinion, the any risk associated with deemed certification is overstated given that the Regional Councils are able to respond using the 'revision' or 'resubmission' pathways where there is concern as to content of a management plan.
131. Mr St Clair states that conditions require plans to be certified within 20 working days of them being submitted. However, that is not correct, and the Schedule instead requires Councils to consider the management plans and to either provide comments back to the Requiring Authority or where there are no issues, to certify those management plans. This distinction is important and does allows matters of concern to be resolved. The Schedule does require Councils to identify issues (where they might exist) with a reasonable degree of process efficiency. This level of process efficiency applies to all RMA processes but is, I think, particularly relevant to regionally significant projects where delays can have significant financial and programme consequences.
132. On this basis, it is my conclusion that no changes to Schedule 10 are required at this time, although I remain open to revising the Schedule to further clarify the intended certification processes.

Condition RGA1

133. In his evidence, Mr St Clair notes that he requested that Condition RGA1 "*be updated to provide for any amendments arising from the hearing process, as well as changes and clarification recorded in Waka Kotahi's response to the section 92 request of the Regional Councils. These requirements have not been carried over into RGA1, and in my view, they should be reflected in that condition*".⁴⁷ Accordingly, Mr St Clair proposes additional clauses in Condition RGA1.
134. The Joint Statement of Planning Experts dated 10, 11 and 14 August 2023 records:

⁴⁷ At paragraph 102.

- (c) *“All agree that the respective general accordance conditions should include reference to the parts of the section 92 response that alters the project described in the condition”*; and
- (d) The matters in the section 92 responses that Mr St Clair considers should be included RGA1.

135. I continue to hold the view that those parts of the section 92 response that alter the Project described in Condition RGA1 should be explicitly listed in the Condition. The following table sets out my analysis of the extent to which parts of the section 92 response that Mr St Clair suggests should be included in Condition RGA1 alter the Project.

Mr St Clair's recommended inclusions	Content of the section 92 response	Analysis of necessity and appropriateness for inclusion in Condition RGA1
Surface water takes 1-14		
Question 1 Asks about reduced take where water is available through acquired bore water.	The response confirms that the information sought is provided in the Design and Construction Report ⁴⁸ and notes that the quantum of water is unknown with consent sought for the maximum take.	The response to Question 1 does not include new information and does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 1 does not need to be included in Condition RGA1.
Question 2 Notes that there is no water remaining in core allocation and asks how Waka Kotahi wishes to proceed.	Waka Kotahi have subsequently withdrawn the part of the application seeking to take water from the core allocation. Instead, consent is sought to take only at or above median flows. This is included in Condition RGA1 explicitly.	The altered application is reflected in Condition RGA1 already. Reference to the response to Question 2 is inconsistent and therefore not required.
Question 3 Asks how management and compliance will be achieved with Condition RWT1.	Condition RWT1 has been redrafted through witness conferencing and mediation.	The redrafted Condition RWT1 renders the response to Questions 3, 4 and 5 redundant. Therefore, reference in Condition RGA1 is not required.
Questions 4 Asks about the rate of take from Manakau and Waiuti streams.		
Question 5		

⁴⁸ Volume II, Appendix Four of the application documentation.

Mr St Clair's recommended inclusions	Content of the section 92 response	Analysis of necessity and appropriateness for inclusion in Condition RGA1
Asks about the rate of take over 24 hours vs 12 hours.		
Question 6 Asks about the freshwater effects assessed in relation to proposed rate of water take.	The section 92 response confirms that the rate of take is so low that ecological effects are highly unlikely.	The response to Question 6 does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 6 does not need to be included in Condition RGA1.
Question 7 Asks about the effects on other water takes.	The section 92 response notes that requested takes are within core allocation, temporary and proposed to be managed via conditions (now redrafted).	The response to Question 7 does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 7 does not need to be included in Condition RGA1.
Question 8 Requests an assessment of the water takes against Policy 5-17.	The section 92 response provides the assessment.	The response to Question 8 does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 8 does not need to be included in Condition RGA1.
Question 9 Seeks an explanation of how the proposed water take represents an efficient allocation of water.	The section 92 response reiterates the water take strategy in the Design and Construction Report.	The response to Question 9 does not include new information and does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 9 does not need to be included in Condition RGA1.
Question 10 Asks for an explanation of why the total water take sought exceeds actual requirement.	The section 92 response provides an explanation related to the location of the water take.	The response to Question 10 does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 10 does not need to be included in Condition RGA1.
Question 11 Asks how the water take will be managed to comply with RTW1.	Condition RWT1 has been redrafted through witness conferencing and mediation.	The redrafted Condition RWT1 renders the response to Question 11 redundant. Therefore, reference in Condition RGA1 is not required.
Question 12 Asks about the assessment of natural flows at Taylors Road Bridge at SH1.	The section 92 response confirms that natural flows at Taylors Road have not been estimated/assessed due to uncertainty.	The response to Question 12 does not include new information and therefore the response to Question 12 does not need to be included in Condition RGA1.
Question 13	Condition RWT1 has been redrafted through	The redrafted Condition RWT1 renders the response to Question 13

Mr St Clair's recommended inclusions	Content of the section 92 response	Analysis of necessity and appropriateness for inclusion in Condition RGA1
Asks about a scaled rate of take at Taylors Road.	witness conferencing and mediation.	redundant. Therefore, reference in Condition RGA1 is not required.
Question 14 Asks for a freshwater ecological assessment of take on Waitohu Stream	The section 92 response provides the assessment.	The response to Question 14 does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 14 does not need to be included in Condition RGA1.
Terrestrial ecology		
Question 20 Asks about management of pest plants during construction	The section 92 response confirms that Waka Kotahi will manage pest plants in accordance with rules and obligations in the Regional Pest Management Plans (GW and Horizons)	The rules and obligations of the RPMPs apply in any case. Further, conditions that relate to pest plant management have been revised through witness conferencing (Condition REM4). As such, reference in Condition RGA1 is unnecessary and there is no need to include the response to Question 20 in Condition RGA1.
Freshwater ecology		
Question 29 Asks about baseline data and whether response actions in Condition RFE4 are time bound.	The section 92 response confirms the intention of Condition RFE4. Condition RFE4 has been amended through witness conferencing and mediation.	The redrafted Condition RFE4 renders the response to Question 29 redundant. Therefore, reference in Condition RGA1 is not required.
Question 36 Asks if there is a disconnect between Technical Assessment K and schedule of culverts in drawings.	The section 92 response explains that Schedules includes transverse culverts for overland flows / ephemeral channels and not just streams and confirms there is no disconnect.	The response to Question 36 does not include new information and does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 36 does not need to be included in Condition RGA1.
Question 40 Asks when baseline monitoring will commence.	The response indicates that monitoring will start prior to July 2023.	Baseline monitoring is now addressed directly in Condition RFE4 and therefore the information in response to Question 40 does not need to be included in Condition RGA1.
Water sensitive design		
Question 50 Asks Waka Kotahi to identify areas of road not receiving full stormwater treatment.	The response sets out the areas where the stormwater is not fully treated.	This information is of little relevance to confirming the envelope of effects established by Condition RSW1 that regulates stormwater discharges across the Project. As such, it is not considered necessary to reference the

Mr St Clair's recommended inclusions	Content of the section 92 response	Analysis of necessity and appropriateness for inclusion in Condition RGA1
		response to Question 50 in Condition RGA1.
Question 51 Seeks clarification regarding the total pond facility footprint area in drawings corresponding with polygons on drawings.	The section 92 response confirms that the polygons are 20% larger than indicated in the schedule to allow for bunds, tracks, maintenance areas, boundary planting, fences, internal landscaping.	The response to Question 51 does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 51 does not need to be included in Condition RGA1.
Question 54 Asks for confirmation of sizing methodology for wetlands.	The section 92 response confirms that the 90 th percentile rainfall is used in accordance with GD01.	The response to Question 54 does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 54 does not need to be included in Condition RGA1.
Question 55 Asks about the influence of vegetated swales on stormwater volumes.	The section 92 response provides the required clarification.	The response to Question 55 does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 54 does not need to be included in Condition RGA1.
Question 57 Asks if wetland forebays be lined.	The section 92 response confirms that it is not intended to line the forebays. Revised conditions supersede this response.	The response to Question 57 does not include new information and does not alter the definition of the Project in Part C of Volume II of the application documentation. Further, the Conditions address forebay design. Therefore, the information in response to Question 57 does not need to be included in Condition RGA1.
Hydrogeology and groundwater		
Question 62 Asks about the effect of dewatering on wetlands EWG5 and EWG4.	The section 92 response refers to Technical Assessment G and H ⁴⁹ and confirms that it is assumed that wetlands are entirely lost (with the loss being offset).	The response to Question 62 does not include new information and does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 62 does not need to be included in Condition RGA1.
Erosion and sediment control		
Question 66 Asks how erosion and sediment control devices will be	The section 92 response refers to the Erosion and Sediment Control Monitoring Plan.	The response to Question 66 does not include new information and does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the

⁴⁹ Volume 4 of the application documentation.

Mr St Clair's recommended inclusions	Content of the section 92 response	Analysis of necessity and appropriateness for inclusion in Condition RGA1
managed and monitored.		information in response to Question 66 does not need to be included in Condition RGA1. It is noted that the content of the ESCP has been the subject of witness conferencing.
Hydrology and flooding		
Question 76 Asks for information to show when the Project will have zero effect beyond designation.	The section 92 response references information included in Technical Assessment F.	The response to Question 76 does not include new information and does not alter the definition of the Project in Part C of Volume II of the application documentation. Further, subsequent modelling makes this response at least partially redundant. Therefore, the information in response to Question 76 does not need to be included in Condition RGA1.
Question 77 Asks for information on changes to flooding outside of designation.	The section 92 response references information included in Technical Assessment F.	The response to Question 77 does not include new information and does not alter the definition of the Project in Part C of Volume II of the application documentation. Further, subsequent modelling makes this response at least partially redundant. Therefore, the information in response to Question 77 does not need to be included in Condition RGA1.
Question 83 Asks for information on changes to velocity.	The section 92 response references information included in Technical Assessment F.	The response to Question 83 does not include new information and does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 83 does not need to be included in Condition RGA1.

136. For the reason set out in the preceding table I am of the view that there is only one matter in the section 92 response that alters the Project described, being the response in respect of the taking of water from the core allocation. This is already addressed in Condition RGA1(a)(i) and therefore I consider that the amendments suggested by Mr St Clair are unnecessary.

137. In addition to those matters identified in the Joint Statement of Planning Experts, Mr St Clair also seeks that Condition RGA1 refers to “*the letter from Waka Kotahi, dated 21 March 2023, to Helen Anderson and Mark St Clair, titled ‘Otaki to north of Levin Highway Project – APP 2021203231.00’ and attachments 2-4*”. This letter addresses two matters:

- (a) amendments to conditions; and
- (b) correspondence that provides further explanation in respect of water takes.

138. In terms of the amendments to conditions, I can confirm that these amendments have either been included in the conditions, or have subsequently been superseded. For this reason, I consider that it is not appropriate or necessary to refer to condition amendments detailed in the 21 March 2023 letter in Condition RGA1.

139. In terms of the explanatory information, this information does not alter or confine the definition of the Project in Part C of Volume II of the application documentation and, therefore, I do not support referencing the additional information in the 21 March 2023 in Condition RGA1.

RESPONSE TO MS ANDERSON

Taylor's Road Southern Interchange

140. In her evidence, Ms Anderson summarises the evidence of Mr Mallon and Mr Dunlop and concludes:

"I support the inclusion of a new designation condition that allows flexibility for Waka Kotahi to provide a suitable alternative arterial connection in the vicinity of Taylor's Road at the OPW stage. I consider this is a pragmatic way to address this issue, given that Waka Kotahi has agreed to undertake the design work to determine whether the connection sought by KCDC (and which the Transport JWS records the Transport witnesses agreed formed part of the overall best transport outcome) can be provided."⁵⁰

141. In reaching the conclusion set out above, Ms Anderson has not fully reflected the Joint Statement of Transport Witnesses dated 24 July 2023 because she does not acknowledge Mr Peet's position in respect of Option 3 as follows:

"Regarding Option 3, it was agreed that this provides overall best transport outcome, but that it is very likely to be outside proposed designation boundary. PP position is that other factors such as environmental, property, and Māori land would make this option untenable. DD position is that there is limited record of whether this

⁵⁰ At paragraph 27.

option has been presented to the affected parties, particularly Māori land owners.”

142. Mr Peet’s view is that Option 3 would likely give rise to adverse effects on the environment. Further, Mr Eccles has concluded that the potential effects of Option 3 have the potential to be significant and have not been assessed by experts for the purpose of the notice of requirement, nor factored into the envelope of effects for which the designations and resource consents is sought. For instance, Mr Goldwater has not considered whether there are any residual ecological effects of Option 3 that would need to be addressed through the offset package.
143. It is therefore my conclusion that the condition proposed by Ms Anderson is not appropriate on the basis that Option 3 would likely have adverse effects on the environment that have not been assessed by experts and managed by the proposed conditions of consent. Further, it is my view that the lack of assessment cannot be cured through the hearing phase of Project.
144. As a final matter, I note that Mr Peet in his rebuttal evidence concludes that there are no transport effects that need to be managed so that no further design changes to the Project are required. Therefore, in addition, there is no need for the condition that is proposed by Ms Anderson.

The Cultural and Environmental Design Framework (CEDF)

Adequacy in respect of Urban Design and Landscape Design

145. In her evidence, Ms Anderson agrees with the suggestions in the evidence of Ms Williams and Mr McIndoe that Condition DTW5 includes reference to “*to relevant sections of Waka Kotahi’s Landscape Guidelines 2014 and Bridging the Gap: Waka Kotahi Urban Design Guidelines (2013) because this greater level of detail on urban design and landscape matters will assist in ensuring the landscape and urban design outcomes proposed.*”⁵¹
146. Mr Lister, in his rebuttal evidence, generally agrees with the suggestions of Ms Williams and Mr McIndoe. Similarly, having reviewed the content of these documents, I am of the view that they would usefully inform the implementation of landscape planting and urban design features of the Project.

⁵¹ At paragraphs 30 to 36.

147. That said, I note that section 176A(3)(e) of the RMA explicitly requires landscaping and design elements of the Project to be described in an outline plan. I therefore consider that the requirement for the design of the Project to be informed by the 'NZTA Landscape Guidelines (March 2018) and Parts 2 and 3 of 'Bridging the Gap: NZTA Urban Design Guidelines (October 2013)' is better located in Condition DGA6 and propose an additional clause accordingly.
148. As a matter of clarification, Ms Anderson has referred to an earlier version of the NZTA Landscape Guidelines. Consistent with Mr Lister's recommendation, I have drafted Condition DGA6 to refer to the more recent, 2018 NZTA Landscape Guidelines.

The design review audit process

149. Ms Anderson, with reference to the evidence of Ms Williams and Mr McIndoe, concludes that the team undertaking the design review audits under Condition DTW5 Design Audit team include a person or persons with landscape and urban designer expertise.⁵² Ms Anderson recommends amendments to Condition DGA9 and DTW5 to achieve this.
150. Mr Dalzell in his evidence explains the rationale for the Design Audit and refers to pages 198 and 199 of Volume II of the lodged application that sets out the rationale for requiring the Design Audit be undertaken during the next phases of the Project and, in doing so, ensuring that the Project Iwi Partners are appropriately embedded in the Project design process. The Design Audit monitors the development of the Project's design against the Core Principles listed in the CEDF; namely 'tread lightly, with the whenua' and 'create and enduring legacy'. In his rebuttal evidence, Mr Lister confirms his understanding that the design review audits are to be undertaken by the Project Iwi Partners with the support and guidance of relevant experts. These experts would include a landscape architect, an urban designer along with, for example, a stormwater expert and/or an ecologist.
151. On this basis, I generally support an amendment to Condition DTW5 to appropriately reflect the support and guidance role of a range of experts in the design review audits. I do not consider that explicit reference to various disciplines is necessary because 'suitably qualified person' is a defined term in the conditions as being a person "*competent and experienced in the field*

⁵² At paragraph 39.

of expertise that is relevant to a particular task or action directed by a Condition". Further, I do not support amending Condition DGA9 because the support and guidance role for experts in Condition DTW5 differs to the direction in Condition DGA9 that suitably qualified persons must "prepare" specified documents or "undertake" specified measures.

Tangata whenua values

152. Ms Anderson acknowledges that the Tangata Whenua Values suite of conditions have not been provided and concludes that residual cultural effects of the Project have not yet been shown to be mitigated. She notes that there is still a need for Waka Kotahi to provide conditions that appropriately address the cultural effects identified in submissions made by tangata whenua.⁵³
153. As described above, in response to the evidence of Mr St Clair, conditions are now included in Appendix A.

Hydrology and flooding – modelled flooding effects

154. Ms Anderson, in her evidence, describes the evidence of Mr McArthur and notes that he considers that there are "*outstanding issues for hydrology and flooding relating to the acceptable scale of effects on existing flooding, and the adequacy of conditions to address these effect*".⁵⁴ Ms Anderson confirms and agrees with McArthur's conclusions that:
- (a) there are a number of locations where flood level increases in the 1% AEP design storm event modelled are in excess of 0.1 m (100 mm) outside the designation;
 - (b) flood level increase thresholds should be applied to urban and non-urban district plan zones and to buildings that are currently subject to flooding at the designation boundary; and
 - (c) a condition quantifying an acceptable scale of flood effects is required.
155. Ms Anderson supports the inclusion of a new condition "*that addresses flood effects on the environment outside the Project designation boundaries through inclusion of performance criteria (flood level increase thresholds) to be met during detailed design phase because this will ensure that buildings,*

⁵³ At paragraphs 42 to 46.

⁵⁴ At paragraph 54.

people, land and roads are appropriately protected from changes to flood hazards arising for the construction of the Project.⁵⁵

156. For the reasons set out in respect to Mr St Clair's evidence that addresses inundation, I support the inclusion of a new resource consent Condition (RGA7) that requires the Project to be designed to:
- (d) achieve a water surface elevation difference that has been modelled for the 1% AEP (annual exceedance probability) design event, which includes the effects of climate change RCP 6.0 to 2130,
 - (e) not result in an increase in internal flooding level of an existing habitable floor by more than 10mm; and
 - (f) further reduce any increase in flood levels as a result of the Project as far as reasonably practicable.
157. In my opinion, my Condition RGA7 addresses flood effects in the manner anticipated by Ms Anderson. That said, I acknowledge that Ms Anderson and Mr St Clair has sought that a condition relating to flooding be replicated in the designation conditions. No rationale is explicitly given in respect of the need for this duplication.
158. While I acknowledge that Policy 9.1 (and sections 30 and 31 of the RMA) directs that the avoidance or mitigation of natural hazards is a dual responsibility, I am of the view that it is unnecessary to repeat the same requirement. That is, I consider that the outcomes sought in Ms Anderson's and Mr McArthur's evidence are achieved through Condition RGA7.

Terrestrial ecology

Measure undertaken by suitably qualified persons

159. Ms Anderson, with reference to the evidence of Mr Hickson-Rowden, identifies activities and measures that ought to be undertaken by suitably qualified persons and therefore referred to in Condition RGA6 as follows:
- (g) the establishment of exclusion zones, placement of nest deterrents and the monthly and repeat surveys referred to in conditions RTE2, RTE3 and RTE4;

⁵⁵ At paragraph 58.

(h) the salvage, capture and relocation of lizards and indigenous invertebrates addressed in conditions RTE5 and RTE6.⁵⁶

160. I agree with Ms Anderson, and include amendments to Condition RGA6 in Appendix A.

Timing of buffer planting

161. Based on the evidence of Mr Hickson-Rowden, Ms Anderson supports an amendment to Condition RTE7 to require indigenous buffer planting is completed sooner than before the end of the first planting season following the Project being open to the public.⁵⁷

162. I understand that, while it is beneficial for buffer planting to be established as soon as possible, this may not always be possible because the areas where edge planting is proposed may need to be used for construction activities. Mr Goldwater explains that the buffer planting will also provide benefits during road operational phases. Condition RTE7 is drafted to require the planting to be undertaken prior to the commencement of construction activities where it is practicable to do so, while also reflecting the practical constraints to achieving this in all circumstances. As such, I do not support the amendment suggested by Ms Anderson.

Water quality

Provision of sub-plans relevant to water quality

163. In her evidence, Ms Anderson acknowledges that Ms Bennett seeks amendments to the conditions to require that the District Councils are provided with the monitoring reports and annual reports along with the certified versions of the Ecology Management Plan and the Erosion and Sediment Control Plan.⁵⁸

164. Ms Anderson concludes that the amendments to conditions suggested by Ms Bennett are not necessary to address an effect on the environment or are justified from a resource management perspective.⁵⁹

⁵⁶ At paragraph 61.

⁵⁷ At paragraph 63.

⁵⁸ At paragraph 68.

⁵⁹ At paragraph 69.

165. I agree with Ms Anderson and further note that the reports and plans referred to by Ms Bennett would be made available to the District Councils, and publicly, in any case.

Stormwater design review

166. In her evidence, Ms Anderson notes that Ms Bennett suggests an amendment to Condition RSW1 to require the Regional Councils' involvement in the design review of stormwater management devices. Ms Anderson does not explicitly express a conclusion in this regard.

167. I address the need for a design review of stormwater management devices (including certification) earlier in my evidence. With reference to Mr Keenan's rebuttal evidence, and for the reasons set out above, I conclude that a design review and certification process is not necessary. In addition, I agree with Mr St Clair that stormwater management falls to the Regional Councils' jurisdiction and need not be managed by designation conditions.

Stormwater Operations and Maintenance Plan

168. In her evidence, Ms Anderson acknowledges that Ms Bennett recommends that Condition RSW1 include a requirement for an Operations and Maintenance Plan to be certified.

169. I address the need for further conditions requiring the preparation of, and certification of, a stormwater operations and maintenance plan earlier in my evidence. I conclude, with reference to the evidence of Mr Keenan, that Condition RSW1 sufficiently addresses the operation and maintenance of stormwater devices without the need for further conditions.

Air quality

170. Ms Anderson, with reference to the evidence of Mr Stacey and Mr Curtis, supports the requirement for at least monthly turbidity monitoring of roof water collection systems. Ms Anderson supports the amendments to Condition RAQ1A suggested by Mr St Clair.⁶⁰ In respond to Mr St Clair's evidence earlier and generally conclude that monthly monitoring is appropriate where dust generating activities are in close proximity to a dwelling and where contingency measures have not been implemented.

⁶⁰ At paragraphs 77 and 78.

Noise and vibration

Preparation and provision of Site Specific Construction Noise and Vibration Mitigation Plans

171. Based on the evidence of Ms Wilkening, Ms Anderson confirms that the only outstanding issue relates to the preparation, and provision to Council, of the Site Specific Construction Noise and Vibration Mitigation Plans required by Condition DNV4 (**SSNVMPs**). Ms Wilkening considers that these plans must be prepared by a suitably qualified person and should be provided to the Councils for either information or certification.
172. Ms Wilkening has also identified that some further amendments are required to the conditions. I have addressed these further below in my evidence under the heading of 'Other Condition Amendments'.
173. While condition DGA9(ii) requires that SSNVMPs (and the CNVMP) are prepared or overseen by a suitably qualified person, Ms Anderson confirms Ms Wilkening's opinion that this requirement needs to be made more explicit in condition DNV4, to ensure that general Project staff (non-experts) do not take on this role, because they may not understand the prediction and measurement of construction vibration. This view is based on personal experience of Ms Wilkening from working with many construction contractors in preparing SSNVMPs³⁹.
174. This matter was discussed at the Planning Expert conferencing, where it was recorded in the JWS – Planning at Item 13, that:
- 'All agree that Site Specific Construction Noise and Vibration Mitigation Plans (SSCNVMP) should be prepared by a suitably qualified person who is agreed with the district council. SSCNVMP's are to be provided to council for information and any comment from council on the schedules must be received within 48 hours of receipt of the schedules', and also noting that any condition requiring agreement to a suitably qualified person by the Council would need to be offered by Waka Kotahi on an Augier basis.'*
175. Ms Wikening concludes that *"Given that the condition DGA9(a)(ii) requires SSNVMPs to be prepared by a SQP, I consider that my concern has largely been addressed, apart from the requirement to have the SQP agreed with*

*District Councils.*⁶¹ On this basis, I do not consider it necessary to include a further clause in Condition DNV4.

176. In terms of the Council agreeing who the suitably qualified person might be, I confirm my understanding that such a requirement would need to be offered on an *Augier* basis and cannot be otherwise imposed. In this regard, I note that 'suitably qualified person' is defined. Further, Schedule 2 requires that the suite of management plans that are to be provided with the outline plan are required to identify the roles and responsibilities of Project personnel (including such suitably qualified persons). As such, it is my view that the definition provides reassurance that an appropriate person will prepare Site Specific Construction and Vibration Mitigation Plans, while the outline plan process would allow the District Council's to request changes to management plans, such a change could include a response to the identified personnel lists in the management plans provided to the Councils as part of the outline plan.

Low noise road surfaces

177. Ms Anderson supports the following amendments to Condition DRN1(a) on the basis that Ms Wilkening considers that the 18 month timeframe specified in the Condition to implement the low noise road surface is excessive:

“Except where Condition DRN3 applies, the low-noise road surfaces in Table DRN-1 must be installed within eighteen (18) months at the latest (and within twelve (12) months unless it is not reasonably practicable to do so) from the date the Project is opened for public use, with installation commencing as soon as reasonably practicable.”

178. Ms Wilkening's view is that the low road noise surface should be implemented on Day 1, or at the very least, as quickly as possible and no more than 12 months after opening of the road⁶¹. Ms Wilkening considers that condition DRN1(a) should be amended to require that the low road noise surface be installed within 12 months unless it not reasonably practicable to do so.
179. Mr Smith and Mr Dalzell respond to Ms Wilkening by agreeing that it is desirable to install the low-noise road surfaces as soon as practicable. This is the reason that Condition DRN1 includes *“with installation commencing as soon as practicable”*. Mr Dalzell sets out the practical (and primarily

⁶¹ At paragraph 17.

seasonal) constraints that mean that making a commitment to “*no more than 12 months*” is not possible.

180. On this basis, I do not support the amendment suggested in Ms Anderson’s evidence.

Traffic and transport matters relating to local road pre and post condition survey and preparation of a Network Integration Plan

Local road pre and post condition survey

181. Mr Kelly in his evidence⁶² considers that a condition survey of local roads that are proposed to be used for construction access purposes be undertaken prior to their use and then again once construction is completed. Ms Anderson supports this approach.⁶³

182. I also agree with this approach (as does Mr Peet) and I have therefore suggested a new Condition DCT2 to provide for a baseline road condition survey, regular condition surveys and remediation of any damage to the baseline survey condition.

Network integration plan

183. Mr Kelly has also proposed that a network integration plan be prepared on the basis that such a plan would ensure the coordination of new infrastructure with the rest of the road network.⁶⁴ Ms Anderson has accepted this proposed condition.⁶⁵

184. The design of new local road connections proposed by the Project are detailed road design matters that are discussed between the relevant road controlling authorities. These design matters are handled between road controlling authorities as a matter of course and irrespective of RMA approval processes (particularly where designations and permitted activity rules generally provide for the development of local roads without the need for resource consent). Accordingly, and in the absence of any effects on the environment being identified and needing to be managed by a Network Integration Plan, I do not consider that it is necessary for such a plan to be prepared.

⁶² Paragraph 19.

⁶³ Paragraph 90.

⁶⁴ Paragraph 21.

⁶⁵ Paragraph 92 to 94

Condition DGA1

185. In her evidence, Ms Anderson:

- (a) notes that the Joint Statement of Planning Experts dated 10, 11 and 14 August 2023 records that *“All agree that the respective general accordance conditions should include reference to the parts of the section 92 response that alters the project described in the condition”*; and
- (b) Sets out the matters in the section 92 responses that she considers should be included in Condition DGA1.

186. Consistent with my opinion in response to Mr St Clair, I continue to hold the view that those parts of the section 92 response that alter the Project described in Condition DGA1 should be explicitly listed in the Condition. The following table sets out my analysis of the extent to which parts of the section 92 response that Ms Anderson suggests should be included in Condition DGA1.

Ms Anderson’s recommended inclusions	Content of the section 92 response	Analysis of necessity and appropriateness for inclusion in Condition DGA1
Traffic and Transport		
Response 108 (and Attachment 1)	Provides transport modelling data for the proposed work (specifically provides sensitivity test of Level of Service effects on network at 2039 using 95th percentile growth forecast).	The sensitivity testing does not alter the definition of the Project in Part C of Volume II of the application documentation and therefore does not need to be included in Condition DGA1.
Response 109 (and Attachment 2)	Provides information showing traffic volumes over the period 2019 – 2022 to help understand effects of Covid on projected traffic growth.	The information in respect of the impact of COVID-19 on traffic volumes does not alter the definition of the Project in Part C of Volume II of the application documentation and therefore does not need to be included in Condition DGA1.
Response 115 (and Attachment 3)	Information about the transportation performance of the proposed Southern Tie in (Taylors Road) and information about design options considered.	The response to Question 115 relates to the consideration of alternatives and does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 115 does not need to be included in Condition DGA1.

Ms Anderson's recommended inclusions	Content of the section 92 response	Analysis of necessity and appropriateness for inclusion in Condition DGA1
Response 118 (and Attachment 4)	Figure provided to show how traffic can access / egress from the state highway network around Ōtaki with and without Ō2NL Project, including anticipated traffic volumes.	Part C of Volume II describes "a half interchange with southbound ramps near Taylors Road and the new PP2Ō expressway to provide access from the current SH1 for traffic heading south from Manakau or heading north from Wellington, as well as providing an alternate access to Ōtaki". The figure and traffic volumes do not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, the information in response to Question 115 does not need to be included in Condition DGA1.
Hydrology and Flooding		
Response 178 (and Attachment 5)	Provides information about duration of inundation increase at the River Ohau as figures. This information is provided in a different form in Technical Report F.	The information about duration of inundation does not alter the definition of the Project in Part C of Volume II of the application documentation and therefore does not need to be included in Condition DGA1.
Response 179 (and Attachment 6)	Revised version of Technical Report F is provided, to correct an error where legends had been omitted from various figures.	Technical Report F is not referenced in Condition DGA1 (including the revised drawings). Therefore, there is no need to revise Condition DGA1 to include the corrected drawings.
Planning		
Response 185	Explains why the term 'improvement' is included in scope of NoR / designations sought.	The explanation does not alter the definition of the Project in Part C of Volume II of the application documentation. Rather, it provides clarification. Therefore, the Response 185 does not need to be included in Condition DGA1.
Response 189 (and Attachment 7)	Planning assessment of whether resource consent is needed for works proposed outside of the NoR / designation.	A planning assessment for activities outside of the designation does not relate to the activity for which the designation is sought. It is therefore not considered appropriate to reference the response to Question 189 in Condition DGA1.
Response 190	Corrects reference to a figure in section 10 of Volume II of the application documentation (by stating that reference to Design Audit should be deleted)	The inclusion of reference to a figure that describes the Design Audit process is not material to the definition of the Project in Part C of Volume II of the application documentation and therefore does not need to be included in Condition DGA1.

Ms Anderson's recommended inclusions	Content of the section 92 response	Analysis of necessity and appropriateness for inclusion in Condition DGA1
Response 192 (and Attachment 8)	Confirm that outline plan waiver is sought in respect of establishment works through a description of permitted activity rules.	A planning assessment for activities that are permitted does not alter the definition of the Project in Part C of Volume II of the application documentation. Therefore, it is not necessary to reference the response to Question 192 in Condition DGA1.

187. For the reason set out in the preceding table I am of the view that there are no matters in the section 92 response that alter the Project described in the application documentation (and specifically Part C of Volume II). I therefore conclude that the amendments suggested by Ms Anderson are neither necessary or appropriate.

Other minor condition amendments

188. Ms Anderson and Ms Wilkening identify a number of minor amendments to the condition for the purpose of generally improving legibility. I briefly respond to these minor amendments as follows:

- (a) Condition DGA6 Outline Plan: I agree with the minor grammatical correction suggested in clause (c);
- (b) Condition DGA7 Revision of an outline plan: I generally agree with the minor grammatical correction subject to limited further amendments to better reflect section 176A of the RMA;
- (c) Designation Conditions Index table: I agree that reference to Condition DPC1 should be deleted;
- (d) Designation Conditions Index table: I agree that the inclusion of page numbers would assist in navigating the conditions;
- (e) PPF/PPFs term/definition: Mr Smith and I agree with the deletion proposed by Ms Wilkening;
- (f) Schedule 2 – CNVMP and condition DNV4 - Site specific construction noise and vibration mitigation: I do not agree with Ms Wilkening that the considerations in Schedule 2 should be duplicated in Condition DNV4, but I have proposed amendments to Condition DNV4 and Schedule 2 to more clearly cross reference and reflect the purpose of the 'considerations';

- (g) Condition DNV1 Construction Noise Limits: I agree that the Table in Condition DNV1 should refer to 'occupied' other buildings that accommodate commercial activities;
- (h) Condition DRN3 Design of noise mitigation measures: I generally agree, subject to limited amendments, that Condition DRN3 should be clear that the report required by clause (s) must confirm that the design change is the Best Practicable Option.

RESPONSE TO MR BENT

189. In his memorandum, Mr Bent identifies the following as issues:

- (a) the discharge of floating contaminants to a treatment wetland; and
- (b) the screening out of litter from stormwater inflow to treatment structures.

190. Mr Bent concludes a condition requiring the screening of litter resolves the issue in clause (b) above and suggests that a further condition (or clause in RSW1) requiring submerged outlets would resolve the issue in clause (a).

191. In response Ms Bennett and Mr Keenan acknowledge that submerged outlets are one design solution that would achieve the outcome sought by Mr Bent and suggest that a more general clause be included in Condition RSW1 to provide for Mr Bent's design solution, but also not prevent other solutions that would achieve the same outcome.

192. In my view it is preferable for the conditions to allow flexibility in design provided the same outcome is achieved. Therefore, I agree with Ms Bennett and Mr Keenan, and propose a replacement clause (d) in Condition RSW1, to resolve the issues raised by Mr Bent.

Ainsley Jean McLeod

10 October 2023

APPENDIX A – DRAFT CONDITIONS