

## **Notice of Requirement for designation Palmerston North City Council**

Being for roading purposes to establish a link road connecting Abby Road to Johnstone Drive.

Palmerston North City

**Decision report of Independent Commissioner**  
28 May 2021

## CONTENTS

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<b>1.0</b>	<b>Introduction .....</b>	<b>2</b>
<b>2.0</b>	<b>Hearing sequence .....</b>	<b>8</b>
<b>3.0</b>	<b>Statutory considerations and other matters .....</b>	<b>11</b>
<b>4.0</b>	<b>Evaluation of environmental effects .....</b>	<b>16</b>
<b>5.0</b>	<b>Consideration of alternatives.....</b>	<b>20</b>
<b>6.0</b>	<b>Consideration of reasonable necessity .....</b>	<b>22</b>
<b>7.0</b>	<b>Overall Judgement.....</b>	<b>24</b>
<b>8.0</b>	<b>Decision .....</b>	<b>25</b>

## SCHEDULE OF APPENDICES

- **APPENDIX 1:** Designation conditions

## INTERPRETATION

This report uses the following abbreviations and acronyms.

<b>TERM</b>	<b>MEANS</b>
the Act	Resource Management Act 1991
AEE	The assessment of environmental effects appended to the application
ALH	Aokautere Land Holdings Limited
the Authority	Palmerston North City Council in its role as Requiring Authority
CMP	Construction Management Plan
CNVP	Construction Noise and Vibration Management Plan
Council	Palmerston North City Council (in its regulatory capacity)
EiC	Evidence in Chief
ESCP	Erosion and Sediment Control Plan
IMP	Infrastructure and Streetscape Management Plan
LPAP	Landscape and Public Access Plan
NoR	Notice of Requirement
NPS-FM	National Policy Statement on Freshwater Management 2020
NPS-UD	National Policy Statement on Urban Development 2020
Plan	Palmerston North City District Plan
RMA	Resource Management Act 1991

<b>TERM</b>	<b>MEANS</b>
RPS	Regional Policy Statement as contained in the Horizons One Plan
Site	The properties to which the proposal relates as described in the NoR
TMP	Construction Traffic Management Plan

## Palmerston North City Council

### Decision report of Independent Commissioner

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**Proposal Description:**

Notice of Requirement from the Palmerston North City Council for a designation of a new road connection between Abby Road and Johnstone Drive, Palmerston North.

**Requiring Authority:**

Palmerston North City Council

**Site Details:**

52 Johnstone Drive - legally described as Lot 2 DP 484516 Lot 694 DP 500578 Lot 695 DP 509873 Lot 1102 DP 519561

**Zoning:**

Residential

**Overlays & map notations:**

'Developable' and 'Limited Developable' land as shown in District Plan Map 10.1 – Aokautere Development Area

**Date of Hearing:**

Wednesday 31 March 2021 (closed 7 May 2021)

**Independent Commissioner:**

DJ McMahon

**Summary of Recommendation:**

Having considered all relevant matters under the RMA, and based on the evidence and submissions presented, I find that:

- the proposal will result in positive effects, and any actual and potential adverse environmental effects of the proposed requirement will be sufficiently managed by the proposed conditions such that the effects are acceptable;
- adequate consideration has been given by the Requiring Authority to alternative sites, routes, or methods of undertaking the work;
- the work and designation are reasonably necessary to achieve the Authority's stated objectives; and
- the effects of the proposal are aligned with the sustainable management purpose of the RMA.

Accordingly, the requirement is **confirmed** subject to the conditions set out in **Appendix 1**.

## 1.0 Introduction

### Report purpose, requirements & outline

- 1.1 The purpose of this report is to outline my decision on the NoR from the Authority to designate land at Johnstone Drive in Palmerston North for the purposes of a new road connection between Abby Road and Johnstone Drive.
- 1.2 Section 168A of the RMA provides the roadmap for my consideration of the proposal. Among other matters, it requires that I consider the environmental effects of allowing the requirement, having particular regard to:
  - a. any relevant provisions of the applicable national, regional and local policy statements and plans<sup>1</sup>;
  - b. whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if I find that it is likely that the work will have a significant effect on the environment or if the Authority does not have sufficient interest in the land for undertaking the work<sup>2</sup>;
  - c. whether the work and designation are reasonably necessary for achieving the Authority's objectives expressed in the NoR<sup>3</sup>; and
  - d. any other matter reasonably necessary to make a decision on the NoR<sup>4</sup>.
- 1.3 In considering effects of the proposal, the RMA makes it clear that those effects may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the requirement, as long as those effects result from measures proposed or agreed to by the requiring authority<sup>5</sup>.
- 1.4 My consideration in all of the above respects is "subject to Part 2" of the RMA.
- 1.5 Having carried out my evaluation of the above matters, I may decide that the requirement be confirmed, modified or withdrawn. If confirmed or modified, the requirement may also be subject to conditions<sup>6</sup>. The remainder of this report is organised as follows:

#### Section 1: Introduction

Section 1 provides a factual basis for the report, including a description of the site and existing environment, the proposal, submissions received and my role.

#### Section 2: Account of pre-hearing & hearing sequence

Section 2 provides a brief factual summary of the hearing proceedings, including the lead up to the hearing by the various parties.

#### Section 3: Outline of statutory considerations and other matters

This part of the report is the first limb of my evaluation and identifies the relevant provisions of the applicable national, regional and local policies and plans that I must have particular regard to under s171(1)(a). It also identifies the relevant non-RMA statutory instruments and non-statutory matters that I must have particular

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<sup>1</sup> s168A(3)(a)

<sup>2</sup> s168A(3)(b)

<sup>3</sup> s168A(3)(c)

<sup>4</sup> s168A(3)(d)

<sup>5</sup> s168A(3A)

<sup>6</sup> s168A(4)

regard to under s171(1)(d). This assessment is, in part, informed by my evaluation of environmental effects canvassed in Section 4 (below).

#### Section 4: Evaluation of environmental effects

Section 4 includes my consideration and evaluation of the adverse and positive effects of the requirement on the environment (Section 3 above), informed by the relevant provisions of Part 2, and the relevant statutory and non-statutory matters outlined in Section 3.

#### Section 5: Consideration of alternatives

This section of the decision considers the test in s168A(3)(b) as to whether adequate consideration has been given to alternative sites, routes or methods.

#### Section 6: Consideration of reasonable necessity

This section considers and evaluates the directions in s168A(3)(c) as to whether the works are reasonably necessary to meet the Authority's objectives.

#### Section 7: Overall judgement

This final evaluative section of the decision contains my overall judgement of the proposal, subject to the RMA's purpose and principles in Part 2.

#### Section 8: Recommendation

Finally, I briefly record my decision and summarise my reasons, having regard to the evaluative sections of the report.

- 1.6 I now discuss the pre-hearing and hearing sequence, the existing environment and the key components of the proposed designation and the submissions lodged to it.

### **Site and existing environment**

- 1.7 The site and surrounding environment are well described in Section 1.3 of the NoR application document lodged by the Authority and in the landscape assessment by Hudson Associates attached to the application<sup>7</sup>.
- 1.8 I adopt those comprehensive descriptions and do not repeat them here other than to note the following for context:
- a. the land to be designated comprises a curved geometry linking the north end of Abby Road to Johnstone Drive over a length of approximately 230m;
  - b. the wider 53ha-site is owned by ALH – also a submitter to the proposal – and is zoned Residential in the Plan;
  - c. the surrounding area is characterised by a mix of residential, institutional and recreational uses; and
  - d. the terrain is relatively flat where the proposed road link joins Abby Road, and descends sharply into the Abby Road Gully before rising on the east side of the gully to Johnstone Drive.
- 1.9 Overall, the proposed designation corridor currently presents as undeveloped residentially zoned land which has an existing open and rural-like appearance but is surrounded on all sides by urban development including roading infrastructure and suburban style residential dwellings.

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<sup>7</sup> See paras 32-40

## The proposed designation

### Authority's objectives

- 1.10 The Authority's objectives for this proposed designation are set out in Section 1.4.1 of the NoR as follows:
- *Preserving and providing an efficient and logical connection between Abby Road and Johnstone Drive.*
  - *Preserving and providing an efficient and logical access to the eastern side of the Adderstone Reserve from Abby Road, to enable recreational opportunities.*
- 1.11 I note that there was considerable discussion on these objectives in the legal submissions advance by counsel for one of the submitters at the hearing, and I return to these in Section 6 below with my consideration of the directions in s168(3)(c) of the RMA.

### Proposed form of the designation

- 1.12 The NoR is proposed in order to facilitate the future construction and operation of a two-lane link road of approximately 230m in length.
- 1.13 Council's consultant planner, Mr Ryan O'Leary, provided the following useful summary of the NoR's component parts in his s42A Report:
- a. earthworks (cut and fill) associated with the formation of the road;
  - b. installation of a culvert from the head of the gully to convey stormwater under the road;
  - c. construction of a 'T-intersection' with Johnstone Drive;
  - d. construction of the road carriageway; and
  - e. removal of vegetation associated with the construction works and replanting of the supporting embankments, once constructed<sup>8</sup>.
- 1.14 The notified NoR described a range of measures to be adopted in implementing the proposal, though for some unexplained reason none of those measures were codified by the Authority in volunteered conditions. Helpfully, Mr O'Leary proposed a comprehensive suite of conditions in his s42A Report. A modified condition set was then tabled at the hearing by Mr Jessen, culminating in a final set of those conditions being modified and agreed between Mr O'Leary and the Authority and presented in the written closing/right of reply by the Authority after the hearing adjournment. Rather than traverse the evolution of those volunteered/agreed conditions, I summarise the final content of the agreed conditions up front here for context, and refer to them in detail at appropriate intervals in the substance of this decision.

### Summary of agreed conditions

- 1.15 The final agreed conditions, numbering 31 in total, were grouped into twelve topic areas covering:
- a. the outline plan process and pre-outline plan certification processes for a suite of seven management plans to be prepared prior to works commencing;

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<sup>8</sup> Para 2.7

- b. the construction management plan;
  - c. the management plan for construction noise and vibration;
  - d. the erosion and sediment control plan;
  - e. dust management;
  - f. the landscape and public access plan; and
  - g. the construction traffic management plan;
  - h. protocol for managing the accidental discovery of urupā, taonga, kōiwi or archaeological sites;
  - i. the infrastructure and streetscape management plan;
  - j. road safety audit requirements;
  - k. geotechnical design and supervision; and
  - l. the stormwater management plan.
- 1.16 Summarising these in further detail, conditions 1-3 relate to the **outline plan and management plan certification** processes. Specifically, they:
- a. require all works to be undertaken in accordance with any approved outline plan of works and any management plans following written technical certification or approval by the Council;
  - b. set out a process resolving any issues where Council refuses to certify any proposed management plan; and
  - c. set out a process for amendments to be made to certified management plans over time.
- 1.17 Conditions 4-6 require **the construction management plan** to be submitted for written technical certification in advance of the works, and set out the minimum information to be addressed in the CMP. These conditions also limit the hours of construction works to 7:30am-6pm Monday to Saturday.
- 1.18 The **construction noise and vibration management measures** are set out in conditions 7-10. In summary, these conditions:
- a. require the CNVP to be prepared by the Authority and certified by the Council in advance of works;
  - b. require the CNVP to be in accordance with the relevant New Zealand standard for construction noise – NZS6803:1999 – and include measures to be adopted to comply with the associated noise criteria codified in the conditions as far as practicable;
  - c. require the CNVP to set out the specific details of methods for controlling vibration associated with project works, which are to be formulated to comply with the relevant industry standard, being German Standard DIN 4150-3:1999 *Structural vibration – effects of vibration on structures*; and
  - d. set out the minimum information requirements to be addressed in the CNVP.
- 1.19 Conditions 11-13 require **the erosion and sediment control plan** to be submitted in advance of the works for technical written certification, and set out the minimum information to be addressed in the ESCP.
- 1.20 Condition 14 requires operations to avoid the generation of objectionable or offensive **dust** as far as reasonably practicable.



- 1.21 Conditions 15-17 require **the landscape and public access plan** to be submitted in advance of the works for written technical certification, and set out the minimum information to be addressed in the LPAP. They also require the works identified in the LPAP to be completed within 12 months of the completion of construction, and for the landscaping to be maintained for 18 months after planting and the replacement of dead or unlawfully removed specimens.
- 1.22 Conditions 18-19 require **the construction traffic management plan** to be submitted in advance of the works for written technical certification, and set out the minimum information to be addressed in the TMP.
- 1.23 Conditions 20 and 21 require works to cease immediately upon **accidental discovery of sensitive cultural or archaeological materials**, and for iwi, the Council and Heritage New Zealand Pouhere Taonga to be informed of the discovery.
- 1.24 Conditions 22-24 require **the infrastructure and streetscape management plan** to be submitted in advance of the works for written technical certification, and set out the minimum information to be addressed in the IMP.
- 1.25 Under conditions 25 and 26, the new link road and intersection with Johnstone Drive must be subject to detailed road safety audits at pre-construction and pre-opening stages in accordance with the relevant national guidelines.
- 1.26 Conditions 27 and 28 require qualified geotechnical expert assessments of the design and implementation of proposed earthworks and construction activity.
- 1.27 Finally, Conditions 29-31 require **the stormwater management plan** to be submitted in advance of the works for written technical certification, and set out the minimum information to be addressed in the SMP.
- 1.28 This 'final' version of the conditions comprises part of the proposal before me as at the close of the hearing. Again, I note that I discuss these measures in greater detail at various junctures below.

## Submissions

- 1.29 The NoR was publicly notified on 4 November 2020.
- 1.30 Three submissions were received before the closing date of 2 December, and a fourth submission was received a week later. The Council duly extended the timeframes for making a submission under s37 of the RMA to accommodate the late submission.
- 1.31 **Powerco** was the only of the submissions that took a neutral position in relation to the proposal. Its main aim in submitting was to draw the Authority's attention to local gas assets it owns in the vicinity of the NoR, and to ensure appropriate protection of those assets during works.
- 1.32 **Mr Bo Yu** and **Ms Lynne Bishop** are both local residents of Woodgate Court who submitted in opposition to the proposal.
- 1.33 Mr Yu's notice of submission expressed concerns about the purpose of the road, the quality of the background investigations justifying it, the funding of the road and about potential impacts on the gully.
- 1.34 In her notice of submission, Ms Bishop also expressed concerns about the proposal's impact on the gully, including associated landscape and visual amenity effects. Her submission also stated that the proposal is not consistent with the earthworks related objectives and policies in Section 6.3.3 of the Plan or the associated assessment criteria under Rule 6.3.7.

- 1.35 **ALH** also submitted in opposition, adding:
- a. the benefits anticipated from the works are not commensurate with the costs/commercial risk;
  - b. the utilisation of the designation process is inappropriate and curtails the advancement of commercial development and residential yield sought by ALH on its land, and ALH should be compensated for this;
  - c. the area to be designated is excessive – it is 37m in width and 3340m<sup>2</sup> in area, whereas the width of the road is required to be only 17.2m to meet relevant Council Engineering Standards;
  - d. the NoR will result in adverse traffic safety and efficiency outcomes; and
  - e. the works will likely exceed \$3M to ratepayers with marginal returns for that investment.
- 1.36 I return to all of the above issues raised by the submitters in Sections 4, 5 and 6 of this decision report.

### **Role of the Commissioner**

- 1.37 I was appointed<sup>9</sup> by the Council to hear, consider and determine the requirement on the Council's behalf pursuant under s168A the RMA.
- 1.38 I record that it was not my role to introduce evidence about the requirement, but to hear the submissions and evidence of others and to make a recommendation on the basis of that information.

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<sup>9</sup> Under delegation dated 3 November 2020

## 2.0 Hearing sequence

### Pre-hearing Procedural Matters

- 2.1 Following my formal engagement, I issued an initial minute<sup>10</sup> to the parties to set out some preliminary matters in preparation for the hearing. Specifically, the minute:
- a. described the sequence for expert evidence exchange;
  - b. outlined a process for expert conferencing should the parties be minded to use conferencing;
  - c. encouraged parties to engage in pre-hearing meetings to narrow any issues in contention where possible;
  - d. set out our expectations for hearing presentations; and
  - e. invited parties to suggest any particular sites or localities that we should visit to inform our understanding of the proposal and the local environment.

### s42A report

- 2.2 The s42A reports were circulated on 9 March 2021. They comprised the planning report authored by Mr O'Leary along with:
- a. a peer review of landscape and visual effects from Mr Shannon Bray;
  - b. a traffic report prepared by Ms Harriet Fraser; and
  - c. a technical review of the stormwater management aspects of the NoR by Mr David Arseneau.
- 2.3 Having drawn on the information in the NoR bundle along the views expressed in the reports of Mr Bray, Ms Fraser, and Mr Arseneau, Mr O'Leary concluded that the proposal:
- a. is consistent with Part 2 of the RMA;
  - b. will result in adverse environmental effects that are no more than minor and can be appropriately mitigated to an acceptable level;
  - c. will 'fit' with the relevant statutory framework and relevant provisions;
  - d. has adequately considered alternative sites, routes and methods, having regard to the extent of the land affected by the designation, the nature of the proposal and its geographical setting which limits the range of alternative options available; and
  - e. is reasonably necessary for achieving the Authority's objectives.<sup>11</sup>
- 2.4 It was Mr O'Leary's recommendation that that the requirement be confirmed subject to conditions.<sup>12</sup>

### Requiring Authority's evidence

- 2.5 The week after the s42A Report was provided, and two weeks before the hearing, the Authority circulated its expert evidence.
- 2.6 This included statements from:

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<sup>10</sup> Minute 1 dated 3 March 2021

<sup>11</sup> O'Leary s42A Report, para 4.83 – 4.85

<sup>12</sup> Ibid, para 4.86-4.87

- a. Ms Chantal Whitby, regarding landscape and visual effects of the NoR;
  - b. Mr Sam Thornton, regarding transportation matters; and
  - c. Mr Michael Duindam, regarding strategic planning matters.
- 2.7 The Authority's evidence outlined initial investigations carried out in support of the NoR, responded to matters raised in the s42A Report and submissions, and acknowledged it would engage with Mr O'Leary to agree a set of final conditions (among other matters).
- 2.8 I discuss the substance of the Authority's evidence in greater detail in sections 4, 5 and 6 below.

### **Submitter expert evidence**

- 2.9 No expert evidence was called by submitters; however, a sworn and signed affidavit was pre-circulated from Mr Leslie Fugle – director and shareholder of ALH. In summary, Mr Fugle expressed the following:
- a. ALH is directly affected by the proposal, being the owner of the land subject to the NoR;
  - b. ALH wishes to continue to develop its land in the proximity and the extent of the NoR should (at most) be minimised to reduce that land development potential of ALH;
  - c. ALH has significant financial and planning reservations as to the suitability of the NoR in its entirety, but in particular as to the need for and appropriateness of the NoR for the link to Manga o Tane Reserve; and
  - d. ALH wishes for the designation to be declined.

### **Hearing Proceedings**

- 2.10 The hearing was convened at 9:00am on Wednesday 31 March 2021 at the Council Chambers.
- 2.11 After I set out some introductory and procedural matters, the Authority opened its case with legal submissions from Mr Nick Jessen. Mr Jessen then called his expert witnesses whose evidence was pre-circulated as summarised above.
- 2.12 I then heard from ALH, whose presentation commenced with oral submissions from its legal counsel, Mr Greg Woollaston. Mr Woollaston then called Mr Fugle, who spoke to his affidavit and responded to questions from me.
- 2.13 Ms Bishop was unable to attend the hearing, but helpfully circulated a written statement in advance of proceedings. Her statement amplified the points raised in her submission notice and underscored her particular concerns about the gully being filled in. In her statement, Ms Bishop expressed the desire for the gully to be gifted to the Council and joined onto the Manga o Tane Reserve with walking tracks provided throughout. This would, in Ms Bishop's view, afford the opportunity for generous landscaping to be provided to mitigate the visual impact of the proposed road.
- 2.14 I then heard from three of the s42A Report authors, culminating with Mr O'Leary's final presentation which included revised conditions to be imposed if the NoR is confirmed.

- 2.15 The hearing was then adjourned, pending receipt of further refinements to the conditions from Mr O'Leary, a written copy of Mr Woollaston's legal submissions and the Authority's right of reply.
- 2.16 Following the adjournment, I conducted a visit of the site and wider locality, including the neighbourhood of both Mr Yu and Ms Bishop. This assisted understanding of the key issues and environmental effects of the NoR, including effects raised by ALH and the two submitters in Woodgate Court.

### **Deliberations & hearing closure**

- 2.17 I subsequently received updated conditions from Mr O'Leary and then the Authority's reply. Mr Woollaston opted not to provide a written version of his submissions.
- 2.18 I issued Minute 2<sup>13</sup> recording the above and to signal that I had all information necessary to conduct my deliberations and deliver my decision. At that time, I confirmed the formal closure of the hearing at 5pm on 7 May 2021.
- 2.19 I subsequently completed deliberations on 12 May 2021.

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<sup>13</sup> Dated 7 May 2021

### 3.0 Statutory considerations and other matters

#### Overview

- 3.1 Here I identify the relevant provisions of the main RMA statutory instruments that I must have particular regard to under s168A(3)(a), followed by the non-statutory matters that I also must have particular regard to under s168A(3)(d).

Mr O'Leary was the only expert witness at the hearing to address me on these statutory and non-statutory considerations and I have adopted his uncontested view as summarised below in relation to the following instruments:

- a. National Policy Statements
  - b. Regional Policy Statement & Regional Plan
  - c. Palmerston North City District Plan
  - d. Other non-RMA/non-statutory documents
- 3.2 The uncontested nature of the assessment by Mr O'Leary allows me to be economical in my considerations of this statutory assessment.

#### National Policy Statements

- 3.3 There are two National Policy Statements relevant to the proposal: the NPS-UD and the NPS-FM.
- 3.4 The NPS-UD sets out the objectives and policies for planning for well-functioning urban environments under the RMA.
- 3.5 As noted by Mr O'Leary, the eight objectives of the NPS-UD are broadly cast. To the extent that they are relevant to the proposal, I adopt Mr O'Leary's view that the NoR is consistent with the objectives for the reasons he expressed.<sup>14</sup>
- 3.6 The NPS-FM aims to ensure natural and physical resources are managed in a way that prioritises the health and well-being of water bodies over the health needs of people and the ability of people and communities to provide for their social, economic and cultural wellbeing.
- 3.7 I also adopt Mr O'Leary's assessment that the proposal is consistent with the NPS-FM for the reasons he has expressed.<sup>15</sup>

#### Regional Policy Statement & Regional Plan

- 3.8 The RPS and Regional Plans for the Manawatu-Whanganui Region are contained in the combined 'One Plan.' The One Plan defines how the natural and physical resources of the Region will be cared for and managed by the Regional Council in partnership with Territorial Authorities and the community.
- 3.9 Mr O'Leary has identified the provisions of the One Plan that are relevant to the proposal, and I adopt his conclusion that the proposal is consistent with those provisions for the reasons he has expressed.<sup>16</sup>

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<sup>14</sup> O'Leary s42A Report, para 4.50-4.54

<sup>15</sup> Ibid, para 4.55-4.56

<sup>16</sup> Ibid, para 4.43, 4.47, 4.58-4.60

## Palmerston North City District Plan

3.10 I also adopt Mr O’Leary’s identification<sup>17</sup> of relevant provisions in the operative Plan and his overall assessment that the proposal is consistent with those relevant objectives and policies. The uncontested expert planning evidence before me is that the proposal is well-aligned with:

- a. Policy 1.2 in Chapter 6, which seeks to avoid, remedy, or mitigate any adverse effects on the environment on the natural land form; landscape values; visual amenity values; and adjoining properties;
- b. the ‘further’ policies listed under Rule 6.3.7.1 which relate to earthworks effects on residential amenity, landscape and visual amenity values, and flood susceptibility
- c. Policy 2.6 in Chapter 7 which seeks to avoid, remedy or mitigate the adverse effects caused by alterations to the natural landform - and to enhance the amenities of the natural and built environment by requiring (among other things) earthworks to be designed, built and landscaped to avoid and/or mitigate adverse effects on the amenities of existing or potential residentially zoned area;
- d. Policies 1.1 through 1.8 in Chapter 20 and their overarching objective insofar as the proposed road: will function as a local road in accordance with the local roading hierarchy; will be designed and constructed to meet the relevant performance standards; and, will support people to use active modes of transport;
- e. Policies 1.3 and 1.4 in Chapter 10, which promote the efficient use of urban (roading) infrastructure and supporting residential development and intensification;
- f. Policy 2.3 in Chapter 7, being to ensuring the safe, convenient and efficient movement of people, vehicles and goods, whilst minimising adverse effects on the environment.
- g. Policies 2.1, 2.2 and 2.4 in Chapter 20 dealing with transportation matters, which I discuss in greater detail shortly;
- h. City View Objective 15 which seeks active engagement from tangata whenua;
- i. Objectives 2.1 to 2.3 in Chapter 3, insofar as the Authority engaged early in the process with Rangitane o Manawatu; identified if there were any urupa, waahi tapu, wahi tupuna or other sites; and, enabled ongoing consultation and communication in the biodiversity and stormwater of the gully, being an area of expressed interest from Rangitane;
- j. City View Objective 19, which seeks to avoid or mitigate natural hazards, taking into account the significant social disruption caused by natural hazard events;
- k. Objective 2 in Chapter 22, which seeks to control the type of development on land which is or might be affected by natural hazards;
- l. Policy 2.2 in Chapter 22, which is to establish appropriate controls to avoid, remedy or mitigate the effects of natural hazards for the purposes of implementing Objective 2;

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<sup>17</sup> Ibid, at intervals throughout Section 4

- m. Policy 1.4, which states that earthworks should not increase the risk posed by natural hazards;
  - n. Policy 2.4 in Chapter 7, which seeks to improve land utilization and to safeguard people and property from the adverse effects of unstable land – and to require the restructuring of land to be specifically designed by a registered engineer in soil mechanics or geotechnical matters.
  - o. Policy 2.5 of Chapter 7, as to the layout, functioning and design of the stormwater drainage system; and
  - p. Objective 2 and Policies 2.1, 2.2 and 2.5 in Chapter 22, which seek to control development on land which is affected by natural hazards.
- 3.11 I wish to take some extra time here to discuss Policies 2.1, 2.2 and 2.4 in Chapter 20 given their relevance to the matters raised by Mr Yu and Ms Bishop. These policies read as follows:
- 2.1 *To restrict the through movement of traffic where the movement has adverse visual, noise and safety effects on adjoining areas by using the roading hierarchy to direct higher volume and heavy traffic movements on identified arterial routes and discouraging this traffic from other areas, such as residential areas.*
  - 2.2 *To avoid, remedy or mitigate the impact of roads and parking areas on visual amenity values of the community by requiring the provision of landscaping.*
  - 2.4 *Avoid adverse effects on amenity and character by ensuring that new roads are well designed and visually complement the character of the surrounding areas.*
- 3.12 In considering these directions, I firstly signal my alignment with Mr O'Leary that while the proposal will amount to an increase in through movement of traffic in the surrounding area, the anticipated flows will maintain a level consistent with the local road classification rather than an arterial function. That lower order classification is consistent with the hierarchy's preference for local roads to service residential areas.
- 3.13 The uncontested expert landscape evidence before me is that any visual amenity effects can be sufficiently mitigated through appropriate landscaping, which is delivered by the proposed conditions. Moreover, local roads are a fundamental component of residential areas – in this respect, the NoR and associated conditions have been designed to enable an overall outcome that complements the character and amenity of the surrounding area to the extent possible.

### **Other matters under s168(3)(d)**

#### **Other plans, strategies and acts**

- 3.14 Mr O'Leary identified six other matters that are reasonably necessary to consider. I adopt his view in that regard as well as his conclusions<sup>18</sup> in each respect that:
- a. the NoR will contribute to the achievement of the relevant aims of the *Horizons Regional Land Transport Plan 2015-2025*, in particular its contribution to multi-modal transport system design;
  - b. the proposal is consistent with the Council's *Strategic Transport Plan 2018*, insofar as it enables the growth of the transport system that links people and

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<sup>18</sup> O'Leary s42A Report, para 4.72-4.81



- opportunities, and provides amenity, safety, interconnectivity, accessibility, resilience and reliability;
- c. the NoR is also consistent with the Council's *City Development Strategy 2018*, principally through making infrastructure available to accommodate growth;
  - d. the proposal is also well-aligned with the Council's *Housing and Future Development Plan 2018* to the extent that it enables future opportunities for employment and growth, and particularly the future growth in Aokautere;
  - e. the proposed road aligns with an indicative road shown in the *Draft Aokautere Structure Plan* as providing a link between Abby Road and Johnstone Drive – to the extent that a draft structure plan with no legal status is relevant to this proposal, it supports the Authority's objectives to preserve and provide efficient and logical connections in this area; and
  - f. The Authority has consulted with Tanenuiarangi o Manawatu, who were also served notice of the NoR consistent with aims of the *Rangitāne o Manawatu Claims Settlement Act 2016*.
- 3.15 Further to the above, some additional commentary in relation to the draft Aokautere Structure Plan is useful, particularly in light of the submission and tabled statement of Ms Bishop. Mr Jessen's closing submissions are also relevant in this regard.
- 3.16 Specifically, Mr Jessen addressed the concern raised by Ms Bishop that the proposal will inevitably lead to the filling in or otherwise further residential development in the head of the gully. He confirmed that the Council has no knowledge of any current resource consent applications to subdivide or otherwise develop or fill the land at the head of the gully.<sup>19</sup>
- 3.17 Mr Jessen added that the operative Plan includes controls which make development and fill within the gully difficult, and he submitted that this is unlikely to become easier with the implementation of an upcoming plan change to incorporate and codify the Aokautere Structure Plan within the District Plan. Mr Jessen noted that Ms Bishop could reinforce her views through that plan change process when it is enacted late this year, and encouraged her to do so.<sup>20</sup>
- 3.18 Mr Jessen also helpfully advised that this NoR can only be judged in relation to the project extent and the project has no direct bearing otherwise on the rights or development aspirations of AHL as landowner.<sup>21</sup>
- 3.19 Mr Duindam's evidence also spoke to this matter. He noted, for example, that implementation of the Aokautere Structure Plan is likely to result in a number of gully crossings that will need to be delivered in a manner that respects the natural character of the gullies and gully landforms. The funding of, and delivering of, these gully crossings, including the Abby Road gully crossing, will be addressed via Council's asset management, long term plan and development contributions frameworks.

### Financial viability & other commercial matters

- 3.20 I am compelled to discuss here the concerns raised by ALH as to the financial viability of the NoR (or lack thereof), and commercial land ownership matters.
- 3.21 As summarised by Mr Jessen, the first of these matters is owing to ALH expressing the view that it is for me to take account of the contention that it would be more cost-

<sup>19</sup> Closing submissions for the Authority, para12-13

<sup>20</sup> Ibid, para 14

<sup>21</sup> Ibid, para 15

effective for ratepayers for a link road to be designed and constructed by ALH through subdivision of its land, rather than through the NoR.<sup>22</sup>

- 3.22 Mr Jessen provided compelling submissions as to why such considerations are beyond my delegation, and instead the financial viability of the proposal is a matter for the Authority to resolve internally. I accept those submissions for the reasons Mr Jessen expressed.<sup>23</sup>
- 3.23 It is also not for me to be the arbiter on discussions between the Authority and AHL about compensation for the loss of land and residential development potential associated with the NoR. This is not to downplay what is a legitimate concern for AHL – it is just to confirm that it is a matter for commercial negotiations between the parties, not me.
- 3.24 I do record that there is scope for the parties to reach a mutually agreeable position through multiple channels. I heard from Mr Jessen that a land swap is a possibility, and there is equally provision for cash purchase or for the Authority to compulsorily acquire the land via the Public Works Act. It is not for me to comment on the merits of these or other options, but I am satisfied that such options exist and can be pursued by those directly affected.
- 3.25 This matter does, however, have some tangential relationship with the consideration of alternatives set out below. As far as that goes, the RMA clearly anticipates this type of scenario in setting out the requirement to consider alternatives where a Authority does not have a sufficient interest in the land.

### **Findings on Statutory Matters**

- 3.26 Following my careful assessment of relevant statutory provisions, I find that at a broad level the NoR is consistent with all relevant statutory documents; being the applicable national, regional and local policy statements and plans and the various non-statutory documents, all outlined above.
- 3.27 As required by Section 168A of the RMA I have had particular regard to the above findings when considering, the environmental effects of allowing the NoR.

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<sup>22</sup> Ibid, para 30

<sup>23</sup> Ibid, para 31-33

## 4.0 Evaluation of environmental effects

### Overview

- 4.1 As an important starting point for my assessment of effects, I am again compelled to record that there is no evidence before me to contest the shared view of the Authority and Mr O’Leary that the effects of the NoR cannot be sufficiently managed by the proposed conditions of consent.
- 4.2 In light of that, I find that my discussion here can again be *very* economical, and founded in my wholesale adoption of Mr O’Leary’s own assessment.
- 4.3 To that end, I firstly signal my alignment with Mr O’Leary’s outline of relevant effects comprising:
- a. landscape, natural character and visual amenity effects;
  - b. effects on the land transport network;
  - c. effects on amenity values
  - d. construction effects, including earthworks;
  - e. archaeology, historic heritage and cultural effects;
  - f. stormwater and natural hazards; and
  - g. positive Effects;
- 4.4 I briefly address each of these in turn, in the discussion that follows.

### Landscape, natural character & visual amenity

- 4.5 The landscape, natural character and visual amenity effects were those of greatest emphasis in the submissions of Mr Yu and Ms Bishop. Consistent with those submissions, was a concern the proposal will have an adverse effect on these aspects of the existing environment.
- 4.6 The uncontested evidence of the landscape experts is that – without mitigation – the adverse landscape, natural character and visual amenity effects for the residential properties in the vicinity of Mr Yu and Ms Bishop would be moderate. However, with mitigation as codified in the proposed conditions, the clear evidence before me is that the effects will be mitigated to an acceptable level.
- 4.7 I note in particular that the proposed NoR corridor is sufficiently sized to accommodate necessary contouring and generous landscaping.
- 4.8 The LPAP will also be a critical tool in ensuring that the adverse effects on landscape, character and visual amenity are successfully mitigated. I am satisfied with the LPAP as a general mitigation tool, and that the minimum information requirements of the LPAP codified in the conditions will result in a document that is fit-for-purpose and delivers an effective mitigation outcome. I note also the requirement to replace any dead or dying species over time in the proposed conditions.
- 4.9 For the above reasons, I accept that the landscape, natural character and visual amenity effects on the environment - including the visual amenity of the living environment of the two residential submitters – is acceptable.

### Transport effects

- 4.10 I also adopt Mr O'Leary's findings that the anticipated effects on the transport network will be acceptable and no more than minor for the reasons he has expressed.<sup>24</sup> In particular, I underscore the shared view of Mr Thornton and Mrs Fraser that:
- a. the effects of the proposal on the efficiency of the Abby Road and Pacific Drive intersection will be negligible, with the performance of the Abby Road intersection with Johnstone Drive being very good;
  - b. the change to the performance of the intersection of Abby Road with Pacific Drive will be negligible and the new intersection of Abby Road and Johnstone Drive will be designed and constructed to an appropriate standard;
  - c. the link road provides improved access and route choice for the surrounding area, resulting in a minor positive effect on accessibility; and
  - d. the link will result in a minor positive improvement in resilience as the link will provide some route redundancy.
- 4.11 The proposed conditions also comprise a further check on network safety insofar as road safety audits are required at both pre-construction and pre-opening stages.
- 4.12 I am satisfied also that the proposed TMP and the minimum information requirements it must contain will sufficiently manage any temporary effects on the network from construction traffic.

### Amenity effects

- 4.13 I have already considered visual amenity effects above, and will not double handle them here. As noted by Mr O'Leary, the RMA definition of 'amenity values' is much broader than visual amenity, however, and includes the natural and physical qualities and characteristics of an area that contribute to people's appreciation of the area, its pleasantness, aesthetic coherence and cultural and recreational attributes.
- 4.14 There will be temporary amenity effects arising during the construction period – which I consider separately below – but also enduring impacts arising from future operation of the proposed link road.
- 4.15 As discussed above, local roads are a defining component of the Residential Zone, and the proposed link road is anticipated to perform a local road function. There will be a physical change to the area comprising the NoR relative to the existing environment, but the evidence before me is that the effect of that change will be no more than minor and consistent with the anticipated character and amenity outcomes within the wider Residential Zone.

### Construction effects

- 4.16 Again, I adopt Mr O'Leary's appraisal that the anticipated construction effects arising from the proposal will be sufficiently managed by the proposed conditions such that the effects are less than minor<sup>25</sup>. In particular, the proposed suite of management plans for erosion and sediment control, construction noise and vibration and general construction activities will ensure appropriate measures are in place at all times.

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<sup>24</sup> O'Leary s42 Report, para 4.25-4.29

<sup>25</sup> O'Leary s42 Report, para 4.35-4.38

- 4.17 The corresponding conditions also establish appropriate operational limitations as to duration and intensity, and allow for the resolution of any complaints received, during the construction process.

### **Archaeology, historic heritage and cultural effects**

- 4.18 I also anticipate that the proposal will have less than minor effects on archaeological, historic heritage and cultural values with the imposition of the proposed conditions for the reasons expressed by Mr O'Leary<sup>26</sup>.
- 4.19 In particular, the proposed accidental discovery protocol codified in the conditions will ensure works cease upon any discovery and appropriate measures can be taken to manage effects including any advice from iwi, the Council and Heritage New Zealand Pouhere Taonga.

### **Stormwater & natural hazards**

- 4.20 The evidence<sup>27</sup> before me is that the NoR will have no more than minor adverse effects in relation to these matters. In particular:
- a. the proposed earthworks associated with the proposal will improve the stability of the gully, through battering necessary to comply with relevant engineering standards;
  - b. the SMP and proposed culvert will provide for suitable management of any stormwater effects
- 4.21 There is no evidence to suggest further mitigation is required in this case.

### **Positive effects**

- 4.22 I also adopt the view expressed by Mr O'Leary that the proposal will have the following positive effects:
- a. the proposed link road will improve access to Johnstone Drive for residents and users of Abby Road;
  - b. the road will provide efficient access to Pacific Drive for future residents within the residentially zoned properties to the north and east;
  - c. it will also improve access to Adderstone Reserve for all modes of transport; and provide a new pedestrian pathway connection to Manga o Tane reserve (consistent with Policy 2.11 (Chapter 7 of the District Plan));
  - d. the proposal will result in enhanced landscaping of the embankments on both sides of the proposed road with associated benefits to landscape and visual amenity; and
  - e. additional on-street parking will be provided and the link road will result in a minor improvement in resilience as the link will provide some route redundancy.

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<sup>26</sup> Ibid, para 4.40-4.43

<sup>27</sup> Ibid, para 4.44-4.46

**Summary conclusion on effects**

- 4.23 For the reasons summarised above, and having regard to s168A (3) and 3(A), I find that the proposal will result in positive effects and any adverse effects will be sufficiently managed by the design of the NoR, the proposed conditions and the future Outline Plan process such that they are no more than minor and acceptable.
- 4.24 Related to this, I am satisfied that the conditions are fit-for purpose including the suite of management plans in particular.

## 5.0 Consideration of alternatives

- 5.1 As noted above, the Authority does not have an interest in the land sufficient for carrying out the proposed works, and a consideration of alternatives is required under the RMA accordingly. The Authority considered three alternatives to the NoR, being:
- a. do nothing;
  - b. extend Abby Road to intersect with Aokautere Drive; or
  - c. extend Abby Road to intersect with Johnstone Drive in an alternative alignment.
- 5.2 As noted in the AEE and Mr O'Leary's s42A Report, the 'do nothing' option would not provide the roading connectivity sought in the Authority's objectives, and would result in relatively longer routes being required for road users relative to the proposed option. This option would not entail any physical change to the existing environment or any construction effects, however.
- 5.3 The Abby Road – Aokautere Drive option was discounted because:
- a. it would introduce an additional intersection at Aokautere Drive in close proximity to existing intersections and would require associated improvements;
  - b. the connection is a longer route than the proposed NoR connection; and
  - c. a preliminary transportation assessment concluded that this option would result in a range of adverse effects on the safe, efficient performance of the network over time.
- 5.4 The proposed NoR was preferred to the alternative Abby – Johnstone connection as:
- a. it provides for better road gradients;
  - b. it provides better connection and integration with the Manga o Tane Reserve;
  - c. it provides sufficient space for the proposed landscaping mitigations; and
  - d. its expansion of the NoR area allows for the predicted fill works to be undertaken within its boundaries.
- 5.5 The second of the above matters was a key focus of the ALH presentation and I discuss this in detail shortly.
- 5.6 Before turning to that, however, I record my acceptance of Mr Jessen's submissions that a finding on the adequacy of the Authority's alternatives assessment does not require the assessment to be 'meticulous' or 'exhaustive' – rather it is a test of whether the assessment is 'sufficient' or 'satisfactory.'<sup>28</sup>
- 5.7 Assisting me further on this point, Mr Jessen submitted that the Authority's assessment of alternatives is sufficient, satisfactory, or perfectly adequate in the circumstances of this case - being a case in which the geography and nature of the project (to connect Abby Road with Johnstone Drive) naturally limits the breadth of alternatives available to achieve the Council's objectives. Within those limits, however, Mr Jessen expressed that the Authority has undertaken a robust assessment with a focus on a 'northern' and 'southern' alignment as sub-options – and it is testament to the adequacy of the alternatives assessment that the Council issued a new notice of requirement favouring the northern alignment in reliance on the views of its technical advisors.<sup>29</sup>

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<sup>28</sup> Closing submissions for the Authority, para 20

<sup>29</sup> Ibid, para 22

- 5.8 Though Mr Jessen persuaded me that I need not consider the contention by ALH that the NoR represents a commercially inviable road connection, he nevertheless addressed me on the substance of ALH's alternative scenario of providing a link road through future subdivision of the land.
- 5.9 Specifically, Mr Jessen advised that the connection described in the affidavit of Mr Fugle has not been considered as an alternative by the Authority because it has already been demonstrated as unviable. This is owing to the option depending upon the gully being filled to the level of the surrounding land. Mr Jessen added that ALH has previously attempted to obtain a resource consent to fill the gully to that level, and the corresponding resource consent was refused for being, among other things, a non-complying activity and in contravention of district plan policy relating to modifications to landform.<sup>30</sup>
- 5.10 Mr Jessen re-emphasised that the Authority need not fully evaluate every possible alternative, even when the environmental effects of other identified alternatives are potentially lower than the chosen option and the alternative is not suppositious. In the case of the alternative proposed by Mr Fugle, Mr Jessen submitted that the adverse effects would be greater than the proposed NoR and the alternative is essentially suppositious given its contravention of the Plan's policies. Mr Jessen expressed that it cannot have been incumbent on the Council to consider such an alternative.<sup>31</sup>
- 5.11 As to whether alternative planning methods – such as plan changes – need be assessed as alternatives to the proposed designation, Mr Jessen submitted that such alternatives are not viable because they do not expressly relate to the undertaking of the proposed work. Specifically, he said:
- [29] It is submitted, however, that district plan provisions are generally not viable for assessment as alternatives. That is because the consideration is “whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work”. Bearing in mind that a NoR is for a public work or project, the alternatives assessment has a focus on different ways that the project may be undertaken. While planning provisions may well be useful in terms of their ability to ‘preserve’ a connection by imposing planning restrictions/ controls on land development over identified connections, they cannot provide the Council as the requiring authority with financial responsibility for the work with the legal rights necessary to carry out the project.<sup>32</sup>*
- 5.12 I accept Mr Jessen's submissions in all of the above respects.
- 5.13 Overall, I am aligned with Mr Jessen and Mr O'Leary that the Authorities assessment of alternatives is adequate in this case for the reasons they have expressed.
- 5.14 The alternatives considered have been discounted for good reason, and the proposed NoR represents superior means of achieving the Authority's objectives in comparison to those alternatives.

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<sup>30</sup> Closing submissions for the Authority, para 23-24

<sup>31</sup> Ibid, para 25

<sup>32</sup> Ibid, para 29



## 6.0 Consideration of reasonable necessity

- 6.1 The Authority and Mr O'Leary were aligned in concluding that the proposed extent of work and the designation area are reasonably necessary to achieve the Authority's objectives, again being to secure the potential to extend Abby Road so that it joins up with Johnstone Drive for the purpose of:
- a. preserving and providing an efficient and logical connection between Abby Road and Johnstone Drive; and
  - b. preserving and providing an efficient and logical access to the eastern side of the Adderstone Reserve from Abby Road, to enable recreational opportunities.
- 6.2 The principal matter in contention on this aspect of the proposal was derived from the oral submissions of Mr Woollaston. In short, Mr Woollaston submitted that the width of the NoR is excessive and – related to that – the boundary connection created between the NoR and the Manga o Tane Reserve does not form or fall within the Authority's objectives.
- 6.3 Specifically, Mr Woollaston contended that because the connection to the Manga o Tane reserve as a feature of the NoR's layout or design does not 'fall within' the Council's statement of purpose, then it cannot be said that the work or designation is reasonably necessary for achieving the objectives of the Authority.
- 6.4 Mr Jessen submitted that Mr Woollaston's interpretation is incorrect in this respect and that the connection to the reserve falls within, or is implicit in, the first bulleted statement of the objectives relating to the efficient and logical connection between Abby Road and Johnstone Drive.<sup>33</sup> On this point, Mr Jessen submitted:

*[10] The first bullet pointed statement of purpose is, however, relevant. In this case the alignment chosen for the NoR (which extends to a boundary connection with the Manga o Tane Reserve) was directly influenced by the factors explained in the NoR at page 10:*

- (a) better road gradients;*
- (b) better connectivity with the reserve;*
- (c) provided sufficient space for the recommended landscaping mitigations (between the road and the reserve);*
- (d) it allowed for the necessary fill work associated with the road works.*

*[11] All those factors influenced the chosen alignment and are brought within the stated purpose of the Council because they relate to considerations of efficiency and logic. The Council's purpose is not to create a bare minimum connection between Abby Road and Johnstone Drive, but rather, as stated in its purpose, to provide an "efficient and logical connection" between Abby Road and Johnstone Drive.*

*[12] Efficiency has many factors, and pure spatial or geometric efficiency as referred to by ALHL inadequately captures the broader efficiencies gained by the proposed alignment as referred to above. Further, it is simply logical for Council to take the opportunity to interconnect its roading network with its reserve network in such a way as to avoid an illogical residual parcel of non-contiguous land resembling an awkward 'gap' between Manga o Tane and the proposed road.<sup>34</sup>*

<sup>33</sup> Closing submissions for the Authority, para 7-8

<sup>34</sup> Ibid, para 10-12

- 6.5 Mr Jessen went on to discuss the concept of ‘reasonable necessity’ and noted it can involve an inquiry into whether the scale or extent of an NoR is too broad or otherwise exceeds what is reasonably necessary to achieve the objectives of the Authority. He cited an example in Auckland where a narrower NoR was ultimately confirmed than originally proposed as the Environment Court determined the original width was wider than reasonably necessary.<sup>35</sup>
- 6.6 The extent to which the same can be said about this proposal – as contended by ALH – is ultimately a matter of evidence, and the compelling evidence before me is as summarised by Mr O’Leary, being that:
- 4.71 The northern and southern extent of the designation corridor will ensure appropriate area, slope and gradient for fill batter slopes. The designation corridor appropriately abuts the Manga o Tane reserve which will enable the revegetation of exposed earthworks areas to be planted in a manner which integrates with the reserve, and will avoid a situation where a portion of residual private land physically and legally separates the proposed road from connecting to the reserve.*<sup>36</sup>
- 6.7 I add to Mr O’Leary’s finding that the agreed position of the two landscape experts to these proceedings, and the relevant findings of engineering assessments supporting the proposal are that the width of the NoR is necessary to provide an efficient layout and route selection – and to accommodate the necessary earthworks, battering, remediation and mitigation planting. Neither ALH nor any other party called expert evidence to refute those findings on the basis of landscape and visual effects, stability or efficient configuration.
- 6.8 For the reasons summarised above, I ultimately share the findings of Mr Jessen and Mr O’Leary that the works are reasonably necessary to achieve the Authority’s objectives, including the width of the NoR and its connection with the Manga o Tane Reserve.

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<sup>35</sup> Closing submissions for the Authority, para 15

<sup>36</sup> O’Leary s42A Report, para 4.71

## 7.0 Overall Judgement

- 7.1 In the preceding report sections, I have identified the main RMA statutory instruments and other matters that we must have particular regard to under s168A(3)(a) - (d). Taking those matters into account, along with the proposed conditions, I have considered and evaluated the positive and adverse effects of allowing the proposed requirement.
- 7.2 In doing so, I have found that the adverse effects will be acceptable.
- 7.3 Subject to Part 2, after considering the above matters, I am satisfied that the effects of the proposal are also aligned with the RMA's sustainable management purpose. My finding in this respect is allied with Mr O'Leary<sup>37</sup>. Drawing on his evaluation I note that:
- a. the requirement:
    - i. has recognised and provided for the management of significant risks from natural hazards associated with land stability and inundation consistent with section 6(h); while
    - ii. is consistent with the efficient use and development of land per section 7(b);
    - iii. will achieve the aims under sections 7(c) and 7(f) relating to the maintenance and enhancement of amenity values and of the quality of the environment; and
  - b. the principles of the Treaty of Waitangi have been taken into account consistent with section 8 – in particular the principle of consultation, which the Authority has carried out with Rangitane o Manawatu;
  - c. peoples' social and cultural well-being will be enabled by the proposal, whilst providing for their health and safety; and
  - d. adverse effects of the NoR will be avoided, remedied or mitigated.
- 7.4 Overall, I find there are no aspects of Part 2 that weigh against a decision to confirm the NoR.

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<sup>37</sup> O'Leary s42A Report, para 4.82-4.83

## 8.0 Decision

- 8.1 For the reasons set out above, and acting under delegated authority on behalf of the Palmerston North City Council, the requirement is hereby **confirmed**, subject to the conditions set out in Appendix 1.

**DATED AT WELLINGTON THIS 28<sup>th</sup> DAY OF MAY 2021**



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DJ McMahon  
Independent Commissioner

## APPENDIX 1 Conditions

The acronyms and abbreviations used in the conditions below have the associated meaning:

Abbreviation	Means...
"the Act" or "RMA"	Resource Management Act 1991
"the AEE"	The Authority's assessment of environmental effects
"the Requiring Authority"	Palmerston North City Council
"the Council"	Palmerston North City Council (as Territorial Authority)
"E&SCP"	Erosion and Sediment Control Plan
"District Plan"	Operative Palmerston North District Plan
"the Designation"	The land affected by the designation is all that is shown and scheduled on the Designation Plan being Appendix A of the document titled: "Abby Road Notice of Requirement", Prepared by WSP; 7 September 2020. The plan is prepared by Hudson Associates Landscape Architects, titled: "Abby Road Northern Designation", DWG No. 62-003, Revision C, dated 2/09/2020.
"TMP"	Traffic Management Plan
"ESLD"	Council's Engineering Standards for Land Development 2019
"CI&SMP"	Comprehensive Infrastructure and Streetscape Management Plan
"CNVMP"	Construction Noise and Vibration Management Plan
"LP&S"	Landscape Plans and Specifications
"CMP"	Construction Management Plan
"SMP"	Stormwater Management Plan
"LPAP"	Landscape and Public Access Plan
"Site Investigations"	Include geotechnical investigations, surveys and monitoring activities
"the Project Works"	All works associated with the extension of Abby Road as described in the Notice of Requirement Dated 7 September 2020, but excludes any site investigations.

### Interpretation:

Where there is any inconsistency between the Notice of Requirement documentation and the designation conditions, the designation conditions shall prevail.

### Duration:

Pursuant to Section 184A(2)(c) of the RMA, the designation shall not lapse for a period of five (5) years after it is included in the Operative Palmerston North City District Plan.

### Outline Plan of Works or Outline Waiver

The Designation conditions below require management plans to be prepared and implemented by the Requiring Authority, following their submission to Council for written technical certification. It is anticipated that should these management plans be certified by Council, the Council may waive the requirements for an Outline Plan of Works pursuant to section 176A(2)(c) of the Resource Management Act 1991 ("RMA"). Notwithstanding the above, the Requiring Authority may apply for an Outline Plan of Works, should it wish to do so.

## CONDITIONS

### General

1. The Project Works must be undertaken in accordance with any:
  - (a) Approved Outline Plan; and
  - (b) management plans, following technical certification/ approval in accordance with procedures set out in the applicable conditions:
    - (i) Construction Management Plan (CMP)
    - (ii) Construction Noise and Vibration Management Plan (CNVMP)
    - (iii) Erosion and Sediment Control Plan (E&SCP)
    - (iv) Landscape and Public Access Plan (LPAP)
    - (v) Traffic Management Plan (Construction) (TMP)
    - (vi) Infrastructure & Streetscape Management Plan (I&SMP)
    - (vii) Stormwater Management Plan (SMP)
2. Should the Council refuse to certify any of the management plans in the conditions below, the Requiring Authority shall submit a revised management plan to the Territorial Authority for written technical certification. The written technical certification process shall follow the same procedure and requirements as outlined in condition related to that management plan.

**ADVICE NOTE:** Certification from Council (or withholding of written technical certification) shall be based on its assessment of whether the matters being considered achieve the purpose and objectives of condition and contain the specified information and requirements. Should the Territorial Authority refuse to certify any management plan, then the Territorial Authority will provide a letter outlining why written technical certification is refused based on the parameters contained within the management plan condition(s).
3. Any management plan may be amended at any time by the Requiring Authority. Any amendments shall be submitted by the Requiring Authority to the Territorial Authority for written technical certification. If the amended management plan is certified, then it becomes the certified management plan for the purposes of any management plan condition. Any amendments to a management plan shall be:
  - a) in accordance with achieving the purpose of the management plan condition);
  - and
  - b) be prepared by an appropriately qualified person.

### Construction Management Plan

4. At least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), the Requiring Authority shall submit to the Territorial Authority for written technical certification a **CMP**. The purpose of the **CMP** is to ensure that appropriate measures are in place to

avoid, remedy or mitigate potential adverse effects associated with the construction activities.

5. The **CMP** shall be prepared by a suitably qualified and experienced person and shall contain, but is not necessarily limited to, the following matters:

- (a) anticipated date of commencement of works;
- (b) a description of the proposed works;
- (c) a programme of works, including sequencing of works, hours of operation and anticipated duration of works;
- (d) contact details for site manager, including their phone number, email address and address for service;
- (e) a list of key personnel and communications protocols;
- (f) procedures to ensure compliance with the conditions of the relevant consents and permits;
- (g) site compound location shown on a plan (including areas for site offices and site parking);
- (h) details of any measures to control mud and detritus from the site onto the road, including any on-site wheel washing and off site road sweeping, to be undertaken in conjunction with and in consideration of the Erosion & Sediment Control Plan;
- (i) swept path analysis of delivery trucks through the access;
- (j) The location of any site-office and portable toilet facilities;
- (k) An accurate location of all existing underground network utilities and identify, using physical indicators placed on the ground, showing specific surveyed locations of the existing network utilities and measures to ensure all personnel are made aware of these utilities;
- (l) Measures to ensure ongoing access is available to all utility operators for the use and maintenance during the entire construction period, including a communication procedure with those utility operators;
- (m) complaints procedures and register;
- (n) monitoring, audit and review programme;
- (o) signage at the site informing of construction works and complaints procedure.

6. All construction works, including all off-loading or materials onto the subject site, shall be restricted to the hours between 7.30am to 6pm Monday to Saturday. Quiet setting up of



site (not including running of plant or machinery) may start at 6:30am. No work shall occur on a Sunday or Public Holiday.

### Construction Noise and Vibration Management Plan

7. At least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), the Requiring Authority shall submit a **CNVMP** to the Territorial Authority for written technical certification. The **CNVMP** shall be prepared by a suitably qualified and experienced person. The purpose of the **CNVMP** is to identify the noise and vibration performance standards that will, where practicable, be complied with and sets the framework for the development and implementation of particular noise and vibration management and control methodologies to minimise adverse effects on the health and safety of nearby residents (or other sensitive land uses) and to minimise any exceedance of the criteria set out in Conditions 8 and 9 below.
8. The **CNVMP** shall be in accordance with NZS 6803:1999 *Acoustics - Construction Noise* (NZS 6803:1999), and include the procedures, methods and measures for the control of noise associated with all relevant construction works authorized by this designation, which shall be formulated to comply, as far as practicable, with noise criteria developed with regards to Table 2 of NZS 6803:1999.

Time of week	Time Period	“Long-term” duration construction (dBA)	
		L <sub>Aeq</sub>	L <sub>A</sub> F <sub>max</sub>
Noise criteria at residential buildings			
Weekdays	0630-0730	55	75
	0730-1800	70	85
	1800-2000	65	80
	2000-0630	45	75
Saturdays	0630-0730	45	75
	0730-1800	70	85
	1800-2000	45	75
	2000-0630	45	75
Sundays and public holidays	0630-0730	45	75
	0730-1800	55	85
	1800-2000	45	75
	2000-0630	45	75

**ADVICE NOTE:** There may be occasions when it is not practicable for construction activity to achieve the guideline criteria in the standard. In such circumstances, mitigation that is consistent with the best practicable option shall be adopted.

9. The **CNVMP** shall include specific details relating to methods for the control of ground vibrations associated with all relevant Project construction works, which shall be

formulated to comply with German Standard DIN 4150-3:1999 *Structural vibration - Effects of vibration on structures*.

10. The **CNVMP** shall include, but is not necessarily limited to, the following information:

- (a) Description of the works, laydown areas, anticipated equipment/processes and their scheduled durations;
- (b) Hours of operation including times and days when construction activities causing noise and/or vibration would occur;
- (c) The construction noise and vibration criteria for the project;
- (d) Identification of affected dwellings and other sensitive activities where noise and vibration criteria apply;
- (e) Mitigation options, including alternative strategies where full compliance with the relevant noise and/or vibration criteria cannot be achieved;
- (f) Requirements for management schedules containing site specific information. Specific management schedules shall include:
  - i. Construction vehicles delivery speeds and restrictions on routes and times for deliveries; and
  - ii. Notification to neighbouring residents.
- (g) Methods and frequency for monitoring and reporting on construction noise and vibration;
- (h) Procedures and methods for maintaining contact with stakeholders, notifying of proposed construction activities and handling noise and vibration complaints;
- (i) Construction equipment operator training procedures and expected construction site behaviours;
- (j) Contact numbers for key staff, staff responsible for noise and vibration assessment and Council officers;
- (k) Undertake a pre-construction building condition survey of buildings if at-risk from construction vibration;
- (l) Communicate and consult with affected residents regarding construction noise and vibration effects, including a letter-drop prior to the commencement of works;
- (m) Complaints procedures and register; and
- (n) Monitoring, audit and review programme.

## Erosion and Sediment Control Plan

11. At least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), the Requiring Authority shall submit for written technical certification an **E&SCP** to the Council. The purpose of the **E&SCP** shall be to minimise sediment discharge from the site to the extent practicable.
12. The **E&SCP** shall as a minimum be based upon and incorporate those specific principles and practices which are appropriate for the Project Works and contained within the document titled *“Erosion and Sediment Control – Guidelines for the Wellington Region, dated June 2006”*, and shall include at least the following:
  - (a) details of all principles, procedures and practices that will be implemented to undertake erosion and sediment control to minimise the potential for sediment discharge from the site;
  - (b) the design criteria, supporting calculations, dimensions and contributing catchments of all key erosion and sediment control structures, including (but not limited to) diversion bunds/channels and decanting structures (if any).
  - (c) a site contour plan of a suitable scale to identify:
    - i. the extent of soil disturbance and vegetation removal;
    - ii. areas of cut and fill;
    - iii. locations of topsoil stockpiles;
    - iv. all key erosion and sediment control structures;
    - v. the boundaries and area of catchments contributing to all erosion and sediment control devices;
    - vi. the locations of all specific points of discharge to the environment; and
    - vii. any other relevant site information.
  - (d) Construction timetable for the erosion and sediment control works and the earthworks proposed;
  - (e) Specific design and construction details (including erosion and sediment controls) for all earthworks;
  - (f) Timetable and nature of progressive site rehabilitation and re-vegetation proposed;
  - (g) Maintenance, monitoring and reporting procedures;

- (h) Rainfall response and contingency measures including procedures to minimise adverse effects in the event of extreme rainfall events and/or the failure of any key erosion and sediment control structures;
- (i) Procedures and timing for review and/or amendment to the **E&SCP**; and
- (j) Identification and contact details of personnel responsible for the operation and maintenance of all key erosion and sediment control structures.

**ADVICE NOTE:** In respect of any of the principles or practices or specific items ((a) to (j) that are required for an E&SCP at Condition 12 above, where those principles, practices or items are also addressed in any Erosion and Sediment Control Plan that is approved or certified by the Horizons Regional Council for any regional resource consent that may be required, such written technical certification may be accepted by the Council as deemed certification for the purposes of this condition.

**ADVICE NOTE:** Certification from the Council (or withholding of written technical certification) shall be based on its assessment of whether the matters being considered achieve the objective of minimising sediment discharges from the site to the extent practicable. Should the Council refuse to certify the E&SCP, then the Council will provide a letter outlining why written technical certification is refused based on the parameters contained in this condition.

13. The Requiring Authority shall ensure that a copy of the **E&SCP**, including any certified amendments, is kept onsite and this copy is updated within **5 working days** of any amendments being certified.

### **Dust Control**

14. All operations on the site shall, as far as reasonably practicable, be carried out in such a manner as to avoid the generation of objectionable or offensive dust arising from construction works going beyond the boundary of designation area. The Requiring Authority must ensure that dust sources are regularly wetted during the construction period.

### **Landscape and Public Access Plan**

15. At least 20 working days prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), the Requiring Authority shall submit a detailed Landscape and Public Access Plan ("**LPAP**") to the Council for written technical certification. The purpose of the LPAP is to demonstrate how the existing landscape will be modified; and, the soft landscape works are to be implemented and maintained; and, how public access from Abby Road to Manga o Tane Reserve will be provided and maintained upon the completion of the works. In particular, the LPAP is to achieve the following outcomes:
- (a) That the land formation undertaken to construct the road is designed to integrate with the existing contour of the gully;

- (b) Ensure that the land between the proposed road and Manga o Tane Reserve will be re-vegetated with native species that will match those within the Manga o Tane Reserve;
  - (c) That all road embankments either side of the road are re-vegetated (where located within the designation boundary); and,
  - (d) That public pedestrian access is provided within the proposed road corridor with public pedestrian access provided to the Manga o Tane Reserve (within the boundaries of the designation).
16. The LPAP must be prepared by a suitably experienced Landscape Architect and shall be in general accordance with the plan prepared by Hudson Associates Landscape Architects, titled: "Abby Road Northern Designation", DWG No. 62-003, Revision C, dated 2/09/2020. The LPAP must include, but is not necessarily limited to:
- (a) Existing contours of the area of land affected;
  - (b) All areas of proposed earthworks cuts and fills, including area and volumes;
  - (c) The final contours proposed following the completion of earthworks;
  - (d) Vegetation that is to be retained within the designation boundaries and any protection this vegetation is to be afforded during construction;
  - (e) the species, grade, spacing/location, and anticipated maximum height of all vegetation to be planted;
  - (f) how the land between the proposed road and Manga o Tane Reserve will be re-vegetated with native species;
  - (g) Details of any consultation and the views of Tanenuiarangi o Manawatu, and the extent to which this has been incorporated into the LPAP.
  - (h) specifications for any other landscape works treatments, such as mulching and tree-staking as appropriate, including the progressive surfacing, top soiling and re-vegetation immediately following completion of each stage of the works (if required);
  - (i) any specific vegetation maintenance procedures to be followed and the length of time that these will be undertaken;
  - (j) procedures for the inspection of vegetation health and replacement of dead or dying species (where required) during the 18 month establishment period; and,
  - (k) the extent to which condition 22 will be achieved with LED street lamps minimising light-spill away from the boundaries of the designation.

- (l) the location, width and grade of any footpaths with the road and the public pedestrian access to Manga o Tane Reserve.
17. The works identified in the **LPAP**, must be completed by the Requiring Authority within **12 months** of completion of construction. The plantings must be monitored for **18 months** from the time of planting in order to allow for plant establishment to the satisfaction of the Council. This includes the removal of weeds within the vicinity of the plantings and the replacement of plants that die or are removed unlawfully within this period in the same location, with the same species. Any plants that fail must be replaced by the Requiring Authority.

### **Traffic Management Plan (Construction)**

18. No less than **20 working days** prior to the commencement of any works on the site, a **TMP** prepared by a suitably qualified and experienced practitioner to the Council (in liaison with the Roding Manager) for written technical certification. The purpose of the certified **TMP** is to set out how the effects of traffic on the surrounding road network are to be minimised during construction using reasonably practicable measures and the methods to be used to achieve these effects.
19. The certified **TMP** must include, but not be limited to, the following information, methods, measures and techniques to the achieve its purpose:
- (a) Purpose and scope of the plan;
  - (b) Relationship with other management plans;
  - (c) Hours of construction traffic activity;
  - (d) Estimated numbers and sizes of construction vehicles;
  - (e) Controlled internal and external access routes;
  - (f) Parking locations for construction staff;
  - (g) How safety risks on the land transport network can be minimized.
  - (h) Access and delivery locations, including swept path analysis for largest vehicles;
  - (i) Likely construction access routes to and from the site;
  - (j) Management of oversize loads;
  - (k) Wheel cleaning and covering of loads; and
  - (l) Management of any complaints.

### Accidental Discovery

20. Prior to the commencement of works (including site investigations which disturb the soil), the Requiring Authority shall develop and have in place a procedure that is to be followed if any urupā, taonga (significant artefacts), kōiwi (human remains) or archaeological sites (whether recorded or unrecorded) are disturbed and/ or discovered during site works, including:
- (a) works in the location of any accidental discovery immediately cease; and
  - (b) the area is to be secured in a way that ensures any remains or artefacts are untouched.
21. In the event of an archaeological site, waahi tapu or koiwi being discovered or disturbed during the works authorised by this designation, the requiring authority shall immediately cease further work and inform:
- (a) the relevant local iwi;
  - (b) the Council (Council's Compliance Monitoring Officer); and
  - (c) Heritage New Zealand Pouhere Taonga.

Further work at the site shall be suspended while iwi carry out their procedures for removal of taonga. The Council's Compliance Monitoring Officer will advise the Requiring Authority when work at the site may recommence.

**ADVICE NOTE:** In the event that human remains are found the police should be contacted immediately and all works shall cease until advice is given that works can recommence.

**ADVICE NOTE:** The Requiring Authority is advised to contact the Heritage New Zealand Pouhere Taonga (HNZPT) if the presence of an archaeological site is suspected. Work affecting archaeological sites is subject to a consent process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity associated with this proposal, such as earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority (consent) from HNZPT must be obtained for the work to proceed lawfully. Heritage New Zealand Pouhere Taonga 2014 contains penalties for unauthorised site damage.

### Infrastructure & Streetscape Management Plan

22. At least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations) the Requiring Authority shall submit to the Council a **I&SMP** for written technical certification. The purpose of the I&SMP is to demonstrate:

- (a) how the proposed roading design, infrastructure and streetscape works are to be designed and constructed in accordance with the Territorial Authority's ESLD; and,
- (b) to demonstrate the location, design of any LED street lamps will minimise light-spill beyond the boundaries of the designation.

**ADVICE NOTE:** In considering written technical certification of the **I&SMP**, the Council's Senior Planner will consult with Council's Subdivisions Engineer; Roading Manager; and, Stormwater Engineer.

23. The **I&SMP** must include, but be not limited to demonstrating the following:

- (a) Its relationship with other management plans, including integration with the **SMP** required under condition 29;
- (b) Engineering Plans demonstrating the detailed design for the project works;
- (c) The outcome of the pre-construction road safety audit on the detailed design, as required by condition 26;
- (d) Location, spatial allocation and dimensions of all: footpaths, formed road width(s) proposed vehicle access crossings (if any), berms and any other street infrastructure;
- (e) The location and heights (where relevant) of all kerb and channel, vehicle crossings, intersections, on-street parking, road carriageways and street lighting.
- (f) A spatial layout of the roading network; including connections to Johnstone Drive, Abby Road and connections to Adderstone Reserve.
- (g) the location and capacity of all services;
- (h) the location of any secondary flow path for stormwater;
- (i) finished site contours for the site;
- (j) the location, design and specifications of any LED street lamps designed to minimise light-spill beyond the boundaries of the designation;
- (k) identify a Technical Representative (being a Professional Surveyor or Chartered Professional Engineer) to monitor the construction of all approved works in accordance with level CM 4 of IPENZ construction monitoring set out in Council's ESLD.

24. The Engineering Plans (demonstrating detailed design) required by condition 23(b) must be prepared by a Chartered Professional Engineer or Professional Surveyor with appropriate qualifications acceptable to Council.



## Road Safety Design Audits

25. Detailed Road Safety Design Audits of the Abby Road extension and its intersection with Johnstone Drive must be carried out for the Requiring Authority by an independent, suitably qualified and experienced road safety auditor at the following stages:

- (a) pre-construction Detailed Design; and,
- (b) pre-opening/ post-construction.

26. The Detailed Road Safety Design Audits required by condition 25 must be undertaken in accordance with the *'New Zealand Transport Agency Road Safety Audit Procedures for Projects Guidelines – Interim release May 2013'* and provided to the Council within 1 month of completion of each stage.

**ADVICE NOTE:** In satisfying this condition, the auditor will make recommendations (if necessary) in an audit document for the consideration of the Requiring Authority. The decision on whether to accept, modify or reject any recommendation, including reasons, will be recorded in the audit document.

## Geotechnical Design and Supervision

27. The requiring Authority shall, at least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations), submit to the Council a **Geotechnical Report** by a suitably qualified and experienced geotechnical engineer. The Geotechnical Report must:

- (a) assess the design of all earthworks to be undertaken within the designation boundaries.
- (b) provides a professional opinion and recommendations with respect to any permanent areas of earthworks cuts or fills to ensure stability during and following the cut or filling operation; and drainage is installed where fill is provided, if deemed by the geotechnical engineer to be required, to ensure long term stability of the areas of fill.

28. The Requiring Authority must appoint and have approved by Council a Technical Representative (being Chartered Professional Engineer experienced in the field of geotechnical assessment) to monitor the construction of all approved earthworks in accordance with level CM 4 of IPENZ construction monitoring set out in Council's ESLD.

## Stormwater Management Plan

29. Prior to the written technical certification of the **I&SMP** and at least **20 working days** prior to the commencement of any earthworks or construction activity within the designation boundaries (excluding site investigations) the Requiring Authority shall submit to the Council a **SMP** for written technical certification. The **SMP** must be prepared by a suitably qualified and experienced stormwater professional and achieve the following purpose:

- (a) be designed to comply with the Council's ESLD;

- (b) Mitigate “post-development” flow to “pre-development” levels for the 2-year through 100-year Annual Return Interval design storm; and,
- (c) Achieve effective treatment of stormwater runoff up to the 90% percentile rainfall event (15 mm depth) in an appropriate stormwater treatment facility.

30. The certified **SMP** must include, but is not limited to, the following:

- (a) Comprehensive details of the engineering calculations of both pre-development and post-development stormwater runoff flows from all hardstand areas associated with the road extension;
- (b) Identification of the location, sizing, placement and configuration of stormwater quantity and quality controls;
- (c) Confirmation of the locations of secondary flow paths;
- (d) Details of how any stormwater infrastructure will connect to the surrounding network;
- (e) Details of any consultation and the views of Tanenuiarangi o Manawatu, and the extent to which this has been incorporated into the SMP;
- (f) An explanation of how the SMP will meet the requirements of the ESLD.

31. No construction or earthworks activities (excluding site investigations) shall commence on the site prior to the **SMP** being certified.