

Report pursuant to s 42A Resource Management Act 1991

**In the matter of:**

A Notice of Requirement to construct, operate, use, maintain and improve approximately 11.5km of new State highway connection between Ashhurst and Woodville

**And:**

A hearing by Manawatū District Council, Palmerston North City Council and Tararua District Council pursuant to s 102

**Requiring Authority:**

New Zealand Transport Agency

**Hearing date:**

5 April 2019

NJ-015652-992-992-V1-e



**Section 42A Technical Evidence Addendum: Planning**

**By: Phil Percy and Anita Coplestone**

NJ-015652-992-992-V1-e



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# **1 Introduction**

1. Our names are Phillip Percy and Anita Copplestone.
2. We jointly prepared the s 42A planning report on behalf of Palmerston North City Council, Manawatū District Council and Tararua District Council in relation to the NOR for the Te Ahu a Turanga – Manawatū-Tararua Highway Project. We have also prepared responses to the Panel's questions issued prior to the hearing.
3. Our qualifications and experience are set out in our s 42A report.
4. We repeat the confirmation given in our s 42A report that we have read the 'Code of Conduct' for expert witnesses and that our evidence has been prepared in compliance with that code.
5. In this addendum we use the same defined terms as in our planning report.
6. In this addendum to our s 42A planning report we provide the following:
  - a) set out the remaining key issues in contention as we see them;
  - b) respond to points raised in expert evidence after our s 42A report was prepared;
  - c) respond to matters that have been discussed during the hearing; and
  - d) provide an update on draft conditions.

# **2 Key issues which are still in contention**

7. A number of issues raised in submissions and in our s 42A report have been resolved, or are at least nearer to being resolved.
8. For the purpose of this addendum, we focus on the larger issues that remain in contention:
  - a) Whether adequate provision has been made to avoid, remedy or mitigate adverse effects on the safety of vulnerable road users;
  - b) How potential adverse effects yet to be identified by iwi should be dealt with;

- c) Addressing adverse effects on the AgResearch long term experiment;
- d) Addressing adverse effects on natural character of wetlands, and rivers, lakes and their margins;
- e) Addressing adverse effects on indigenous ecological biodiversity;
- f) Management of traffic safety effects in Woodville;
- g) Whether it is appropriate to recommend additions to the requirement to provide for potential future recreation opportunities;
- h) What role the CEDF plays and how it is refined.

## **2.1 Effects on vulnerable road users**

9. It is a fact that the existing environment is one where there is currently no road traversing the Ruahine Range in the NOR corridor. The existing environment includes two routes across the Tararua and Ruahine Ranges, being the Pahiatua Track and Saddle Road. The construction of the new road will mean that there will be three roads traversing the ranges. The new road will therefore introduce effects, positive and adverse, into the existing environment.
10. We agree that NZTA have considered and largely responded to adverse effects of the Project on vulnerable users travelling between Ashhurst Bridge and the Manawatū Gorge Scenic Reserve. However, we do not consider that adverse effects on vulnerable users travelling between the Manawatū Scenic Reserve and the eastern roundabout have been properly acknowledged or that those adverse effects will be avoided, remedied or mitigated. Ms Fraser is also concerned about the lack of provision for vulnerable users between the Ashhurst Bridge and Cambridge Avenue, and within Woodville,
11. In the DBC, NZTA expressly chose not to make specific provision on the proposed road for vulnerable users. Therefore the NOR didn't identify any adverse effects of the proposed road on vulnerable users. On the technical evidence, there are adverse effects, and there are alternatives available for addressing those effects including a

wider shoulder that meet best practice or a separated shared path. We agree with Ms Fraser that neither have been adequately assessed by NZTA.

12. Ms McLeod concludes in her evidence that *'it is my conclusion that allowing the requirements will result in significant positive effects in respect of traffic safety and efficiency; network capacity; and the reliability and resilience of the network, and deliver an outcome consistent with the relevant objectives and policies of RMA and LTMA plans'*<sup>1</sup>. However, Ms McLeod does not assess the adverse effects of the new road on vulnerable users. The closest her evidence comes to considering adverse effects of the new road on vulnerable user safety is to say *'Mr Dunlop concludes that the crash risk for cyclists on the new road has reduced as a result of these changes and is significantly less than other sections of the wider transport network.'* (our emphasis). The changes referred to are summarized at paragraph 118 of Ms McLeod's EIC.
13. We do not consider that reducing the crash risk in the wider network is the correct way to assess the effect on vulnerable users.
14. We do not consider that adverse effects on the health and safety of road users are sufficiently avoided or mitigated, despite the improvements that are advanced through evidence, including the clip on to the Ashhurst bridge and the offer for a shared path from the Ashhurst bridge to the scenic reserve carpark.
15. Ms McLeod's latest draft conditions propose that further safety audits are provided to the Territorial Authorities after they have been completed (Condition 26B of Ms McLeod's 2 April conditions). While a road safety audit is useful and has been recommended by Ms Fraser, the recommendations of the audit are non-binding and we have little confidence based on the Agency's response to the previous safety audit recommendations, that any future recommendation will be adopted. While undertaking safety audits in the future will be useful, it provides no certainty that the effects already identified will be avoided or mitigated. We consider, based on Ms Fraser's

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<sup>1</sup> Paragraph 120 of EIC

recommendation, that there is justification to impose a condition now, and agree with her recommendation for a separated shared path

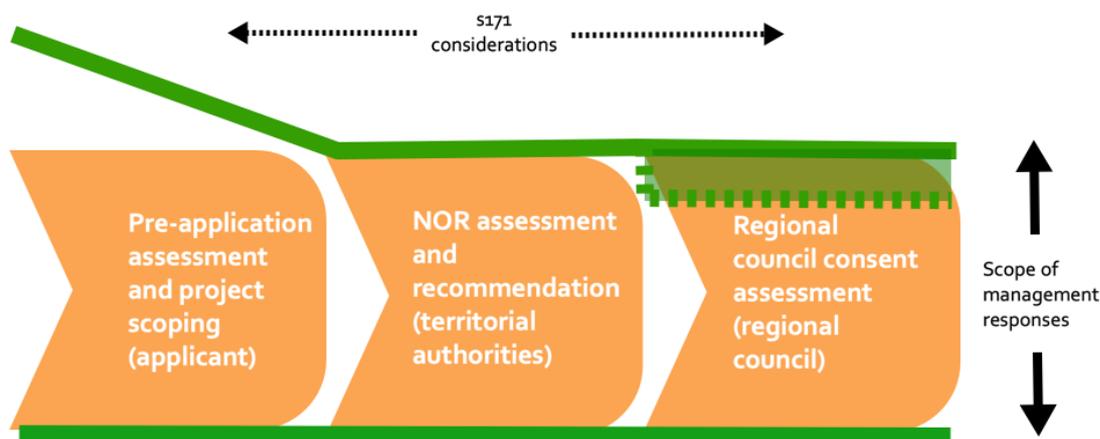
16. We have not seen any evidence that says that the relevant objectives and policies of the planning documents are not applicable. We also consider that Ms McLeod's narrow interpretation of the transport policy documents (GPS, NLTP, RLTP) is not an accurate application of those policies and that there is clear consistency within those documents that safety, including safety of vulnerable users, is an outcome to be achieved by the Project.
17. We have heard the discussion with submitters and witnesses concerning the possible mitigation options, and in particular testing the options of widening the shoulder to meet best practice or providing a separated shared path. We recommend a separated shared path in accordance with Ms Fraser's advice regarding the additional safety that it provides, and we consider that such an option best aligns with the respective policies that encourage usage, safety and access, and that providing for the wellbeing, and the health and safety of road users, aligns with the sustainable management purpose of the RMA.

## **2.2 Influence of NOR on regional council consenting process**

18. In our view, the NOR process is near the front end of a planning 'pipeline'. The matters that the Panel must have regard to under s 171 infer a need to consider how effects of allowing a requirement will play out throughout the various planning processes that the Project will need to pass through. The conditions and ultimately the scope for design alternatives that are imposed/allowed through the NOR process can have the effect of constraining the subsequence processes.
19. In the case of this Project, there are at least two aspects that will impinge on the scope of regional council processes. Those include:
  - a) the condition offered by NZTA in response to Meridian concerns about the effects of future planting on windfarm efficiency, which may inhibit mitigation and offset planting opportunities necessary to avoid, remedy or mitigate adverse effects, and
  - b) the constraints that the designation boundaries impose on the ability to find design solutions that avoid high-value ecological areas, which restricts the ability for the

full effects management hierarchy in Chapter 6 and Chapter 13 of the One Plan to be explored at a later date.

20. Figure 1 below indicates the choke effect that those two aspects of the NOR may have on regional council consent decision-making. The green lines above and below the process steps represent the scope of management responses available along the process. Decisions at each step of the process influence the scope of management responses available for the latter stage. The dotted top line within the regional council consenting process stage represents a potential scope constraint that could be imposed by recommendations and decision at the NOR stage.



**Figure 1**

21. As we pointed out in our response to the Panel’s question, consideration of the planning pathway is not about pre-determining the regional council consent decisions, but to ensure that the NOR does not constrain the ability for the regional council to exercise its functions and powers when considering Policy 13-4.
22. The evidence of Boyden Evans (NZTA), John Hudson and the ecologists all describe the opportunities to avoid or mitigate adverse effects on stream and riparian environments by enhanced planting within the catchments affected. Those mitigations are likely to be relevant considerations to regional council consent decisions, particularly when considering effects on freshwater ecology, natural character, and indigenous biological diversity. If those potential mitigations are not available because of the Meridian

planting condition (for example), it increases the potential that the Regional Council reaches the conclusion that the adverse effects of the activities cannot be avoided, remedied or mitigated.

23. Similarly, if off-setting is an option in those situations, the Meridian condition would have the effect of excluding catchments within the windfarm footprint from being available for offsets. As the ecology experts have explained, off-setting is most appropriately applied as close to the impacted site as possible. They consider that freshwater ecology effects offsetting is unlikely to be entirely achievable within the designation but 'should be implemented into the same sub-catchment as effects occur'<sup>2</sup>. When the Te Apiti Windfarm area is overlaid on the catchments through which the designation will pass, many of the streams within the sub-catchments are within the windfarm area and will therefore be subject to the Meridian condition.
24. It is relevant that, when the Regional Council considers resource consent applications for non-complying activities, the adverse effects test in s 104D does not allow for the consideration of positive effects (only adverse effects). That is relevant because, for the purposes of the NOR, the Agency is in effect offsetting adverse effects (such as those on indigenous biodiversity, natural character and other aspects that will also be addressed by the Regional Council in its consenting capacity) with positive effects (such as social and economic benefits arising from reconnecting the wider region). The 'net effect' calculation the Agency applies in the NOR process will not be applicable to future s 104D tests.
25. In our opinion (in the context of the above discussion), the implication of this for a s 171 assessment is that the Panel needs to have particular regard to the *adverse* effects of activities specifically in light of the future Regional Council consenting processes (which are directed by the One Plan framework).
26. This will involve determining whether offsetting is available as a step in the mitigation (effects) hierarchy. If there is uncertainty as to whether the objectives and policies can

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<sup>2</sup> Page 9, Joint Statement of Ecology Experts (Freshwater Ecology and Natural Character), 19 March 2019.

be met, the s 42A reporting team has suggested that the NOR corridor provides for avoidance. By that we mean that the spatial extent of the corridor provides opportunity for the alignment (whatever that may be) to respond to the directive avoidance policies within the One Plan, as may be required. As Mr Jessen spoke to in legal submissions it cannot be assumed that offsetting is available in every case when managing effects. For this reason, we say that the Panel needs to consider (as far as it can) the applicability of 13-4.

### **2.3 Alternative alignments**

27. Several witnesses have raised the question of whether there are alternative alignments available that would allow adverse effects to be avoided or mitigated, but which would fall outside the current corridor boundaries.
28. Beyond the question of adequacy of the initial alternatives assessment, reconsideration of designation boundary is relevant within the NOR process where there are alternations (such as those offered to date by NZTA or where the Panel is considering recommendations to modify the requirement) or increased obligations are likely to be imposed (such as through conditions). If, for example, the addition of a shared path by way of condition, which was not anticipated when NZTA defined the corridor boundaries, requires a slightly wider footprint in some locations, it would be reasonable for the Panel to consider whether a boundary adjustment is a consequential modification arising from imposing the condition. As Mr Jessen and Ms Johnston explain in their legal submissions, it is open to the Panel to recommend modification to the requirement, including its boundaries, under s 171.

### **2.4 Natural character and indigenous biological diversity**

29. There are significant adverse effects on indigenous biological diversity and, significant effects on natural character (at least in the western QEII Covenant catchment). In that catchment, by Mr Evan's assessment, the natural character of the whole stream will reduce from high to moderate high. In our opinion, it is not consistent with the preservation of an area of high natural character for the Project to reduce the natural character to a level that is less than high.
30. Referring to the Detailed Business Case, NZTA undertook no analysis of natural character, including none at the preferred option level. NZTA provided cursory

consideration of alternative routes to avoid areas of significant biodiversity but no documented evidence to support the conclusions on the adequacy of those alternative options (for example, no quantification of additional earthworks volumes, effects on landscape, value of habitat along the theoretical realignment). No alternative design speeds (which might influence road geometry and therefore road alignment) appear to have been considered for the preferred option (Option 3).<sup>3</sup>

## **2.5 Addressing adverse effects on natural character of wetlands, and rivers, lakes and their margins**

31. The legal submissions of Mr Jessen and Ms Johnston summarise the statutory and policy considerations relating to natural character. We agree with that summary. In particular, we agree that it is relevant and necessary to comprehensively assess the effects of the Project on natural character. That is both because:
- a) of the direction provided in the Act, and in the relevant objectives and policies of the district plans and the One Plan; and
  - b) to ensure that the final form of the Requirement does not unduly influence or constrain future regional council consent decisions.
32. The One Plan objectives and policies are directive and include clear effects avoidance expectations. For similar reasons as to the need to carefully consider the full set of effects associated with indigenous biodiversity, more than a high-level consideration of natural character effects is required at this stage. Simply put, if any feasible road alignment within the designation corridor will result in effects that will be inconsistent with the objectives and policies then the NOR should provide for avoidance within its spatial extent to ensure the designation is 'fit for purpose'.

## **2.6 Addressing adverse effects on indigenous ecological biodiversity**

33. As Mr Jessen explained when presenting his legal submissions, s 171 RMA obliges the Panel to consider the effects of the project on indigenous biological diversity. In doing

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<sup>3</sup> David Dunlop indicated alternative speeds were considered for option 2, not option 3.

so, the provisions of the One Plan, including Policy 13-4 in relation to off-setting, are relevant.

34. The questions from Commissioner Van Voorthuysen relating to when compensation becomes relevant indicated a line of inquiry that, if there is insufficient certainty that offsets will be available (and therefore residual adverse effects may not be resolved by that path) then the next step is to provide for compensation. While I can see a certain logic to that reasoning, it does not align well with the effect management hierarchy set out in Policy 13-4 and in biodiversity management guidance. The technical experts agree that avoidance of adverse effects is the starting point.
35. Where there is insufficient information to determine, at this stage, whether or not avoidance is possible, the response is not to move down the management hierarchy, but to resolve the information deficit.
36. The s 6(c) RMA outcome for indigenous biodiversity is to 'preserve' it. Avoiding adverse effects comes closest to that outcome, with the progression down the mitigation hierarchy requiring progressively greater levels of effort and action to achieve the same outcome. Deviating from the simplest management response on the basis of a lack of information (rather than on the basis that avoidance is not actually possible) does not seem to be consistent with either good planning practice or with sustainable management.
37. As we have observed in our evidence, and as Mr Jessen pointed out in his submissions, the primary responsibility of the Panel in making recommendations on the NOR is to ensure that it provides enough opportunity for the Project to be constructed in a way that will meet the objectives and policies of the planning documents (primarily the One Plan in the case of indigenous biodiversity). Part of that assessment involves consideration of whether an offset is appropriate in the circumstances (see section 2.5 above).
38. As has been pointed out by several submitters, and NZTA, the regional council consenting process provides the opportunity for the details of the indigenous biodiversity effects to be addressed. It will be at that point that detailed design will provide certainty as to the actual effects to be addressed, and the degree to which those areas are able to be avoided, remedied, mitigated or, if appropriate, offset.

39. The offering up of 'offsetting' conditions by NZTA has perhaps confused matters, in that it has encouraged an assessment of the adequacy of those conditions as if they are to be 'comprehensive' offsetting conditions. In assessing the NOR against the matters in s 171, and given that the regional council consenting process is intended to deal with the specific details of biodiversity protection, offsetting conditions on the NOR are not actually necessary. If the Panel is satisfied that the Requirement provides sufficient scope for the regional council consenting process to occur in line with the objectives and policies of the One Plan, a condition is not required to confirm that.
40. In our view, the offered conditions can be retained, but they should not be extrapolated into more than just an acknowledgement of a more comprehensive response to come.

## **2.7 Quantum of vegetation affected**

41. The area of vegetation affected is of little relevance to the consideration of indigenous biodiversity effects. Biodiversity management is primarily driven by an assessment of threat or conservation status of the habitats. If the habitat type is rare, threatened or at risk, the impact of removal of even a small area of vegetation is likely to have a significant adverse effect. The cumulative loss of small areas of habitat has largely been the reason why such habitats are now classified as rare, threatened or at risk. We do not consider that significance of habitat loss can be determined simply on the percentage loss.

## **2.8 Opportunities for positive effects to be 'imposed' through conditions**

42. The Panel has discussed with several witnesses the issue of whether it is appropriate to require positive effects to be created through the imposition of conditions (or a recommendation to modify). A common point of discussion was whether provision of assets to enhance recreational use of the area adjacent to the Project was appropriate. NZTA's position is that it is not.
43. We agree with Mr Murphy's observation that where there are several options available to address an adverse effect, it is relevant to consider the positive effects that each of those options might contribute, and that those positive effects should be a consideration in the option selection process. We agree with Mr Murphy's observation that, particularly where a shared path is required to address vulnerable user safety effects, the

opportunities to maximise consequential recreational benefits to the wider area is at least a consideration for the Agency.

## **2.9 Outline Plan v Certification of Management Plans**

44. Certification is proposed in conditions to provide for flexibility for adaption and modification to management plans to happen without the need to go back for a full variation to an approved outline plan. This provides for efficiency in process. It does however limit the ability for the Requiring Authority to reject the approved management plan certification (and potentially to reject non-certification) as NZTA would always have the option of submitting a further outline plan.
45. Our understanding of s 176A of the Act (outline plans), is that it does not make provision for amendments to outline plans. Any changes to works or management plans that were approved as part of a previous outline plan would need to be addressed by a new outline plan that would need to be submitted before the works commenced. In reality, changes to management plans will need to occur once works they relate to have commenced – management plans by their nature can be relatively dynamic documents that allow for adaptive management as a complex and large-scale project progresses.
46. Commissioner Van Voorthuysen asked whether Regional Council relevant conditions, such as indigenous biodiversity conditions, could be certified by the Regional Council rather than the TAs. I do not consider that such an approach is appropriate or necessary.
47. The need for indigenous biological diversity (IBD) conditions on the NOR is in fact doubtful given it is the function of the Regional Council to control those matters through resource consents. A primary responsibility of the Panel at this stage is to be satisfied that the effects of allowing the designation, including effects on regional council matters, can be adequately addressed in line with statutory and policy direction. The NOR does not need to include conditions to achieve this; only a robust examination of the effects and how they can be addressed.
48. As Mr Lambie observes in relation to IBD, the ECR conditions provide an unrefined set of offset expectations, but a comprehensive set of offset conditions would need to be significantly more specific. This would include where offsets will be applied, how those offsets will be secured and managed over time, etc. As the technical experts agree, there

is insufficient detail of the actual road design to enable the actual offsets (if they are appropriate) to be specified.

49. Condition 5(d) of the NZTA draft conditions makes provision for amendments to provide updated information or to reflect changes in design, construction methods or the management of effects without the need for further outline plans. However, that condition provides no recourse to, or opportunity for, the TA's to address the adequacy of those changes – they are required to be accepted. Clause (ii) of that draft condition is subjective and is open to debate around interpretation. Other than that condition, the draft conditions offered by NZTA do not describe how amendments or changes to approved management plans would take place, the assumption being that new outline plans would need to be submitted.
50. An aspect of the Project is that there will be numerous outline plans, many of which will be prepared and submitted throughout the construction phase. However, several management plans will cut across these outline plans, with the outline plans required to incorporate or otherwise reference them. A certification process for the management plans enables them to be independently developed and then applied across multiple outline plans. Such a process also allows management plans to be adapted where changes are necessary to respond to effects or construction adjustments that affect multiple outline plans without the need for all of those outline plans to be re-submitted.
51. If a single outline plan was required which would address the entirety of the construction works, separate certification of management plans would be unnecessary. But given the complexity and extent of the construction works on this Project, and the multiple overlapping outline plans that will be in play, a separate management plan certification process provides for administrative efficiency and consistency of management of effects both spatially and temporally.

## **2.10 Future amendments to designation to address corridor pinch points**

52. The Panel has asked several questions exploring whether there is a need to consider modification to the designation now to account for 'pinch points', or whether these issues can be dealt with in the future via changes to the designation addressed the s 181 RMA.
53. We consider there are benefits in addressing this now, to the extent possible.

- a) There is a clear opportunity now to test the proposed designation as to its appropriateness for delivering the project within its spatial extent while being able to address adverse effects.
- b) The Panel question to Mr Conway for PNCC in relation to assessing whether a condition imposed by the Panel could reasonably be complied with without the need for a future designation amendment is relevant. That would logically apply to all conditions of the consent that are not otherwise offered by the Agency.
- c) The same considerations around effects and impacts on individuals and communities would need to be taken into account for changes both now and in the future, as they relate to notification and process. From a delay perspective, those same changes to the designation boundaries are likely to follow the same or similar processing timeframes. For unforeseen changes required to the designation, those will naturally have to be addressed in the future. However, for foreseeable changes to the designation, consideration should be given to addressing those now to provide certainty both for the Agency but also for the community and landowners.
- d) There are implications of directive avoidance policies under the One Plan, particularly for 'high value' matters such as indigenous biodiversity and natural character matters. While the Agency may decide to amend the designation in the future to achieve the avoidance outcomes for biodiversity and natural character, it is not obliged to. There is also a risk it limits the decision maker at a later date.
- e) As Mr Murphy points out in his addendum, NZTA will be in contact with landowners so future changes to the designation is unlikely to come as a surprise to those landowners. The same point applies to changes that might be proposed now. Landowners are likely to be aware (possibly advised by NZTA) that the NOR process could well result in modifications to the NOR.

## **2.11 AgResearch Trial site's significance**

- 54. The evidence appears to be consistent that the AgResearch LTE is a nationally significant resource. From an objectives and policy assessment perspective, Objective 3-1, and Policy 3-2 of the One Plan apply. There is no definition of 'other physical resources of national or regional importance', however the significance of the LTE would seem to fall

within that phrase. The LTE site is a physical resource, being an area of land that is being used for a particular purpose.

55. Policy 3-1 lists a number of physical resources and infrastructure that are considered to be regionally or nationally important. The policy is not however exclusive and provides for future unlisted resources to be influenced by the policy. That makes planning sense. Such resources may be developed over time and it will not be the case that the RPS will need to be added to in every instance. If a party considers that their resource qualifies as benefiting from the policy, it seems reasonable that they should be able to demonstrate that qualification.
56. In our opinion, based on the evidence that has been presented, the AgResearch LTE is nationally important based on the benefits it provides to scientific research and agricultural practice. The One Plan objectives and policies relating to regional and national important physical resources therefore apply to the s 171 assessment, including considering the effects on the AgResearch LTE.
57. Objective 3-1 states that regard is to be given to the benefits of infrastructure and other physical resources of regional or national importance by recognising and providing for, amongst other things, their operation and maintenance. Under Policy 3-2, the Regional Council and Territorial Authorities must ensure that adverse effects on other physical resources of regional or national importance from other activities are avoided as far as reasonably practicable, including by a number of mechanisms, of which a) and b) are most applicable in this situation:
  - (a) *ensuring that ... other physical resources of regional or national importance, are identified and had regard to in all resource management decision-making, and any development that would adversely affect the operation, maintenance or upgrading of those activities is avoided as far as reasonably practicable.*
  - (b) *ensuring that any new activities that would adversely affect the operation, maintenance or upgrading of ... other physical resources of regional or national importance are not located near existing such resources or such resources allowed by unimplemented resource consents^ or other RMA authorisations.*
58. This is a strong directive.

## **2.12 Flexibility in Condition 26D (Shared pathway condition)**

59. During questions to Palmerston North City Council witnesses, the potential for shared path design flexibility to be provided for in the proposed condition 26D was discussed. Our intention in drafting the condition was that it would provide maximum flexibility in terms of location, with a view to providing NZTA with discretion as to how to incorporate it into the overall design in an efficient way.
60. There was a question as to flexibility of form, and specifically whether there should be flexibility provided for surfacing of the path. The scenario proffered was whether part of the path could be surfaced in something like crushed lime rather than being sealed. Ms Fraser has responded to this in her addendum. I understand her position is that to avoid restricting users of the path, a sealed surface caters for the maximum range of users from expert road cyclists through to recreational cyclists. For that reason, we do not consider that the proposed condition needs to be amended to allow for alternative non-sealed surfaces.
61. There were also questions around the need to retain clauses (c) and (d) of the draft condition, and that they may not be necessary to ensure the outcome. We agree with the response from Mark Read, that without the minimum of guidance proposed, there is a chance that the intended outcomes might not be realised. We do note the influence that a Safety Audit may have on the ultimate design, however. As has been discussed in some detail during the hearing, NZTA do have discretion in whether to adopt the safety audit recommendations. We therefore consider that clauses (c) and (d) of the condition should be retained.

## **2.13 Addressing as-yet unknown Māori cultural effects**

62. The evidence of iwi witnesses has been consistent that there has been insufficient time and resources available to complete cultural impact assessments to inform an assessment of effects of the NOR. While support of the Project in principle is consistent across all iwi participating in the process, iwi also consistently rely on the CEDF as the primary means to address cultural effects once they are identified.
63. We remain concerned that the CEDF, if it remains an open document, provides no basis on which to transparently manage effects at this stage in the process. As we explained in our s 42A planning report, any aspects of the CEDF that are to be relied upon to

address adverse effects should be confirmed and 'locked in' before the Panel makes its recommendation and/or any bottom lines necessary to address adverse effects or to secure specific outcomes specified in conditions.

64. While a combination of a flexible CEDF and backstop conditions is a feasible way forward, we remain concerned that there remains a knowledge vacuum in terms of cultural effects. Iwi are placing significant faith in the CEDF being refined in enough time for it to influence detailed design. Given the project programme that we are aware of, the indicated months<sup>4</sup> to complete cultural impact assessments and to make subsequent modifications to the CEDF will run very close to the point when the detailed design is to be completed and regional council resource consents are sought<sup>5</sup>.

#### **2.14 Adequacy of CEDF generally**

65. While there has been some progress made on the content of the CEDF in expert conferencing, the amendments have primarily been to introduce the recommendations made in Mr Evans' assessments included in the NOR documentation. An updated version of the draft CEDF has been worked on between Mr Hudson, Mr Bentley, Ms McLeod and Mr Percy. At the time of preparing this addendum, a response from NZTA has been provided on suggested amendments we put forward after the JWS was signed. A statement setting out these changes will be provided to the Panel as soon as it is completed.
66. We have reviewed Ms McLeod's proposed amendments to her conditions that relate to the CEDF. We understand the intent of the conditions changes to be that a version of the CEDF is 'locked in' when the Panel makes its recommendation to provide a greater level of certainty on the effect of the CEDF compared with the very flexible approach originally put forward in the NOR. We have not had the benefit of reviewing the latest version of the CEDF which we understand will incorporate the most recent discussions

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<sup>4</sup> Evidence of Greg Carlyon for Ngati Kahungunu and Ngati Raukawa

<sup>5</sup> Detailed design and resource consenting estimated to occur mid to late 2019

<https://www.nzta.govt.nz/assets/projects/sh3-manawatu/Te-Ahu-a-Turanga-Whats-happening-now-poster.pdf>

between NZTA and iwi. As a result, it is difficult to say whether the proposed condition amendments in conjunction with changes to the CEDF provide the level of certainty necessary.

67. In any event, our opinion remains that the flexible and open wording used in the CEDF means that it is useful for broad-level guidance of design and effects management but is not sufficiently certain or enforceable to be relied on to address adverse effects. Our recommendation remains that any measures that are to be relied on to avoid, remedy or mitigate adverse effects should be conditions.
68. While some double-up may occur between CEDF content and the conditions, it is still considered useful if the CEDF provides a reasonably complete picture of design expectations. CEDF and conditions can be applied together when considering outline plans, management plans and compliance with conditions.

### **3 Draft Conditions**

69. As requested by the Panel, we have prepared a table of conditions. The table includes Ms McLeod's 2 April version of conditions in the left column, and our latest version of conditions in the right column.
70. As the Panel will appreciate, it has been difficult dealing with two sets of conditions throughout the hearing. There remain some structural differences between our draft conditions and those of Ms McLeod which makes it difficult to combine them into a single set. Primarily this structural difference is because we consider that the outcomes should be specified outright in conditions. Ms McLeod's drafting preference is to include outcomes as secondary matters within conditions that are primarily for requiring outline and management plans.
71. In relation to the CEDF, Mr Randal noted to the Panel that Ms McLeod's draft conditions of 2 April provide for further amendments to management plans post iwi consultation and effects identifications via Condition 5(d). This proposed condition does not appear to provide opportunity for modification to the CEDF itself (the CEDF is proposed to be deleted from the list of documents in clause (c)). It therefore does not directly address gaps in the CEDF and maintains discretion with NZTA as to whether matters of concern to iwi are promoted. As we are not aware of any side agreement that may be in place

between NZTA and iwi, it is possible that there is some requirement there to compel NZTA to make the necessary amendments.

72. Given the pace of the process, and the complexity of matters addressed through evidence at the hearing, we have not had an opportunity to fully refine the conditions. We also acknowledge that Mr Lambie has provided comments on DOC recommendations that will need to be addressed through further drafting. We suggest that we work with Ms McLeod and NZTA over these matters over the coming days (presumably NZTA are also seeking their own technical input). However, we will talk the Panel through the draft conditions when we appear at the hearing, highlighting areas that require further consideration or refinement.

**Phil Percy and Anita Coplestone**

5 April 2019