

**BEFORE**

A Hearing Panel of Commissioners appointed  
by Palmerston North City Council, Manawatū  
District Council and Tararua District Council

**IN THE MATTER OF**

The Resource Management Act 1991

**AND**

**IN THE MATTER OF**

Notices of requirement for designations under  
section 168 of the Act, in relation to Te Ahu a  
Turanga; Manawatū Tararua Highway Project

**BY**

**NEW ZEALAND TRANSPORT AGENCY**  
Requiring Authority

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**REPLY ON BEHALF OF THE NEW ZEALAND TRANSPORT AGENCY**

**17 April 2019**

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## **MAY IT PLEASE THE HEARING PANEL:**

### **INTRODUCTION**

1. The Panel has now heard the parties' views on the notices of requirement ("**NoRs**") and will be considering the evidence, representations, and legal submissions in framing up its recommendations.
2. The New Zealand Transport Agency ("**Transport Agency**") again acknowledges the issues raised by submitters and thanks them for the time they have taken to participate in this process, including the continuing discussions that have taken place during the hearing.
3. The information presented to the Panel has underscored the essential nature of the Te Ahu a Turanga; Manawatū Tararua Highway Project ("**Project**") and the aptness of its location, provided that adverse effects on the fertiliser trial site at Ballantrae Station (and the environment more generally) are appropriately addressed. Otherwise, despite criticisms regarding provision for active users, the information presented to the Panel strongly supports the Transport Agency's case.
4. The hearing has also highlighted the adverse effects of allowing the NoRs that merit particular attention and informed the Transport Agency's proposed approach to addressing them. The conditions proposed by the Transport Agency set appropriate bottom lines and will otherwise guide designers in the related tasks of:
  - (a) minimising or otherwise addressing adverse effects; and
  - (b) putting forward a high-quality proposal for consideration in the resource consenting and outline plan stages of the Project.
5. The testing of the proposal by submitters, the section 42A reporting officers, and the Panel has led to further significant enhancements being made to the Transport Agency's proposal, including:
  - (a) provision of a separated path for walking and cycling, as discussed below;
  - (b) funding and other support for additional recreational paths in and around the Te Āpiti area, also discussed below;
  - (c) further refinement of the 'effects envelope' and conditions relating to effects on the Ballantrae Station fertiliser trial site; and

- (d) modifications to the proposed conditions regarding the Te Āpiti Wind Farm, the Cultural and Environmental Design Framework (“**CEDF**”), tangata whenua values, ecological issues, noise effects, Transpower’s infrastructure, and other matters, presented in **Appendix A** (the conditions) and **Attachment 1** (the CEDF) to this reply.
6. More generally, the Transport Agency’s reply to the issues raised during the hearing is set out below. To the extent possible the reply relies on, rather than repeats, the opening legal submissions for the Transport Agency dated 20 March 2019.
7. The reply addresses the following matters in turn:
- (a) the **significant transport benefits**, and associated economic, cultural, and social benefits, that will be realised through the Project;
  - (b) updated information regarding a **separated shared path** and **funding for other recreational path opportunities**;
  - (c) effects on the **field trial site** at Ballantrae Station;
  - (d) **an overview of the conditions in Appendix A**, encapsulating the measures by which the Project’s potential effects on communities and the environment will be managed effectively;
  - (e) effects on **values held by iwi Māori**;
  - (f) effects on **ecological values**;
  - (g) effects on the **natural character** of streams and their margins;
  - (h) effects on the **Te Āpiti Wind Farm**;
  - (i) effects on **other landowners and neighbours**;
  - (j) **other effects** in respect of which no significant issues have arisen, namely social, noise, heritage, landscape, and visual effects; and
  - (k) the Transport Agency’s **conclusion** on the matters before the Panel.
8. The reply will explain why the Project, subject to the modified conditions as presented to the Panel, aligns even more strongly with the relevant planning instruments and will achieve the sustainable management purpose of the Resource Management Act 1991 (“**RMA**”).
9. As such, with respect, the Panel should recommend that the NoRs be confirmed.

## **TRANSPORT EFFECTS – THE FUNDAMENTAL BENEFITS OF THE PROJECT**

10. The urgent need for the Project, and its fundamental transport benefits, have not been a central focus of the hearing. Nonetheless, the benefits are real and substantial, and must be afforded significant weight by the Panel in making its recommendations.
11. It is not in dispute that the slips in the Manawatū Gorge have created major problems for the transport network, and that the Project will fix those problems.
12. The impression created by the section 42A report authors, and a number of submitters at the hearing, is of an expectation that the Project will go ahead, so those benefits can be ‘banked’. Their focus has therefore been on the possible realisation of additional benefits, including the recreational opportunities discussed below.
13. Even submitters raising technical concerns about aspects of the Project nonetheless accept the need for a new road; the Panel will recall the acceptance of that proposition by Mr Kay on behalf of the Royal Forest & Bird Society, Mr Wallace on behalf of the Queen Elizabeth II (“**QEII**”) Trust, Mr Bent, Mr Pellow on behalf of AgResearch Limited (“**AgResearch**”), counsel for the Director-General of Conservation, and others.
14. James Kendrick of Ngāti Kahungunu ki Tāmaki Nui-ā-Rua spoke in a particularly evocative way about the need for a new link, both to save lives that would otherwise be lost in road accidents, and to improve the journey for emergency workers transporting patients or attending incidents across and around the ranges.
15. Likewise, Mayor Tracey Collis of Tararua District clearly expressed how the adverse impact of the closure of the Manawatū Gorge route on the people of Tararua has been significant, and that it will continue to be so until the Project is constructed.
16. The acceptance by submitters that the Project is essential infrastructure obviously accords with the Transport Agency’s case, and there appears to be broad acceptance that the Project’s benefits are compelling. As the Panel has demonstrated through its questioning of various planning witnesses, however, in an overall evaluation of whether the NoRs should be confirmed it is important not to lose sight of the major advantages the Project will bring to people and communities living in Tararua, Manawatū, and Palmerston North

city, for the wider region, and for people travelling through and beyond the region.

17. To repeat, the Project will realise the following major transport improvements:
- (a) **Travel times** for motor vehicles crossing the ranges will be significantly reduced as a result of the Project.
  - (b) **Safety** for trips across the ranges and in Ashhurst will be significantly improved as a result of the Project, for all modes of travel.
  - (c) The new road will be constructed to a high quality and will be much more **resilient** to the major disruptions that have been caused over the years by slips in the Gorge.
  - (d) Accordingly, the Project will relieve the current pressures on **freight operators** (and on **economic activity** more generally) by alleviating the significant additional costs to them of having to use alternative routes.
  - (e) For **other motor vehicle users** – commuters, people accessing Palmerston North hospital, people visiting whānau, sports teams, and other travellers through the region – the Project will create a safe and reliable route that saves people time that would otherwise be spent travelling, thus freeing up that time for more productive and rewarding activities.
  - (f) How the Project improves transport networks for **cyclists and pedestrians** is addressed in further detail below, in response to requests for a separated path. Even without such a path, which is now to be provided, there is no dispute that the Project:
    - (i) would have improved safety for the commuting or touring cyclists who wish to cross the ranges, via either of the two routes that currently exist for that purpose, or via the new road;
    - (ii) will help connect active transport users to the Manawatū Gorge Scenic Reserve and surrounding area, through new dedicated infrastructure on or beside the Ashhurst Bridge, from that bridge to the carpark on the Transport Agency’s and Mr Shannon’s land allowing access to the Manawatū Gorge Scenic Reserve (“**MGSR**”), on the Manawatū River Bridge, and in Woodville;<sup>1</sup> and

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<sup>1</sup> This includes improved access for equestrians, because of the diversion of 96% of current traffic volumes away from Saddle Road.

- (iii) will improve the environment for active users of local roads in Ashhurst.

- 18. The Panel will appreciate why the Transport Agency is working urgently to generate these very significant benefits.

## **A SEPARATED WALKWAY / CYCLE PATH AND RECREATIONAL INITIATIVES**

### **Introduction**

- 19. The key outcome sought by most participants in this process is a condition requiring the Transport Agency to construct a separated path or paths for use by walkers, cyclists, and (in some cases) horse-riders.
- 20. The Transport Agency has very carefully considered the submissions made by members of the public, the Councils, and others, and listened closely to their representations to the Panel.

### **Recreational path(s)**

- 21. Initial requests by the section 42A reporting officers and submitters were for a recreational shared path mostly situated away from the new highway, to provide for an attractive and enjoyable user experience.
- 22. The Transport Agency recognises that such a path would be an exciting recreational and tourism asset for the region. On reflection, notwithstanding the Project's priority to fix the urgent problems occasioned by the closure of State Highway 3 through the Manawatū Gorge, the Transport Agency believes that recreational aspirations can be realised as an adjunct to the Project too, which it will deliver in consultation with tangata whenua, landowners, the Te Āpiti Governance Group, and other stakeholders.
- 23. This will be achieved through the creation of a significant dedicated fund of \$1 million, which is to be used to investigate and build recreational paths, subject to the necessary property interests and statutory approvals being obtained. A condition is proposed to this effect (Condition 26C).

### **Separated path between Ashhurst and Woodville**

- 24. During the hearing the focus shifted more towards a potential sealed commuter path for cyclists immediately adjoining the highway, separated by a wire-rope barrier.<sup>2</sup>

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<sup>2</sup> See for example the evidence addendum of Mr David Murphy, at paragraph 4.5, and the joint addendum of Mr Mark Read and Mr David Murphy, at paragraphs 4.1-4.13.

25. Again, the Transport Agency has reflected on the submissions requesting such a path, and the questioning of witnesses and submitters by the Panel members regarding cyclist safety. While cyclist safety is a 'bottom line' for the Project that would have been delivered in any event, the Transport Agency is now in a position to commit to constructing a separated walking and cycling path connecting Ashhurst and Woodville as part of the Project.
26. The Transport Agency has not yet been able to progress the details to determine the precise location of the path, so the proposed condition allows for flexibility in this regard. The Transport Agency will progress this as quickly as it can to give the community certainty.
27. The Transport Agency considers it would be appropriate for design specifications (including as to width and surface) to be worked through as part of the detailed design process.
28. The Transport Agency recognises it is important that, in providing these facilities for commuting cyclists, walkers, and recreational users, any work within the designation can achieve this within the environmental constraints that have been identified by its expert advisors and submitters, including the 'effects envelopes' regarding the Ballantrae Station field trial site, terrestrial ecology, and streams identified in the proposed conditions.
29. This new aspect of the Project is also incorporated into the proposed conditions appended to this reply;<sup>3</sup> this condition, and Condition 26C regarding the recreational path(s), are put forward on an *Augier* basis, to the extent that that is necessary.
30. The Transport Agency looks forward to realising these initiatives through the Project, in conjunction with its Project partners.

### **A safe system for cyclists**

31. As a result of the Transport Agency's updated position, summarised above, there can be no question that the Project will create a safe, separated route between Ashhurst and Woodville for cyclists, where none currently exists.
32. A question may nonetheless arise whether cyclists should be barred from using the shoulders of the new road, irrespective of where the separated path will be located, because some may prefer to cycle on those shoulders over sharing a path with other cyclists and walkers.

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<sup>3</sup> Condition 26(b)(iii).



33. The Transport Agency's position remains that it is unnecessary to ban cyclists from using the shoulders of the new road, because the shoulders are accepted as providing a safer cycling environment than exists at present.
34. Counsel for the section 42A reporting officers suggested that the Transport Agency, in pointing out that the Project would have benefited cyclist safety without a separated path, was applying an *"overly broad-scale assessment of effects over the wider roading network"* that *"risks the dilution or inappropriate discounting of adverse effects at the local scale (over the new road itself)"*.<sup>4</sup> Even without the Project incorporating a separated path, that suggestion was simply incorrect; the Project will improve safety and reduce risk for each and every cyclist crossing the ranges, be they on the shoulders of the new road, on the new separated path, or using the alternative routes.
35. Shoulders that are consistently two metres wide or greater compare favourably with other rural highways with similar traffic volumes; a good sealed shoulder width for a four- or five-star road, in accordance with the KiwiRAP road assessment programme, is between 1.7 and 2.4 metres.<sup>5</sup> Mr Kennett noted, in response to questions from the Panel, that cyclists would find the 2-metre+ shoulders *"very good indeed"*.
36. In any event, the Panel should bear in mind that contributing to a safe land transport system is a core part of the Transport Agency's objective and functions, in accordance with section 94 of the Land Transport Management Act 2003. The Transport Agency is ultimately responsible for ensuring the safety of users of its network, and this is in effect a 'bottom line' for the Transport Agency.
37. To this end, there are well-established and iterative Road Safety Audit and review processes that the Transport Agency will continue to employ through the development of the Project's design. The safety of vulnerable users of the new road will be a specific consideration during those processes, and a designation condition is proposed to enshrine that obligation and require the Transport Agency to demonstrate the outcomes of those processes to the Councils.<sup>6</sup>
38. This condition is proposed to be retained, despite the addition of a separated path to the Project.

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<sup>4</sup> Paragraph 34(b) of counsel's legal submissions.

<sup>5</sup> [http://www.kwirap.org.nz/scoring\\_bands.html](http://www.kwirap.org.nz/scoring_bands.html).

<sup>6</sup> Proposed condition 26B.

39. Through the outline plan process, the Councils can request changes to the Project, and ultimately any disagreement could be tested by the Environment Court against the touchstone of the RMA's sustainable management purpose.
40. The Panel can therefore be assured that the Project will be safe for cyclists.
41. This also addresses the issues raised by one submitter, Mr Castle, regarding the Project's compliance with health and safety legislation.

## **EFFECTS ON THE BALLANTRAE STATION FIELD TRIAL SITE**

### **Introduction**

42. The Transport Agency recognises the importance of minimising the effects of the Project on the fertiliser trial site at Ballantrae Station, and of addressing the effects that will result from the Project traversing the site.
43. The Transport Agency has endeavoured to be responsive to the evidence of AgResearch and discussions at the hearing in updating its proposed measures to minimise and otherwise address effects.
44. The general structure of the relevant conditions remains the same as was proposed at the outset of the hearing. The conditions:
  - (a) seek to minimise the physical impact of the Project on the trial site and its key parameters, and limit that impact by establishing a maximum 'envelope' of effects such that no more than 15% of the trial site will be lost (proposed condition 5(e)(iv)); and
  - (b) require the preparation of a Ballantrae Station Management Plan ("**BSMP**"), through which the Transport Agency will seek to minimise the effects of the Project on the trial site and, as recommended by Mr Morton, will include monitoring and studies to help confirm the scale of the effect and inform the possibilities for ongoing research during the construction period and beyond (proposed condition T3). The funding provided by the Transport Agency will also allow for alternative component research if AgResearch does not wish to continue the farm systems trial at the site.
45. In response to discussions and developments during the hearing, the Transport Agency proposes further detail be added to both these conditions,

as discussed below. Specific references to the trial site have also been added to the CEDF, further to Ms Robson's addendum evidence.<sup>7</sup>

46. To date, the Transport Agency has had little success in engaging with AgResearch in respect of measures to minimise and address effects. The position taken by AgResearch and its witnesses has been that all effects on the trial site must be avoided. Ultimately, however, that is not possible; put simply, completely avoiding effects on the trial site is not compatible with the confirmation of the NoRs.
47. During the hearing, the Panel asked the Transport Agency and its witnesses to seek to discuss the key factors and priorities in terms of minimising effects on the trial site. AgResearch declined to engage in any such discussions. Since the end of the hearing, the Transport Agency has again sought AgResearch's direct comment and input on the conditions and how they might be refined; again, that input has not been forthcoming.
48. Nevertheless, the conditions provide for AgResearch to be involved in the processes of setting the final Project footprint across the trial site and in preparing the BSMP. The Transport Agency is confident that this process will ultimately provide for meaningful engagement and progress in minimising effects on the trial site.

### **The physical impact of the Project and the 'envelope' of effects**

#### *Refining the indicative construction footprint and reference to frame sites*

49. Mr Whaley's second addendum addresses the envelope, and the physical footprint of the Project as it crosses the trial site. That evidence confirms that the indicative construction footprint was a 'best foot forward' position on behalf of the Transport Agency (at least, in the absence of information about the location and importance of frame sites), and that "*there is no obvious way of meaningfully reducing the extent of the footprint across the Ballantrae trial site*".<sup>8</sup> That is, the indicative alignment is confined as much as possible. It also affects only relatively small proportions of each farmlet, with the HFHF farmlet (the smallest farmlet in the trial) being the least affected.<sup>9</sup>
50. As discussed at the hearing, Mr Whaley has relied on the geotechnical analysis of Mr Dave Morton in that respect. An email summary of Mr Morton's

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<sup>7</sup> As a "Project constraint" in section 2.4, within the "Gateways and local connections" text in 3.7, and as a "Project focus area" in section 4.1.

<sup>8</sup> Second addendum of Mr Andrew Whaley at paragraph 15.

<sup>9</sup> The management plan approach will allow this alignment to be discussed further with AgResearch, in case it has a preference.

geotechnical advice to the Transport Agency is provided with these submissions as **Attachment 2**.

51. AgResearch's evidence and discussions at the hearing have highlighted the need to consider the frame sites when seeking to minimise effects. Based on GPS information received from Dr Mackay during the hearing, Mr Whaley was able to confirm that the indicative footprint would directly affect 15 frame sites across the four farmlets.
52. At the Panel's request, Mr Whaley also developed and presented two alternative indicative alignments through the trial site, with the key driver being to consider whether either would reduce the number of frame sites affected. On an indicative basis, the northern alignment would directly affect 17 frame sites, while the southern alignment would directly affect 9 frame sites. Dr Horne has provided a more detailed breakdown of the affected frame sites in his addendum evidence (filed as **Attachment 3** to these submissions), as requested by the Panel at the hearing.
53. It is not yet clear whether AgResearch would prefer either the southern or northern alignment over the current indicative footprint; the Transport Agency looks forward to more constructive discussions in the near future. With that in mind, the proposed envelope condition has been amended to add:
  - (a) a maximum number of 15 directly affected frame sites, to reflect the current indicative footprint; and
  - (b) a requirement that the Transport Agency consult with AgResearch in finalising the construction footprint across the trial site, which would allow input from AgResearch on which of the three broad possible corridors would be preferable.<sup>10</sup>

*There will be no direct effect on land outside the 'envelope'*

54. The Transport Agency's intention has been, and remains, that the Project will have no effect on any part of the trial site that is outside the 'envelope' (currently represented by the indicative construction footprint). That is why Dr Horne's and Jeff Morton's analysis was based on the effects of the indicative construction footprint.
55. The AgResearch evidence, positions taken in the Joint Witness Statement on the Ballantrae trial site, and responses by the AgResearch witnesses to

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<sup>10</sup> The envelope condition allows AgResearch to agree to an alteration to the prescribed parameters, which would for example allow for the northern alignment to be developed if that was preferred.

questions from the Panel all demonstrate an ongoing uncertainty and misunderstanding in that respect.

56. AgResearch will likely be served with a notice under section 18 of the Public Works Act 1981 (“**PWA**”) applying to all land within the designation corridor (this will occur before the construction footprint is finalised). However, the Transport Agency does not intend to take a permanent interest in land outside the ultimate roading corridor necessary to construct and operate the Project. The PWA process allows for refinements to be made to the area specified in the section 18 notices to give effect to that intention.<sup>11</sup>
57. To avoid any ongoing doubt, an addition to the envelope condition is proposed to specify that there will be no direct impact on the tenure of or activities undertaken on the trial site beyond the envelope. In other words, the condition requires that the direct effect of the Project will be limited to 4.8 hectares of the trial site – approximately 15% of the total trial site area. The balance of the site will be able to be farmed and controlled by AgResearch and its lessee in an uninterrupted way.

### **The proposed Ballantrae Station Management Plan**

58. The Transport Agency continues to propose a suite of measures to address the effects of the Project on the trial site, to be set out in the BSMP prepared in consultation with AgResearch.
59. As explained in counsel’s opening submissions, those measures will seek to minimise disruption to the operation of the trial site during Project construction (and beyond, as appropriate), and a monitoring and research programme to address the potential impact on the long-term viability of the trial and research use of the site. The monitoring and research programme includes:
  - (a) funding for a pre-construction programme to fill the gap in research and measurements over the last 30 years and capture the results of the trial to date;
  - (b) monitoring of the effects of the Project on the trial site for a 3- to 5-year period following construction; and
  - (c) funding for an ongoing research programme at the trial site.

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<sup>11</sup> Discussed below in relation to the QEII Trust covenants.

60. In response to developments at the hearing, the Transport Agency proposes that additional details be added to the BSMP condition, so that it specifically requires the Transport Agency to:

- (a) reinstate frame sites lost to the Project footprint in alternative locations, to the extent that doing so is reasonably practicable (and is desirable to AgResearch) – this would occur at an early stage in the construction process to allow the new frame sites to be established and correlated;<sup>12</sup> and
- (b) monitor the effects of vehicles (construction and operational) and their emissions on the trial site, including on animal behaviour. Monitoring of this potential effect, including the effect of transferring the primary source of vehicle emissions from Saddle Road to the Project route, may in turn provide research and publication opportunities.

61. The research funding programme element is intended to facilitate future research activities at the site. As Mr Morton explains in his evidence,<sup>13</sup> the intention is that:

- (a) the Transport Agency will work with AgResearch to set up a trust fund, using Transport Agency funding;
- (b) interest from the trust fund will be used to provide year-by-year funding for a Post-Doctoral student to carry out research on the trial site; and
- (c) after five years of operation of the trust fund, AgResearch would have the option of retaining the capital investment or continuing the trust operation (ie funding of Post-Doctoral research work).

62. This certain, substantial investment can be contrasted with the otherwise uncertain nature of scientific funding described by the witnesses.

63. While Mr Pellow was unable to give details of any programme of future research planned at the trial site, Dr Mackay described planned and potential future activities for the trial site, in the further information he provided to the Panel following his appearance at the hearing. With that in mind, the Transport Agency proposes to add references to those potential activities as part of the possible scope of the research programme to be funded by the Transport Agency.

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<sup>12</sup> As explained by Mr Jeff Morton at the hearing, those efforts would seek to replicate the slope, aspect and soil type of the frame sites being replaced as much as possible, and consider and attempt to duplicate pasture composition.

<sup>13</sup> Mr Jeff Morton EIC at paragraph 16.

64. The measures set out in the conditions must of course be seen in the broader context that full compensation will be payable to AgResearch under the PWA scheme for the loss of part of the trial site, as well as any relevant business interruption impacts.

### **Assessing the level of effect of the Project on the site**

#### *Introduction*

65. The Panel's task is to assess the significance of the effects of the Project on the trial site, in light of the conditions proposed by the Transport Agency and the current situation in respect of the trial site. The Transport Agency's position is that:
- (a) the effects will be appropriately addressed, including because of the measures summarised above; and
  - (b) the trial site and the effects of the Project on it are not so significant that all effects must be completely avoided.
66. The submissions below:
- (a) discuss the factual and planning context against which the Panel must test the witnesses' evidence that the trial site is nationally significant;
  - (b) address the reality that the trial site is not now, and has not previously been treated as, sacrosanct or unchanging; and
  - (c) traverse the potential effects of the Project on the trial site, and how they will be minimised and otherwise addressed, including in particular by providing a significant opportunity for future research aspirations to be realised.

#### *The trial site as 'nationally significant' – introduction*

67. The technical experts agree that the trial site is a nationally significant research facility. However, that needs to be put in its proper context in RMA terms.

#### *No specific protection through section 6 or under the One Plan*

68. As Ms McLeod explained in response to questions from the Panel, the site is not covered by any of the matters of national importance that must be recognised and provided for by the Panel, in section 6 of the RMA.<sup>14</sup>

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<sup>14</sup> In her addendum evidence (paragraph 6 and 15), Ms Bridget Robson accepted that point.

69. Nor does the site qualify as infrastructure or another physical resource of regional or national importance recognised in the One Plan. In his addendum evidence, Mr Percy contends that Objective 3-1 and Policy 3-2 apply, stating that “*there is no definition of other physical resources of national or regional importance*”; he also appears to conclude that Policy 3-1 applies to the site or is at least relevant, on the basis that the list set out in Policy 3-1 is “*not however exclusive and provides for future unlisted resources to be influenced by the policy*”.<sup>15</sup>
70. Ms Robson also states that Policy 3-1(b) “*is not an exclusive list*” and, like Mr Percy, suggests that there may be facilities not listed that “*are still relevant to Policy 3-1*”.<sup>16</sup>
71. The notion that these provisions apply to the trial site is not supported by the plain language of the provisions, including for the following reasons:
- (a) Objective 3-1 sets out the importance of “*infrastructure and other physical resources of regional or national importance*”.
  - (b) Policy 3-1 includes exclusive lists of infrastructure (3-1(a)) and “*facilities and assets*” (3-1(b)) that are to be recognised as “*physical resources of regional or national importance*”, and provides that the benefits of those specifically listed resources must be had regard to (3-1(c)).
  - (c) In other words, Policy 3-1 effectively provides a definition of the term “*infrastructure and other physical resources of regional or national importance*”. In her addendum, Ms Robson accepts that “*Policy 3-1(c) and (d) (...) constrain their guidance to the specifically listed infrastructure, facilities and assets listed in 3-1(a) and (b)*”.<sup>17</sup>
  - (d) Policy 3-2 seeks the avoidance of adverse effects on “*infrastructure and other physical resources of regional or national importance*”. That must logically be read to apply to the resources listed specifically and exclusively in Policy 3-1.
72. Of course, even if Policy 3-1 does provide for “*future unlisted resources to be influenced by the policy*”, that does not apply to the trial site, which has been in place for over 40 years.

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<sup>15</sup> At paragraphs 54 – 58. This analysis is absent from the Section 42A Planning Report, which makes no suggestion that those provisions apply to the trial site, despite comments about the site’s importance to the New Zealand agricultural sector and economy (see paragraphs 627 – 630 and 742(e)).

<sup>16</sup> Ms Bridget Robson addendum evidence at paragraph 10.

<sup>17</sup> Ms Bridget Robson addendum evidence at paragraph 10.



*No previous effort has been made to protect the trial site*

73. It is instructive that AgResearch's detailed submission on the One Plan contained no suggestion that the trial site should be referred to in Policy 3-1 (or more generally that the recognition given to infrastructure and other physical resources of regional or national importance should extend to the trial site). AgResearch's submission on the One Plan, dated August 2006, is provided as **Attachment 4** to these submissions.
74. As the Chair pointed out during the hearing, the trial site does not benefit from any other form of specific planning protection.
75. Mr Pellow and Ms Robson suggested there was no reason to consider the need for measures to safeguard the site in RMA terms before the closure of the road through the Manawatū Gorge in 2017. However, the possibility of a new State highway traversing this general area has been live for some time, in the context of the long-standing issues posed by the risk of slips through the Gorge. A replacement route to the north of the Gorge is and has for some time been an obvious potential solution to those issues. That is reflected in the Project Detailed Business Case ("**DBC**"), which records:<sup>18</sup>

*"The Ministry of Works first identified the potential for an alternative route in 1977, which was further investigated by Worley consultants in 1997. The alternative alignment Worley recommended within the Manawatū Gorge Strategic Transportation Study curved north from the existing Manawatū bridge at the western end, then parallel to the Gorge before veering further north and then back down to connect with Woodlands Rd (...) Further investigations were conducted in 2012 by MWH which considered four alternative routes, one of which was the 1997 Worley alignment (Route Option C)."*

76. The 'Worley Route' referred to traverses across the Ruahine Range to the north of Saddle Road, through Ballantrae Station (albeit to the north of the current extent of the trial site).
77. Moreover, Saddle Road (which bisects the trial site), has been improved, including through widening, both before and after the closing of the Gorge road, and Te Āpiti Wind Farm was constructed in close proximity to the trial site in the 2000s.

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<sup>18</sup> Manaw atū Gorge Alternatives Detailed Business Case, 31 May 2018 at page 28.  
<https://nzta.govt.nz/assets/projects/sh3-manawatu/Manawatu-Gorge-alternatives-detailed-business-case-part-a-october-2018.pdf>

78. If AgResearch was particularly concerned to ensure the trial site had the benefit of specific planning protection, there have been sufficient prompts to spur action on that front, including through the One Plan process, the longstanding and well-known issues with the Gorge road, and improvements to Saddle Road.<sup>19</sup>

*The trial site is and has long been in a state of flux*

79. More broadly, the evidence demonstrates that, far from being sacrosanct and unchanging, the trial site is a dynamic environment, and has been in a state of flux for some time. The evidence has established that:

- (a) Research activities have reduced, or at least fundamentally changed, since 1988.
- (b) At some point in the 1980s the trial site was reduced in size by 70%; it is now under a third of its original size.
- (c) AgResearch came close to selling the site in recent years, while the current and future leasing arrangements over the site are highly uncertain.
- (d) The environment of the site has been subject to change, in particular in respect of the nature and use of Saddle Road.

80. The first three of these points, discussed further below, indicate that AgResearch and other potential funders have, over the past 30 or so years, not placed nearly as much weight on the significance of the trial site as the specialist technical experts in these proceedings.

81. Given that context, it is perhaps understandable that AgResearch's submission on the One Plan did not seek specific planning protection that would preserve the site in its then-current form and use (noting that might in turn have made any alternative use or tenure more difficult).

*Research activities at the trial site*

82. There was detailed discussion at the hearing about the level of research activity carried out at the site over time. Mr Morton accepts that monitoring and research activities have continued over the life of the trial site.

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<sup>19</sup> Ms Bridget Robson states at paragraph 14 of her addendum evidence there were no "alarm bells" for AgResearch at the time of the One Plan process. That seems a particularly high threshold for seeking any planning protection for a site that AgResearch witnesses consider to be nationally significant.

83. Having said that, it is clear that the focus of activities has changed, in comparison to the original purpose of the trial site. Dr Mackay made it clear in discussions with the Panel that the work carried out is evolving.
84. Furthermore, it is also apparent that research activities have decreased since the initial intensive period of activity from 1975 to 1988.<sup>20</sup> During that period, pasture growth and composition was continually measured, and soil testing carried out annually. However, since 1988 those activities – being the original focus of the trial – have declined markedly (with only three sets of soil sampling and one year of pasture growth and composition measurements carried out).<sup>21</sup>
85. The hearing demonstrated a clear theme of a lack of certainty of funding for recent and future research activities. Dr Mackay referred to past, more generous funding environments in his discussion with the Panel.<sup>22</sup> Mr McIvor and Dr Roberts confirmed at the hearing that Beef+Lamb and the Fertiliser Association, respectively, provide no funding for research activities at the trial site; reference to future work (and potential funding) begs the question as to the lack of continual pasture measurements over the last 30 years.

*Reduction in size of the trial site*

86. At some point after 1983, the size of the trial site was reduced by nearly 70%, from 99 hectares to the current 31 hectares. The number of farmlets has been reduced from 14 (the original number referred to by Dr Mackay in his discussion with the Panel on this point) or 10 (the number cited by Dr Matthew) down to the current four.<sup>23</sup> At the hearing Dr Matthew explained this downsizing was driven by a more difficult funding environment.
87. That is of course a fundamental reduction in the physical extent of the trial site – far more significant than the reduction required by the Project, which is less than 5% of the original trial site (or 15% of the balance) – and calls into question the notion that the precise current size and layout of the trial site must be protected at all costs.

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<sup>20</sup> Mr Jeff Morton addendum evidence at paragraph 11.

<sup>21</sup> Mr Jeff Morton EIC at paragraphs 20 – 22.

<sup>22</sup> Including in terms of funding for sustainability work from MBIE in the 1990s and early 2000s.

<sup>23</sup> Dr Cory Matthew addendum evidence at paragraph 8.

*The near-disposal of the site and ongoing uncertainty in tenure*

88. AgResearch came very close to selling Ballantrae Station (including the trial site) during the 2010 – 2014 period, with publicly available documents recording that the site was considered surplus to requirements.<sup>24</sup>
89. Mr Pellow contends any sale would have been subject to protections to ensure the ongoing integrity of the trial site.<sup>25</sup> However, no documentary evidence has been produced to that effect, and the publicly available source documents make no such suggestion.
90. Ultimately AgResearch retained ownership of Ballantrae Station, but entered into a lease arrangement with Taratahi Agricultural Training Centre, allowing for the continued use of the trial site. However, Taratahi is now in liquidation, casting the ongoing viability of that arrangement into question. Based on Mr Pellow's answers to questions from the Panel, it appears that AgResearch is relying on the liquidators' decision to continue the lease as the means of enabling the science activities at the site to be continued.

*Change to the physical environment including Saddle Road*

91. There have been periodic interruptions to the use of the road through the Manawatū Gorge, and resulting periodic increases in traffic using Saddle Road. Since the closure of the Gorge road in 2017, traffic volumes on Saddle Road have increased exponentially. AgResearch witnesses indicated concern about the effect of emissions on the trial site.<sup>26</sup>
92. As the Panel will appreciate, to the extent that is a real issue, it is an existing (or indeed pre-existing) one.

*The potential effects on the trial site and their implications*

93. When considering the effect of the indicative construction footprint (which is the basis for the maximum level of effect under the envelope condition), the following key factors are particularly relevant:
- (a) The area directly affected (in terms of land lost) is about 15% of the trial site (or about half of the area within the designation corridor).

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<sup>24</sup> Mr Lonnie Dalzell EIC at paragraph 70.

<sup>25</sup> At paragraph 15 of his statement of evidence.

<sup>26</sup> Though all signatories to the Joint Witness Statement recorded (at page 6) that such impacts are not within their expertise. In his addendum (paragraph 13), Dr Cory Matthew sought to update his position.

- (b) The balances of slope, aspect and soil type on each farmlet “are more or less preserved after the construction of the Project”.<sup>27</sup> The exception is the reduction in southerly facing aspects on the LFLF farmlet.<sup>28</sup>
- (c) 15 out of 72 frame sites will be lost. However, as per the proposed Ballantrae Station Management Plan condition, they will be replaced where it is reasonably practicable to do so.
94. AgResearch witnesses also referred to the potential impact of contaminants from the Project route on the trial site, as well as the Project route and its associated traffic impacting animal behaviour and therefore trial results. Again, whether or not those effects might be material,<sup>29</sup> similar issues have already been introduced to the trial site (well after the start of the trial) through the exponential increase of traffic using Saddle Road at times of disruption to the Manawatū Gorge route, including since 2017 (which will continue for at least another four years).
95. Dr Mackay and Mr Sneath in particular (in response to questions from the Panel) both made a distinction between a temporary road contaminant effect from increased traffic on Saddle Road, and a permanent effect from the Project route. However, that distinction is illusory – in the absence of the Project, the current Saddle Road situation will become permanent. Put another way, the existing environment includes the current significant traffic levels on Saddle Road through the site, continuing indefinitely.
96. AgResearch witnesses also referred to the effect of the Project on the hydrology of the trial site. Dr Horne accepted at the hearing that the Project cutting will break connectivity, but noted the location of the indicative construction footprint, generally at the downslope parts of the landscape, mitigates that effect. Dave Morton’s geotechnical view, based on observations of the site, is that:<sup>30</sup>

*“In our experience, the zone of influence in such soils is small such that any more than nominally 10m or so from the crest of the cut batter, there is little to no drainage effect. This can also be observed on site where the ground immediately adjacent to existing Saddle Road cuts remains poorly drained. On this basis, you could say that the effect on*

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<sup>27</sup> Dr David Horne EIC at paragraph 22.

<sup>28</sup> Dr David Horne EIC at paragraph 24.

<sup>29</sup> Mr Jeff Morton in particular considers that given the hilly topography of the trial site the animal behaviour impact is not likely to be significant. Refer to paragraph 39 of his EIC.

<sup>30</sup> Refer to Attachment 2 to these submissions.

*surface drainage and soil moisture levels adjacent to the proposed AgResearch road cuts should be fairly minor.”*

97. Potential practical effects arising from the construction process (for example, on health and safety and the ability to move stock around the farmlets) are addressed in detail by Jeff Morton in his evidence. The intention is that his proposed measures to address those effects will be captured through the BSMP.

*The implications of the Project for the future of the trial and the trial site*

98. The AgResearch witnesses, Dr Roberts, and Dr Matthew have recorded their view that completely avoiding the trial site is the only way to ensure the ongoing validity of the long-term trial site.<sup>31</sup> In essence, the AgResearch case is that if the Project goes ahead, the trial (and even the ‘system’ based use of the trial site) must cease. That view seems to be based on a combination of:
- (a) an enduring misunderstanding of the area of the trial site that will be directly affected (in the sense of being subject to construction activities, or being taken out of the control of AgResearch); and
  - (b) a view that the Project will introduce further ‘variables’ to the site, which will in turn limit the attractiveness of the trial site to scientific researchers and publishers.
99. Jeff Morton and Dr Horne agree that, based on the full **designation corridor** being directly affected, the credibility of the existing trial would be lost.<sup>32</sup> However, Dr Horne and Mr Morton make it clear in their evidence that they do not think that needs to be the case if only the area within the indicative construction footprint (about half the designated area) is lost to the trial site.
100. At the hearing, Mr Catto (giving evidence for Ballance Agri-Nutrients) made it clear he does not consider the Project would do irreparable damage.
101. At face value, that more moderate view seems more aligned with the reality that:
- (a) the vast majority of the trial site (and frame sites) will not be directly affected by the Project footprint – most of the trial site ‘system’ will remain intact, and it would seem reasonable for the system-based use of the site to continue;

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<sup>31</sup> AgResearch JWS at page 8.

<sup>32</sup> AgResearch JWS at page 8. At paragraph 11 of his addendum evidence, Mr Jeff Morton explains that the presumption of those who participated in conferencing was that all land within the designation corridor would be outside the control of AgResearch during Project construction. That misapprehension endured, on the part of the AgResearch and other submitter witnesses, through the course of the hearing.

- (b) the current slope, aspect and soil 'balances' will remain largely intact (noting that southerly aspects of the LFLF farmlet is the exception); and
  - (c) the changes the Project will bring can properly be seen as a continuation of other changes that have occurred over the life of the trial.
102. Should AgResearch decide to bring the current trial to a close, all experts agree that there is potential for future component research on the remainder of the trial site.<sup>33</sup> Mr Morton focuses in his evidence on the long-term value of the trial site, being a "*unique long-term trial resource where future issues around land, water and animals can be investigated in component trials.*"<sup>34</sup> He has consistently made clear his view that it is not essential that the current trial continue.
103. The AgResearch witnesses also focused on the potential for future issues (particularly relating to climate change, and sustainability generally) to be considered through research derived from the trial site.
104. Whether the effects of the Project are sufficiently problematic that the current long-term trial should cease is ultimately a decision for AgResearch. Dr Mackay and others referred to changes and variables in the physical environment introducing uncertainty, though of course significant changes have been introduced previously, and the trial has continued.
105. What the Transport Agency has endeavoured to do, on the advice of Dr Horne and Mr Morton, is minimise and otherwise address these effects including the potential uncertainty arising from physical changes to the environment, to in turn maximise the opportunity for the trial to continue.
106. Alternatively, the steps that will be taken to minimise and address the effects of the Project will enable (and indeed provide funding for) the 85% of the trial site that will remain to be utilised for alternative research purposes, including in respect of climate change and other sustainability-related issues.
107. In any event, the Transport Agency will fund pre-construction work to capture the results of the trial to date. It is anticipated that the pre-construction and post-construction monitoring to be funded by the Transport Agency will provide information both to facilitate research and analysis (for example, on the effects of new roads on animal behaviour), and potentially to assist AgResearch in determining the future use of the trial site.

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<sup>33</sup> AgResearch JWS at page 10.

<sup>34</sup> Mr Jeff Morton EIC at paragraph 48.

108. And perhaps most fundamentally, the Transport Agency is committing to providing an enduring source of funding for research associated with the trial site, in a context where current and future funding for work at the trial site seems uncertain at best.<sup>35</sup>
109. As explained by Mr Morton at the hearing, preserving the trial site is one thing, but encouraging more scientific work to be carried out at the site is just as or more important.<sup>36</sup> The measures proposed by the Transport Agency strike an appropriate balance between preserving the site as much as possible, and providing a meaningful commitment to the future scientific use of the trial site (whether that be in the form of the current trial / other 'system'-based research, or component research).

### **The trial site and the Transport Agency's consideration of alternatives**

110. AgResearch (and in particular Ms Robson) has challenged the adequacy of the Transport Agency's consideration of alternatives under section 171(1)(b), with specific reference to the consideration of the trial site (and long-term experiment).
111. Counsel understand this challenge to be focused on the selection of the Project route corridor following the completion of the DBC process, rather than the subsequent process of refining the chosen route corridor option. In respect of that later process, Mr Whaley explains the consideration given to alignments further to the south, and the reasons why the AgResearch site was not able to be avoided.<sup>37</sup>
112. A review of the documentation, and evidence presented through this hearing process, demonstrates that the trial site was considered in an appropriate way as part of the Transport Agency's alternatives process.
113. At the hearing, Ms Robson was critical of the relatively few direct references to the site in the DBC and supporting documentation. It is worth traversing the manner in which the trial site was considered through the DBC process, including (but not only) in the Multi-Criteria Analysis ("**MCA**") process.
114. Mr Wickman explains that the MCA process was employed as a tool to support informed decision-making by the Transport Agency on the route option to proceed with. The process involved the assessment of a range of

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<sup>35</sup>For example, in response to questions from the Chair, Mr Neild noted that research funding is generally 'tight', referred to AgResearch focussing on other areas, and reiterated his view that AgResearch would be unlikely to re-establish a long-term trial site if the site at Ballantrae was to be released.

<sup>36</sup> See also Mr Jeff Morton's EIC at paragraph 28, where he explained that "*it is of little use maintaining this resource if there is not funding to carry out the necessary research.*"

<sup>37</sup>Mr Andrew Whaley EIC at paragraphs 145 – 148.



options, through specialists and with the involvement of stakeholders, landowners, and members of the public. The process had two stages: 18 options were assessed at the long-list stage, which was followed by a short-list stage where four options were considered.

115. Assessment criteria were employed in the MCA process, as set out by Mr Wickman. The criteria of most potential relevance to the trial site were the infrastructure and property criteria, which formed part of the environmental and social impacts group of criteria. The Longlist and Shortlist MCA Reports<sup>38</sup> record that the specialists carrying out the assessments for the environmental and social impacts criteria relied on various resources, including in particular feedback from stakeholder and community engagement, and information from relevant RMA planning instruments.<sup>39</sup>
116. The property criterion assessment focused in particular on acquisition cost / compensation, impact on individual properties, and complexity of acquisition.<sup>40</sup> That assessment included the trial site, as one of the properties that would be directly affected by the Project option (as well as Short List Option 2, involving an upgrade of Saddle Road).
117. The assessment under the infrastructure criterion focused on the Te Āpiti and Tararua Wind Farms, as well as other core utilities infrastructure (including transmission and gas lines). That is in a context where the wind farms occupy large parts of the study area, and where the wind farms and other utilities infrastructure are specifically protected under the One Plan,<sup>41</sup> and subject to National Policy Statements.<sup>42</sup>
118. Importantly, the Transport Agency's decision-making process allowed for and encouraged information to be fed in from stakeholders, landowners and members of the public. The Transport Agency actively sought the views of potentially affected landowners, including AgResearch.
119. In his evidence for the Transport Agency, Mr Wickman explains that the Transport Agency was:

*"(...) well aware of the potential effect the Project corridor (short list Option 3) could have on the Ballantrae site during the options*

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<sup>38</sup> Long List Option Assessment (Appendix B to the Project DBC); Short List Option Assessment (Appendix C to the Project DBC). These reports are included in this document, which contains all DBC appendices: <https://www.nzta.govt.nz/assets/projects/sh3-manawatu/APPENDICES-Manawatu-Gorge-Alternatives-Detailed-Business-Case-Part-A-Version-E-October-2019.pdf>

<sup>39</sup> See in particular page 16 of the Shortlist Report.

<sup>40</sup> And, at the shortlist stage, Maori land interests.

<sup>41</sup> They are listed as infrastructure of regional and national significance in Policy 3-1(a) of the One Plan.

<sup>42</sup> The National Policy Statement on Renewable Electricity Generation, and the National Policy Statement on Electricity Transmission.

*assessment process. In particular, direct engagement with AgResearch during the short-list assessment stage aided our understanding of the potential impact on the fertiliser trial conducted at the site. Both short list Option 2 (the Saddle Road upgrade option) and short list Option 3 traversed the trial site. That potential impact was a consideration during the assessment process.”<sup>43</sup>*

120. That is reflected in the Shortlist MCA Report. In traversing the feedback received on the options, the Report sets out:

*“There was less specific feedback regarding Options 1 and 3 during the key stakeholder workshop however, the general themes of public feedback on Option 3 [the Project option] were that this option had a lesser property impact compared with other options and acceptable gradients.*

*During this phase of the project the project team was available to meet with potentially affected landowners. Potentially affected landowners were provided this opportunity via letters and many took up this opportunity. In addition to private landowners, the project team met with Meridian, Tilt and AgResearch to further understand specific issues and considerations. In particular this alerted the project team to the presence of a long-term fertiliser research site, which would be affected by the northern short list options to varying degrees.”<sup>44</sup>*

121. Mr Pellow has confirmed, including in response to questions from the Panel, that AgResearch was “*involved substantially*” in the assessment of alternatives process, and communicated the importance of the trial site to the Transport Agency.<sup>45</sup> In her evidence, Ms Robson states:

*“NZTA’s first on-site discussion of the road proposal was 26 October 2017. At this discussion the effects of a road cutting were discussed as they applied to the functioning of the overall farm, and to the long term experiment. At that meeting with the NZTA engineers, Brian DeVantier, Farm Systems and Environment, from AgResearch Grasslands explained the significance, importance and uniqueness of the long term experiment, its history and the important role it played in developing Overseer for North Island Hill Country farms, among other things. That it would be impossible to replicate the 43 years of historical record was*

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<sup>43</sup> EIC of Mr Scott Wickman at paragraph 75.

<sup>44</sup> At page 41.

<sup>45</sup> See also Mr Pellow’s statement of evidence at paragraphs 17 – 18..

*also discussed. His impression at that time was that they seemed to consider that the area of Ballantrae taken up by the experiment fell into the category of 'other items of major significance'.*<sup>46</sup>

122. Subsequent to that on-site discussion with AgResearch, a key stakeholder workshop was held on 7 November 2017 to discuss the short-listed options. The Consultation Summary Report prepared as part of the DBC records that the trial site was specifically discussed at the workshop, as a 'key theme' in respect of Option 3 (the Project option):

*"Stakeholders noted that out of all the options, this had the lowest gradients which saves on operating costs. Key thing to note was that the option affects a nationally significant scientific site. In terms of land use, it travels through rural land and a wind farm".*<sup>47</sup>

123. Ms Robson is critical that the Transport Agency "had no expertise on the subject of land-based long-term trials" when assessing alternative options.<sup>48</sup> That would be an unusually specific topic of expertise for an MCA assessment. In any event, though, the Transport Agency sought to draw direction on the expertise of AgResearch by specifically engaging with the organisation in respect of the trial site, including at a site visit to the trial site.
124. The trial site was subsequently specifically discussed in the Project DBC,<sup>49</sup> which was the overarching document (drawing on the MCA process and Longlist and Shortlist MCA Reports) informing the Transport Agency's decision on the route option to progress with.
125. In its summary of the short-list assessment process, the DBC traverses the feedback received on the four shortlisted options, including as follows:

*"The majority of public feedback indicated a preference for either Option 3 or Option 4. The feedback on Option 3 [the Project option] was relatively consistent amongst the public – namely that this option was considered favourable as it is shortest, most direct route and has the best gradients. Associated commentary included the favourable road geometry ('less twisty') and cost efficiency. This route was also considered to have a lesser property impact than other options. Overall, there was limited negative commentary on this option (even when it*

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<sup>46</sup> At paragraph 15.

<sup>47</sup> At page 14 of the "Manawatu Gorge Alternatives Consultation Summary Report" prepared by GHD for the Transport Agency, and which is Appendix J to the Project DBC.

<sup>48</sup> At paragraph 28 of her evidence.

<sup>49</sup> Dated 31 May 2018. The DBC is at this link: <https://nzta.govt.nz/assets/projects/sh3-manawatu/Manawatu-Gorge-alternatives-detailed-business-case-part-a-october-2018.pdf>

*was not identified as their preferred option) however concerns regarding the impact on the AgResearch fertiliser trial site, the similarity of the route (in terms of location) to Saddle Road were noted. Specific concerns regarding the AgResearch fertiliser trial site included the inability to replace or reproduce this site.”<sup>50</sup>*

126. The DBC explains that Option 3 (the Project option) was the preferred option. Mr Wickman notes that this choice was influenced by the transport performance of Option 3, the risks of adverse environmental effects being considered acceptable, and implementability.<sup>51</sup> The DBC records:

*“Taking into consideration each of the short list MCA assessment performances and the feedback received from the different forms of public consultation, Option 3 was chosen as the preferred option. The key aspects of the MCA process, which support the recommendation of Option 3 include better transport performance, an acceptable risk of adverse environmental impacts, and greater implementability. (...)*

*The short list options performed similarly overall in terms of social and environmental impacts, with no fatal flaws identified on any of the alignments and at the time of the production of this DBC, these effects were considered to be able to be avoided or minimised through future design and/or addressed using mitigation and environmental offset approaches familiar to the Transport Agency, including the Public Works Act.”<sup>52</sup>*

127. The DBC includes a detailed summary of Option 3 as the preferred option,<sup>53</sup> and set out in tabular form key findings from the assessment of social and environmental effects, constraints and opportunities. In respect of property issues, the DBC records:

*“The alignment is expected to negatively impact on properties in the area (through displacement and severance), property acquisition will be required, interests include private farmland, AgResearch, Meridian Energy, KiwiRail, Transpower, Tararua District Council and PowerCo.”<sup>54</sup>*

128. In selecting Option 3, the Transport Agency had due regard to Project cost. The ‘financial case’ section of the DBC includes an appropriately wide cost

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<sup>50</sup> At page 46.

<sup>51</sup> Mr Scott Wickman EIC at paragraph 61.

<sup>52</sup> At page 46 – 47.

<sup>53</sup> Section 5 of the DBC.

<sup>54</sup> As part of Table 16 at page 60, referred to at page 54.

estimate, building in property acquisition costs estimates.<sup>55</sup> As such, the cost of acquiring part of AgResearch's land was considered by the Transport Agency in making its choice on the Project route.

129. Overall, then, the Transport Agency's consideration of alternative route options for the Project:
- (a) included an MCA criterion (property) that provided for consideration of Ballantrae Station and the trial site;
  - (b) provided for information to be sought from landowners, which led to AgResearch being "*substantially involved*" in explaining the issues associated with the trial site to the Transport Agency; and
  - (c) encompassed information relating to the trial site specifically fed into the Transport Agency's overall assessment and decision-making, including through specific reference in the DBC and the Short List MCA report.
130. As is often the case with critiques of alternatives processes, the criticism levelled by AgResearch of the Transport Agency's process appears to stem from the fact that ultimately the Transport Agency selected an option that did not avoid the trial site. While disappointment in that outcome is understandable, the route decision was the Transport Agency's to make as requiring authority. The documentation illustrates that it did so on a properly informed basis, having specifically engaged with AgResearch in order to understand the issues associated with the trial site.
131. Ultimately, as recorded in the DBC, the decision to proceed with the Project option was made for a number of reasons. The need to acquire part of the trial site, and the potential impact of the Project on the trial site, was properly considered in making that decision. Ms Robson's assertion that "*no active consideration was given to the site during the MCA or DBC process*" is clearly incorrect.<sup>56</sup>
132. Effects on the trial site were not considered to be an overriding consideration, warranting the selection of another route option.<sup>57</sup> The Transport Agency considered the adverse effects of the Project option (which, like the other options, are significant) to be capable of being avoided, minimised, or

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<sup>55</sup> Part 7 of the DBC and in particular the reference to property acquisition estimates is at page 80.

<sup>56</sup> Ms Bridget Robson addendum evidence at paragraph 17.

<sup>57</sup> Just as the effects of the Project option on Te Āpiti Wind Farm were not considered to be overriding, despite the direct planning and policy support for the Wind Farm.

otherwise addressed through RMA and PWA processes.<sup>58</sup> That remains the case, including in respect of the effects on the trial site.

133. For ease of reference, the passages of the DBC and supporting documents specifically cited in this section are provided as **Attachment 5** to these submissions.

### **Conclusion regarding the trial site**

134. In conclusion on this issue, the Project's effects on the long-term field trial site will be minimised, and effects on the scientific potential and use of the site will be appropriately addressed through the conditions and ongoing funding to be provided by the Transport Agency.

## **OVERVIEW OF THE PROPOSED DESIGNATION CONDITIONS**

### **General**

135. The Transport Agency has proposed an extensive set of conditions to be imposed should the Panel be minded to recommend that the requirements be confirmed.
136. Draft conditions were included in the AEE, and in the evidence of **Ms McLeod**. Those conditions were further refined before, during, and since the hearing, and an updated set of proposed conditions is now attached to these submissions as **Appendix A**.
137. **Appendix A** is a table that clearly notes where recommended conditions are agreed as between Ms McLeod and Mr Percy, and where they are not.
138. The proposed conditions will ensure that the effects of the Project are appropriately avoided, remedied and mitigated.
139. In particular, a number of conditions set minimum standards that the Transport Agency must adhere to when delivering the Project. These minimum standards can be relied on by the Panel as setting the 'bottom line' or 'worst case scenario' of effect that will flow from recommending that the requirements be confirmed – the Transport Agency will be legally bound to adhere to these conditions and deliver these outcomes.

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<sup>58</sup> That reflects the requirement of Policy 3-3 in respect of adverse effects of infrastructure and other physical resources of regional or national importance, which is referred to by Ms Robson at paragraph 16 and 17 of her addendum evidence. Counsel note this policy relates specifically to effects of such infrastructure and resources, rather than being a policy specifically directed to managing effects on such infrastructure (and in any event, as discussed above, the trial site does not qualify as infrastructure / other physical resources of regional or national significance in terms of the One Plan).

140. Other conditions specify outcomes that also create legally binding obligations on the Transport Agency including, significantly, the 'net gain' outcome for indigenous biodiversity enshrined in proposed condition 17.
141. These conditions are discussed in more detail in this reply in relation to particular effects categories (including effects on the field trial site (above), ecology, and natural character in particular).
142. The conditions also refer to the requirement for the Transport Agency to submit an outline plan under section 176A of the RMA and for that outline plan to include a suite of management plans, which will ensure that the potential adverse effects of the Project are appropriately managed.

### **Management plans submitted as part of an outline plan**

143. Questions in the hearing arose regarding how the proposed management plans fit within the outline plan(s) the Transport Agency is required to submit under section 176A.
144. As set out in proposed condition 5, the Transport Agency's intention is that the management plans will form part of the outline plan(s). That provision enables a territorial authority to request changes to an outline plan and, if any change is not accepted by the requiring authority, to appeal to the Environment Court.
145. However, the territorial authorities have also sought that the management plans be submitted for their "*confirmation*" prior to being resubmitted as part of the outline plan(s) of works under section 176A.
146. The Panel has indicated through its questions that it is live to the risk of unnecessary duplication of process, and the Transport Agency shares that concern. In particular:
  - (a) Where a management plan has been "*confirmed*" by the territorial authority, the territorial authority could in theory still request changes to that management plan when it is resubmitted as part of the outline plan under section 176A. This is inefficient and could lead to unnecessary delays.
  - (b) Conversely, if any dispute were to arise between the Transport Agency and the territorial authorities (or between the Councils themselves) about whether a management plan is fit for "*confirmation*", it is unclear

how that dispute would be resolved.<sup>59</sup> In contrast, section 176A provides a clear dispute resolution mechanism, through the ability to appeal to the Environment Court.

147. In this context, “*confirmation*” of the management plans by the territorial authorities is an unnecessary additional step for this Project, where the management plans are all to be submitted as part of an outline plan, and the Transport Agency has not sought an outline plan waiver. As Mr Conway submitted for PNCC,<sup>60</sup> the orthodox position for notices of requirement is for an outline plan to be submitted setting out the details of the work and how effects on the environment are to be managed. The Transport Agency is following that orthodox approach for this Project and intends the management plans to be submitted as part of an outline plan.
148. As such, section 176A of the RMA provides a process for the finalisation of the management plans submitted as part of an outline plan – the territorial authorities can request changes, and if those changes are not accepted by the requiring authority, the territorial authorities can appeal that decision to the Environment Court. There is therefore no need for an additional “*confirmation*” role.
149. However, the Transport Agency accepts that the process under section 176A RMA does not provide an abundance of time for the territorial authorities to consider an outline plan, or for the parties to discuss and work through changes. Rather, a territorial authority has only 20 working days to request changes to an outline plan (and 15 working days to decide whether to appeal the Transport Agency's decision if it decides not to make the requested changes).
150. For a proposal of this scale, the 20-working-day timeframe could prove difficult. The Transport Agency therefore agrees it would be sensible for the conditions to require draft management plans to be provided to the territorial authorities for comment (rather than “*confirmation*”) before they are finally submitted as part of the outline plan(s) of works.
151. This change has been made in the amended set of proposed conditions attached at **Appendix A**, and a requirement has been added for the Transport Agency to explain in the outline plan why any changes requested

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<sup>59</sup> Though the conditions proposed by the section 42A reporting officers ultimately provide for the Transport Agency to bypass ‘confirmation’ and submit a management plan that remains in dispute as part of the outline plan process (their Condition 1B(d)).

<sup>60</sup> In response to questions.



to the management plans by the territorial authorities have not been accepted (if that occurs).

152. The difference between the outcome sought by the Transport Agency and the section 42A officers may ultimately be more about framing than substance; the proposed section 42A condition provides that where the “*confirmation*” process cannot be concluded due to an unresolved disagreement, the Transport Agency may opt to submit the management plan in question as part of the outline plan process.<sup>61</sup> A straightforward condition requiring the provision of the management plans for comment in advance of the outline plan process is more appropriate, and simpler to understand and administer.

## EFFECTS ON MĀORI VALUES

### Overview

153. As noted in opening legal submissions and throughout the hearing, the Transport Agency is privileged to be in partnership with the four iwi who presented evidence as part of the Transport Agency’s case.<sup>62</sup> These partnerships are crucial to the success of the Project, given the knowledge of the iwi regarding the cultural landscape in and around the Project area and the guidance they are providing on how adverse effects on that landscape can best be addressed.
154. That ongoing guidance will enable the detailed design, resource consenting, and construction processes to reflect and respect tangata whenua values.
155. As the Panel will recall, various proposed conditions expressly provide for the ongoing kaitiaki role of the Transport Agency’s iwi partners, in particular through the following:
- (a) Implementation of the CEDF in the detailed design of the Project. Parts 2.1 (‘Tangata Whenua Principles’), Appendix A.2 (‘Cultural Values and Narratives’), and Appendix A.3 (‘Sites of Significance to Tangata Whenua’) of the CEDF are particularly relevant; those aspects of the CEDF may be supplemented by additional information provided by iwi over time (despite the rest of the CEDF being ‘*locked in*’).<sup>63</sup>

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<sup>61</sup> Their Condition 1B(d).

<sup>62</sup> Rangitāne o Manaw atū, Rangitāne o Tamaki Nui-ā-Rua, Ngāti Kahungunu ki Tāmaki Nui-ā-Rua, and Ngāti Raukawa.

<sup>63</sup> Condition 5(d)(iii).

- (b) Input into preparation of the Landscape Management Plan,<sup>64</sup> the Lizard Management Plan<sup>65</sup> (if required), the Bat Management Plan,<sup>66</sup> the Avifauna Management Plan,<sup>67</sup> the Ecological Management Plan,<sup>68</sup> and the Western Car Park Reinstatement Plan.<sup>69</sup>
  - (c) Input into finalising an accidental discovery protocol (“ADP”) or protocols.<sup>70</sup>
  - (d) Specific provision for consultation with the Te Āpiti Ahu Whenua Trust in respect of works related to the bridging of the Manawatū River.<sup>71</sup>
  - (e) A Tangata Whenua Values Monitoring and Management Plan (or Plans) with a stated purpose *“to recognise and provide for the tangata whenua values of the area and to develop mechanisms and processes to seek to avoid or minimise potential impacts on those values through the implementation of agreed monitoring and mitigation measures”*.<sup>72</sup>
156. In relation to this last matter, proposed condition 23 has been updated, in response to evidence presented by iwi (in particular Mr Kendrick and Ms Lynch-Karaitiana), to provide for the Tangata Whenua Values Monitoring and Management Plan to include *“consideration of potential effects on taonga species, or other species of significance to tangata whenua”*, including some of the effects referred to during the hearing.
157. The true role of iwi in the Project is and will continue to be much broader than can be captured in conditions; nonetheless, the Panel can take comfort from the proposed conditions that iwi will remain appropriately central to the implementation of the Project.

### **Cultural and Environmental Design Framework**

158. During the hearing, the Panel sought clarification around how the CEDF, as a living document, will operate over the next stages of the Project.
159. As confirmed by Mr Bentley, the intention of the Transport Agency and its iwi partners is for the CEDF to be used as reference point for every aspect of design, in order to help facilitate discussions and lead to the development of an optimal design outcome.

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<sup>64</sup> Condition 12(d).

<sup>65</sup> Condition 14(b).

<sup>66</sup> Condition 15(b)(ii).

<sup>67</sup> Condition 16(b).

<sup>68</sup> Condition 17(a)(iii)B and 17(b).

<sup>69</sup> Condition PN2A(b).

<sup>70</sup> Condition 24(b).

<sup>71</sup> Condition PN1.

<sup>72</sup> Condition 23.

160. The Transport Agency recognises the need for the Panel to have sufficient certainty around the CEDF framework, and as such a 'finalised' version is provided as **Attachment 1** to these submissions. As noted above, however, flexibility is retained to allow for further information from iwi to be incorporated within the CEDF. This is done by reserving three sections within the framework that may continue to be added to even after the rest of the CEDF has been locked in.
161. It is important to emphasise that condition 5(d)(iii) is intended to allow for **supplementary** information to be added to these sections of the CEDF, with the wording as it currently stands to also remain within the CEDF.
162. Another matter queried by the Panel was how the Transport Agency intends to resolve potentially differing iwi views, in particular as they relate to the implementation of the Tangata Whenua principles at section 2.1 of the CEDF.
163. Mr Hudson suggested adding a dispute resolution process within the CEDF. The Transport Agency considers that to be an unnecessary and overly mechanistic response to matters that are more properly determined by iwi themselves, by reference to tikanga Māori principles and practices.

## **Conclusion**

164. On these matters, and more generally, the Panel can take a high level of confidence from the clear evidence of iwi witnesses as to the acceptability of Project, and their wish to see the NoRs confirmed.

## **EFFECTS ON ECOLOGICAL VALUES**

### **Basis for assessing effects**

165. Counsel for the section 42A reporting officers and the Director-General of Conservation ("**DOC**") have suggested that the Transport Agency has not clearly stated a position on whether the effects of allowing the NoRs on ecological values are matters for the Panel to consider.<sup>73</sup>
166. The Panel will have understood the Transport Agency's case to be that effects on terrestrial ecology are a matter to be evaluated. So are effects on streams, to the extent necessary to assess alignment of the Project with the One Plan provisions regarding natural character.

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<sup>73</sup> Memorandum of counsel for DOC dated 15 March 2019, at paragraph 6; submissions of counsel for the section 42A reporting officers dated 3 April 2019, at paragraphs 44 to 46.

167. Otherwise, effects on aquatic ecology values are effects of activities not enabled by the NoRs, so those effects (and the measures that will be proposed to address adverse effects) fall to be considered in the later resource consenting process, rather than the designation process. Effects on terrestrial ecology will again be a central consideration in that later consenting process too.
168. Despite the uncertainty expressed on behalf of the Councils and DOC, there does not appear to be any real dispute about this approach to assessing the effects of allowing the NoRs.
169. Counsel for the Councils maintain that the Panel must consider, in making its recommendations on the NoRs, the likelihood of later resource consent applications for non-complying activities passing through the objectives and policies gateway in section 104D of the RMA. Even if this exercise were possible in a practical sense, on the evidence before the Panel, it is not among the Panel's functions described in section 171.

#### **Concerns raised regarding the assessment of effects**

170. The hearing has confirmed that the criticisms levelled at the Transport Agency's ecologists regarding the quality of their assessments of adverse effects relate to relatively insignificant issues, and that the 'effects envelopes' for indigenous vegetation specified in conditions are appropriate, provided that further consideration is given to avoiding, remedying, and mitigating effects in future.<sup>74</sup>
171. Further implementation of that hierarchy is incentivised by the conditions (such as through operation of the environmental compensation ratios ("ECRs") and the express incorporation of One Plan Policy 13-4<sup>75</sup>), and in some cases is specifically directed (such as in relation to minimising effects on streams<sup>76</sup>).
172. The Transport Agency will have to demonstrate the appropriateness of the outcomes in this regard through the outline plan process, and when it seeks regional consents.
173. Another suggestion that is not accepted by the Transport Agency is that Dr Forbes failed to provide DOC witnesses with his quantitative assessment data relating to 10 of 12 vegetation types; on the contrary, he provided all the information that was sought, in line with his obligations under the code of

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<sup>74</sup> Submissions of counsel for the Councils, paragraph 200.

<sup>75</sup> In proposed condition 17(b)(i).

<sup>76</sup> Proposed condition 5(e)(i).

conduct for expert witnesses and the Transport Agency's approach of engaging constructively and fully with stakeholders.

### **QEII areas – potential northern alignment**

174. Designers have not been able to identify a feasible alignment option that avoids the western and eastern QEII areas, because that would in turn adversely affect a vegetated valley to the north and significantly increase earthworks volumes and cost, given the rising (and then falling) topography in that area.
175. Despite this, counsel for the section 42A reporting officers maintain that further consideration should be given to avoiding the QEII areas, and that the designation should be widened to the north to allow alignments to be 'in the mix' in future.
176. As well as the environmental issues with such a modification, no justification for it has been presented by reference to the relevant legal tests; for example, the officers did not indicate that they had canvassed that possibility with the relevant landowners (Mr Bolton, Mr Moar and Meridian) or with tangata whenua.
177. Nor does the Transport Agency accept the criticism on behalf of the Councils that it has been *"unprepared to comprehensively consider alternative routes and methods that could avoid some or all of the adverse effects on the Western QEII area and the significant sites at the base of the Western Rise"*. That assessment work has been done, as summarised by the Transport Agency's witnesses; regrettably, it is not practicable to avoid those areas, which has led to the Transport Agency turning its focus to the conditions and measures through which effects will be minimised and residual effects offset to achieve a net biodiversity gain.
178. In terms of potential alignments within the designation boundaries as proposed, the Panel has heard that a roading alignment further to the north could reduce the adverse effects on indigenous vegetation within the eastern QEII area.
179. Mr Whaley explained that:
- "A Northern option considered feasible is similar to the current indicative alignment, except that it has a straighter alignment, which bisects all pairs of wind farm turbine towers equidistant from each other, avoiding the need for turbine removal. The alignment traverses the section where the terrain is higher than the current indicative*

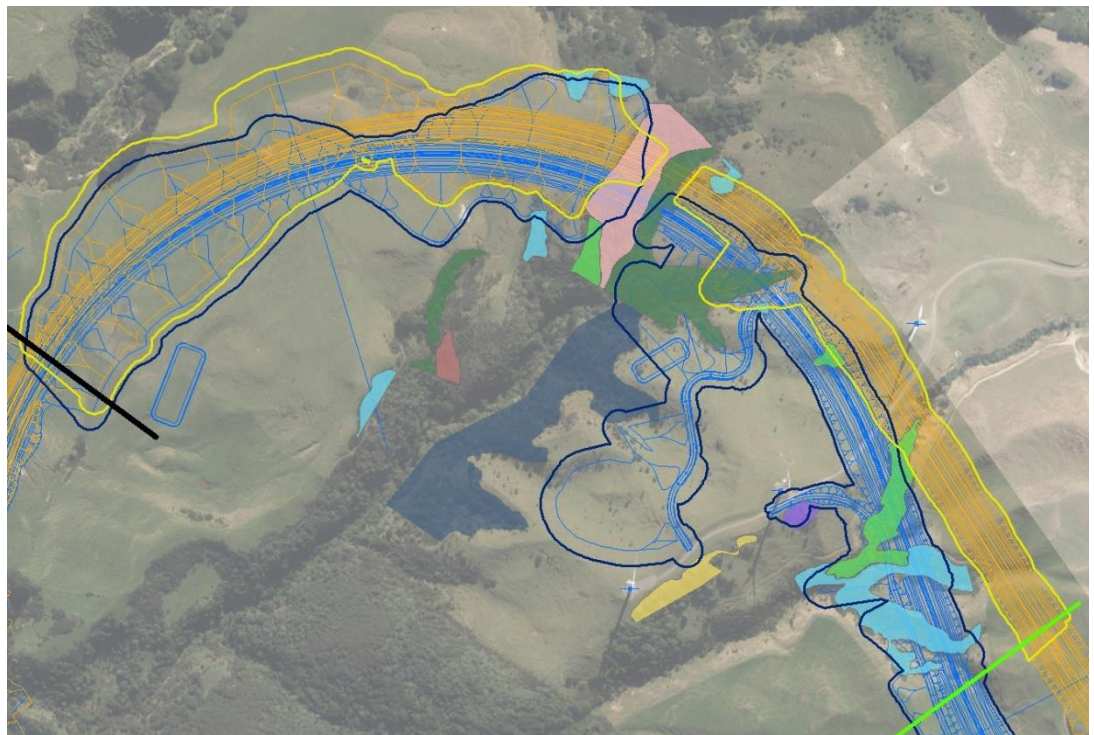
*alignment, resulting in a substantial increase in earthwork volumes (an increase of cut of more than 400,000m<sup>3</sup>).<sup>77</sup>*

180. In relation to that evidence, the Panel asked whether that alignment would avoid the forested area in the eastern QEII, and Mr Whaley advised that:

*“The alignment would not avoid the QEII area. It would however occupy less of it (approximately 40% of the indicative alignment). The total volume of earthworks would also increase (by approximately 4 – 500,000 m<sup>3</sup> more than the indicative alignment) with the greater elevation on this alignment.”<sup>78</sup>*

181. The Panel has now sought more detailed information about the relative ecological and other environmental effects, and cost and engineering effects, of a more northern alignment through the QEII areas.

182. A drawing showing the earthworks extent of the indicative alignment (in blue) and a preliminary concept design northern alignment (in orange) is shown below.<sup>79</sup> As can be seen from the drawing, the preliminary concept design northern alignment does not yet include provision for an access road to the wind turbines to the south of the new road.



183. Relevant implications of these alignments can be summarised as follows:

<sup>77</sup> Mr Andrew Whaley EIC, paragraph 141.

<sup>78</sup> Response to Panel questions; appendix to memorandum of counsel for the Transport Agency dated 20 March 2019.

<sup>79</sup> Some of the fill batters in the northern alignment, as drawn, would be marginally outside the boundaries of the proposed designation, but could be steepened so as to be constructed within them.

- (a) The preliminary concept design northern alignment has additional earthworks volumes, as previously indicated by Mr Whaley, given the higher elevation of the topography in that area. The additional volume is approximately 140,000m<sup>3</sup>; Mr Whaley's earlier figure of 4-500,000m<sup>3</sup> includes additional earthworks arising from the northern alignment continuing to the east.
- (b) 140,000m<sup>3</sup> of additional earthworks equates to approximately \$4.5 million of additional cost (with some unquantified cost savings as a result of less ecological offsetting being required).
- (c) Both alignments require the removal of one wind turbine.
- (d) The alignments are considered neutral in terms of constructability.
- (e) The resilience of both alignments would be substantially similar, as both would be designed to the same standard, although the preliminary design concept northern alignment is more challenging given the higher cuts and greater exposed cut faces.
- (f) Dr Forbes has prepared a comparison showing the differing effects on ecosystems between the current indicative alignment and the preliminary design concept northern option.<sup>80</sup> The analysis spans areas of each alignment between CH4800 and CH6400 to encompass the combined effect on both the Western and Eastern QEII sites. The results of the analysis are tabulated below. Ecosystem types B and F relate to the Western QEII. Ecosystem types I and J relate mainly to the Eastern QEII.

Ecosystem type	Indicative alignment		Preliminary design concept northern option	
	(m <sup>2</sup> )	(ha)	(m <sup>2</sup> )	(ha)
B - Old-Growth Forest Hill Country	5673	0.5673	3368	0.3368
C - Secondary Broadleaved Forests with Old-Growth Signatures	73	0.0073		
D - Old-Growth Treelands	990	0.0990		
F - Advanced Secondary Broadleaved Forest	18749	1.8749	4735	0.4735
I - Secondary Broadleaved Forests and Scrublands	9274	0.9274	1378	0.1378
J - Manuka, Kanuka Shrublands	16486	1.6486	2520	0.2520

<sup>80</sup> Noting again any vegetation impacts of a turbine access track associated with the northern alignment would be additional to these figures.

Ecozone A	2899	0.2899		
<b>Sum (ha)</b>		<b>5.4145</b>		<b>1.2001</b>

184. This analysis demonstrates that moving the alignment north could avoid effects on over 4ha of indigenous vegetation, at an additional cost of \$4.5 million.
185. While it is open to the Panel to recommend constraining works further through this area, given the preliminary nature of the northern design shown, the Transport Agency's strong preference is to retain design flexibility through that area, with the assurance (through conditions) that adverse effects on the QEII area and on streams is to be avoided if practicable, and otherwise ecological effects on the QEII will need to be comprehensively offset/compensated to a net indigenous biological diversity gain position.
186. In respect of effects on the QEII covenants more generally, as the Panel will be aware, a key component of the package of measures to address ecological effects will be replacement and offset planting (at the proposed ECRs), and retirement of existing areas of vegetation. The management of all those areas will include legal and physical protection (through stock exclusion and fencing) in perpetuity, akin to a QEII covenant.
187. In other words, through the Project the legal and physical protection afforded by the existing covenants will be replicated over a much larger area than at present.

### **Concerns regarding the certainty of net gain**

188. During the hearing the Panel has explored with representatives of DOC, Forest & Bird, other submitters, and the Councils the issue of the perceived lack of certainty regarding the package of positive measures to address adverse ecological effects.
189. As explained in the opening submissions for the Transport Agency, those concerns are unfounded given:
- (a) the proposed condition legally requiring the Transport Agency to achieve and demonstrate a net gain in indigenous biodiversity;
  - (b) the generous ECRs proposed,<sup>81</sup> in respect of which witnesses other than Dr Forbes were unable to provide the Panel with meaningful guidance;

<sup>81</sup> In response to questions from the Panel, Dr Forbes confirmed his view that the ECRs proposed are generous, and explained that was also the view of his peer reviewer Dr Blaschke.



- (c) other conditions requiring the Transport Agency to seek guidance from iwi, DOC, and others regarding the extent of any further offsetting or compensation necessary to achieve a net indigenous biological diversity gain, by reference to the direction given by Policy 13-4 of the One Plan; and
  - (d) the processes the Transport Agency has initiated to secure the land interests necessary to undertake offset planting, the limited relevance of the location of the proposed designation boundaries in those processes, and the legal powers the Crown has at its disposal to acquire such interests if necessary.
190. Reference to the Te Āpiti Governance Group's Biodiversity Management Plan has since been added to the conditions, given that potential funding for activities of the Governance Group could be a useful adjunct to the other offsetting measures proposed.
191. It is also clear that the offset package has been "offered", in terms of section 171(1B), contrary to initial suggestions by counsel for DOC.<sup>82</sup>

#### **Policy 13-4 of the One Plan**

192. Counsel for the section 42A reporting officers appeared to query whether the adverse effects of allowing the NoRs can be appropriately offset in line with Policy 13-4, despite confirming that the effects envelopes proposed by Dr Forbes are largely acceptable (other than potentially in respect of the western QEII area, in Mr Lambie's view).
193. Further, while counsel for DOC and the Councils accepted that compensation could assist to address ecological effects (and, it is understood, help achieve net indigenous biodiversity gain), they asserted that compensation would not fit within the framework of Policy 13-4.
194. Again, the Project accords, and will continue to accord, with Policy 13-4 and judicial commentary as to best practice, including in the *Day* and *Oceana Gold* decisions cited by counsel,<sup>83</sup> where efforts should be made to avoid or minimise adverse effects before looking to offsetting. That approach has guided the Project to date, and has resulted in the effects envelopes, designation boundaries, and conditions that have been proposed.

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<sup>82</sup> In response to questions from the Panel, counsel for DOC reframed DOC's position as being that the offsets have not been offered in full, on the basis that the sites where offsetting will occur have not been confirmed. The conditions (17H in particular) require those sites to be identified prior to the commencement of construction, and secured so that the offsetting actions can be delivered.

<sup>83</sup> *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182; *Oceana Gold NZ Limited v RFBPS* [2019] NZEnvC 41.

195. The proposed conditions also contemplate the potential use of compensation measures to contribute towards achieving a net gain.
196. The assertions of counsel for DOC and the Councils that those measures would fall outside Policy 13-4 are not accepted; use of the term “*offset*” in the One Plan, including in Policy 13-4, can be read to include the concept of “*compensation*” as DOC and the Councils understand it, and indeed even cruder compensation tools such as monetary payments.
197. In this regard, the wording of Policy 3-3 is instructive; it refers to more than minor adverse effects of important infrastructure being “*offset, including through the use of financial contributions*”.<sup>84</sup>

### **Wet pasture criss-crossed with drains**

198. A replacement planting ECR of 1.5 is provided in proposed condition 13 for “*exotic dominated seepage wetlands*”. In the context of criticisms by DOC’s witnesses about that ECR, the Panel queried the relevance of these areas to conditions,<sup>85</sup> bearing in mind their generally low ecological value.
199. Dr Martin and Mr Lambie were asked whether these areas should properly be classified as wetlands warranting protection (and if they amount to anything more than wet pasture criss-crossed with drains). In response, Dr Martin’s position was that if these areas meet the RMA definition of wetland, effects on them need to be addressed. Mr Lambie said that where these areas are merely wet paddocks, the One Plan response would be to classify them as very low value in ecological terms.
200. As requested, Dr Forbes has given further consideration to this issue. He advises that:
- (a) Areas classed as “*exotic dominated seepage wetlands*” for the purposes of condition 13 differ from mere wet pasture, in that to qualify as wetlands areas must be dominated by or have a prevalence of exotic wetland indicator plant species.<sup>86</sup>
  - (b) The ecological relevance of exotic-dominated wetlands relates to the wetland class rather than the composition of vegetation.<sup>87</sup>

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<sup>84</sup> The absence of the specific word “*compensation*” from the One Plan is not surprising in light of the evolving terminology in this area.

<sup>85</sup> Noting condition 13 should focus on indigenous biodiversity values.

<sup>86</sup> Dr Forbes refers to the list at Appendix 9 to this Landcare Research document:

[https://www.landcareresearch.co.nz/\\_\\_data/assets/pdf\\_file/0003/71949/vegetation\\_tool\\_wetland\\_delineation.pdf](https://www.landcareresearch.co.nz/__data/assets/pdf_file/0003/71949/vegetation_tool_wetland_delineation.pdf)

<sup>87</sup> It has been estimated that only 3% of the pre-human wetland extents (all wetland classes combined) remains in the Horizons region

- (c) Dr Forbes' understanding is that exotic-dominated wetlands are not relevant under the One Plan policies and rules, and he is confident that the exotic-dominated wetlands under consideration do not provide indigenous fish habitat.

201. With the above in mind, exotic-dominated seepage wetlands have been included in the effects management regime (including through an ECR in condition 13) solely because of the nationally and regionally highly under-represented status of wetland ecosystems. This goes above and beyond what would be expected based solely on the application of the One Plan. Dr Forbes is comfortable that the area of affected exotic-dominated seepage wetland identified in condition 13 is appropriate.<sup>88</sup>

### **Condition changes suggested by Dr Martin**

202. In his addendum evidence, Dr Martin makes a number of comments relating to the Transport Agency's proposed conditions; a number of changes he has sought were adopted in the latest section 42A reporting officers' conditions. As requested by the Panel, Dr Forbes (with the input of Mr Blayney as appropriate) has considered these points, and the Transport Agency responds as follows:

- (a) Dr Martin seeks that condition 5 specifically require further surveying of exotic-dominated wetlands.<sup>89</sup> As set out above, having reflected on the discussion at the hearing, Dr Forbes does not consider that to be necessary.
- (b) Dr Martin's comments on the mitigation hierarchy and divaricating Coprosma shrubland<sup>90</sup> have been addressed by the change to the Lizard Management Plan and Terrestrial Invertebrate Management Plan conditions, specifying that the Project must "*avoid, remedy or mitigate*" potential effects (as opposed to "*manage*" effects).<sup>91</sup>
- (c) In respect of Dr Martin's comments on confirming the relevant ECRs,<sup>92</sup> proposed condition 17(b)(i) now specifically requires the ECRs to be reviewed and confirmed when the Ecology Management Plan is prepared.

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<sup>88</sup> And as such further survey work is not necessary, particularly when taking into account the relatively low value of these areas and the lack of recognition for them in the One Plan.

<sup>89</sup> Dr Tim Martin addendum evidence at paragraphs 2.1 – 2.3.

<sup>90</sup> Dr Tim Martin addendum evidence at paragraphs 3.1 – 3.2.

<sup>91</sup> The primary value of this habitat relates to lizards and invertebrates (the relevant management plan conditions are conditions 14 and 16A).

<sup>92</sup> Dr Tim Martin addendum evidence at paragraphs 4.1.

- (d) The location and extent of edge planting will be confirmed once a final Project design is determined; specific reference to edge planting has been added to proposed condition 17(a)(3)(H).<sup>93</sup>
- (e) The reference in the Avifauna Management Plan condition to potential whitehead habitat has been generalised (rather than specify only old-growth forest as relevant) in response to Dr Martin’s comments.<sup>94</sup>
- (f) A specific requirement for exclusion areas around any identified cryptic bird species nesting areas has been added (to add to the general “avoid, remedy or mitigate” Avifauna Management Plan requirement).<sup>95</sup>
- (g) In respect of Dr Martin’s comments on the Terrestrial Invertebrates Management Plan condition,<sup>96</sup> as noted above the updated requirement is to “avoid, remedy or mitigate” potential effects. Mr Blayney is comfortable that the additional specificity sought by Dr Martin is not necessary (as those details can appropriately be addressed in the Management Plan itself).
- (h) The proposed conditions now specify that the pest management residual trapping requirement is 5% *or better* (in the unlikely event of any future confusion on that front).<sup>97</sup>
- (i) In terms of the Landscape Management Plan,<sup>98</sup> condition 13 is clear that the ecological bottom lines must be met (so no change is required to condition 12 on that front); similarly, condition 12 relates to landscape planting (including in terms of planting within Te Āpiti Wind Farm), and condition 13 stands on its own in terms of offset planting.
- (j) Condition 31 does not need to refer specifically to conditions 14, 15, 16 and 16A – those conditions (and management plans) are captured by the reference to condition 17 and the overall Ecology Management Plan.<sup>99</sup>

## Bats

203. The second of the two surveys recommended by Mr Blayney to confirm whether long-tailed bats are present in the Project area has now been completed. No bats were detected. In line with Mr Blayney’s evidence, that in

<sup>93</sup> Refer Dr Tim Martin addendum evidence at paragraph 5.1.

<sup>94</sup> Condition 16(d); refer to Dr Tim Martin’s addendum evidence at paragraph 6.1.

<sup>95</sup> Condition 16(f); refer to Dr Tim Martin’s addendum evidence at paragraph 6.2.

<sup>96</sup> Dr Tim Martin addendum evidence at paragraphs 7.1 – 7.6.

<sup>97</sup> Condition 17(a)(3)(H); Dr Martin addendum evidence at paragraph 8.1.

<sup>98</sup> Dr Tim Martin addendum evidence at paragraphs 9.1 – 9.2.

<sup>99</sup> Dr Tim Martin addendum evidence at paragraph 9.3. The other ecological management plans all form part of that overall management plan.

turn confirms that bats are not present at detection-level density and therefore risks to bats are very low.<sup>100</sup>

204. The Transport Agency is awaiting a formal report of the survey, which will be provided to DOC and the Councils. In the interim, the proposed bat management plan condition has been retained.<sup>101</sup>

### **Pest management along the old road through the Manawatū Gorge**

205. DOC and Forest and Bird continued to argue that a condition should be imposed requiring pest control measures in respect of the Gorge road.<sup>102</sup> As set out in opening legal submissions, the Gorge road remains the responsibility of the Transport Agency (including in terms of the State Highway Control Manual referred to by Mr Briggs),<sup>103</sup> which has no intention of simply abandoning that corridor. Further, the Project itself does not change the existing environment of the Gorge road.<sup>104</sup>
206. In that context, counsel remain of the view that a condition of the type sought by DOC and Forest and Bird would be unnecessary and unlawful. The section 42A reporting officers have not recommended a condition on this point (either in the form recommended by Mr Briggs, or otherwise).

## **EFFECTS ON NATURAL CHARACTER**

### **Introduction**

207. The section 42A reporting officers have criticised various points of detail regarding the Project's effects on natural character, but have not discredited the assessment undertaken by the Transport Agency's witnesses (or indeed undertaken their own meaningful assessment of those effects).
208. Below we address briefly, in turn:
- (a) the incorrect suggestion by counsel for the section 42A reporting team that the Project offends against Objective 6-2(b) of the One Plan, on the Transport Agency witnesses' own assessment; and
  - (b) criticisms of the methodology used to assess natural character, including of a perceived failure to assess cumulative adverse effects on natural character at a stream level.

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<sup>100</sup> Mr Andrew Blayney EIC at paragraphs 17 – 25 and in particular 22.

<sup>101</sup> Condition 15.

<sup>102</sup> Legal submissions for DOC at paragraph 67; Mr Michael Briggs addendum evidence at section 4.

<sup>103</sup> Mr Michael Briggs addendum evidence at paragraphs 4.1 – 4.2.

<sup>104</sup> It is worth reiterating that unlike the Transmission Gully and *Handley* examples cited by counsel for DOC, the Project does not involve the bypassing of an otherwise fully functioning road corridor. The Transport Agency understands and accepts that it has RMA responsibilities for the Gorge road under section 17 of the RMA, as referred to by the Court in *Handley* (at [59]).

## **The Project does not significantly diminish attributes in areas of high natural character**

209. As an initial point, counsel for the section 42A reporting team have pointed to tables 9 and 11 of the natural character technical assessment (Appendix 4.A to Technical Assessment 4) as evidence that the attributes and qualities of areas of high natural character have been significantly diminished, even on the Transport Agency's witnesses' own assessment.

210. As the Panel identified in its questioning of counsel, tables 9 and 11 in Appendix 4.A must be read together with the balance of that report, and Technical Assessment 4. Read more broadly, it is clear that:

- (a) The evidence of the multi-disciplinary team that assessed natural character effects for the Transport Agency is that effects must be assessed at a stream scale, rather than focusing narrowly on the effects at the relevant crossing point. That is because, as explained by Mr Evans in his evidence, in response to questions from the Panel, *"streams are interconnected ecosystems and effects need to be considered in context. While adverse effects may occur at one point on a stream the effects are influenced by the stream condition downstream and upstream of the actual crossing point."*<sup>105</sup>
- (b) There was understood to be general acceptance that natural character diminishing from 'high' to 'moderate' (or less) constitutes *"significant"*, in terms of the One Plan. Mr Hudson now appears to be of the view that diminishment from 'high' to 'moderate-high' is significant – that is not the view of the Transport Agency witnesses, however.
- (c) There are references in tables 9 and 11 of Appendix 4.A to natural character diminishing from high to moderate (or less), but all but one of those references are to effects at a localised stream-crossing scale.
- (d) The reference in table 9 to natural character diminishing from high to moderate at the stream scale relates to a potential design option described as *"embankment and QEII west crossing"*. That option was considered and subsequently discounted, because of its adverse ecological effects. This was explained by Mr Evans in Technical Assessment 4, at paragraphs 201 and 202:

*"The nature and scale of changes would depend on the Project alignment selected. Various options were considered for this*

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<sup>105</sup> Mr Boyden Evans EIC, paragraph 102(a).

*sector that would have resulted in quite different outcomes. A westerly bridge alignment constructed on embankments after it crosses the Manawatū River, would have required extensive earthworks, stream diversion and removal of a valued area of old growth indigenous forest to accommodate the footprint. That option cannot proceed, because it would exceed the proposed 'effects envelope' (recommended by Dr Forbes).*

*The current indicative alignment of the Project, comprising an easterly bridge alignment across the river, together with a second bridge to form a 'viaduct/long bridge' spanning the raupō wetland, would avoid the old growth indigenous forest and avoid stream diversion."*

### **Criticisms of the methodology used to assess natural character**

211. Mr Hudson's criticisms of the natural character assessment methodology persisted through the hearing, which is disappointing given that Mr Hudson:
- (a) fed comments into the draft methodology, which were then adopted, in July 2018, prior to the assessment being undertaken; and
  - (b) has himself adopted the Boffa Miskell methodology in undertaking assessments of natural character, including in an August 2015 assessment of the natural character of the coastal environment in the Manawatū District.
212. One criticism, in respect of which the Panel has sought further information, is that no assessment has been undertaken of cumulative adverse effects on natural character at a 'whole stream' scale.
213. Mr Evans does not accept that criticism; cumulative effects on natural character at a stream level were indeed assessed for Stream 7 (at Chainage 4000-6000), where the indicative alignment crosses tributary 7A in two places.
214. That is, Mr Evans and colleagues assessed and rated each of the crossing points individually and the relevant information was shown in Table 2 of his evidence (reproduced below). That is, under Chainage 4000-6000 the 'Lower stream/Wetland' crossing point and 'QEII West' crossing point were assessed.

Table 4.2: Summary of changes to natural character (at crossing locations)

Location	Current Condition	Post-Construction Condition
Manawatū River Crossing	Moderate/High	Moderate
Chainage 4000-6000 Lower stream/Wetland QE II West	High High	Moderate/High Moderate
QEII East (chainage 6100-6400)	High	Moderate
East End Stream (chainage 12700-13100)	Moderate	Moderate/Low
Stream crossed by an existing construction access track to/from Saddle Road	High	Moderate/High

215. Mr Evans' subsequent table, Table 4.3, then noted the assessment at Chainage 4000-6000 (i.e. Stream 7) in relation to the whole stream and rated it overall considering both areas cumulatively.

Table 4.3: Summary of changes to natural character (at whole stream level)

Location	Current Condition	Post-Construction Condition
Chainage 4000-6000 QE II West and lower stream/wetland	High	Moderate/High
QEII East (chainage 6100-6400)	High	High
Stream crossed by an existing construction access track to/from Saddle Road	High	High

216. Mr Hudson's other criticisms can also be answered briefly, as follows:

- (a) Mr Evans has confirmed that the expert team's evaluation used some statistical analysis of attribute states (namely a median score) as one element of an overall consideration, rather than the sole determinant of the outcome. There is not understood to be any challenge to the use of



statistical analysis in this way; rather, Mr Hudson seems to question whether that was actually the process adopted. Mr Evans' evidence on that point is clear.

- (b) The section 42A reporting officers have maintained the position that significant diminishment of **any one** of the numerous attributes making up natural character means that the attributes and qualities of natural character are significantly diminished overall. Ms McLeod explained in her evidence how that cannot be the correct interpretation of Objective 6-2(b) of the One Plan;<sup>106</sup> more broadly, Ms McLeod's interpretation is supported by section 6(a) of the RMA, which requires preservation of natural character as an overall construct rather than requiring each and every aspect of natural character to be preserved.
- (c) Mr Hudson has opined that diminishment of natural character – and indeed, presumably any attribute making up character overall – from 'high' to 'moderate-high' is "*significant*". That is an unreasonably stringent standard; on any fair interpretation, a diminution by one step in a nine-step scale cannot qualify as "*significant*".
- (d) Mr Brown has concerns that some qualitative stream attributes may have been underestimated, including that some attributes in Policy 6-8 of the One Plan may not have been accounted for, but these concerns have not been borne out during the hearing.

217. In respect of these matters, the evidence of Mr Evans and other the Transport Agency witnesses should be preferred. The commentary of the section 42A reporting officers is overly critical, and Mr Hudson's 'spot-check' desk-top review of some aspects of Mr Evans' assessment is not a robust basis for preferring his evidence as to effects on natural character.

218. More generally, the Panel should not take up the section 42A reporting officers' suggestions of:

- (a) requiring that the natural character assessment be repeated using a different methodology;
- (b) reducing the applicable 'envelope' of lengths of stream habitat that can be affected (noting that no alternative lengths have been put forward by those officers); or

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<sup>106</sup> Ms Ainsley McLeod EIC, at paragraph 51.

- (c) the designation boundaries being enlarged to provide additional space for potential avoidance options to be explored.
219. There is no evidentiary or legal justification for those measures; the effects of the Project on the natural character of watercourses and their margins have been assessed by Mr Evans and colleagues in a robust manner, and will be appropriately mitigated through the conditions proposed.

### **EFFECTS ON TE ĀPITI WIND FARM**

220. Mr Dalzell's evidence described the detailed and ongoing discussions that have occurred between the Transport Agency and Meridian Energy Ltd ("**Meridian**") to address potential effects of the Project on the Te Āpiti Wind Farm.
221. Further progress on those issues was made during the hearing itself and the expert planning witnesses for both the Transport Agency and Meridian have now agreed further changes to proposed condition T1 (which requires preparation of a Wind Farm Management Plan) to address potential effects on the Wind Farm. In addition, a new condition 5(e)(x) has been proposed, which will prevent the Project from removing more than two wind turbines from the Wind Farm, unless Meridian provides written consent.
222. The following conditions are now proposed to address potential effects on the Wind Farm:
- (a) **Condition 5(c)(v)** requires the outline plan to include a Wind Farm Management Plan;
  - (b) **Condition 5(e)(x)** (as noted above) prevents the Project from removing more than two wind turbines from the Wind Farm, unless Meridian provides written consent;
  - (c) **Condition 5(e)(xi)** requires the outline plan to demonstrate how permanent practical on-going access is maintained to existing and relocated network utilities and wind farm turbines (where retained), including reasonable and emergency access during construction of the Project;
  - (d) **Condition 12(f)** restricts the planting that the Landscape Management Plan may require to be carried out on the Wind Farm;
  - (e) **Condition 13(d)** restricts the ability to locate replacement and offset planting on the Wind Farm;

- (f) **Condition 21(d)(x)** requires the Construction Noise and Vibration Management Plan to include procedures, developed in consultation with Meridian, to remedy or mitigate any potential adverse effects in instances where the construction vibration criteria set out in Condition 20 might not be complied with in respect of Meridian's wind turbines;
- (g) **Condition 22(l)** requires the Construction Traffic Management Plan to detail measures to provide on-going vehicle access to private properties, including the Wind Farm, and limit the adverse effects of construction and severance, including by forming any new permanent accesses at the earliest opportunity; and
- (h) **Condition T1** requires the preparation of a Wind Farm Management Plan. As noted above, the expert planning witnesses for Meridian and the Transport Agency agreed further changes to this condition during the hearing. Condition 5(c)(v) requires the Management Plan to be submitted as part of the outline plan(s) and condition T1 requires it to be prepared in consultation with Meridian prior to any construction works or enabling works being undertaken on the Wind Farm. The purpose of this Management Plan is to avoid, where practicable, any potential effects of the Project on wind farm operations provided for in the Wind Farm resource consent (granted 3 September 2003) and, where avoidance is not practicable, set out measures to remedy or mitigate such effects. The Management Plan must comply with minimum requirements set out in condition T1, including the following:
  - (i) T1(c) requires the Plan to describe details of the on-going access arrangements, *including for over-dimensional loads*, and as required by Condition 5(e)(xi) to accommodate Meridian's operation, maintenance and upgrade requirements; and
  - (ii) T1(f) requires the Plan to include technical, engineering and geotechnical advice from a suitably qualified and experienced person in relation to the impact of construction activities on the safe and efficient operation of a turbine where construction activities are within 160 metres of a turbine location shown provided for in the Wind Farm resource consent (granted 3 September 2003).<sup>107</sup>

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<sup>107</sup> Except particular named turbines, as agreed with Meridian.

223. The conditions provide a robust framework for any adverse effects on the Wind Farm to be appropriately addressed. In particular, they address the outstanding issues raised in the addenda filed by Meridian's witnesses in the following way:

- (a) Meridian's request for a 160m contingency zone is addressed by proposed Condition T1(f); and
- (b) Meridian's concerns regarding access, particularly for over-dimensional loads, is addressed by proposed Condition T1(c) and 5(e)(xi).

224. Notwithstanding the good progress made during the hearing, Meridian has stated a preference that all adverse effects on the Wind Farm are avoided and if not, that the NoRs be withdrawn. This is not a reasonable position for the reasons addressed below.

### **National Policy Statement for Renewable Electricity Generation 2011 (NPSREG)**

225. Meridian argues that:

- (a) the Project does not give effect to the NPSREG;<sup>108</sup> and
- (b) when considering a notice of requirement under section 171(1), the directions in *King Salmon* apply more closely than for a resource consent application because *"the process is related to a planning framework context as opposed to a resource consent."*<sup>109</sup>

226. These propositions are incorrect as a matter of law.

227. Section 171(1) directs the Panel, subject to Part 2, to consider the effects on the environment of allowing the requirement, having particular regard to relevant provisions of RMA planning documents, including the NPSREG and others. The Panel is not required by section 171(1) to consider whether the Project *"gives effect"* to the NPSREG. This is not a plan change where the contents of the plan must *"give effect"* to relevant national policy statements, such as was the case in *King Salmon*.

228. Further, it is not correct to say the directions in *King Salmon* apply more closely under section 171(1). The *Basin Bridge* decision specifically considered the implications of the *King Salmon* decision on the statutory test under section 171(1) and confirmed that the task of a decision-maker under section 171(1) is different to that of a decision maker considering a plan

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<sup>108</sup> Legal submissions on behalf of Meridian at paragraph 61.

<sup>109</sup> Legal submissions on behalf of Meridian at paragraph 64.

change (such as was the case in *King Salmon*). The High Court in *Basin Bridge* cited the Board of Inquiry's description of the statutory task with approval on this point:<sup>110</sup>

*"[183] Further and perhaps more importantly, as we have already noted, Section 171(1) and the considerations it prescribes are expressed as being subject to Part 2. We accordingly have a specific statutory direction to appropriately consider and apply that part of the Act in making our determination. The closest corresponding requirement with respect to statutory planning documents is that those must be prepared and changed in accordance with (...) the provisions of Part 2.*

*[184] For the above reasons, the statutory framework and expectation of Section 171(1) relevant to our current decision can be contrasted with the situation in King Salmon. The plan change being considered in that case was required to give effect to a higher order planning document which the Supreme Court considered should already give substance to pt 2's provisions in relation to (...) [the] coastal environment. By contrast, here we are required to consider the environmental effects of the NoR, subject to Part 2 and having particular regard to the relevant statutory planning documents.*

229. As noted in counsel's opening submissions, the Court of Appeal has recently revisited the meaning of "subject to Part 2" in the context of resource consent applications, in light of the *King Salmon* decision.<sup>111</sup> In short, in *Davidson*, the Court of Appeal determined that:

- (a) Notwithstanding *King Salmon*, RMA decision-makers should usually consider Part 2 when making decisions on resource consents (that is the implication of the words "subject to Part 2" in section 104);
- (b) However, where the relevant plan provisions have clearly given effect to Part 2, there may be no need to do so as it "would not add anything to the evaluative exercise". It would be inconsistent with the scheme of the RMA to override those plan provisions through recourse to Part 2. In other words, "genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome".

<sup>110</sup> *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, (2015) 19 ELRNZ 168 at [118].

<sup>111</sup> *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, (2018) 20 ELRNZ 367.

230. The Court of Appeal in *Davidson* did not directly address the use and meaning of the term "subject to Part 2" in section 171(1) and counsel is unaware of any decision that has qualified the approach of the High Court in *Basin Bridge* to the meaning of "*subject to Part 2*" in section 171(1) in light of the *Davidson* decision.
231. In any event, the Panel is not required to reach a conclusion on this matter as this is not a case where the NPSREG directs a specific outcome, or in the words of *Davidson*, "*genuine consideration and application of the NPSREG leaves little room for Part 2 to influence the outcome*".
232. The NPSREG does not contain strong 'avoidance' directives such as were under consideration in the *King Salmon* or *Davidson* decisions in respect of the New Zealand Coastal Policy Statement ("NZCPS"). The policies under consideration in those cases were Policies 13 and 15 of the NZCPS, which include directions:
- (a) To "*avoid adverse effects*" on outstanding natural character, features and landscapes in the coastal environment; and
  - (b) To "*avoid significant adverse effects*" on other natural character, features and landscapes in the coastal environment.
233. In contrast, the NPSREG does not require avoidance of adverse effects in this way. Rather:
- (a) Objective B, Policy B requires decision-makers "*to have particular regard*" to a range of matters, including that "*even minor reductions in the generation output of existing renewable electricity generation activities can cumulatively have significant adverse effects on national, regional and local renewable electricity generation*"; and
  - (b) Objective D, Policy D requires decision-makers "*to the extent reasonably possible, [to] manage activities to avoid reverse sensitivity effects on consented and on existing renewable electricity generation activities*".
234. In respect of Objective B, Policy B, this provision does not require decision-makers to ensure all adverse effects on existing renewable electricity generation are "*avoided*". Rather, decision-makers must "*have particular regard to*" significant adverse effects that may arise due to even minor reductions in generation output. The Transport Agency's position is that the Project will not lead to such significant adverse effects.

235. Meridian have drawn the Panel's attention to the following statement in the AEE for the Project:

*"On this basis, and having regard to the local and regional context, the removal of one (and possibly two) turbines from the existing wind farm does give rise to a significant cumulative effect on national, regional and local electricity output."*

236. However, it is clear from the surrounding context that this paragraph includes a typographical error and should instead read "(...) *does not give rise to a significant cumulative effect (...)*"<sup>112</sup>

237. To be clear, the Transport Agency's position is that the removal of up to two turbines from the Wind Farm would not constitute a significant cumulative effect on national, regional or local electricity output, and is therefore not inconsistent with the policy direction in Objective B Policy B. The new proposed condition 5(e)(x) will ensure that no more than two turbines can be removed by the Project, unless Meridian consents to this.

238. In respect of Objective D, Policy D, this is not a strong 'avoidance' policy such as Policies 13 and 15 of the NZCPS as the direction to avoid reverse sensitivity effects is only *"to the extent reasonably possible"*. In any event, the Transport Agency's position is that the Project will not create reverse sensitivity effects as the Project is not an activity that is sensitive to the effects of the Wind Farm.

239. In summary then:

- (a) The NPSREG does not require all adverse effects on renewable electricity generation to be avoided.
- (b) The Project is consistent with the relevant policies of the NPSREG. Therefore, there is no "conflict" between the NPSREG directions and the other considerations under s 171(1).
- (c) As such, there is no need for the Panel to consider whether the approach under s 171(1) has changed following *Davidson* or *King Salmon*. However, the leading authority as it stands is the *Basin Bridge* decision, which states that the directions in s 171(1) are still *"subject to*

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<sup>112</sup> The full paragraph is at Section 41.1 of the AEE, page 189, and reads: *"In terms of Objective B– Policy B, the Project may necessitate the removal of a turbine, or turbines, that in turn may result in a reduction in generation output. However, in developing the Project, and consistent with Policy B, the NZ Transport Agency has had particular regard to the location of the designation corridor in order to avoid or minimise the loss of turbines as a result of the Project. Further, the NZ Transport Agency has explored opportunities to relocate, rather than remove, turbines from the wind farm with Meridian. On this basis, and having regard to the local and regional context, the removal of one (and possibly two) turbines from the existing wind farm does [not] give rise to a significant cumulative adverse effect on national, regional and local electricity output."*

*Part 2*" and therefore that the planning documents are not determinative (although they are an important matter to be had particular regard to).

### **Effects of dust from Meridian access tracks**

240. Lastly, Meridian has expressed concern about effects of dust from access tracks adversely affecting users of the new road. In response to a question from the Panel, counsel can confirm that the Transport Agency does not share that concern.

## **EFFECTS ON OTHER LANDOWNERS AND NEIGHBOURS**

### **Introduction**

241. Further to those set out above, the following affected landowners and neighbours to the Project also spoke to their submissions at the hearing. The main issues raised by these submitters, and the Transport Agency's responses, are set out below.

### **Mr Bolton**

242. Mr Bolton spoke about the effects of the Project on his longstanding farming operation, with a focus on the PWA processes to be undertaken in respect of the relevant portions of his land.

243. The Transport Agency appreciates Mr Bolton submission, and acknowledges the Project's adverse effects on Mr Bolton's farm. In respect of the PWA process, the Transport Agency is committed to continue to work through these matters in the usual way to ensure a fair outcome for Mr Bolton.

### **Mr and Mrs Rogers; and Mr Shoebridge and Mrs Cooke**

244. These submitters reside outside but adjacent to the Project designation corridor, near the proposed roundabouts at the western (Rogers – 1213 Fitzherbert East Road) and eastern (Shoebridge and Cooke – 49846 SH3) ends of the route. They expressed concern about noise effects associated with the roundabouts, and the Project generally.

245. Dr Chiles confirms that anticipated noise levels at both dwellings will comply with NZS 6806 "Category A" noise limits,<sup>113</sup> but in any event recommended noise mitigation measures that have been incorporated in the Transport Agency's proposed conditions. Indeed, the conditions go further than what Dr Chiles recommended, and:

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<sup>113</sup> Dr Stephen Chiles' EIC at paragraphs 36 and 56.



- (a) require the roundabouts to be more than 100 metres from both dwellings<sup>114</sup> and maximise the distance between the western roundabout traffic lanes and the Rogers dwelling;<sup>115</sup>
- (b) provide for an enhanced earth bund at the Rogers property, and a new earth bund at the Shoebridge / Cooke property for noise mitigation and screening purposes, to be developed through the Landscape Management Plan;<sup>116</sup> and
- (c) require a post-construction review of noise levels experienced at both dwellings, with further noise mitigation to be offered if noise levels exceed the NZS6806 “Category A” standard.<sup>117</sup>

246. In response to comments made by Mr Rogers and Mr Shoebridge at the hearing, the Transport Agency is happy to commit to bund construction as soon as practicable, and not more than one year following the commencement of construction subject to designs being agreed and access to property being allowed.<sup>118</sup> This requirement has been added to proposed condition 12(e)(v) and (vi).<sup>119</sup>

247. In his addendum evidence, Mr Lloyd recommends that the Transport Agency offer to provide noise insulation for the bedrooms at both dwellings (without testing whether that is necessary via post-construction monitoring).<sup>120</sup> This is a new recommendation, not reflected in the Joint Witness Statement or Mr Lloyd’s Section 42A Report. At the hearing, Mr Lloyd acknowledged that Dr Chiles did not consider this up-front insulation to be necessary, on the basis that potential noise effects at these two dwellings have been overstated (bearing in mind the existing noise environment).<sup>121</sup>

248. The Transport Agency remains committed to monitoring the noise levels at these dwellings following construction. However, given Dr Chiles’ advice and the fact that noise levels are predicted to comply with the relevant standard, the Transport Agency does not consider it necessary to offer insulation without that being shown to be necessary.

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<sup>114</sup> Conditions 5(e)(v) and 28(a).

<sup>115</sup> Condition 5(e)(vii).

<sup>116</sup> Condition 12(e)(v) and (vi).

<sup>117</sup> Condition 29B. Dr Stephen Chiles did not consider monitoring to be necessary given the clear results of pre-construction monitoring / modelling (refer paragraph 55 of his EIC).

<sup>118</sup> Noting the intention would be to utilise spoil from Project construction.

<sup>119</sup> In response to the addendum evidence of Mr Lloyd at paragraph 15.

<sup>120</sup> With draft condition wording recommended at paragraph 20.

<sup>121</sup> Mr Lloyd said that he “*can see [Dr Chiles’] point*”.

## Queen Elizabeth II Trust

249. The Panel has asked for further information regarding the intended process for the Transport Agency acquiring the land subject to a covenant in favour of the QEII Trust. In particular, the Panel has asked:

- (a) Does the Transport Agency intend to remove the covenants from all of the QEII land within the designation corridor, or only the land within the construction footprint?
- (b) What is the process for removing only part of the covenanted area?
- (c) What is the process for determining the amount of compensation that would be payable to either the fee simple owner or the QEII Trust?
- (d) Are there any precedents for land subject to a QEII covenant being acquired under the Public Works Act 1981?

250. At the Panel's request, the QEII Trust's solicitor provided a high-level summary of the process that has previously been followed when land including a QEII Open Space Covenant has been acquired for roading projects.<sup>122</sup> That summary generally accords with counsel's understanding; in the text below some additional detail is provided. The short point is that the QEII covenant will remain in place over the land that is outside the final construction footprint for the Project (and therefore not acquired by the Transport Agency).

*Does the Transport Agency intend to remove the covenants from all of the QEII land within the designation corridor, or only the land within the construction footprint?*

251. The Transport Agency does not intend to remove the covenants over the entire designation corridor, but rather over the construction footprint only. Counsel understand that section 18 notices<sup>123</sup> are likely to be served in relation to the entire designation corridor. However, the intention is only to progress with section 23 notices<sup>124</sup> once design has been completed and the area of the construction footprint is confirmed. Section 23 notices will therefore only be served in relation to the construction footprint.

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<sup>122</sup> Statement provided by Olivia Nyce on behalf of the QEII Trust, dated 4 April 2019.

<sup>123</sup> Section 18 notices under the PWA give notice of the Crown's desire to acquire the land.

<sup>124</sup> Section 23 notices under the PWA give notice of the Crown's intention to take land and can lead to a compulsory acquisition process if agreement is not reached with the owner.

*What is the process for removing only part of the covenanted area?*

252. Counsel understand that the Crown will seek to agree to purchase the part of the land subject to the construction footprint by agreement with the landowner, and to negotiate with the QEII Trust to agree compensation for the variation or surrender of the covenant in respect of the construction footprint land. The covenant will remain on the rest of the land. Counsel have been advised by accredited suppliers for the Crown that this is the Crown's preferred method of removing the covenant and is consistent with previous experience in relation to other projects.
253. If agreement is not able to be reached with the landowner, the Crown may need to compulsorily acquire the area of the construction footprint. The owner and the holder of any affected registered interest, like the QEII Trust, will have the right to object. If no objections are filed, or any objections are disallowed by the Environment Court, or an agreement has not been reached with the owner in the meantime, then the Crown may issue a proclamation taking the land under section 26 of the PWA.
254. This proclamation would have the effect of extinguishing the covenant over the area of the construction footprint. The QEII Trust would be entitled to payment of compensation under Part 5 of the PWA.
255. Counsel understand that extinguishment of the QEII covenant over the construction footprint would be reluctantly sought by the Crown, and only if there appeared to be little prospect of achieving a negotiated outcome.

*What is the process for determining the amount of compensation that would be payable to either the fee simple owner or the QEII Trust?*

256. Both the fee simple owner and QEII Trust are eligible for compensation in accordance with Part 5 of the PWA.<sup>125</sup> The fee simple owner's entitlement is to compensation for the required land and any injurious affection to the balance of the owner's land. The QEII Trust's entitlement to compensation can be addressed by either making other lands subject to a QEII covenant or, if that is not achievable, by payment of compensation determined in accordance with PWA compensation principles.

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<sup>125</sup> The QEII Trust would be considered an "owner" under section 59 PWA, and is therefore eligible for compensation under s 60 PWA.

*Are there any precedents for land subject to a QEII covenant being acquired under the Public Works Act 1981?*

257. Yes. Counsel understand that land subject to a QEII covenant was acquired for the Ara Tūhono: Pūhoi to Wellsford Project. In that case, the owner agreed to sell the land to the Crown and the land was transferred with the covenant in place. The Crown then negotiated with the QEII Trust to vary the covenant so as to remove it from the land the Crown had acquired, and paid compensation in accordance with Part 5 of the PWA.

### **Transpower**

258. Ms McLeod explained in her evidence the amendments previously made to the conditions relating to Transpower assets (including a specific outline plan condition T1), and that Transpower had confirmed those amendments resolved its concerns.<sup>126</sup> However, on the afternoon of Friday 5 April Transpower filed a document resiling from that position and seeking a “*National Grid Construction Management Plan*” condition.

259. The Transport Agency is prepared to accept a Management Plan along the lines of that sought by Transpower (to replace the previously proposed Condition T1). The Transport Agency will consult with Transpower in developing the Management Plan. In line with its general position on management plan certification, the Transport Agency does not consider it appropriate for the Management Plan to be subject to certification by Transpower (and Transpower has provided no justification as to why it should be).

260. The Transport Agency’s now proposed Condition T1 was provided to Transpower during the week of 8 April 2019.

### **OTHER EFFECTS**

261. A number of other effects were addressed through evidence, but no significant issues have arisen in respect of them. These effects are briefly discussed below.

### **Social**

262. Throughout the hearing there was widespread agreement that the Project will have significant positive social effects for the communities on either side of

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<sup>126</sup> Ms Ainsley McLeod EIC at paragraphs 231 – 233.

the ranges.<sup>127</sup> However a number of submitters, including the joint councils, identified the lack of a walking and cycling path to be a missed opportunity.

263. In light of the Transport Agency's proposal to include a walking and cycling facility, discussed above, this opportunity sought by these submitters, and the further positive social effects associated with it, will now be realised.

### **Noise and vibration**

264. Noise and vibration effects and the appropriate mitigation measures are largely agreed by the experts.<sup>128</sup> Discussion at the hearing focused on potential noise effects on the properties closest to the two roundabouts (Rogers and Cooke / Shoebridge).

265. The Transport Agency's position in respect of effects on those properties is set out above; Dr Chiles and the Transport Agency also consider a requirement to offer insulation to the owners of 49807 State Highway 3 (Andrew Bolton) and 75 Hope Road (the Napiers) prior to construction to be unnecessary for broadly the same reasons.<sup>129</sup>

266. Construction noise and vibration will be managed through the application of the relevant standards,<sup>130</sup> the Construction Noise Vibration Management Plan,<sup>131</sup> and (indirectly) the Construction Traffic Management Plan. In respect of the latter:

- (a) Dr Lloyd seeks that the use of Hope Road by bulk haulage and regular construction traffic be prohibited. The updated requirement proposed by the Transport Agency is to minimise any effects as far as practicable, including by preventing any night-time movements and requiring consultation with the two key property owners.<sup>132</sup>
- (b) Ms Austin seeks that the condition specifically require consultation with directly affected landowners;<sup>133</sup> this is given effect to in the Transport Agency's Communications Plan condition.<sup>134</sup>

267. DOC seeks that the conditions require directive management of noise levels at the car park on land owned by the Transport Agency and Mr Shannon that allows public access to the Manawatū Gorge Scenic Reserve.<sup>135</sup> Given Dr

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<sup>127</sup> Including through legal submissions on behalf of joint councils at paragraph 90.

<sup>128</sup> Acoustics JWS, 13 February 2019.

<sup>129</sup> Mr Lloyd proposes that offer to be made to all four properties.

<sup>130</sup> Conditions 19 and 20.

<sup>131</sup> Condition 21.

<sup>132</sup> Condition 22(e)(ii). Refer also to addendum evidence of Ms Ainsley McLeod at paragraph 63.

<sup>133</sup> Addendum evidence of Ms Kirsty Austin at paragraphs 13 – 14.

<sup>134</sup> Condition 7(a)(iii)(A).

<sup>135</sup> Addendum evidence of Mr Michael Briggs at paragraphs 9.3 – 9.4.

Chiles' assessment that any noise effects will be minor, and the reality of the use and location of the Car Park, no such requirements are proposed by the Transport Agency (or by the section 42A reporting officers).

### **Historic heritage and archaeology**

268. As set out in the evidence of Dr Clough and the opening submissions on behalf of the Transport Agency, the Project avoids heritage sites and known archaeological sites, including the Parahaki kāinga site on Moutere Island, but may encounter unrecorded archaeological sites. That possibility will be managed primarily through an archaeological authority the Transport Agency is seeking under the Heritage New Zealand Pouhere Taonga Act 2014, which is expected to cover the entire site.
269. Proposed condition 24 should be seen in that context, in that it will apply only in the (unlikely) event of an accidental discovery where there is no archaeological authority in place.

### **Landscape and visual effects**

270. Landscape and visual effects were not at issue between experts during the hearing. In terms of landscape effects, Mr Evans considers that the proposed conditions and measures described in the CEDF will provide effective mitigation.<sup>136</sup>
271. Mr Evans also considers that visual effects can be managed through design, in particular at the area around the new Manawatū River Bridge, which he identifies as the key area of sensitivity in relation to visual effects.<sup>137</sup> Again these effects are not highly contentious.
272. As noted in the opening submissions on behalf of the Transport Agency, specific consideration of the detailed design of the road and, accordingly, its potential visual and landscape effects will be able to be carried out throughout the next stages of the Project.

### **CONCLUSION**

273. In conclusion, the Transport Agency has put forward a compelling, high-quality proposal through its NoRs. The Panel is respectfully asked to recommend that the NoRs be confirmed, on the conditions proposed by the Transport Agency.

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<sup>136</sup>Mr Boyden Evans EIC, paragraph 20.

<sup>137</sup>Mr Boyden Evans EIC, paragraph 44.

274. This will allow the Project to proceed to the next phase, with the work of designers to be framed by the conditions and guided by iwi. The Transport Agency wishes to proceed with urgency to ensure that the Project's fundamental benefits are realised as soon as possible.

**DATED** this 17<sup>th</sup> day of April 2019

A handwritten signature in blue ink, appearing to be 'DR' or similar initials, positioned above a horizontal line.

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**David Randal / Thaddeus Ryan / Annie O'Connor**  
**Counsel for the New Zealand Transport Agency**

**APPENDIX A – CONDITIONS PROPOSED BY THE TRANSPORT  
AGENCY**



## ATTACHMENT 1 – UPDATED CEDF

**ATTACHMENT 2 – SUMMARY OF GEOTECHNICAL ADVICE  
REGARDING EARTHWORKS ON BALLANTRAE STATION**

**ATTACHMENT 3 – ADDENDUM EVIDENCE OF DR DAVE HORNE**

**ATTACHMENT 4 – AGRESEARCH’S SUBMISSION ON THE ONE PLAN**

**ATTACHMENT 5 – PASSAGES IN DBC AND SUPPORTING DOCUMENTS  
RELATING TO AGRESEARCH TRIAL SITE AND REFERRED TO IN THESE  
SUBMISSIONS**