

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of Resource Consents and Notices of Requirement for the Central Interceptor main project works under the Auckland Council District Plan (Auckland City Isthmus and Manukau Sections), the Auckland Council Regional Plans: Air, Land and Water; Sediment Control; and Coastal, and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

STATEMENT OF EVIDENCE OF MARJORY JOYCE RUSS ON BEHALF OF WATERCARE SERVICES LIMITED

PLANNING

1. INTRODUCTION

- 1.1 My name is Marjory Joyce Russ. I am a Senior Resource Management Specialist and Director of Tonkin & Taylor Ltd, Environmental and Engineering Consultants.
- 1.2 I have a Masters in Science (Honours) in Resource Management and I am a Member of the New Zealand Planning Institute. I have been working as an environmental and resource management planner since the early 1980s, with close to 30 years' experience in private sector and government roles in New Zealand, Australia and the United Kingdom. I have over 20 years' experience working in the Auckland Region and with the relevant Auckland regional and district plans.
- 1.3 I have provided statutory planning inputs to a number of large infrastructure projects. Most relevant to this case was my involvement on the Watercare Hobson tunnel project ("**Project Hobson**"). Other projects have included renewal of consents for Watercare's water supply dams in the Waitakere Ranges, consenting for new landfill development at Puwera, the award-winning landfill remediation project at Seaside Park, Auckland, and contaminated site remediation at Mapua and the Otahuhu C Power Station. Over the last 20 years I have worked with Watercare on a range of projects on environmental regulatory compliance, environmental and quality management systems and operations management procedures for the wastewater network.

Involvement in the Central Interceptor Scheme

- 1.4 I have been involved with the Central Interceptor Scheme as part of the project team since August 2009. My role has been to provide high-level strategic input and technical review on the statutory planning aspects of the Scheme and, in particular, the main project works ("**Project**") as described in the evidence of Mr Munro and Ms Petersen. I have visited all of the sites where works are proposed to be undertaken as part of the Project.

Code of Conduct

- 1.5 I have been provided with a copy of the Code of Conduct for Expert Witnesses contained in the Environment Court's Updated Practice Note 2011 which took effect on 1 November 2011. I have read and agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

- 1.6 The purpose of my evidence is to outline and address the Resource Management Act 1991 ("**RMA**") statutory provisions that are relevant to the approvals being sought for the Project.
- 1.7 My evidence is structured as follows:
- (a) executive summary;
 - (b) outline of the Project;
 - (c) statutory approvals being sought;
 - (d) RMA requirements for decisions;
 - (e) the Project and RMA requirements;
 - (f) response to submissions;
 - (g) response to Auckland Council ("**Council**") Pre-hearing Report;
 - (h) proposed conditions; and
 - (i) conclusions.

2. EXECUTIVE SUMMARY

- 2.1 Watercare has lodged three Notices of Requirement ("**NoRs**") and is seeking RMA consent approvals for the Project. The approvals required include designations in district plans and a number of resource consents. Council has grouped the consent requirements in a suite of 20 separate resource consents. I have described the NoRs and consent applications, and the statutory provisions that apply to the Council's decision making processes to make recommendations on the NoRs and grant the resource consents.
- 2.2 The Council Pre-hearing Report has taken a highly conservative approach and has bundled all the applications for resource consents together and assessed them as non-complying activities. Accordingly, I have assessed the Project in its entirety against the statutory tests in section 104D of the RMA for non-complying activities.
- 2.3 My assessment has drawn extensively on the materials submitted with NoRs and the applications for consents, information provided in response to Section 92 requests for additional information and the evidence of expert witnesses. I have identified the information and evidence I have relied on to make my planning assessment.
- 2.4 I have assessed the Project against the relevant requirements and have reached the following conclusions:
- (a) The AEE and evidence presented by the expert witnesses outline and demonstrate significant positive impacts and benefits associated with the Project.
 - (b) The AEE and evidence presented by the expert witnesses demonstrate that during work at the construction sites for the Project, there will be a range of adverse effects on the environment that will generally be temporary and/or can be mitigated to an appropriate level by appropriate construction management. The ongoing effects of the normal operation of the Project will be no more than minor. In the event of a discharge occurring from the Emergency Pressure Relief ("**EPR**") structure there will likely be short-term public health, aesthetic and ecological effects.
 - (c) The AEE and evidence presented addresses the requirements under section 171 of the RMA that the Council must consider. It demonstrates that Watercare has considered alternative sites, routes and methods for undertaking the Project and that the Project is reasonably necessary for achieving Watercare's objectives as a requiring authority.

- (d) Overall, the Project meets the requirements of the test in section 104D(b) of the RMA for non-complying activities that require authorisation by resource consent. The Project is not contrary to the objectives and policies of the relevant plans. Accordingly, there is no impediment to Council granting consents under this provision of the RMA.
- (e) The AEE and evidence have addressed the requirements of section 105 of the RMA to have regard to the nature of discharges, sensitivity of the receiving environment, reasons for the choices made about discharges, and possible alternative methods of discharge.
- (f) The discharges from the Project meet the requirements of section 107(2) of the RMA and there is no restriction therefore under section 107(1) on the Council granting resource consents for those discharges.
- (g) The Project is consistent with the provisions of the relevant statutory instruments under the RMA, and in particular, is not contrary to the objectives and policies of the relevant plans.
- (h) The Project meets the requirements of Part 2 of the RMA. It meets the sustainable management purpose of the RMA and recognises and provides for relevant nationally important matters, other matters and has taken account of the principles of the Treaty of Waitangi.
- (i) Watercare has proposed a suite of conditions for the designations and resource consents that will ensure that adverse effects of the Project are adequately managed to avoided, remedied or mitigated.
- (j) On the basis of these conclusions, I recommend that the Commissioners grant the resource consents and provide positive recommendations on the NoRs required to authorise the Project, subject to the conditions proposed by Watercare.

3. THE CENTRAL INTERCEPTOR PROJECT

- 3.1 The Project is described in the *Central Interceptor Main Project Works: Resource Consent Applications and Assessment of Effects on the Environment* submitted to the Council, dated August 2012 ("**AEE**"), and in the evidence of Mr Munro, Ms Petersen, Mr Cantrell and Mr Cooper. Further information on the Project and its effects was provided

by Watercare in its Section 92 Responses to the Council, dated 14 December 2012, 1 March 2013, 13 May 2013 and 27 May 2013. My evidence relies on these descriptions.

4. STATUTORY APPROVALS BEING SOUGHT

4.1 Watercare has lodged NoRs and is seeking RMA consent approvals for the Project. The approvals required include designations in district plans and a number of resource consents.

Notices of Requirements for Designations

4.2 Watercare has lodged three NoRs for Designations with the Council as follows:

- (a) NoR 1 to the Council is for works within the Auckland Council District Plan (Auckland City Isthmus Section) area. Details of the NoR are set out in the separately bound *Central Interceptor Main Project Works Notice of Requirement 1: Auckland City District Plan: Isthmus Section, August 2012*. Details of a minor amendment to this NoR are set out in correspondence from Watercare to Auckland Council dated 20 February 2013 and titled *Central Interceptor Project: Amendment to Proposed Designation Boundary Notice of Requirement 1, Haverstock Road (Proposed Plan Modification 332)*.
- (b) NoR 2 to the Council is for works within the Auckland Council District Plan (Manukau Section) area. Details of this NoR are set out in the separately bound *Central Interceptor Main Project Works Notice of Requirement 2: Manukau District Plan, August 2012*.
- (c) NoR 3 to the Council is for works within the Auckland Council District Plan (Auckland City Isthmus Section) area. Details of the NoR are set out in the separately bound *Central Interceptor Main Project Works Notice of Requirement 3: Auckland City District Plan: Isthmus Section, March 2013*.

4.3 The purpose of all three designations in the NoRs is for "the construction, operation and maintenance of wastewater infrastructure".

4.4 Attached to the NoR documents are the designation plans, schedules of the land included in the designations and Watercare's Proposed Designation Conditions. Information on the nature of the proposed works, effects on the environment, consideration of alternatives and consultation undertaken, is included in the AEE and, for NoR 3, in the *Central Interceptor Main Project Works Assessment of Effects on the Environment: Mt Albert War Memorial Reserve – Car Park Site, March 2013*.

- 4.5 NoR 1 concerns 17 separate sites and 42 separate land parcels. At three sites, NoR 1 seeks to put in place new designations that will overlie existing Watercare designations at those three sites.¹
- 4.6 NoR 2 concerns one site and two land parcels.
- 4.7 NoR 3 concerns one site and five land parcels. The Mt Albert War Memorial Reserve Car Park site, covered by NoR 3, is adjacent to, and has some overlap with, the Mt Albert War Memorial Reserve - Reserve site included in NoR 1. NoR 3 provides for an alternative layout for works proposed at this Reserve. NoR 1 has not been amended to exclude the Reserve Site at Mount Albert War Memorial Reserve, as Watercare wishes to be certain of the outcome on NoR 3 before doing so. Therefore, both sites are being retained until there is complete certainty on the outcome of NoR 3, including the ability to comply with any specific conditions which apply to that site, for example, the provision of alternative car parking.
- 4.8 Watercare is proposing an extended lapse period of 15 years for all three of the designations from the date of inclusion within the district plans. Watercare expects that construction works authorised by the designations will commence around 2017 and be complete in 2023, however, because this is a large and complex project, flexibility is required in the timing for giving effect to the designations.

Applications for resource consents

- 4.9 Watercare has applied for a suite of resource consents for the construction and operations phases of the Project. Table 2.2² in the AEE (reproduced as **Appendix A** to my evidence) identifies the specific RMA sections and regional/district plan rules that trigger consent requirements. For the avoidance of doubt, Watercare's application is for consents under the rules identified in Table 2.2 **and** for any consents required under any other rules which may apply to the activity, even if not specifically noted.
- 4.10 The Council Pre-hearing Report has identified 20 separate resource consents required for the Project and has allocated Consent Reference Numbers for these.³

¹ At the Lyon Avenue, Pump Station 23 and Pump Station 25 sites.

² Pages 11-16 of the Central Interceptor Main Project Works Resource Consent Applications and Assessment of Effects on the Environment Part A – AEE Report.

³ Sections 5.4 to 5.7, pages 23-45.

- 4.11 The 20 consents identified by the Council comprise:
- (a) one land use consent under the Auckland Council District Plan (Auckland City Isthmus Section) with a non-complying overall activity status (Consent Reference Number R/LUC/2012/2846). This consent is for the construction of the main tunnel;
 - (b) one land use consent under the Auckland Council District Plan (Manukau Section) with a discretionary overall activity status (Consent Reference Number PRC40962). This consent is for:
 - (i) construction of the main tunnel and associated link sewers;
 - (ii) removal of the existing Pump Station at Kiwi Esplanade Reserve, and
 - (iii) removal of trees and/or works within the drip-line of trees;
 - (c) two land use consents as discretionary activities under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, for the disturbance of contaminated sites, Project-wide (Consent Reference Numbers R/LUC/2012/2846/1 and PRC40963);
 - (d) one land use consent under the Auckland Council Regional Plan (Sediment Control) with an overall restricted discretionary activity status for earthworks, Project-wide (Consent Reference Number 40834);
 - (e) nine consents under the Auckland Council Regional Plan (Air, Land and Water) for a range of activities (Project-wide and site-specific) as follows:
 - (i) taking/diversion of groundwater as a restricted discretionary activity (Consent Reference Number 40836);
 - (ii) discharge of stormwater from construction works, overall as a discretionary activity (Consent Reference Number 40841);
 - (iii) construction-related discharges to freshwater as a discretionary activity (Consent Reference Number 40835);
 - (iv) discharge of stormwater from permanent works at Western Springs as a controlled activity (Consent Reference Number 40837);
 - (v) discharge of stormwater from permanent works at Haverstock Road as a controlled activity (Consent Reference Number 40838);

- (vi) discharge of stormwater from permanent works at Miranda Reserve (Pump Station 25) as a controlled activity (Consent Reference Number 40839);
 - (vii) discharge of stormwater from permanent works at May Road as a restricted discretionary activity (Consent Reference Number 40840);
 - (viii) discharge of stormwater from permanent works at the proposed Mangere Pump Station as a discretionary activity (also identified as Consent Reference Number 40840);
 - (ix) discharges to air from tunnels and pump stations as a restricted discretionary activity (Consent Reference Number 40842); and
 - (x) disturbance of contaminated sites as a restricted discretionary activity (Consent Reference Number 40843);
- (f) six consents under the Auckland Council Regional Plan (Coastal) for a range of activities associated with the main tunnel and specific sites as follows:
- (i) for the main tunnel overall as a non-complying activity (Consent Reference Number 40844);
 - (ii) for the temporary "construction platform and permanent seawall" at Pump Station 23 overall as a discretionary activity (Consent Reference Number 40845);
 - (iii) for the EPR structure at the proposed Mangere Pump Station overall as a discretionary activity (Consent Reference Number 40846);
 - (iv) construction-related discharges to the Coastal Marine Area ("**CMA**") at Pump Station 23, Kiwi Esplanade and the proposed Mangere Pump Station as a discretionary activity (Consent Reference Number 40848);
 - (v) stormwater discharges to the CMA from permanent works at Pump Station 23, Kiwi Esplanade and the proposed Mangere Pump Station overall as a discretionary activity (Consent Reference Number 40849); and

- (vi) discharge from the EPR structure to the CMA as a discretionary activity⁴ (Consent Reference Number 40850).

- 4.12 I note that the Council has identified stormwater discharges from permanent facilities at the proposed Mangere Pump Station as part of Consent Reference Number 40840 required under the Auckland Council Regional Plan: Air, Land & Water. This appears to duplicate the authorisation for this discharge under Consent Reference Number 40849 required under the Auckland Regional Plan: Coastal.
- 4.13 I note that the Council Pre-hearing Report includes reference to permanent stormwater discharges at Kiwi Esplanade as part of the activities covered by Consent Reference Number 40849. No discharge of stormwater to the CMA is proposed at this site as part of permanent works and Watercare's applications for consents did not include any stormwater discharges from permanent facilities at Kiwi Esplanade.
- 4.14 I also note that the discharges of stormwater during construction and from permanent works at the proposed Mangere Pump Station will be via existing discharge structures. Discharges of stormwater during construction at Pump Station 23 will be via a decant incorporated in the temporary bund. Similarly discharges from permanent works at Pump Station 23 will be via a discharge point incorporated into the seawall. Accordingly, no additional consents are required for the discharge structures.
- 4.15 As with the NoRs, Watercare is seeking an extended lapse period of 15 years from the date of granting of the resource consents.

Other approvals

- 4.16 Watercare will prepare and submit Outline Plans of Work for works within the designated areas prior to construction commencing.
- 4.17 A number of the construction sites are subject to designations by other requiring authorities. There are also designations in place above the alignment of the tunnels as set out in the AEE.⁵ As described in the evidence of Ms Petersen, Watercare has consulted with the relevant requiring authorities and these approvals from the requiring authorities will be obtained prior to construction commencing in those areas.

⁴ The note to the relevant Rule in the Auckland Regional Plan: Coastal (Rule 20.5.11) cross refers to Rule 5.5.13 in the Auckland Regional Plan: Air, Land and Water. The note advises that under Rule 5.5.13 a discharge, such as that from the EPR, would be assessed as a non-complying activity. As noted in the Council Pre-hearing Report (page 44), Rule 20.5.11 has been amended by Variation 1 to the Coastal Plan and this has been settled by a consent order. Council has confirmed that the correct activity status is (as noted in the AEE) discretionary.

⁵ See AEE, August 2012, Section 2.6.2.

4.18 Watercare also intends to apply for a general authority under section 12 of the Historic Places Act 1993 and will apply, as required, for approvals required under other legislation as outlined in the AEE.⁶

4.19 Ms Petersen has discussed other approvals in her evidence and this statement does not address these other approvals in further detail.

5. RMA REQUIREMENTS FOR DECISIONS

5.1 Council has two decision processes in relation to the Project:

- (a) to make decisions on recommendations to Watercare on its NoRs; and
- (b) to make decisions on Watercare's applications for resource consents.

5.2 The applicable provisions of the RMA are outlined below.

Section 171

5.3 Section 171 of the RMA sets out the requirements on a territorial authority when considering a NoR. The authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to:

- (a) any relevant provisions of:
 - (i) a national policy statement;
 - (ii) a New Zealand coastal policy statement;
 - (iii) a regional policy statement or proposed regional policy statement;
 - (iv) a plan or proposed plan;
- (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if:
 - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
 - (ii) it is likely that the work will have a significant adverse effect on the environment;

⁶ See AEE, August 2012, Sections 2.6.3 and 14.4.

- (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
- (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

Section 104

5.4 Section 104 of the RMA sets out the requirements for a consent authority when considering applications for resource consents. Subject to Part 2, the consent authority must have regard to:

- (a) any actual and potential effects on the environment of allowing the activity;
- (b) applicable statutory instruments under the RMA; and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

Section 104D

5.5 Section 104D of the RMA applies to resource consent applications for non-complying activities. It establishes two tests for decision-making on resource consent applications for non-complying activities. One of these two tests must be met for the consent to be granted. The two "gateway" tests are:

- (a) the adverse effects of the activity on the environment will be minor; or
- (b) the application is for an activity that will not be contrary to the objectives and policies of a relevant plan or proposed plan.

Section 105

5.6 Section 105 of the RMA concerns applications for discharge permits or coastal permits. It requires the consent authority to have regard to:

- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects;
- (b) the applicant's reasons for the proposed choice; and
- (c) any possible alternative methods of discharge, including discharge into any other receiving environment.

Section 107

- 5.7 Section 107(1) of the RMA requires that a consent authority must not grant a discharge permit or a coastal permit for a discharge to water (or land which may result in a discharge to water) if, after reasonable mixing, the contaminant or water discharged is likely to give rise to all or any of the following effects:
- (a) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
 - (b) any conspicuous change in the colour or visual clarity;
 - (c) any emission of objectionable odour;
 - (d) the rendering of fresh water unsuitable for consumption by farm animals; and/or
 - (e) any significant adverse effects on aquatic life.
- 5.8 Section 107(2) of the RMA provides that a consent authority may grant a discharge permit or a coastal permit in the circumstances described above if it is satisfied that:
- (a) exceptional circumstances justify the granting of the permit;
 - (b) the discharge is of a temporary nature; or
 - (c) the discharge is associated with necessary maintenance work.

Part 2

- 5.9 Part 2 of the RMA (comprising sections 5 through 8) sets out the purpose and principles of the RMA. The purpose of the RMA is "*to promote the sustainable management of natural and physical resources.*"⁷
- 5.10 Sustainable management is defined in section 5 as meaning:

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

⁷

Section 5 of the RMA.

- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

5.11 Section 6 sets out matters of national importance that must be recognised and provided for. In relation to the Project, the relevant matters are:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers;
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

5.12 Section 7 sets out other matters to which particular regard must be had when exercising functions and powers under the RMA. The following matters are relevant to the Project:

- (a) kaitiakitanga;
- (aa) the ethic of stewardship;
- (b) the efficient use and development of natural and physical resources;
- (c) the maintenance and enhancement of amenity values;
- (d) intrinsic values of ecosystems; and
- (f) maintenance and enhancement of the quality of the environment.

5.13 Lastly, section 8 requires those exercising powers or functions under the RMA to take account of the principles of the Treaty of Waitangi.

6. CENTRAL INTERCEPTOR PROJECT AND RMA REQUIREMENTS

Introduction

6.1 This section of my evidence addresses the statutory considerations relevant to the Council's decisions on recommendations to Watercare on its NoRs and Watercare's applications for resource consents.

6.2 For both of these processes, the RMA requires the Council's considerations to:

- (a) be subject to Part 2 of the RMA;
- (b) include the environmental effects of the proposal; and
- (c) have regard to the relevant provisions of statutory instruments prepared under the RMA.

6.3 The Council may also have regard to other matters it considers to be reasonably necessary to make its recommendations on the NoRs or its decisions on the consent applications. In addition, there are specific requirements for considering NoRs and resource consents applications. I address each of these, in the following order:

- (a) effects on the environment;
- (b) RMA provisions on recommendations for NoRs;
- (c) RMA provisions on decisions on application for resource consents;
- (d) statutory instruments;
- (e) other matters; and
- (f) Part 2 of the RMA.

Effects on the environment

6.4 Watercare has completed an extensive assessment of the effects of the Project on the environment. This has been reported in the AEE that accompanied the NoRs and applications for resource consents. The assessment has been based on descriptions of the existing environment overall for the Project⁸ and for each of the 19 construction sites.¹⁸ It has considered positive effects, temporary and construction effects, and operational effects. It has considered the effects of the tunnels⁹ and the effects at the

⁸ AEE Section 10, pages 87-100.

⁹ AEE Section 11, pages 104-114.

19 construction sites.¹⁰ The range of effects assessed has been comprehensive. Supporting detailed technical reports have been prepared.¹¹ Mitigation measures and monitoring have been addressed.¹²

6.5 In addition, further information on effects on the environment and measures to avoid, remedy or mitigate adverse effects has been included in responses to Section 92 requests for further information.

6.6 As described in the evidence of Ms Petersen, Watercare has consulted extensively with affected and interested parties on the Project and its effects. Watercare has made a number of modifications to some construction sites and developed measures to avoid, remedy and mitigate adverse effects as a result of this consultation.

6.7 The Project delivers significant positive effects described in the AEE as the following key benefits:¹³

- (a) positive effects on public health and the environment through the effective operation of the wastewater network generally;
- (b) the provision of capacity in the wastewater network for future growth and development on the Auckland Isthmus for the next 20 years and beyond;
- (c) asset security through the duplication of the lower section of the ageing Western Interceptor;
- (d) a significant reduction of the major wastewater overflows into the Meola Creek catchment; and
- (e) the opportunity to further reduce existing wastewater overflows from the combined sewer system into urban streams and the Waitemata Harbour.

6.8 Mr Munro and Mr Cantrell have addressed these key benefits and positive effects in their evidence. Mr Munro has described substantial benefits, including for the Manukau Harbour (by providing an alternative to the ageing Western Interceptor) and for local streams and the Waitemata (through reductions in major wastewater overflows). Mr Cantrell has described the Project as the only viable option to address the required duplication of the Western Interceptor, and to provide sufficient additional network capacity so that existing trunk sewers are not overloaded as growth and development

¹⁰ AEE Section 12, pages 115-128 and AEE Part B.

¹¹ AEE, Part D.

¹² AEE Section 13, pages 129-132 and AEE Part B.

¹³ AEE Section 10, pages 101 - 103.

continues. He has also advised that the Project addresses 18 identified overflow locations, which include the largest in Watercare's system.

6.9 Potential effects on the environment that have been identified and assessed in the AEE from the construction and operation of the **tunnel** include:

- (a) land settlement;
- (b) impacts on groundwater users and groundwater quality;
- (c) ground stability;
- (d) vibration and noise;
- (e) effects on services;
- (f) effects on archaeology, geological features, and Maori and cultural heritage;
- (g) land use and property above the tunnels;
- (h) the effects of earthworks; and
- (i) effects in the CMA.

6.10 The AEE has concluded that the tunnels are not expected to affect: properties above the alignment; archaeological or geological features; or groundwater users. It concluded that there is a negligible risk of: structural damage to building and services; adverse effects on regional groundwater quality; or effects in the CMA. It also concluded that any potential effects from vibration or noise would be less than minor. Despite this, technical expert evidence has been presented on groundwater and surface settlement effects by Mr Twose and I summarise his conclusions below.

6.11 Mr Twose has addressed the effects of the tunnels and shafts on groundwater and surface settlement in his evidence. He has considered mitigation measures, monitoring and contingency plans and proposed consent conditions. He has concluded that the Project tunnels and shafts can be constructed without resulting in unacceptable settlement or damage to buildings and structures. He notes that consent conditions will require monitoring and contingency plans to develop monitoring networks to track the development of effects during construction. This is to confirm that the settlement effects are being adequately managed, and to provide additional construction controls if required. With respect to groundwater, he has concluded that there is a low risk of measurable changes in groundwater quality immediately around the tunnel and a

negligible risk of any adverse effect on regional groundwater quality or groundwater users in the vicinity.

6.12 Potential effects on the environment that have been identified and assessed in the AEE at the **construction sites** include:

- (a) visual and landscape effects;
- (b) recreation and public access effects;
- (c) vegetation and ecological effects;
- (d) archaeological, Maori and cultural heritage effects;
- (e) traffic, noise, vibration and odour effects;
- (f) effects in the CMA;
- (g) contaminated sites effects;
- (h) effects of stormwater discharges (during construction and permanent discharges following construction);
- (i) effects of construction-related discharges;
- (j) effects of activities in potential flood areas;
- (k) effects on ground stability;
- (l) effects on services; and
- (m) effects of Link Sewer 4 trenching.

6.13 The AEE has concluded that during work at the construction sites, there will be a range of adverse effects within the immediate vicinity.¹⁴ These will generally be temporary and/or can be mitigated to an appropriate level by appropriate construction management. Once completed, the Central Interceptor and associated features will be predominantly underground, and temporary work areas will be reinstated in an appropriate manner. The AEE also concludes that the ongoing effects of the permanent works will be no more than minor.

¹⁴ AEE Section 15, page 160.

- 6.14 The AEE identifies a range of mitigation and monitoring measures.¹⁵ These include construction management plans addressing the effects that have been identified. These measures have been further addressed in the evidence of expert witnesses. I will briefly discuss those of particular relevance below and which have been addressed by the expert witnesses.

Vibration

- 6.15 Mr Millar has addressed vibration effects and associated mitigation measures. He has concluded that once operational, the vibrations generated by the Project and associated infrastructure will be negligible, except on the rare occasions where maintenance work requires access for heavy plant. He also concluded that the effects on people will be less than minor and there will be no risk of structural damage to buildings. He noted that the Project has been designed to minimise effects of vibration by being located at depth and excavated in weak rock.
- 6.16 He describes the primary potential vibration effects associated with the Project as related to the construction activities required at the various proposed construction sites. He has addressed Watercare's Proposed Designation and Consent Conditions and concluded that these will enable the construction works to be undertaken in a way which manages effects such that structural damage to properties and unacceptable disturbances to people will be avoided.

Noise

- 6.17 Mr Cottle has addressed noise effects and associated mitigation measures. He has noted that construction noise levels predicted to be experienced at dwellings and other noise-sensitive receivers in the vicinity of construction activity at the various sites, range from readily compliant, without the need for mitigation, to compliance with Project Noise Controls (which act as triggers for a further mitigation process) with implementation of mitigation measures, to minor non-compliances despite the mitigation measures and, in a few instances, significant exceedances.
- 6.18 Mr Cottle has concluded that the noise generated by construction activity for the Project can, in the main, comply with the Project Noise Controls. He notes that where non-compliance is possible, practicable mitigation and management measurements would be implemented through the Construction Noise and Vibration Management Plan ("**CNVMP**") including consultation with affected parties to achieve acceptable outcomes. He considers that where the best practicable option is adopted, in conjunction with community consultation and feedback via the CNVMP, this would result in the

¹⁵ AEE Section 13, pages 129 - 132.

construction noise effects being controlled to acceptable levels. He also concluded that operational noise generated by the Project would be compliant and any noise effects would be no more than minor.

Landscape / Visual

- 6.19 Mr Goodwin has addressed visual amenity and landscape effects. He has concluded that the effects resulting from the Project will vary from site to site for the construction works (temporary effects) and the completed works (permanent effects); and will also vary depending on whether open space and landscape attributes, or visual amenity effects are being considered. He concluded that the effects on these attributes will range from very high adverse temporary effects at two sites, to potentially high beneficial permanent effects at three sites.
- 6.20 He noted that the majority of the temporary effects are moderate for the duration of the construction activities at each particular site. The permanent adverse effects of the completed surface works are in his view generally low to very low, and in many instances neutral following completion of the reinstatement site works. He also noted that noticeable beneficial effects will occur at many sites through the enhancement of water quality and associated natural character, landscape and visual amenity values. He stated that the magnitude of the effects would not be unexpected with a significant infrastructure project such as the Project.

Ecology

- 6.21 Mr Slaven has addressed ecological effects. He has concluded that overall, the extent of adverse ecological effects associated with the Project are limited (and concern just three sites), and the ecological benefits that would result from the Project, in terms of significantly reduced annual average wastewater overflows to the environment, are major. He noted that there is a potential for the proposed works to have more than minor adverse ecological effects at Lyon Avenue, Pump Station 23 and Pump Station 25 but considered that these effects can all be appropriately managed and sufficiently mitigated.

Traffic

- 6.22 Mr Hills has addressed traffic effects. He has concluded that construction of the Project can occur in a way that the effects on the function, capacity and safety of the surrounding road network are minimal. He also concluded that once completed, there would be negligible traffic issues associated with the operation of the Project. He confirmed that Watercare's Proposed Designation Conditions are appropriate and that, provided the proposed mitigation measures and conditions are implemented, the extent

of the works proposed by Watercare can be accommodated by the surrounding road network while maintaining appropriate levels of safety and performance. Overall, he considered that potential traffic effects associated with the Project can be effectively managed.

Air Quality - Odour and Dust

6.23 Mr Kirkby has addressed air quality effects, in particular in relation to odour effects and dust effects. In respect to odour he has concluded that the adverse effects of discharges to air of odours arising from the operation of the Central Interceptor will be no more than minor and, in some cases will be reduced when compared to the existing situation.

6.24 With respect to discharges to air of dust from construction activities, he has concluded that adverse effects will be no more than minor.

EPR

6.25 The response to the Council's Section 92 request for further information provided on 27 May 2013 contains significant information about the proposed EPR discharge. In addition, in his evidence, Mr Roan has described the discharges that could occur from the EPR. He begins his evidence by noting that discharge from the EPR structure is possible, but only under scenarios which are very unlikely. He has addressed the potential effects in the event that an EPR discharge occurs. He has described the public health risk to contact recreation along the Hillsborough shoreline which would likely require beach closures and closure of shellfish gathering areas. He has also described localised ecological effects and aesthetic effects. He notes that while the discharge might disperse to areas of identified ecological value, he would not expect the discharge to alter those values. He describes these as effects that would be resolved over a relatively short period of time by tidal processes, with recovery of shellfish quality and habitats expected to occur over a series of weeks. He has concluded that there would be no permanent effects on the Manukau Harbour and its associated recreational or ecological values.

Cultural

6.26 Mr Maskill has addressed cultural and iwi concerns. He has described the consultation processes that Watercare has engaged in with Mana Whenua regarding the Project. He has also outlined the concerns and matters raised by Iwi groups and Watercare's response to those matters.

Summary

6.27 In my opinion, the evidence presented by the expert witnesses supports the conclusion drawn in the AEE that:

during work at the construction sites, there will be a range of adverse effects within the immediate vicinity and that these will generally be temporary and/or can be mitigated to an appropriate level by appropriate construction management or in the longer term.¹⁶

6.28 In his evidence, Mr Cooper has described details of construction methodologies and processes that will be used to manage and mitigate environmental effects during construction. This in particular, includes preparing and implementing a suite of construction management plans.

6.29 In addition, the AEE also concluded that "the ongoing effects of the permanent works will be no more than minor". In my opinion, the evidence presented by the expert witnesses supports this conclusion, in respect to normal operation of the completed Project.

6.30 In relation to any discharge that may occur from the EPR, I note that the likelihood of a discharge occurring is very low. However, should a discharge occur, Mr Roan has described the public health risks and short-term ecological and aesthetic effects.

Recommendations on NoRs

Section 171

6.31 In addition to effects on the environment (outlined above), provisions of RMA statutory instruments and Part 2 of the RMA (outlined below) Section 171 of the RMA requires the Council to have regard to the following matters when considering a NoR:

- (a) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if:
 - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and
- (b) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

¹⁶ AEE Section 12, page 118.

- 6.32 The AEE has described the extensive processes Watercare has engaged in to consider alternatives.¹⁷ This has included considering wastewater network alternatives in a regional context (such as sewer separation or local storage tanks); alternative alignment options; and a range of design options Project-wide and site-specific. The AEE concludes that the evaluation processes have confirmed the Central Interceptor as the preferred integrated network upgrading solution; and confirmed the Project as the option that best provides for future wastewater network needs.
- 6.33 Mr Munro and Mr Cantrell have also addressed the consideration of alternatives in their evidence. Mr Munro has described how the Project has been identified as part of a wider package of works to provide wastewater services in Auckland as part of planning that has been underway for many years. He has also described alternatives that have been considered in the context of Watercare's entire wastewater network. He has also described the Central Interceptor Scheme as the best practicable option to meet the key drivers identified by Watercare. Mr Cantrell has described the extensive and detailed processes that have considered alternatives within the design process for the Project including alternative alignments for the main tunnel; alternative configurations at construction and connection sites, alternative construction methods, alternative permanent works facilities and operational provisions for managing discharges from the network.
- 6.34 In my opinion, Watercare has met, comprehensively, the requirement to consider alternatives.
- 6.35 The AEE has addressed the need for the Project.¹⁸ The need is established within the context of:
- (a) Watercare's responsibilities and corporate goals;
 - (b) the purpose of a wastewater network;
 - (c) Watercare's existing wastewater network and the Mangere WWTP;
 - (d) regional wastewater planning (in relation to the Three Waters Strategic Plan (2008) and the Auckland Plan 2012); and
 - (e) the three key drivers for the Central Interceptor and upgrading the wastewater network:
 - (i) duplicating the lower part of the Western Interceptor;

¹⁷ AEE Section 7, pages 66 - 73.

¹⁸ AEE Section 3, pages 19 - 24 and Section 4, pages 25 - 31.

- (ii) providing additional capacity for growth and development across the Auckland Isthmus; and
- (iii) reducing wet weather overflows from the existing wastewater network in the central Auckland Isthmus area.

6.36 Mr Munro and Mr Cantrell have addressed the need for, and benefits of, the Project in their evidence. Mr Munro has described the existing wastewater network and the issues that have created the drivers for the Project. He has outlined the consequences of not addressing these issues. He has also outlined how the Project addresses the key drivers involved and delivers substantial benefits which span across a large geographical area. Mr Cantrell has provided additional detail on the benefits and how the Project addresses the key drivers involved.

6.37 In my opinion, Watercare has demonstrated very strongly that the Project and the designations are reasonably necessary for achieving Watercare's objectives as a requiring authority.

Decisions on Resource Consent Applications

6.38 The matters that section 104 of the RMA requires a consent authority to consider in relation to applications for resource consents have been addressed in my evidence above, with respect to effects on the environment; and also with respect to the relevant statutory instruments and Part 2 of the RMA. In addition to these, the RMA has some requirements that are relevant in specific situations. These matters are addressed below.

Section 104D

6.39 Section 104D establishes two tests for decision-making on resource consent applications for non-complying activities. The analysis completed in the AEE of the rules in the relevant Regional and District Plans identified that of the multitude of consents sought (included as **Appendix A**), it is only minor technical breaches of one rule in the Auckland Council District Plan (Auckland City Isthmus Section) and three rules in the Auckland Regional Plan: Coastal that trigger a non-complying activity status in relation to the Project.

District Plan Non-complying Activity

6.40 Under the provisions of the Auckland Council District Plan (Auckland City Isthmus Section), an application for land use consent is required for earthworks associated with tunnel construction where this occurs **outside** of designated areas or under road

reserves. This requirement is under Rule 4A.1.a(ii), which is a "catch all" rule that makes any activity that is not specifically provided for as a permitted, controlled or discretionary activity, a non-complying activity. Five rules are triggered for earthworks beyond permitted activity limits in areas under residential or recreational zoned land or under areas within the CMA; or under areas of land subject to instability. These rules assign a activity status of restricted controlled or discretionary. As no rules assign a permitted, controlled or discretionary activity status to earthworks under land zoned open space, which appears to be an omission given the other zonings are provided for, the non-complying rule is triggered for the main tunnel under those open space-zoned areas.

- 6.41 These controls in the Isthmus Plan for earthworks are directly concerned with, and focused on, effects that are associated with earthworks occurring **at the land surface**. This is reflected in the assessment criteria¹⁹ and in the objectives and policies.²⁰ It is clear from these objectives and policies that the application of this rule to tunnelling at depth was never anticipated when the rule was drafted. The tunnelling earthworks proposed as part of the Project will occur **at depth** and will have no impact at the land surface in areas outside designations where this non-complying consent is sought.²¹

Auckland Regional Plan: Coastal Non-complying Activities

- 6.42 The construction of the main tunnel triggers non-complying activity status under three rules in the Auckland Regional Plan: Coastal ("**Coastal Plan**") as follows.²²
- (a) Rule 12.5.22 – *"The erection or placement, alteration or extension of any structure which is located in Coastal Protection Area 1"*;
 - (b) Rule 10.5.10 – *"Occupation by any activity specified as a non-complying activity by another rule in this plan"*; and
 - (c) Rule 16.5.23 – *"In any Coastal Protection Area 1, the disturbance of the foreshore or seabedthat is not provided for as a permitted, controlled, discretionary or prohibited activity in another rule in this chapter"*.

- 6.43 In summary, activities in a Coastal Protection Area 1 are subject to stricter controls under the Coastal Plan. This appears from the wording of the Coastal Plan to be aimed at avoiding adverse effects on the Coastal Protection Area 1 **above ground**. For

¹⁹ AEE Table 14-10 Auckland Council District Plan (Auckland City Isthmus Section) – Assessment Criteria.

²⁰ For example Objective 5B.4.3 Water Quality and supporting policy which includes "controlling the effects of development earthworks and the removal of vegetation so as to minimise pollution or sedimentation of coastal waters" (see AEE Appendix B, page 50).

²¹ AEE Section 11.3, page 111 and Section 11.11, page 113.

²² Refer AEE Table 2.2, pages 14-16.

example, other sections of the main tunnel in the CMA, outside of the Coastal Protection Area 1, require consent as discretionary and restricted discretionary activities. As with the rules and controls for earthworks in the District Plan, the provisions of the Coastal Plan are focussed on effects that may occur **at or near the surface** of the seabed or in coastal waters. As above, the effects envisaged are not readily applicable to tunnelling at depth and it is clear that this type of activity was never intended to be "caught" by these rules.

Council's Approach to Bundling

6.44 The Council Pre-hearing Report has taken a highly conservative approach to bundling of applications for resource consents for the Project. The Report has bundled applications at three different levels:

- (a) First, (on pages 33 - 45 of the Report) applications have been bundled by consent. An overall activity status has been assigned for each of the 20 consents required for the Project.
- (b) Second, (on page 45) consents required under each plan have been bundled, resulting in overall non-complying activity status under the Auckland District Plan: Isthmus Section and the Coastal Plan.
- (c) Finally, (on pages 45 - 46) all applications have been bundled across all plans, with the result that all activities requiring resource consent for the Project are considered as non-complying activities.

6.45 In my opinion, a strong argument can be mounted to restrict bundling of the non-complying status to the activities at the individual consent level (the first "bundling" discussed above).

6.46 The non-complying activity status of the main tunnel where it passes under Open Space-zoned land in the Auckland Isthmus and the CPA1 is an unanticipated technical outcome of rules written to control activities at the surface of the land and CMA being applied to activities at depth. The main tunnel construction in these areas will not have any of the adverse effects the relevant rules in the plans seek to control. In addition, the main tunnel construction in those areas has no overlap or consequential effects with other Project activities requiring consent in terms of:

- (a) physical location;
- (b) effects on the environment;

- (c) any need to exercise the consents together (noting the construction at different sites will occur over a long period and at different times); or
- (d) impact of the different activities on each other.

- 6.47 In short, in my view, there is no reason to consider all these activities as a single non-complying bundle.
- 6.48 Setting aside my opinion on bundling, I note that Watercare has accepted that the Council may wish to approach bundling on a "more prudent basis", bundle consents **by** plan and apply an overall non-complying status to all activities requiring consent under the Auckland Regional Plan: Coastal.²³ The Pre-Hearing Report has referred to this position.
- 6.49 However, the Pre-Hearing Report has gone further than this. It has bundled all applications as non-complying and has assessed the applications on that basis.
- 6.50 Given that the Council Pre-hearing Report has bundled all Project activities that require resource consent as non-complying, I have completed an assessment of the entire Project against the tests in section 104D. In completing my section 104D assessment, I have had the benefit of the additional information (in particular, on the EPR) that was included in Watercare's responses to Council's Section 92 requests for further information and information that included in the evidence the other experts witnesses have presented for this hearing.

Test 1: Minor adverse effects of the activity on the environment

- 6.51 I have outlined in my evidence above the conclusions on environmental effects presented in the AEE and in the evidence of expert witnesses. The AEE and the evidence have described a range of adverse effects of varying location, scale, magnitude, duration and likelihood of occurring. On a number of these effects (most particularly those related to the operational phase of the Project), the relevant experts have drawn the conclusion the effects are minor, or no more than minor.
- 6.52 I observe that the Pre-hearing Report²⁴ has concluded that the applications for consents (as bundled all together as a non-complying activity) meet the test of minor effects of the activity on the environment. This is based on the assessment presented in Section 9 Actual and Potential Effects in the Pre-hearing Report.

²³ Correspondence dated 31 August 2012 from Watercare to Auckland Council – Notices of Requirement and Applications for Resource Consents for the Central Interceptor Main Project Works.

²⁴ Pre-hearing Report Section 10.13, page 237.

- 6.53 I acknowledge that different perspectives and approaches can be taken to reach a judgement about whether the adverse effects of a project of the nature and scale of this Project could be considered "on balance" or overall to be minor. Different perspectives and approaches will result in different conclusions.
- 6.54 In this case, I do not need to reach a conclusion on whether the Project meets the test on minor adverse effects. To pass the gateway test for non-complying activities in section 104D of the RMA, the Project needs only to pass one of the two tests. I prefer to deal with the overall balance of effects on the environment associated with the Project in the context of the objectives and policies of the relevant plans.

Test 2: Not contrary to objectives and policies of relevant plans

- 6.55 To undertake my assessment for this test I have carried out a comprehensive and rigorous assessment against the objectives and policies of the various relevant plans. My assessment has been concerned with establishing whether all aspects of the activities that require resource consent could be considered to be "not contrary to the objectives and policies of the relevant plans". This is a considerably more demanding requirement than the obligation in section 104 of the RMA for decision makers to have regard to relevant provisions of RMA statutory instruments (including objectives and policies).
- 6.56 I have incorporated my assessment findings and conclusions in the section of my evidence below addressing the statutory instruments. I note here that, on the basis of my detailed assessment of the Project against the objectives and policies the relevant plans, it is my opinion that the Project meets the requirements of the second test in section 104D. The applications are for activities that will not be contrary to the objectives and policies of the relevant plans.

Section 105

- 6.57 The Project requires a number of consents for discharge permits and coastal permits for discharges. These include consents for:
- (a) discharges of stormwater from construction sites, during construction;
 - (b) construction site-related discharges;
 - (c) discharges from works in contaminated sites, during construction;
 - (d) discharges of stormwater from permanent works with impervious surfaces greater than 1000 m²;

- (e) discharges to air; and
- (f) discharge from the EPR structure at the proposed Mangere Pump Station.

- 6.58 Section 105 of the RMA requires the Council to have regard to the nature of the discharges, sensitivity of the receiving environment, reasons for the choices made about discharges and possible alternative methods of discharge.
- 6.59 The AEE has addressed the nature of the discharges and sensitivity of the receiving environments. It has also addressed Watercare's reasons for the proposed choice and possible alternative methods of discharge. Discharges have also been addressed in the evidence of expert witnesses.
- 6.60 Mr Cantrell has described decisions made in considering design options about discharges and alternatives. This has included decisions and alternatives, for example about the location of the EPR structure and of construction sites.
- 6.61 Mr Cooper has addressed construction-related discharges, including stormwater, and how these are to be managed through construction management plans.
- 6.62 Mr Slaven has described the receiving environment and its sensitivity in his evidence and assessment of effects of the construction activities.
- 6.63 Mr Kirkby has addressed potential discharges to air. He also has described the receiving environment and its sensitivity in his evidence and assessment of effects.
- 6.64 Mr Roan has addressed the potential discharge from the EPR structure. He has described the nature of the discharge, examining a number of potential scenarios and the sensitivity of the receiving environment. He has considered effects that may occur in different tidal conditions and expressly considered the special ecological values of areas within Manukau Harbour that may be affected. He has also addressed alternatives considered for the location of the EPR structure and the discharge.

Section 107

- 6.65 Section 107 (1) of the RMA sets a restriction on granting permits for discharges to water that give rise to:
- (a) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
 - (b) any conspicuous change in the colour or visual clarity;

- (c) any emission of objectionable odour;
- (d) the rendering of fresh water unsuitable for consumption by farm animals; and/or
- (e) any significant adverse effects on aquatic life.

6.66 The EPR discharge, should it occur, could give rise to some of these effects.

6.67 Section 107 (2) provides that consents can be granted where:

- (a) exceptional circumstances justify the granting of the permit;
- (b) the discharge is of a temporary nature; or
- (c) the discharge is associated with necessary maintenance work.

6.68 Should a discharge occur from the EPR, it meets the requirements of section 107 (2). As described in the evidence of Mr Cantrell and Mr Roan, the discharge would only occur in an exceptional circumstance and it will be temporary. Mr Cantrell and Mr Roan have also described how the concept design for the EPR includes a screening device to capture any litter and floatable solids.

Statutory Instruments

6.69 Section 104 (b) of the RMA requires decision makers to have regard to the relevant provisions of a range of RMA statutory instruments. In relation to the Project, the applicable instruments are:

- (a) New Zealand Coastal Policy Statement 2010;
- (b) National Policy Statement on Freshwater Management 2011;
- (c) National Policy Statement on Electricity Transmission 2008;
- (d) National Environmental Standard for Assessment and Managing Contaminants in Soil to Protect Human Health 2012;
- (e) Auckland Regional Policy Statement 1999;
- (f) Auckland Council Regional Plan: Coastal 2004;
- (g) Auckland Council Regional Plan: Sediment Control 2001;
- (h) Auckland Council Regional Plan: Air, Land, and Water;

- (i) Auckland Council District Plan (Auckland City Isthmus Section) 1999 (Auckland City District Plan); and
- (j) Auckland Council District Plan (Manukau Section) 2002 (Manukau District Plan).

6.70 The section 104D (b) test for non-complying activities requires that the activity(ies) will not be contrary to the objectives and policies of the relevant plan(s). For the Project (on the basis of bundled consent applications) the relevant plans are those listed in (f) – (j) above.

6.71 The AEE includes an analysis of the statutory instruments described above (with the exception of the National Policy Statement on Electricity Transmission) as follows:

- (a) those instruments that contain rules have been addressed to identify requirements for NoRs, resource consents and requiring authority approvals;²⁵
- (b) zoning or planning limitations on land that are included in statutory instruments have been identified as part of the description of the existing environment;²⁶
- (c) an overview assessment of the instruments and their objectives, policies and assessment criteria is presented in the statutory context and assessment²⁷ and more site specific statutory assessment is included in each of the NoR Assessment of Effects on the Environment;
- (d) detailed assessments against objectives and policies contained in the Auckland Regional Policy Statement, and in regional and district plans²⁸ and planning maps²⁹ are appended.

6.72 An additional assessment against the Auckland Council District Plan (Manukau Section) Network Utility Services Assessment Criteria is included in the Section 92 response to the Council dated November 2012.³⁰

6.73 The AEE assessment against objectives and policies has concluded that:

- (a) overall, the proposed works are not contrary to the objectives and policies of the New Zealand Coastal Policy Statement;

²⁵ AEE Section 2, pages 8 - 18.

²⁶ AEE Section 9.10, pages 97 - 100.

²⁷ AEE Section 14.5, pages 140 - 158.

²⁸ AEE Appendix B.

²⁹ AEE Appendix D.

³⁰ Section 8.2, pages 14 - 17.

- (b) the proposed works are consistent with the relevant objective and policy of the National Policy Statement on Freshwater Management;
- (c) the proposed works give effect to, or are generally consistent with, the relevant objectives and policies in the Auckland Regional Plan: Coastal, the Auckland Regional Plan: Air, Land and Water, the Auckland Council District Plan (Auckland City Isthmus and Manukau Sections) and the related policies and objectives in the Auckland Regional Policy Statement; and
- (d) the proposed works give effect to the relevant objectives and policies of the Auckland Regional Plan: Sediment Control.

6.74 I agree with these overall conclusions but provide additional assessment and comments related to:

- (a) the New Zealand Coastal Policy Statement;
- (b) the National Policy Statement on Electricity Transmission; and
- (c) the plans that are relevant to the section 104D(b) test.

New Zealand Coastal Policy Statement

6.75 Policy 23 in the New Zealand Coastal Policy Statement concerns discharge of contaminants and is relevant to the EPR discharge.

6.76 Policy 23(1) requires the following:

In managing discharges to water in the coastal environment, have particular regard to:

- (a) the sensitivity of the receiving environment;
 - (b) the nature of the contaminants to be discharged, the particular concentration of contaminants needed to achieve the required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded; and
 - (c) the capacity of the receiving environment to assimilate the contaminants;
- and:
- (d) avoid significant adverse effects on ecosystems and habitats after reasonable mixing;
 - (e) use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and

- (f) minimise adverse effects on the life-supporting capacity of water within the mixing zone.

6.77 Mr Roan has addressed these matters in his evidence in detail.

6.78 Policy 23(2) provides that "in managing discharge of human sewage, do not allow; (a) discharge of human sewage directly to water in the coastal environment without treatment". The Minister for Conservation has provided guidance on the application of Policy 23 on the Department of Conservation website.³¹ Key points in the guidance are that Policy 23(2)(a):

- (a) is a strong direction;
- (b) is not a rule and does not mean applications cannot be approved;
- (c) signals that a clear justification should underpin any provision for a discharge of untreated sewage;
- (d) discharges must be looked at in context (location, frequency, duration, volume, level of treatment and whether the discharge is the best practicable option); and
- (e) should be considered together with other objectives and policies in the New Zealand Coastal Policy Statement and broader statutory framework.

6.79 Mr Cantrell and Mr Roan have addressed the context of the EPR discharge in their evidence. Mr Cantrell has outlined the requirement for an EPR provision in the context of the Project and how this is the best practicable option. Mr Cantrell and Mr Roan have addressed the selection of the location for the EPR and how this decision is also the best practicable option. Mr Roan has addressed the environmental context, the nature of the discharge and its potential effects on the CMA.

6.80 In my opinion, the proposal for the EPR structure is consistent with the guidance for Policy 23. They are also consistent with other relevant objectives and policies in the New Zealand Coastal Policy Statement, in particular:

- (a) enabling people and communities to provide for their social, economic and cultural well being and their health and safety (Objective 6);
- (b) recognising that the provision of infrastructure is important to the social, economic and cultural wellbeing of people and communities (Policy 6(1)(a));

³¹ <http://www.doc.govt.nz/conservation/marine-and-coastal/coastal-management/nz-coastal-policy-statement/policy-statement-and-guidance/sewage-discharges/>

- (c) considering the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment (Policy 6(1)(b));
- (d) recognising that there are activities that have a functional need to be located in the CMA, and provide for those activities in appropriate places (Policy 6(2)(c)); and
- (e) promoting restoration or rehabilitation of natural character including reducing or eliminating discharges of contaminants (Policy 14(c)(vi)).

6.81 On the basis of my assessment above, it is my opinion that the Project is consistent with the New Zealand Coastal Policy Statement.

National Policy Statement on Electricity Transmission

6.82 The National Policy Statement on Electricity Transmission sets out objectives and policies to enable the management of the effects of the electricity transmission network under the RMA. The objective of the Policy Statement concerns facilitating the operation and upgrade of the transmission network, including managing the adverse effects of other activities on the network.

6.83 Policy 10 is relevant to the Project. It states:

In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.

6.84 I note that Transpower NZ Limited ("**Transpower**") has made a submission on the NoRs and applications for resource consents drawing attention to the National Policy Statement and Policy 10 and has sought appropriate conditions to be attached to the designations and resource consent applications. As noted in the AEE,³² Watercare has undertaken some pre-application consultation with Transpower and the AEE refers to works at the construction sites being outside the overhead line 12 m corridor at the sites where there are overhead power lines in the vicinity.³³ Watercare has responded to

³² AEE Section 8.7, pages 80 - 81.

³³ AEE Section 2.18, page 127.

Transpower's submission, provided additional technical information³⁴ and proposed designation conditions addressing Transpower's concerns.

Plans relevant to the section 104D(b) test

- 6.85 With the benefit of the information provided in response to Section 92 requests and presented in the evidence of the expert witnesses, I provide some additional comments below that strengthen and support the AEE assessment and conclusion that the Project is not contrary to the objectives and policies of relevant plans.
- 6.86 Cumulative effects: Mr Roan has expressly addressed potential cumulative effects associated with discharges from the EPR, consistent with the Auckland Regional Plan: Coastal - Policies 10.4.8 and 10.4.9.
- 6.87 Effects on Coastal Protection Areas: Mr Roan has described how any discharge from the EPR will not have adverse effects on the values for which the nearby Coastal Protection Areas and Areas of Significant Conservation Value have been noted. This is consistent with Auckland Regional Plan: Coastal Policy 20.4.1. He and Mr Cantrell have also described the necessity for the EPR. Mr Cantrell and Mr Munro have also described Watercare's programme to upgrade the wastewater network. These descriptions are consistent with the requirements of Policy 20.4.9.
- 6.88 Public Access: Mr Roan has described some temporary restrictions on public access to the CMA in the form of beach closures to manage risk to public health in the event of a discharge from the EPR. This is consistent with Auckland Regional Plan: Coastal - Objective 7.3.2 and Policy 7.4.1.
- 6.89 Wastewater Overflow Discharges: Mr Munro has provided a detailed description of the strategic importance of the wastewater network and the Project within that context, consistent with Auckland Regional Plan: Air, Land and Water - Policy 5.4.9. Mr Roan has provided a description of the location and effects of a discharge from the EPR which meets the requirement of supporting Policy 5.4.14 and with the Auckland Regional Plan: Coastal - Policy 20.4.10.
- 6.90 Best Practicable Option ("BPO"): Mr Munro, Mr Cantrell and Mr Roan have all provided information that place the discharge from the EPR in a context of a BPO framework, consistent with the requirements of Auckland Regional Plan: Coastal - Policy 20.4.11.

³⁴ Correspondence from Watercare to Transpower dated 20 March 2013 entitled Submission on Central Interceptor Main Project Works.

- 6.91 Natural Values and Character: Mr Cantrell and Mr Slaven have described benefits of the Project for natural values and natural character from reducing wastewater overflows and the resulting enhancement of degraded freshwater habitats and ecosystems inside the urban Auckland area. This is consistent with Auckland Regional Plan: Air, Land and Water Objective 2.1.3.1 and Policies 2.1.4.6 and 2.1.4.1 on natural values and Objective 3.6.2.1 and Policies 3.6.4.4 and 3.6.4.5 on management areas. Mr Slaven has also provided descriptions and assessment of effects on the coastal environment at Kiwi Esplanade, consistent with the requirements of Auckland District Plan (Manukau Section) - Objective 11.1.3.1 and Policy 11.1.4.3.
- 6.92 Mr Twose has drawn the conclusion that the Project will present low risk of measurable changes in groundwater quality immediately around the main tunnel and negligible risk of any adverse effect on regional groundwater quality or effect on groundwater users in the vicinity. This is consistent with Auckland Regional Plan: Air, Land and Water - Objective 6.3.2.

Other relevant matters

- 6.93 Sections 171 and 104 of the RMA enable the Council to consider any other matters it considers reasonably necessary. The AEE has identified other relevant documents: the Auckland Plan; Local Board Plans, Reserve Management Plans and Iwi documents.³⁵
- 6.94 The Auckland Plan identifies the Central Interceptor as a future component of the critical infrastructure network³⁶ to address significant wastewater management challenges associated with the Region's expected growth over the next 30 years. It also includes the a directive to "*provide existing and future network utility infrastructure to ensure efficient provision of secure and resilient...wastewater...services that will meet the needs of Auckland over time*".³⁷ I note that the Project is consistent with this directive.
- 6.95 The AEE has identified five Local Board Plans³⁸ that are potentially relevant to the Project, noting that the local boards have been consulted and their comments have been taken into account in the design process. The AEE concludes that the works as proposed support the aspirations in the Local Board Plans to see improved quality of waterways.

³⁵ AEE Section 14.6, pages 158 - 159.

³⁶ Refer to Map 12.2 of the Auckland Plan.

³⁷ Auckland Plan, Chapter 12 at paragraph 718.

³⁸ Waitemata, Whau, Albert Eden, Puketapapa and Mangere Otahuhu (AEE, Section 14, p.148).

- 6.96 The AEE has identified three reserve plans³⁹ that are relevant to the Project. It notes that the Project will involve temporary use and disruption of confined areas of the affected reserves. Permanent works at these sites will be able to be integrated into the sites so that long-term visual or recreational effects are expected to be no more than minor.
- 6.97 I note that Mr Maskill has identified and addressed a number of relevant Iwi documents in his evidence and described how Watercare and the Project has responded to these.

Part 2

Section 5

- 6.98 In my opinion, the Project meets the sustainable management purpose of the RMA for the reasons I outline below.
- 6.99 The Project will form part of the bulk wastewater network for Auckland. As described in the AEE,⁴⁰ Auckland's wastewater network provides significant public health benefits to the people of Auckland. Its establishment significantly reduced discharges of wastewater to Auckland's natural environment. It has enabled, and continues to enable, the region's economy to develop and population to grow by providing collection, treatment and disposal of industrial, commercial and domestic wastewater. There have been, and continue to be, significant positive benefits for the region's social and cultural wellbeing.
- 6.100 The importance of the Project to the overall network has been described in the AEE⁴¹ and in the evidence of Mr Munro and Mr Cantrell. This demonstrates the importance of the Project in enabling the people and communities of Auckland to provide for their social, economic and cultural wellbeing and for their health and safety.
- 6.101 As described in the AEE⁴² and in the evidence of Mr Munro and Mr Cantrell, the Project will provide additional capacity for growth and development of Auckland. This and the other ongoing upgrades to the Mangere WWTP and wider wastewater network (described in the AEE⁴³ and in the evidence of Mr Munro) are important to sustain the potential of Auckland's physical wastewater network resources to meet the reasonably foreseeable needs of future generations. I also note that wider contextual information provided Section 92 response⁴⁴ submitted to the Council on the 27 May 2013

³⁹ Keith Hay Park, Kiwi Esplanade Reserve and Walmsely Park Plans (AEE, Section 14, page 149).

⁴⁰ AEE Section 3.3, pages 20 - 21.

⁴¹ AEE Section 4.0, pages 25 - 31.

⁴² AEE Section 4.1, pages 25 - 26.

⁴³ AEE Sections 4.5 and 4.6, pages 30 - 31.

⁴⁴ Central Interceptor Main Project Works Section 92 RMA Response Report May 2013, Attachment 11 Information on Mangere WWTP and the Manukau Harbour.

demonstrates the importance of the existing wastewater network, wastewater treatment plant, planned upgrades and the Project in sustaining the potential of natural resources (in particular the receiving environment of Manukau Harbour) to meet the reasonably foreseeable needs of future generations.

- 6.102 The Project will significantly reduce major wastewater overflows to Meola Creek and coastal areas in the Waitemata. Mr Cantrell has described how the Project will divert overflows from 18 targeted locations which include the largest in the combined sewer system. He has described how they represent approximately 50 - 60% of the volumes associated with all overflows located in the entire catchment area of the Central Interceptor Scheme. The majority of the 18 overflows (by volume) discharge into the Meola catchment, but they also impact on the Motions and Whau catchments. Mr Cantrell has also noted the benefit the Project provides to the Manukau Harbour by providing asset security through the duplication of the ageing Western Interceptor. These significant positive effects of the Project will help to safeguard the life supporting capacity of air, water, soil and ecosystems.
- 6.103 As described in the AEE⁴⁵ and in the evidence of Mr Munro, Mr Cantrell and Mr Cooper, the design processes have included detailed analysis to identify and assess alternatives to establish a Project that represents best practicable option. These processes have incorporated steps to avoid, remedy or mitigate adverse effects through the selection of the route and work sites; in construction methodologies, and the proposed construction management. Potential adverse effects have been considered Project-wide and at each works site. Specific measures to avoid, remedy or mitigate adverse effects have been developed and incorporated in proposed conditions for the designations and resource consents.

Section 6 (a)

- 6.104 The Project recognises and provides for the nationally important matter of preservation of the natural character of the coastal environment and rivers and their margins.
- 6.105 As described in the evidence of Mr Cantrell, the Project will reduce overflows of wastewater to the natural environment. This will help to preserve the natural character of the Meola Creek and coastal environment in Waitemata Harbour and improve the quality of these environments in future.

⁴⁵ AEE Section 7, pages 66 - 73.

- 6.106 The Project includes works in the coastal environment at the Pump Station 23, Kiwi Esplanade and Mangere Pump Station sites. These works are described and the effects assessed in detail in the AEE.⁴⁶ I note that all three of these sites are modified environments and that the assessments conclude that design of any permanent features will ensure that these are appropriately integrated into the site setting. Mr Goodwin has addressed the effects of these works on natural character in his evidence.
- 6.107 I note that the main tunnel under the CMA at depth has no impact on the natural character of the coastal environment.

Section 6 (c)

- 6.108 The Project works do not directly impact on areas of significant indigenous vegetation and significant habitats of indigenous fauna. As described in the AEE,⁴⁷ the main tunnel will pass, at depth, under an area identified as Coastal Protection Area 1, CPA 23(b), adjacent to Kiwi Esplanade and an Area of Significant Conservation Value, ASCV 59. The AEE concludes that the main tunnel will be beneath the pahoehoe lava flows identified as a feature within this CPA and will not impact on the migratory bird roosting and feeding areas that are the values identified for these areas.
- 6.109 I note that the Pre-hearing Report⁴⁸ suggests that the works at Pump Station 23 and the EPR structure are within areas identified as Coastal Protection Area 2. This is not the case. Both are in the General Management Area as identified on the Auckland Council Regional Plan: Coastal Maps, Sheet 12.
- 6.110 In the unlikely event of a discharge from the EPR, there may be effects on a number of CPAs and Areas of Significant Conservation Value. As described in the evidence of Mr Roan, these effects will not alter the values for which these areas are noted.

Section 6 (d)

- 6.111 The Project will have limited effects on public access to the CMA. As described in the AEE,⁴⁹ at Pump Station 23 there is no existing walkway around the site that will be affected by the proposed works and during works, however, access will still be possible along the foreshore at low tides. During construction of the EPR structure, there will be some temporary restriction of public access to ensure public health and safety. As described by Mr Roan, in the unlikely event of a discharge from the EPR, temporary

⁴⁶ AEE, Part B – Site Specific Assessments: Pump Station 23, section 8.0 pages 113-130; Kiwi Esplanade, sections 9A and 9B, pages 131-146; and Mangere Pump Station, section 10.0, pages 147-155.

⁴⁷ AEE Part A, Section 11.12, page 113.

⁴⁸ Council Pre-hearing Report, page 41.

⁴⁹ AEE Part B, Section 8.6.3, page 124.

restrictions to public access (in the form of beach closures) may also be required to ensure public health and safety.

Section 6 (e)

- 6.112 The Project recognises and provides for the nationally important matter of the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga, as described below.
- 6.113 The Project will reduce wastewater overflows and have a direct positive impact on water quality, a key concern of Mana Whenua. As described in the AEE,⁵⁰ and in the evidence of Mr Maskill, Watercare has engaged in extensive consultation with Mana Whenua. This consultation has included responding to specific concerns about diversion of wastewater to discharge to the Manukau Harbour. Mr Maskill's evidence also includes more detailed comments and an assessment of Watercare's consultation process against the requirements of Section 6(e).

Section 7 (a) and (aa)

- 6.114 The Project has had regard to the matters of kaitiakitanga and the ethic of stewardship. As noted above, Watercare has and is engaged in consultation with Mana Whenua. In addition, as described in the AEE,⁵¹ the selection of construction sites considered the potential sensitivity of sites and sought to avoid sensitive sites as much as possible. Mr Maskill's evidence has also included more detailed commentary on this provision of Section 7.

Section 7 (c)

- 6.115 The Project has had regard to efficient use and development of natural and physical resources in two ways. Firstly, through the planning and design processes described in the AEE⁵² and in the evidence of Mr Munro, Mr Cantrell and Mr Cooper, which have established the Project as the best practicable option.
- 6.116 Secondly, the Project will help ensure the efficient use and development of natural and physical resources by providing capacity to support growth within the existing urban Auckland area and through improving asset security of the regionally significant wastewater network infrastructure.⁵³

⁵⁰ AEE Section 8.5, pages 77 - 80.

⁵¹ AEE Section 14.2.1.3, pages 134 - 135 and Section 7.3, pages 69 - 73.

⁵² AEE Section 3.6, pages 23 - 24 and Section 4, pages 25 - 31.

⁵³ AEE Section 14.2.1.3, page 135.

Section 7 (c) (d) and (e)

- 6.117 The Project has had regard to the maintenance of amenity values, intrinsic values of ecosystems and the maintenance and enhancement of the quality of the environment. The Project will reduce wastewater overflows and this will have significant positive effects on amenity values, intrinsic values of stream and coastal ecosystems that are currently affected by overflows, and on the quality of the environment.
- 6.118 As outlined in the AEE,⁵⁴ selection of surface construction sites and the arrangement of site layouts has considered effects on amenity and tried to avoid adverse effects where practical. Measures such as noise barriers and site fencing (described in the AEE for each work site⁵⁵) will help to mitigate construction effects on amenity, and the design of permanent features and site reinstatement will also seek to maintain and/or enhance amenity values. The construction sites and proposed mitigation measures are described in the evidence of Mr Cooper.

Section 8

- 6.119 In relation to the Project, Watercare has taken into account the principles of the Treaty of Waitangi. Watercare has been actively consulting and is continuing consultation with Mana Whenua on cultural heritage matters associated with the Project. Consultation completed before NoRs and applications for resource consents were lodged is described in the AEE.⁵⁶ Mr Maskill has described the consultation with Mana Whenua in his evidence. Mr Maskill has also addressed this provision of the RMA in more detail in his evidence.

7. RESPONSE TO SUBMISSIONS

- 7.1 Submissions have addressed a wide range of issues and effects of the Project. A number, including in particular submissions from Iwi, have questioned whether the Project is consistent with the provisions of the RMA and relevant policies and plans. I have completed an assessment against the applicable requirements of the RMA and the relevant statutory instruments. This assessment has been comprehensive and rigorous and has been required to demonstrate that all elements of the Project requiring resource authorisation as non-complying activities meet the demanding test of section 104D(b) in addition to the section 104 and section 171 assessments under the RMA.

⁵⁴ AEE Section 3.6, pages 23-24 and Section 4, pages 25 - 31.

⁵⁵ AEE Part B Site Specific Assessments.

⁵⁶ AEE Section 8.5, pages 77 - 80.

8. RESPONSE TO COUNCIL PRE-HEARING REPORT

- 8.1 I have read the Council Pre-hearing Report and made reference to it as relevant through my evidence. I agree, for the most part with the statutory assessment presented in the Report, noting that I have not considered it necessary to draw a conclusion on the section 104D(a) test on minor effects.

9. PROPOSED CONDITIONS

- 9.1 Watercare and other expert witnesses have commented in detail on the conditions proposed for the designations and resource consents. On the basis of their comments, I am confident that Watercare's proposed conditions will ensure adverse effects of the Project are adequately avoided, remedied or mitigated.

10. CONCLUSIONS

- 10.1 Watercare has lodged NoRs for designations and applications for resource consents to authorise the construction and operation of the Project.
- 10.2 I have described the NoRs and consent applications, and the statutory provisions that apply to the Council's decision making processes, to make recommendations on the NoRs and grant the resource consents.
- 10.3 I have assessed the Project against the relevant requirements and have reached the following conclusions.
- (a) The AEE and evidence presented by expert witnesses outline and demonstrate the significant positive impacts and benefits associated with the Project.
 - (b) The AEE and evidence presented by expert witnesses demonstrate that during work at the construction sites for the Project, there will be a range of adverse effects on the environment that will generally be temporary and/or can be mitigated to an appropriate level by appropriate construction management. The ongoing effects of the normal operation of the Project will be no more than minor. In the event of a discharge occurring from the EPR there will likely be short-term public health, aesthetic and ecological effects.

- (c) The AEE and evidence presented addresses the requirements under section 171 of the RMA that Council must consider. It demonstrates that Watercare has considered alternative sites, routes and methods for undertaking the Project and that the Project is reasonably necessary for achieving Watercare's objectives as a requiring authority.
- (d) Overall, the Project meets the requirements of the test in section 104D(b) of the RMA for non-complying activities that require authorisation by resource consent. The Project is not contrary to the objectives and policies of the relevant plans. Accordingly, there is no impediment to the Council granting consents under this provision of the RMA.
- (e) The AEE and evidence have addressed the requirements of Section 105 of the RMA to have regard to the nature of discharges, sensitivity of the receiving environment, reasons for the choices made about discharges and possible alternative methods of discharge.
- (f) The discharges from the Project meet the requirements of section 107(2) and there is no restriction therefore under section 107(1) on the Council granting resource consents for those discharges.
- (g) The Project is consistent with the provisions of the relevant statutory instruments under the RMA, and in particular, is not contrary to the objectives and policies of the relevant plans.
- (h) The Project meets the requirements of Part 2 of the RMA. It meets the sustainable management purpose of the RMA and recognises and provides for relevant nationally important matters, other matters and has taken account of the principles of the Treaty of Waitangi.
- (i) Watercare has proposed a suite of conditions for the designations and resource consents that will ensure that adverse effects of the Project are adequately managed to avoided, remedied or mitigated.
- (j) On the basis of these conclusions I recommend that the Commissioners grant the resource consents and provide positive recommendations on the NoRs required to authorise the Project, subject to the conditions proposed by Watercare.

Marjory Russ
12 July 2013