

**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

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**LEGAL SUBMISSIONS ON BEHALF OF WATERCARE SERVICES LIMITED  
29 JULY 2013**

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**RUSSELL McVEAGH**

D A Nolan / B S Carruthers  
Phone 64 9 367 8000  
Fax 64 9 367 8163  
PO Box 8  
DX CX10085  
Auckland

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## 1. INTRODUCTION

1.1 This hearing relates to the Notices of Requirement ("**NORs**") and applications for resource consents needed by Watercare Services Limited ("**Watercare**") to enable the construction of the Central Interceptor Scheme's main project works ("**Project**").

1.2 As demonstrated in the evidence, the Project will bring significant benefits to Auckland. It will:

- (a) provide asset security through the duplication of the lower section of the ageing Western Interceptor, reducing the potential risk to the Manukau Harbour;
- (b) provide capacity in the wastewater network for future growth and development to occur without dry weather wastewater overflows;
- (c) significantly reduce the major wet weather wastewater overflows into the Meola Creek catchment;
- (d) provide an opportunity to further reduce existing wet weather wastewater overflows into urban streams and the Waitemata Harbour, by enabling the CSO Collector Sewers which relies on construction of the main tunnel; and
- (e) have positive effects on public health and the environment generally.

1.3 While construction will occur largely below ground, it is inevitable that construction activities will generate effects at the 19 above ground construction sites. These sites are required along the tunnel alignment to construct the tunnels and to provide permanent connections to the network, and for ongoing operations and maintenance. These potential effects have been thoroughly assessed in the evidence and conditions have been proposed that will mitigate the effects.

1.4 The Project represents the culmination of a number of years of investigations, including the Three Waters Strategic Plan completed in 2008, to determine the best practicable option that provides for asset risk management, additional network capacity and the reduction of existing wet

weather wastewater overflows. The Project has been thoroughly assessed and refined and represents Watercare's best efforts to balance all the competing interests that inevitably come to the fore in any large infrastructure project.

- 1.5 All these aspects have been acknowledged in the Council Pre-hearing Report, which has recommended that the resource consent applications be granted and the NORs confirmed.

## 2. BRIEF OVERVIEW OF THE PROJECT

- 2.1 The evidence of Mr Munro from Watercare, and Mr Cantrell and Mr Cooper from AECOM, takes the Committee through the Project in detail. We simply highlight for the Committee its key aspects.

- 2.2 The overall concept for the Central Interceptor Scheme is illustrated on Figure 1.1 on page 4 of the Hearing Drawing Set and has two elements:

(a) The **main project works**, a 13 km gravity tunnel from Western Springs to the Mangere WWTP, four link sewers, a series of connections to the existing network of branch sewers, a new pump station at Mangere and at that location an Emergency Pressure Relief ("**EPR**") discharge structure. These works will duplicate the lower section of the Western Interceptor, provide the network capacity required for future growth on the Auckland Isthmus and will provide overflow mitigation at some of the largest wet weather wastewater overflows in Watercare's network.

(b) The **CSO Collector Sewers**, a series of smaller sewers that extend out from the main project works into the local catchments to provide overflow mitigation. The CSO Collector Sewer works will occur as part of a separate construction contract once the main project works are complete.

- 2.3 Watercare is seeking Resource Management Act 1991 ("**RMA**") approvals for these two elements of the Central Interceptor Scheme separately, because the two packages are quite different in respect of the extent of works intended and potential construction effects. Due to their different scale and timing, the CSO Collector Sewers form a separate consent

package and are not discussed further in the subsequent sections of these submissions.

- 2.4 As part of the overall Central Interceptor Scheme, and also not part of the main project works being considered by the Commissioners today, Watercare has separately applied for a Network Discharge Consent from Auckland Council to authorise existing and future (albeit significantly reduced) overflow discharges from the public wastewater network within the Central Interceptor catchment area.
- 2.5 The Scheme has been designed to capture, store and convey for treatment wet weather overflows from the wastewater network. Once completed, it will reduce the average annual wastewater overflow volumes discharged into the environment by approximately 80%. This is a huge reduction. This equates broadly to network overflows in only 6-12 storm events in an average rainfall year, down from the many hundreds of events that occur year in, year out at present. The Network Discharge Consent is to authorise the remaining overflow volume, expected to occur in infrequent significant wet weather events that exceed the storage capacity of the Central Interceptor main tunnel.
- 2.6 It is Watercare's understanding that, like the CSO Collector Sewers, the Network Discharge Consent for the Central Interceptor catchment area will also be determined by the Commissioners, at a later date.
- 2.7 The main project works that are the subject of this hearing involve:
- (a) The main tunnel between Western Springs and the Mangere Wastewater Treatment Plant ("**WWTP**"). This will be located within a 40m by 20m corridor that is approximately 13 km in length and ranges between 22m and 110m below the ground surface. The tunnel will be concrete lined with an internal diameter of between 3.5 m and 5 m. A tunnel diameter of 4.5 m has been used in the design work completed to date. This provides a storage capacity of around 200,000 m<sup>3</sup>.
  - (b) Four link sewer tunnels. In total, the link sewer tunnels will be about 5 km in length and of varying diameters.
  - (c) Connections with the existing Watercare network to divert flow from the existing network to the Central Interceptor.

- (d) Associated structures at the connection points, including access shafts, drop shafts, flow control structures, overflow structures, grit traps, air vents and air treatment facilities.
- (e) A new pump station at the Mangere WWTP to pump wastewater from the tunnel to the Mangere WWTP.
- (f) An EPR structure at the Mangere WWTP to allow for safe and controlled outflows in the event of extreme inflows to the main tunnel combined with an emergency event (e.g. pump station failure). Provision for an EPR structure at the proposed Mangere Pump Station must be made to ensure that, under emergency situations (predicted to be extremely rare), pressure can be safely released from the main tunnel without causing damage to the proposed Mangere Pump Station or to the main tunnel, or causing uncontrolled overflows from shafts along the main tunnel alignment.<sup>1</sup>

2.8 While the construction of the Central Interceptor tunnels will occur largely below ground, above ground construction sites are required along the tunnel alignment. The 19 proposed construction sites are shown on Figure 1.1<sup>2</sup> and are at the following locations:

- (a) Three primary construction sites at Western Springs, May Road and the Mangere WWTP will serve as the main construction bases for the tunnelling activities. These construction sites may operate for around five to six years, depending on the construction methods employed.
- (b) Seven secondary construction sites are needed along the main tunnel alignment to provide the permanent connections to the main tunnel. A further nine secondary construction sites are needed along the link sewer alignments to construct or provide connection to the link sewer tunnels. All these secondary sites would likely operate for between six to 18 months each as the shaft is excavated and permanent works are constructed, although total occupation will range from two to five years due to the intermittent nature of the works.

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<sup>1</sup> Evidence of Clint Cantrell at [5.67].  
<sup>2</sup> Figure 1.1 is set out on page 4 of the Hearing Drawing Set.

2.9 The construction activities proposed at all the sites will include a wide range of activities, such as the removal of vegetation, earthworks, relocation of services, establishment of site access, construction yards and lay down areas, traffic management, works in watercourses, construction of the physical works, commissioning and site reinstatement. In addition, at the existing Watercare pump station on the edge of the Manukau Harbour at Hillsborough Bay (Pump Station 23), a temporary construction platform will be required in the Coastal Marine Area ("**CMA**") to facilitate the construction activities.

### **3. EVIDENCE TO BE PRESENTED**

3.1 Recognising the complexity and importance of the Project, Watercare will call a total of 15 witnesses. Their combined view is that the Project is necessary, appropriate, will have significant environmental benefits, will avoid, remedy or mitigate any adverse effects, and will promote the sustainable management purpose of the RMA.

3.2 The Watercare evidence has been pre-circulated to allow for the evidence to be read in advance of this hearing. As a result, instead of presenting their evidence in full, the Watercare witnesses, who follow Mr Ford, have included an executive summary of their evidence which they will present, along with a number of visual presentations or aids, or they may take you to particular parts of their evidence which they wish to draw your attention to. They will then be available to answer any questions the Commissioners might have.

3.3 The witnesses to be called by Watercare are:

(a) **Mr Mark Ford** (Chief Executive, Watercare) who provides a brief background of Watercare, setting out the company structure and responsibilities, and an overview of Watercare's projects, including the Central Interceptor Project.

(b) **Mr Tim Munro** (Manager of Major Projects, Watercare) provides an overview of Watercare's responsibilities and corporate goals, the wider wastewater network, and how the Project fulfils and fits into these. Mr Munro also addresses the key drivers and positive effects, as well as the implementation of the Project.

- (c) **Mr Clint Cantrell** (Civil Engineer and Water and Wastewater Sector Leader, AECOM) describes how the design and layout of the Project was developed, including the consideration of alternatives, and the key features and facilities of the Central Interceptor. He provides an overview of the Project's operation, construction methodology and use of management plans.
- (d) **Mr John Cooper** (Civil Engineer and Technical Director, AECOM) outlines the technical proposals for the concept design and methods of construction for the Central Interceptor and associated works.
- (e) **Ms Belinda Petersen** (Resource Consents Manager, Watercare) describes the NORs and resource consent sought and their purpose, the consultation process undertaken for the Project, and also responds to issues raised in submissions and the Council Pre-hearing Report. She also addresses the proposed designation and consent conditions.
- (f) **Mr Craig Mcilroy** (Manager Stormwater at Auckland Council) explains the relationship and ongoing collaboration between Auckland Council Stormwater and Watercare, the complexity and cost of separation of the wastewater and stormwater networks, and why the Project is the Best Practicable Option from both stormwater and wastewater perspectives.
- (g) **Mr Graeme Twose** (Senior Geotechnical Engineer, Tonkin & Taylor) discusses groundwater and surface settlement issues in relation to the Project.
- (h) **Mr Peter Millar** (Civil Engineer and Business Development Manager, Tonkin & Taylor) describes his assessment of vibration effects related to the construction of the Project, as well as mitigation options and proposed conditions.
- (i) **Mr Mathew Cottle** (Acoustic Engineer, Marshall Day Acoustics) focuses on the noise associated with the Project's construction, and outlines the intended approach to mitigating noise effects.

- (j) **Mr Leo Hills** (Civil Engineer, Traffic Design Group) discusses the key traffic-related aspects of the Project, the analysis undertaken, and conditions and mitigation proposed to address any potential effects.
- (k) **Mr John Goodwin** (Landscape Architect and Director, Boffa Miskell) addresses the landscape and visual effects of the Project, outlines the existing landscape setting and site character, and describes the Project in terms of its changes to the physical landscape, including key mitigation measures.
- (l) **Mr Dave Slaven** (Ecologist and Senior Principal, Boffa Miskell Ltd) covers the potential ecological effects associated with the Project, including a summary of ecological values of the sites, how these could be affected and, where necessary, mitigated.
- (m) **Mr Peter Roan** (Ecologist and Principal, Tonkin & Taylor Ltd) outlines the potential water quality and ecological effects of discharge from the EPR structure at the proposed Mangere Pump Station as part of the Project, should this ever occur.
- (n) **Mr Charles Kirkby** (Senior Air Quality Specialist, Beca) discusses the potential odour and dust effects of the Project.
- (o) **Mr Garry Maskill** (Statutory Planning Manager, Watercare) explains the consultation process undertaken by Watercare with iwi, the relevant statutory framework and iwi documents and Watercare's response to issues raised by iwi in submissions and during the consultation process.
- (p) **Ms Marje Russ** (Senior Resource Management Specialist and Director, Tonkin & Taylor) undertakes the statutory assessments, and addresses the key matters raised by submitters and the Pre-hearing Report.

3.4 Where appropriate the witnesses have addressed the Council Pre-hearing Report, the issues raised in submissions and the proposed conditions to the extent relevant to the scope of their brief.

#### 4. AUTHORISATIONS SOUGHT

- 4.1 The proposed works are within the jurisdiction of Auckland Council. Watercare has lodged three NORs to designate a number of sites across the Auckland Isthmus and Manukau in the Auckland Council District Plan: Auckland City Isthmus and Manukau Sections ("**District Plan**"). A number of resource consents are also sought.
- 4.2 We briefly introduce the NORs and resource consent applications in this section. We discuss the legal requirements in relation to both the NORs and resource consents in further detail in later sections.

##### **Designations**

- 4.3 Watercare is a requiring authority as a network utility operator, approved under section 167 of the RMA.<sup>3</sup>
- 4.4 The three NORs lodged for the Project relate to 18 of the 19 surface construction sites. The nineteenth proposed construction site, at the Mangere WWTP, is located entirely within an existing Watercare designation, and the works proposed are within the scope of that designation.<sup>4</sup> As such, no new designation is required or proposed at this site.
- 4.5 Watercare also holds existing designations at three of the proposed construction sites: Lyon Avenue (main tunnel in Mount Albert), Pump Station 23 (main tunnel on the edge of the Manukau Harbour) and Pump Station 25 (link sewer in Miranda Reserve) - see Figure 1.1.<sup>5</sup> Watercare is proposing a new designation through this process that will partly overlie these existing designations, but is required because the proposed works extend over a greater area than the existing designations and with a new designation the Project can be managed with a single set of consistent designation conditions.
- 4.6 By way of summary, the three NORs are:
- (a) **NOR 1:** Notice of Requirement to Auckland Council for works within the Auckland Council District Plan (Auckland City Isthmus Section) area – this NOR relates to 17 surface construction sites.

<sup>3</sup> Pursuant to the Resource Management (Approval of Watercare Services Limited as a Requiring Authority) Notice 2012, New Zealand Gazette, No 69.

<sup>4</sup> Designation 144A in the Auckland Council District Plan: Manukau Section (Map MDC 6).

<sup>5</sup> Figure 1.1 is set out on page 4 of the Hearing Drawing Set.

- (b) **NOR 2:** Notice of Requirement to Auckland Council for works within the Auckland Council District Plan (Manukau Section) area – this NOR relates to the one surface construction site in the former Manukau City outside the Mangere WWTP designation: Kiwi Esplanade, Mangere Bridge (see Figure 1.1<sup>6</sup>).
- (c) **NOR 3:** Notice of Requirement to Auckland Council for works within the Auckland Council District Plan (Auckland City Isthmus Section) area — this relates to the proposed surface construction site in the car park at the Mount Albert War Memorial Reserve. This proposed area to be designated partly overlaps with the original Mount Albert War Memorial Reserve site included in NOR 1, as explained below.

4.7 Of note, in relation to the NORs:

- (a) Both NOR 1 and NOR 3 designate land for a surface construction site at Mount Albert War Memorial Reserve (see Figure 1.1<sup>7</sup>). The two sites at Mount Albert War Memorial Reserve are referred to throughout the evidence as:
- (i) **"Mount Albert War Memorial Reserve site"** (NOR 1);<sup>8</sup>  
and
- (ii) **"Mount Albert War Memorial Reserve Car Park site"** (NOR 3).<sup>9</sup>

Watercare's preferred site is the Car Park site, which is covered by NOR 3. This site is supported by the Albert-Eden Local Board.

- (b) The designation boundaries at two of the other proposed sites have been amended since lodgement of the NOR in August 2012 as follows:
- (i) at the proposed Lyon Avenue site the NOR area has been removed from a number of private car parks;<sup>10</sup> and

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<sup>6</sup> Figure 1.1 is set out on page 4 of the Hearing Drawing Set.  
<sup>7</sup> Figure 1.1 is set out on page 4 of the Hearing Drawing Set.  
<sup>8</sup> Refer to Drawing number AEE-MAIN-2.1, set out on page 38 of the Hearing Drawing Set.  
<sup>9</sup> Refer to Drawing number AEE-MAIN-2.1A, set out on page 49 of the Hearing Drawing Set.  
<sup>10</sup> Refer to Drawing number AEE-MAIN-3.1, set out on page 61 of the Hearing Drawing Set.

- (ii) at the proposed Haverstock Road site the access boundary has been slightly amended to align with the underlying title boundaries.<sup>11</sup>

4.8 NOR 1 has not been amended to withdraw the Reserve site at Mount Albert War Memorial Reserve. Watercare is requesting that the Commissioners recommend both sites for adoption, as both sites meet the tests under the RMA. Watercare will then make a final call on which site to use, with only one being ultimately constructed. As will be explained, the Car Park site is preferred but there are land owner approvals and related alternative car parking requirements that will need to be resolved for this site to be available. If these matters can be resolved during the statutory time period prior to confirmation of the NORs, then Watercare would be able to confirm only the Car Park site. However, if this cannot be achieved then both options will need to be confirmed until it is known whether or not the Car Park site can be used.

#### **Resource consents**

4.9 Aspects of the Project work also require resource consents under the Auckland Council District Plan and the Auckland Council Regional Plans.

4.10 Watercare is applying for a number of resource consents in respect of the Project. Ms Russ appends to her evidence a helpful table setting out each of the consents sought. In summary, the 20 consents comprise:

- (a) One land use consent under the Auckland Council District Plan (Auckland City Isthmus Section) with a non-complying overall activity status. 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. This consent is for the construction of the main tunnel and associated link sewers where they are located within the Manukau area, the removal or the existing pump station at Kiwi Esplanade Reserve, and for the removal of trees and/or works within the drip-line of trees.

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<sup>11</sup>

Refer to Drawing number AEE-MAIN-4.1, set out on page 72 of the Hearing Drawing Set.

- (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.
- (d) One land use consent under the Auckland Council Regional Plan (Sediment Control) with an overall restricted discretionary activity status for earthworks Project-wide.
- (e) Nine consents under the Auckland Council Regional Plan (Air, Land and Water) for a range of activities Project-wide and site-specific, with an overall discretionary status.
- (f) Six consents under the Auckland Council Regional Plan (Coastal) for a range of activities associated with the main tunnel under the Manukau Harbour and with specific sites (Pump Station 23 on the Manukau Harbour foreshore and the EPR), with an overall non-complying status.

4.11 Ms Russ has identified a few minor errors in the list of resource consents listed in the Pre-hearing Report and clarifies each of these in her evidence.

## 5. DESIGNATIONS

5.1 Part 8 of the RMA outlines the procedures for securing designations within a district plan. Decisions on the NORs are governed by section 171(1) of the RMA, which provides:

- 171 Recommendation by territorial authority**
- (1) When considering a requirement and any submissions received, a territorial 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; and
  - (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; and
- (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 decision on the requirement.

5.2 Within section 171, there are three key considerations we will address:

- (a) an assessment of the effects on the environment of allowing the NORs;
- (b) whether adequate consideration has been given to alternative sites or methods given the requiring authority does not have an interest in all of the land; and
- (c) whether the works and designations are reasonably necessary.

#### **Assessment of effects - section 171(1)(a)**

5.3 The following paragraphs provide the context within which the assessment of effects under section 171 must take place.

5.4 Section 171 requires the Committee to consider the "effects on the environment" of allowing the NORs. While the wording is slightly different from section 104 (which applies to the assessment of applications for resource consents), the central focus of both is ultimately the "effects".<sup>12</sup> The assessment of effects under both section 171 and section 104 are therefore essentially the same.

5.5 Case law on the assessment of effects, particularly in the context of section 104, has lead to a layered analysis, starting with an assessment of the existing environment, then a consideration of the plausible future environment, a discretion to disregard effects forming part of the 'permitted baseline', and finally an assessment of the remaining effects.<sup>13</sup>

<sup>12</sup>

"Effect" is defined in section 3(1) as:

In this Act, unless the context otherwise requires, the term effect ... includes—

- (a) Any positive or adverse effect; and
- (b) Any temporary or permanent effect; and
- (c) Any past, present, or future effect; and
- (d) Any cumulative effect which arises over time or in combination with other effects— regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
- (e) Any potential effect of high probability; and
- (f) Any potential effect of low probability which has a high potential impact.

<sup>13</sup>

For cases in the context of section 104 see *Rodney District Council v Eyres Eco-Park Limited* [2007] NZRMA 1 (HC) and *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] 12

5.6 We comment briefly on two of these aspects below.

*Existing environment*

5.7 In assessing the effects of a proposed activity, a consideration of the character of the existing environment is required.<sup>14</sup> This is because the true "effects" of a proposed activity are those effects that are not already impacting upon the environment.<sup>15</sup>

5.8 The starting point therefore is to consider the effects of a proposed activity against the 'existing environment' of the proposed activity area, namely the current environment at the time of the application, including all features and characteristics (man-made or natural) currently occurring on or around the proposed designation site. This includes the effect of any currently implemented resource consents and designations.<sup>16</sup> These effects have been considered by the relevant Watercare experts.

*Permitted baseline*

5.9 When assessing an application for a resource consent (which we will come to shortly), the consent authority is also entitled (if it chooses) to disregard 'permitted' adverse effects:

**104 Consideration of effects**

(2) When forming an opinion for the purposes of subsection 1(a), a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

5.10 The permitted baseline was previously a mandatory consideration and was accepted under the previous law as also applying to the assessment of designations.<sup>17</sup> The Council Pre-hearing Report also considers the permitted baseline as part of its consideration of effects under section 171(1) as it relates to NORs.<sup>18</sup>

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<sup>14</sup> ELRNZ 299; [2006] NZRMA 424 (CA), which in our submission also apply to the consideration of a notice of requirement under section 171.

Eco-Park at [38] and Hawthorn at [57]:

[57] In summary, all of the provisions of the Act to which we have referred lead to the conclusion that when considering the actual and potential effects on the environment of allowing an activity, it is permissible, and will often be desirable or even necessary, for the consent authority to consider the future state of the environment, on which such effects will occur.

<sup>15</sup> *Rodney District Council v Eyres Eco-Park Limited* [2007] NZRMA 1 (HC) at [38].

<sup>16</sup> See *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] 12 ELRNZ 299; [2006] NZRMA 424 (CA) at [84], which was accepted as applying to the assessment of a designation under section 171 in *Villages of NZ (Mt Wellington) Limited v Auckland City Council* ENC Auckland A023/09, 20 March 2009 at [32].

<sup>17</sup> *Beadle v Minister of Corrections* ENC Wellington A074/02, RMA 408/00, 8 April 2002 at [1002].

<sup>18</sup> Council Pre-Hearing Report at page 59.

- 5.11 In short, we agree with the conclusions of the Pre-hearing Report that the permitted baseline is of relatively limited assistance in the context of this particular project.

**Whether there are alternative sites, routes or methods (s171(1)(b))**

- 5.12 The duty under this limb of section 171 is to give "adequate" consideration to alternatives.<sup>19</sup> While a requiring authority cannot act arbitrarily or only give cursory consideration to alternatives,<sup>20</sup> it is not required to eliminate every possible option<sup>21</sup> or even demonstrate that it is pursuing the "best" option.<sup>22</sup> As the Court in *Takamore Trustees* explained:<sup>23</sup>

The word "adequate" is a perfectly simple word and we have no doubt has been deliberately used in this context. It does not mean "meticulous". It does not mean "exhaustive". It means "sufficient" or "satisfactory". Indeed one of its definitions in the Oxford English Reference Dictionary (1996) is "barely sufficient" - a definition we do not intend to follow because it does not accord with the general thrust of judicial authority. It does, however, support the concept that a District Council is not required to go to unreasonable lengths to support a chosen route or site for a particular public work.

- 5.13 As is fully explained in the Assessment of Effects on the Environment ("AEE") and the evidence of Mr Munro, Mr Cantrell and Ms Petersen, Watercare has very carefully considered both the alternatives to the Project itself and then, in relation to the Project, the alternative locations or layouts for the proposed construction sites. The evaluation process first confirmed the Project as the preferred network upgrading solution, and then underwent a detailed consideration of alignment options, potential sites and design and construction configurations.
- 5.14 Mr Munro explains the alternatives to the Project itself and Mr Cantrell explains the detailed evaluation of options undertaken in developing the Project once it had been selected. In respect of the latter evaluation of alternatives, in summary:
- (a) Multiple alignments were considered for the Central Interceptor main tunnel. A short-listing process was used to establish the more appropriate alignments, which were then assessed against

<sup>19</sup> Resource Management Act 1991, section 171(1)(b).

<sup>20</sup> *Estate of P A Moran v Transit New Zealand* ENC Wellington W055/99, 30 April 1999, Kenderdine J, at [147].

<sup>21</sup> *Bungalo Holdings Ltd v North Shore City Council* ENC Auckland A052/01, 7 June 2001 at [111], and cited in *Villages of NZ (Mt Wellington) Limited v Auckland City Council* ENC Auckland A023/09, 20 March 2009 at [44].

<sup>22</sup> *Estate of P A Moran v Transit New Zealand* ENC Wellington W055/99, 30 April 1999 at [1232].

<sup>23</sup> *Te Runanga O Ati Awa Ki Whakarongotai v Kapiti District Council* (2002) 8 ELRNZ 265 (ENC) at [153].

numerous criteria including: their ability to meet hydraulic grade requirements; geotechnical constraints; environmental effects; constructability; and costs.

- (b) The preferred tunnel horizontal and vertical alignment, construction method, and liner types were evaluated further.
- (c) A range of alternatives were considered for the types of treatment facilities to be used to address potential odour effects, including biofilters, activated carbon, biotrickling filters, and chemical scrubbing.
- (d) Various sites were assessed for the location of the EPR structure, including the proposed location adjacent to the proposed Mangere Pump Station, use of the existing Mangere WWTP discharge channel, and the Pump Station 25, Pump Station 23, and Kiwi Esplanade sites.
- (e) Alternative layouts for each of the construction sites were considered during development.<sup>24</sup>

5.15 The construction site layout options have been further developed and modified based on inputs received from various parties during the consultation process. Watercare has demonstrated a willingness to further adapt its plans for construction sites to address the concerns of submitters and other affected parties where it is possible and practicable to do so.

5.16 This conclusion is also reached by the Council in the Pre-hearing Report.<sup>25</sup>

It is considered that Watercare has given adequate consideration to alternative sites, routes and methods for undertaking the proposed Central Interceptor scheme. In particular, the option assessment process applied by Watercare has been iterative, involved ongoing refinement, and been informed by Watercare's objectives for providing a cost-effective solution for future growth, asset risk management, and an appropriate level of overflow mitigation.

It is the view of the authors that the selected options for providing trunk sewer capacity improvements, mitigating sewer overflows, tunnel alignment, and construction site locations and layouts has been the result of a robust assessment.

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<sup>24</sup> A summary of these is set out in Table 7-2 of Part A of the Central Interceptor Main Project Works Assessment of Effects on the Environment, submitted to the Council in August 2012.  
<sup>25</sup> Council Pre-hearing Report at page 220.

5.17 The submissions focus on four sites in particular, being: Mount Albert War Memorial Reserve (the two alternative sites); Lyon Avenue; Keith Hay Park; and Kiwi Esplanade, all as shown on Figure 1.1.<sup>26</sup> The consideration of alternatives undertaken in relation to these sites is addressed in more detail below.

5.18 The Pre-hearing Report also discussed alternatives in relation to Western Springs Interchange, May Road, and Walmsley Park. Watercare has undertaken a robust assessment of alternatives for each of these sites and no further discussion on these sites is included here, although the evidence addresses this.

*Mount Albert War Memorial Reserve (see pages 38 and 49 of the Hearing Drawing Set)*

5.19 The original location within the Mount Albert War Memorial Reserve was on the grassed area of the reserve itself and adjacent to a number of residences (Reserve site). Following further discussions with the Albert-Eden Local Board, the Council's Parks, Sport and Recreation department and local residents, the alternative site using the adjacent car park was progressed and a separate NOR lodged for it (Car Park site).

5.20 A further change in response to discussions with a neighbour was that the connection point and drop shaft were relocated further from the northern residential boundary within the NOR area.<sup>27</sup>

5.21 Watercare has carefully considered all appropriate alternatives in this general location and consider both options meet the RMA tests. As noted earlier, it seeks a recommendation in favour of both options but will only proceed with one, ultimately.

*Lyon Avenue (see page 61 of the Hearing Drawing Set)*

5.22 A number of submitters have raised concerns with the proposed Lyon Avenue site. Some argue that, in their opinion, there had been only a limited assessment of alternatives, and others just prefer a different location than the one proposed by Watercare. Watercare has assessed in detail many alternative site layouts and locations and access arrangements, both

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<sup>26</sup> Figure 1.1 is set out on page 4 of the Hearing Drawing Set.

<sup>27</sup> This is reflected in the layout set out on Page 49 of the Hearing Drawing Set.

as part of the initial assessment and then more recently as a result of submissions received.

- 5.23 Based on the results of its assessments, Watercare considers that the proposed site (including its proposed access via Morning Star Place) is suitable and in fact, the most appropriate option. Ms Petersen provides further information on the assessment of alternatives undertaken for this site in her evidence, and a number of the experts, including Mr Hills, Mr Goodwin, and Mr Slaven address the Lyon Avenue site and the feasibility and effects of alternative sites in detail.
- 5.24 The Pre-hearing Report acknowledges the assessments undertaken and concludes that, on balance, the Lyon Avenue site provides the best practicable location for construction,<sup>28</sup> and supports the use of Morning Star Place for access to the Lyon Avenue site.<sup>29</sup>

*Keith Hay Park (see page 102 of the Hearing Drawing Set)*

- 5.25 Watercare engaged with Council staff and the Puketapapa Local Board in relation to the use of Keith Hay Park for a site. It became clear through discussions that both had concerns regarding the potential effects on Keith Hay Park. In response to these concerns, Watercare investigated alternative construction sites in this locality and ultimately decided to move the proposed site location from within Keith Hay Park to private land at 22 Gregory Place and Council properties at 49 – 51 Arundel Street in order to minimise impact on park usage. That alternative location is the site that is the subject of the NOR and related consents.
- 5.26 Watercare has undertaken a robust assessment of alternative layouts and locations in the Keith Hay Park site area and is of the view that its proposed layout best avoids, remedies or mitigates overall adverse effects at this location given the extensive use of Keith Hay Park and Council's (now confirmed) plans for further development of park facilities.

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<sup>28</sup> Council Pre-hearing Report at page 196.  
<sup>29</sup> Council Pre-hearing Report at page 197.

*Kiwi Esplanade (see page 125 of the Hearing Drawing Set)*

- 5.27 Watercare undertook a comprehensive assessment of alternative locations for the Kiwi Esplanade site prior to lodgement. Mr Cantrell's evidence makes it quite clear why Kiwi Esplanade is needed and other evidence (eg Mr Goodwin) shows the minimal effects at this site.

**Whether the works and designation are "reasonably necessary" (s171(1)(c))**

- 5.28 Consideration of this limb of section 171 requires an understanding as to:
- (a) the meaning of "reasonably necessary"; and
  - (b) the requiring authority's objectives.
- 5.29 As to the meaning of "reasonably necessary", the Court has found that the term allows some tolerance.<sup>30</sup>

"[N]ecessary" falls between expedient or desirable on the one hand, and essential on the other, and the epithet "reasonably" qualifies it to allow some tolerance.

- 5.30 As set out above, Watercare's objectives for the Project are threefold:<sup>31</sup>
- (a) duplicating the lower section of the regionally critical Western Interceptor, which is ageing and at risk of failure;
  - (b) providing additional network capacity for growth and development to occur without dry weather wastewater overflows; and
  - (c) reducing existing wastewater overflows into urban streams and the Waitemata Harbour, and improving public health and environmental conditions.
- 5.31 These objectives are for Watercare to define, which it has done.<sup>32</sup> The Pre-hearing Report recognises that the proposed works and designations are reasonably necessary to achieve these objectives.<sup>33</sup>

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<sup>30</sup> *Bungalo Holdings Ltd v North Shore City Council* ENC Auckland A052/01, 7 June 2001 at [94].  
<sup>31</sup> Part A, Central Interceptor Main Project Works Assessment of Effects on the Environment, submitted to the Council in August 2012, page 1.  
<sup>32</sup> *Wymondley Against Motorway Action Group v Transit New Zealand* ENC Auckland A22/2003, 24 February 2003 at [28].  
<sup>33</sup> Council Pre-hearing Report at page 219.

- 5.32 The Pre-hearing Report also concludes, in our view correctly, that designations are the appropriate method to provide for the construction sites, and that they are entirely appropriate in the context of large infrastructure projects such as the Central Interceptor Project.<sup>34</sup>

### **Conclusion on NORs**

- 5.33 It is Watercare's position, based on its evidence, that its proposed NORs meet the section 171 tests, and should therefore be recommended to be adopted into the relevant district plans.

## **6. RESOURCE CONSENTS**

- 6.1 The Committee must consider the resource consent applications under section 104 of the RMA. Due to the nature of the activities being proposed, the tests set out in sections 104D, 105, and 107 of the RMA are also relevant.

- 6.2 We do not intend to cover planning matters in depth as these will be addressed in the evidence of Ms Russ. However, we do address the issue of activity status and bundling. We also set out a brief analysis of the statutory provisions relevant to the consideration of these applications below. We return to the overarching test in Part 2 of the RMA at the close of these submissions.

### **Activity status**

- 6.3 There are only two quite distinct elements of the Project with non-complying activity status:
- (a) the earthworks associated with the construction of the underground tunnel under the Open Space zones of the District Plan (Isthmus Section); and
  - (b) the construction of the main tunnel under the seabed in the Coastal Protection Area 1 under the Auckland Council Regional Plan: Coastal.
- 6.4 The Project therefore has a non-complying element under an aspect of each of the Isthmus Section of the District Plan and the Regional Plan: Coastal. However, as Ms Russ explains, tunnelling at depth was not intended to be

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<sup>34</sup> Council Pre-hearing Report at page 220.

caught by these rules.<sup>35</sup> These rules are concerned with the effects of earthworks at the land surface,<sup>36</sup> or at and near the surface of the seabed or in coastal waters<sup>37</sup> - not tunnelling at depth. The non-complying status of these elements of the Project is therefore an unanticipated technical outcome of rules written to control activities at the surface of the land and in the CMA.<sup>38</sup> This unintended technical non-compliance should not result in the entire Project needing to be assessed as a non-complying activity.

6.5 It would have been open to Watercare to request that its applications be processed on the basis that the only consents needing to be assessed as non-complying were those listed in paragraph 6.3 above.

6.6 However, Watercare instead agreed that the Council could bundle the activities requiring consent under each of the various regional and district plans, so that there was one overall activity status under each of the plans. Watercare had numerous discussions with the Council on bundling prior to lodgement, and was clear throughout that it did not accept bundling of activities across the various plans as this would result in an overall non-complying activity status applying to the entire Project when the majority of activities are restricted discretionary or discretionary (a few are controlled).<sup>39</sup> For this reason, Watercare agreed that bundling could occur within plans but opposed any bundling across plans. This was seen as a pragmatic and prudent approach. This resulted in:

- (a) a non-complying activity status under both the Isthmus Section of the District Plan and the Regional Plan: Coastal;
- (b) a discretionary activity status under the Manukau Section of the District Plan, the National Environmental Standard ("**NES**") for Assessing and Managing Contaminants in Soil to Protect Human Health and the Auckland Council Regional Plan: Air, Land and Water; and
- (c) a restricted discretionary activity status under the Regional Plan: Sediment Control.

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<sup>35</sup> Evidence of Marjory Russ at [6.41].

<sup>36</sup> Evidence of Marjory Russ at [6.41].

<sup>37</sup> Evidence of Marjory Russ at [6.43].

<sup>38</sup> Evidence of Marjory Russ at [6.46].

<sup>39</sup> Refer to Attachment A of the evidence of Marjory Russ for the complete list of resource consents required for the construction and operation of the Project.

- 6.7 The Pre-hearing Report has, however, adopted a different approach and bundled all consents across the various plans and standards<sup>40</sup> and applied an overall activity status of non-complying to the entire Project. The Pre-hearing Report explains this is considered appropriate because the various activity components under each plan, and as part of the overall Project, are not severable from each other and form part of an interconnected project.<sup>41</sup> The Pre-hearing Report also refers to the recent judicial support of this "across plan" approach to bundling *Newbury Holdings Limited v Auckland Council*.<sup>42</sup> In that particular case, the High Court held that the Environment Court had not erred in bundling together activity consents from different council plans because of the overlap of the activities.<sup>43</sup>
- 6.8 Respectfully, Watercare considers that while the *Newbury* approach might be appropriate in some cases, it is not appropriate for this Project. The Project is a large and complex infrastructure project involving both designations and numerous resource consents under five different plans and a NES.
- 6.9 In our submission, it is inappropriate for the non-complying activity status of two discrete activities (relating to certain geographically separate underground sections of tunnel only) to apply to the entire Project. This approach ignores the realities that the effects of these isolated activities will not impact on, be dependent on, inter-relate, or overlap with, the effects of other activities at other sites located a considerable distance away and mostly above ground (the proposed main tunnel is 13 kilometres in length).
- 6.10 We also submit that the Project is distinguishable from *Newbury* and other cases where an "across plan" approach has been accepted.<sup>44</sup> Those cases concerned individual sites and involved a single development where the effects of the consent clearly overlapped and were interrelated. In comparison, the effects of the Project will be experienced at multiple surface construction sites some distance apart and the tunnelling between will be at depth. Therefore the effects of the Project along its alignment can be realistically and properly separated.

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<sup>40</sup> The Auckland Council Plan (Isthmus and Manukau Sections), the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, Auckland Council Regional Plan: Sediment Control, Auckland Council Regional Plan: Air, Land and Water and the Auckland Council Regional Plan: Coastal.

<sup>41</sup> Council Pre-hearing Report at page 46.

<sup>42</sup> *Newbury Holdings Limited v Auckland Council* [2013] NZHC 1172.

<sup>43</sup> *Newbury Holdings Limited v Auckland Council* [2013] NZHC 1172 at [62].

<sup>44</sup> See for example *Tairua Marine Limited v Waikato Regional Council* ENC Auckland A108/05, 1 July 2005 at [181] - [182] and *Graham v Dunedin City Council* ENC Christchurch C43/2001, 9 April 2001 at [45].

- 6.11 **Attached at Tab A** is a schedule of the 20 consents sought (drawn from the more detailed schedule in Ms Russ' evidence)<sup>45</sup> which shows the activity status under each rule, and the overall status under each plan. This is consistent with the "per plan" approach Watercare proposed in the original application documents and is the approach which Ms Russ also considers proper.<sup>46</sup> It is not consistent with the approach that the Pre-hearing Report recommends you take.
- 6.12 Having said that, Watercare is confident that, if the approach suggested in the Pre-hearing Report is followed, the Project easily meets the section 104D threshold. While it disagrees with the suggested approach, it accepts that the Commissioners may, out of an abundance of caution and taking a conservative approach, be comfortable assessing the resource consent applications for the entire Project as though they were non-complying (as argued in the Pre-hearing Report). Given the Project easily meets the section 104D threshold, Watercare is prepared to not challenge the adoption of this approach, if it is the Commissioners' preference to proceed in that manner.

#### **Section 104D**

- 6.13 Section 104D sets out the gateway through which any application for a non-complying activity must pass before it can be granted consent. This section requires that either the proposal has no more than minor adverse effects or that the proposal is not contrary to the objectives and policies of any relevant plan or proposed plan. Only one of these "gateway tests" must be met for the consent to be granted.
- 6.14 The Council has assessed the Project under section 104D and has reached a conclusion that it satisfies both of the tests:<sup>47</sup>

It is considered that subject to appropriate conditions of consent the proposal satisfies the threshold test of section 104D because:

- as demonstrated in section 9 of this report the adverse effects on the environment will be no more than minor; and
- the proposal will not be contrary to the objectives and policies of the respective planning documents as concluded in section 10.6 of this report.

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<sup>45</sup> Attachment A of the evidence of Marjory Russ.  
<sup>46</sup> Evidence of Marjory Russ at [6.44] - [6.47].  
<sup>47</sup> Council Pre-hearing Report at page 237.

- 6.15 Ms Russ, on behalf of Watercare, has also undertaken a comprehensive assessment of the relevant objectives and policies, which is discussed in and appended to her evidence. Ms Russ concludes that the Project cannot be considered contrary to the objectives and policies of the plans, and that it easily passes through the test in section 104D(1)(b).

### **Sections 105 and 107**

- 6.16 As the Project involves various discharge permits and coastal permits, the Committee must also consider sections 105 and 107 of the RMA.

#### *Section 105*

- 6.17 Section 105 states that if an application is for a discharge or coastal permit to do something that would contravene section 15,<sup>48</sup> in addition to the matters in section 104(1), a consent authority must have regard to:

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

- 6.18 The discharge permits being sought for the Project include construction site-related discharges, discharge of stormwater, discharges from works in contaminated sites, discharges to air, and potential wastewater discharges from the proposed EPR structure. As noted in the evidence of Mr Cantrell and Mr Roan, the likelihood of the latter discharge occurring is very small and including it in the design is necessary for safety and operational purposes. The other discharges referred to are all of a minor nature and are necessary to undertake the proposed works.

- 6.19 We have addressed the issue of alternatives that arises in section 105(1)(c) above, when dealing with the same subject in the context of designations. We repeat our submission that alternative sites, and therefore other receiving environments, have been properly considered. Mr Cantrell and other witnesses identify why the EPR structure is a necessary design element, why it is proposed to be located adjacent to the proposed Mangere Pump Station, and the alternative locations considered.

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<sup>48</sup> A contravention of section 15 occurs where a discharge containing contaminants is proposed which is not expressly allowed by a rule in a regional plan.

- 6.20 The actual effects of the discharges for which the technical consents are needed from the Council are all able to be managed through the implementation of appropriate conditions.

*Section 107*

- 6.21 Section 107(1) provides that a discharge permit or coastal permit shall not be granted if, after reasonable mixing, the contaminant or water discharged is likely to give rise to one or more of a list of effects in receiving waters. Such discharges are allowed, however, if there are exceptional circumstances, or if the discharge is temporary, and it is consistent with the purpose of the RMA to grant consent.

- 6.22 As noted above, the discharges proposed are generally of a minor nature. The stormwater and construction site related discharges will not give rise to the effects listed in section 107. The likelihood of the discharge occurring from the EPR structure at the proposed Mangere Pump Station is very low and the ability to discharge is essential so that the pressure can be safely released from the main tunnel without causing damage or uncontrolled overflows in other locations. In the event that a discharge occurs, any effects would be temporary and expected to be remedied through tidal flushing and natural coastal processes.

- 6.23 Accordingly, we submit that grant of consent is not precluded by sections 105 and 107.

**Section 104**

- 6.24 The Committee must consider the applications under section 104 of the RMA. Section 104 sets out the relevant considerations for a consent authority when considering an application for resource consent:
- (a) the actual and potential effects on the environment of allowing the activity;
  - (b) the relevant provisions of the applicable statutory planning instruments; and
  - (c) any other matter considered relevant and reasonably necessary to determine the application.

- 6.25 As described above, in the context of the section 171 assessment for the NORs, a layered analysis to the assessment of effects arising from the resource consents sought for the Project must be undertaken. The principles applying to the assessment of effects under section 171 above are adopted for the section 104 assessment.
- 6.26 We note, having regard to the matters outlined in section 104(1) as demonstrated by Watercare's evidence that:
- (a) there are a range of actual and potential effects on the environment in relation to the Project, including both positive and potentially adverse effects;
  - (b) with the implementation of the proposed management plans and mitigation, any adverse effects can be suitably avoided, remedied or mitigated; and
  - (c) the Project provides significant positive effects through duplicating ageing assets at risk of failure, providing capacity for future growth to occur without creating dry weather wastewater overflows, and significantly reducing wet weather wastewater overflow volumes.
- 6.27 In addition, and as covered in more detail by Ms Russ, the Project will give effect to, or is considered to be generally consistent with the relevant objectives, policies and assessment criteria set in the relevant statutory and non-statutory documents referred to in section 104(1)(b) of the RMA.
- 6.28 The consents should therefore be granted.

## **7. SPECIFIC ISSUES**

- 7.1 In this part, we address some specific issues that have been raised or are relevant namely:
- (a) the Mangere WWTP and compliance with existing consents;
  - (b) Requiring Authority Approvals;
  - (c) Landowner Approvals;
  - (d) Mount Albert War Memorial Reserve Car Park site;

- (e) Lyon Avenue - St Lukes Gardens Apartments;
- (f) May Road - Foodstuffs (Auckland) Limited ("**Foodstuffs**");
- (g) Potential EPR discharge;
- (h) Iwi issues;
- (i) Treaty of Waitangi Claims;
- (j) Property valuation; and
- (k) Lapse Dates.

### **Mangere WWTP and compliance with existing consents**

- 7.2 A number of submitters have raised concerns that the Project could result in a non-compliance with the existing conditions of consent for the Mangere WWTP.<sup>49</sup>
- 7.3 The Central Interceptor Project does not directly relate to, or in any manner seek to amend, the operation of the Mangere WWTP under its current resource consents. Watercare remains committed to compliance with the existing consents.
- 7.4 The Central Interceptor has been designed to operate in accordance with the existing Mangere WWTP consents. What is more, the actual volume of wastewater treated at the Mangere WWTP will not be significantly increased by the addition of the Central Interceptor, as the amount of flow will be the same in most situations. In this context, it is worth recalling that all of the households and properties to be serviced by the Central Interceptor are already having their wastewater conveyed to the Mangere WWTP via the Western Interceptor or the Orakei Main Sewer and the Eastern Interceptor. No additional areas are being collected by the Central Interceptor. The Central Interceptor is however, collecting untreated overflows that currently discharge to urban streams in wet weather. As discussed in detail in the evidence of Mr Cantrell, while the Central Interceptor is designed to collect around 80% of those overflows, this collection of wet weather overflows will result in less than a 2% increase in flows to the Mangere WWTP on an annual volumetric basis. In other words, while the Central Interceptor will collect a large proportion of untreated overflows (around 80%), in the grand

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<sup>49</sup> Including the Mangere Bridge Residents and Ratepayers Association, the Mangere Bridge Restoration Society and the pro-forma submissions.

scheme of wastewater in Auckland, this only amounts to a very small increase (2%) in flows received at the Mangere WWTP.

- 7.5 The Mangere WWTP's existing Discharge Consent,<sup>50</sup> granted in 1997, authorises the discharges associated with the operation of the Mangere WWTP and has an expiry date of 2032. The Discharge Consent imposes two types of limits on the capacity of the Mangere WWTP: restrictions on the flow rates coming into and discharging from the Mangere WWTP; and a restriction on increasing the hydraulic capacity of the incoming interceptor system.<sup>51</sup>
- 7.6 The key numerical constraints involved are:
- (a) The maximum inflow and discharge is not to exceed 1,209,600 m<sup>3</sup> per day.
  - (b) The mean daily inflow is not to exceed 390,000 m<sup>3</sup> over any one year period.
  - (c) The discharge is not to exceed a flow rate of 25 m<sup>3</sup>/s.
- 7.7 The Discharge Consent also requires that the hydraulic capacity of the system not be increased.<sup>52</sup> While hydraulic capacity is not defined in the Discharge Consent, it clearly intends that the hydraulic capacity, or volume or flow of water, which can pass through the incoming interceptor system at the Mangere WWTP cannot be increased above existing levels.
- 7.8 As discussed in the evidence of Mr Cantrell, the Central Interceptor has been designed to ensure that it will operate in accordance with all of the above requirements, so that none are exceeded.
- 7.9 In these circumstances, while a number of submitters seem likely to give evidence at this hearing over their concerns about discharges from the Mangere WWTP into the Manukau Harbour, and more broadly about the state of the harbour or various parts of the harbour, this is not the forum for those concerns. Watercare has all requisite consents in place in relation to the operation of the Mangere WWTP and the only relevant potential discharge into the harbour for this hearing is that from the EPR structure.

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<sup>50</sup> Discharge Consent Permit Number 30083 (File Reference: 9610853).  
<sup>51</sup> Condition 11 of Discharge Consent Permit Number 30083 (File Reference: 9610853).  
<sup>52</sup> Condition 11(2) of Discharge Consent Permit Number 30083 (File Reference: 9610853).

### Requiring Authority approvals

- 7.10 Some of the land included within the NOR sites and over the tunnel alignment are already subject to designations by other Requiring Authorities. Those other Requiring Authorities are the Auckland Council, Auckland Transport, New Zealand Transport Agency, KiwiRail Limited, Minister of Education, Transpower New Zealand Limited ("**Transpower**"), New Zealand Refining Company and Vector Limited.
- 7.11 Watercare has not yet sought formal approvals from these other Requiring Authorities under sections 176 or 177 of the RMA but will do so once detailed design is underway. In the meantime, Watercare is consulting with these Requiring Authorities and will continue to do so as the Project develops.
- 7.12 Watercare has proposed a condition to clarify that no network utility operators with existing infrastructure in the road reserve (whether subject to an existing designation or not) will be expected to seek written consent under section 176 of the RMA for routine access, inspection, and maintenance of existing assets. Following further discussions with Auckland Transport, Watercare has also proposed further minor amendments to the wording of Proposed Designation Condition W.1, which in the Hearing Set version of the conditions now reads (additions underlined and deletions in ~~strike through~~):
- The Requiring Authority shall not require Auckland Transport or network utility operators with existing infrastructure within the road reserve to seek written consent under Section 176 of the RMA for on-going routine access inspection to enable works associated with the routine construction, operation and maintenance of existing assets.
- 7.13 This condition has been proposed to assure Auckland Transport that Watercare fully intends that their ability to access and maintain their existing assets will not be jeopardised or made more difficult as a result of its designations.
- 7.14 The background to this offer of a condition is that when a designation is put in place, all other persons (other than requiring authorities with existing designations) require an approval of the body holding the new designation where the works would prevent or hinder the activities authorised by the

designation. The potential need for such approvals is naturally a concern for the existing infrastructure owners who routinely need to access, inspect, and maintain their existing infrastructure. Watercare understands that concern and faces the issue itself at times elsewhere. In this case, Watercare has satisfied itself that within the road reserve any routine access, inspections, and maintenance of existing infrastructure assets would not hinder or prevent Watercare's own works. As a result, Watercare was happy to address this potential concern by providing certainty through Watercare's proposed Designation Condition W.1 that section 176 approvals would not be needed in those circumstances.

- 7.15 We note that the Pre-hearing Report considers that this proposed Condition goes beyond section 176 and states:<sup>53</sup>

It is the authors' view that the Commissioners cannot recommend conditions that override a requiring authority's statutory rights, such as the section 176 approval process. However the authors note that Watercare has suggested at condition W.1 that network utility operators will not require section 176 approval in particular circumstances. Watercare may wish to comment at the hearing regarding any arrangement it wishes to make with Transpower and/or Auckland Transport in respect of these matters.

- 7.16 If the Commissioners are concerned over the point raised in the Pre-hearing Report, then in light of the background above, Watercare proffers it as an *Augier*<sup>54</sup> condition to address the concerns of these other network operators.

### **Landowner approvals**

- 7.17 The Pre-hearing Report summarises the points raised in the Parks, Sports, and Recreation ("**PSR**") memoranda, noting that they identify a number of matters that will be addressed as part of the landowner approval process. After listing the matters noted, the Pre-hearing Report concludes that:<sup>55</sup>

The above comments relate primarily to the land owner approval process, rather than the resource consent or NOR process. However, it is considered appropriate to include reference to the comments and requirements of PSR and the Local Boards so that Watercare has the opportunity to comment at the hearing as to any significant issues that may arise from

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<sup>53</sup> Council Pre-hearing Report at page 48.

<sup>54</sup> An *Augier* condition is a condition that is proffered by an applicant that would otherwise be *ultra vires* for the Council to impose and is relied upon by the decision-maker and other parties when granting consent. Refer *Augier v Secretary of State for the Environment* (1978) 38 P & Cr 219; *Frasers Papamoa Limited v Tauranga City Council* [2010] 2 NZLR 202.

<sup>55</sup> Council Pre-hearing Report at page 152.

this feedback and which may have implications for their ability to carry out the project, or affect the proposed NOR boundaries and/or resource consent requirements.

- 7.18 Watercare has considered the comments raised and is confident that, to the extent necessary, the concerns raised can be addressed through the detailed design process and/or ongoing discussions with PSR and the Local Boards. There are therefore no significant issues arising that will have implications for the Project in the way suggested.
- 7.19 Watercare accepts that for a number of sites it does not yet have the necessary property rights to undertake the work. It is settled law that, while obtaining the necessary property rights is necessary in order to exercise any designation or consent, whether an applicant has the necessary property rights is irrelevant to the consideration of whether the application achieves sustainable management.<sup>56</sup>
- 7.20 Watercare acknowledges and accepts that it will require the necessary property rights before it can commence construction of the Project.

#### **Mount Albert War Memorial Reserve Car Park Site**

- 7.21 Moving now to the two alternative sites within the Mount Albert War Memorial Reserve, there is one specific issue to comment on.
- 7.22 An impact of the Car Park site proposed at Mount Albert War Memorial Reserve, compared with the Reserve site, is the temporary loss of around 65 car parks. Consultation is continuing with Auckland Council PSR and the Albert-Eden Local Board regarding options for alternative parking during occupation. As noted above, and in the evidence of Ms Petersen, this is one of the key reasons for which Watercare seeks a recommendation in respect of both sites at the Mount Albert War Memorial Reserve.
- 7.23 Watercare proposed two new conditions, TM.3B and TM.3C, in its circulated set of conditions and which are also found in the Hearing Set, to address this issue. These proposed conditions require Watercare, in consultation with Auckland Council PSR and the Albert-Eden Local Board, to identify suitable alternative car parking at its cost. A car park plan must be provided as part of the OPW, and must demonstrate that the proposed car parking location and layout complies with the relevant Council standards.

<sup>56</sup>

*Director-General of Conservation v Marlborough District Council* ENC Christchurch C113/04 17 August 2004 at [47]. In the case of designations where property rights are not held, an assessment of alternatives is required, which has been completed by Watercare Services Limited.

### St Lukes Gardens Apartments

- 7.24 As shown on pages 61 to 70 of the Hearing Drawing Set, Watercare's proposed Lyon Avenue site is located predominantly on land owned by the Crown and administered by the Ministry of Education. The proposed Lyon Avenue site is also partially on land within the St Lukes Gardens Apartments development ("**Apartments' Land**") and Watercare proposes to access the proposed construction site via Morning Star Place, a private road running through the development. The St Lukes Gardens Apartments are a relatively new residential development in this location.
- 7.25 St Lukes Gardens Apartments Body Corporate ("**Body Corporate**") and St Lukes Gardens Apartments Progressive Society Incorporated ("**Society**") lodged submissions in relation to the Project. From their submissions and from meetings with them, Watercare understands that they oppose the location, extent of works, proposed access, and the temporary loss of the visitor car parking and there is also an allegation that the Project works would put the Body Corporate in breach of its resource consent conditions in relation to that parking. These allegations are responded to below.

#### *Background*

- 7.26 It is important that the Commissioners understand the background to the relationship between Watercare and the land now owned by the St Lukes Gardens Apartments. In summary:
- (a) In 1929, Watercare's predecessor was granted a registered easement over part of what is now the Apartments' Land. The easement provides Watercare with the right to construct and maintain a spillway and prevents the landowner from activities which would interfere with that spillway.
  - (b) In accordance with the easement, a wastewater spillway was constructed within what is now the Apartments' Land.
  - (c) Watercare has an existing designation over that spillway.<sup>57</sup>
  - (d) During the development of the Apartments, many decades after the easement was granted, Watercare's approval was required to construct parking over the top of the spillway.

<sup>57</sup>

See Designation at Planning Map E06-06 and in Appendix B, Section E2, page 20 of the Auckland Council District Plan: Isthmus Section. The Designation is in favour of Watercare Services Limited for "wastewater purposes".

- (e) A deed of agreement was signed on 2 December 2010 ("**Deed**").
- (f) The Deed expands on the rights contained in the easement. It allows for the construction and use of a parking structure on top of the spillway. In consideration, Watercare is provided with more specific rights to undertake future works, including:
- (i) Unlimited rights of access to carry out Watercare's Works.
  - (ii) Exclusive possession of the spillway area to carry out Watercare's Works.
  - (iii) Unlimited rights to enter the common property of the Body Corporate, including with machinery and equipment to carry out Watercare's Works.
  - (iv) Acknowledgement that while Watercare will use reasonable endeavours to minimise inconvenience, Watercare's Works will involve construction effects which members of the Body Corporate may find inconvenient.
  - (v) Watercare shall at its own cost reinstate the parking spaces on the spillway suitable for parking.
- (g) "Watercare's Works" are defined as:<sup>58</sup>
- Certain works to be undertaken by Watercare as part of its planned **central interceptor** upgrade with respect to and in the vicinity of the Spillway which may include, without limitation, the demolition and possible reconstruction of the Parking Structure. [emphasis added]
- (h) St Lukes Holdings Limited, the Society and the Body Corporate (all parties to the Deed) agreed not to object to, prevent, prohibit, or in any way interfere with or restrain the undertaking of Watercare's Works, including lodging any submission with the Council.
- (i) An encumbrance is attached to the Deed which includes the exact terms of the Deed and is registered against the title of the land where the spillway is located. The purpose of the encumbrance is simply to ensure the rights and obligations in the Deed are registered against the land in question.

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<sup>58</sup>

Development Deed regarding construction over Edendale Spillway between Watercare Services Limited, St Lukes Holdings Limited, Body Corporate No 346086 and the St Lukes Garden Apartments Progressive Society Incorporated dated 2 December 2010 at page 2.

7.27 As set out in Ms Petersen's evidence, Watercare has consulted St Lukes Gardens Apartments in relation to the Project. It is clear from that consultation that the two parties' interpretations of the Deed are not aligned. The difference in interpretation over the Deed is a contractual matter and, as such, its interpretation cannot be determined at this hearing. That said, the above background and context may be relevant to some aspects of this hearing, as it seems likely to be raised by these submitters.

*Watercare's position*

7.28 In summary, it is Watercare's position that:

- (a) The existing overflow point at the Lyon Avenue site is the largest overflow in Auckland. Reducing this and other large overflows is one of the key drivers for the Project and the Project will have significant positive effects for all these areas, including for the owners and residents of St Lukes Gardens Apartments. In order to achieve these positive effects and "pick up" this overflow, some works must be done on the Apartments' Land.
- (b) The works proposed at the Lyon Avenue site are provided for by the Deed:
  - (i) The visitor car parking area is currently on the lid above the existing spillway. This spillway is being replaced and construction works have to occur in this location. The parking deck will be removed and reinstated on completion.
  - (ii) The temporary reduction in visitor parking is allowed for by the Deed (we will return to the issue of whether this would result in a breach of consent conditions below).
  - (iii) Some temporary adverse effects on the residents of the Apartments is anticipated and provided for in the Deed.
- (c) Watercare considers that both the Society and the Body Corporate have breached the Deed by lodging their submissions in opposition to the Project.

In saying that, Watercare has not sought to directly challenge the acceptance of the Society and Body Corporate submissions or to enforce this provision of the Deed, as it is acknowledged that there will be temporary adverse effects on the residents of the Apartments and, at this stage, Watercare would like to work together with the Body Corporate and the Society to try to address their concerns, and, where possible, mitigate the adverse effects.

- (d) A minor amendment has been made to the boundary of the proposed Lyon Avenue site in response to consultation with the Society and Body Corporate. This amendment avoids impacts on a number of privately allocated car parks on the Apartments' Land.
- (e) As explained earlier, Watercare undertook a comprehensive consideration of potential alternatives. Since lodgement, and in response to submissions, Watercare has undertaken a further consideration of alternative construction sites and alternative access options. These are discussed in more detail in the evidence, especially that of Ms Petersen (Watercare) and Mr Hills (traffic). In summary:
  - (i) Watercare has assessed the proposed construction site and a potential alternative construction site using land in the Mount Albert Grammar School playing fields ("**MAGS**"), other Crown land as well as some of the Apartments' Land. However, regardless of whether part of the construction site were to be located on the MAGS playing fields (which is not proposed), considerable works would still be required on the Apartments' Land to connect the existing overflow with the main tunnel.
  - (ii) Watercare remains of the view that the proposed Lyon Avenue construction site, rather than the alternative in MAGS, is the best practicable option at this location, having regard to the alternatives available, the views of landowners, the potential construction and long-term effects, the opportunities to mitigate those effects and the benefits of the works.

- (iii) A range of alternative construction access options have been assessed in detail, including those proposed by the Body Corporate and Society in their submissions. The proposed access via Morning Star Place remains Watercare's preferred access option.
- (f) As with all sites, Watercare's Proposed Designation Conditions provide for the reinstatement of the proposed Lyon Avenue site following construction. However, what is different about the Lyon Avenue site is the proposal to undertake enhancement works (eg weed removal and planting) in the Roy Clements Treeway in advance of any construction occurring at this site. The Designation Conditions propose the creation and implementation of a Vegetation Enhancement Plan beyond the designated area to further mitigate the effects of the vegetation to be removed at the Lyon Avenue site.

*St Lukes Gardens Apartments Conditions of Consent*

- 7.29 As mentioned above, in their submissions, the Body Corporate and Society allege that the proposed works will result in a breach of the conditions of their resource consent.
- 7.30 The Deed between the parties specifically provides for the temporary removal of the visitor car parking deck that was allowed to be constructed on top of Watercare's spillway.
- 7.31 Condition 12 of the St Lukes Holdings Limited's Resource Consent<sup>59</sup> states that the Consent Holder shall provide parking, traffic circulation and pedestrian linkages in accordance with attached plans. Condition 16 specifically provides for the temporary removal of a number of car parks while Watercare undertakes its works:

All 48 visitor parking spaces will be held as common property either by the Body Corporate or in some other form of ownership which will ensure, in perpetuity, that visitors can access and utilise the visitor spaces, provided that should Watercare Service's Limited planned **central interceptor upgrade works** result in a temporary reduction in the number of visitor parking spaces able to be provided on the spillway cap (**while the works are undertaken**) **then the number of visitor parking spaces required by this condition shall be correspondingly reduced for that period of time.** [emphasis added]

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<sup>59</sup>

See Consent Order on appeals ENV-2008-AKL-0000111 - 0000119.

7.32 Further, Advice Note 11 provides:

If Watercare Services Limited upgrades its infrastructure, the spillway cap may be removed and the visitor car parking located on the spillway cap [made] temporarily unavailable during the works.

7.33 In summary, the conditions specifically enable the temporary removal of the 22 visitor car parks located on the spillway, while Watercare undertakes its planned Central Interceptor upgrade works. This allows for the total of 48 visitor car parks to be reduced by 22 for the period of time while the works are undertaken.

7.34 On this basis, the removal of the visitor car parks while Watercare undertakes the upgrade works will not breach the resource consent.

7.35 For that reason, the alleged adverse effects on car parking in the Body Corporate submission are unfounded. Whether or not the Apartments complex can operate with the loss of 22 visitor car parks would have been considered when the Deed was agreed and when the resource consent and conditions for the Apartment development were finalised. It is clear from those documents that the Body Corporate considered the temporary loss in parking to be acceptable. For that reason, it cannot now seek to challenge that settled position through the current Watercare Project.

7.36 Whether or not Watercare has the requisite property rights to undertake the proposed works is not specifically relevant to these resource management proceedings. For the purposes of these proceedings, Watercare has applied for and seeks all resource management approvals required to allow it to undertake the proposed works at the Lyon Avenue site which include part of the Apartments' Land. If the Commissioners grant the resource consents and recommend the NORs be confirmed, Watercare will need to have the requisite property rights prior to undertaking the works.

### **May Road - Foodstuffs**

7.37 May Road is one of the primary construction sites. It is where Link Sewer 3 connects to the main tunnel alignment. It could potentially be the launch point for the Tunnel Boring Machine, or may instead be a retrieval point. It is a key site for the Project and Watercare has, for some time, been focussed on acquiring it.

- 7.38 The site has legal access to Roma Road. Watercare intends to form this legal access and use it for both construction and permanent purposes. At the time the AEE was lodged, and still at the time the evidence was pre-circulated, this remained the proposal: all access to and from this primary construction site would be from its legal access to Roma Road.
- 7.39 Roma Road is a local road servicing an industrial area. It is wide and caters for a significant volume of heavy vehicles accessing Foodstuffs' distribution centre. During consultation with Foodstuffs it became clear that Foodstuffs did not really wish Watercare's vehicles to utilise Roma Road and the site's legal access. However, the initial assessment by Traffic Design Group confirmed that both the local road and the legal access were satisfactory for both construction and permanent purposes. This is confirmed in the evidence that has been pre-circulated.
- 7.40 Watercare has recently acquired the site and, in so doing, has also negotiated a licence over the adjacent properties bordering May Road that enables it to access the site direct from the adjacent sites' legal access to May Road during construction. While the expert independent evidence confirmed that such an additional access was not required (as the legal access to Roma Road and the use of Roma Road could be made to operate satisfactorily), Watercare has elected to amend its proposal in an attempt to address, or go some way towards addressing, the concerns raised by Foodstuffs.
- 7.41 The Council was advised of this development by letter dated 23 July 2013, and supplementary evidence has been prepared by Ms Petersen and Mr Hills to provide further detail on the revised access arrangement. In essence, it is now proposed to operate a one way system during construction, so vehicles associated with Watercare's site would not use Roma Road for all movements as originally proposed. Effectively, the volume of Watercare traffic along Roma Road will be halved from what was proposed as the vehicles will only enter the site from Roma Road, or depart using Roma Road, but not both as intended previously.
- 7.42 It is important to note that Roma Road is not a private road belonging to Foodstuffs and is freely available to all properties with legal frontage and access to it. The proposed access from the site to Roma Road is using an existing legal access for the site. While the permitted baseline is of limited relevance for the Project, it is also important to remember that this site is

zoned Business 4: Light Industrial and that, as a consequence, it is entirely reasonable to expect that its access would be used by heavy vehicles, potentially on a frequent and long-term basis.

- 7.43 This recent amendment is a further example of how Watercare has sought to respond to concerns expressed by neighbours, where possible to do so.

#### **Potential EPR discharge**

- 7.44 A few submitters, including some Iwi, have opposed the provision of the EPR structure due to the potential impact of discharges from it on the Manukau Harbour. The Pre-hearing Report also recommends that Watercare should clarify the nature of the discharge, in terms of quality and quantity, and the effects on the environment of the selected location when compared to other options.<sup>60</sup>

- 7.45 The evidence of Mr Cantrell and Mr Roan sets out the additional information requested in the Pre-hearing Report to demonstrate that a discharge from the EPR is unlikely, however, even if it did occur, the discharge would be temporary and the effects of the discharge can be resolved over a relatively short period.<sup>61</sup>

- 7.46 In respect of the EPR structure and discharge, the evidence of Mr Cantrell and Mr Roan concludes:

- (a) The activation of the EPR requires a combination of events to occur - for example, the prolonged failure of the proposed Mangere Pump Station and associated backup generators, a significant storm event, the main tunnel exceeding capacity and the failure of the various pre-emptive monitoring, reporting and diversion systems which will allow flows to be diverted away from the main tunnel until the pump station is restored to service.<sup>62</sup>
- (b) Due to these multiple events all having to all occur at once, the likelihood of a discharge occurring has been assessed as around 1 every 50 years.<sup>63</sup>

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<sup>60</sup> Council Pre-hearing Report at page 95.

<sup>61</sup> Evidence of Peter Roan at [4.19] - [4.21].

<sup>62</sup> Evidence of Clint Cantrell at [5.67 - 5.72], [8.23] and [9.7] and Peter Roan at Section 6.

<sup>63</sup> Evidence of Clint Cantrell at [9.7] and Mr Roan at [2.2].

- (c) If a discharge did occur, the effects on ecology would be determined by a combination of factors, including the quality of the discharge, the potential duration and rate of discharge, and the dilution and dispersion conditions of the Manukau Harbour at the time of discharge.<sup>64</sup>
- (d) The effects of any discharge on public health, recreational and ecological values would be resolved over a relatively short period due to tidal dilution and there would be no permanent effects on the Manukau Harbour.<sup>65</sup>
- (e) Watercare has considered the alternative locations for the EPR structure as well as whether other options, such as a pipeline out to the Purakau Channel, are technically feasible. Mr Cantrell and Mr Roan both conclude that the proposed location is the only location that is hydraulically feasible and is preferred due to its remoteness from the public, lower ecological and recreational values, and its proximity to the Mangere WWTP.<sup>66</sup>

7.47 The evaluation of the potential effects of any discharge from the EPR cannot occur in a vacuum and must be assessed in their context. The likelihood of a discharge occurring has been assessed as very low and any adverse effects are temporary. The significant beneficial effects of the Project on a daily basis over its lifetime will far outweigh the relatively short-term effects of a discharge in the unlikely event that one occurred.

### **Iwi issues**

7.48 There are some criticisms in the Pre-hearing Report (from a Mr Forsman) on the fact that Watercare did not commission a Tangata Whenua Values Assessment and that this omission does not ensure that all Iwi concerns have been identified.

7.49 As set out in Mr Maskill's evidence, Watercare has undertaken, and is continuing to undertake, extensive consultation with Iwi Authorities, including those Iwi Authorities that lodged submissions on the Project.<sup>67</sup> Watercare has conducted this consultation in an open and collaborative

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Evidence of Peter Roan at Section 4.

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Evidence of Peter Roan at [2.8] and [4.21].

<sup>66</sup>

Evidence of Peter Roan at Section 5 and Clint Cantrell at [6.14] - [6.16].

<sup>67</sup>

Ngāti Tamaoho, Ngai Tai Ki Tamaki Tribal Trust and Te Ākitai Waiohū Waka Taua Trust on behalf of Ngāti Pare Waiohū, Ngāti Pou Waiohū and Te Ākitai Waiohū. These submissions are discussed in Section 4 of the evidence of Garry Maskill.

manner that has allowed both Watercare and Iwi to openly question and discuss concerns. Watercare considers that the consultation that has been undertaken to date has enabled Watercare to attain as much information as possible to identify and understand Iwi concerns, more so than Watercare could have attained through a written Tangata Whenua Values Assessment report. While Watercare acknowledges the value that these assessments can sometimes provide, Watercare considers that the approach taken for this Project has negated the need for such assessment.<sup>68</sup> Mr Maskill provides further discussion of the consultation undertaken in his evidence.

- 7.50 Consultation with, and the involvement of, Iwi will continue to occur throughout the detailed design and construction phases of the Project and beyond to ensure that Iwi can fulfil their kaitiaki role as mana whenua and Watercare can ensure that cultural matters are appropriately addressed.

#### **Treaty of Waitangi claims**

- 7.51 Mr Forsman, in his advice to the Council's Planners for the Pre-hearing Report, made comments concerning the Waitangi Tribunal's Manukau Claim Report (1985) ("**Waitangi Tribunal Report**").
- 7.52 In his report, Mr Forsman concludes that Watercare's AEE and planning assessment should show how the proposal responds to the Tribunal's recommendations in order to assist the Council in giving effect to its statutory obligations under section 8 of the RMA. The Council Planners in the Pre-hearing Report state that these comments are "noted with some caution by the authors who understand local authorities are to take into account the principles of the Treaty of Waitangi but not to consider claims arising under the Treaty of Waitangi Act 1975". Watercare agrees with this observation and considers that, respectfully, Mr Forsman's comment incorrectly blurs the distinction between the Crown and the local authority.
- 7.53 Having said this, Watercare has reviewed the Waitangi Tribunal Report and Mr Maskill notes, in particular, that:
- (a) Watercare recognises the cultural, spiritual and historical significance of the Manukau Harbour to mana whenua; and
  - (b) Watercare has undertaken a series of works to assist in the achievement of the relevant recommendations.

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Refer to the evidence of Garry Maskill at Section 7 for more discussion.

- 7.54 In essence, Mr Maskill concludes that Watercare has responded positively and appropriately to the recommendations set out in the Waitangi Tribunal Report.

### **Property valuation**

- 7.55 As has become common in RMA hearings, several submitters have raised concerns about the effects of the construction works on the value of their properties, and some have sought compensation.<sup>69</sup>

- 7.56 Watercare disputes the relevance of effects on property values for a number of reasons:

- (a) Effects on property values cannot be considered as an additional effect and to do so would be tantamount to "double-counting" of effects on affected properties. This concept was explained in *Chen v Christchurch City Council*<sup>70</sup> where, in relation to valuation evidence concerning the reduction of property values due to interference with views, the Court stated:

[Valuation evidence] needs to be carefully used because it can lead to 'double-weighting'. A valuation is simply another expert opinion of the adverse effect (loss) being assessed by the Council or Commissioner (or Court) (see *Goldfinch v Auckland CC* A66/95), whereas the Commissioner 'also' took into account 'a potential diminution in value to the Ireland's property'. Such a valuation can be used to confirm the Council's opinion of the scale of an effect but not as an additional or separate factor.

The effects themselves (eg noise, vibration etc) can and will be addressed during the Project and those effects will be avoided, remedied, or mitigated.

- (b) In considering allegations of valuation effects, the Environment Court has held:<sup>71</sup>

A consent authority, and this Court on appeal, is required to have regard directly to the likely effects on the environment of allowing the activity. A valuer's appraisal of the way those effects might impact on market value would duplicate the consent authority's function in an indirect way. We prefer to rely on the evidence of the qualified resource management planners about the effects themselves.

<sup>69</sup> Including Hamish and Michelle Archer; Toby Curnow and Helen Hume; Sean and Mary Dempsey; Laural France; Peter Kerridge and Sally Kedge; Denise Laraman; and Bruce Coloff.

<sup>70</sup> *Chen v Christchurch City Council* ENC Christchurch Decision C102/97, 26 September 1997, pages 18-19.

<sup>71</sup> *Giles v Christchurch City Council* ENC Christchurch A92/2000, 27 July 2000 at [59].

- (c) Even if valuation effects were relevant, from a practical perspective it would be virtually impossible to separate out the effect on value of a proposal from the myriad of other factors that influence property values at any one time.
- (d) Finally, as the Commissioners will be well aware, a consent authority has no legal ability under the RMA to impose resource consent (or designation) conditions requiring that some sort of compensation be paid.

7.57 Accordingly, we consider that any property valuation effects on properties surrounding the various sites or along the tunnel routes that occur as a result of the Project are not matters to be considered in their own right when assessing the effects of the Project, and are in any event not particularly helpful to the Commissioners' overall assessment.

#### **Lapse dates**

7.58 As noted above, the Project involves three NORs and various resource consents.

7.59 As set out in the AEE, Watercare has requested an extended lapse date of 15 years for both the resource consents and the NORs. Although the Project is currently expected to be completed within 10 years from now (construction works are expected to commence around 2017 and be complete in 2023), flexibility is required due to the size and complexity of the Project. At the time the AEE was lodged, a 15 year lapse date was considered necessary for all consents and NORs.

7.60 The Council Pre-hearing Report is supportive of this extended lapse date:

The authors [The Council planners] are, however, satisfied that the standard five year lapse period would be too short a timeframe for both the NORs and the resource consents, and that a 15 year period is a more appropriate timeframe...<sup>72</sup>

It is considered appropriate that the designations, which will include completion works associated with reinstatement of the construction sites, be afforded the degree of flexibility sought.<sup>73</sup>

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<sup>72</sup> Council Pre-hearing Report at 10.10.5, page 227.  
<sup>73</sup> Council Pre-hearing Report at 10.10.5, page 226.

This longer lapse period is considered to be an acceptable timeframe given the nature of the project and the need to provide certainty and protection for the construction works.<sup>74</sup>

7.61 Further consideration has been given to this request in the lead-up to the hearing. Watercare's preference is that, where possible, the various commencement, lapse and expiry dates of related NORs and consents should be aligned with one another. A solution that achieves this goal is explained below.

7.62 The majority of consents sought relate to construction activities, with a smaller number authorising activities during both construction and operation.<sup>75</sup> There are, however, a small number of consents that are only needed once the permanent works are in place and/or the Central Interceptor has been commissioned.

7.63 It is therefore clear that:

- (a) the NORs and the majority of consents are required from the start of the Project; and
- (b) a small number of consents are only required once the permanent works are in place and/or the Central Interceptor has been commissioned.

7.64 We discuss the commencement and lapse dates of these two groups below.

*NORs and Consents that relate to construction, or both construction and permanent works*

7.65 Ideally, the commencement and lapse dates for the various consents and NORs that enable construction should be aligned.

7.66 In terms of commencement dates:

- (a) For consents, these can be stipulated in the consent itself.<sup>76</sup>
- (b) This is not the case for NORs which commence on the date they are included in the district plan.<sup>77</sup>

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<sup>74</sup> Council Pre-hearing Report at 10.10.5, page 227.

<sup>75</sup> Consent reference numbers 1:R/LUC/2012/2846; 2:PRC40962; 3: R/LUC/2012/2846/1(Isthmus); 4: PRC40963 (Manukau); 5: 40834; 6: 40836; 7: 40835; 12: 40841; 14: 40843; 15:40844; 16: 40845; 17: 40846; 18: 40848.

<sup>76</sup> See section 116 of the Resource Management Act 1991.

<sup>77</sup> See section 175 of the Resource Management Act 1991.

- 7.67 However, a later lapse date can be specified in both consents and NORs.<sup>78</sup> Therefore, provided the lapse dates are aligned, it is not strictly necessary for the commencement dates to be aligned.
- 7.68 For this reason, Watercare seeks that the various construction-related, or combined construction and operational-related, consents and the NORs have a common lapse date of 15 years after the date on which the last of any appeals on all consents and NORs associated with the Central Interceptor main project works is withdrawn or determined, or, if no appeals are lodged, the date on which the NORs are included in the District Plan(s) in accordance with section 184(1)(c) of the RMA.
- 7.69 This formula for determining the lapse date of the various construction-related or combined consents and the NORs is considered to be appropriate. In the event that any aspect of the Project is appealed, the 15 year period for giving effect to the consents will not start to run until the Project is no longer subject to any appeals.
- 7.70 Amendments are included in the relevant Proposed Designation and Consent Conditions to give effect to this.

*Operational related Consents*

- 7.71 Turning now to the small number of consents required once the permanent works are in place and/or the Central Interceptor has been commissioned. These are:
- (a) The discharge of stormwater from permanent works at the Western Springs, Haverstock Road, Pump Station 25 (Miranda Reserve) and May Road sites.<sup>79</sup>
  - (b) The discharge of stormwater from permanent works into the CMA at the Pump Station 23 (Frederick Street) and Mangere Pump Station sites.<sup>80</sup>
  - (c) The discharge of contaminants to air from tunnels and pump station at drop shafts and odour treatment facilities Project-wide.<sup>81</sup>

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<sup>78</sup> See sections 125 and 184 of the Resource Management Act 1991.  
<sup>79</sup> Consent reference numbers 8, 9, 10 and 11: 40837 (Western Springs), 40838 (Haverstock Road), 40839 (Pump Station 25 - Miranda Reserve) and 40840 (May Road).  
<sup>80</sup> Consent reference number 19: 40849 (Pump Station 23 (Frederick Street) and Mangere Pump Station).  
<sup>81</sup> Consent reference number 13: 40842 (Project-wide).

(d) The emergency discharge from the EPR structure.<sup>82</sup>

7.72 These consents are not needed, and cannot be given effect to, until the construction of the Project is complete. There is a risk that if, for whatever reason, construction took longer than 15 years, these consents could be considered to have lapsed on the basis that they had not been given effect to (if they were to commence with the other consents). There is also the risk that the discharge term of 35 years will be significantly reduced if the consents were to commence with the other consents. The 35 year discharge term should run from when construction has effectively been completed and the Project has moved into the operational phase.

7.73 As set out in section 116 of the RMA, resource consents can specifically include a later commencement date. Watercare considers that this can be appropriately used to avoid these risks. The consents relating solely to the permanent works and/or the operational aspects of the Project, should have later commencement dates as follows:

(a) For the discharge of stormwater from permanent works at the Western Springs, Haverstock Road, Pump Station 25 (Miranda Reserve) and May Road sites: The commencement date of these four consents shall be the date on which construction is completed at the site. This date is considered to be appropriate as this is the date on which construction-related stormwater discharges will cease and any discharges will instead be from the permanent works.

(b) For the discharge of stormwater from permanent works at the Pump Station 23 (Frederick Street) and the proposed Mangere Pump Station sites to the CMA: The commencement date of this consent shall be the date on which construction is completed at the first of the two construction sites. It is necessary for the permit to commence at both sites on the same date, regardless of progress at the second site, because the permit authorises the discharges from two separate sites.

(c) & (d) For the discharge of contaminants to air and the discharge from the EPR structure: The commencement date of these two consents shall be the date on which the commissioning of the

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<sup>82</sup>

Consent reference number 20: 40850 (Mangere Pump Station).

tunnel begins. This is considered to be appropriate as this is the date from which discharges authorised under these consents could potentially occur.

- 7.74 The standard five year lapse date can apply to these consents (rather than the 15 year lapse date sought for the construction consents and NORs associated with the Project), given the later commencement dates that are linked to the permanent works being in place enabling the discharges to occur.
- 7.75 A separate, but related point, is that the consent needs to be clear that the discharge permit for the EPR structure has been given effect to regardless of whether a discharge ever occurs from this structure. The likelihood of the EPR discharge occurring has been assessed as only 1 every 50 years,<sup>83</sup> with the permit providing a 35 year term for the EPR discharge. It is possible that the EPR structure will not discharge during the 35 year life of the consent and it is similarly possible that it will not discharge during the lapse period from commencement. To avoid any possible future interpretation that the consent has not been "given effect to" because there has been no discharge from the structure, and has therefore lapsed, we propose the following advice note:

*Advice Note: This consent will have been given effect to, for the purpose of section 125 of the RMA, once the Central Interceptor main tunnel has been commissioned and there is the potential for an EPR discharge to occur. The consent will therefore have been given effect to regardless of whether a discharge ever does in fact occur.*

### *Summary*

- 7.76 In summary therefore:
- (a) All construction-related, or construction and operational-related, consents and NORs will have:
    - (i) the default *commencement dates* stipulated in the RMA; and

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<sup>83</sup> Refer evidence of Clint Cantrell at [9.7] and Mr Roan at [2.2].

- (ii) a common *lapse date* of 15 years from the date on which the last of any appeals on all consents and notices of requirement associated with the Central Interceptor main project works is withdrawn or determined.
- (b) All operational only, related consents will have:
- (i) a later *commencement date* of, depending on the consent involved, either:
    - (aa) the date on which construction is completed at the site (where each consent is for one site); or
    - (bb) the date on which construction is completed at the first of the two sites (where the consent is for multiple sites); or
    - (cc) the date on which the commissioning begins (for odour and EPR discharges); and
  - (ii) the default *lapse date* stipulated in the RMA.
- (c) An advice note on the EPR discharge consent will confirm it is given effect to regardless of whether a discharge occurs.

7.77 The lapse and commencement dates for the various consents sought are all set out in the table **attached at Tab A**. For ease of review the rows relating to operational related consents have been shaded grey, while the rows relating to the construction related or combination consents are un-shaded.

## 8. PART 2 - OVERALL ASSESSMENT

8.1 The Commissioners will be well aware of the legal requirements in relation to the overall assessment required to be made of NORs and consent applications against Part 2 of the RMA and the overarching goal of sustainable management.<sup>84</sup>

<sup>84</sup>

See for example *Aquamarine Limited v Southland Regional Council* ENC Christchurch C126/97, 15 December 1997, Skelton J, regarding an "overall judgement" at page 141; *New Zealand Rail Limited v Marlborough District Council* [1994] NZRMA 70 (HC), Greig J, at page 19.

## Section 5

8.2 The starting point is section 5:

### 5. Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means 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
  - (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.

8.3 The general approach taken by the Courts to section 5 has been described as the "overall judgement"<sup>85</sup> approach of whether the proposal would promote the sustainable management of natural and physical resources. Such a judgement allows for comparison of conflicting considerations and the relative scale and degree of them, and their relative significance in the final outcome.<sup>86</sup>

8.4 Both positive and negative effects of the proposal are to be considered. As noted in *AFFCO NZ Limited v Far North District Council*:

The value of integrated decision-making is apparent from the purpose of the Act from the consideration stipulated by s104. Unless all of the effects, positive and negative, of a proposal are assessed together, the consideration of them are required to make the ultimate judgement whether the consent should be granted or refused may be incomplete, and the balancing of them may be distorted.<sup>87</sup>

8.5 Having regard to those guidelines, the Project is consistent with the sustainable management purpose of the RMA because:

- (a) The Central Interceptor main project works will form part of the bulk wastewater network of Auckland and are therefore directly related to enabling the people and communities of the region to provide for their social, economic and cultural well-being and for their health and safety.

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<sup>85</sup> *Aquamarine Limited v Southland Regional Council* ENC Christchurch C126/97, 15 December 1997 at page 141.

<sup>86</sup> *New Zealand Rail Limited v Marlborough District Council* [1994] NZRMA 70 (HC) at page 19.

<sup>87</sup> *AFFCO NZ Limited v Far North District Council* [1994] NZRMA 224 (PT), Sheppard J, at page 13.

- (b) In determining the preferred solution, a wide range of technical, environmental, social, economic and cultural matters were considered. This approach will also be taken in developing and finalising the detail of the proposed works, in consultation with key stakeholders.
- (c) The development and implementation of detailed methodologies for construction and a construction management plan and other management plans will ensure that the life-supporting capacity of air, water, soil and ecosystems are safeguarded.
- (d) Any potential adverse effects arising from the construction, physical presence and operation of the Central Interceptor can be avoided, remedied or mitigated, as outlined in earlier sections of this report.
- (e) Once commissioned, the Central Interceptor main project works will help to sustain the potential of natural and physical resources to meet the foreseeable needs of future generations by providing for continued population growth to ensure that overflows do not increase in the future and by significantly reducing the wet weather overflow of wastewater into the natural environment.

8.6 The Project will have significant positive effects, along with some adverse effects, most of which are only temporary or minor, and we submit that, overall, the Project will achieve the purpose of the RMA.

### *Section 6*

8.7 Under section 6 of the Act, the Committee is required to recognise and provide for various matters of national importance when considering a NOR and applications.<sup>88</sup>

8.8 In terms of the Project, the following matters listed in section 6 are relevant and have been addressed:

- (a) section 6(a), being 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; and

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<sup>88</sup>

Resource Management Act 1991, section 6.

(b) section 6(e), being the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

8.9 The proposed surface works in the coastal environment (at the Pump Station 23 (Frederick Street) and Mangere Pump Station sites) are located in modified environments. There will be temporary effects during construction but in the long-term it is expected that the design of the permanent features will result in these features being appropriately integrated into the site settings.

8.10 Through reducing overflows the Project will address one of the key concerns of mana whenua groups, namely water quality. Watercare is continuing to engage with Iwi with an interest in the area to help identify any ongoing issues of importance to mana whenua in relation to the proposed works.

8.11 Reducing overflows into the natural environment will not only help to preserve the natural character of streams and the coastal environment, but also help to increase the quality of those environments in the future. While the Project includes the potential EPR discharge, the likelihood of such a discharge occurring is low and the effects are temporary.

8.12 In summary, the Project is consistent with, recognises, and provides for, the relevant matters under section 6 of the RMA.

#### *Section 7*

8.13 In the present instance, relevant matters under section 7 have been considered by Watercare and addressed, including:

- (a) section 7(a) - kaitiakitanga;
- (b) section 7(aa) - the ethic of stewardship;
- (c) section 7(b) - the efficient use and development of natural and physical resources;
- (d) section 7(c) - the maintenance and enhancement of amenity values;
- (e) section 7(d) - intrinsic values of ecosystems; and

- (f) section 7(f) - maintenance and enhancement of the quality of the environment.

8.14 Having regard to these matters, we note the following:

- (a) Watercare has engaged and is continuing to engage with mana whenua to help identify and address any potential effects of the Project on mana whenua. Selection of construction sites has considered the potential sensitivity of sites and tried to avoid any such sites as much as possible.
- (b) The Project will help to ensure the efficient use and development of natural and physical resources by providing capacity to support growth within the existing Auckland urban area and through improving asset security of the regionally significant wastewater network infrastructure.
- (c) Selection of surface construction sites and arrangement of layouts has considered effects on amenity and tried to avoid adverse effects where practical. Measures, such as noise barriers and site fencing, will help to mitigate construction effects on amenity, and design of permanent features and site reinstatement will also seek to maintain and/or enhance amenity values.
- (d) The Project will have significant positive effects on amenity values and on the values of stream ecosystems by reducing overflows of wastewater to the environment. This will help to maintain and enhance the quality of the environment and protect the intrinsic values of ecosystems.
- (e) Measures are proposed at construction sites so that temporary effects on amenity values during construction and ongoing effects arising from permanent works are minimised or mitigated.

8.15 Overall, Watercare submits that the Project is consistent with, and has had particular regard to, relevant section 7 matters.

### *Section 8*

- 8.16 Section 8 of the RMA requires that the principles of the Treaty of Waitangi be taken into account. As described above, Watercare has engaged with Iwi to help identify any potential effects of the Project on mana whenua or cultural heritage matters. Engagement is ongoing.
- 8.17 Overall, we submit that the Project is in accordance with Part 2 of the RMA.

## **9. PRE-HEARING REPORT AND PROPOSED CONDITIONS**

### **Council Pre-hearing Report**

- 9.1 The Council Pre-hearing Report requested that Watercare provide further evidence at the hearing in relation to a number of matters.<sup>89</sup> This has all been provided in Watercare's evidence. For ease of reference, a table is **attached** at **Tab B** which sets out the further information requested and which Watercare expert addresses that point.

### **Watercare's Proposed Conditions**

- 9.2 Watercare and the Council have proposed a number of Conditions, both in relation to the resource consents sought and the NORs lodged. Marked-up versions of these conditions setting out Watercare's proposed amendments are attached to the evidence of Ms Petersen.
- 9.3 The reasons for the amendments proposed by Watercare are discussed by Ms Petersen, who also has a helpful summary table of all amendments proposed, and addressed by various of the Watercare experts.
- 9.4 We have prepared clean copies of the designation and consent conditions proposed by Watercare (these are identical to those attached to the evidence of Ms Petersen, but with the changes accepted) ("**Hearing Set**"). Any changes shown in these "new" versions of the Conditions, which are dated 29 July 2013, are as a result of ongoing discussions with the Council and submitters over the past two weeks and since Watercare's evidence was submitted. This Hearing Set, along with the original marked up conditions from Ms Petersen's evidence (Appendix E and F), have been bound in a **separate** Conditions Bundle handed out today.

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<sup>89</sup> Council Pre-hearing Report at pages 247 and 283.

9.5 This set of the conditions itself has some new tracked changes and that is to bring the Commissioners up to date with the ongoing discussions that Watercare has held with the Council staff and a number of submitters since the evidence was exchanged.

9.6 Ms Petersen has prepared a supplementary statement identifying the background to, or reasons for, these track changes to the versions circulated as part of her original evidence, and where relevant, she identifies any other Watercare witnesses who will cover these points.

## **10. CONCLUSION**

10.1 The Central Interceptor Project is a critical piece of new infrastructure. It is a key component of Watercare's regional wastewater strategy and its wider programme of major wastewater network upgrades.

10.2 Auckland has three immediate needs, as identified in the Three Waters Plan and the evidence of Mr Munro:

- (a) to duplicate the lower sections of the existing Western Interceptor which are at risk of failure. This is needed to ensure the safe and long-term conveyance of wastewater across the Manukau Harbour to the Mangere WWTP;
- (b) to provide capacity to meet planned future growth and development within the area already serviced by the existing wastewater system. This is needed to avoid not only increased wet weather overflows of untreated wastewater but to also avoid dry weather overflows of untreated wastewater which are predicted to occur if system capacity is not provided; and
- (c) to control and reduce wet weather overflows of untreated wastewater, which currently equate to 2,200,000 m<sup>3</sup> of diluted wastewater per annum. This is needed to address public health, environmental and cultural effects.

10.3 Since 2008, the Project has been identified as the Best Practicable Option for addressing these needs. It has now been developed to a concept design stage and Watercare is in a position to seek all necessary authorisations to enable the Project to be constructed.

- 10.4 The effects of the Project have been thoroughly assessed and these conclusions are detailed in the expert evidence presented by Watercare. It is inevitable that the construction of the Project will have some temporary adverse effects in the vicinity of the surface construction sites, and that the post-construction reinstatement will take some time to establish. It is also accepted that, in the event of a discharge from the EPR structure, there will be temporary adverse effects. With the exception of these few effects, the rest of the story is positive. The long-term positive benefits to the community and the environment are significant and will clearly outweigh the short-term adverse construction effects.
- 10.5 The Project represents sustainable management of Auckland's reticulated wastewater network and is the best practicable option for future-proofing Watercare's wastewater network.
- 10.6 Watercare respectfully requests that the Committee recommends confirmation of the NORs, and grants the resource consent applications for the Project on the conditions proposed by Watercare at this hearing.



Derek Nolan



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D A Nolan and B S Carruthers

**Counsel for Watercare Services Limited**  
**29 July 2013**