29. **Statutory assessment**

29.1 **Introduction**

This section sets out the assessment of the Project against the statutory requirements of Part 2, and sections 171, 104D, 104, 105 and 107 of the RMA. Sections 1.7 and 1.8 of this AEE identify the NORs and suite of Resource Consents sought in this process.

29.2 **Part 2 analysis**

29.2.1 **Section 5 RMA**

The Project will enhance the use of an existing regionally and nationally significant physical resource through providing better and more reliable travel times, a safer travel environment and greater efficiency in movement of goods and services for people and communities. The Project will also enable Auckland, Warkworth and those communities further north to provide for their health, safety and wellbeing.

The Project will be undertaken in a manner that does not significantly compromise the natural or physical resources of the area. The management of effects during construction, as identified in Section 28 above, will ensure that there are no significant long-term effects on natural resources, that water quality is maintained, and that erosion is managed to avoid exacerbating siltation of the Mahurangi and Pūhoi Rivers and Harbours. The Project includes a suite of measures appropriate to the scale and significance of the potential effects that may arise to avoid, remedy or mitigate those effects.

Accordingly I consider the Project meets the purpose of the RMA.

29.2.2 **Section 6 RMA**

The section 6 matters of national importance that must be recognised and provided for are addressed below.

(a) **The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development**

The Project has a relatively small, direct relationship with the CMA, and coastal environment. The crossing of Okahu Creek is unavoidable, given the design, cultural and topographical constraints of the immediate location. The works are being undertaken in a location removed from the Pūhoi River by the existing SH1, leaving the broader coastal environment in the locality intact.

Section 5.1.3 (Biophysical Effects) of the Landscape and Visual Assessment Report identifies the Okahu Creek area as having high values. The Report goes on (under Landscape/Natural Character Effects) to state that the “physical effects of the viaducts on the landscape will be reduced by the structures spanning these waterways. The reduction is due to some of the natural character of the waterways being retained”. In my opinion, given the limited interaction with the coastal...
environment and the necessity of the location of the Okahu Viaduct, the Project recognises and provides for preservation of the natural character of the coastal environment.

With respect to the natural character of wetlands, and rivers and their margins, the natural character of the more significant waterbodies will be maintained through structures. Where diversions of watercourses are necessary, the remediation of the watercourse will be dictated by its type, with restoration designed to recreate a natural character including bank shaping and riparian planting (refer Operational Water Assessment Section 21.5 above). Significant watercourses will be bridged rather than culverted, which will ensure as much of the natural character can be retained as practical. The mitigation offered through management of diversions and riparian restoration of those watercourses will ensure that the effect of the Project on the natural character of rivers and their margins will be minor.

The stormwater discharges during construction and operation will not result in any significant change to water quality that might influence the natural character of the coastal environment. I rely on the Marine Ecology Assessment Report to conclude that the long-term contribution to the sedimentation of the Mahurangi and Pūhoi harbours is considered to be minor. Accordingly I do not consider the Project will adversely affect the natural character of the coastal environment.

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development

The Project passes through two ONLs, as defined in Proposed Change 8 to the ARPS, one west of Perry Road (ONL 43) and one near the Johnstone’s Hill Tunnels (ONL 44).

ONL 43 west of Perry Road is a portion of a large ONL around the West Mahurangi Harbour. The Landscape and Visual Assessment Report records that “the ONL is extensive and largely focused around the West Mahurangi Harbour and the river and stream values... which will be unaffected by the Project” (Section 5.5.3). It is my opinion that the Project design has considered this ONL and, given that the ONL remains largely intact, the Project is not an inappropriate development.

The Landscape and Visual Assessment Report notes that the Project “skirts along the periphery of the delineated area of ONL 44 near Pūhoi River”. The Report also records the modification to the landscape values given the SH1 and Johnstone’s Hill Tunnels. Based on that Report and on my own consideration of the ONLs and Proposed Change 8, I conclude that the Project has no significant effects on these ONLs.

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna from inappropriate subdivision, use, and development

The Project passes through one area identified as a Significant Natural Area in the ACDP, in the vicinity of Woodcocks Road and Carran Road. The Terrestrial Ecology team has surveyed the significant natural area (SNA) and especially that portion affected by the proposed designation. The Terrestrial Ecology Assessment Report concludes that the SNA has low values and, as it is not fenced off, is subject to undergrazing by cattle, which further affects its long-term viability.

A section of the Project is indicatively located within a Natural Stream Management Area (NSMA) under the ARP:ALW. However, Auckland Council and I agree that this area does not meet the
definition of NSMA in Chapter 3 of the ARP:ALW (refer to 3.4.2(b)(i) for analysis) and I therefore have not considered further the Plan provisions relating to NSMAs.

The proposed designation also affects approximately 8.5 hectares of indigenous vegetation, although through alignment design shifts, the designation avoids much of the area of kauri trees at Perry Road. The Project team has had regard to the protection of significant indigenous vegetation and habitats. In my opinion, through the mitigation that will be offered in conditions, overall the Project area will continue to protect these values and is not an inappropriate development.

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

The Project will enhance and maintain access to or along the margins of the coast or rivers. In a minor way access to reserves along the Pūhoi River to the east of SH1 will be enhanced by the reduction in traffic on the current SH1 providing greater opportunities for public access to the eastern side of SH1 where there is a succession of reserves along the coastal margin.

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

The Project team has recognised and provided for the relationship of tangata whenua with their ancestral lands, water, sites, waahi tapu, and other taonga in the following main ways:

- Ongoing iwi input into the Project’s development and design, including collaborative engagement regarding sites of cultural significance;
- The relationship between the NZTA and Hōkai Nuku;
- Proposed mitigation designed to address cultural impacts and to provide an ongoing Iwi Advisor role during the construction and operation of the Project.

(f) The protection of historic heritage from inappropriate subdivision, use, and development:

The Heritage Assessment Report identifies a small number of heritage sites and buildings that fall within the proposed designation. Where these sites and buildings cannot be avoided, the Report addresses potential mitigation. Adverse effects on historic heritage will be largely avoided through design, for example, in the case of the recently rediscovered pā, through a modification to the indicative alignment.

The Heritage team considers loss of the midden sites to be acceptable from an archaeological perspective with the adoption of mitigation as recommended in the Heritage Assessment Report. The two historic houses are assessed as being adversely affected but the effects can be mitigated through detailed recording of the buildings and relocation. Overall the Project protects historic heritage where practical.

(g) The protection of protected customary rights.

Paragraph (g) does not apply.
My overall conclusion with respect to section 6 matters is that the Project team has recognised and provided for these matters of national importance.

29.2.3 Section 7 RMA

The Project team has had particular regard to the matters in section 7 as set out earlier in relation to statutory and non-statutory instruments and the key area of effects (see Sections 10 to 26 and Section 27 of the AEE), so are not repeated here in full. It is noted:

- Kaitiakitanga and the ethic of stewardship are being recognised and actively incorporated into the Project design and proposed mitigation.
- The Project provides improved gradients, safety standards and travel time reliability, which will offer greater efficiency for the users of the network.
- Amenity values will be affected by the Project. The compounding effects during construction for some residents will reduce their amenity. The Assessment Reports and recommended mitigation reflect how to best manage the amenity issues that local residents will face. During construction, the expectations of residents will be managed through clear communication and messaging. This communication will enable residents affected by works to plan around events, including traffic management and blast events. The ability to be prepared will assist residents to continue their daily lives with minimal disruption. Post construction analysis of noise (as identified in the Operational Noise Assessment Report) will ensure that while the current level of amenity (including a low ambient noise environment) will not be fully restored, the noise levels will be within the most stringent category according to NZS6806, which will protect the amenity of residents with regard to daily activities such as sleeping. Enabling community input into the draft Urban Design and Landscape Framework prior to it being considered by Council will enable some engagement with the design and look of the Project. The Landscape and Visual Assessment Report has assessed several of the viewing catchments as having high visual amenity, including around Pūhoi, and west of Perry Road. Post construction the remediation through landscaping and planting and the adjusted amenity will gradually become part of the broader environment.
- The Project, through option analysis and route selection, has avoided significant natural and built environments, such as Pohuehue Scenic Reserve and Warkworth township. The Project will include a range of measures (many encapsulated in the Urban Design and Landscape Framework) that will offer opportunities to enhance the physical environment both at key tie-in locations such as Pūhoi and Warkworth, but also along the route (eg at the Kauri Eco Viaduct).

29.2.4 Section 8 RMA

The Project team has taken the principles of the Treaty of Waitangi into account by engaging with the relevant iwi early in the development of the Project, and through maintaining ongoing relationship with Hōkai Nuku in a partnership arrangement that will endure beyond this Project.

29.3 Consideration of Notices of Requirement

Section 171 of the RMA sets out various matters to be had regard to when considering notices of requirement. These matters have been discussed and assessed throughout the AEE and associated
Assessment Reports in relation to the NORs. The purpose of this Section is to draw these matters together to provide a clear outline of the s171(1) considerations and where these are addressed in more detail.

<table>
<thead>
<tr>
<th>Matter for Consideration</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 2 (s171(1))</td>
<td>Consideration of the Project against the matters within Part 2 of the Act is set out below.</td>
</tr>
<tr>
<td>Relevant provisions of NPS (s171(1)(a)(i))</td>
<td>The relevant provisions of the New Zealand Policy Statement for Freshwater Management are addressed in Chapter 27.6.1. I found the Project to be consistent with the provisions of the NPSFW</td>
</tr>
<tr>
<td>Relevant provisions of NZCPS (s171(1)(a)(ii))</td>
<td>Consideration of the NZCPS is contained in Section 27.2 of this AEE. I found the Project to be generally consistent with the objectives and policies of the NZCPS.</td>
</tr>
<tr>
<td>Relevant provisions of RPS or proposed RPS (s171(1)(a)(iii))</td>
<td>Consideration of the relevant provisions of the RPS is contained in Section 27.4 of this AEE. I consider the Project to be consistent with the objectives and policies of the ARPS.</td>
</tr>
<tr>
<td>Relevant provisions of a Plan or Proposed Plan (s171(1)(a)(iv))</td>
<td>Consideration of the relevant provisions of the ARP:C, ARP:ALW and ARP:SC and the ACDP:RS are provided in Sections 27.6, 27.7, and 27.8 respectively. I consider the Project to be generally consistent with the objectives and policies of these plans.</td>
</tr>
<tr>
<td>Adequate consideration to alternative sites, routes or methods (s171(1)(b))</td>
<td>A comprehensive assessment of alternative sites, routes and methods was undertaken as part of the scheme assessment phase of the Project, which has continued throughout the duration of the current assessment of environmental effects stage. The alternatives identified and the means by which the Project was selected are outlined in Section 7 of this AEE. Overall, my view is that proper consideration has been given to alternative sites, routes and methods.</td>
</tr>
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### Matter for Consideration

<table>
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<tr>
<td>Whether the work and designation are reasonably necessary to achieve the objectives of the NZTA (s171(1)(c))</td>
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</table>

The works and the designation are considered reasonably necessary because:

1. The works are considered reasonably necessary for the reasons outlined in Section 2 above, particularly regarding improving traffic and transport safety, efficiency and reliability;
2. The designation is considered reasonably necessary for the reasons outlined below including that it will:
   - allow the NZTA and/or its authorised agents to undertake any proposed works;
   - allow the land required to be identified in the ACDP, giving a clear indication of the intended use of the land;
   - help identify land required to be purchased under the PWA process;
   - enable the Project to be undertaken in a comprehensive and integrated manner;
   - protect the proposed route from future development which may otherwise preclude the construction of the Project; and
   - Provide a more efficient tool than using resource consents or plan changes to authorise the Project given the complexity of design detail and the mitigation planning that I recommend be used to manage the construction and operation of the Project;

Any other matter that the decision-maker considers reasonably necessary. (s171(1)(d))

A full analysis of other matters I consider are relevant to the decision is contained in the NORs, resource consent applications, AEE, Assessment Reports and Drawings. Key matters include that the Project will:

1. help facilitate the benefits of the wider RoNS programme;
2. enable the NZTA to meet its broader LTMA objectives and functions; and
3. help Auckland Council meet its growth aspirations for Warkworth as set out in the Auckland Plan.

With respect to the alteration of the existing Designation (ACDP:R reference 401), I note that the alterations sought are to conditions only, to ensure that the new Designation will not render NZTA non-compliant with conditions of the existing designation, where they do not enable the works proposed at the southern tie-in. There are no additional effects that would result from this alteration. In any case, my conclusions also apply to the alteration to Designation 401.

Having had regard to the potential effects of the proposed designation, the relevant provisions of planning documents as outlined in Section 28 above, the assessment of alternatives and the objectives of the Project, and sections 5, 6, 7 and 8 and s 171 of the RMA it is my opinion that the NORs can be confirmed subject to appropriate conditions.

### 29.4 Consideration of the resource consent applications

The full suite of resource consent applications are identified in Section 1.8 above.
The consideration of the coastal permits required at Okahu Inlet fall to being considered as non-complying activities. Non-complying activities require a consideration against section 104D prior to the substantive assessment of the Project under section 104(1). I propose to unbundle the coastal permits from the wider suite of resource consents.

**29.4.1 Bundling of activities**

When considering a suite of associated consents with varying individual consent categories, the "bundling" principle ensures that these consents are considered as a complete package. The bundling principle ensures that associated consents are assessed against the most stringent activity status.

As noted in Section 1.4 above, the consent status of the wider suite of resource consents falls to being considered as discretionary and restricted discretionary activities with the exception being the activity status of the structure and associated works in the CMA at Okahu Inlet (the bridge structure, construction of the bridge, occupation of the sea bed, and removal of mangroves). This is the only location where a consent is triggered under the ARP:C. The CPA1 notation relates to the quality of the feeding ground and specifically to the quality of the saline vegetation areas in the Pūhoi estuary.

If the consent applications were bundled, overall the Project would be considered as a non-complying activity by virtue of that particular activity.

In my opinion, both the ARP:C and the CPA1 notation relate to a very discrete element (calculated to be less than 0.5% of the indicative area) of the Project, and relate to a very specific issue that is not relevant to any other location in the Project area. To separate the coastal consent applications from the rest of the consents for assessment purposes would not be artificial in my opinion, but would more accurately reflect the separate nature of the activity, its locational environment and its effects. Additionally, to consider the entire alignment as a non-complying activity on the basis of discrete coastal ecological values that are not represented anywhere else within the Project area would inappropriately skew the overall consideration of the Project.

In summary, I am of the opinion that the coastal permits can be unbundled from the remainder of the consents required for the Project for the following reasons:

- The coastal permits are for a discrete section of the alignment, and are considered under a different regional plan than the remainder of the alignment;
- The area’s notation as a CPA1 is for specific coastal ecological reasons which relates to the saline vegetation for feeding and roosting habitat; and
- The effects of the proposed structure and associated works in the CMA are distinct from the rest of the Project effects and do not overlap with, or have consequential effects on, the rest of the Project.

It is my opinion that this Project, whilst involving a number of consent matters, would be misrepresented by consideration as a non-complying activity as a whole. On that basis I have undertaken an analysis of the non-complying aspect of the Project below, and applied the
substantive section 104 analysis over the entire Project on the basis that the activity status for the remainder of the Project is discretionary overall.

29.4.2 Threshold analysis of non-complying coastal permits

The threshold test of section 104D requires that the proposal for a non-complying coastal activity passes either the test whereby the effects on the environment will be minor OR that the application is for an activity that will not be contrary to the objectives and policies of the relevant plan or proposed plan. In my opinion, the activity passes both gateway tests in s104D:

1. The conclusion of the Marine Ecology Assessment Report in relation to the activity specifically within Okahu Inlet is that the permanent and temporary loss of habitat will be of very low significance after mitigation. The effects are minor or less than minor.

2. I note that the phrase “not contrary to” has been considered in light of established case law to mean not “opposed to in nature, different to, opposite to”. I also understand that my assessment should be based on whether the activity is not contrary to the overall objectives and policies of the plan, rather than assessing the non-complying activity against the detailed provisions of those plans. In this case, as demonstrated in Section 27.5, my opinion is that the Project is not contrary to the objectives and policies of the ARP:C, being the only relevant plan in this instance.

The non-complying coastal activity can therefore be assessed under section 104.

In the event that the decision-maker considers the whole Project should be assessed as a non-complying activity overall, I have assessed the Project against the relevant objectives and policies of the ARP:C, the ARP:ALW, the ARP:SC and the ACDP:R in Section 27 of this AEE. That assessment concludes that the Project as a whole is not contrary to objectives and policies of relevant plans including those parts of the ARP:ALW that are subject to appeal.

29.4.3 Section 104 assessment

Under s104 of the RMA the decision-maker in its deliberation of the applications sought for the Project, including consideration of any submissions received must, subject to Part 2, have regard to:

(a) any actual and potential effects on the environment of allowing the activity; and
(b) any relevant provisions of—
   (i) a national environmental standard:
   (ii) other regulations:
   (iii) a national policy statement:
   (iv) a New Zealand coastal policy statement:
   (v) a regional policy statement or proposed regional policy statement:
   (vi) a plan or proposed plan; and
(c) any other matter the consent authority considers relevant and reasonably necessary to
determine the application.

29.4.4 Section 104(1)(a) – Effects on the environment

Sections 10 to 26 of this AEE and the Assessment Reports outline the actual and potential effects
of the Project.

In summary, the Project will have a number of positive and adverse effects. These effects vary in
potential significance, scale (local, regional and national), intensity and duration.

The Project will have significant positive transport effects at a local and regional level, including:

- Improved resilience for the road network;
- Improved safety and reduced crash risk;
- Significant travel time savings between the Johnstone’s Hill Tunnels and Warkworth; and
- More efficient freight movement and associated economic benefits.

There are several related positive social and economic effects arising from these transport benefits.

Potential short-term effects during construction of the Project will be:

- Nuisance effects (eg dust, noise, traffic, lighting, amenity) from construction activities;
- Visual effects;
- Increased sediment and contaminants entering waterways;
- Disruption and displacement of wildlife; and
- Diversions, degradation and loss of terrestrial and freshwater habitats.

Potential long-term positive effects from operation of the Project (in addition to the improved
transport environment and the positive effects derived from this) will be:

- Restoration of the connectivity of Warkworth’s community facilities with the wider
  residential and commercial activities through the reduction of traffic on the existing SH1;
  and
- Less noise, lower stormwater contaminant discharges through treatment of stormwater
  from the motorway and the removal of traffic from the existing SH1 and a safer route for
  cyclists and pedestrians from traffic reduction on SH1; and
- Gradual bedding in of alignment into the landscape, through mitigation planting and
  through readjustment to the change of amenity.

The long term adverse effects will be the discharge of treated stormwater, and visual and noise
effects. I consider these effects to be minor.

29.4.5 Section 104(1)(b) – Relevant provisions of planning documents

With respect to the assessment of the Project against the statutory planning documents listed in
s104(b)(i) to (iv), I consider the Project to be generally consistent with these documents and I
refer you to Section 27 of this AEE along with the following sections:
National Environmental Standard Air Quality Standard – refer Section 18 of this AEE and the Air Quality Assessment Report;
National Environmental Standard for Sources of Human Drinking Water— refer Sections 10 and 21 of this AEE and the Construction and Operational Water Assessment Reports;
National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) – refer Section 20 of this AEE. Consents required under this NES will be acquired at a later date when access to all property is available;
National Policy Statement for Freshwater Management 2011 - refer Sections 10, 11 and 21 of this AEE and the Construction Water, Freshwater Ecology and Operational Water Assessment Reports;
Auckland Regional Policy Statement – refer Section 27.4 of this AEE;
Auckland Regional Plan: Coastal; Auckland Regional Plan: Air, Land and Water; and Auckland Regional Plan: Sediment Control – refer Sections 27.5, 27.6, and 27.7 of this AEE respectively; and
Auckland Council District Plan – Operative Rodney Section – refer Section 27.8 of this AEE.

29.4.6  Section 104(1)(c) – Other matters

The other matters that I consider relevant to the determination of this matter fall into two broad categories:

1. Transport policy and NZTA’s LTMA objectives and functions, including those discussed in Section 3.4.4 above; and
2. Non-RMA policy, documents or plans that have been developed through community engagement.

(a) Transportation policy

I consider the following documents to be relevant to the consideration of the Project under section 104(1)(c):

- Connecting NZ 2011;
- The National Freight Demand Strategy 2008;
- NZ Transport Agency Statement of Intent 2013-2016;
- State Highway Plan 2013/2014; and
- Auckland Regional Road Safety Plan 2009-2012.

A number of the relevant non-statutory documents listed above are based on strategic and policy documents, including the GPS, the NIP and the Road Safety Strategy. Key themes underpinning these documents relate to the NZTA’s role in managing the State highway network

Delivering the RoNS programme is outlined in the aforementioned documents as being integral to the above functions.
Connecting NZ 2011 recognises the pivotal role of the State highway network in the movement of freight, particularly via HVC and that "a number of our highways are affected by congestion, unreliable journey times or have a poor safety record". The RoNS programme is outlined in Connecting NZ 2011 as an example of the Government’s significant investment in the State highway network to address the needs of key supply chain routes, enhance connections with our major sea and airports with the State highway system and reduce traffic congestion around our metropolitan areas. The RoNS are identified as high-use highways in the State Highway Classification System, with the existing SH1 identified as a Nationally Strategic State highway.

The movement of freight plays a vital role in supporting economic development. The National Freight Demand Strategy (NFDS) (discussed earlier in Section 2 of this AEE), provides a snapshot of freight volumes and movements, and forecasts the future freight task. In relation to the movement of freight between Northland and Auckland, the NFDS suggests that road freight traffic between these Regions will increase by over 250% over the 25 year period from 2006-07 to 2031.

The NZTA Statement of Intent (SOI) illustrates how the NZTA will deliver the Government’s goals as outlined in the GPS and NLTP. The SOI recognises that significant investment in the RoNS programme is integral to the Government’s ability to provide opportunities for economic growth through the safe and efficient movement of people and freight, greater network resilience and security and congestion relief. Development of the Pūhoi to Warkworth section of the Ara Tūhono Pūhoi to Wellsford RoNS is identified in the milestones over the 2013/14 – 2015/16 years, reflecting the forecast from the NLTF.

The State Highway Plan (SHP) outlines the NZTA’s annual State highway work programme, which is consistent with the objectives of the State Highway Asset Management Plan. The SHP outlines the Government’s commitment to the RoNs programme, in particular progressing the Ara Tūhono Pūhoi to Wellsford RoNS.

The Auckland Regional Road Safety Plan is a regional plan developed in alignment with the GPS, which outlines the Government’s target for fewer road fatalities. The Plan recognises the importance of increased safety engineering as one response.

As outlined in Section 1 of this AEE, the Pūhoi to Warkworth section of the Ara Tūhono Pūhoi to Wellsford RoNS will be a new four-lane motorway between Pūhoi and Warkworth. The motorway will reduce travel times and improve travel time reliability between Pūhoi and Warkworth that will in turn provide for improved accessibility and the more efficient movement of freight between Northland and Auckland. These transport benefits are important with the forecast increase in freight movements as outlined in the NFDS and will provide opportunities for economic growth. The Project will improve the safety performance of the existing SH1 with the new motorway designed, operated and constructed in accordance with the RoNS Standards to provide a high level of safety in accordance with the Government’s objectives outlined in Safer Journeys

132 Auckland Regional Transport Authority 2009, Road Safety Plan
133 http://www.saferjourneys.govt.nz/
Other matters I consider relevant with respect to transport policy that I considered earlier in this AEE include:

- Government Policy Statement on Land Transport Funding 2009/10 – 2018/19 – (refer Section 2.3.3 of this AEE);
- National Infrastructure Plan 2011 (refer Section 3.11.1);
- New Zealand Transport Strategy 2008 (refer Section 2.3.3);
- Auckland Regional Land Transport Strategy 2010 – 2040 (refer Section 2.3.4);
- The Upper North Island Freight Story 2013;
- The Auckland Integrated Transport Plan 2012 – 2041; and

The discussion immediately above and in Sections 2 and 3 shows a strong central and regional transport policy direction. The Project is consistent with that direction and supports the broader transport objectives contained in them.

(b) Non-statutory RMA Policy

Other matters I consider relevant to consideration of the Project include NZTA’s own policy documents (in addition to specific documents which informed the Assessment Reports), an NPS that is still in draft form, and structure plans that have not yet been incorporated into the ACDP. These documents assist to inform a strategic direction within which the Project will sit. The other document is one promulgated out of a concern for the effects of increasing siltation of the Mahurangi Harbour, on commercial, recreational and ecological interests.

These other matters are:

- Warkworth Structure Plan 2004;
- Pūhoi Structure Plan;
- The Mahurangi Action Plan;
- The NZTA Environmental Plan 2008; and
- The Auckland Plan.

Proposed National Policy Statement on Indigenous Biodiversity

The NPS:IB was publicly notified for submissions between January and May 2011. It is yet to take effect. The NPS:IB has the single objective:

> To promote the maintenance of indigenous biological diversity by protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to encourage protection and enhancement of biodiversity values more broadly while:

- supporting best practice of local authorities
- recognising the positive contribution of landowners as guardians/kaitiaki of their land
- recognising that the economic, social and cultural well-being of people and communities depends on, amongst other things, making reasonable use of land.
The Project generally affects only pockets of indigenous vegetation and habitats. These effects have been identified and assessed in the Terrestrial Ecology Assessment Report. The mitigation proposed in Section 28 of this AEE is informed by the findings in that Report and will ensure that the Project will maintain biodiversity in the limited areas where there may be an adverse effect. The Operational Stormwater and Landscape and Visual Assessment Reports identify further opportunities to enhance existing indigenous vegetation or rehabilitate within the proposed landscaping that will be detailed in the OPW for the Project. The Project mitigation will be informed by Hōkai Nuku as part of their on-going expression of kaitiaki over the Project area. Regardless of the draft status of the NPS:IB, I consider the Project to be generally consistent with it.

**Warkworth Structure Plan 2004**

The Warkworth Structure Plan (WSP) was adopted by the former Rodney District Council in 2004. The Plan was developed in response to population growth projections for Warkworth and provides a growth management strategy and concept for the revitalisation of Warkworth. The Plan focuses on providing additional land for employment, retail and residential activities and improvements to movement safety and connection for all modes. The WSP is a non-statutory document and not included in the ACDP.

The Project has been developed with regard to the strategic direction for future growth and development of Warkworth as outlined in the WSP. The new motorway will extend west of Warkworth, allowing land planned for urban expansion to remain well connected to the remainder of the settlement. The Project will provide for improved transport connections with the State highway network and reduce congestion in Warkworth, particularly at the intersection of the current SH1 and Hill Street.

**The Pūhoi Structure Plan**

The Pūhoi Structure Plan was adopted by the former Rodney District Council in 2010. Pūhoi is not identified as a growth node from a regional perspective and minimal land use change is anticipated by the Plan. The Plan acknowledges that a new route between Pūhoi and Wellsford was being developed during the preparation of the Plan.

The indicative alignment has been developed with consideration to minimising potential impacts on the Pūhoi settlement and community, in particular, effects on Pūhoi Village and the heritage character of the area. As outlined in Section 5 of this AEE, the Project design includes the provision of a single lane northbound off-ramp and a single lane southbound on-ramp to and from Pūhoi in the vicinity of the intersection with Pūhoi Road and the existing SH1. These ramps will provide access between Pūhoi and the new motorway.

**Mahurangi Action Plan**

I have considered the Mahurangi Action Plan given its purpose and the level of community engagement undertaken in its preparation. The Mahurangi Action Plan was developed out of increasing community concerns over the increasing level of sedimentation of the Mahurangi Harbour. This concern was shared by the then Auckland Regional Council and Rodney District
Council. The Mahurangi Action Plan was released in September 2010, and was the product of workshops and engagement with a wide range of concerned parties, from local residents, business (including oyster farmers), tangata whenua, forestry operators, Federated Farmers and individual landowners.

The Mahurangi Action Plan’s key focus is sediment accumulation in the Mahurangi River and Harbour and its effect on habitat, recreation, navigation and commercial activities. The Plan also considers other contaminants from land use, effluent discharge, agricultural leachate and fertiliser to be an issue to the River. Whilst the implementation of the Mahurangi Action Plan has lost some momentum with the formation of the Auckland Council, the objectives and priority actions are still valid. Some recognition has been given to the Mahurangi Action Plan with the Rodney Local Board advocating for funding to support the environmental initiatives offered through the Mahurangi Action Plan. The objectives of relevance to the Project are to reduce sediment (Objective 1), that vegetation cover is maintained and increased (Objective 2), and that water quality is safe for recreational and commercial users (Objective 3). The Project supports these Objectives through its commitment to management of sediment during construction and the treatment of stormwater during operation, and will further the objective to maintain and increase vegetation cover of tributaries of the Mahurangi River Right Branch through landscaping that will be detailed in the OPW.

**The NZTA Environment Plan**

The Environment Plan outlines the NZTA’s intentions with respect to the contribution of State highways to the environment and social wellbeing of New Zealand. The LTMA, NZTS and RMA are the primary supporting legislative and policy context for the Plan.

The Plan guides the design, construction, operation and maintenance of the State highway network in relation to a range of potential environmental and social impacts in order to:

- Protect and enhance the environment where appropriate;
- Avoid adverse effects to the extent reasonable in the circumstances;
- Use and manage resources efficiently;
- Consider environmental issues early;
- Contribute to sustainable outcomes by working with others; and
- Continually improve environmental performance.

In my opinion, the Project will meet the relevant objectives of the NZTA Environmental Plan, including those regarding noise emissions, air quality, stormwater discharges, sediment and erosion control, landscaping, heritage and biodiversity.

**The Auckland Plan**

The Auckland Plan is a requirement of section 79 of the Local Government (Auckland Council) Amendment Act 2010. The purpose of the Auckland Plan is to

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134 Transit New Zealand 2008, Environment Plan
“...contribute to Auckland’s social, economic, environmental, and cultural well-being through a comprehensive and effective long term (20 – 30 year) strategy for Auckland’s growth and development”.

The Major Transport Projects identified in the Auckland Plan (page 334), include “construction of the Pūhoi-Wellsford Motorway, first Phase Pūhoi to Warkworth within the first decade projects (being 2011 – 2020)”. The Project is consistent with the objectives of the Auckland Plan through the delivery of consents to enable the construction of the Project.

29.4.7 Overall conclusion under s104

Having had regard to the potential effects of the Project and the relevant provisions of planning documents as outlined in Section 28 above, and sections 5, 6, 7 and 8 and 104 of the RMA, it is my opinion that the resource consents can be granted subject to appropriate conditions.

29.5 Section 105 Assessment

Section 105(1) of the RMA requires that, for discharge permits or coastal permits that would contravene section 15 or section 15B, the decision maker must, in addition to the matters in s104(1), have regard to the following:

(d) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
(e) the applicant’s reasons for the proposed choice; and
(f) any possible alternative methods of discharge, including discharge into any other receiving environment.

29.5.1 Nature of the discharge and the sensitivity of the receiving environment

I have considered the nature of the stormwater discharge from the Project and the sensitivity of the receiving environment. The Project involves significant earthworks and discharges, particularly during the construction period. The earthworks, the management of associated discharges and the immediate and eventual receiving environment are identified and considered in the Construction Water, Operational Water, Freshwater Ecology and Marine Ecology Assessment Reports.

29.5.2 The applicant’s reasons for the proposed choice and possible alternative methods of discharge

The alternative methods of discharge considered by the NZTA are set out in the Operational Water Assessment Report. The consideration of alternatives identified the particularly sensitive environments to be avoided. In my opinion, it would be impossible to avoid the receiving environment within either the Pūhoi or Mahurangi catchments. At a macro level, there is no practical alternative to the discharge into the respective environments. All discharges will be

135 Auckland Plan page 10
136 We note that section 105 also relates to discharges under section 15B but these are discharges from ships or offshore installations which are not relevant in this instance
treated (both during construction and operation) and all points of discharge will be designed to ensure that ongoing sedimentation of the watercourse can be managed appropriately. The Construction Water Assessment Report addresses construction water management including applying a maximum earthworks area for each catchment, through directly addressing earthworks on steeper slopes and steep cut faces, using cut-off drains for diversions above earthwork areas and other management techniques to minimise the loss of sediment from the site into watercourses. Given that it is not practical to discharge to an alternative receiving environment, I consider that the selection of the BPO for managing sediment control is appropriate.

29.6 Section 107 Assessment

The Project is to be considered under section 107. Section 107(1) sets out restrictions on granting discharge permits if, after reasonable mixing, the containment or water discharge is likely to give rise to certain effects (as listed in s107(1)(c)-(g)):

A consent authority may grant a discharge permit which gives rise to these effects if it is satisfied –

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

and that it is consistent with the purpose of the RMA to do so.

Discharges to water during construction and operation of the Project may increase contaminants that after reasonable mixing potentially give rise to the following s107(1)(c)-(g) effects:

1. The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials during construction and operation;
2. Sedimentation during construction causing a conspicuous change in the colour or visual clarity; and
3. Significant adverse effects on aquatic life from sedimentation during construction due to a possible severe weather event.

In my opinion, the Project will meet the tests of section 107 allowing the grant of discharge permits for the following reasons:

- The potential for effects on receiving waters associated with odours, conspicuous oils, floatable or suspended solids are considered in both the Construction Water Assessment Report and the Operational Water Assessment Report, supported by the Marine and Freshwater Ecology Reports, and are assessed as minor;
- The Construction Water Assessment Report concludes (at 10.3) that, at worst, there will be minor effects on water quality after reasonable mixing;
- The potential for significant effects from sediment discharges will be temporary, as they are limited to the construction period and during the earthworks season only, with the balance of the site being stabilised during the winter months;
The potential effect on aquatic life in marine environments from sedimentation arising from the Project would only occur during a 50 year rain fall event, which is unlikely. Such effects are considered significant on a marine environment with medium ecological values (refer Marine Ecology Assessment Report Section 4.1.3). To the extent that such an event occurred during construction, the conditions I propose include a process for post event monitoring and reporting on any remedial recommendations that need to be implemented;

The Operational Water Assessment Report concludes that the design of instream structures and the use of stormwater wetlands will ensure that, after reasonable mixing, effects of granting the discharge consents will be minor (refer Section 8 of the Report);

Treatment of the construction water will ensure that the quality (as a result of increased TSS) of the construction water discharged will be restricted to a temporary period and can be tolerated by the resident fish species as assessed in Section 6.2.5 of the Freshwater Ecology Report;

The NZTA will adopt non-structural practices to ensure that in advance of forecasted significant rain events all practicable measures are taken to minimise the loss of sediment via the treatment systems and into the watercourses; and

Once completed, the Project will treat all stormwater runoff from the motorway to the BPO prior to discharging to the watercourse, and water quality effects will be negligible. There may be improvements in water quality due to less traffic using existing SH1 on which there is no existing stormwater treatment.

In my opinion, it would also be consistent with the purpose of the RMA to grant the discharge consents given the scale and significance of the Project. The possibility of a significant effect on aquatic life from sedimentation in particular is unlikely. Mitigation is available to remedy any such effect in the event that significant effects occur, due to the potentially high impact of such effects.

29.7 Conclusion

The Project is a project of national significance. As outlined above, the notices of requirement and resource consent applications achieve the statutory requirements of sections 171 and 104 respectively. The Project offers significant transportation and health and safety benefits to both road users, through improved travel time and travel reliability, and the Warkworth community, through the reduction of traffic on SH1 through the town. I accept that the Project will have adverse effects on the environment, especially during construction. Where effects cannot be avoided or remedied, appropriate mitigation has been identified by the Project team and will inform the conditions. It is my opinion that the Project will promote the sustainable management of natural and physical resources and therefore achieves the purpose of the RMA. I accordingly consider that the notices of requirement can be confirmed and the resource consents granted.