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Newmarket Level Crossing Project – Notice of Requirement Decision

Recommendations

That the Board:

- i. Accepts the recommendation of the independent commissioners (Attachment 1) to confirm the Notice of Requirement (NoR) for the Newmarket Level Crossing Project.
- ii. Approves the modification of two conditions:
 - Condition 18.7 (c) Additions shown as underlined and deletion in strikethrough.
A description of the mitigation measures proposed to reduce the noise and vibration levels and minimise the degree of non-compliance as far as practicable including how the selected mitigation achieves the Best Practicable Option, including and any options mitigation options that have been discounted due to cost or any other reason;
 - Condition 18.8
Any management schedule produced in accordance with condition 18.7 is to be provided to the Council (Major Infrastructure Projects Team Manager) for ~~approval~~ certification no less than 5 working days prior to the authorised works commencing.
- iii. Notes the decision of the independent commissioners to approve the resource consent applications.
- iv. Notes the Environment Court Appeal on the decision on the resource consent applications from Cowie Street Residents Association Incorporated, Parnell Community Committee Incorporated and Parnell Incorporated (Attachment 2).
- v. Notes that the General Counsel will notify Auckland Council under delegated authority of the board's decision. Notes that submitters will have 15 working days to lodge an appeal with the Environment Court from when Auckland Council serve the decision on directly affected land owners and occupiers and submitters.

Executive summary

The Newmarket Level Crossing Project Notice of Requirement (NoR) was lodged, under delegated authority by the Group Manager Property and Planning, on 11 September 2015. The application was publically notified on 7 October 2015 and the submission period closed 18 November 2015. AT extended the submission period from 20 working days to 30 working days given the community interest in the Project. 15 submissions were received - 2 neutral submissions (1 subsequently withdrawn prior to the hearing), 6 submissions in opposition (3 were identical submissions from Cowie Street Residents Association Incorporated, Parnell Incorporated and Parnell Community Committee Incorporated) and 7 in support including 1

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in support from the only directly affected landowner. The hearing was held on 19 – 21 April 2016 before independent commissioners' appointed by Auckland Council.

On 14 June 2016, Auckland Transport (AT) received the independent commissioners' recommendation to confirm the NoR (**Attachment 1** Commissioners' Recommendation) and the decision to approve the resource consent applications.

The resource consent decision has been appealed to the Environment Court by Cowie Street Residents Association Incorporated, Parnell Community Committee Incorporated and Parnell Incorporated for the reasons set out in the attached Appeal Notice (**Attachment 2**).

AT has a statutory timeframe of 30 working days to give written notification to Auckland Council (AC) of its decision in relation to the Commissioners' recommendation (on or before 26 June 2016).

This paper recommends the board accepts the recommendation to confirm the Newmarket Level Crossing Project NoR under section 172 (1) Resource Management Act 1991 (RMA) and approve the modification of conditions 18.7 to align with the Best Practicable Option (BPO) for noise mitigation in accordance with s16 of the RMA and condition 18.8 to alter the word "approval" to "certification" of the construction noise management plan in accordance with the outline plan process.

Strategic context

The Project will provide for the objectives of the Auckland Plan, and contribute to the Integrated Transport Plan 2012-2041 and Statement of Intent 2015/16-2018/19.

Background

The at-grade level crossing at Sarawia Street is located on the Newmarket Branch Line which is the busiest section of rail track. Closing the existing level crossing will improve the efficiency and operation of the higher frequency rail network and network performance.

The preferred option for alternative access to Laxon Terrace and Youngs Lane is a new road between Cowie Street and Laxon Terrace.¹

The new road will be approximately 260m in length and a total of 7.4m in width, consisting of two 2.5m wide traffic lanes, two 0.3m wide drainage channels, and a 1.8m wide footpath on one side. The new road will be designed as a low speed environment, with traffic calming measures at several locations including a pedestrian refuge near 4 Cowie Street and a single-direction chicane near Laxon Terrace. Stormwater treatment measures include a vegetated swale and rain gardens.

¹ Board Resolution December 2013 - Approved by the Board.

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The NoR for the Project encompasses all proposed works necessary to construct, operate and maintain the new road between Cowie Street and Laxon Terrace. Resource consents were sought and granted relating to matters such as stormwater discharge, earthworks, tree removal from a Significant Ecological Area (Newmarket Park) and works on contaminated land. The grant of consents has been appealed to the Environment Court.

The Commissioners' recommendation

The Commissioners' were required to consider the Newmarket Level Crossing Project proposal, submissions, and evidence from AT and AC and their experts, and whether the conditions proposed by AT were sufficient to address the effects generated by the Project. The Commissioners' recommended confirming the NoR subject to the conditions put forward by AT with the exception of a recommended change to Condition 18.8 relating to "approval" by AC of a construction noise management plan.

Further discussions between AT and AC have concluded that "certification" is the appropriate term as the construction noise management plan will be provided with a suite of management plans to AC as part of the outline plan process and AT's adaptive management framework. In accepting this change, AC requested additional changes to condition 18.7 in relation to the mitigation proposed by the construction noise management plan. The proposed changes ensure that where AT cannot meet the noise standard, the construction noise management plan as far as practicable will identify suitable mitigation which achieves the BPO under the RMA. The proposed change is considered appropriate and in accordance with the requirements of the RMA and provides a measure for which the construction noise management plan can be certified by AC. It is recommended that the wording of Condition 18.7 and 18.8 be altered (as set out in **Attachment 3**) and issued with AT's decision.

The Commissioners' concluded "that the Newmarket Crossing project has been envisaged for the wider community to benefit from improved rail journey times through the busiest section of rail track in the country and for Auckland Transport and KiwiRail to operate their infrastructure safely and efficiently. It will also contribute to encouraging people to adopt public transport modes, being a long-term strategic objective for the region which is reflected in the relevant planning instruments. Public access to Newmarket Park will be maintained and no longer involve having to pass directly across the railway lines."

The Commissioners noted in their recommendation that "the wider benefits [of the Project] outweigh the interests of the Cowie Street residents whose principal concern is to secure the status quo so far as their street and its amenity is concerned."

Next steps

Subject to Board approval:

- General Counsel, pursuant to Delegation Instrument ATDI2012/01 from the Chief Executive dated 17 July 2013, will notify AC of AT's decision to confirm the Newmarket Level Crossing Project NoR and conditions as outlined in the recommendation.
- AC must serve a copy of the decision on all submitters and directly affected landowners/occupiers within 15 working days of AT making its decision. Submitters may lodge an appeal to the Environment Court within 15 working days from when the decision is served.

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- It is anticipated that an appeal to the NoR will be received from Cowie Street Residents Association Incorporated, Parnell Incorporated. and Parnell Community Committee Incorporated (in addition to the appeal to the resource consent applications already received).
- Based on experience from other recent appeals, it is expected all parties will agree to participate in Environment Court assisted mediation, likely to occur in September/October 2016. If an Environment Court hearing is required post mediation, the matters will likely be set down for a hearing in December 2016/January 2017.
- A confirmed or modified designation will be included in the operative Auckland Council District Plan (Isthmus Section) and the Proposed Auckland Unitary Plan.

Attachments

Attachment Number	Description
1	Commissioners' recommendation
2	Environment Court Appeal Notice from Cowie Street Residents Association Incorporated, Parnell Community Committee Incorporated and Parnell Incorporated
3	Amended Condition

Document ownership

Submitted by	Nesh Pillay Principal Planner	
	Recommended by	Aimee Barwick Planning Integration Manager
	Deb Godinet Group Manager Property & Planning	
	Greg Edmonds Chief Infrastructure Officer	
Approved for submission	David Warburton Chief Executive	

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Glossary

Acronym	Description
AC	Auckland Council
AT	Auckland Transport
BPO	Best Practicable Option
NoR	Notice of Requirement
RMA	Resource Management Act 1991



14 June 2016

Auckland Transport
Private Bag 92250
Victoria Street West
Auckland 1142

Attention: Nesh Pillay

Dear Sir or Madam,

**DECISION RESOURCE CONSENT APPLICATIONS R/LUC/2015/3627,
R/REG/2015/3629 AND R/REG/2015/3633**

**RECOMMENDATION - PROPOSED PLAN MODIFICATION 380 (NOTICE OF
REQUIREMENT FOR NEWMARKET RAIL LEVEL CROSSING PROJECT)**

Application Numbers:	Proposed Plan Modification 380 (Notice of Requirement for a Designation for the construction, operation and maintenance of a new road connecting Laxon Terrace to Cowie Street, including the construction of a bridge over the Newmarket Branch Line and the closure of the existing connections between Sarawia Street and Laxon Terrace, Newmarket). Resource consents: R/LUC/2015/3627, R/REG/2015/3629 and R/REG/2015/3633
Applicant:	Auckland Transport
Resource Consents Activity Types:	Earthworks within a Significant Ecological Area; Vegetation Removal; Soil Disturbance under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health; Stormwater Diversion and Discharge and Contaminated Land Discharge.
Location:	Sarawia Street, Laxon Terrace, Cowie Street and Newmarket Park, Newmarket

A. Resource Consents - Decision

The above application was heard by Auckland Council Hearing Commissioners on the 19 - 20 April 2016. After consideration of the Council Officers' reports, the legal submissions and evidence of the Applicant and Submitters, the Independent Hearing Commissioners have resolved that the above Resource Consents applications for the Newmarket Rail Level Crossing Project be **granted with conditions**.

A copy of the decision of the Hearing Commissioners is attached, and will be forwarded to every person who made a submission. It outlines the basis for the decision and any associated conditions. A copy of the decision and plans will be uploaded on the Council website under 'Meetings and Agendas - Hearings'.

If you are the applicant or a submitter, and you disagree with the decision, or parts of it, you can lodge an appeal under section 120 of the Resource Management Act 1991. A notice of appeal shall be lodged with the Environment Court in the prescribed form and served on the Council (Private Bag 92300, Auckland 1142) within 15 working days' of receiving this decision. A copy of the notice of appeal shall be served on all submitters within 5 working days of lodging the appeal with the Environment Court.

If an appeal is lodged, any person who made a submission on the application may become a party to the proceedings by lodging a notice under section 274 of the Resource Management Act 1991.

The information on appeals in this letter is provided as a guide only and does not constitute legal advice. Information on the appeal process can be found on the Environment Court website www.justice.govt.nz/courts/environment-court.

Pursuant to section 116 of the Resource Management Act 1991, this consent will not commence until any appeals are withdrawn or decided.

If you have any queries regarding the decision on the resource consent applications, please contact Fritha Witton on 09 352 2622 and quote the application numbers.

B. Proposed Plan Modification 380 (Notice of Requirement for Newmarket Rail Level Crossing Project) – Recommendation

Proposed Plan Modification 380 was heard by Auckland Council Hearing Commissioners on the 19 - 20 April 2016. After consideration of the Council Officers' reports, the legal submissions and evidence of the Applicant and Submitters, the Independent Hearing Commissioners have recommended that Proposed Plan Modification 380 be **confirmed, subject to conditions**.

A copy of the Hearing Commissioners' recommendation for Proposed Plan Modification 380 (Notice of Requirement for Newmarket Rail Level Crossing Project) is attached.

Under section 172 of the Resource Management Act 1991, as the requiring authority, Auckland Transport has 30 working days from receipt of Hearing Commissioners' recommendation in which to advise Auckland Council whether it accepts or rejects the recommendation in whole or in part. If the requiring authority rejects the recommendation in whole or in part, or modifies the requirement, the requiring authority must give reasons for its decision and must advise the Auckland Council of its decision.

Under section 173 of the Resource Management Act 1991, Auckland Council shall, within 15 working days after the requiring authority's (Auckland Transport) decision, serve on all submitters and landowners and occupiers directly affected by the decision a copy of the requiring authority's decision.

Under section 174 of the Resource Management Act 1991, there is a right of appeal to the Environment Court by any person who made a submission on the above requirement and Auckland Council (as the territorial authority). An appeal must be lodged with the Environment Court and served on the requiring authority (Auckland Transport) within 15 working days of receipt of the decision. A copy of the appeal must be served on Auckland Council and submitters on the above requirement within 5 working days of lodging the appeal with the Environment Court.

If an appeal is lodged, any person who made a submission on the application may become a party to the proceedings by lodging a notice under section 274 of the Resource Management Act 1991.

Information on the appeal process can be found on the Environment Court website www.justice.govt.nz/courts/environment-court

If you have any queries regarding the recommendation on the Notice of Requirement, please contact Joao Machado on 027 295 0386.

Yours faithfully,



Fritha Witton
Senior Planner, Major Infrastructure Projects Team



Joao Machado
Team Leader Planning – Central & Islands

Appeals Information Sheet

RIGHT OF APPEAL (Applicant and Submitters)

The Applicant and/or Submitters may appeal the Council decision under Sections 120 and 358 of the Resource Management Act 1991, as outlined below.

LODGING AN APPEAL

If you decide to lodge an appeal with the Environment Court under sections 120 or 358 of the Resource Management Act 1991 you must do so:

- a. within 15 working days of receiving this letter; **or**
- b. within 15 working days of receiving notice of the Council's decision on your objection on costs.

Refer to the Practice Notes of the Environment Court before lodging any proceedings. These Practice Notes give you a guide to the practice and procedure of the Environment Court. You can find the Practice Notes on the Ministry of Justice's website: www.courts.govt.nz/courts/environmental-court

You should also refer to the Resource Management (Forms, Fees, and Procedures) Amendments Regulation 2006 for the correct form for your proceedings. These forms are available on www.mfe.govt.nz.

A cost of lodging most appeals with the Environmental Court is \$511.11 GST inclusive.

If you are in any doubt about the objection or appeal procedures you may wish to contact this office, or consult a lawyer, for further information.

Recommendation on a Notice of Requirement and decision on applications for associated resource consents

SUBJECT: Notice of Requirement for a designation for the Newmarket Level Crossing Project and applications for associated resource consents under the Resource Management Act 1991 by Auckland Transport at Sarawia Street, Laxon Terrace, Cowie Street and Newmarket Park, Newmarket. Hearing held at the Town Hall, Auckland, commencing at 9.30 am on 19 April 2016

PURSUANT TO SECTION 171 OF THE RESOURCE MANAGEMENT ACT 1991 THE NOTICE OF REQUIREMENT, AS MODIFIED, IS RECOMMENDED TO BE CONFIRMED. PURSUANT TO SECTION 104B OF THE ACT, THE RESOURCE CONSENTS ARE GRANTED. THE FULL RECOMMENDATION AND DECISIONS ARE SET OUT BELOW

Hearings Commissioners:	The Notice of Requirement and the applications were heard by independent Hearings Commissioners consisting of:	
	Miss Leigh McGregor	(Chair)
	Ms Janine Bell	
	Ms Pamela Peters	

Council Officers and Consultants:	Ms Fritha Witton	Senior planner (resource consents)
	Mr Chris Scrafton	Planning consultant (Notice of Requirement)
	Mr Andrew Gysberts	Manager, Major Projects
	Mr Scott Paton	Development Engineer
	Mr Jon Styles	Acoustics engineer
	Mr Leo Hills	Traffic engineer
	Ms Rosa Cockburn	Democracy Advisor - Hearings

For the applicant:	Mr Gerald Lanning - legal counsel with Ms Antonia Smith
	Mr Nicholas Seymour – electrical engineer, project director
	Mr Adrian Price – team leader – rail, public transport capital improvements, Auckland Transport
	Mr Jeremy Gibbons - civil and transport engineer
	Dr Moustafa Al-Ani – civil engineer (bridges)
	Mr Richard Donaldson – principal rail operations advisor
	Ms Siiri Wilkening – acoustics engineer
	Ms Yanesherie (Nesh) Pillay – principal planner
	Ms Melaina Voss – planning consultant
	Ms Helen Preston Jones – landscape architect
	Mr Matthew Paul - arborist
	Mr Alok Vashista – engineer and senior parking design and policy coordinator, Auckland Transport
	Mr Warren Burt – stormwater engineer

Submitters:	Dr Martin Putterill
	Mr William Carson
	Cowie Street Residents Association, Parnell Community Committee and Parnell Inc. represented by Mr Russell Bartlett QC with Mr Stephen Brownhill, legal counsel, with evidence called from:
	Mr Hamish Firth – planning consultant
	Mr John Parlane – traffic engineer
	Mr Clive Baddeley – civil contracts manager
	Mr Nicholas Robinson - landscape architect
	Mr Selwyn Rabbits – mechanical engineer
	Mrs Debbie Haysom – Cowie Street resident
Mrs Debbie Haysom	
Laxon Terrace and Youngs Lane Residents Group represented by Mr Michael Murray	
KiwiRail Holdings Limited represented by Ms Rebecca Beals, resource management planner, and Mr Carl Mills, manager – operations development	

RECOMMENDATION AND DECISIONS OF THE COMMISSIONERS

1.0 INTRODUCTION

- 1.1 Auckland Transport has issued a Notice of Requirement (“NoR”) for a designation and applied for associated resource consents to enable the construction, operation and maintenance of a new road bridge over the Newmarket branch railway line to connect Laxon Terrace to Cowie Street in Newmarket. If approved the existing at-grade connection between Sarawia Street and Laxon Terrace will be closed. The project has been proposed to improve pedestrian and traffic safety and to improve the frequency of rail movements through Newmarket with the introduction of more efficient electric trains on the region’s network.
- 1.2 Auckland Transport is a Council Controlled Organisation and is tasked by section 39 of the Local Government (Auckland Council) Act 2009 with contributing to an effective, efficient and safe Auckland land transport system in the public interest. Section 47 of that statute deems Auckland Transport to be a requiring authority for transport purposes in the Auckland region. While KiwiRail manages the Crown’s interest in the rail corridor and associated infrastructure, Auckland Transport has obligations to improve the number and reliability of the train services, upgrading railway stations and services, and developing facilities.
- 1.3 There are a number of issues with the current at-grade crossing in Newmarket, including delays caused to rail services while waiting for the safety barriers to be opened and closed when allowing traffic to cross the lines; noise and other impacts for neighbouring residents; and an increased safety risk because of the number of trains that pass through the crossing. At present there are around 10 trains an hour and closure of the crossing is expected to increase this hourly figure by four trains (two in each direction) under the existing signalling regime.
- 1.4 The objectives for the current project are:
- *to improve the operation of the Auckland rail network by removing the potential safety issue at the existing at-grade level crossing;*
 - *to provide an alternative vehicle access to and from Laxon Terrace and Youngs Lane (both on the Remuera side of the rail alignment) which would*

otherwise be isolated from the surrounding area if the level crossing access was to be removed;

- *to retain pedestrian and cycle connections between Parnell Road and the Newmarket Park area;*
- *to take account of the interests and preferences of stakeholders including the Parnell Local Board, community groups, park users, Mana Whenua and local residents; and*
- *to achieve a compatible urban design that is safe and environmentally sensitive.*

1.5 The Notice of Requirement and the resource consent applications were bundled together for consideration as an integrated proposal and heard at a public hearing in Auckland before three independent Commissioners with delegated authority from the Council to make a recommendation to Auckland Transport on the NoR and to decide the consent applications.

2.0 THE SITE, THE LOCALITY AND THE EXISTING ENVIRONMENT

2.1 Cowie and Sarawia Streets are on the border of Newmarket, with the latter situated very close to the major roundabout on the eastern side of that centre where Broadway joins Parnell Road. Each of the roads is accessed from Parnell Road. The topography of the immediate area slopes relatively steeply to the south and down to a gully where the railway lines pass through the area to either Parnell and the Britomart Station or in the other direction to the nearby Newmarket station. The Newmarket rail station is a major hub for all rail movements through the Auckland region and feeds a high volume of rail traffic to the west and the south and beyond. The junction is commonly known as the Newmarket Triangle because of the routes that coincide there.

2.2 Cowie Street is currently a short no exit road while Sarawia Street provides the only through road access across the railway lines to residents of Laxon Terrace and Youngs Lane on the other side of the gully. If the project is approved those positions would be reversed: Cowie Street would then supply the road access link and Sarawia Street would become a no exit road with barriers being installed to prevent any through movements. Newmarket Park also lies on the southern side of the gully,

and access for pedestrians and cyclists to the reserve is gained from Sarawia Street while the only road access to the Park is located in Ayr Street further to the east.

- 2.3 Both Cowie Street and Sarawia Street have been settled since the 19th century while development in Laxon Terrace and Youngs Lane is relatively new, with the more recent Broadway Park apartment developments lying beyond and accessed from Laxon Terrace by foot and cycle only using an accessway that is too narrow to allow any vehicles to pass through. Furneaux Way lies beyond this. During the consultation phase of the project residents of Broadway Park made it known that they would strenuously oppose any suggestion that a link might be created by forming the existing path into a road or thoroughfare that would then join the Laxon Terrace and Youngs Lane area to Furneaux Way and from there provide access to and from Remuera Road instead of Parnell Road. The Laxon Terrace and Youngs Lane Residents Group was established for the same purpose, namely specifically to participate in consultation of a preferred option process.
- 2.4 There are 50 residential units in Cowie Street, some of which are townhouses or apartments contained in multi-unit buildings. The individual houses are large and well established and have sizeable and well-tended gardens and mature trees. At the lower end of the street is a multi-unit development on the edge of the gully overlooking the railway lines, and along with the more elevated properties in the street has views over Newmarket Park to Hobson Bay and the harbour beyond. Part of the multi-unit property at 9 Cowie Street will be required to be taken for the project. It was apparent on our inspection of the area that around three of the houses closer to Parnell Road are used for business purposes although each of these appeared to provide off-street parking for their clients. Cowie Street has 21 kerbside parking spaces while there are only six small spaces on Laxon Terrace and none at all in Youngs Lane.
- 2.5 Development in Sarawia Street has a different character with numerous older style flats (principally of a mock Spanish style) and newer multi-storey apartment buildings being predominant on both sides of the carriageway. Both streets have on-road parking which we were told is heavily utilised by people who work and shop in the Newmarket area with the local area being fully 'parked up' by around 7am each week day. There is no formal pedestrian crossing installed on either road.
- 2.6 There are 53 dwellings in Laxon Terrace and Youngs Lane, with 18 of those located in four apartment blocks which are part of the Broadway Park development. Local

resident and Residents Group spokesman Mr Murray said a further 12 dwellings have recently been approved for construction in Youngs Lane. On the edge of Newmarket Park at 3 Laxon Terrace is a block of 21 apartments which will be affected by stormwater and other construction works if the project proceeds. Two Pin Oak trees on the boundary of this property with the existing line will remain.

- 2.7 In the gully itself (at Sarawia Street) the rail lines are the most obvious feature. These are crossed by way of a level crossing with barrier arms and an alarm warning system. A separate pedestrian/cyclist path on the eastern side includes a metal 'maze' with automatic gates that close whenever the barriers come down. Numerous train movements pass through this crossing every day, with trains being held back at the Newmarket Station until the tracks are cleared of traffic at the crossing point. In simple terms the proposal has been designed to separate the road and rail movements for safety reasons as well as to make more efficient use of the electric trains which have come on line and consequentially to avoid delays and thus carry more passengers because the frequency of services can then be increased.
- 2.8 In the wider area beyond the major Parnell Road thoroughfare is the Jubilee Building (the former home of the Blind Institute) on the opposite side of the road to Cowie Street, the Auckland Domain further to the north, and the Newmarket and Parnell shopping centres to the west and east respectively. It would be fair to say that traffic in the general area is heavy but our observation was that both Cowie and Sarawia Streets are quiet in terms of traffic movements.
- 2.9 A range of zones will be traversed by the new road and bridge, namely land zoned for residential, open space and transport purposes, as well as being subject to designations, overlays and other notations in the Auckland District Plan: Isthmus Section ("the District Plan") and the Proposed Auckland Unitary Plan ("PAUP"). The most relevant of the notations for present purposes is a Significant Ecological Area under the PAUP on a portion of Newmarket Park where some vegetation needs to be removed and works will be conducted, and there is a Special Character Overlay which covers the area involved.

3.0 THE PROPOSAL

- 3.1 The project involves construction, operation and maintenance of a new road to connect Laxon Terrace and Youngs Lane to Cowie Street and construction of a

bridge over the Newmarket branch railway line so the rail lines will no longer need to be crossed at grade. The level crossing between Sarawia Street and Laxon Terrace will be closed when the works are completed. The new road is proposed to be a low speed environment with traffic calming measures being implemented at several locations, including a pedestrian refuge outside 4 Cowie Street and a single direction chicane near Laxon Terrace. Apart from a 200m² area required to be taken from 9 Cowie Street the land to be used for the project is owned by either the Council or KiwiRail.

- 3.2 The existing pedestrian and cycle access from Newmarket Park to Laxon Terrace and Youngs Lane will be relocated so that access to the Park for these users will remain. A *pou* (symbolic pole) and seating area presently at the Park entrance from Laxon Terrace near the apartments at No.3 will be relocated and pathways altered. Around 30 trees will be removed from the park property and mitigation planting will be undertaken elsewhere on the reserve. A letter from the Council's acting manager, local and sports parks central, dated 8 September 2015 records an assessment had concluded on its behalf that "nothing hugely significant will be removed" and gave approval for the proposed removals¹.
- 3.3 As part of its application material, Auckland Transport submitted a "Fact Sheet" prepared by KiwiRail, which outlines issues associated with the existing at grade railway level crossing at Sarawia Street, being its impact on train operations, its impact on neighbouring residents and that it presents a safety risk because of the high number of trains that pass over it. The fact sheet explains what distinguishes the Sarawia Street crossing and makes it a priority for closure, how it impacts the current train operations, how it impacts on neighbouring residents, the length of time the safety barriers are down, noise issues from the alarm bells at the crossing and the impact of the level crossing on future rail development, particularly with the introduction of electric trains.
- 3.4 The issues identified with the existing crossing have been investigated for a number of years by various parties including the Council, Auckland Transport and KiwiRail. Mr Donaldson and Mr Mills detailed the operational benefits of the Newmarket Crossing project in terms of operational, travel time savings and safety in their evidence with Mr Mills explaining on behalf of KiwiRail that there is extremely limited spare capacity in this part of the network, thus creating a cascading effect of delays.

¹ Dr Putterill construed this letter as an agreement to sell the land concerned but it is clearly headed as a landowner approval and no mention of an actual or potential sale is made in its content

Removing the level crossing will supply capacity, which we understood from the evidence is particularly important as this is the busiest section of railway in the country, and the site of a major railway hub (the “Newmarket Triangle”), and even a saving of a few seconds in travel time can produce positive effects in terms of railway traffic flows on lines elsewhere and provide for efficiency overall.

- 3.5 Construction of the Crossing project is proposed to start as soon as the NoR has been confirmed and the resource consents granted with completion proposed for mid-2017. The construction works will be conducted in staged sequences with the new road and the bridge abutments forming the first stage. The new 260 metre road will be adjacent to Newmarket Park and lead from Laxon Terrace to the eastern bridge abutment. This stage 1 work involves clearing vegetation on the western border of the park, constructing retaining walls along the road alignment and a gated 50m private access road for KiwiRail that will lead toward the Parnell tunnel, as well as creating a vegetated swale and a raingarden for stormwater attenuation and disposal purposes. At the same time both bridge abutments will be formed by drilling three bored concrete piles down to competent rock in each case and then placing wingwalls and pre-cast concrete panels around the framework that is created. Where possible the wingwalls will be aligned with the road direction to minimise the volume of fill and associated earthworks that will be required.
- 3.6 This will be followed by construction of the western bridge approach on KiwiRail land and also part of the multi-unit site at 9 Cowie Street including clearing vegetation, including some large trees, on the latter. Stage 3 is when the seven beams that will form the base of the pre-cast concrete bridge superstructure will be craned over the gully and fixed to the abutments as well as being tensioned together. The bridge span will be approximately 20 metres and the structure will include two 2.7m² traffic lanes, drainage channels and a 1.8m footpath on one side. This stage will occur during a long weekend “block of line”, i.e. for safety reasons all train movements will be stopped while the works over the gully are taking place. Construction on the bridge deck surface will be completed at this time, including paving the surface, installing the edge barriers and utilities although this finishing work will not impact on any train movements. The works will take place from the eastern bridge approach to minimise construction impacts on local residents and construction access will be achieved through Sarawia Street.

² Amended from 2.5 metres during the hearing

- 3.7 The next stage involves paving the new roadway, installing street lights, road signage and other urban design features. After that 'tie-ins' such as road paving, street lights and drainage works will be installed in Cowie Street and Laxon Terrace. The final stage involves closing the southern end of Sarawia Street with a 'hammerhead' junction and some planting to make it obvious that it is no longer a through road and the level crossing, barrier arms, pedestrian refuge and alarm bells will be removed.
- 3.8 The volume of earthworks required for the project is relatively small. Around 300m² of cut material is expected and will be sent off site because of the potential presence of contaminated materials. About the same volume of fill will be required to be imported for use, mainly for the bridge abutment locations.
- 3.9 The Assessment of Environmental Effects ("AEE") advised that the relevant vibration limits can be complied with at dwellings 20 metres or more from the construction site where equipment such as vibratory rollers will operate. Ms Wilkening's evidence was the property at 3 Laxon Terrace is closer than this and while there is a risk of some vibration effects that will be mitigated by the size of the equipment to be used and a dilapidation survey will be carried out on this property before the works start so there is a baseline for any damage alleged afterwards. This property is also the closest receiver in terms of construction noise.
- 3.10 A stormwater swale and a lined raingarden are proposed for stormwater attenuation and disposal purposes. The location of the raingarden was shifted closer to 3 Laxon Terrace while the application was being processed and is now shown in its preferred location. The reason for shifting it was explained as being so stormwater will not have to be conveyed back along the Council's park track in order to dispose of it. Mr Burt advised that stormwater from the roads is currently not treated and discharges from Cowie Street to enter into a combined stormwater-wastewater connection. The new swale will provide treatment and from its outlet stormwater will be conveyed through a piped system. The result should be that cleaner stormwater eventually discharges into Hobson Bay.
- 3.11 The area of the proposed works has been extensively modified during the 20th century and the archaeological assessment lodged on behalf of Auckland Transport advised that the 19th and early 20th century rail track bed has been modified on numerous occasions, most recently for the Auckland Rail Electrification Project (from 2010 on). There were no archaeological effects of any moment raised during the hearing.

4.0 STATUTORY REQUIREMENTS

The Notice of Requirement

4.1 Part 8 of the RMA deals with designations and heritage orders, including notices of requirements for designations. Section 168 provides simply that a requiring authority may give notice of its requirement for a designation for a project or work. Auckland Transport is a requiring authority and has had that status for a considerable time. The NoR is to be considered under section 171. This requires when considering a requirement and any submissions received, and subject to the broad overall judgement required under Part 2 of the Act, we must 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) the 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 we consider reasonably necessary in order to make a recommendation on the requirement.

4.2 The recommendation made to the requiring authority following those considerations is to be one of the following:

- that the requiring authority confirms the requirement;
- that it modifies the requirement;
- that conditions are imposed; or

- that the requirement be withdrawn.

We consider the NoR in terms of the relevant requirements further on.

The Resource Consents

- 4.3 Resource consents are required for land disturbance and vegetation removal, including in a Significant Ecological Area, stormwater discharges, and discharges of contaminants to land or water from land containing elevated levels of contaminants that is to undergo land disturbance. While each of these has a different activity classification, the consent for land disturbance and vegetation removal is classified as a discretionary activity and because the various activities overlap they are to be 'bundled' together for the purposes of the decision. This means that the strictest classification is to be applied to consideration of the consents overall and as a result the consent applications are to be considered as discretionary activities. Consent is also required under Regulation 10 of the National Environmental Standard for Assessing and Managing Contaminants in soil to Protect Human Health ("NES: Soil").
- 4.4 Because of the discretionary activity classification section 104B of the RMA applies. This provides that a consent authority may grant or refuse consent, and if the consents are granted then conditions may be imposed pursuant to section 108. The discharge consents are also to be considered in the context of sections 105 and 107. All considerations are subject to section 104 and, following that, to a broad overall discretionary judgement after taking account of the matters set out in Part 2.
- 4.5 Section 104 requires that in considering the applications we must have regard to:
- (a) any actual or potential effects on the environment of allowing the activity concerned; 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 district plan or proposed district plan; and
 - (c) any other matter we consider relevant and reasonably necessary to determine the application.

- 4.6 Part 2 sets out the purpose and principles of the Act in section 5; matters of national importance in section 6 which, where relevant, we must have regard to; section 7 lists other matters to which we are to pay particular regard; and section 8 requires that the principles of the Treaty of Waitangi are to be taken into account when reaching a decision. In that regard we record that a Cultural Impact Assessment (“CIA”) was prepared by Ngāti Maru Runanga and lodged with the application materials. We return to its content later but note that it included a disclaimer to the effect that provision of the CIA was not to be taken as “a sign off for consent”.
- 4.7 Aside from the RMA processes Auckland Transport will have to obtain an authority from Heritage New Zealand for works on an archaeological site, gain relevant approvals from the affected landowners, and also any party already holding a designation over the land involved, which in this case is KiwiRail. Steps will also have to be taken to acquire the affected portion of land at 9 Cowie Street and to revoke the reserve status of the land in Newmarket Park which is required for the project and to vest the land involved in the Council as road.

5.0 NOTIFICATION AND SUBMISSIONS

- 5.1 The NoR and applications were notified to the public on 7 October 2015 with the submission period having ended on 18 November. This was an extended closing date and had been requested by Auckland Transport. Eleven submissions were lodged with the Council on each of the NoR and the resource consent applications and there was a further combined submission from KiwiRail. Of these, four were in support of the resource consents, one was neutral and six opposed the consents being granted. In respect of the NoR five submitters were in support and six opposed it. In February the submission lodged by Vector Limited in respect of the NoR was withdrawn.
- 5.2 The issues raised by the submissions included: the effects of increased traffic on Cowie Street and associated safety, parking and loss of character and amenity concerns; ecological effects in terms of the proposed tree and vegetation removals; construction effects such as noise and vibration; stormwater effects and the proposed stormwater management approach; effects on archaeology and heritage; a lack of meaningful consultation; and the adequacy of Auckland Transport’s consideration of alternative routes and methods, in particular in its having discounted

the prospect of using an underpass instead of an over-bridge to achieve the outcome sought.

- 5.3 One submission alleged the proposal failed to meet the threshold tests set out in section 104D of the Act, but as that provision applies to non-complying activities and not to discretionary activities that ground of opposition is not correct and is not discussed further as a result. In a similar vein, allegations of effects on property values and a lack of any assessment under section 32 of the Act are not relevant. Alleged effects on property values have been held in a number of cases not to constitute effects on the environment for the purposes of the RMA (an example being *Foot v Wellington City Council*, Environment Court decision W73/98 dated 2 September 1998), and the section 32 evaluation process applies only to plan changes and not to considerations of NoRs or consent applications. Another submission made reference to a former landfill site but detailed site investigations conducted on behalf of Auckland Transport had showed that there has been no landfill inside the project area although there were quantities of fly-tipped materials which had been thrown down the gully banks including some fibreboard.
- 5.4 KiwiRail's combined submission was supportive but at the same time it wished to be assured that any land not required for the ongoing operation of the project would not be subject to the proposed designation once the construction works have been completed. Cycle Action sought that the proposed footpaths be wider, and that bypasses be included in the chicanes in order to create a shared path facility for both pedestrians and cyclists.
- 5.5 There were no written approvals supplied as part of the application materials.
- 5.6 Following receipt of the submissions, reports and recommendations for each of the NoR and consent applications were prepared on behalf of the Council by Mr Scrafton of MWH Limited for the NoR and senior Council planner Ms Witton for the resource consents after considering the application materials, the submissions received, the actual and potential effects of the project and the relevant statutory and non-statutory instruments as well as other matters. They were assisted by a number of technical and evaluative reports prepared by Council specialists and external consultants in a range of specialities and produced a combined report which we are referring to as either "the section 42A report" or the "Council's report(s)" and those who reported as the Council's "reporting team". Because of the depth of detail provided in the

application materials and the Council's reports it is not necessarily being repeated in these recommendations and decisions.

- 5.7 In the section 42A report the reporting team had reserved their position in respect of the NoR because at the time it was written they were awaiting further information to be provided by Auckland Transport with respect to its consideration of alternatives and managing the effects of parking that would be lost in Cowie Street. They nevertheless provided marked up copies of the conditions that were being recommended for the NoR and the consents and which had been supplied to the Council on behalf of AT. Ms Witton recommended that the resource consents be granted for the reasons given throughout the Council's report and also summarised as part of a four page table of conclusions in the hearing agenda ("table 23.1"). At the conclusion of the hearing Ms Witton advised her recommendation had not changed. Mr Scrafton was satisfied he had received the information he required and with the consideration given to alternatives, and went on to recommend that the NoR be approved. Mr Hills maintained the view expressed in his traffic assessment report that a pedestrian refuge on Cowie Street was not required and said that calming measures could be installed without any need to remove the existing supply of on-street parking there.

6.0 ISSUES IN CONTENTION

- 6.1 We address the NoR first in this section as the resource consents are subordinate to it. The principal issue for the hearing on the part of the Cowie Street residents (who also presented on behalf of the Parnell Community Committee, and Parnell Inc.) was whether Auckland Transport had given adequate consideration to an alternative of constructing an underpass from Laxon Terrace to Sarawia Street instead of the proposed over-bridge which would connect with Cowie Street instead. Allied to that were the potential adverse effects on Cowie Street and its amenity. Directly opposing them was the Laxon Terrace and Youngs Lane Residents Group who strongly favoured the bridge proposal and who considered an underpass would not be in the public interest for a number of reasons which Mr Murray articulated in his presentation.

Adequacy of Consideration of Alternatives and Effects on the Environment

- 6.2 The question of alternative sites, routes or methods of undertaking the work arises because of section 171(1)(b) which is set out earlier. We have combined this discussion with that on the effects on the environment as the submitters who appeared tended to merge their comments on effects with the relief they were seeking by way of our recommending that the NoR be withdrawn or requiring that the underpass option be adopted by Auckland Transport. To some extent many of the effects on the environment will also be generated by the activities sought to be authorised by the resource consents and where they do we will not repeat the discussion later.
- 6.3 For the purpose of the statutory provision we are to have particular regard to whether Auckland Transport has made sufficient investigations of alternatives to satisfy itself as to the alternative it was proposing rather than having acted arbitrarily or giving only cursory consideration to them. It is not however required to eliminate speculative or suppositions options³ or to examine every possible alternative. The test is whether *adequate* consideration has been given. The focus is on the process rather than the outcome.
- 6.4 It is important to record at the outset that the policy function of determining the most suitable alternative lies with the requiring authority and not with the Council. Options for managing the Newmarket level crossing project have been considered in various iterations since 2004 by AT, its predecessors and other organisations such as Kiwirail. These considerations culminated in a Scheme Assessment report in 2013 which summarised a large number of reports. This was updated in 2015 after the underpass option had been investigated and evaluated including an independent review by the engineering firm AECOM.
- 6.5 In the section 42A report, the Council's reporting team conveyed that they were not satisfied that sufficient details of Auckland Transport's consideration of alternatives had been provided to the Council to facilitate a conclusion on their part that the requirements of section 171(1)(b) would be met and accordingly did not make a recommendation in that respect until it had received the details it had identified. In particular, the reporting team noted that little detail had been provided at that stage regarding:

³ *Bungalo Holdings Ltd v North Shore City Council*, Environment Court decision A052/01; *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347

- a) How the options were originally identified and thus whether the range of options identified was appropriate.
- b) The process or method adopted to assess a long list of alternatives and to refine the long list to a shortlist; and
- c) The technical inputs utilised to refine the long list to a shortlist.

6.6 As covered by Mr Price's evidence, Auckland Transport supplied the following response:

- a) Between 2004 and 2011 five alternative options were identified;
- b) A further three options were identified in 2012;
- c) Two further options were identified between 2012 and 2014, including the Cowie Street Residents Association's underpass option;
- d) These options ("the long list") were assessed between April 2013 and September 2013;
- e) A 2013 Scheme Assessment report was drafted to record both the shortlisting process and identification of a preferred option;
- f) The assessment of the initial options (the long list) had been assisted by internal and external expert advice including:
 - i. Project managers and engineers;
 - ii. Transportation planners;
 - iii. KiwiRail;
 - iv. Auckland Transport operations;
 - v. Property acquisition specialists
- g) Key elements or criteria for informing the shortlisting process were:
 - i. Technical feasibility;
 - ii. Amenity outcomes;
 - iii. Construction disruption; and

- iv. Cost estimates
 - h) No benefit-cost ratio (“BCR”) or formal multi-criteria analysis (“MCA”) was used to consider the long list options. Instead, the shortlisting process had relied primarily on expert judgement; and
 - i) The 2013 Scheme Assessment report had recorded the details of the shortlisting process and was supplied with the NoR materials.
- 6.7 Two options for lowering the road carriageway (underpass options) were explored in 2004 but dismissed due to the need for the significant civil works required to implement them. Mr Price said a variation of the Sarawia Street to Laxon Terrace underpass option was reintroduced in June 2013 following further discussions with the Cowie Street residents. The option of forming an overbridge from Sarawia Street to Laxon Terrace was discounted due to topographical and geographical constraints and Mr Price said this option was considered to be significantly inferior to the Cowie Street bridge option. Other options considered were two variations of a road passing through Newmarket Park and three Parnell Road connections. These were discounted for various reasons including land acquisition issues, potential geotechnical risks including ground stability, issues navigating the Mobil Station on Parnell Road and traffic safety risks in the proximity of the Parnell Road/Ayr Street intersection.
- 6.8 Having reviewed this further information, the reporting team considered that the matters outstanding in terms of the consideration of alternatives had been adequately addressed, and concluded that the considerations had been appropriately undertaken and had satisfied the requirements of section 171(1)(b).
- 6.9 Mr Bartlett QC presented legal submissions on behalf of the Cowie Street residents, the Parnell Community Committee and Parnell Incorporated⁴. The Cowie Street residents maintain that the residential environment in their street and the surrounding area will be adversely affected to such a degree that the NoR should be withdrawn and the consents declined. In his submission the relevant “environment” for present purposes included Cowie Street, Ayr Street, Sarawia Street, Newmarket Park, Laxon Terrace, Youngs Lane and Middleton Road. He advised that the key aspects of the residents’ opposition related to constructability, traffic safety, crime, safety and

⁴ For convenience we have referred to them together as the “Cowie Street residents”

security (Crime Prevention Through Environmental Design or “CPTED”), residential character and amenity values. Mr Bartlett’s submission was the proposal conflicted with the residents’ legitimate expectation that the amenity values of Cowie Street and the surrounding area would be maintained and enhanced in accordance with the residential objectives and policies in the operative Auckland District Plan: Isthmus Section (“the District Plan”).

- 6.10 Mr Lanning’s response to the legitimate expectation point made was set out in the Reply. He said there was no scope in this case to take any such expectation into account because there had been no evidence to establish that the Cowie Street residents had relied on an assurance given by a public authority, made in the lawful exercise of that authority’s powers, but in any event if there was a legitimate expectation it was not one created by Auckland Transport. To the extent that it may have been created by the District Plan provisions then that is taken account of by section 171(1)(a)(iv) and the need to consider the effects on the environment of allowing the requirement under section 171.
- 6.11 Mr Bartlett’s further submission for the Cowie Street residents was Auckland Transport had failed to consider the alternative method in the form of an underpass between Sarawia Street and Laxon Terrace adequately. In this regard Mr Bartlett referred to a number of cases decided by either the Environment Court or the High Court on appeal and also a Board of Inquiry matter, drawing a particular parallel with the Basin Bridge decision (*New Zealand Transport Agency v Architectural Centre Inc* [2015] NZRMA 375), a proposal based on reducing journey times and providing variability for people and freight, thereby facilitating economic development. The cases he cited included *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC2347 which suggests that where private land is involved the extent of the consideration of alternatives should correlate with the extent of private land that will be affected by the proposed designation, and that the greater the impact on private land, the more careful the assessment of alternative sites not affecting private land will need to be. Mr Bartlett submitted the area of public land in Newmarket Park required for the current project is an aspect of this. The measure of adequacy of the consideration will also depend on the impact on the environment of the adverse effects of a proposal. Mr Bartlett submitted the authorities he relied on represented a legal shift for the evaluation of matters under section 171(1)(b) –(d), from procedural to substantial compliance. Mr Lanning disagreed.

- 6.12 Mr Bartlett described the extent of private land required for the project as “significant” and thus requiring greater scrutiny than had been undertaken on behalf of AT. In the context of other roading projects each of the Commissioners has considered in the course of many years we do not accept that characterisation. The extent of the private land required is actually small, being comprised of 200m² to be taken from 9 Cowie Street and a total of 1650m² from Newmarket Park, along with 800m² of KiwiRail’s area. Even if the additional land Mr Parlane mentioned in his evidence was to be added to that, we consider the area then involved would still not be large in relative terms.
- 6.13 In respect of the present project Mr Bartlett argued the residents’ underpass option is neither suppositious nor hypothetical. He said the evidence called for the Cowie Street residents demonstrated this option was viable and could be undertaken with less risk to the environment, particularly in relation to stability and geotechnical considerations. According to their figures the residents had estimated it would also cost less than the bridge and road extension proposal. A wealth of BCR information was supplied with the submitters’ statements and the costs and benefits of the project were set out in the detail of Auckland Transport’s consideration of alternatives.
- 6.14 The submitters’ material did not persuade us that Auckland Transport failed in this aspect of its considerations. More importantly, we draw attention to a portion of the *Queenstown Airport* decision where Justice Whata found [at para 132] “*There is nothing in the language of ss 7(b) or 171(1)(b) that imposes a legal duty on the requiring authority to prepare a cost benefit analysis or require the Court to consider a cost benefit analysis. ... such an analysis may be very helpful and the failure to do one may mean that the Court finds that the assessment of efficiency and/or alternatives is inadequate. But rarely will the failure of the Court to require a cost benefit amount to an error of law. Indeed the full High Court in Meridian Energy Ltd v Central Otago District Council*⁵ considered that the Environment Court had erred by requiring a cost benefit analysis”.
- 6.15 Even though Auckland Transport advised it was increasing the width of the lanes on the overbridge from 2.5 to 2.7 metres⁶ Mr Parlane’s traffic engineering evidence for the Cowie Street residents was the carriageway would still remain too narrow to provide an adequate connection to Laxon Terrace. He acknowledged narrow roads

⁵ [2011] 1 NZLR 513 (PC) at 522

⁶ Which accords with section 7 of its Code of Practice (“ATCOP”)

have been used for short sections of residential streets in the past but said those were usually straight roads over short distances where there were passing opportunities for larger vehicles, but in the present case a truck would “*barely be able to pass an oncoming car and two trucks could not pass each other at all*”. He said a truck would need to stop at the Cowie Street end to allow another to wind its way up the road from Laxon Terrace and “*worse than that, each end of the constrained section would not be visible from the other so a truck driver would have no way of knowing they actually need to stop. Instead it is more likely that one truck will either need to reverse or even drive on the footpath*”. He acknowledged this would not happen often but said it would occur from time to time such as on rubbish collection days. Chicanes to be installed on the bridge before the curve is reached would also not allow sufficient space to pass another vehicle which he regarded as a more than minor adverse effect. We found this difficult to reconcile with Figure 3 of his evidence as that appears to show that there would be at least adequate visibility along the carriageway before the chicanes are reached.

- 6.16 Mr Parlane ventured that the curve and narrow lanes had been designed to slow traffic because of the steep 12% grade for a critical section down from Cowie Street to the point where the bridge will turn toward Laxon Terrace. If the traffic was not slowed then there would be a risk to vehicles and their occupants because of the tracking geometry, and also a risk to pedestrians because the footpath would be on the outside of the curve with no physical barriers to separate the path and the carriageway. He said guard rails, as shown in some of the art work presented in the application documents, could restrict visibility.
- 6.17 In his opinion as a bare minimum the bridge should include 3 metre wide lanes, further widening should be provided to cater for vehicle tracking on the area where the bridge would have a tight curve, and if double height kerbs were to be installed then there should also be an additional clearance of 300mm provided on the carriageway. He said that while widening the bridge as he suggested would mitigate adverse effects on vehicle tracking, at the same time that step could require more land from the edge of Newmarket Park to accommodate the widened road along with the footpath and fences or railings. Sufficient space appeared to be available to do this but it had not been shown on the applicant’s land acquisition plan.
- 6.18 Mr Parlane was not opposed to closure of the level crossing, although he was sceptical about the claim that it is required for safety reasons as there had been no recorded injury crashes in recent years and he considered the traffic flows in the area

are too low for crash models to suggest a problem exists. He was not convinced an underpass would present the 'significant safety challenges' referred to in Mr Price's evidence saying that it could be designed to meet approach speed requirements.

- 6.19 In Mr Parlane's opinion an underpass would be a better solution than the overbridge being proposed as a preliminary design had indicated it would have better lane widths, better manoeuvring for large vehicles, and would provide a more direct and therefore shorter link for vehicles and pedestrians than a bridge would. He acknowledged there would be places where oncoming trucks would need to pass in single file but said there would be space for a truck to wait while another passes through the tunnel.
- 6.20 He said the underpass could be built around 60 metres south of the level crossing "*at a location where the landform is conducive to an underpass*". Mr Robinson produced sketch plans of how the underpass might appear and we noted at the time that a steep escarpment behind its location did not appear to have been taken into account. Mr Parlane provided some detail of the suggested design and configuration of the underpass and advised that it would not suffer from the traffic constraints that in his opinion the proposed new road and overbridge would. A curve on the eastern side of the underpass option would have a radius of 15 metres which is tighter than Auckland Transport's option but would not require a continuous sharp turn through more than 90 degrees and would have the required visibility.
- 6.21 Mr Parlane was aware that underpasses generally are not favoured. He said this is largely because of some very poor examples which had given little thought to public safety, an example being under the Mangere Bridge (which we note is a New Zealand Transport Agency asset). However in his view that does not mean a safe underpass cannot be developed and a short underpass with a wide footpath and traffic lanes is likely to be preferable to a longer bridge option located away from other activities and which also required a long walk between a park and a railway line. In his evidence Mr Firth also concluded that an underpass would provide good outcomes that would adhere with Auckland Transport's objectives and would be better overall. The basis for this conclusion in planning terms was not stated.
- 6.22 Mrs Haysom addressed the apprehended effects for the Cowie Street residents in her statement, saying it would be dramatically altered with the introduction of passing traffic and removal of large trees at its present termination point. Mrs Haysom lives in the original homestead in the area and described Cowie Street as "*a private, leafy,*

boutique residential cul-de-sac, very community based. Our street has remained relatively untouched and authentic in many aspects since we moved in [34] years ago". Her view is there will be a significant change in the street from "a tree-lined, low volume traffic street, to a street with limited parking, an additional volume of traffic each day, all trying to get out onto Parnell Road at a T intersection". She described this turning manoeuvre as "a hazard at the best of times" and said the situation has been worsened by the recent introduction of bus lanes on Parnell Road. Parking in Cowie Street was described as a major problem and she told us that constant calls have to be made to Auckland Transport to have cars parked over driveways, on yellow lines and on the roadside berms removed. In her view this unfavourable situation would be exacerbated if four of the existing on-street parking spaces and also nine private spaces at 9 Cowie Street were to be removed as proposed.

- 6.23 Mr Parlane believed there was no question that residents of Cowie Street would notice the impact of additional traffic. In part this would be due to vehicles travelling up the steep grade into what is currently the quietest part of the road at present and because of the increased flows. The current traffic flow has been measured as 409 vehicles a day with 425 at the Parnell Road end and 107 at the cul-de-sac. He interpreted the Opus traffic counts prepared on behalf of Auckland Transport as increasing this number to 862 movements. Mr Firth said the road will become a "busy thoroughfare" and there would be a consequent loss of character and amenity as a result. Our finding based on the figures provided is the number of increased movements will be small, and less than the capacity of a local road which is the classification of Cowie Street.
- 6.24 As to the parking supply Mr Parlane assessed the impact of removing the four street spaces along with the private spaces from 9 Cowie Street in terms of the assessment criteria in the operative District Plan, including setting out his findings in respect of zonings and activities that do not apply to the land involved. As we are considering a Notice of Requirement and not a consent application, strictly speaking assessment criteria do not apply. When questioned Mr Parlane advised that the PAUP is moving to parking maximums and also that the parking requirements for the Terrace Housing and Apartment Building zone, which the PAUP has proposed be applied to Cowie Street, will be relaxed or minimised.
- 6.25 In the Council's reporting team's final comments after having heard all the evidence Mr Hills' opinion was the effect of removing the on street carpark spaces would be

adverse effect but in his view not significantly so because of the proximity to the Newmarket town centre and to public transport/amenities such as the Newmarket rail station approximately 900 metres away and bus stops on Parnell Road which are around 100 metres away from Cowie Street. He said the zoning proposed by the PAUP recognises this and also encourages use of public transport. Having said that, his opinion was although the effect would not be significant it could be avoided.

6.26 The applicant's position in respect of the on-street parking spaces had been stated in the opening legal submissions and was reiterated in its Reply with Mr Lanning saying on both occasions that it was questionable whether this is an "effect" that can be considered by the Commissioners as on-street parking can be removed or modified by Auckland Transport as a regulatory function in accordance with its parking strategy without the need for any approvals under the RMA. He said Auckland Transport had considered the effect without prejudice to that. However the on-street parking issue would be considered again when the detailed design phase is undertaken.

6.27 In respect of Mr Parlane's analysis using the District Plan criteria, the reporting team did not consider that a loss of the parking spaces at 9 Cowie Street and any potential subsequent inconsistency with rule 12.9.1.2 of the District Plan will be of such significance that the Commissioners should recommend the NOR be withdrawn. Their reasoning, which we have adopted with some minor editing, was:

'The reporting team directs the Commissioners to s171(1)(a)(iv) of the RMA that requires a territorial authority, subject to Part 2 of the RMA, to consider the effects on the environment of allowing the requirement, having particular regard to any relevant provisions of a plan or proposed plan.

From the reporting team's experience:

- a) *It is a common occurrence for a designated public work to infringe District Plan rules as they are often for activities (public works) not anticipated within the relevant zone. A common example of this would be infrastructure within a public reserve. In such a scenario, any infringement of or inconsistency with a District Plan provision is generally considered in the context of Part 2 of the RMA and any potential effects of allowing the requirement.*
- b) *In considering s171(1)(a)(iv) of the RMA as part of an NOR process, greater emphasis is generally placed on objectives and policies of a district plan as opposed to rules. The reporting team considers that the "spot zoning" principle referred to by Ms Voss in her summary statement of evidence, and the fact that s176(a) of the RMA states that s9(3) of the RMA does not apply to a designation adds further credence to the reporting team's view on this matter.*

... the reporting team notes that s171(1)(a)(iv) of the RMA requires the territorial authority to have “particular regard” to relevant provisions of a plan or proposed plan. In the view of the reporting team, have particular regard to does not mean “give effect to” or “be consistent with”. As stated above, the reporting team considers that any infringement of or inconsistency with a District Plan provision should be considered:

- a) Subject to Part 2 of the RMA; and*
- b) In the context of any potential effects of allowing the requirement.*

In this regard:

- a) .. Mr Hills is of the view that the adverse effects of the loss of off-street parking is not significant; and*
- b) As outlined in the reporting team’s s42A report, the reporting team consider that the project is consistent with Part 2 of the RMA.’*

6.28 We have accepted the advice of both the Council and Auckland Transport on this consequential aspect of the proposal and recommend that if possible the on-street parking spaces remain.

6.29 In the reporting team’s final comments after having considered all the evidence presented, Mr Hills’ opinion was the maximum gradient of 12%, the radii of the bends at a minimum of 20 metres, and the revised lane widths of 2.7m were all acceptable and accorded with the ATCOP. However his view was there would be no need for a pedestrian crossing (in any form) in Cowie Street, being one of the reasons behind the proposal to remove the four on-street spaces. His experience with this road was that it is as easy to cross as Sarawia Street which has no crossing. In any event, a significant number of pedestrians currently cross both roads at Parnell Road without any apparent pedestrian safety issues as no pedestrian accidents have been reported in the last 5 years as a result of crossing either Sarawia or Cowie Street. He said traffic calming device(s) can be installed on Cowie Street that do not removing any parking and would still achieve the safety benefits of lowering traffic speeds. An example of this can be found in Temple Street, Meadowbank where a simple speed hump has been installed and parking is permitted over it.

6.30 Mr Hills said there is no need for a footpath wider than 1.8m as it had been designed to accommodate pedestrians only and a width of 1.8m is acceptable and in accordance with ATCOP at this location. He also saw no need for the footpath to be widened to accommodate cyclists due to the predicted low speeds and low volumes of traffic. He concluded by noting that the details of such matters would be subject to a further safety audit once the detailed design has been undertaken.

6.31 Auckland Transport's response to these roading issues in its Reply was that Mr Parlane had not taken account of the existing road widths on Laxon Terrace or the fact that the proposed new road was to be a local road providing access to 50 or 60 dwellings with constrained potential for future development and not, for example, a collector or arterial route being provided as part of a brownfields or greenfields development. The road would comply with the default road widths provided in the ATCOP which also allows for narrower widths if justified for situation-specific reasons. Mr Lanning said the proposed widths will be examined again during the detailed design stage taking safety issues into account. He pointed out also that this is a proposed designation situation, rather than a consent application, being a situation where it is not appropriate to specify all the details.

Character and amenity

6.32 Mrs Haysom believes there will be a significant adverse effect on the character and residential amenities of Cowie Street if the proposed bridge and road extension proceed. Construction would involve removing a number of mature and exotic trees which she said are an important feature of this environment and add to the street's pleasantness and ambience with the established trees and villas also providing an aesthetic coherence. The visual effects of the work were also a concern in the context of a road that to date has been protected from urban development and she queried how the construction noise would be monitored.

6.33 Landscape architect Mr Robinson described the bridge proposal as the creation of a "circuitous and poorly legible route" from Laxon Terrace to Broadway in Newmarket. He said although the road and footpath are proposed to be lit they will run alongside extensive densely vegetated areas which would provide isolation opportunities and entrapment and concealment spots with no good options for escape. In his opinion there would be inadequate surveillance from the dwellings. The proposed road and bridge would therefore be perceived as unsafe by pedestrians, especially at night when the traffic is lighter.

6.34 We were not convinced by this reasoning. The vegetation already exists and furthermore we heard from submitters who clearly do not wish for it be removed. If it causes a safety problem we would have thought they might have welcomed the vegetation removals proposed. Secondly, the bridge will be elevated and also well lit. If there are pedestrian safety problems in this area we heard no evidence to suggest it already occurs on the ground in the local tree-lined streets. We find the

apprehension that the appearance of the bridge would suddenly attract undesirable people into this area is speculative rather than having a credible factual foundation.

- 6.35 Mr Robinson said further that local residents of the three streets would not acquire any significant sense of ownership over the bridge and approach road as they would read as separated transport infrastructure rather than as community space, although some detailed design could reduce the level of adverse effects but would not avoid them. The fact that the railway lines and the associated rail infrastructure have been established in the gully since the 19th century, and for that reason inevitably any residents moved into this area can be taken to have known that those were there, also leads us to the view that the 'community ownership' argument is not merited.
- 6.36 Along with others called to speak for the Cowie Street Residents Group Mr Robinson believed an underpass would supply a greater level of visibility and surveillance and pose no entrapment or isolation opportunities. Given that the sketches provided showed the only views into it would be from a very small handful of residences on Laxon Terrace because of the curve required to access the underpass, and by definition this type of structure would prevent views into it from above, we were not persuaded that would necessarily be the case.

Consultation

- 6.37 Mr Carson resides at 5 Cowie Street. His perspective was if there is a problem with Sarawia Street then it should be fixed there rather than elsewhere. He regarded the consultation carried out for the project as superficial and somewhat secretive. His understanding was Auckland Transport had agreed with nearby Broadway Park residents that an overbridge would be the best option for the crossing as early as 2009 and from that time the outcome was pre-determined. Mr Carson tabled a number of documents including an excerpt from *Wellington International Airport Limited and others v Air New Zealand* [1993] 1 NZLR 671 which addresses consultation, and also copies of various letters and emails which tended to confirm there had been an ongoing dialogue and that a number of options were being explored at the relevant times.
- 6.38 Dr Putterill also resides in Cowie Street and holds international accounting qualifications. He described himself as the initiator of the underpass concept and outlined his involvement in Parnell community activities and his attendances at various consultation meetings regarding the Newmarket crossing project, the first of

which he attended in 2012. He was sceptical about Auckland Transport's costings for the project, particularly so far as the geology of the ground where the swale, raingarden and bridge will be built, saying it was a surprising feature that the accounting for the bridge was a static total cost estimate which had been repeated for three years. While he alluded to effects on the environment, apart from a query regarding the geology of the directly affected areas Dr Putterill did not spell out what he apprehended those might be.

- 6.39 After attending a number of meetings since that time, in 2014 Dr Putterill had undertaken his own investigations and commenced developing the underpass option. He said "*the reaction of AT to the [u]nderpass idea can best be described as cautious but it was not dismissed out of hand*". He said sketch plans were prepared and there were several meetings to try to overcome the points of difference. Through lobbying with the Waitemata Local Board the engineering firm AECOM was instructed to undertake the independent study of the bridge versus underpass options. Dr Putterill regarded the outcome of this study as having shown little sign of independence as it endorsed the bridge option. However, the fact that it was undertaken served to demonstrate to us as independent Commissioners that in fact the underpass option was obviously considered on more than a cursory or hypothetical basis and Auckland Transport's materials confirm that.
- 6.40 The residents of Laxon Terrace and Youngs Lane have a directly opposing stance to those in Cowie Street. On their behalf Mr Murray said these residents had been consulted about the closure of level crossing and access and egress to and from their streets since the outset. He said the initial consultations were conceptual but since 2012 they had examined a number of options which were detailed and broad as well as 'lively' which he said was because of disruptions by people from Cowie Street. He said his group's experience was that Auckland Transport "*went out of its way and responded to things well*". The upshot was that residents of Laxon Terrace and Youngs Lane supported the bridge option.
- 6.41 His view was a tunnel (underpass) would pose a greater risk and liability for the Council and ratepayers than a bridge, for example by land and buildings subsiding in the adjacent areas above and below the tunnel, air pollutants being contained in the structure, noise reverberating, people not being visible when in the tunnel, emergency vehicles having difficulty turning left onto Laxon Street from the exit at 5 Laxon Terrace, fires in tunnels being more frequent, the structure attracting vagrants, and at the same time it would provide no community access or other benefits (such

as a viewing platform for looking over Newmarket Park and beyond) and therefore it would not contribute to the amenity of the neighbourhood.

- 6.42 Mr Murray said the reason there are significantly more bridges than tunnels in New Zealand is *“simply that bridges are inherently safer than tunnels, easier and quicker to build, operate and maintain, and for the matter under consideration significantly less disruptive to the community during construction and maintenance”*. He concluded by saying that from the public interest and risk assessment perspectives it was difficult to see why a tunnel would be considered in the first place. In his view the objections by the Cowie Street residents had not considered the wider public interest or amenities.
- 6.43 There is actually no duty on the part of a requiring authority, or a consent applicant, to consult any person about either a NoR or an application for a resource consent. This was enshrined in section 36A of the RMA by an amendment made in 2005. But consultation is usually conducted as an aspect of good practice by requiring authorities nevertheless. Having regard to the details provided with the NoR, in Mr Murray's and Dr Putterill's evidence and that of Ms Pillay, and the obligations that can be imposed through conditions on the designation requiring ongoing pre-construction and construction communication and consultation, we agree with the Council's final comments regarding consultation to the effect that there has been, and will continue to be, adequate consultation undertaken for this project including that which occurred with a number of parties including local residents in terms of alternative sites, routes or methods before the NoR was issued.
- 6.44 We record Mr Lanning's advice on behalf of Auckland Transport in response to the underpass evidence that excavating under the busiest section of rail track in New Zealand creates more significant construction-related risks than building a bridge over the rail. He said that is a decision Auckland Transport is entitled to make and submitted that the process by which it has reached that decision cannot be described as “cursory” or arbitrary”.

Conclusion on alternatives

- 6.45 In terms of Auckland Transport's consideration of alternatives, after considering all the evidence, submissions, and materials provided, we find that Auckland Transport has given adequate consideration to alternative routes and methods of undertaking this project and the requirements of section 171(1)(b).of the RMA have been satisfied

as a result. We agree with Mr Lanning's submission that whether or not the underpass alternative may be considered by some to be "better" does not reflect a test recognised by the RMA.

Construction Effects

- 6.46 Another of the Cowie Street residents' concerns was the effect of construction traffic and noise (in particular) on the amenity of Cowie Street and its residents. After hearing their presentations Auckland Transport's response was the vast majority of construction traffic would be directed through Sarawia Street for the construction site access. Truck movements through Cowie Street will be restricted to those required for construction activities west of the rail corridor, being primarily the western bridge abutment and road tie-in works to Cowie Street. Mr Lanning said night time truck access through both Sarawia Street and Cowie Street will be minimised through limiting the night time works and using short term storage areas for materials and equipment. An approved Construction Traffic Management Plan would also be required. This is common practice for major projects in the region. Because Auckland Transport is the body responsible for approving such traffic management plans, in this case proposed management plan would be included in the outline plan of works for the project and would thus be approved by the Council as part of that process instead.
- 6.47 We inquired whether deliveries, particularly of large materials such as the pre-formed bridge components, could be delivered by rail as that seemed to be a convenient option in the circumstances but were reassured that due to the railway's own requirements, including its passenger and staff safety requirements, that will not prove to be practical.
- 6.48 The limited night time work hours would also serve to limit construction noise. Dr Al-Ani's evidence advised that when night time work is required this will occur for only isolated periods of up to three consecutive nights at any time.

Stormwater

- 6.49 A discharge permit is required for the diversion and discharge of stormwater from the new impervious surfaces which will be created by the project. The actual and potential environmental effects of the proposed stormwater management measures are to be considered in terms of sections 104 and 171 of the RMA. Various questions were raised by the Commissions regarding where stormwater will enter the

reticulated system and whether stormwater will discharge into Newmarket pond and, if so, whether the pond would benefit from this discharge or it would be subject to adverse effects.

- 6.50 The proposed bridge, road formation and construction works will be undertaken on relatively steep land and an embankment, formed midway from the Parnell Road ridge down to the gully of Newmarket Park, where overland water from the site and the wider Newmarket gully naturally flows out to Hobson Bay. The proposed structures will sit in a created, as opposed to a natural, environment comprised of established residential areas, roads, essential rail infrastructure, and an urban park, all with stormwater management provisions demanded by the local topography and environment.
- 6.51 The materials disclosed that water from the proposed raingarden will be connected to an existing stormwater pipe that discharges directly to the Newmarket Stream (and bypassing the pond completely). Another option considered was connecting the proposed swale to an existing pipe that would then discharge through the pond and from there flow into the stream. In the instance there would be a good flow of stormwater moving through the pond from either the raingarden or swale, although the Council's stormwater specialist Mr Woortman's advice was he would not count on any benefits to the pond in Newmarket Park.
- 6.52 Submitters who raised stormwater issues cautioned the Commissioners to ensure conditions were imposed to maintain the function and asset condition of current rail infrastructure (KiwiRail) and local residents who were concerned the stormwater and run-off might contaminate a play area in Newmarket Park and also create potential problems in terms of site stability. On behalf of the Cowie Street residents Mr Rabbits and Mr Baddeley questioned the structural integrity of the raingarden being installed close to Laxon Terrace, cautioning it could serve to de-stabilise a slope in an environmentally sensitive area.
- 6.53 Both Dr Al-Ani and Mr Burt provided evidence on stormwater matters for Auckland Transport. Dr Al-Ani's evidence covered several critical points. He said stormwater treatment is not required for this project due to the small, 1250m², area of impervious surfaces that it would introduce. He said all the stormwater collected could be directed into the existing piped underground systems at minimum cost and still meet the Council's requirements. However after discussion with stakeholders, including Mana Whenua in particular, Auckland Transport considered a vegetated swale and

raingarden would potentially enhance the project outcomes without generating any significant adverse effects at the same time. Dr Al-Ani addressed the stability of the raingarden in a statement of rebuttal evidence. In this he said a draft detailed geotechnical design had been completed to confirm the integrity of the retaining structures being proposed. This was confirmed in the Reply to the evidence and the Ngati Whātua Iwi Management Plan was addressed in the reporting team's final comments which noted that one of the iwi's objectives for urban environments is to create locally adapted native plantings in indigenous groves and corridors for native animals.

- 6.54 Dr Al-Ani concluded the project will have a net positive effect on the downstream receiving environment. Mr Burt reinforced this when he addressed the hearing. He advised the current residential infrastructure and road surface in Cowie Street discharges to combined sewer overflows (combined waste and stormwater). Any future stormwater runoff from the Cowie Street roading surface and bridge structure would be treated through the vegetated swale, which removes most of the total suspended solids, and then be directed into the public and separated stormwater system. He advised this system does not direct water down to the Newmarket Park pond and/or children's play area.
- 6.55 For KiwiRail Ms Beals noted in respect of stormwater effects that this had been translated into the recommended conditions 15 and 16 for the NoR and 43-47 of the stormwater permit, both of which had included the proposed stormwater management devices. Based on this, Ms Beals agreed the effects on the rail environment from this aspect of the proposal would be no more than minor.
- 6.56 The Council's stormwater adviser Mr Woortman had undertaken a technical review of the project and his conclusions were included in the section 42A report. He concluded that the adverse effects on the environment from the stormwater discharge and diversion activity would be appropriately mitigated by the proposed stormwater works.
- 6.57 Implementation of the project should effectively reduce discharges of sewerage into Hobson Bay during heavy rainfall events by removing a combined sewer/stormwater catchpit at the end of Cowie Street and introducing a vegetated swale at the bottom of the road and bridge area to capture and treat stormwater run-off and then pipe the filtered stormwater into the public systems below instead of the present combined system. The urban design and landscape mitigation concepts prepared by Opus

provide for two new areas of native plantings associated with the raingarden, with the species to be selected in agreement with iwi and the Council's Parks division. The recommended conditions carry this through by requiring that all the proposed landscaping is to be of native plantings in their original habitat context and sourced from the ecological district in general accordance with the Ngāti Whātua Ōrākei Iwi Management Plan 2012. We regard both aspects as being positive benefits of the project and consider further that these measures accord with the spirit of the Cultural Impact Assessment prepared by Ngati Maru Runanga and the aspirations expressed through the IMP.

Conclusion on Stormwater

- 6.58 After considering all the evidence and technical advice we have found the proposed stormwater treatment for the project and the associated conditions of consent will satisfy the Council's relevant environmental requirements. We have been satisfied that any adverse stormwater effects will be appropriately mitigated and also that positive effects should accrue over time as the vegetation matures. We agree with the applicant's position that there will be net positive effects from the project's providing the raingarden and vegetated swale, and positive effects in terms of the quality of the water that will be discharged to Hobson Bay. We note Auckland Transport's advice that the proposed measures developed during consultation discussions with stakeholders including Mana Whenua which for us provided practical evidence for the purposes of section 6 (e) of the RMA as did the conditions recommended for the landscaping proposed.

Whether the Work and Designation are Reasonably Necessary to Achieve the Project Objectives

- 6.59 The objectives for the Newmarket Crossing are set out in paragraph 1.4 and section 171(1)(c) of the RMA requires us to consider whether the work and designation are reasonably necessary to achieve them. It is well settled that the RMA neither requires nor allows the merits of the objectives themselves to be judged by the decision maker.
- 6.60 Mr Bartlett submitted on behalf of the Cowie Street residents that there was no evidence to support Auckland Transport's first objective, namely to improve the operation of the Auckland rail network by removing a potential safety issue with trains and the level crossing. He referred in support to Mr Parlane's evidence that the benefit cost ratio for the preferred alternative had not been robust and had failed to consider a realistic 'do minimum' scenario. The materials provided advised that this option had been dismissed early in the consideration of options as it was not considered to be viable.
- 6.61 Counsel said Auckland Transport appeared to have assumed that the level crossing currently causes 30 seconds delay to each and every train passenger but there was no survey data, modelling or other justification to support that. Further, its assumption accounted for 10 times as much as the time benefits of removing the level crossing which *"completely overshadows the dis-benefits or travel time disadvantages that each of the options other than the underpass would have due to requiring traffic to travel further. It also completely obscures the fact that the Cowie Street bridge option has more dis-benefits due to the longer travel route than benefits due to removing the level crossing"*.
- 6.62 Mr Parlane contended that the 30 second delays being claimed by KiwiRail are due to the way it manages the trains rather than to the crossing itself as there is no history of crashes in the crossing location. His conclusion was that at best Auckland Transport had double-counted the delay to rail passengers and at worst it had counted the delay twice without it existing in fact. In the light of this evidence Mr Bartlett submitted Auckland Transport had not established that the proposed work and the designation were "reasonably necessary" to achieve the first project objective.

- 6.63 Mr Bartlett further submitted that the proposed design was not sympathetic with the urban environment and will have a “significant enduring adverse effect on Cowie Street and the surrounding residential environment”, implying that the fifth objective, to have a compatible urban design that is safe and environmentally sensitive, would not be met.
- 6.64 For Auckland Transport Ms Voss’ planning evidence, which accorded with that given by Ms Pillay, was that a designation as a planning mechanism is necessary as it will identify the location, nature and extent of the project and the intended use of that land in the District Plan and the PAUP; secondly it would protect the land and secure the project from other development which might prevent or hinder its construction, operation and maintenance. The planners said a designation would also enable Auckland Transport to have the flexibility and ability to construct, operate and maintain the project notwithstanding anything contrary in those plans. This evidence was not actively contested.
- 6.65 After considering the reports, submissions and evidence on this issue we have found that the proposed works and a designation are reasonably necessary to achieve the requiring authority’s objectives for this project.

Other Relevant Matters

Road closures

- 6.66 Mr Bartlett submitted in terms of ‘other matters’ that the project would require stopping Sarawia Street in accordance with Schedule 10 of the Local Government Act 1974 and this step should be undertaken expeditiously so any objections in that regard could then be heard at the same time as any appeals that may be lodged with respect to the current NoR and resource consents.
- 6.67 After hearing this argument the Commissioners questioned the Council’s reporting team whether there were any examples where roads have been required to be closed as a result of implementing a designation. From personal experience members of the reporting team, particularly Mr Hills, were well aware that the City Rail Link NoRs (Auckland) and the Ruakura Interchange project in Hamilton NOR have both required road closures. The City Rail Link is requiring a number of roads to be closed, especially in the Newton area. To the best of the team’s knowledge, the formal road closure process for this project is or will be undertaken at a time closer to its implementation.

- 6.68 The Reply to the evidence on behalf of Auckland Transport advised that, contrary to Mr Bartlett's submissions, a road stopping process is not required under either the Local Government Act or the Public Works Act 1981 as in this case the railway crossing is not a "road" but a rail corridor with the right to access it being controlled by KiwiRail under the Railways Act 2005. It was therefore not susceptible to being stopped as suggested.
- 6.69 The legitimate expectations of residents in Cowie Street in terms of the District Plan provisions was also raised as an 'other matter' and has been addressed earlier in these recommendations and we refer to that discussion.

Lapse period

- 6.70 Mr Carson was concerned that Auckland Transport was proposing a 5 year lapse period for the designation in terms of the effect this could have on his confidence to invest in his property, for example whether he should paint his house. Five years is the default designation lapse period under section 184 (1) of the RMA and as a result AT was not seeking an extended lapse date - which requiring authorities frequently do, with 15 years being a relatively common request in our experience. A longer lapse period can create greater uncertainty and is therefore more likely to result in planning blight and anxiety for affected parties.

Overall Finding on the NoR

- 6.71 Based on the foregoing the Commissioners have been satisfied that the section 171 RMA requirements have been met and are recommending pursuant to section 171(1A) that the Notice of Requirement, as modified by Auckland Transport, be confirmed.

The Resource Consents

- 6.72 The subject matter of the resource consents required for the project has been covered in discussing the NoR. As discussed, we have been satisfied with respect to the stormwater measures proposed for the project and also that there is no issue in terms of the NES: Soil such that the consents should be refused in terms of the actual and potential effects on the environment. We were satisfied on the facts that any contamination will be appropriately dealt with.

7.0 RELEVANT PLANNING INSTRUMENTS

7.1 As highlighted in the Council's section 42 report the NoR and resource consent applications are subject to different, albeit similar, statutory considerations under the RMA. Both applications must, subject to Part 2, consider the effects on the environment of allowing the requirement or activity, having particular regard to any relevant provisions of a national policy statement, the New Zealand Coastal Policy Statement, the regional policy statement, the proposed regional policy statement and the relevant regional and district plans and proposed plans.

7.2 Collectively the assessment of environmental effects prepared to support the NoR and applications for resource consent and the Council's section 42A report provided a comprehensive commentary on the relevant national and regional policy statements, the relevant provisions of the Regional and District Plans, the Proposed Auckland Unitary Plan and other instruments. We do not intend to repeat this material, rather we rely on the application documents and reporting team's reports in this regard, except to indicate that the following documents were considered of particular relevance in reaching our decision in relation to the both the NoR and the resource consent applications:

- Auckland Regional Policy Statement ("ARPS");
- Auckland District Plan : Isthmus section;
- Proposed Auckland Unitary Plan, including Chapter B Regional Policy Statement;
- National Policy Statement for Freshwater Management;
- National Environment Standard for Assessing and Managing Contaminants in Soil to Protect Human Health;
- The New Zealand Coastal Policy Statement;
- Hauraki Gulf Marine Park Act 2000.

7.4 In respect of the resource consent applications, specific consideration was also given to the relevant sections of the Auckland Regional Plan: Sediment Control and the Auckland Council Regional Plan: Air, Land and Water. Other matters we also considered relevant and reasonably necessary to determine these matters included

the relevant sections of the Auckland Plan and the Auckland Regional Land Transport Plan 2015-2025.

- 7.5 Schedule 1 to the ARPS identifies High Density Centres and Intensive Corridors and Future Urban Areas. Newmarket is identified as a sub-regional growth centre located on the rapid transit system. This is reflected in both the operative District Plan and the PAUP which zones Cowie Street, Sarawia Street, Laxon Terrace and Youngs Lane as areas suitable for high density residential development, albeit that the PAUP also identifies Cowie and Sarawia Streets as being in a Special Character overlay.
- 7.6 The project accords with the strategic direction of the ARPS set out in clause 2.6 and in particular the following strategic objectives and policies:

Objectives

3. *To achieve a compact well designed more sustainable urban form served by an integrated multimodal (private vehicles, public transport, walking and cycling) transport system.*
4. *To develop and manage the region's transport system including road, rail, ferry, bus, cycling and pedestrian networks and services in a manner that supports urban development and land use intensification.*
6. *To achieve a high level of mobility and accessibility within the Region that provides for an integrated, responsive, sustainable, safe, affordable and efficient movement of goods and people.*

Policies

2.6.5 Urban Structure

3. *To develop a network of High Density Centres and Intensive Corridors which are linked by high quality public transport ranging from frequent local bus services supplemented by express buses to rapid transit (rail, ferry, or bus) on separate rights-of-way.*

2.6.8 Urban Design

1. *The design of Future Urban Areas and the management and promotion of change in existing urban areas is to occur so that:*
 - (iv) Urban environments have a logical permeable and safe structure of connected routes for all modes of transport, including walking and cycling;*
 - (v) Public transport, roading, cycling and walking networks are integrated with each other and the land uses they serve;*
 - (vi) Roads (including new roads) and road improvements within higher density areas should be designed to provide a pleasant environment for cyclists, pedestrians and residents and minimise adverse effects on urban amenities*

2.6.11 Land Use and Transport Integration

- (i) High Density Centres and Intensive Corridors are able to be served by an efficient and effective public transport network;*
- (ii) High Density Centres on the rail rapid transit network and on the bus rapid transit system are served by a fast, frequent and reliable public transport service;*
- (iii) High Density Centres and Intensive Corridors are planned to develop to a density which supports planned transport infrastructure and service improvements (refer to Appendix H);*
- (iv) provision is made for transport improvements which deliver a multi-modal transport system (including walking and cycling) in a manner which supports quality, compact and contained High Density Centres and Intensive Corridors;*
- (vi) High Density Centres and Intensive Corridors are not compromised by inappropriate transport infrastructure. This includes avoiding, remedying or mitigating the severance of communities*

- 7.7 The project also accords with the transport objectives in the ARPS which seek “to develop a transport network that supports a compact sustainable urban form”, but which also “is safe as is practicable and promotes better physical health for the community”. These objectives are supported by policies that include development of a transport system that “avoids, remedies, or mitigates the adverse effects of transport on local communities”.
- 7.8 The project is consistent with the transport objectives and policies in the operative District Plan, in particular:

12.3.1 Objective – Efficiency/Environment

To manage the use and development of the City’s transportation resources in a way that promotes the protection and enhancement of the City’s environment.

- *By supporting the creation of an efficient public transport network which provides an integrated system, with appropriate levels of convenience and service.*
- *By minimising the adverse local environmental effects of proposed new roads and other additions to the City’s transportation network.*

12.3.1 Objective – Accessibility/Safety

To improve access, ease and safety of movement within the City, while ensuring that adequate provision is made for the various transport needs of the region.

- *By improving the capacity and safety of existing facilities through the use of appropriate traffic management techniques.*

- *By providing new roads or other facilities where these are considered essential.*
- *By controlling access and the intensity of use along particular roads, so as to ensure both vehicle and pedestrian safety.*
- *By improving passenger transport infrastructures where appropriate.*
- *By recognising the need for effective public transport and for catering for people without cars.*
- *By enhancing public and personal safety through reducing opportunities for crime to occur through appropriate design and management of transportation facilities.*

7.9 With respect to the PAUP, we find the project is not contrary to Chapter B which provides the Proposed Regional Policy Statement and that it also accords with the Auckland-wide objectives and policies relating to infrastructure and transport.

7.10 On behalf of the Cowie Street residents, we heard planning evidence from Mr Firth who did not agree with the Council's reporting officer that the project is consistent with the objectives and policies in the District Plan. In his opinion, and relying on the evidence of Mr Parlane and Mr Robinson, his view was the disturbance to traffic and impact upon the character of Cowie Street would be more than minor and concluded the project is not consistent with the objectives and policies for the Residential 8c zone. However his statement of evidence failed to identify the particular objectives and policies he considered the project did not meet nor could he provide any reasoning for this conclusion when questioned by the Commissioners.

7.11 Overall we have concluded that the applications are not contrary to the objectives and policies of the instruments traversed. In particular the proposal is generally consistent particularly with the transport and infrastructure objectives of the Regional Policy Statement, the Proposed Regional Policy Statement (Chapter B – PAUP) and the operative District Plan along with the Auckland-wide objectives and policies of the Proposed Auckland Unitary Plan. The proposal accords with Auckland Transport's legislative purpose as set out in section 39 of the Local Government (Auckland) Act 2009. We agree with the reporting officer's assessment that, while many of the relevant zone objectives and policies of both the District Plan and the PAUP are not

particularly relevant to the assessment of the project, the project is not contrary to these objectives and policies.

8.0 PART 2 OF THE RMA

- 8.1 The purpose, policies and directions contained in Part 2 of the RMA, which is comprised of sections 5 to 8, provide a framework for an overall consideration of the effects on the environment of allowing the requirement, and override the section 171 matters in the event of a conflict. The dominant provision is section 5 which sets out the purpose of the Act, to promote the sustainable management of natural and physical resources in a way or at a rate that enables people and communities to provide for their social, economic and cultural wellbeing, and their health and safety.
- 8.2 When addressing Part 2 Ms Voss drew attention to the support the project will provide for Auckland Transport's initiative to improve passenger transport across Auckland thus enabling people and communities in the region to move in a more sustainable manner. She said also through removing the level crossing the project will contribute to reducing vehicle congestion, which given the evidence we heard of the limited amount of traffic in this area we did not find particularly convincing. We agree however with her opinion that removing the need for local traffic to wait at the level crossing, or for trains to be held back while waiting for the barrier arms to be lifted, will improve the safety and efficiency of both transport modes. For the purposes of sections 6 and 7 of the RMA her evidence referred to the cleaner stormwater which will be directed to the coast and to Auckland Transport's consultation and engagement with mana whenua (which was traversed in some detail in Ms Pillay's statement).
- 8.3 Mr Bartlett concluded for the Cowie Street residents the adverse effects on Cowie Street and 'other local streets' will be enduring and permanent and no mitigation could avoid or remedy that "inevitable outcome". What other local streets he was referring to were not specified. Mr Firth's planning evidence was the project is inconsistent with Part 2 as it would be an inefficient use of funds, there would be a substantial reduction in the amenity of Cowie Street both during construction and once the bridge is completed through a substantial increase in noise and disturbance, and that the additional traffic would result in the character of the neighbourhood being altered forever. In his opinion the sustainable management purpose of the Act would not be achieved as a result.

- 8.4 In contrast with counsel's assertion was the evidence brought on behalf of the Laxon Terrace and Youngs Lane residents, roads that we regard as 'other local streets', which clearly favoured the proposed bridge option and was actively opposed to an underpass. We heard no evidence from residents of any other local streets, including any parties who are based in Sarawia Street and who can be expected to have their existing amenity enhanced as a result of through traffic no longer passing by, installation of a sizeable garden area at the lower end of their street, and an end to intrusions in terms of level crossing alarm noise (which will benefit the Cowie Street residents also).
- 8.5 The Newmarket Crossing project has been envisaged for the wider community to benefit from improved rail journey times through the busiest section of rail track in the country and for Auckland Transport and KiwiRail to operate their infrastructure safely and efficiently. It will also contribute to encouraging people to adopt public transport modes, being a long-term strategic objective for the region which is reflected in the relevant planning instruments. Public access to Newmarket Park will be maintained and no longer involve having to pass directly across the railway lines. We find in this situation that the wider benefits outweigh the interests of the Cowie Street residents whose principal concern is to secure the status quo so far as their street and its amenity is concerned. We have also found that the apprehended 'significant increase' in the volumes of traffic that will pass through Cowie Street is not supported as the evidence was clear there are a limited number of properties in Laxon Terrace and Youngs Lane with very limited further development opportunities that would increase the existing volume of traffic movements. While there will be some negative effects relating to the limited amount of additional traffic and reduced parking on Cowie Street as well as on the 9 Cowie Street property these effects are minimal when viewed in the broader context.
- 8.6 In terms of section 8 we inquired whether the Iwi Management Plan ("IMP") for the area had been considered, although it is not mandatory in this context for that to have occurred. The reporting team had reviewed the Ngāti Whātua Iwi Management Plan and identified the following key objectives, policies and actions in relation to this project:
- Objective: The urban environments, including open spaces and streets in Tāmaki Makaurau, will contain predominantly locally adapted native plants to provide indigenous vegetation groves and corridors for native animals.

- Policy: Establish and maintain strong partnerships / working relationships / agreements with key stakeholders / environmental authorities in the implementation of sustainable ecological initiatives throughout our *rohe*.
- Action: Ensure that the Auckland Council and other public entities prioritise native planting in preference to exotic planting on public land and require native planting as conditions of resource consent for development on private land unless there is a compelling reason for specific exotics. All native plantings are to be within their original habitual context e.g. coastal plants on the coast, and sourced from that ecological district.

8.7 The reporting team considered, subject to adoption of recommended amendments to conditions relating to the involvement of iwi in the development of the project's management plans, that the project is consistent with the IMP. There was no evidence suggesting otherwise in the case of either the IMP or the Ngāti Maru Runanga CIA. We are satisfied that section 8 has been appropriately taken into account for the project as reflected in the stormwater measures having been adopted, the landscaping proposed and through the ongoing iwi involvement contemplated by the relevant conditions that were recommended to us.

9.0 CONCLUSION, RECOMMENDATION AND DECISION

9.1 After considering all the materials and evidence put before us for the hearing we have concluded that the Newmarket Crossing project has been envisaged for the wider community to benefit from improved rail journey times through the busiest section of rail track in the country and for Auckland Transport and KiwiRail to operate their infrastructure safely and efficiently. It will also contribute to encouraging people to adopt public transport modes, being a long-term strategic objective for the region which is reflected in the relevant planning instruments. Public access to Newmarket Park will be maintained and no longer involve having to pass directly across the railway lines.

9.2 We find in this situation that the wider benefits outweigh the interests of the Cowie Street residents whose principal concern is to secure the status quo so far as their street and its amenity is concerned. We have also found that the apprehended 'significant increase' in the volumes of traffic that will pass through Cowie Street is not supported as the evidence was clear there are a limited number of properties in

Laxon Terrace and Youngs Lane with very limited further development opportunities that would increase the existing volume of traffic movements. While there will be some negative effects relating to the limited amount of additional traffic and reduced parking on Cowie Street as well as on the 9 Cowie Street property these effects are minimal when viewed in the broader context.

9.3 We agree with Ms Voss' conclusion that *"It is inevitable that the construction of the Project will have some temporary local adverse effects and that the post-construction reinstatement will take some time to establish with regards to trees and vegetation. With the exception of these few effects, the Project provides significant broader long-term positive effects as well as localised benefits, such as safety, accessibility and noise reduction"*.

9.4 Having regard to all relevant matters under sections 168, 171 and Part 2 of the Resource Management Act 1991, and exercising our delegations under section 34A of the RMA, the Commissioners make the following **recommendation** to Auckland Transport:

That the notice of requirement by Auckland Transport for the designation of land to construct, operate and maintain a new road connecting Laxon Terrace to Cowie Street, including construction of a bridge over the existing Newmarket branch railway line and closure of the existing at grade connections between Sarawia Street and Laxon Terrace, Newmarket and all associated activities and infrastructure, including a new approach road be **CONFIRMED** subject to the designation conditions attached as Attachment 1.

9.5 The reasons for this recommendation are:

(a) the proposed designation, as modified before the hearing concluded, satisfies the requirements of the Resource Management Act 1991, particularly Part 2 and section 171;

(b) adequate consideration has been given by the requiring authority to alternative sites and methods of conducting the project and the consideration undertaken was transparent, appropriate and covered a number of potential routes and methods including an underpass option;

(c) the designation and the works are reasonably necessary for achieving the stated objectives for the project;

(d) the construction activities effects identified as potentially adverse can be managed in a way that either avoids or mitigates their effects to a point where these are likely to be no more than minor or moderate;

(e) the project will generate a number of positive effects for the wider community;

(f) confirming the designation with conditions meets the purpose of the RMA better than recommending its withdrawal or further modification.

9.6 Having considered the applications, the Assessment of Environmental Effects, the submissions lodged on the applications, the reports and recommendations prepared on behalf of the Council and the evidence and submissions presented at the hearing, pursuant to sections 104, 104B, 105 and 107 of the Resource Management Act consent is **granted** to the applications by Auckland Transport for resource consents including a land use consent (“R/LUC/2015/3627”) for earthworks, vegetation removals in a Significant Ecological Area, and to disturb soil under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health pursuant to section 9 of the RMA; a discharge permit (“R/REG/2015/3629”) for stormwater discharges pursuant to section 15 of the RMA; and a discharge permit (“R/REG/2015/3633”) for discharges from contaminated land pursuant to section 15 of the RMA, all associated with the construction, operation and maintenance of a new road connecting Laxon Terrace to Cowie Street, including construction of a bridge over the existing Newmarket branch railway line and closure of the existing at grade connections between Sarawia Street and Laxon Terrace, Newmarket. The conditions of the consents are attached to this decision document as part of Attachment 1.

9.7 The reasons for this decision are:

(a) While the project will generate adverse effects on the environment, the applicant has adequately demonstrated that the identified adverse effects can be accommodated or mitigated by a range of measures;

(b) The project will deliver significant wider benefits through enabling improved network resilience and improved rail and passenger capacity for the Auckland region;

- (c) The project is consistent with the objectives and policies of the Auckland Regional Policy Statement, the Auckland District Plan: Isthmus Section and also those of the Proposed Auckland Unitary Plan;
- (d) The proposal is consistent with the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health and the National Policy Statement for Freshwater Management 2014;
- (e) The requirements of each of section 105 and section 107 of the Act will be met; and
- (f) The project supports sustainable management of the environment in accordance with Part 2 of the RMA.

9.8 Pursuant to section 108 of the RMA these consents are subject to the consent conditions attached to this decision as part of Attachment 1.



Leigh A McGregor (Chair) for and on behalf of the Commissioners appointed on behalf of the Auckland Council
10 June 2016

Attachment 1 – Recommended designation conditions and approved conditions of consent

Attachment 1

Newmarket Level Crossing Project

RECOMMENDED CONDITIONS OF DESIGNATION

Definitions:

Term	Definition
Consult, Consulting, Consultation	The process of providing information about the construction works, and receiving for consideration, information from stakeholders, directly affected parties, regarding those effects and proposals for the management and mitigation of them.
Material Change	Includes any amendment to information informing the CEMP or other Management Plan (including, but not limited to, methods, processes, procedures or details) which has potential to materially increase adverse effects on a particular receiver. For clarity, changes to personnel and contact schedules do not constitute a material change.
Affected in Proximity	All owners and occupiers of properties within the 250m radius as depicted in Appendix 1 to the Assessment of Environmental Effects – Newmarket Level Crossing – Visual Catchment/Viewing Audience (prepared by Opus International Consultants and dated January 2016)
Directly affected parties	All property owners and occupiers identified within the designation footprint
The project	The construction of a new road connecting Laxon Terrace to Cowie Street including construction of a bridge over the Newmarket Branch Line and closure of the road connections between Sarawia Street and Laxon Terrace.

Abbreviations:

PCCP	Pre-Construction Communication and Consultation Plan
CEMP	Construction Environmental Management Plan
CCCP	Construction Communication and Consultation Plan

CLG	Community Liaison Group
HNZPT	Heritage New Zealand Pouhere Taonga
CNVMP	Construction Noise and Vibration Management Plan
UDLP	Urban Design and Landscape Management Plan
CPTED	Crime Prevention Through Environmental Design
EMP	Ecological Management Plan
VMP	Vegetation Management Plan
CTMP	Construction Traffic Management Plan
HHMP	Historic Heritage Management Plan

Condition Number	Condition
General conditions	
1	<p>1.1 Except as modified by the conditions below, the project is to be undertaken in general accordance with the following information:</p> <ul style="list-style-type: none"> a) Notice of Requirement and Resource Consent - Assessment of Environmental Effects prepared by Opus International Consultants Ltd, August 2015; b) Supporting environmental assessment reports dated August 2015; c) Plans sets: <ul style="list-style-type: none"> i. 1-C1135.00 Notice of Requirement Preliminary Design Plan, Sheet 1, Revision RI; ii. 1-C1135.00 Notice of Requirement Preliminary Design - Longsection, Sheet 1A, Revision RI; iii. 1-C1135.00 Notice of Requirement Bridge – General Arrangement, Sheet 1B, Revision RI; iv. 1-C1135.00 Notice of Requirement Temporary Construction Designation, Sheet 2, Revision RI; v. 1-C1135.00 Notice of Requirement Permanent Designation, Sheet 3, Revision RI; vi. 1-C1135.00 Notice of Requirement Land Acquisition – 9 Cowie Street, Sheet 4, Revision RI; vii. 1-C1135.00 Notice of Requirement Land Acquisition – Auckland Council Parks, Sheet 5, Revision RI;

	<ul style="list-style-type: none"> viii. 1-C1135.00 Notice of Requirement Land Acquisition – KiwiRail, Sheet 6, Revision RI; ix. Newmarket Level Crossing Tree Identification Plan; x. 1-C1135.00 Notice of Requirement Cowie St Effected Trees – 1, Sheet 8, Revision RI; xi. 1-C1135.00 Notice of Requirement Cowie St Effected Trees – 2, Sheet 9, Revision RI; xii. 1-C1135.00 Notice of Requirement Mitigation Planting Concept Plan, Sheet 10, Revision RI; xiii. 1-C1135.00 Notice of Requirement Stormwater Drainage Plan – Sht 1 of 2, Sheet 11, Revision RI; xiv. 1-C1135.00 Notice of Requirement Stormwater Drainage Plan – Sht 2 of 2, Sheet 12, Revision RI; and xv. 1-C1135.00 Notice of Requirement Specimen Erosion & Sediment Control Plan, Sheet 13, Revision RI. <ul style="list-style-type: none"> d) Section 92 Response to Notice of Requirement and Resource Consent for the Newmarket Level Crossing Project prepared by Opus International Consultants Ltd, 23 December 2015; e) Section 92 Response to Notice of Requirement and Resource Consent for the Newmarket Level Crossing Project prepared by Opus International Consultants Ltd, 5 February 2016; f) Supporting documents (as updated by information provided by the Requiring Authority up until the close of the hearing) <p>1.2 Where there is inconsistency between:</p> <ul style="list-style-type: none"> a) The documents provided by the Requiring Authority and listed above and these conditions, these conditions prevail. b) The information and plans lodged with the Notice of Requirement and presented in evidence on behalf of the Requiring Authority at the Council hearing, the most recent information and plans prevail. c) The evidence presented at the Council hearing and the management plans required by the conditions of this designation and submitted through the Outline Plan, the requirements of the management plans prevail.
2	<p>2.1 In accordance with section 184(1)(c) of the Resource Management Act 1991 (“RMA”), this designation will lapse if not given effect to within 5 years from the date on which it is confirmed.</p>
3	<p>3.1 As soon as reasonably practicable, and no later than 12 months from the date of the project becoming operational, the Requiring Authority is to:</p> <ul style="list-style-type: none"> a) Identify any areas of the designation that are no longer necessary for the on-going maintenance or operation of the project or for on-going mitigation measures; and b) Give notice to the Auckland Council in accordance with section 182 of the RMA for the removal of those parts of the designation identified in (a) above.

Pre-construction conditions	
4	<p>Appointment of communication and consultation manager</p> <p>4.1 Within three months of confirmation of the designation, the Requiring Authority is to appoint a communication and consultation manager to implement the pre-construction Communication and Consultation Plan (condition 5). The communication and consultation manager is to be the main and readily accessible point of contact for persons affected by or interested in the project until the commencement of the construction phase of the project, or the contact person required by condition 13 is appointed.</p> <p>4.2 The communication and consultation manager's contact details are to be listed in the pre-construction Communication and Consultation Plan, on the Requiring Authority's website, and on the Auckland Council's website.</p>
5	<p>Pre-construction communication and consultation plan</p> <p>5.1 The Requiring Authority is to prepare a pre-construction Communication and Consultation Plan. This plan is to be submitted to the Auckland Council's Major Infrastructure Projects Team Manager, three months prior to construction commencing to certify that the Plan has been prepared in accordance with this condition. The objective of the pre-construction Communication and Consultation Plan is to set out a framework to ensure appropriate communication and consultation is undertaken with the community, stakeholders, affected parties and affected in proximity parties prior to the commencement of construction of the project.</p> <p>5.2 The Plan is to be implemented and complied with from the date of its certification until the commencement of construction.</p> <p>5.3 This Plan is to set out recommendations and requirements (as applicable) that should be adopted by and/or to inform the Construction Environmental Management Plan ("CEMP") and management plans.</p> <p>5.4 The pre-construction Communication and Consultation Plan is to set out how the Requiring Authority will:</p> <ul style="list-style-type: none"> a) Inform the community of project progress and likely commencement of construction works and programme; b) Engage with the community in order to foster good relationships and to provide opportunities for learning about the project; c) Respond to queries and complaints. The information is to include but not be limited to: <ul style="list-style-type: none"> i. who is responsible for responding; ii. how responses will be provided; and iii. the timeframes in which the responses will be provided. d) Seek (and specify reasonable timeframes for) feedback and input from stakeholders, directly affected and affected in-proximity parties regarding development of the CEMP and management plans. <p>5.5 Where feedback in accordance with this condition is provided, the pre-</p>

	<p>construction Communication and Consultation Plan is to articulate how that feedback has informed the development of the CEMP and management plans and where it has not, reasons why it has not.</p> <p>5.6 The pre-construction Communication and Consultation Plan is to be prepared in consultation with:</p> <ul style="list-style-type: none"> a) All property owners and occupiers identified within the designation footprint; b) All affected in proximity parties; c) The CLG; d) HNZPT; and e) Network utility operators. <p>5.7 The pre-construction Communication and Consultation Plan is to include as a minimum:</p> <ul style="list-style-type: none"> a) A communications framework that details the Requiring Authority's communication strategies, the accountabilities, frequency of communications and consultation, the range of communication and consultation tools to be used (including any modern and relevant communication methods, newsletters or similar, advertising etc.) and any other relevant communication matters; b) Details of the communication and consultation manager for the pre-construction period including their contact details (phone, email and postal address); c) The methods for identifying, communicating and consulting with stakeholders, directly affected parties and affected parties and other interested parties. Such methods are to include but not be limited to: <ul style="list-style-type: none"> i. Newsletters; ii. Newspaper advertising; iii. Notification and targeted consultation with stakeholders, affected parties and affected in proximity parties; and iv. The use of the project website for public information. d) The methods for communicating and consulting with Mana Whenua for implementation of Mana Whenua principles for the project; and e) How communication and consultation activity will be recorded. <p>5.8 The pre-construction Communication and Consultation Plan is to be publicly available once certified by the Council (Major Infrastructure Projects Team Manager) and for the duration of construction.</p>
<p>6</p>	<p>Mana Whenua engagement</p> <p>6.1 Within three months of the designation being confirmed, the Requiring Authority is to establish a kaitiaki Mana Whenua forum (or similar) to provide for an on-going role in the design and construction of the project and is to maintain this forum until completion of the construction</p>

	<p>period.</p> <p>6.2 The Requiring Authority is to extend an invitation for membership of the kaitiaki forum to (but not limited to) representatives of:</p> <ul style="list-style-type: none"> a) Ngāi Tai ki Tāmaki Tribal Trust; b) Ngāti Maru Runanga; c) Ngāti Pāoa Trust Board; d) Ngāti Tamaoho Trust; e) Ngāti Te Ata Waiohua; f) Ngāti Whātua Ōrākei; g) Te Ākitai Waiohua; and h) Ngati Whatua Runanga. <p>6.3 The role of the kaitiaki forum may include (but is not limited to) the following:</p> <ul style="list-style-type: none"> a) Input into preparation of the following plans as required by these conditions: <ul style="list-style-type: none"> i. UDLP ii. EMP iii. CEMP b) Input into the structural design elements of the project to reflect cultural values using Te Aranga principles; c) Involvement of Mana Whenua in the removal and or replanting of any native tree species, or any on-going maintenance that may be required, and provision for use of any removed native vegetation for customary purposes; d) Working collaboratively with the Requiring Authority on archaeological matters; e) Undertaking kaitiakitanga responsibilities associated with the project, including ceremonial, monitoring/surveying of native flora and fauna, pest and weed control, assisting with discovery procedures, and providing mātauranga Māori input in the relevant stages of the project; and f) Undertaking monitoring of construction activities on site by representatives appointed by kaitiaki forum members. <p>6.4 All landscaping proposed as part of the UDLP and EMP is to be comprised of native plantings within their original habitat context and sourced from that ecological district in general accordance with the Ngāti Whātua Ōrākei Iwi Management Plan 2012.</p> <p>6.5 The kaitiaki forum may provide written advice to the Requiring Authority in relation to any of the above matters. The Requiring Authority must consider this advice and the means by which any suggestions may be incorporated in the project.</p>
7	<p>Network utility operators</p> <p>7.1 In the period before construction begins on the project, the following</p>

	<p>activities undertaken by network utility operators will not prevent or hinder the project, and can be undertaken without seeking the Requiring Authority's written approval under section 176(1)(b) of the RMA:</p> <ul style="list-style-type: none"> a) Maintenance of and urgent repair works to existing network utilities. b) Minor renewal works to existing network utilities necessary for the on-going provision or security of supply of network utility operations. c) Minor works such as new property service connections. d) Upgrades to existing network utilities within the same or similar location with the same or similar effects on the Newmarket Level Crossing designation. <p>7.2 For the avoidance of doubt, in this condition an "existing network utility" includes infrastructure operated by a network utility operator which was:</p> <ul style="list-style-type: none"> a) In place at the time the Notice of Requirement for the project was served on the Auckland Council; or b) Undertaken in accordance with this condition or an approval given under section 176(1)(b) of the RMA. <p>7.3 On completion of construction of the project, security fencing is to be constructed at the termination of Sarawia Street with the approved landscaping required by these conditions.</p>
<p>8</p>	<p>Community liaison group</p> <p>8.1 Within three months of the confirmation of the designation, the Requiring Authority, in consultation with the Council, is to establish a Community Liaison Group ("CLG").</p> <p>8.2 Membership of the CLG is to include representatives of the Requiring Authority and be open to all directly affected and affected in proximity parties to the project including, but not limited to, the following:</p> <ul style="list-style-type: none"> a) Representative(s) for and/or directly affected and affected in proximity property owners and occupiers; b) Representative(s) for and/or members of the Cowie Street Residents Association Incorporated; c) Representative(s) for and/or members of the Parnell Community Committee Incorporated; d) Representative(s) for and/or members of Parnell Incorporated; e) Representative(s) for and/or members of the Laxon Terrace and Youngs Lane Residents Group. <p>8.3 The purpose of the CLG is to:</p> <ul style="list-style-type: none"> a) Provide a means for receiving regular updates on project progress; b) Monitor the effects of constructing the project on the community by providing a regular forum through which information about the project can be provided to the community; c) Enable opportunities for concerns and issues to be reported to and responded to by the Requiring Authority; d) Provide feedback on the development of the CEMP and any other management plans.

	<p>8.4 The Requiring Authority is to consult with the CLG in respect of the development of the CEMP and any other management plans.</p> <p>8.5 The Requiring Authority is to appoint one or more persons appropriately qualified in community consultation as community consultation advisor(s) to (as a minimum):</p> <ul style="list-style-type: none"> a) develop and administer a code of conduct to ensure that the CLG works effectively; b) act as a community consultation advisor to the CLG. <p>8.6 The Requiring Authority is to use its best endeavours to ensure that the CLG meets at least twice prior to the commencement of construction and then at least once every three months once construction has commenced.</p> <p>8.7 Once construction has commenced, the Requiring Authority is to provide an update at least every three months to the CLG, with a copy of the update being provided to the Council, on compliance with the designation conditions, the CEMP, any management plans and any material changes to these plans.</p> <p>8.8 The Requiring Authority is to provide reasonable administrative support for the CLG including organising meetings at a local venue, inviting all members of the CLG to meetings, and taking and disseminating meeting minutes.</p> <p>8.9 The CLG is to continue for the duration of the construction phase of the project and for three months following completion of the project. The Requiring Authority is to use its best endeavours to ensure that the CLG meets at least once post completion of construction.</p>
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Construction conditions

9	<p>Outline plan requirements</p> <p>9.1 Before construction is commenced, the Requiring Authority is to submit an outline plan for construction of the project to the Auckland Council in accordance with section 176A of the RMA. The outline plan may be submitted in stages to reflect any proposed staging of the physical works. The outline plan is to include:</p> <ul style="list-style-type: none"> a) The Communication and Consultation Plan; b) The CEMP; c) Other management plans required by these conditions for any particular stage, including the: <ul style="list-style-type: none"> i. CNVMP ii. UDLP iii. VMP iv. EMP v. CTMP vi. HHMP a) Any other information required by the conditions of this designation associated with the construction of the project.
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	<p>9.2 The management plans listed above must clearly document the comments and inputs received by the Requiring Authority during its further discussion and consultation undertaken in accordance with these conditions.</p> <p>9.3 The Requiring Authority may elect to give effect to the designation conditions associated with construction of the project:</p> <ul style="list-style-type: none"> a) Either at the same time or in parts; and b) By submitting one or more: <ul style="list-style-type: none"> i. Communication and Consultation Plan; ii. CEMP; and iii. Other management plans required for any particular stage. <p>9.4 Early engagement by the Requiring Authority is to be undertaken with the Auckland Council in relation to preparation and submission of the outline plan to establish a programme that ensures achievable timeframes for both parties.</p> <p>9.5 All works are to be carried out in accordance with the confirmed outline plan.</p>
<p>10</p>	<p>Construction monitoring conditions</p> <p>10.1 The Requiring Authority is to establish and to implement a collaborative working process with the Council (Major Infrastructure Projects Team Manager) for dealing with day to day construction processes, including monitoring compliance with these conditions and with the CEMP and management plans and any material changes to these plans associated with construction of the project.</p> <p>10.2 This collaborative working process is to:</p> <ul style="list-style-type: none"> a) Operate for the duration of the construction works and for 6 months following completion of construction works where monitoring of designation conditions is still required, unless a different timeframe is mutually agreed between the Requiring Authority and the Auckland Council. b) Have a “key contact” person representing the Requiring Authority and its contractor team to work with the Council (Major Infrastructure Projects Team Manager) c) The “key contacts” are to be identified in the CEMP and is to meet at least monthly with the Council (Major Infrastructure Projects Team Manager) unless a different timeframe is agreed. The purpose of the meetings is to: <ul style="list-style-type: none"> i. Report on compliance with these conditions and with the CEMP, management plans and material changes to these plans and on any matters of non-compliance and how they have been addressed. ii. Identify and agree: <ul style="list-style-type: none"> a. that material changes have occurred or are required that require a review of the CEMP

	<p>or management plans in accordance with condition 11. The key contacts are to provide the Council (Major Infrastructure Projects Team Manager) with written confirmation that a material change has occurred or is required and;</p> <p>b. Which receivers are affected parties.</p> <p>10.3 The purpose and function of the collaborative working process is to:</p> <ul style="list-style-type: none"> a) Confirm with the Council (Major Infrastructure Projects Team Manager) that: <ul style="list-style-type: none"> i. The works authorised by this designation are being carried out in compliance with the designation conditions, the CEMP, management plans and any material changes to these plans. ii. The Requiring Authority and its contractor(s) are undertaking all monitoring and recording the monitoring results in compliance with the requirements of the CEMP and management plans and any material changes to these plans. b) Subsequent to a confirmed outline plan, provide a mechanism through which any changes to the design, CEMP or management plans, which are not material changes requiring approval that triggers a requirement for a new outline plan, can be required, reviewed and confirmed. c) Advise where changes to construction works following a confirmed outline plan require a new CEMP or management plan. d) Review and identify any concerns or complaints received related to, the construction works monthly (unless a different timeframe is mutually agreed with the Council (Major Infrastructure Projects Team Manager) and the adequacy of the measures adopted to respond to these.
<p>11</p>	<p>Review process for CEMP and management plans</p> <p>11.1 The CEMP and management plans are to be reviewed as a result of a material change to the project or to address unforeseen adverse effects arising from construction or unresolved complaints. Such a review may be initiated by either the Auckland Council or the Requiring Authority. The review is to take into consideration:</p> <ul style="list-style-type: none"> a) Compliance with the designation conditions, the CEMP, management plans and material changes to these plans. b) Any changes to construction methods. c) Key changes to roles and responsibilities for the project. d) Changes in industry best practice standards. e) Changes to legal or other requirements. f) Results of monitoring and reporting procedures associated with the management of adverse effects during construction.

	<p>g) Any comments or recommendations received from the Auckland Council regarding the CEMP and/or subsidiary management plans.</p> <p>h) Any unresolved complaints and any response to the complaints and remedial action taken to address the complaint.</p> <p>11.2 The Requiring Authority is to provide the opportunity (and specify reasonable timeframes for) feedback and input from affected parties identified in condition 10.2(c)(ii)(b) regarding the CEMP and management plan review process.</p> <p>11.3 A summary of the review process is to be kept by the Requiring Authority, provided annually to the Council (Major Infrastructure Projects Team Manager), and made available to the Auckland Council on request.</p>
12	<p>Update of CEMP and/or management plans following review</p> <p>12.1 Following any review process required by the previous condition, the CEMP or management plan may require updating.</p> <p>12.2 Any material change to the CEMP and/or management plan must be consistent with the purpose and objective of the relevant condition.</p> <p>12.3 Any affected parties (including any identified in accordance with condition 10.2(c)(ii)(b)) is to be notified of any material change proposed to a CEMP or management plan.</p> <p>12.4 The CEMP and management plans must clearly document the comments and inputs received by the Requiring Authority from affected parties about the material change along with a clear explanation of where any comments have not been addressed in the CEMP or management plan, and the reasons why not.</p> <p>12.5 Following that review any material change proposed to the CEMP and/or management plans relating to an adverse effect are to be submitted for approval to the Auckland Council's Compliance and Monitoring Officer at least 10 working days prior to the proposed changes taking effect. If any changes are not agreed, the relevant provisions of the RMA relating to approval of outline plans apply.</p>
13	<p>Contact person</p> <p>13.1 The Requiring Authority is to make a contact person available during standard working hours and also a 24 hour phone contact for the duration of the construction period to answer and to follow-up on public enquiries and concerns about the project and construction works.</p>
14	<p>Construction Communication and Consultation Plan</p> <p>14.1 The Requiring Authority is to prepare a Construction Communication and Consultation Plan ("CCCP") which is to be implemented and complied with for the duration of construction of the project. The objective of the CCCP is to set out a framework to ensure appropriate communication and consultation is undertaken with the community, stakeholders, directly affected parties and affected in proximity parties</p>

during construction of the project.

14.2 The CCCP is to set out how the Requiring Authority will:

- a) Inform the community of construction progress and future construction activities and constraints that could affect them (including activities that will cause noise, vibration and dust effects, information on temporary traffic disruptions and suggested alternative routes to avoid traffic disruption);
- b) Provide early information on key project milestones;
- c) Obtain and specify a reasonable timeframe (being not less than 10 working days) for feedback and inputs from directly affected and affected in proximity parties regarding construction of the project (as part of the review process provided by condition 11) and implementation of the CEMP or other management plans; and
- d) Respond to queries and complaints including but not limited to:
 - i) who is responsible for responding;
 - ii) how responses will be provided; and
 - iii) the timeframes within which responses will be provided.

14.3 As a minimum the Communication and Consultation Plan is to include:

- a) A communications framework that details the Requiring Authority's communication strategies, the accountabilities, frequency of communications and consultation, the range of communication and consultation tools to be used (including any modern and relevant communication methods, newsletters or similar, advertising etc.), and any other relevant communication matters;
- b) Details of the Communication and Consultation manager for the project including their contact details (phone, email and postal address);
- c) The methods for identifying, communicating and consulting with people affected by the project including but not limited to:
 - i) The CLG;
 - ii) All property owners and occupiers identified within the designation footprint;
 - iii) All owners and occupiers immediately adjacent to construction sites;
 - iv) HNZPT; and
 - v) Network utility operators.
- d) Methods for communication and consulting in advance of the proposed hours for construction activities outside normal working hours and on weekends and public holidays, to directly affected and affected in proximity parties (including surrounding communities);
- e) How stakeholders and persons affected by the project be consulted in the development and review of the CEMP and

	<p>management plans, including specifying reasonable timeframes for feedback;</p> <ul style="list-style-type: none"> f) Methods for communicating with directly affected and affected in proximity parties (including surrounding communities), bus (public and private) operators, taxi operators, bus users and the general public in advance of temporary traffic management measures and permanent changes to road networks and layouts; g) Methods for communicating and consulting in advance of construction works with emergency services (Police, Fire, Ambulance) on the location, timing and duration of construction works, and particularly in relation to temporary road lane reductions and/or closures and the alternative routes or detours to be used; and h) The process for Concerns and Complaints Management (receiving, acknowledging, responding and reporting to the community on actions taken) required by condition 15. <p>14.4 The Communication and Consultation Plan is also to include (as relevant) linkages and cross-references to the CEMP and management plans.</p> <p>14.5 If, in the course of amendments undertaken as part of the review process, a material change to the Communication and Consultation Plan is made, those parties affected by the change are to be notified within one month of the material change occurring.</p>
<p>15</p>	<p>Concerns and complaints management</p> <p>15.1 On receiving a concern or complaint during construction, the Requiring Authority is to instigate a process to address concerns or complaints received about adverse effects. This process is to:</p> <ul style="list-style-type: none"> a) Identify the nature of the concern or complaint, and the location, date and time of the alleged event(s). b) Acknowledge receipt of the concern or complaint within 24 hours of receipt. c) Respond to the concern or complaint in accordance with the relevant management plan, which may include monitoring the activity by an appropriately qualified expert and implementation of mitigation measures. <p>15.2 A record of all concerns and / or complaints received is to be kept by the Requiring Authority. This record is to include:</p> <ul style="list-style-type: none"> a) The name and address of the person(s) who raised the concern or complaint (unless they elect not to provide this) and details of the concern or complaint. b) Where practicable, the weather conditions at the time of the concern or complaint, including wind direction and cloud cover if the complaint relates to noise or air quality. c) Known project construction activities at the time and in the vicinity of the concern or complaint.

	<p>d) Any other activities in the area unrelated to the project construction that may have contributed to the concern or complaint such as non-project construction, fires, traffic accidents or unusually dusty conditions generally.</p> <p>e) Remedial actions undertaken (if any) and the outcome of these, including monitoring the activity.</p> <p>15.3 This record is to be maintained on site, be available for inspection on request, and is to be provided every two months (or as otherwise agreed) to the Council (Major Infrastructure Projects Team Manager).</p> <p>15.4 Where a complaint remains unresolved or a dispute arises, the Council (Major Infrastructure Projects Team Manager) is to be provided with all records of the complaint and how it has been addressed and whether the Requiring Authority considers that any other steps to resolve the complaint are required.</p> <p>15.5 On receiving records of the complaint, the Council (Major Infrastructure Projects Team Manager) may determine whether a review of the CEMP and/or Management Plans is required under condition 11 to address the complaint. The Council (Major Infrastructure Projects Team Manager) will use its best endeavours to advise the Requiring Authority of its recommendation within 10 working days of receiving the records of complaint.</p>
<p>16</p>	<p>Contractors' Environmental Management Plan (“CEMP”)</p> <p><i>Preparation compliance and monitoring</i></p> <p>16.1 The objective of the CEMP and other management plans is, so far as is reasonably practicable, to avoid, remedy or mitigate any adverse effects associated with the project construction. All works are to be carried out in accordance with the CEMP and management plans required by these conditions and in accordance with any changes to any of these plans.</p> <p>16.2 The CEMP and other management plans are to be prepared, complied with and monitored by the Requiring Authority throughout the duration of construction of the project.</p> <p>16.3 The management plans are to give effect to any specific requirements and objectives set out in these designation conditions.</p> <p>16.4 The CEMP is to include measures to give effect to any specific requirements and objectives set out in these designation conditions that are not addressed by the management plans.</p> <p>16.5 Where mitigation measures are required to be implemented by the Requiring Authority in relation to construction of the project, it is to meet the reasonable and reasonable costs of implementing such mitigation measures.</p>
<p>17</p>	<p>Contractors Environmental Management Plan (“CEMP”)</p> <p><i>Information Requirements</i></p>

	<p>17.1 To give effect to condition 16, the CEMP must include details of:</p> <ul style="list-style-type: none"> a) Information boards clearly identifying the Requiring Authority and the project name, together with the name, telephone number and email address of the site or project manager and the communication and consultation manager; b) Training requirements for employees, sub-contractors and visitors on construction procedures, environmental management and monitoring; c) The procedure for a cultural heritage induction for all parties involved in excavation works on the project site; d) Training requirements for employees sub-contractors and visitors on the cultural history and significance of the area, construction procedures, environmental management and monitoring; e) The site or project manager and the communication and consultation manager (who will implement and monitor the Communication and Consultation Plan), including their contact details (phone, email and physical address); f) The document management system for administering the CEMP, including review and Requiring Authority /contractor / Auckland Council requirements; g) Environmental incident and emergency management procedures (including spills); h) Environmental complaint management procedures; i) An outline of the construction programme of the works, including construction hours of operation, indicating linkages to the other management plans which address the management of adverse effects during construction; j) An outline of the location of the construction yard and how the construction yard is to be managed and maintained during the project including, but not limited to, how site offices and lower level noise construction activities will be located on the edge of the construction yards where practicable; k) Specific details on demolition to be undertaken during the construction period; l) How construction methods and processes will achieve waste minimisation and energy efficiency; m) Methods to ensure the safety of the general public; n) Specific details on the environmental monitoring to be undertaken throughout construction, as required by these designation conditions; o) Methods to control the intensity, location and direction of artificial construction lighting to avoid light spill and glare onto sites adjacent to the construction areas; p) Where access points are to be located and procedures for managing construction vehicle ingress and egress to construction support and storage areas;
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	<ul style="list-style-type: none"> q) Measures to ensure that all storage of materials and equipment associated with the construction works takes place within the boundaries of the designation; r) Methods to ensure the prevention and mitigation of adverse effects associated with the storage, use, disposal, or transportation of hazardous substances; s) Measures to ensure all temporary boundary / security fences associated with the construction of the project are maintained in good order with any graffiti to be removed as soon as possible; t) How the construction areas are to be fenced and kept secure from the public and the location and specifications of any temporary acoustic fences and visual barriers; u) The location of any temporary buildings (including workers' offices and portaloos) and vehicle parking (which should be located within the construction area and not on adjacent streets); v) Measures adopted to ensure that any vehicles associated with construction of the project do not park on any adjacent streets.
<p>18</p>	<p>Project standards – construction noise</p> <p>18.1 Construction noise is to be measured and assessed in accordance with the requirements of NZS6803:1999 Acoustics – Construction Noise. Noise generated from construction works is to comply with the long term noise limits stated in Tables 2 and 3 of NZS6803:1999 unless otherwise varied by a management schedule developed in accordance with condition 18.7.</p> <p>18.2 The hours of work for construction activities shall be 0730 to 1800 from Monday to Saturday unless otherwise varied by a management schedule developed in accordance with condition 18.7.</p> <p>18.3 Vibration from construction and demolition is not at any time to exceed the limits set out in Tables 1 and 3 of German Standard DIN 4150 Part 3: 1999 "Structural Vibration in Buildings – Effects on Structures" (the "DIN Standard") at any building.</p> <p>Construction Noise and Vibration Management Plan</p> <p>18.4 No later than ten working days prior to commencement of work on the project, the Requiring Authority must submit a Construction Noise and Vibration Management Plan ("CNVMP") to the Council (Major Infrastructure Projects Team Manager) for certification. The certified CNVMP and any management schedules prepared in accordance with condition 18.7 must be implemented, adhered to and maintained throughout the construction period.</p> <p>18.5 The CNVMP must describe the best practicable option(s) that will be adopted to avoid, remedy or mitigate construction noise and vibration effects. The CNVMP must as a minimum address the noise management measures set out in Annex E of the NZS6803:1999 and the following:</p> <ul style="list-style-type: none"> a) Construction sequencing; b) Machinery and equipment to be used, including promotion of the

	<p>use of low noise machinery where practicable;</p> <ul style="list-style-type: none"> c) Hours of operation, including times and days and reasons for when it is necessary to undertake construction works outside of the hours in 18.2; d) The design of noise mitigation measures such as temporary barriers or enclosures; e) Methods for monitoring and reporting on construction noise; and f) Methods for receiving and responding to complaints about construction noise. <p>18.6 The CNVMP must be prepared in accordance with the vibration management measures set out in the vibration standards of the DIN Standard and must address the following:</p> <ul style="list-style-type: none"> a) Vibration monitoring measures; b) Vibration criteria; c) Possible mitigation measures; d) Complaint response; e) Reporting procedures; f) Notification and information for the community of the proposed work; g) Vibration testing of equipment to confirm vibration predictions; h) Location for vibration monitoring when construction activities are adjacent to buildings identified for settlement monitoring. <p>18.7 Where an activity is predicted or measured to be non-compliant with the project standards in conditions 18.1 and/or 18.2, the Requiring Authority is to prepare a management schedule(s). Any management schedule is to be activity specific and include, as a minimum, the following details:</p> <ul style="list-style-type: none"> a) A description of the activity (including duration), plant and machinery that is expected not to comply with the noise and/or vibration limits in conditions 18.1 and 18.2; b) Predicted levels and proposed noise limits for all receivers where the levels will not be compliant with the limits in condition 18.1; c) A description of the mitigation measures proposed to reduce the noise and vibration levels as far as practicable, including any options that have been discounted due to cost or any other reason; d) A description of any additional methods to manage the effects on the affected parties (e.g. temporary accommodation during the specific activity) <p>18.8 Any management schedule produced in accordance with condition 18.7 is to be provided to the Council (Major Infrastructure Projects Team Manager) for approval no less than 5 working days prior to the authorised works commencing.</p>
	<p>Condition surveys</p> <p>18.9 The Requiring Authority is to engage an appropriately qualified and experienced structural engineer who, prior to construction within 20 metres of any dwelling or structure on the properties shown on the Newmarket Level Crossing – Condition Survey Map prepared by Opus International Consultants dated 27 April 2016, is to undertake a survey</p>

	<p>of those dwellings and structures whose owners and occupiers provide their written consent for access. The survey is to assess the current condition of the exterior and interior of the dwellings and other structures (including swimming pools and masonry walls) and shall determine the vibration criterion for each dwelling and structure according to the DIN Standard. All surveys are to be at the Requiring Authority's cost.</p> <p>18.10 A copy of each survey is to be provided to the Council's Team Leader Compliance and Monitoring – Central and a copy as it relates to the relevant property is to be made available to those property owners who participate in the survey and request a copy of the results.</p> <p>18.11 On completion of the construction works a follow-up survey of each dwelling and/or structure surveyed is to be carried out at the Requiring Authority's cost.</p>
<p>19</p>	<p>Urban Design and Landscape Plan</p> <p>19.1 The Requiring Authority is to submit an Urban Design and Landscape Plan (“UDLP”) to the Council (Major Infrastructure Projects Team Manager). The objective of the UDLP is to provide a framework that ensures:</p> <ul style="list-style-type: none"> a) The integration of any above ground structures of the project into the surrounding landscape; b) To the greatest extent practicable, the avoidance, remediation or mitigation of any adverse landscape or visual effects of the project; and c) The operation of the project is consistent with relevant CPTED principles. <p>19.2 To achieve the objective of the UDLP, the UDLP is to provide details of how the following design elements have been incorporated in the detailed design of the project:</p> <ul style="list-style-type: none"> a) Visibility, sightlines and casual surveillance are to be maximised; b) Concealment and isolation opportunities are to be minimised; c) Fencing, landscaping and streetscape features are to be designed to maximise visibility; d) Fencing and landscaping is to be utilised to discourage access to the rail corridor; e) Design of above ground infrastructure is to encourage safe movement, orientation and way finding; f) Materials and fixtures are to be vandal and graffiti resistant; g) Design of above ground structures is to be integrated with the surrounding landscape to the greatest extent practicable; h) Connectivity for pedestrians between Newmarket Park and the existing pedestrian network on Parnell Road, Laxon Terrace and Youngs Lane is to be provided for to the greatest extent practicable. <p>19.3 The UDLP is also to include the following details:</p> <ul style="list-style-type: none"> a) How the proposed lighting will meet the requirements of the Auckland Transport’s Street Lighting Policy for “Pathways in high risk, high brightness areas”);

	<ul style="list-style-type: none"> b) How opportunities to promote the character of Newmarket Park have been included in design (e.g. through providing information boards/signage and viewing platforms); c) How mitigation planting is in general accordance with the mitigation planting concept plan; d) How mitigation planting in front of 9 Cowie Street will avoid or mitigate adverse visual effects of the overbridge from properties to the south; e) How mitigation landscaping addresses the recommendations of the EMP. Details are to include: <ul style="list-style-type: none"> i. Plans showing plant species, plant spacing, plant sizes at the time of planting; layout; grade; likely heights on maturity and how planting will be staged and established methods of ground preparation; fertilising; mulching; spraying and ongoing maintenance; ii. A maintenance schedule for maintenance of vegetation covering no less than 3 years; iii. Methods of ground preparation, fertilising, mulching, spraying and ongoing maintenance; iv. A vegetation maintenance schedule for the proposed landscaping, in particular details of maintenance methodology and dates/frequencies for the first three years following completion of the construction works. <p>19.4 The Requiring Authority is to undertake a practical completion audit of the landscaping implemented under condition 19 at the end of the 3 year maintenance period. Any defects identified by the audit are to be remedied by the Requiring Authority to the satisfaction of the Auckland Council's Compliance Monitoring Officer.</p> <p>19.5 Following completion of the construction works on the site (or at a time agreed with the Council (Major Infrastructure Projects Team Manager), the Requiring Authority is to implement the UDLP. The planting is to be implemented and maintained to the satisfaction of the Council (Major Infrastructure Projects Team Manager).</p> <p>19.6 The UDLP is to be prepared in consultation with the Auckland Council, the Waitemata Local Board, mana whenua, KiwiRail, and property owners identified in the Visual Catchment/Viewing Audience map dated January 2016 prepared by Opus International Consultants as part of the Assessment of Environmental Effects ("map 2") as being in Zone A and B (refer also to the definitions provided for these conditions). The Requiring Authority is to consider feedback from these parties and the means by which any relevant suggestions may be incorporated in the UDLP.</p> <p>19.7 As part of the UDLP submitted, the Requiring Authority is to: <ul style="list-style-type: none"> a) Provide a record of feedback received from the parties referred to in condition 19.6. b) Provide detail regarding the degree to which the feedback has been considered and where applicable incorporated into the design. Where feedback has not been incorporated, the Requiring Authority is to provide comment as to reasons why the feedback has not been incorporated. </p>
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<p>20</p>	<p>Tree protection</p> <p>20.1 Prior to commencement of construction, the Requiring Authority is to appoint a qualified arborist ('Works Arborist') for the duration of the works. The role of the Works Arborist is to supervise all tree removals and works within the dripline of protected trees and street trees adjacent to the works site.</p> <p>20.2 Contact details of the Works Arborist are to be provided to the Auckland Council's nominated project arborist prior to construction and in accordance with the CEMP.</p> <p>20.3 Prior to commencement of construction, a pre-commencement meeting is to be conducted at the site. The pre-commencement meeting is to:</p> <ul style="list-style-type: none"> a) Be attended by the Works Arborist and the Council's project arborist; and b) Brief all contractors, sub-contractors and work site supervisory staff who will be carrying out project works of vegetation protection measures required on the site during construction. <p>20.4 Prior to works commencing, the following are to be implemented;</p> <ul style="list-style-type: none"> a) Protective fences of day-glo mesh attached tautly to closely spaced Waratah standards are to be erected to enclose as much of the dripline areas of affected trees as practicable. The locations of these fences is to be agreed and supervised by the Works Arborist. b) On completion of the pre-commencement meeting (condition 20.3), the Works Arborist is to submit a compliance memo to the Auckland Council's Compliance Officer and/or the Council's project arborist for certification. c) Communications and actions undertaken by the Works Arborist to manage activities implemented under condition 20.4 are to be supplied as part of the arboriculture works log sheet which is to form part of the tree management compliance report specified in condition 20.9. <p>20.5 In the event activities, machinery, storage of materials and/or vehicle tracking associated with construction are required within the dripline of trees and/or protected vegetation, the Requiring Authority, through the Works Arborist, must:</p> <ul style="list-style-type: none"> a) Ensure no passage of machinery, or emplacement of materials, equipment, fuels and oils, and spoil, is permitted within the dripline of trees and/or protected vegetation without approved protection measures being installed. b) Where 20.5(a) cannot be achieved, a practicable solution to protect the affected tree must be recommended by the Works Arborist. Methods may include, but are not limited to <ul style="list-style-type: none"> i. track-mats, ii. plywood at a minimum thickness of 17mm must be utilised in any machinery movement. c) Storage of materials, equipment, and spoil must be stored on a hard surface adjacent to the works area with polythene sheeting or plywood used as a further preventative measure. <p>20.6 All tree removal, pruning and works within the dripline of protected</p>
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	<p>trees shall be undertaken in accordance with, but not limited to, the tree protection methodology provided in sections 8 and 9 of the arboricultural assessment prepared by Peers Brown Miller Ltd, dated 24 July 2015. A copy of this report is to be accessible on the site at all times.</p> <p>20.7 In accordance with condition 20.5(a), excavation undertaken to install new hard surface and/or permanent structures within the dripline of protected trees is to:</p> <ul style="list-style-type: none"> a) Be assessed by the Works Arborist prior to excavation works occurring; b) Be undertaken with approved methods to prevent damage to the tree, as recommended by the Works Arborist; c) Excavation works are to be monitored by the Works Arborist, d) Pruning of protected trees is to be carried out prior to works commencing by the Works Arborist or a qualified arborist under the instruction of the Works Arborist; <p>20.8 The Requiring Authority is to submit a Vegetation Management Plan (“VMP”) to the Auckland Council. The VMP is to be prepared in accordance with the recommendations provided in the arboricultural assessment prepared by Peers Brown Miller Ltd, dated 24 July 2015. The VMP is to include, but not be limited to:</p> <ul style="list-style-type: none"> a) Measures to ensure that all contractors, sub-contractors, and workers engaged in all activities covered by this designation are advised of the tree protection measures required by conditions on the designation, and operate in accordance with those; b) A tree works methodology for works in the root-zone of the mature Poplar and Puriri trees at 9 Cowie Street, with construction details for the proposed bridge and roadway designed to avoid any adverse effects on the immediate and long term health and stability of the trees; c) Methods adopted to ensure the avoidance to the greatest extent practicable of machinery striking any part of any tree during the course of the project. <p>20.9 The Requiring Authority is to submit compliance reports on a monthly basis throughout the course of the works to the Auckland Council’s project arborist and to the Major Infrastructure Projects Team Manager, Auckland Council. The compliance reports are to include:</p> <ul style="list-style-type: none"> a) A digital photographic record of the tree works undertaken from the Works Arborist. b) Details of each instance that the Works Arborist is present on the site to supervise and monitor works in the rootzone of retained trees. c) Details (including photographs) of all of the activities which have been undertaken on or within the rootzone of retained trees and d) Confirmation that the works to date have been in accordance with the conditions of this designation while under the direction of the Works Arborist. <p>20.10 A tree management completion report is to be completed by the Works Arborist and provided to the Council’s project arborist within one month</p>
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	<p>of completion of construction. The tree management completion report is to:</p> <ol style="list-style-type: none"> a) Confirm (or otherwise) that the works have been undertaken in accordance with the tree protection measures required by the these conditions and under the direction of the Works Arborist. b) Confirm that the impact on the protected trees has been no greater than that provided for by the conditions.
21	<p>Ecological Management Plan</p> <p>21.1 The Requiring Authority is to prepare and submit an Ecological Management Plan (“EMP”) to the Council (Major Infrastructure Projects Team Manager). The objective of the EMP is to detail the ecological management and monitoring programme that will be implemented to manage ecological effects on the environment during and after the construction phase of the project.</p> <p>21.2 The EMP is to be prepared by an appropriately qualified and experienced ecologist prior to commencement of the works.</p> <p>21.3 The EMP is to include, but not be limited to, the following:</p> <ol style="list-style-type: none"> a) A revegetation planting plan using appropriate native species eco-sourced from the Tamaki Ecological District; b) A planting schedule, methodology, and an implementation and maintenance programme; c) A weed and pest management programme for a minimum of two years commencing on completion of the revegetation planting; d) A Herpetofauna Management Plan (“HMP”) prepared by a qualified herpetologist. The HMP should include, but not be limited to, the following: <ol style="list-style-type: none"> i. Lizard capture-relocation methodologies and timeframes including a minimum capture period duration of eight weeks outside of winter months. ii. Details of habitat enhancement and protection measures. iii. Details of a predator control programme including methodologies and timeframes. iv. Details of any monitoring proposed to assess the effectiveness of the mitigation. e) The revegetation planting is to be implemented during the first planting season (April to July) following the completion of works.
22	<p>Network utility infrastructure</p> <p>22.1 The Requiring Authority must ensure that access to the existing infrastructure of network utility operators for maintenance work (at all reasonable times) and for emergency works (at all times) is not adversely affected by the activities authorised by the designation.</p> <p>22.2 During final design of the project the Requiring Authority is to:</p> <ol style="list-style-type: none"> a) Liaise with all relevant network utility operators in relation to any part of the works within the designation where their infrastructure may be affected; and b) Where required, make all reasonable changes requested by

	<p>such network utility operators to the relevant design plans and methodologies, to ensure that access to, maintenance and the operation of, all network utility infrastructure within the designated area is not adversely affected.</p> <p>22.3 Where during design or construction such infrastructure is found to be affected, subject only to reasonable planned interruption, the Requiring Authority is to either:</p> <ul style="list-style-type: none"> a) protect the utility from any activity which may interfere with the proper functioning of the services, relocate it to the same or similar standard (including property rights) as the operator currently had before commencement of the project; or b) repair or replace, at the Requiring Authority's expense, any infrastructure damaged during construction to the reasonable satisfaction of the affected network utility operator. <p>22.4 For works impacting on Vector assets, the requiring authority will consult with Vector Limited and enter into an agreement describing how the assets are to be relocated, and how the costs are to be apportioned. That agreement is to be consistent with Vector's standard "Agreement for Movement of Infrastructure", and is to be in place prior to any works taking place pursuant to the designation that might affect Vector's assets.</p> <p>22.5 Works required at the termination point of Sarawia Street are to be designed in consultation with KiwiRail to address the following:</p> <ul style="list-style-type: none"> a) Prevent pedestrian access from Sarawia Street to KiwiRail land; and b) Appropriate fencing and structures located adjacent to KiwiRail land.
<p>23</p>	<p>Lighting</p> <p>23.1 Any lighting used to illuminate carriageways is to be designed and located so that lighting levels comply with the Australia New Zealand Roadway Lighting Standard 1158, (series) - Lighting for Roads and Public Spaces.</p> <p>23.2 Any lighting employed to illuminate carriageways is to be sited and designed to ensure that no more than 10 lux (vertical) of light is spilled during night time hours onto any residential building. This is to be measured at the windows of any habitable room in any such building.</p>
<p>24</p>	<p>Construction Traffic Management Plan</p> <p>24.1 The Requiring Authority is to submit a Construction Traffic Management Plan ("CTMP") to the Council (Major Infrastructure Projects Team Manager). The objective of the CTMP is to provide a framework to avoid, remedy or mitigate adverse traffic effects associated with the construction of the project.</p> <p>24.2 The CTMP is to be provided to the Auckland Council at least 10 working days prior to construction activity and is to be implemented and</p>

	<p>complied with for the duration of construction of the project.</p> <p>24.3 The CTMP is to describe the measures that will be undertaken to avoid, remedy or mitigate the local and network-wide effects of construction of the project. In particular, the CTMP is to include (but not be limited to) the following matters:</p> <ul style="list-style-type: none"> a) Methods to avoid, remedy or mitigate the local and network-wide effects of the construction of individual elements of the project particularly near Cowie Street and Sarawia Street (e.g. intersections/ bridges); b) Methods to manage the effects of the delivery of construction material, plant and machinery (including cranes and oversized trucks) during construction; c) Measures to maintain existing vehicle access, or where the existing property access is to be removed or becomes unsafe as a result of the construction works, measures to provide alternative access arrangements in consultation with the Auckland Council and the affected landowner; d) Measures to maintain pedestrian and cycle access with thoroughfare to be maintained on all roads and footpaths adjacent to the construction works, where practicable (e.g. unless provision of such access is severed by the works or such access will become unsafe as a result of the construction works). Such access is to be safe, clearly identifiable, provide permanent surfacing and seek to minimise significant detours; and e) Measures to minimise loss of parking through construction (including contractor vehicles).
<p>25</p>	<p>Parking</p> <p>25.1 Subject to the recommendations of a safety audit of the detailed design, there is to be no loss of on-street parking on Cowie Street. If the outcome of the detailed design safety audit necessitates the loss of on-street parking on Cowie Street, any reduction of on-street parking is to be minimised to the greatest extent practicable.</p>
<p>26</p>	<p>Historic Heritage Management Plan</p> <p>26.1 The Requiring Authority is to prepare and submit an Historic Heritage Management Plan (“HHMP”) to the Auckland Council at least 20 working days prior to commencement of any activity authorised by the designation. The objective of the HHMP is to provide a framework for the avoidance, remediation or mitigation of adverse effects on archaeological remains during construction, as far as reasonably practicable.</p> <p>26.2 The Requiring Authority is to submit the HHMP to the Manager: Heritage Unit, Auckland Council to confirm that the activities undertaken in accordance with the HHMP will achieve the objectives of the plan and compliance with the following conditions.</p> <p>26.3 The HHMP is to be prepared by the Requiring Authority in consultation</p>

with HNZPT and the Auckland Council's Heritage Unit (Cultural Heritage Implementation) and is to include details of (but not be limited to):

- a) Details of all the historic heritage sites in the development area;
- b) How construction, operation and maintenance of the project will ensure that any effects on the circa 1914 scoria retaining wall will be avoided;
- c) How adverse direct and indirect effects on historic heritage sites identified are proposed to be avoided, remedied or mitigated;
- d) The training requirements proposed to ensure the project team is aware of the processes and procedures;
- e) Measures proposed for the storage and curation of the site archive and dissemination of the results of any fieldwork investigations undertaken in relation to historic heritage;
- f) Details of the storage and curation of the site archive and dissemination of the results of any fieldwork investigations undertaken in relation to historic heritage;
- g) Auckland Transport's Accidental Discovery Protocols as set out below:
 - i. If, at any time during site works, potential koiwi, archaeology or artefacts of Māori origin are discovered, then all site works, including earth moving machinery must stop around the location of the find and the following accidental discovery protocol must be followed.
 - ii. The site owner or the site manager must immediately advise the kaitiaki and kaumatua of the relevant Mana Whenua, Team Leader Cultural Heritage (Implementation) and Heritage New Zealand Pouhere Taonga.
 - iii. Mana Whenua will determine the tikanga for appropriate preservation, management and handling of the koiwi, archaeology or artefacts of Māori origin that are uncovered, which may include removal of the koiwi, archaeology or artefacts of Māori origin from the site by Mana Whenua or preservation within the site.
 - iv. Preservation of the koiwi, archaeology or artefacts of Māori origin that are uncovered may require amendments to the site works to avoid adverse effects on sites of significance to Mana Whenua and Māori values.
 - v. Works in the identified area must not recommence until approval has been granted by HNZPT in consultation with Mana Whenua.
 - vi. Any final archaeological reporting resulting from an accidental discovery is to be submitted to the Council's the Cultural Heritage Team (Implementation) for the purpose of record keeping within 30 days of an updated report being provided to HNZPT.

ADVICE NOTES

AN1	Some of the project land is subject to existing designations. Nothing in these designation conditions negates the need for the Requiring Authority to adhere to the provisions of section 177 of the RMA.
AN2	The resource consents for the project granted by the Council also include conditions that require preparation and implementation of a CEMP. It is appropriate that a single CEMP be prepared by the Requiring Authority/consent holder which meets the conditions of this designation and the conditions of the resource consents.
AN3	Certification of the Historic Heritage Management Plan by the Council relates only to those aspects of the management plan that are relevant under the Resource Management Act 1991. The certification does not amount to an approval or acceptance of suitability by the Council of any elements of the management plan that relate to other legislation, for example, but not limited to, the Heritage New Zealand Pouhere Taonga Act 2014 (“HNZPTA”).
AN4	It is unlawful to modify or destroy a pre-1900 (or post -1900 archaeological site declared under section 43 of the HNZPTA) archaeological site without the prior authority of Heritage New Zealand Pouhere Taonga (“HNZPT”) issued under the HNZPTA. The HNZPTA also requires that approval be sought of persons nominated to undertake the activity under an authority. Requirements under the HNZPTA should be confirmed directly with Heritage New Zealand Regional Archaeologist (ArchaeologistMN@heritage.org.nz).
AN5	The Requiring Authority is advised that installation of silt fences within the rootzone of retained trees must not involve the excavation or alteration of ground levels. Alternative methods to trenching should entail pinning the bottom edge of the siltcloth to the ground (using ground staples) and reinforcing with straw bales or similar. This requirement also applies where tree protection and silt/erosion control fences are combined into the one fence and constructed in the protected rootzone area.
AN6	The EMP may be incorporated into the landscape plans for the project provided all the requirements of the EMP condition are met.

Newmarket Level Crossing Project

CONDITIONS OF CONSENT (R/LUC/2015/3627, R/REG/2015/3629 and R/REG/2015/3633)

General conditions

Note: These general conditions apply to all the resource consents required for the project.

- The project shall be carried out in general accordance with the plans and all information submitted with the application, detailed below, and all referenced by the Council as consent numbers R/LUC/2015/3627, R/REG/2015/3629 and R/REG/2015/3633:

Application form, and Assessment of Environmental Effects prepared by Opus International Consultants Ltd, dated August 2015

<i>Report title and reference</i>	<i>Author</i>	<i>Rev</i>	<i>Dated</i>
Fact Sheet Sarawia Street – level crossing operation	KiwiRail		January 2013
Newmarket Level Crossing Project Ecological Assessment of Effects	Opus International Consultants Ltd		August 2015
Newmarket Level Crossing Project Stormwater Management – Assessment of Environmental Effects	Opus International Consultants Ltd		August 2015
<i>Plan title and reference</i>	<i>Author</i>	<i>Rev</i>	<i>Dated</i>
Notice of Requirement Preliminary Design Plans 1-C1135.00 Sheet 1	Opus	RI	31/08/2015
Notice of Requirement Preliminary Design – Longsection 1-C1135.00 Sheet 1A	Opus	RI	31/08/2015
Notice of Requirement Bridge – General Arrangement 1-C1135.00 Sheet 1B	Opus	RI	31/08/2015
Notice of Requirement Mitigation Planting Concept Plan 1-C1135.10 Sheet 9	Opus	RI	31/08/2015
Notice of Requirement Stormwater Drainage Plan SHT 1 of 2 1-C1135.00 Sheet 10	Opus	RI	31/08/2015
Notice of Requirement Stormwater Drainage Plan SHT 2 of 2 1-C1135.00 Sheet 11	Opus	RI	31/08/2015
Notice of Requirement Specimen Erosion & Sediment Control Plan 1-C1135.00 Sheet 12	Opus	RI	31/08/2015
Raingarden and Swale Typical Sections	Opus	A	2/02/2016

Plan title and reference	Author	Rev	Dated
1-C1135.63			
Other additional information	Author	Rev	Dated
Further information response letter, including all attachments A-J "Section 92 Response To Notice of Requirement and Resource Consent for the Newmarket Level Crossing Project"	Opus		23 December 2015
Further information response letter, including all attachments A-F "Section 92 Response to Notice of Requirement and Resource Consent for the Newmarket Level Crossing Project"	Opus		5 February 2016

All charges paid

2. These consents (or any part thereof) will not commence until such time as the following charges, owing at the time this decision is notified, have been paid to the Council in full:
 - a. All fixed charges relating to receiving, processing and granting these resource consents under section 36(1) of the RMA; and
 - b. All additional charges imposed under section 36(3) to enable the Council to recover its actual and reasonable costs in respect of these applications, being costs which are beyond challenge.
3. The consent holder is to pay any subsequent further charges imposed under section 36 of the RMA relating to receiving, processing and granting these resource consents within 20 days of receipt of notification of a requirement to pay the same provided that, in the case of any additional charges under section 36(3) that are subject to challenge, the consent holder shall pay such amount as is determined by that process to be due and owing, within 20 days of receipt of the relevant decision.

Lapse date

4. Under section 125 of the RMA, these consents will lapse five years after the date they are granted unless:
 - a. The consent is given effect to; or
 - b. On application the Council extends the period after which the consent will lapse.

Compliance monitoring charge

5. The consent holder is to pay the Council an initial consent compliance monitoring charge of \$845 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs to ensure compliance with the conditions of these consents.

Advice note:

The initial monitoring charge is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc, all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, inspections, in

excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge(s) as they fall due. Such further charges are to be paid within one month of the date of invoice. Only after all conditions of these resource consents have been met, will the Council issue a letter confirming compliance on request of the consent holder.

Construction Management

6. Prior to commencement of the construction activities authorised by these consents, the consent holder is to prepare a Construction Environmental Management Plan ("CEMP"). The CEMP is to include the following information:
 - a. Final project details and staging of works to illustrate that the works remain within the limits and standards approved by these consents;
 - b. General site layout and management;
 - c. The site or project manager and the Communication and Consultation Manager, including their contact details (phone, email and physical address);
 - d. The communication procedures for ensuring that directly affected, affected in-proximity parties and stakeholders are given prior notice of the commencement of construction and are informed about the expected duration. In particular, the procedures shall provide for the following:
 - i) List of directly affected parties, affected in-proximity parties and stakeholders to be engaged with throughout the project and the proposed methods of engagement;
 - ii) Communication prior to the commencement of construction;
 - iii) Timeframes for carrying out engagement, including notice periods for changes to pedestrian and vehicle access, night works and/or activities that may generate significant noise and vibration;
 - iv) When and how regular updates on construction progress will be made;
 - v) Key dates for project milestones; and
 - vi) Identify necessary communication on any other matters potentially affecting the parties identified in i) above.
 - e. The management plans which are required to be provided to the Council prior to construction commencing and which form part of these conditions, being:
 - i. Site Management Plan(s); and
 - ii. Erosion and Sediment Control Plan.
 - f. Identification of the appropriately qualified engineering professional required by these conditions;
 - g. Environmental incident and emergency management procedures, including spills;
 - h. Environmental complaint management procedures;
 - i. Training requirements for employees, sub-contractors and visitors on the cultural history and significance of the area, construction procedures, environmental management and monitoring;
 - j. The proposed measures to keep the construction area in a tidy condition in terms of disposal/storage of rubbish and storage unloading construction materials (including

equipment). All storage of materials and equipment associated with the construction is to take place within the boundaries of the designation;

- k. How the construction areas are to be fenced and kept secure from the public; and
- l. The means of ensuring the safety of the general public.

7. The CEMP is to be provided to the Council (Team Leader Central Monitoring) for certification at least 20 working days prior to commencement of construction. Construction is not to commence until written certification has been obtained from the Council (Team Leader Central Monitoring).

Advice note:

The consent holder may provide the CEMP(s) to the Council (Team Leader Central Monitoring) for certification in a staged manner.

8. The certified CEMP is to be implemented and maintained throughout the entire construction period for the project, or relevant project stage, to manage potential adverse effects arising from the construction and is to be updated as necessary. Any change to the CEMP is to be submitted to the Council (Team Leader Central Monitoring) for certification and no activity relying on a change to the CEMP is to be undertaken until the change has been certified.

Specific conditions – land use consent R/LUC/2015/3627

Consent duration

9. This consent will expire 5 years after it commences unless it has been surrendered or been cancelled at an earlier date.

Notice of commencement of works

10. The consent holder is to inform the Council (Team Leader Central Monitoring), in writing, of the commencement of the works at least two working days prior to the start date of the works authorised by this consent.

Advice note:

Please contact the Team Leader Central Monitoring, Compliance, Auckland Council at monitoring@aucklandcouncil.govt.nz to advise of the start of works. The following details should also be provided:

- *site address to which the consent relates;*
- *name and telephone number of the project manager and the site owner;*
- *activity to which the consent relates; and*
- *the expected duration of the works.*

Site management plan (“SMP”)

11. At least 20 working days prior to the commencement of soil disturbance activities on the site, a final SMP shall be submitted to the Council (Team Leader Central Monitoring) for certification. The SMP is to be prepared by an appropriately qualified and experienced contaminated land professional and is to be generally consistent with the draft SMP prepared by Opus International Consultants Ltd, dated February 2016.

Advice note:

The Council acknowledges that the SMP is intended to provide flexibility for management of the works and the contaminated site discharge. Accordingly, the SMP may need to be updated. Any updates should be limited to the scope of this consent and consistent with the conditions of this consent. If you would like to confirm that any proposed updates are within scope, please contact Team Leader Central Monitoring on (09) 301 0101.

12. The consent holder is to ensure that all soil disturbance activities are undertaken in accordance with the procedures in the certified SMP.

Stockpiling

13. Stockpiling of soils is to be overseen by an appropriately qualified and experienced contaminated land professional to ensure that there is no mixing of contaminated material with non-contaminated material, with the stockpiles clearly labelled. Stockpiles are to be completely covered with polythene or equivalent impermeable material and anchored at the edges when not being worked on.

Disposal

14. All excavated soils comprising fill material are to be removed from the site and disposed of at an appropriate facility which is licensed to accept the levels of contamination identified. In the event that natural soils are to be taken off-site, these may be regarded as suitable for cleanfill disposal if they have been characterised in accordance with the Ministry for the Environment's "A Guide to the Management of Cleanfills" and shown to meet its definition of "cleanfill".

Specific sampling (stormwater swale)

15. Where soil is excavated for construction of the proposed stormwater swale, this soil is to be either sampled to determine the appropriate disposal requirements, or in the absence of testing, be disposed of at a licensed landfill. Sampling is to be undertaken by an appropriately qualified and experienced contaminated land professional in accordance with the Contaminated Land Management Guidelines No. 5 – Site Investigation and Analysis of soils, Ministry for the Environment, revised 2011.

Dust

16. During earthworks, all necessary action is to be taken by the consent holder to prevent dust generation, and sufficient water is to be available to dampen exposed soil, and/or other dust suppressing measures are to be available to avoid dust formation. The consent holder is to ensure that dust management during the excavation works generally complies with the Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions, MfE (2001).

Accidental discovery

17. In the event of any accidental discovery of contamination during the remediation and bulk earthworks, including asbestos material, and including any visible change in the nature of sub-surface material, works in the area containing the unexpected contamination are to cease until such time as an appropriately qualified and experienced contaminated land professional has assessed the situation (including

possible sampling and testing) and determined the best option for managing the material.

18. In the event that asbestos containing material (“ACM”) is encountered, this material is to be removed by a person certified under the Health and Safety in Employment (Asbestos) Regulations (1998). Soils in the vicinity of the ACM are to be additionally tested for the presence of asbestos with the results being provided to the Council (Team Leader Central Monitoring) for review, which will advise on further action, including the need for remediation of any impacted soil, that is required.

Fill management

19. Where fill material remains at the finished excavated surface, this is to be capped according to the procedures provided in the certified Site Management Plan.
20. All imported fill is to comply with the definition of “cleanfill” in the “Guide to the Management of Cleanfills”, Ministry for the Environment (2002).

Health and safety

21. The consent holder is to ensure that a site-specific health and safety plan is in place for the entire construction period and is adhered to at all times to the satisfaction of the Council (Team Leader Central Monitoring).
22. Good practice hygiene measures are to be adopted during remediation and bulk earthworks and adequate decontamination and wash-up facilities are to be provided to the satisfaction of the Council (Team Leader Central Monitoring).

Site validation report

23. Within three months of completion of the soil disturbance activities on the site, a Site Validation Report (“SVR”), which documents that the earthworks have been carried out according to the certified Site Management Plan and the conditions of consent, is to be provided to the Council (Team Leader Central Monitoring). The SVR is to be prepared by an appropriately qualified and experienced contaminated land practitioner and is to contain sufficient detail to address the following matters:
 - a. The results of further sampling and testing together with site plans of sampling locations;
 - b. A summary of the earthworks undertaken;
 - c. Site plans showing excavation extents and depths;
 - d. Site plans showing locations where fill remains in place and locations which have been capped;
 - e. The volume/weight of soil excavated and removed from the site, with copies of disposal documentation for all soil taken off site;
 - f. Documentation that imported material meets the definition of “cleanfill” in the “Guide to the Management of Cleanfills” Ministry for the Environment (2002);
 - g. Reports of any complaints, health and safety incidents related to contamination, and/or contingency events during the remediation and bulk earthworks.

Earthworks and engineering

Erosion and sediment control plan

24. At least 20 working days prior to commencement of soil disturbance activities on the site, a final Erosion and Sediment Control Plan (“ESCP”) is to be submitted to the Council (Team Leader Central Monitoring) for certification. The final ESCP is to include the following information:
 - a. Confirmation of the appropriate structural and non-structural erosion and sediment control measures to be installed prior to and during construction works;
 - b. Management procedures and construction methods to avoid, remedy and mitigate adverse effects from sediment discharges;
 - c. Any specific measures to manage dust and any contingency measures to manage vapour and/or odour;
 - d. An overview of the indicative staging of earthworks across the alignment;
 - e. The procedures for decommissioning the erosion and sediment control measures; and
 - f. Inspection and monitoring procedures.

Erosion and sediment control standards

25. Bulk earthwork activities are not to occur between 30 April and 1 October (winter period) in any one year unless specifically included in the certified ESCP.
26. All areas not subject to earthwork activities during any given winter period are to be stabilised by 30 April of that year.
27. Unless otherwise agreed with the Council (Team Leader Central Monitoring), the consent holder is to design, construct and maintain all erosion and sediment control devices in accordance with the Council’s Technical Publication 90 –“Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region”.

Geotechnical completion report

28. The consent holder is to provide a geotechnical completion report for the road works to the Council (Team Leader Central Monitoring) within three months following completion of those works.

Engineering supervision

29. The consent holder is to engage an appropriately qualified engineering professional to supervise the works authorised by this consent. Contact details for the engineer(s) supervising the works are to be provided to the Council (Team Leader Central Monitoring) at least 20 working days prior to works commencing on the site.

Filling for abutments

30. Within 10 working days following completion of the works, the consent holder is to provide written certification from the qualified engineering professional to the Council (Team Leader Central Monitoring) confirming that filling around the abutments meets NZS4402 – “Methods for Testing Soils for Civil Engineering Purposes”.

Bridge abutments

31. Within 10 working days following completion of the works, the consent holder is to provide written certification from the qualified engineering professional to the Council (Team Leader Central Monitoring) of the foundation design associated with the bridge abutments.

Rain garden foundations

32. Within 10 working days following completion of the works, the consent holder is to provide written certification from the qualified engineering professional of the foundation design associated with the rain garden to the Council (Team Leader Central Monitoring). This certification is to be provided in a written engineering report which includes a global stability assessment of the finalised ground profiling and retaining.

Drainage trenching

33. The consent holder is to utilise trenchless pipe installation for the raingarden piped drainage in the reserve south of the raingarden site. Alternative open trench installation is subject to a geotechnical statement of work method by an engineer approved by the Council (Team Leader Central Monitoring) prior to open trenching commencing.

Specific conditions – stormwater permit R/REG/2015/3629

Consent duration

34. This consent will expire 35 years after it commences unless it has been surrendered or been cancelled at an earlier date.

Stormwater management works

35. The following stormwater management works are to be constructed for the following catchment areas and design requirements, and are to be completed prior to discharges commencing from the site:

Works to be undertaken	Catchment area:	Design requirement(s)
Swale	3,070m ²	75% TSS removal
Raingarden	1,201m ²	75% TSS removal

Modifications approval

36. In the event that any modifications to the stormwater management system are required that will not result in an application pursuant to section 127 of the RMA, the following information is to be provided by the consent holder:
- a. Plans and drawings outlining the details of the modifications; and
 - b. Supporting information detailing how the proposal does not affect the capacity or performance of the stormwater management system.

All information is to be submitted to, and approved by the Council (Team Leader Central Monitoring), prior to implementation.

Advice note:

All proposed changes must be discussed with the Team Leader Central Monitoring, prior to implementation. Any changes to the proposal which will affect the capacity or performance of the stormwater management system will require an application to the Council pursuant to section 127 of the RMA. An example of a minor modification is a change to the location of a pipe, or slight changes to the site layout. If there is a change of device type (even proprietary), the consent will have to be varied (section 127 of the RMA).

Pre-construction meeting

37. A pre-construction meeting is to be arranged and held by the consent holder, prior to commencement of construction of any stormwater devices on the site, that:
 - a. is arranged five working days prior to initiation of the construction of any stormwater devices on the site;
 - b. is located on the site;
 - c. includes representation from the Council (Team Leader Central Monitoring); and
 - d. includes representation from the site stormwater engineer and contractor who will undertake the works and any other relevant parties.
38. The consent holder is to ensure that the following information is made available to those who attend prior to, or at the pre-construction meeting:
 - a. timeframes for key stages of the works authorised under this consent;
 - b. contact details of the site contractor and site stormwater engineer; and
 - c. construction plans approved (signed/stamped) by the Council (Auckland Council Development Engineer).

Post-construction meeting

39. A post-construction meeting is to be held by the consent holder within 20 working days of completion of the stormwater management works, that:
 - a. is located on the site;
 - b. includes representation from the Council (Team Leader Central Monitoring); and
 - c. includes representation from the site stormwater engineer and contractors who have undertaken the works and any other relevant parties.

Advice note:

To arrange the construction meetings required by this consent, please contact the Team Leader Central Monitoring on monitoring@aucklandcouncil.govt.nz.

Certification of stormwater management works (as-built plans)

40. As-built certification and plans of the stormwater management works, which are certified (signed) by an appropriately qualified registered surveyor as a true record of the stormwater management system, are to be provided to the Council (Team Leader Central Monitoring) five working days prior to the post-construction meeting.

Content of as-built plans

41. The consent holder is to ensure that the as-built plans display the entirety of the stormwater management system, and that they include the following:
 - a. the surveyed location (to the nearest 0.1m) and level (to the nearest 0.01m) of the discharge structure, with co-ordinates expressed in terms of NZTM and LINZ datum;
 - b. location, dimensions and levels of any overland flowpaths including cross sections and long sections;
 - c. plans and cross sections of all stormwater management devices, including confirmation of the water quality volume, storage volumes and levels of any outflow control structure; and
 - d. documentation of any discrepancies between the design plans and the approved as-built plans.

Operation and maintenance plan

42. An operation and maintenance plan ("OMP") is to be submitted to the Council (Team Leader Central Monitoring) for certification 5 working days prior to the post-construction meeting.
43. The OMP is to set out how the stormwater management system is to be operated and maintained to ensure that adverse environmental effects are minimised. The OMP is to include:
 - a. details of who will hold responsibility for long-term maintenance of the stormwater management system and the organisational structure which will support this process;
 - b. a programme for regular maintenance and inspection of the stormwater management system;
 - c. a programme for the collection and disposal of debris and sediment collected by the stormwater management devices or practices;
 - d. a programme for post storm inspection and maintenance;
 - e. a programme for inspection and maintenance of the outfall;
 - f. general inspection checklists for all aspects of the stormwater management system, including visual checks; and
 - g. a programme for inspection and maintenance of vegetation associated with the stormwater management devices.
44. The consent holder is to ensure that the stormwater management system is managed in accordance with the certified OMP.
45. Any amendments or alterations to the OMP are to be submitted to, and certified by the Council (Team Leader Central Monitoring), in writing, prior to implementation.
46. The OMP is to be updated and submitted to the Council (Team Leader Central Monitoring) for certification, on request by the Council.

Capture and diversion of stormwater

47. Roding, kerbs and channels constructed across overland flowpaths are to be set at a level that maximises the capture of water by road cesspits. Other than at the identified overland flowpaths, driveway crossings are to be constructed in order to minimise the overflow of water from the road into private properties.

Obstruction of secondary flowpaths

48. The consent holder is to ensure that secondary flowpaths are kept free from obstructions such as buildings and solid fences.

Maintenance report

49. The consent holder is to ensure that details of all inspections and maintenance for the stormwater management systems, for the preceding three years, are retained.
50. A maintenance report is to be provided to the Council (Team Leader Central Monitoring) on request and is to include the following information:
- a. details of who is responsible for maintenance of the stormwater management system and the organisational structure supporting this process;
 - b. details of any maintenance undertaken; and
 - c. details of any inspections completed.

Review

51. The conditions of this consent may be reviewed by the Council pursuant to section 128 of the RMA (with the costs of the review process being borne by the consent holder), by giving notice pursuant to section 129, at one or more of the following times:
- a. within one year of construction of the stormwater works; and/or
 - b. at five yearly intervals after that time.

The purpose of the review may be for any of the following purposes, namely:

- a. To deal with any adverse effect on the environment which may arise from the exercise of the consent or is contributed to by the exercise of the consent, or is found appropriate to deal with at a later stage, and in particular, but without limiting the ambit of this clause, to:
 - i) insert conditions, or modify existing conditions, to require the consent holder to identify the character or nature of any discharges authorised by this consent and to report the results of that monitoring to the Council; and/or
 - ii) insert conditions, or modify existing conditions to require the consent holder to monitor the effects of any discharges authorised by this consent on the local receiving environment and to report the results of that monitoring to the Council.

Specific conditions – discharge permit (R/REG/2015/3633) Contaminated Land

Consent duration

52. This consent will expire 5 years after it commences unless it has been surrendered or been cancelled at an earlier date.

Site management plan ("SMP")

53. At least 20 working days prior to commencement of soil disturbance activities on the site, a final SMP is to be submitted to the Council (Team Leader Central Monitoring) for certification. The SMP is to be prepared by an appropriately qualified and experienced contaminated land professional in accordance with Schedule 13 (A4) of the Auckland I Regional Plan: Air, Land and Water ("ACRP:ALW").

Advice note:

The Council acknowledges the SMP is intended to provide flexibility for the management of the works and contaminated site discharge. Accordingly, it may need to be updated. Any updates should be limited to the scope of this consent and consistent with the conditions of this consent. If you wish to confirm that any proposed updates are within scope, please contact Team Leader Central Monitoring on (09) 301 0101.

54. No disturbance earthworks are to commence until certification has been provided by the Council (Team Leader Central Monitoring) that the SMP meets the requirements of Schedule 13 (A4) of the ARP:ALW.
55. The consent holder is to ensure that all soil disturbance activities are undertaken in accordance with the procedures in the certified SMP.

Notice of commencement of works

56. The consent holder is to inform the Council (Team Leader Central Monitoring), in writing, of the commencement of the works at least two working days prior to the start date of the works authorised by this consent.

Advice note:

Please contact the Team Leader Central Monitoring, Compliance, Auckland Council at monitoring@aucklandcouncil.govt.nz to advise of the start of works. The following details should also be provided:

- *site address to which the consents relate;*
- *name and telephone number of the project manager and the site owner;*
- *activity to which the consent relates; and*
- *the expected duration of the works.*

Supervision requirements

57. The consent holder is to ensure that all disturbance earthworks are supervised by an appropriately qualified and experienced contaminated land practitioner who is to ensure that all management options and contingency measures outlined in the certified SMP and all relevant consent conditions are complied with.
58. All sampling and testing of contamination on the site is to be overseen by an appropriately qualified and experienced contaminated land practitioner. All sampling is to be undertaken in accordance with the Contaminated Land Management Guidelines,

No.5 - Site Investigation and Analysis of Soils, Ministry for the Environment, revised 2011.

Management of disturbed areas

59. The consent holder is to ensure that all disturbance areas are managed to minimise any discharge of debris, soil, silt, sediment or sediment-laden water from beyond the site to any land, stormwater drainage systems, watercourses or receiving waters.
60. Erosion and sediment controls are to be installed along the boundaries of the disturbance areas in accordance with the Council's Guidelines for Land Disturbing Activities in the Auckland Region, Technical Publication 90 ("TP90"). The excavation areas is to be dampened during the day to suppress dust generation during the works, and covered overnight, on weekends, during rainfall events and where excavations are left open for extended periods due to the staging of works to prevent infiltration of water into potentially contaminated soil. Filter cloths or cover mats are to be installed over the stormwater cesspits in the vicinity of the excavation areas.

Advice note:

'Discharge from the site' includes:

- *infiltration of stormwater into the contaminated soils within the excavation area.*
- *disposal of water (eg. perched groundwater or collected surface water) from the remediation area.*

Disposal

61. The soils and/or fill material identified for off-site disposal are to be primarily loaded directly into trucks and covered during transportation off site. If required, temporary stockpiles are to be located on an impervious layer within an area protected by erosion and sediment controls, and covered with tarpaulins anchored at the edges outside working hours and during periods of heavy rain. If utilised, stockpiles are to be placed in an area away from overland flowpaths, temporary stormwater diversions and stormwater drains. Stockpiles of contaminated material are to be clearly labelled and to be kept separate from non-contaminated material to prevent cross contamination. All soil removed from the land disturbance area is to be deposited at a disposal site that holds a consent to accept the relevant level of contamination.

Where it can be demonstrated that the soil has been fully characterised in accordance with the Ministry for the Environment's 'A Guide to the Management of Cleanfills' (2002) and meets the definition of 'cleanfill', removal to a consented disposal site is not required. In such circumstances, the Council (Team Leader Central Monitoring) is to be advised prior its removal from the site.

Capping requirements

62. The consent holder is to ensure that any excavations where fill material is remaining near the finished level is capped by:
 - a. 350mm of clay cleanfill material; or
 - b. A geosynthetic clay liner; or
 - c. An impervious surface.

Water encountered

63. Any perched groundwater, or surface water encountered within the excavations requiring removal is to be considered potentially contaminated, and either:
- a. be disposed of by a licensed liquid waste contractor; or
 - b. pumped to sewer, providing the relevant permits are obtained; or
 - c. discharged to the stormwater system or surface waters provided testing demonstrates compliance with the Australian and New Zealand Environment Conservation Council (ANZECC) Guidelines for Fresh and Marine Water Quality (2000) for the protection of 95 percent of freshwater species.

Importation of fill

64. All imported fill must:
- a. comply with the definition of 'cleanfill' in 'A Guide to the Management of Cleanfills', Ministry for the Environment (2002); and
 - b. be solid material of an inert nature; and
 - c. not contain hazardous substances or contaminants above natural background levels of the receiving site.

Advice note:

Background levels for the Auckland region can be found in the Council's technical publication "TP153, Background concentrations of inorganic elements in soils from the Auckland Region", (2001).

Site validation report

65. Within three months of completion of the soil disturbance activities on the site, a Site Validation Report ("SVR"), which documents that the earthworks have been carried out according to the certified Site Management Plan and the conditions of consent, is to be provided to the Council (Team Leader Central Monitoring). The SVR shall be prepared by an appropriately qualified and experienced contaminated land practitioner and is to contain sufficient detail to address the following matters:
- a. a summary of the works undertaken, including a statement confirming whether the excavation of the site has been completed in accordance with the relevant application reports and the certified SMP;
 - b. the location and dimensions of the excavations carried out, including a relevant site plan;
 - c. a summary of any testing undertaken, including tabulated analytical results, and interpretation of the results in the context of the contaminated land rules of the ARP:ALW and the Proposed Auckland Unitary Plan ("PAUP");
 - d. copies of the disposal dockets for the material removed from the site;
 - e. evidence that all imported fill material complies with the definition of 'cleanfill' in 'A Guide to the Management of Cleanfills', Ministry for the Environment (2002);
 - f. records of any unexpected contamination encountered during the works, if applicable; and

- g. details regarding any complaints and/or breaches of the procedures set out in the certified SMP and the conditions of this consent.

Unexpected contaminants

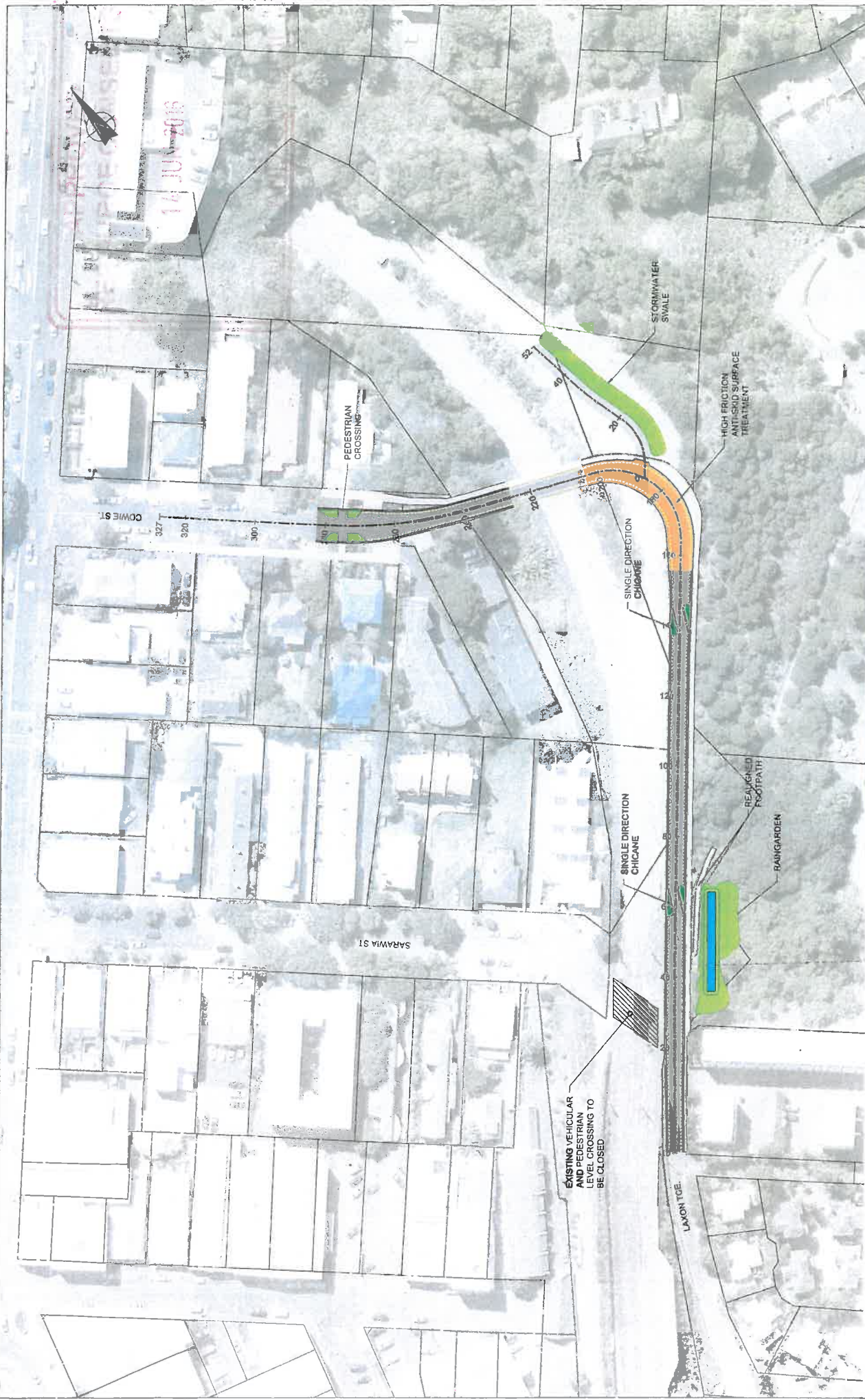
66. Where contaminants are identified that have not been anticipated by the application, works in the area containing the unexpected contamination are to cease and be notified to the Council (Team Leader Central Monitoring). Works are not to recommence until confirmation has been received from the Council (Team Leader Central Monitoring) that disturbance of the unexpected contamination is within the scope of this consent. Any unexpected contamination and contingency measures are to be documented in the SVR.

Advice note:

Unexpected contamination may include contaminated soil, perched water or groundwater. Where unexpected contamination is significantly different in extent and concentration from that anticipated in the original site investigations, handling the contamination may be outside the scope of this consent. Advice should be sought from the Team Leader Central Monitoring as to whether carrying out any further work in the area of the unexpected contamination is within the scope of this consent.

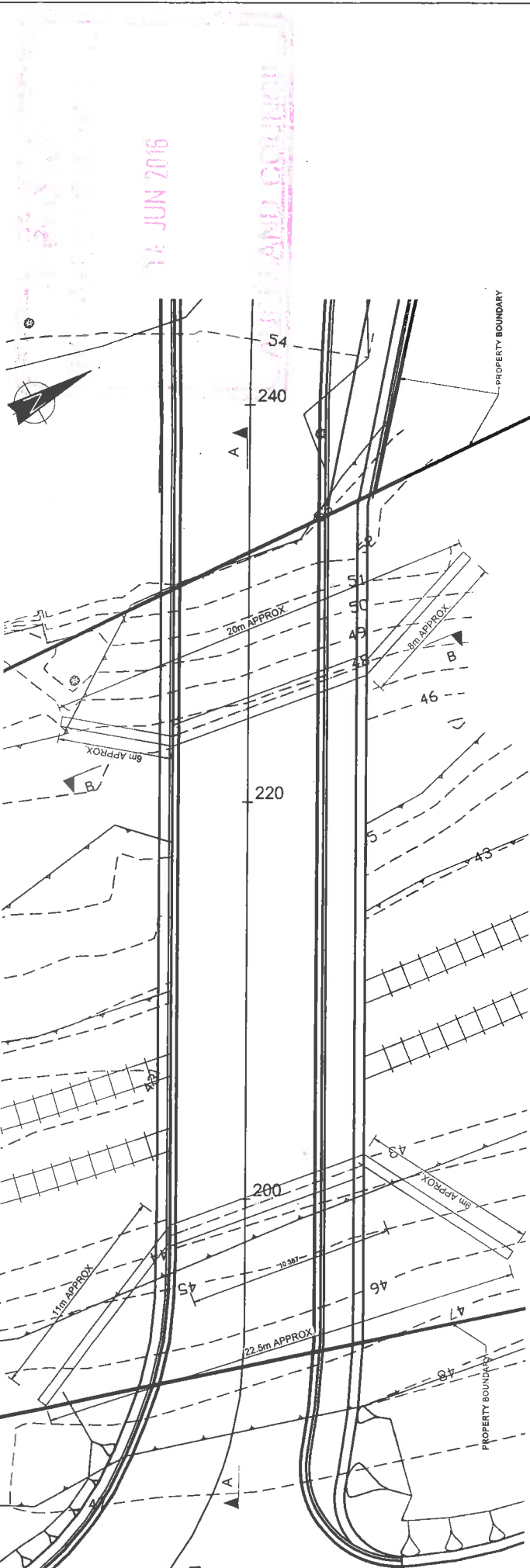
ADVICE NOTES

- a) *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those required under the Building Act 2004 and the Heritage New Zealand Act 2014. This consent does not remove the need to comply with all other applicable statutes (including the Property Law Act 2007), regulations, relevant bylaws, and rules of law. These consents do not constitute a building consent approval. Please check whether a building consent is required under the Building Act 2004.*
- b) *Some of the land is subject to existing designations. Nothing in these conditions negates the need for the Requiring Authority to comply with the provisions of section 177 of the RMA.*

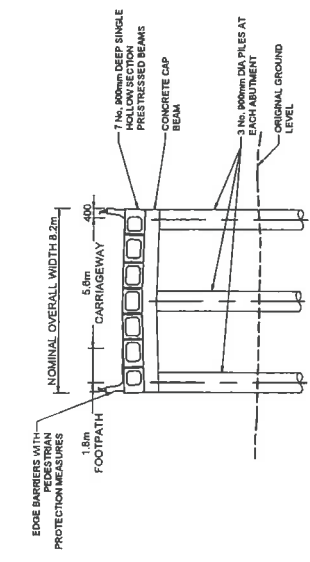


		OPUS Auckland Office PO Box 9488 Auckland 1141 New Zealand M: +64 9 335 9500 F: +64 9 335 9500		Auckland Transport Newmarket Level Crossing NOTICE OF REQUIREMENT PRELIMINARY DESIGN PLAN	
ISSUED FOR COMMENT MA 31.08.2015	DESIGNED MA 31.08.2015	DATE MA 31.08.2015	SCALE 1:500 @ A1 1:1000 @ A3	PROJECT NO. 1-C-1135-00	REVISION 1 R1
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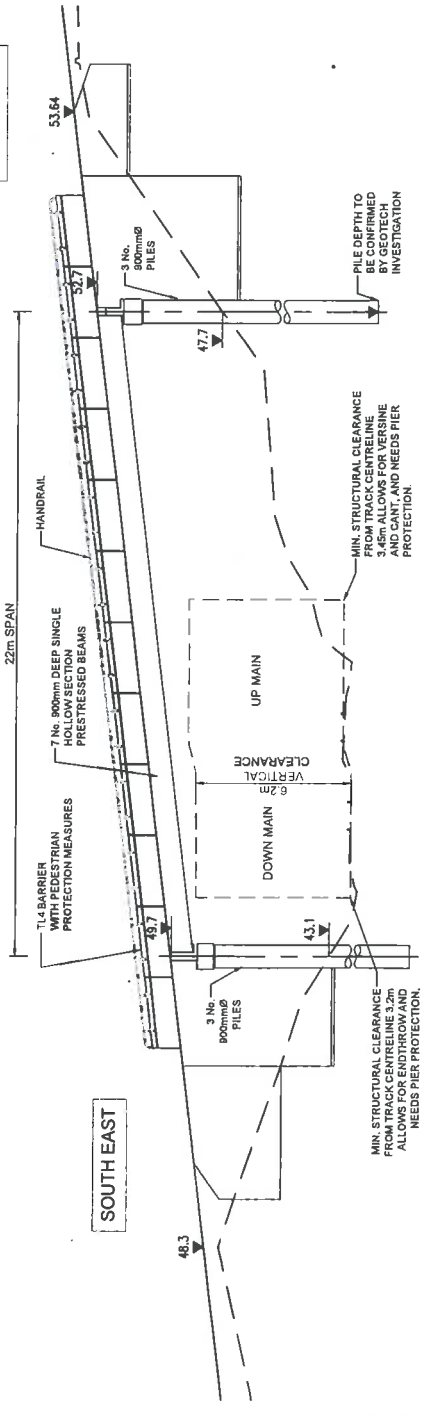




NORTH WEST



SOUTH EAST



SECTION A-A
SCALE 1:100 (A1)

SECTION B-B
SCALE 1:100 (A1)

PRELIMINARY

OPUS
Auckland Office
PO Box 5446
Auckland 1141
New Zealand
Tel: +64 9 356 6500

A7

Author	MA	31/08/2015
Checked	MA	
Drawn	MA	
Scale	1:500 @ A1	1:1000 @ A3

AUCKLAND TRANSPORT
NEWMARKET LEVEL CROSSING
NOTICE OF REQUIREMENT
BRIDGE - GENERAL ARRANGEMENT

1-C1135-00

1B RI



LEGEND

NEWMARKET PARK REVEGETATION

The purpose for this planting is to replace the species removed as part of the works (where practicable), or with species also found in the surrounding vegetation.

- Tree species to include:** Mahoe, Pohutukawa, Melicytus ramiflorus, Metrosideros excelsa, Pittosporum crassifolium, Pseudopanax arboreus, Five finger
- Shrub species to include:** Karamu, Harakeke / Flax, Phormium tenax
- Specimen tree planting:** Common name: Pohutukawa
- Metrosideros excelsa**
- Height at planting / Notes:** 1m high at planting, 1.5m high at planting, 1.5m high at planting, 1m high at planting
- Spacing:** 1.5m

COWIE STREET EMBANKMENT PLANTING

The purpose for this planting is to replace the species removed as part of the works, with underplanting of species found in nearby vegetation.

- Shrub species to include:** Common name: Kawakawa, Harakeke / Flax
- Phormium tenax**
- Height at planting / Notes:** 1m
- Spacing:** 1m

RAIL CORRIDOR REVEGETATION

The purpose for this planting is to replace the species removed as part of the works, or with species also found in the surrounding vegetation.

- Tree species to include:** Common name: Leptospermum scoparium, Manuka, Melicytus ramiflorus, Mahoe, Pittosporum eugenoides, Lemonwood
- Shrub species to include:** Coprosma robusta, Karamu, Harakeke / Flax, Phormium tenax
- Height at planting / Notes:** 1m high, 1.5m high, 1m high, 1.5m high
- Spacing:** 1.5m, 1.5m, 1.5m

OBJECTIVE: To integrate the new structure into the surrounding environment.

PLANTED SWALE AND RAIN GARDEN PLANTING

The purpose for this planting is to have native grasses and sedges that filtrate stormwater during wet periods, whilst also tolerating dry periods.

- Species to include:** Common name: Spreading swamp sedge, Swamp sedge, Carex lasiocarpa, Carex virgata, Juncus edgariae, Wiwi
- Height at planting / Notes:** 0.5m, 0.5m, 0.5m, 3L, 3L, 3L
- Spacing:** 0.5m, 0.5m, 0.5m, 3L, 3L, 3L

LOW GROWING NATIVE AMENITY PLANTING

The purpose for this planting is to provide low growing native amenity planting that maintains visibility and key views to the wider landscape.

- Species to include:** Common name: Wire-netting bush, Koromiko, Hebe stricta, Phormium cookianum, Harakeke / Flax
- Height at planting / Notes:** 1m, 1m, 1m, 1m
- Spacing:** 1m, 1m, 1m, 1m

TRAFFIC ISLAND PLANTING

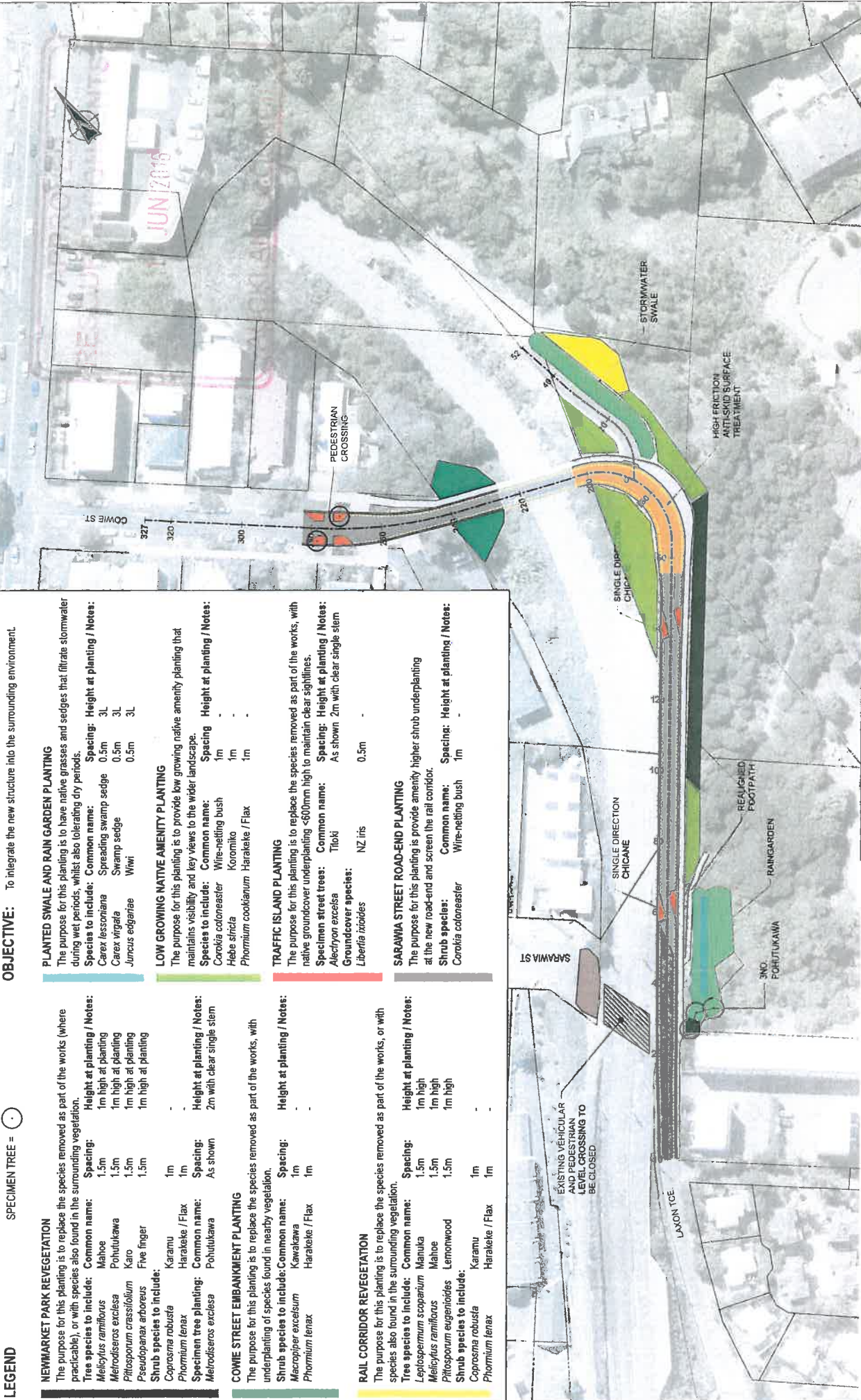
The purpose for this planting is to replace the species removed as part of the works, with native groundcover underplanting <600mm high to maintain clear sightlines.

- Specimen street trees:** Common name: Tiboki
- Alcoryon excelsa**
- Groundcover species:** NZ iris, Liberia intoides
- Height at planting / Notes:** 0.5m
- Spacing:** As shown, 2m with clear single stem

SARAWIA STREET ROAD-END PLANTING

The purpose for this planting is to provide amenity higher shrub underplanting at the new road-end and screen the rail corridor.

- Shrub species:** Common name: Wine-netting bush, Corokia cotoneaster
- Height at planting / Notes:** 1m
- Spacing:** 1m



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Email: info@opus.co.nz

A7

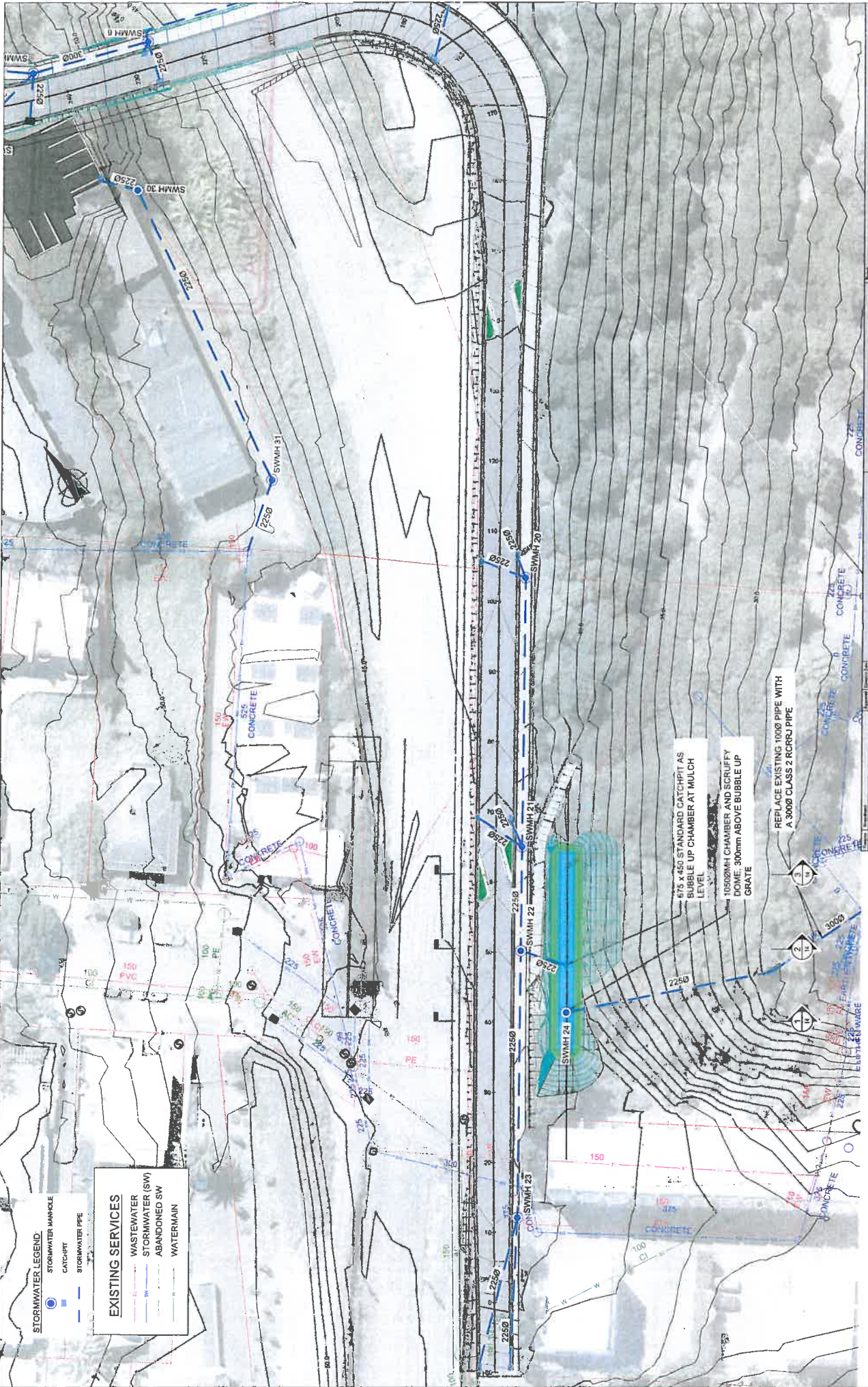
AUCKLAND TRANSPORT
NEWMARKET LEVEL CROSSING
NOTICE OF REQUIREMENT
MITIGATION PLANTING CONCEPT PLAN

Scale: 1:1000 @ A1, 1:500 @ A0
Date: 01/08/2015
Author: BT
Check: BT
Drawn: BT
Project: 1-C1135-10

ISSUED FOR CONSENT
REV | DATE | DESCRIPTION

1 | 31/08/15 |

1:1000 @ A1 (PRINT)
1:1000 @ A0
Original Issue: SW A1 (M-1049)



STORMWATER LEGEND

- STORMWATER MANHOLE
- CATCHPIT
- STORMWATER PIPE

EXISTING SERVICES

- WASTEWATER
- STORMWATER (SW)
- ABANDONED SW
- WATERMAIN

OPUS
 Auckland Office
 148 132 800

Project: 12500(1) 1500(1)
 Date: 31.08.2015

Client: AUCKLAND TRANSPORT
 PROJECT: NEWMARKET
 DRAWING: NEWMARKET LEVEL CROSSING

Scale: 1:1000 @ A1
 1:1000 @ A3

Sheet: 10 of 10
 Title: NOTICE OF REQUIREMENT
 Stormwater Drainage Plan - SHT 1 OF 2

NO.	ISSUED FOR CONSENT	DATE
1	ISSUED FOR CONSENT	31.08.15

AT7

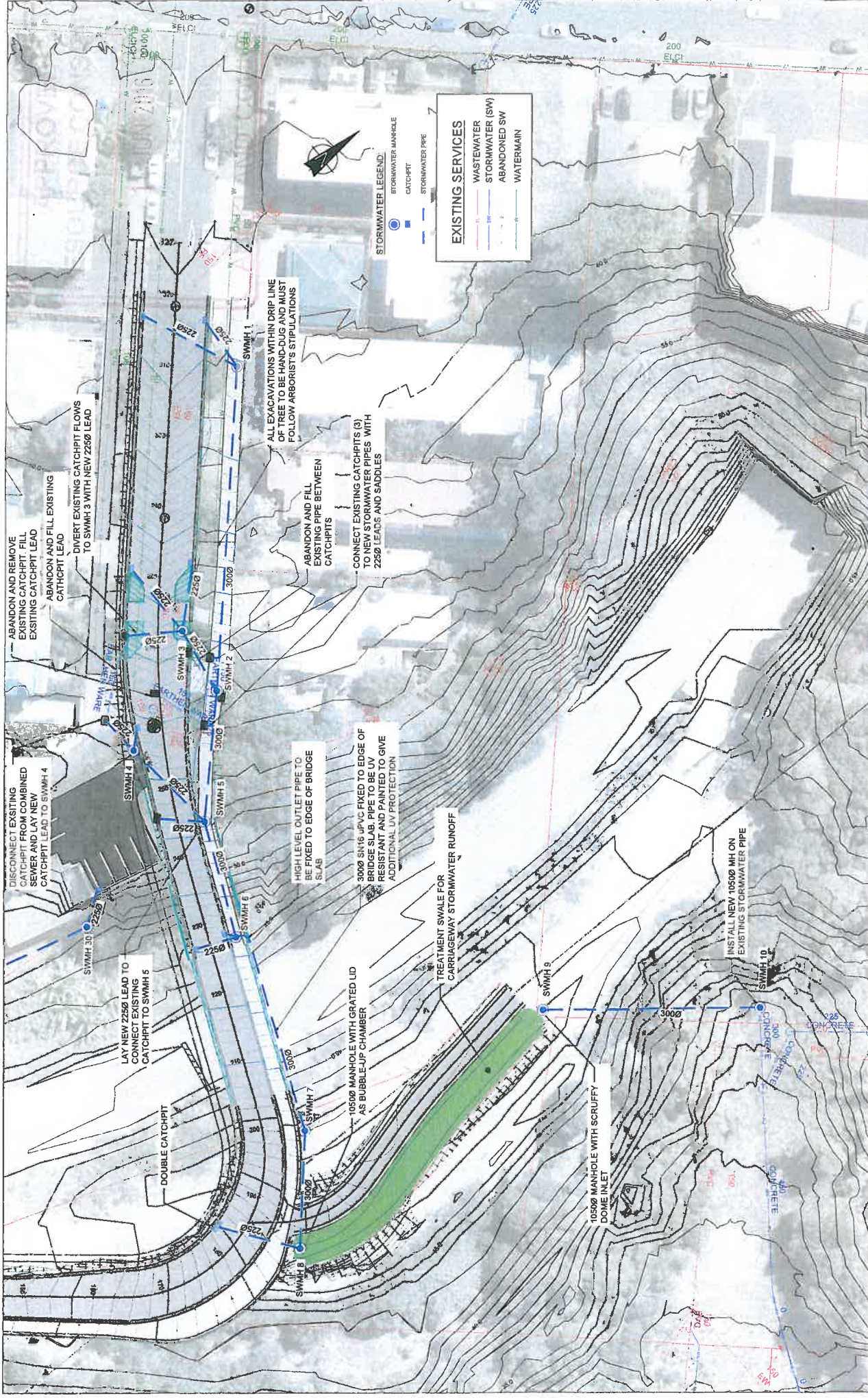
Scale: 1:1000 @ A1
 1:1000 @ A3

Project: 12500(1) 1500(1)
 Date: 31.08.2015

Client: AUCKLAND TRANSPORT
 PROJECT: NEWMARKET
 DRAWING: NEWMARKET LEVEL CROSSING

Scale: 1:1000 @ A1
 1:1000 @ A3

Sheet: 10 of 10
 Title: NOTICE OF REQUIREMENT
 Stormwater Drainage Plan - SHT 1 OF 2



OPUS
 Auckland Office
 PO Box 544
 Auckland 1141
 New Zealand
 Tel: +64 9 300 8900
 Fax: +64 9 300 8901
 Email: opus@opus.co.nz

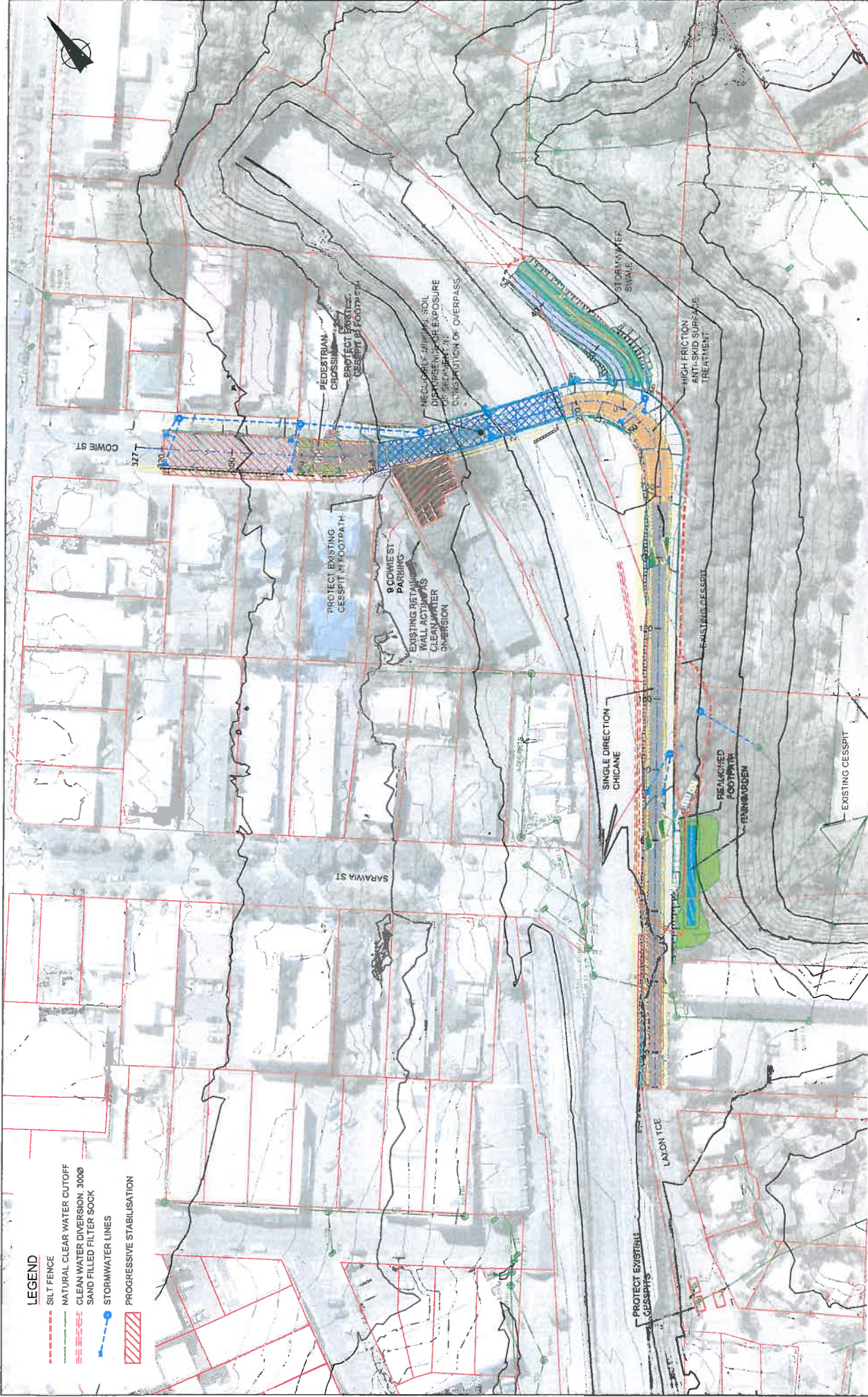
AUCKLAND TRANSPORT
 NEWMARKET
 NEWMARKET LEVEL CROSSING
 PROJECT NO: 1-11-15-00
 DRAWING NO: 11
 DATE: 31.08.2015

A7

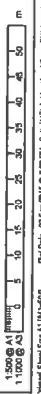
NO.	ISSUED FOR COMMENT	DATE

1:500 @ A1 (11mm)
 1:1000 @ A2 (5mm)

Original Sheet Size A1 (841x594)
 Plot Date: 01 Sep 2015 @ 12:28:28 PM Path: \\T:\Users\michael.gibson\Documents\michael.gibson\107_15705\Drawings\107_15705_13.dwg, 13



- LEGEND**
- - - - - SILT FENCE
 - - - - - NATURAL CLEAR WATER CUTOFF
 - - - - - CLEAN WATER DIVERSION, 3000
 - - - - - SAND FILLED FILTER SOCK
 - - - - - STORMWATER LINES
 - / / / / / PROGRESSIVE STABILISATION

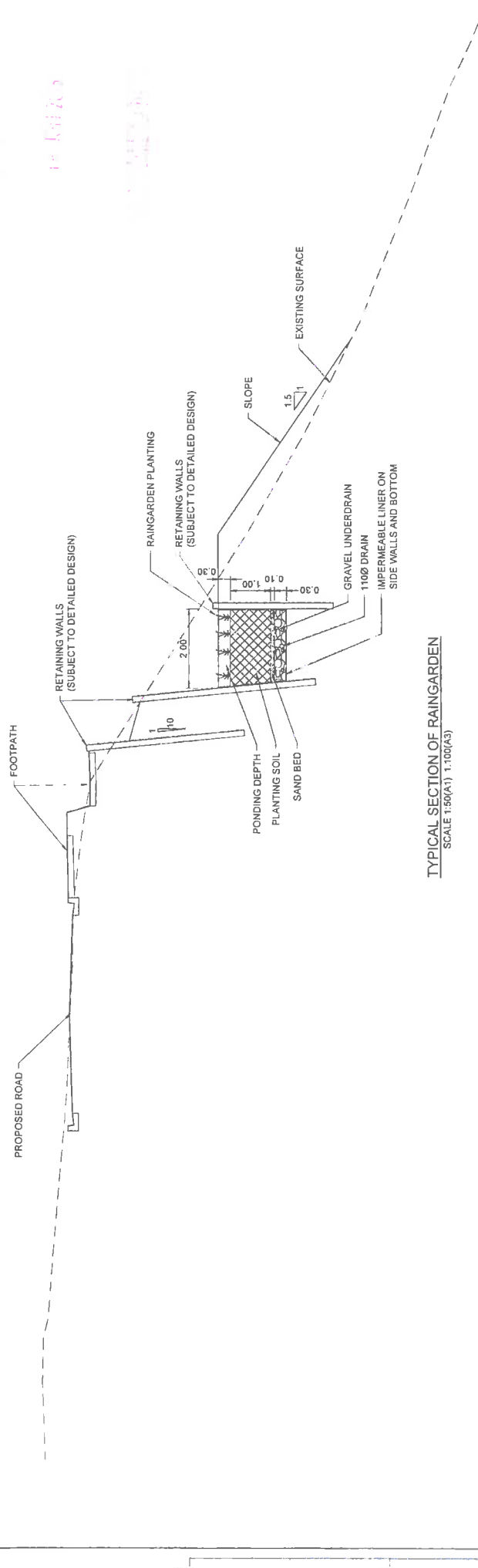


PO Box 944
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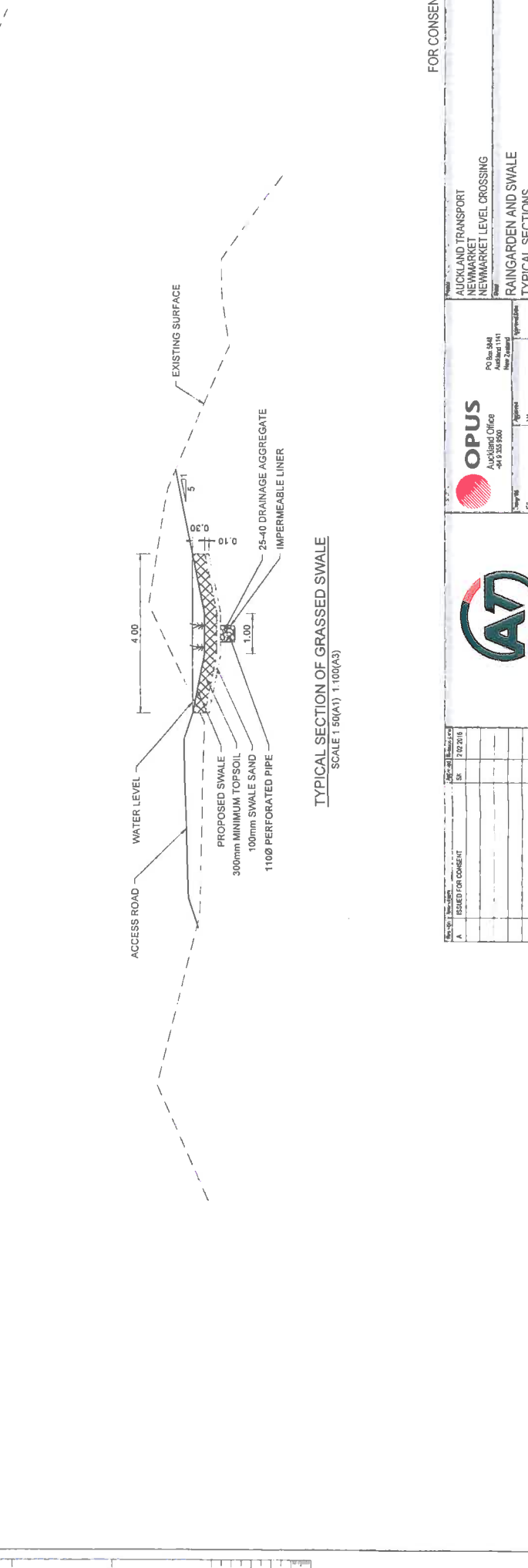
ALCKLAND TRANSPORT
NEWMARKET LEVEL CROSSING

NOTICE OF REQUIREMENT
SPECIMEN EROSION & SEDIMENT CONTROL PLAN
1-C1105.00

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR CONSENT	13/09/14	MA



TYPICAL SECTION OF RAINGARDEN
SCALE 1:50(A1) 1:100(A3)



TYPICAL SECTION OF GRASSED SWALE
SCALE 1:50(A1) 1:100(A3)

1:500 @ A1
1:1000 @ A3



NO.	REVISION	DATE	BY	CHECKED
1	ISSUED FOR CONSENT	2/12/2016	SK	



OPUS
Auckland Office
414-333-9500
PO Box 544
Auckland 1141
New Zealand

AUCKLAND TRANSPORT
NEWMARKET
NEWMARKET LEVEL CROSSING
RAINGARDEN AND SWALE
TYPICAL SECTIONS

FOR CONSENT
Page 30 of 30
Sheet 1 of 1
1:1000 @ A1 1:1000 @ A3
1-C1135 63

BEFORE THE ENVIRONMENT COURT

ENV-2016-AKL-

IN THE MATTER the Resource Management Act
1991("the Act')

AND

IN THE MATTER of an appeal under section 120
of the Act

BETWEEN **COWIE STREET RESIDENTS
ASSOCIATION
INCORPORATED, PARNELL
COMMUNITY COMMITTEE
INCORPORATED and
PARNELL INCORPORATED**

Appellants

AND

AUCKLAND COUNCIL

Respondent

NOTICE OF APPEAL

Dated: 1 July 2016

Solicitor Acting:
Andrew Clements
Grayson Clements Limited
Lawyers
PO Box 105, Hamilton
Tel: 07 857 0900
Fax: 07 857 0901
Email: aclements@gclegal.co.nz

Counsel Acting:
R E Bartlett QC
Barrister
PO Box 4338, Auckland
DX CX 10258
Tel: (09) 307 9827
Fax: (09) 366 1599
bartlett@shortlandchambers.co.nz

NOTICE OF APPEAL

To The Registrar
Environment Court
Auckland

1. The appellants are submitters on the application for resource consents.
2. The decision was received on 15 June 2016.
3. The appeal is against the grant of consent for resource consents to undertake earthworks; the removal of vegetation within a Significant Ecological Area; soil disturbance under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health and the diversion and discharge of stormwater and discharges from contaminated land.
4. The resource consents were granted in relation to a notice of requirement by Auckland Transport for a designation to undertake the construction, operation and maintenance of a new road connecting Laxon Terrace to Cowie Street, including the construction of a bridge over the Newmarket Branch Line and the closure of the existing connections between Sarawia Street and Laxon Terrace, Newmarket, Auckland (Proposed Plan Modification 380).
5. The reasons for the appeal are as follows:
 - (a) The decision is not consistent with the purpose of the Act under Part 2, s5(1);
 - (b) The adverse effects of the activities on the environment will be more than minor and will not be avoided, remedied or mitigated, contrary to s5(2)(c);
 - (c) The decision will not achieve the purpose of the Act in relation to ss 7(b), 7(c), 7(d) and 7(f);

- (d) The decision is contrary to ss 9(1) and 15(1), and without specific regard to ss 105 and 107 of the Act;
 - (e) The decision is inconsistent with the relevant objectives and policies of the Auckland Council Operative District Plan(Isthmus section) and with the Proposed Auckland Unitary Plan, including Chapter B Regional Policy Statement;
 - (f) The decision is inconsistent with the relevant provisions in the Auckland Regional Policy Statement, the National Policy Statement for Freshwater Management, the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, the New Zealand Coastal Policy Statement and Hauraki Gulf Marine Park Act.
6. Without derogation from the generality of the above:
- (a) The adverse effects of the activities on the character and amenity values of the environment will be more than minor when considered in the whole and will not be mitigated. These effects will be significant in relation to Cowie Street and the Newmarket Park Reserve;
 - (b) The proposed road and bridge will create a significant adverse visual effect on the environment. The bridge will have a dominant presence in Cowie Street and will be a visible intrusion in the street and in the surrounding area;
 - (c) The removal of vegetation including mature native trees from Newmarket Park, and the construction of the proposed swale and raingarden, will have more than minor adverse effects on the Reserve. The proposed re-planting will not mitigate the effects. The activities are also contrary to the use of the Park as a recreation reserve and to its status as a Significant Ecological Area under the Operative and Proposed District Plans;
 - (d) The proposed diversion and disposal of stormwater from contaminated land into the Newmarket Park reserve will have

more than minor adverse effects on the environment. The potential for contaminated stormwater to reach Hobson Bay is a risk that should not be taken as the proposed stormwater treatment measures will not insure that the contaminants will be removed and the quality of stormwater that will be discharged to Hobson Bay will be improved;

- (e) The proposed earthworks will be undertaken in an area with a history of subsidence and instability. The potential effect of further subsidence may be of low probability but will have a high potential impact and this will not be avoided or mitigated.

7. The appellants seek relief as follows:

- (a) Cancellation of the respondent's decision;
- (b) Refusal of the application for resource consents under s 104B of the Act;
- (c) Costs.
- (d) The appellants will consent to Court-assisted mediation.

8. Copies of documents attached to this notice:

- (a) Respondent's decision;
- (b) Names and address of persons to be served with a copy of this notice.



.....
Russell Bartlett QC / Stephen Brownhill
On behalf of the Appellant

1/7/16
.....
Date

Address for service of appellant:

Russell Bartlett QC
Barrister
PO Box 4338
Auckland
Ph: 09 307 9819
Fax: 09 366 1599
Email: bartlett@shortlandchambers.co.nz

Advice to recipients of copy of notice*How to become party to proceedings*

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (*see* form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the relevant submission and the relevant decision. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

NAMES & ADDRESSES OF PERSONS TO BE SERVED

Auckland Council
C/- Fritha Witton
Senior Planner, Major Infrastructure Projects Team
Private Bag 92300
Victoria Street West
Auckland
Email: fritha.witton@aucklandcouncil.govt.nz

Auckland Transport
C/- Gerald Lanning
Simpson Grierson
Solicitors, Auckland
Email: gerald.lanning@simpsongrierson.com

Margaret Barron
403/8 Middleton Rd
Parnell

Cycle Action Auckland
23 Segar Avenue
Parnell

Max Norman Goode
1C/38 James Cook Crescent
Parnell

Broadway Park Residents Society Incorporated
PO Box 28106
Parnell

Debbie & Bruce Haysom
3 Cowie Street
Parnell

Martin Putteril
7/4 Cowie Street
Parnell

William Carson
PO Box 1836
Parnell

KiwiRail Holdings Limited
PO Box 593
Parnell

CONFIDENTIAL

Attachment 3
Amended Condition

Additions shown as underlined and deletion in strikethrough

Condition

- 18.7 Where an activity is predicted or measured to be non-compliant with the project standards in conditions 18.1 and/or 18.2, the Requiring Authority is to prepare a management schedule(s). Any management schedule is to be activity specific and include, as a minimum, the following details:
- (a) A description of the activity (including duration), plant and machinery that is expected not to comply with the noise and/or vibration limits in conditions 18.1 and 18.2;
 - (b) Predicted levels and proposed noise limits for all receivers where the levels will not be compliant with the limits in condition 18.1;
 - (c) A description of the mitigation measures proposed to reduce the noise and vibration levels and minimise the degree of non-compliance as far as practicable including how the selected mitigation achieves the Best Practicable Option, including and any options mitigation options that have been discounted due to cost or any other reason;
 - (d) A description of any additional methods to manage the effects on the affected parties (e.g. temporary accommodation during the specific activity)
- 18.8 Any management schedule produced in accordance with condition 18.7 is to be provided to the Council (Major Infrastructure Projects Team Manager) for ~~approval~~ certification no less than 5 working days prior to the authorised works commencing.