

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
APPOINTED BY THE TASMAN DISTRICT COUNCIL**

**UNDER:** the Resource Management Act 1991

**IN THE MATTER OF:** Resource consent applications  
RM190877, RM190876, RM190878,  
RM190879, RM190881 and RM190880  
associated with the Pōhara drainage  
improvement project, Pōhara Village,  
Golden Bay–Mohua.

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**STATEMENT OF EVIDENCE IN CHIEF OF TIMOTHY ALASTAIR DEANS ENSOR  
ON BEHALF OF  
TASMAN DISTRICT COUNCIL**

Dated: **23 April 2021**

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## 1. INTRODUCTION

1.1 My full name is Timothy Alastair Deans Ensor. I am currently a Principal Planner with Tonkin & Taylor Limited having previously been employed by AECOM New Zealand Limited and its predecessor, URS New Zealand Limited. I have been a consultant planner for approximately 13 years. Prior to consulting I was employed by Environment Canterbury for approximately two and a half years as a consents planner.

### **Qualifications and experience**

1.2 I hold a Bachelor of Science and a Bachelor of Arts with honours majoring in Geography, obtained from the University of Canterbury in 2002. In 2012 I graduated with a Post Graduate Diploma in Planning from Massey University. I am an associate member of the New Zealand Planning Institute.

1.3 I have worked throughout the South Island assisting private and public sector clients with obtaining statutory approvals, undertaking environmental impact assessment and policy analysis for projects, and providing expert planning evidence at plan and consent hearings. These clients include the Department of Conservation, Waka Kotahi the NZ Transport Agency, Environment Canterbury, the Canterbury Aggregate Producers Group, Opuha Water Limited and ANZCO Foods Limited.

### **Background**

1.4 I have been the lead planner and technical reviewer for the resource consent applications. assessment of effects on the environment. I am familiar with the resource consent applications to which these proceedings relate. In preparing my evidence, I have reviewed:

- (a) The resource consent application and assessment of effects on the environment,
- (b) Evidence of Mr David Stephenson,
- (c) Evidence of Mr Damian Velluppillai,
- (d) Evidence of Mr Patrick Lees, and

- (e) The s42A Officers Report.

### **Code of Conduct**

- 1.5 I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court's Practice Note as updated in 2014. My evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, this evidence is within my area of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

## **2. SCOPE OF EVIDENCE**

- 2.1 My evidence addresses:

- (a) A summary of the site,
- (b) A summary of the activity,
- (c) The statutory context,
- (d) The resource consents required,
- (e) Specific planning issues identified in submissions,
- (f) An assessment of effects on the environment,
- (g) Consent conditions,

- 2.2 My evidence is structured as follows:

- (a) A description of the site,
- (b) A summary of the proposed activities,
- (c) The planning context,
- (d) The resource consents required,
- (e) Specific issues identified in submissions,
- (f) An assessment of effects on the environment, and

- (g) Proposed resource consent conditions.

### 3. THE SITE

- 3.1 Section 2 of the Pōhara drainage improvements - Resource consent application and Assessment of Effects on the Environment (**the AEE**)<sup>1</sup> describes the location of the site. The evidence of Mr Stephenson describes the physical characteristics of the area as it pertains to flooding. The site encompasses a number of private properties adjoining Bartlett Creek (both upstream and downstream of the Ellis Creek confluence), and land adjacent to Abel Tasman Drive and Lansdown Street (a paper road intersecting Able Tasman Drive).
- 3.2 Section 2 of the AEE also provides a description of the site including a description of the ecological and archaeological setting. The ecological setting will be discussed further in the evidence of Mr Lees.

### 4. THE PROPOSED ACTIVITIES

- 4.1 The Pōhara Drainage Improvements project (**the proposal**) involves a suite of flood protection and management measures to increase the level of service (reduce flooding) to properties within the Pōhara West floodplain. These measures are described in detail in Section 3 of the AEE<sup>2</sup> and in the evidence of Mr Velluppillai. In summary the activities include the construction and use of:
  - (a) Earthfill bunds,
  - (b) Timber pole flood barriers,
  - (c) Vehicle access ramps (across earth bunds),
  - (d) Culvert upgrades,
  - (e) Swale drain upgrades,
  - (f) Rock riprap creek bank protection, and

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<sup>1</sup> Tonkin & Taylor Limited, 2019, Pōhara drainage improvements - Resource consent application and Assessment of Effects on the Environment, page 4 - 9.

<sup>2</sup> Tonkin & Taylor Limited, 2019, **Error! Unknown document property name. - Error! Unknown document property name.**, page 10 - 17.

(g) Stream widening (at the confluence of Ellis and Clifton Stream).

4.2 The activities proposed include construction of structures both within and outside of a stream bed, earthworks, the damming and diversion of flood water, and the discharge of contaminants to water. The ongoing maintenance and repair of the structures once they are lawfully established is also included in the proposal.

## 5. THE PLANNING CONTEXT

### Applicable planning documents

5.1 The site is within the regulatory jurisdiction of the TDC. The resource consent applications were lodged on 24 July 2019 and the planning documents that are applicable to the site and proposed activities are:

- (a) National Policy Statement for Freshwater Management 2020 (**NPSFM**),
- (b) New Zealand Coastal Policy Statement (**NZCPS**),
- (c) National Environmental Standard for Freshwater (**NESF**),
- (d) Tasman Regional Policy Statement (**TRPS**), and
- (e) Tasman Resource Management Plan (**TRMP**).

5.2 For the most part, these documents have been discussed in the AEE. However, following the lodgement of the resource consents for the proposal, the NPSFM 2020 has come into force, as has the NESF. Consequently, this section will highlight the relationship of the NPSFM and the NESF to the proposal, as well as highlighting the key elements of the remaining statutory planning documents of relevance to the proposal.

### NPSFM

5.3 Underpinning the NPSFM 2020 is the concept of Te Mana o te Wai, which is reflected in the Objective of the NPSFM 2020. In Part 3, the NPSFM states that *“Every regional council must engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and fresh water ecosystems in the region.”*

- 5.4 Ellis, Bartlett and Clifton Creeks receive flow inputs from the wider Ellis Creek catchment which is described in the evidence of Mr Stephenson. Therefore, in terms of prioritising the health and wellbeing of the water body, giving effect to Te Mana o te Wai, and managing freshwater in an integrated way, the values and functions of each water body as a whole need to be considered. Recognising that this values identification process (and the wider NPSFM Part 3 process) has not occurred in Golden Bay, my view is that the consideration of the NPSFM is largely limited to an interim consideration as to whether the proposal aligns with the objective and the more specific Policy 6, Policy 7, Policy 9 and Policy 15 of the NPSFM.
- 5.5 Policy 7 is that the loss of river extent and values is avoided to the extent practicable and Policy 9 is to protect the habitat of indigenous freshwater species.
- 5.6 The proposal involves very little interaction with the river channels of Ellis, Bartlett and Clifton Creeks other than to upgrade several culverts, to widen the confluence of Ellis and Clifton Creeks and to lower the bank of Ellis Stream east of 59A Selwyn Street. There will be no loss of river extent as a result of the proposal and where culverts are installed, this will occur in accordance with the permitted activity standards for culverts (which includes fish passage requirements) in the NESF.
- 5.7 Where channel disturbance does occur, the loss of habitat values will be avoided where practicable. Where this is not practicable, habitat restoration work will follow where required. This will be done as part of implementing a post construction habitat restoration plan for the project and will focus on achieving habitat restoration objectives discussed below and in Mr Lees evidence.
- 5.8 The specific provisions in the NPSFM relating to natural wetlands including Policy 6 will be addressed in the context of the NESF below.
- 5.9 Policy 15 is particularly relevant to the proposal given the flood protection it provides. This policy will also be discussed in relation to the NESF below.
- 5.10 Overall, the avoidance of substantive work in the rivers, and the focus on restoration of aquatic habitat where disturbance does occur is in my view aligned with the first priority of Objective 2.1 of the NPSFM. On this basis, my view is the proposal is consistent with the NPSFM and importantly will not create

a barrier to substantively giving effect to Te Mana o te Wai through the future NPSFM Part 3 process.

### **NZCPS**

- 5.11 While the project site sits outside of the coastal marine area (**CMA**), the coastal environment is defined fairly broadly and therefore the NZCPS provides relevant guidance to components of the proposal. Of particular relevance are Policy 11 (Indigenous biological diversity) and Policy 23 (Discharge of contaminants) as they relate to achieving Objective 1 and Objective 6.

### **NESF**

- 5.12 The NESF has introduced additional potential resource consent requirements in the period following the lodgement of the resource consent applications for the proposal. These are:

- (a) Natural wetlands;
- (b) Reclamation of rivers; and
- (c) Passage of fish affected by structures.

- 5.13 As discussed in the s42 report, wetlands exist within the site, and the proposal includes the installation and upgrade of culverts (no reclamation of rivers is proposed). However, my opinion is that no resource consent is required for work within or in proximity to wetlands or for culverts under the NESF.

- 5.14 Section 43B of the RMA sets out the relationship between national environmental standards, rules and consents. In terms of the relationship between the NESF and the resource consent application for the proposal, Section 43B(7) is of particular relevance and states:

*“This subsection applies to a resource consent not covered by subsection (5) or (6).<sup>3</sup> The consent prevails over a national environmental standard if the application giving rise to the consent was the subject of a decision on whether to notify it before the date on which the standard is notified in the Gazette.”*

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<sup>3</sup> Subsections 5 and 6 apply where a land use consent has been granted, and where a coastal, water or discharge permit, or regional land use permit has been granted respectively.



*However, the consent does not prevail if the standard expressly provides otherwise” (emphasis added).*

- 5.15 In the context of Section 43B(7), reference to ‘consent’ is reference to the resource consent application. Section 43B(7) is to address situations where a resource consent application has progressed so far through the process (beyond a notification decision) as to make it impractical to introduce consideration of a national environmental standard without withdrawing the resource consent applications and reconsidering the notification decision.
- 5.16 The resource consent applications for the proposal were notified in December 2019, prior to the NESF coming into effect. On this basis the consent (application) prevails over the NESF. The NESF therefore does not apply to the proposal.
- 5.17 For completeness I have addressed the policy (suggested wording at Section 3.22) contained in the NPSFM relating to wetlands that is to be included in regional plans to give effect to Policy 6 of the NPSFM.<sup>4</sup> The NPSFM directs regional councils to include specific policy in plans including (or words to this effect):

*“The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:*

*[..]*

*(b) the regional council is satisfied that:*

- (i) the activity is necessary for the construction or upgrade of specified infrastructure; and*
- (ii) the specified infrastructure will provide significant national or regional benefits; and*
- (iii) there is a functional need for the specified infrastructure in that location; and*
- (iv) the effects of the activity are managed through applying the effects management hierarchy.”*

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<sup>4</sup> Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

- 5.18 This suggested wording tempers Policy 6 of the NPSFM by recognising that specific activities will need to be treated differently to others where they meet specific criteria.
- 5.19 In terms of this criteria, the proposal meets the definition of specified infrastructure<sup>5</sup> and provides significant regional benefits (discussed below in relation to the positive effects of the activity). There is a functional need for the infrastructure to be located between the rivers and the flood prone properties in order to carry out its role in providing protection against flooding. Where there is the potential for effects on wetlands to occur, will need to be avoided where practicable, or otherwise remedied or mitigated.
- 5.20 Therefore, my opinion is that no resource consent is required under the NESF, and the NPSFM contemplates that specified infrastructure projects such as the proposal may result in some loss of natural wetland, and/or some level of effect on natural wetlands. This position, informed by Policy 15 of the NPSFM<sup>6</sup> is in my view the starting point for considering effects on natural wetlands. The effects on wetlands will be addressed later in my evidence.

### TRPS

- 5.21 The relevant provisions of the TRPS are set out in Section 6.1.5 of the AEE. These provisions highlight that a balance is required between maintenance and enhancement of natural and other values of rivers and streams<sup>7</sup> and the maintenance and enhancement of flood mitigation<sup>8</sup>. Given that the TRPS was made operative in 2001, the policy direction needs to be considered through the lens that the NPSFM now provides. My view is the proposal is consistent with these provisions of the TRPS, while prioritising freshwater as anticipated by the NPSFM. However, given that the TRPS is 20 years old, I have focused on the objectives and policies of the TRMP and the NPSFM rather than the TRPS in the remainder of this evidence.

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<sup>5</sup> **specified infrastructure** means any of the following:

[...]

(c) any public flood control, flood protection, or drainage works carried out:

(i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or

(ii) for the purpose of drainage by drainage districts under the Land Drainage Act 1908

<sup>6</sup> Policy 15: Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.

<sup>7</sup> General Objective 1, Land Resource Objective 6.6 and River and Lake Objective 8.2

<sup>8</sup> Land Resource Objective 6.6 and River and Lake Objective 8.1

## TRMP

- 5.22 Section 6.1.6 provides a comprehensive overview of the relevant objectives and policies of the TRMP. Of particular relevance to this proposal are objectives and policies relating to maintaining water quality and protecting indigenous biodiversity,<sup>9</sup> restoring and enhancing riparian areas,<sup>10</sup> and the wairua and mauri of the streams.<sup>11</sup> Provisions of the TRMP of particular relevance will be discussed in relation to the potential effects of the proposal later in my evidence.

## 6. RESOURCE CONSENTS REQUIRED

### Planning notations and features

- 6.1 The planning notations or features contained in the planning documents listed above relevant to the site are contained in Section 4, Table 4.1 of the AEE. There does not appear to be any disagreement with the s42A officer regarding the planning context.

### Consent requirements

- 6.2 The resource consent requirements are set out in Section 4 of the AEE. As discussed above, my view is that no resource consent is required under the NESF. Therefore, all relevant resource consents have been applied for.

## 7. SPECIFIC ISSUES IDENTIFIED IN SUBMISSIONS

### Esplanade Strip

- 7.1 In his submission, Mr Hans Stoffregen has raised concerns regarding how the proposal interacts with the conditions of resource consent RM180659 requiring an esplanade strip to be created over Lots 1 and 2 of DP532086 “*to contribute to the protection of conservation values of Ellis Creek.*” Specifically, the submission requests “*...clarification [as to] how the work in the creek and the compliance with the above can be achieved.*”

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<sup>9</sup> Objectives 10.1.2, 12.1.2 and 33.1.2.1, Policies 12.1.3.2, 33.1.3.2, 33.1.3.5, 33.1.3.6 and 33.1.3.7

<sup>10</sup> Objective 8.2.2 and Policies 8.2.3.12 and 8.2.3.17

<sup>11</sup> Objective 27.2.2 and Policies 27.2.3.1 and 27.2.3.2

- 7.2 The potential effects of the proposal on ecological and conservation values have been addressed in the AEE, and further in the evidence of Mr Lees. Mr Lees concludes that subject to proposed conditions the potential effects on the ecological values of Ellis Creek are acceptable. In addition, and as discussed later, the applicant is proposing habitat restoration work following construction.
- 7.3 On this basis, my view is the proposal will not diminish conservation values (through managing effects) and at least in part, is actively contributing to protecting conservation values through habitat restoration. My opinion is the proposal is aligned with the purpose of the esplanade strip and therefore does not present any challenges in terms of compliance with the conditions of RM180659.
- 7.4 The proposal may require TDC to utilise the esplanade strip for access in order to construct the proposed flood management infrastructure (the timber pole flood barrier that makes up part of the Selwyn Street (west) work). The widening of the confluence of Ellis and Clifton Creek will also occur within the esplanade strip.
- 7.5 The instrument creating the esplanade strip specifies activities that can and can't occur within it and by whom. Vehicle access onto the strip is prohibited unless authorised by the owner or occupier unless for conservation purposes whereby TDC may also have access. The proposal is not for conservation purposes (it is for flood management purposes) and therefore in order to undertake the substantive work (any habitat restoration work is aligned with conservation purposes), authorisation from Mr Stoffregen is required for entry. From his submission, I understand that Mr Stoffregen is prepared to grant access over his land for work at the confluence of Ellis and Clifton Creeks, provided this is in conjunction with "*an agreed post construction habitat restoration plan.*"
- 7.6 The applicant is willing to prepare and implement a habitat restoration plan. This is not only to assist with negotiating access but to remedy or mitigate potential adverse effects and better align the project with the purpose of the esplanade strip; being to contribute to the protection of conservation values. A condition has been proposed accordingly and is attached as **Appendix B** to this evidence. This condition requires TDC to engage a suitably qualified person to prepare a habitat restoration plan in order to meet the following objectives:

- (a) That restoration of any freshwater habitats affected by the proposal should be self-sustaining and not impact on the adjoining upstream and downstream reaches of the existing watercourse.
- (b) Self-sustaining habitat restoration means that it functions without features or characteristics that rely on ongoing maintenance or that impose a financial or other burden on the proponent, government or the community.
- (c) Ecological values within the habitat affected by the proposal are managed, protected and enhanced. These must include provisions to:
  - (i) restore any lost habitat for the native fish species present within the catchment (including potential Inanga spawning habitat
  - (ii) Provide fish passage at all replacement culverts.

### **Stormwater generated from the SHA**

- 7.7 In its submission, Cloud Dance Trust has stated that “*the position with stormwater runoff from the proposed Special Housing Area (SHA) at 82 Richmond Road is ambiguous*”. The submission interprets the AEE for this proposal to mean that there will be no increase in flow onto the Cloud Dance Trust’s land as a result of the SHA and if this is not the case, that any work that may increase flooding of the trusts land is opposed.
- 7.8 The evidence of Mr Velluppillai sets out the parameters used for modelling the efficacy of the proposal. Mr Velluppillai confirms that the resource consent for the discharge of stormwater from this development requires the management of stormwater to pre-development flows.<sup>12</sup> In addition, the resource consent contains a condition specifying that the “*discharge of stormwater shall not cause or contribute to any damage caused by flooding that may affect adjoining and downstream properties*”.<sup>13</sup> Therefore, the development must not contribute additional flood flows to the lower catchment as the SHA development

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<sup>12</sup> Resource consent SH180016, Condition 2.

<sup>13</sup> Resource consent SH180016, Condition 5.

progresses over and above the pre-development flows. This is the basis on which the Pōhara Flood Protection proposal has been developed.

- 7.9 In relation to whether work may increase flood flows on the trusts land, the applicant has no control over work within the SHA<sup>14</sup> that may increase flooding of the Cloud Dance Trust's land. Whether or not the developer is complying with conditions of their resource consents or any permitted activity standards is an enforcement matter separate to this proposal.
- 7.10 In relation to the work directly associated with this proposal and the impact this may have on flooding, the flood modelling shows that this proposal reduces flooding depth on Mr Stoffregen's property, and therefore the work has positive flooding related effects.

### **Vegetation clearance**

- 7.11 The submission of Rosemary Jones and Danial TeTau supports the proposal but requests that several conditions are imposed on the consent if granted. These conditions relate to a requirement for the clearance of riparian vegetation along Ellis Creek, and a legal agreement regarding current and future maintenance of Ellis Creek between the submitter and TDC.
- 7.12 The proposal as framed in the resource consent application does not involve extensive clearance of riparian vegetation and is limited to vegetation clearance to facilitate the widening of the confluence of Ellis and Clifton Creeks, and minor vegetation clearance to enable the construction of the timber pole wall flood barrier and the associated earth bund along Ellis Creek.<sup>15</sup> The assessment of the efficacy of the proposal in terms of flood management does not rely on the vegetation clearance requested by the submitter.
- 7.13 The submitter also discusses a historic agreement with landowners who had streams flowing through their properties with regards to maintenance and cost sharing. The submitter also references a discussion at a public meeting for the proposal related to vegetation clearance and silt removal where specific work was discussed and agreed to.

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<sup>14</sup> it is assumed the submission is referring to work within the SHA, not the proposal.

<sup>15</sup> Captured under the resource consent for work within 10 m of a riverbank under Rule 16.10.2.1(d)

7.14 Regardless of historical arrangements and conversations, removing vegetation (other than discussed above) and clearing sediment from Ellis Creek is not part of the proposal and is not required to achieve the flood management objectives. Consequently, these matters are outside of the scope of this resource consent. As far as I am aware, there is no agreement in place regarding channel maintenance or cost sharing. This does not mean that something couldn't be put in place in the future. However, this does not form a part of this resource consent application.

#### **Summary of issues of scope**

7.15 The matters in submissions addressed above raise issues of scope for this hearing. Specifically, these matters are:

(d) Whether the applicant is responsible for ensuring inflows to the scheme area remain as anticipated through the assessment?

(e) Whether the applicant is required to address vegetation clearance within the catchment but not proposed as part of this proposal?

7.16 The catchment has the potential to be influenced by permitted and consented activities that may increase stormwater runoff (e.g. through increases to impermeable surfaces). Influencing the contribution of permitted activities to flows in the catchment is beyond the influence of this resource consent process as these activities are dictated by the operative rules in the TRMP. However, the existing land uses for the catchment have been considered in the flooding assessment.

7.17 The SHA development is subject to conditions dictating that flows will be managed to pre-development levels. Compliance with the conditions of these resource consents is the responsibility of the developer and therefore outside the scope of matters to be considered through this application.

7.18 Vegetation clearance on Ellis Creek to maintain flood carrying capacity has not been included as part of the proposal. On this basis alone, my view is this activity is beyond the scope of matters that can be considered as part of this resource consent process. Whether vegetation clearance as described by the submitter may also make a useful contribution to mitigating flooding risk is a matter the submitter could take up with TDC outside this resource consent

process. However, the flood assessment demonstrates that this is not necessary to meet the flood management objectives in the flood events modelled.

## **8. ASSESSMENT OF EFFECTS ON THE ENVIRONMENT**

8.1 The actual or potential effects associated with the proposal are identified in Section 5 of the AEE. These effects remain relevant and forms the basis for this section of my evidence. As noted above, the NPSFM has come into effect since the resource consent applications have been lodged and therefore provides an additional lens through which to view effects. I have commented on this generally above and will highlight any specific areas where this has a particular bearing on effects below as well.

### **Positive effects**

8.2 The positive effects associated with the proposal are outlined in the AEE at Section 5.2 and the evidence of Mr Velluppillai. In summary the positive effects of the proposal are:

- (a) Improved capacity of the local stormwater and flood conveyance network,
- (b) Reduction of the flooding risk within the catchment,
- (c) Increased personal safety,
- (d) Lowered risk of associated property damage and loss, and
- (e) Reduced risk of disruption to both personal and civic life as a result of flooding.

### **Adverse flooding effects**

8.3 While the proposal has been modelled to show a reduction in potential flooding for 59 properties, some properties will experience an increase in flooding depth as a result of the proposal. The flood modelling results are included in Section 5.3 of the AEE and are discussed in the evidence of Mr Velluppillai.



- 8.4 The assessment identified 34 properties that have the potential to incur greater flooding effects as a result of the proposal as compared to a scenario where the proposal did not occur in the 1% annual exceedance probability or 1 in 100 year flood event. Of these 34 properties, the assessment identified 21 properties with the potential for minor adverse effects to occur due the proposal.
- 8.5 To assess the consequences of flooding effects, the AEE considered the modelled flooding depth alongside qualitative assessment matters. These are:
- (a) The frequency with which the modelled flooding would occur,
  - (b) The extent of the additional flooding,
  - (c) The location of the flooding in relation to sensitive land use including dwellings, and
  - (d) The depth of flooding as it relates to the floor level of any dwelling.
- 8.6 The assessment methodology is discussed in more detail in Section 5.3.2 of the AEE. Table 5.2 of the AEE identifies the 21 properties and describes the results of the assessment. While several of the most affected properties may experience increased flooding depth in proximity to dwellings and other buildings, importantly in my view the flood modelling does not identify an increase in flooding above the floor level of any dwelling, nor restrict access (vehicular or otherwise) to the properties.
- 8.7 My opinion is the consequences of these adverse flooding effects need to be placed in the context of the overall objectives of the proposal; to minimise the risk of flooding of buildings and property (articulated in Mr Stephenson's evidence), and therefore the anticipated positive effects. In addition, given that the existing environment without the proposed interventions will result in adverse flooding effects in the 1% AEP flood event,<sup>16</sup> the proposal needs to be evaluated to determine its overall success in managing flooding effects in the wider area.
- 8.8 In summary, my opinion is that the proposal results in a significant overall improvement to flooding effects (a decrease in flooding for 59 properties vs an

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<sup>16</sup> These are shown on the difference in modelled flood depth maps attached as Appendix F to the AEE.

increase for 34 properties). Importantly, based on the modelling undertaken this overall improvement is achieved without any additional flooding impacting the floor levels of any dwelling. Consequently, my opinion is that effects arising from flooding are appropriate. In forming this opinion, I have also considered the fact that none of the submitters opposed the predicted flooding increase.

- 8.9 Ideally development of flood prone land is avoided in order to avoid associated potential effects. This is supported by the objectives and a large number of the policies in Chapter 13 of the TRMP.<sup>17</sup> However, through Policy 13.1.3.10 the TRMP recognises that new flood protection work may be appropriate where, for example there are substantial capital works or infrastructure at risk, it is impractical to relocate assets, and protection works will not generate further adverse effects on the environment or transfer effects to another location.
- 8.10 There is substantial investment in the properties and infrastructure potentially affected by flooding in Pōhara and it is impractical at this time to relocate the potentially affected dwellings making the proposal a good example of where Policy 13.1.3.10 should apply. While the proposal does generate additional flooding effects on some properties, these effects are relatively small when compared to the gains, and do not impact habitable floor levels of the particular properties. In addition, the effects on the environment are assessed as acceptable.<sup>18</sup> On this basis my view is that the proposal is consistent with Policy 13.1.3.10.

### **Construction effects**

#### ***Soil and river bank disturbance***

- 8.11 Soil disturbance has the potential to mobilise sediment which may enter water through surface runoff. There is also the potential for dust to be transported in air. The TRMP contains objectives and policies that reinforce the application of the effects hierarchy for land disturbance activities.<sup>19</sup> In relation to this project, Policy 12.1.3.2 and Policies 33.1.3.5 and 33.1.3.6 seeks to avoid, remedy or mitigate effects while considering the sensitivity and significance of water bodies where sedimentation may occur.

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<sup>17</sup> For example: Policies 13.1.3.2

<sup>18</sup> As addressed in the AEE and evidence presented to this hearing.

<sup>19</sup> Objective 10.1.2 and Policy 12.1.3.2.

- 8.12 Given the proximity of the proposed soil disturbance to the coastal environment, the NZCPS also provides guidance for these activities through Policy 23. Particularly the sensitivity of the receiving environment needs to be considered and significant adverse effects on ecosystems and habitats is to be avoided after reasonable mixing.
- 8.13 The sensitivity of the water bodies subject to these consent applications is discussed in the AEE at Section 2.3.1 and are described as being heavily modified via mechanical excavation which has reduced the available fish habitat. Despite this there are likely to be several native fish species present.
- 8.14 The potential effects associated with soil disturbance (for the construction of bunds and flood walls), and work required to widen the confluence of Ellis and Clifton Creeks (work in a river bed) are readily mitigated through management methods familiar on any similar project. In relation to soil disturbance this includes erosion and sediment control measures such as clean water diversions, silt fences, soil stabilisation techniques and minimising areas of exposed soil to minimise sediment generation risk (for both air and stormwater related discharges).
- 8.15 In relation to work in rivers, where possible work will be done in the dry to minimise the release of sediment. The proposal involves very limited work within the rivers themselves. This work is largely associated with the installation of culverts and the widening of the confluence of Elia and Clifton Creeks. Some work in the rivers may also be required for habitat restoration purposes.
- 8.16 The purpose of the confluence expansion is to create greater carrying capacity during flood flows and the work required to widen the confluence of Ellis and Clifton Creeks will largely occur outside of the normal flow channel (in the dry). The placement of rip rap erosion protection may occur within the low flow channel.
- 8.17 It is anticipated that the substantive work and any habitat restoration work will be done in accordance with sediment and erosion control protocols to be documented in the project Construction Environmental Management Plan (**CEMP**).
- 8.18 The evidence of Mr Lees aligns with the conclusions drawn in the AEE and concludes that provided sediment control mitigation is put in place, works are

scheduled to avoid fish recruitment and inanga spawning periods, and inanga habitat restoration occurs, any adverse effects on aquatic habitat and species resulting from stream disturbance will be acceptable.

### ***Construction noise***

- 8.19 The construction of the proposal will require the use of heavy machinery that will result in noise. The applicant is proposing to comply with New Zealand Standard NZS 6803: 1999 '*Acoustics-Construction Noise*'. The specific methods for achieving this standard will be outlined in a CEMP (discussed below). The applicant is also proposing to limit the hours of operation to between 7:00 am and 6:00 pm Monday to Saturday to avoid potential disruption to sleep.

### ***Traffic***

- 8.20 The construction will result in traffic generation, particularly on Able Tasman Drive and adjoining roads linking to the wider site. This traffic will be temporary, and the applicant proposes to manage these effects through the implementation of a temporary traffic management plan and where practicable, avoiding the busy summer period.

### ***Construction effects management***

- 8.21 The applicant is proposing that the draft CEMP attached to the AEE as Appendix D is updated and certified by the consent authority prior to construction commencing. This CEMP will incorporate an erosion and sediment control plan, details of how the construction activities will comply with New Zealand Standard NZS 6803: 1999 '*Acoustics-Construction Noise*', and a temporary traffic management plan. It will also detail periods when work will not be done so as to avoid effects on fish migration and spawning.
- 8.22 A condition of consent setting out the requirements of the CEMP and the certification process is contained in the AEE and reproduced with some amendments in the set of proposed conditions attached as **Appendix B** to this evidence.
- 8.23 Provided the CEMP is implemented, my view is that any adverse effects associated with construction activities can be mitigated to the point where they are acceptable. This includes managing discharges into fresh and coastal water

to an acceptable level in terms of the NPSFM and NZCPS. There appears to be no disagreement from the s42A officer on this matter.

### **Ecological effects**

#### ***Freshwater environment***

- 8.24 Aside from the installation and upgrade of culverts, there is very limited work within the bed of the rivers in the site area. The widening of the confluence of Ellis and Clifton Creeks will largely occur in the dry as the purpose of this work is to provide greater flood flow capacity. There will be some rip rap placed at the confluence to protect against erosion and this will result in the loss of some aquatic habitat, particularly inanga spawning habitat. In addition, the stream bank lowering to the east of 59A Selwyn Street will also be undertaken in the dry.
- 8.25 The evidence of Mr Lees addresses this and concludes that the loss of habitat is limited in relation to the other areas of similar habitat. In addition, with appropriate habitat restoration the effects of this loss can be mitigated to a point where effects are low. This aligns with the conclusions drawn in the AEE and by the s42A officer.
- 8.26 In terms of culvert design, the applicant has designed these to meet the fish passage requirements of the NESF permitted activity standards. While there will be some disturbance and release of sediment during installation, this will be temporary.
- 8.27 The evidence of Mr Lees discusses timing of the work in relation to sensitive periods of the lifecycle of aquatic species. He has recommended limiting work to certain periods of the year in order to mitigate effects on these species. Consequently, I have updated the draft consent conditions (attached as **Appendix B**) to explicitly require the CEMP to address the timing of work so as to mitigate effects on aquatic ecology.
- 8.28 Based on the conclusions drawn in the AEE and the evidence of Mr Lees, and provided the activities are undertaken in accordance with the draft consent conditions, my opinion is that the potential effects on aquatic ecology will be acceptable.

***Terrestrial environment***

- 8.29 The potential effects on terrestrial ecology have been assessed Section 5.5.3 of the AEE. The overall conclusion in relation to terrestrial habitat is that effects are expected to be low. This is largely due to the fact that the site consists of mixed exotic and native plants and that threatened species are unlikely to be naturally occurring amongst them. In addition, the area of more valuable habitat that may be impacted (salt marsh) is small (8 m<sup>2</sup>).
- 8.30 The AEE has concluded that the likely level of effect on avifauna and herpetofauna (birds and lizards) will be low. In terms of birds this is due to low habitat value in the area. In relation to lizards, the AEE concludes that the overall ecological value of lizard species present is low due to the likely absence of threatened lizard species.
- 8.31 The s42A report comes to a similar conclusion to the AEE. In addition, the implementation of the habitat restoration plan will factor in the loss of salt marsh and therefore provides opportunity to mitigate this effect if required. Based on the assessment reported in the AEE, my view is effects on terrestrial ecology will be acceptable.

***Wetland environments***

- 8.32 There are several wetland areas that have been identified within the site following the NPSFM and the NESF coming into effect. As discussed in relation to the NESF and the policy direction of the NPSFM, these documents provide an exemption for specified infrastructure from the direction contained in Policy 6, to avoid loss of extent of natural wetland (under specific conditions).
- 8.33 The earth fill embankment located to the north-west of 59C Selwyn Street is located close to a wetland that sits between this property and Boyle Street. The footprint of this bund is outside of the wetland extent and is unlikely to intercept any substantial overland flow to the wetland. The proposed work to widen the confluence of Ellis and Clifton Creeks may also interact with a wetland. If this does occur, habitat restoration will occur in line with the objectives of the habitat restoration plan discussed above.
- 8.34 The earth bund proposed along the true right (northern) bank of Bartlett Creek at 82 Abel Tasman Drive, the site owned by Richmond Pohara Holdings Limited

(RPHL), will potentially intersect wetland areas. There is some uncertainty as to whether the wetlands in this area are sustained by groundwater, surface water or a combination of the two. Consequently, there is some uncertainty as to what effect the proposal will have on these wetlands (beyond the loss of wetland extent due to the physical footprint of the proposed earth bund).

- 8.35 The applicant is currently undertaking additional work in order to assess the potential effect on these wetlands and investigate any potential mitigation measures that may need to be developed. Given the rapidly developing nature of NPSFM and NESF implementation (including the recently released 'exposure draft' of guidance from the Ministry for the Environment), the applicant wishes to consider this matter further and will provide additional information ahead of the hearing.

#### **Landscape, natural character and visual amenity effects**

- 8.36 The site is not identified as having any particular landscape or natural character values in the TRMP.<sup>20</sup>

- 8.37 Objective 8.2.2 is the:

*"Maintenance and enhancement of the natural character of the margins of lakes, rivers, wetland and the coast, and the protection of that character from adverse effects of the subdivision, use, development or maintenance of land or other resources, including effects on landform, vegetation, habitats, ecosystems and natural processes."*

- 8.38 Objective 5.1.2 is the:

*"Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources."*

- 8.39 The land within and adjoining the sites is already heavily modified. To the south the predominant land use is pasture production used for livestock grazing, while the predominant land use to the north of Bartlett Creek is residential. Due to the current use and historic management of land surrounding the project area all of the creeks within the project area have limited or no riparian vegetation.

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<sup>20</sup> For example, in terms of Section 6(a) and (b) of the RMA.

- 8.40 While the proposal will involve earthworks to create flood bunds and the construction of timber flood barriers, this will occur in the context of residential development and pastoral land use. For the most part the timber flood barriers will appear as a fence along the boundary of a residential site and the bunds will form a rise in an area of pasture. The bunds will be sown in grass.
- 8.41 The work around the confluence of Ellis and Clifton Creeks will be accompanied by habitat restoration planting. As discussed above TDC will prepare and implement a habitat restoration plan. This will assist in enhancing the natural character of the section of Ellis and Clifton Creeks around the confluence and remedy or mitigate potential effects on vegetation, habitats, ecosystems and natural processes.
- 8.42 Given the modified nature of the creeks and surrounding area, what natural character exists will be maintained if not enhanced, assisting in achieving Objective 8.2.2. Consequently, my opinion is effects on landscape and natural character, and visual amenity will be mitigated so as to be acceptable.

#### **Cultural effects**

- 8.43 Section 6(e) of the RMA contains the requirement to recognise and provide for *“the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.”*
- 8.44 The Te Tau Ihu coastal marine area is recognised as a Statutory Acknowledgement Area for eight iwi. This area includes the Motupipi River estuary. The obligations associated with Statutory Acknowledgement Areas are set out in the s42A report, which includes providing the resource consent application to all eight iwi.
- 8.45 The TRMP does not contain specific policy for cultural values, rather weaves provisions relating to cultural value throughout. Of relevance to this proposal are:
- 8.46 Objective 27.1.2.1 which is:

*“The maintenance, restoration and enhancement, where appropriate, of aquatic habitats in the beds of rivers and lakes that is sufficient to:*

- (a) preserve their life-supporting capacity (including the mauri of the water);*



*(b) protect their values for native fisheries (including inanga and eels), trout fisheries and wildlife (including indigenous bird species);*

*(c) protect or enhance indigenous biodiversity values.”*

8.47 Objective 27.2.2 and Policies 27.2.3.1 and 27.2.3.2:

*Objective 27.2.2*

*Retention or enhancement of the traditional values held by Māori under tikanga for rivers and lakes and their margins, including the mauri (or life-supporting capacity) and the wairua (or spiritual value) of rivers and lakes.*

*Policy 27.2.3.1*

*To avoid, remedy or mitigate adverse effects on the mauri and the wairua of the river or lake arising from the effects of structures and other activities in, on, under or over river and lake beds.*

*Policy 27.2.3.2*

*To ensure activities and structures in, on, under or over the beds of rivers and lakes avoid, remedy or mitigate adverse effects on cultural heritage sites, including wāhi tapu and wāhi taonga.*

8.48 Iwi and hapū management plans provide further context for a consideration of cultural effects. The Ngati Tama Environmental Management Plan provides environmental and cultural value context for the Pōhara area as part of a wider area of interest. Aspirations for water quality are set out in Section 13.2.1 of the plan. Of particular relevance is the aspiration that riparian margins of water bodies are restored with indigenous vegetation, providing habitat and pathways for indigenous species and a recognition of the connection between land and water. The applicant is proposing habitat restoration where the activities interact with aquatic habitat and has recognised that careful construction management will be required to address the potential effects of land disturbance on water quality.

8.49 The applicant has engaged with local iwi representative Manuwhenua ki Mohua throughout the project and a draft resource consent application and AEE was provided prior to lodgement.

8.50 I recognise that only tangata whenua can express whether or not a proposal gives rise to cultural effects. On this basis I will not attempt to do so here.

However, I will comment on specific matters that may assist the commissioner with context when making a determination of cultural effects.

- 8.51 An important matter in this regard is that the application was notified to Manawhenua ki Mohua Trust, Ngāti Tama ki Te Tau Ihu, Ngāti Rārua and Te Ātiawa o Te Waka-a-Māui. No submissions have been received from these parties.
- 8.52 As I understand it, no sites of identified cultural significance including wāhi tapu and wāhi taonga are located within the site of the proposal though there are some adjacent (the Te Tau Ihu Statutory Acknowledgement Area and cultural heritage precinct AF16-17).
- 8.53 Information provided by other witnesses for the applicant has provided a professional opinion as to the extent of certain potential effects that may arise from the proposal, as has the AEE. Of particular note is the evidence of Mr Lees in relation to ecology and the matters set out in Objective 27.1.2.1. While conclusions regarding the extent of a particular physical effect does not translate to a level of cultural effect, I wish to draw your attention back to Mr Lees evidence and conclusions drawn in the AEE for context when deciding these applications.
- 8.54 The applicant has proposed to engage a cultural monitor to oversee excavation where this is required due to work occurring in proximity to sensitive areas. This will be determined through ongoing engagement with Manuwhenua ki Mohua.

## 9. RESOURCE CONSENT CONDITIONS

- 9.1 I have attached a set of proposed resource consent conditions to this evidence as **Appendix B**. These are based on the set provided in the AEE and have been updated to reflect recommendations made by other witnesses. I note that the s42A officers report also contains recommended conditions. While I am of the view that not all the conditions proposed are appropriate in this case (for example Conditions 46 – 48 relating to wetlands), I am open to discussing these conditions with the s42A officer with the aim of reaching agreement if this is of assistance.

## 10. CONCLUSION

- 10.1 The proposal will have a significant benefit to the residents of Pōhara through decreasing the level of flooding on 59 properties. The proposal achieves this while avoiding significant flooding effects on other properties in the area, and importantly avoiding any flooding of habitable floors under the scenarios modelled.
- 10.2 I have concluded that the proposal is supported by the community given that submissions received in opposition have focused on site specific issues rather than opposition to the proposal itself.
- 10.3 The proposal requires some land and river bed disturbance. The latter is very limited in extent and any effects can be remedied through habitat restoration and mitigated through standard erosion and sediment control and stream bed work methodologies. Similarly, the land disturbance required can also adequately be mitigated through erosion and sediment controls. Consequently, the majority of potential adverse environmental effects are low when considered against the benefits of the proposal.
- 10.4 Importantly, the proposal is consistent with the key objectives and policies within the TRMP, NZCPS and NPSFM. Particularly those relating to avoiding, remedying or mitigating effects on indigenous biodiversity, maintaining or enhancing flood mitigation, and habitat and water quality.
- 10.5 The Government's Essential Freshwater package, the NPSFM, and the NESF were released following notification of the resource consent applications. While my view is that no additional resource consents are necessary under the NESF, some uncertainty remains regarding the potential adverse effects the proposal may have on natural wetlands in the context of a proposal that meets the definition of 'Specified Infrastructure'.
- 10.6 The applicant is doing further work in relation to potential effects and possible mitigation with the aim of providing more information to the hearing on this matter.
- 10.7 There are no matters of national importance under Section 6 of the RMA relating to this proposal other than those addressed above, and relevant other matters

set out in Section 7 of the RMA<sup>21</sup> have been addressed through my discussion of effects.

- 10.8 Setting aside the uncertainty regarding potential effects on wetlands, my view is the proposal achieves the purpose of the RMA. It does this by enabling the Pōhara community to provide for their social, economic, and cultural well-being, and particularly their health and safety by managing flooding risk. Importantly it achieves this while safeguarding the life-supporting capacity of water and associated ecosystems and avoiding, remedying, or mitigating adverse effects on the environment.

**Timothy Alistair Deans Ensor**

**23 April 2021**

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<sup>21</sup> (c) the maintenance and enhancement of amenity values, (d) intrinsic values of ecosystems and (f) maintenance and enhancement of the quality of the environment.

## **Appendix A – Plan provisions referred to in this evidence**

### **National Policy Statement for Freshwater Management 2020**

#### **2.1 Objective**

(1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems
- (b) second, the health needs of people (such as drinking water)
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

**Policy 1:** Freshwater is managed in a way that gives effect to Te Mana o te Wai.

**Policy 6:** There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

**Policy 7:** The loss of river extent and values is avoided to the extent practicable.

**Policy 9:** The habitats of indigenous freshwater species are protected.

**Policy 15:** Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.

### **NZ Coastal Policy Statement**

#### **Objective 1**

To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:

- maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;
- protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and
- maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.

**Objective 6**

To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:

- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;
- some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;
- functionally some uses and developments can only be located on the coast or in the coastal marine area;
- the coastal environment contains renewable energy resources of significant value;
- the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;
- the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;
- the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected; and
- historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.

**Policy 23 Discharge of contaminants**

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

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

- (e) use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and
  - (f) minimise adverse effects on the life-supporting capacity of water within a mixing zone.
- (2) In managing discharge of human sewage, do not allow:
- (a) discharge of human sewage directly to water in the coastal environment without treatment; and
  - (b) the discharge of treated human sewage to water in the coastal environment, unless:
    - (i) there has been adequate consideration of alternative methods, sites and routes for undertaking the discharge; and
    - (ii) informed by an understanding of tangata whenua values and the effects on them.
- (3) Objectives, policies and rules in plans which provide for the discharge of treated human sewage into waters of the coastal environment must have been subject to early and meaningful consultation with tangata whenua.
- (4) In managing discharges of stormwater take steps to avoid adverse effects of stormwater discharge to water in the coastal environment, on a catchment by catchment basis, by:
- (a) avoiding where practicable and otherwise remedying cross contamination of sewage and stormwater systems;
  - (b) reducing contaminant and sediment loadings in stormwater at source, through contaminant treatment and by controls on land use activities;
  - (c) promoting integrated management of catchments and stormwater networks; and
  - (d) promoting design options that reduce flows to stormwater reticulation systems at source.
- (5) In managing discharges from ports and other marine facilities:
- (a) require operators of ports and other marine facilities to take all practicable steps to avoid contamination of coastal waters, substrate, ecosystems and habitats that is more than minor;
  - (b) require that the disturbance or relocation of contaminated seabed material, other than by the movement of vessels, and the dumping or storage of dredged material does not result in significant adverse effects on water quality or the seabed, substrate, ecosystems or habitats;

- (c) require operators of ports, marinas and other relevant marine facilities to provide for the collection of sewage and waste from vessels, and for residues from vessel maintenance to be safely contained and disposed of; and
- (d) consider the need for facilities for the collection of sewage and other wastes for recreational and commercial boating.

## **Tasman Regional Policy Statement**

**General Objective 1** - Maintenance and enhancement of the quality of the Tasman District environment.

**Land Resources Objective 6.6** - Maintenance and enhancement of flood mitigation, habitat conservation, water quality, recreational and public access values and opportunities of riparian lands.

**River and lake resources Objective 8.1** - Maintenance of the stability and efficiency of rivers and floodway lands to carry floodwaters or sediment.

**River and lake resources Objective 8.2** - Maintenance and enhancement of natural and other instream values of rivers, lakes and streams

## **Tasman Resource Management Plan**

### **Objectives**

- 5.1.2 Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.
- 8.2.2 Maintenance and enhancement of the natural character of the margins of lakes, rivers, wetland and the coast, and the protection of that character from adverse effects of the subdivision, use, development or maintenance of land or other resources, including effects on landform, vegetation, habitats, ecosystems and natural processes.
- 27.1.2.1 The maintenance, restoration and enhancement, where appropriate, of aquatic habitats in the beds of rivers and lakes that is sufficient to:
  - (a) preserve their life-supporting capacity (including the mauri of the water);



- (b) protect their values for native fisheries (including inanga and eels), trout fisheries and wildlife (including indigenous bird species);
  - (c) protect or enhance indigenous biodiversity values.
- 27.2.2 Retention or enhancement of the traditional values held by Māori under tikanga for rivers and lakes and their margins, including the mauri (or life-supporting capacity) and the wairua (or spiritual value) of rivers and lakes.
- 10.1.2 Protection and enhancement of indigenous biological diversity and integrity of terrestrial, freshwater and coastal ecosystems, communities and species
- 12.1.2 The avoidance, remedying, or mitigation of adverse effects of land disturbance, including:
- (a) damage to soil;
  - (b) acceleration of the loss of soil;
  - (c) sediment contamination of water and deposition of debris into rivers, streams, lakes, wetlands, karst systems, and the coast;
  - (d) damage to river beds, karst features, land, fisheries or wildlife habitats, or structures through deposition, erosion or inundation;
  - (e) adverse visual effects;
  - (f) damage or destruction of indigenous animal, plant, and trout and salmon habitats, including cave habitats, or of sites or areas of cultural heritage significance;
  - (g) adverse effects on indigenous biodiversity or other intrinsic values of ecosystems.
- 33.1.2.1 The discharge of contaminants in such a way that avoids, remedies or mitigates adverse effects while:
- (a) maintaining existing water quality; and
  - (b) enhancing water quality where existing quality is degraded for natural and human uses or values.

### **Policies**

- 8.2.3.12 To enable the maintenance of physical resources for the well-being of the community, where those resources are located in riparian or coastal margins, subject to the avoidance, remedying or mitigation of adverse effects on the environment.
- 8.2.3.17 To pursue and encourage restoration and enhancement of coastal and riparian areas where natural character has been degraded by past human activities.

- 12.1.3.2 To avoid, remedy, or mitigate the actual or potential soil erosion or damage, sedimentation, and other adverse effects of land disturbance activities consistent with their risks on different terrains in the District, including consideration of:
- (a) natural erosion risk, and erosion risk upon disturbance;
  - (b) scale, type, and likelihood of land disturbance;
  - (c) sensitivity and significance of water bodies and other natural features in relation to sedimentation or movement of debris;
  - (d) Coastal Risk Area.
- 13.1.3.2 When determining appropriate subdivision, use or development in the coastal environment to assess the likely need for coastal protection works and, where practicable, avoid those sites for which coastal protection works are likely to be required.
- 27.2.3.1 To avoid, remedy or mitigate adverse effects on the mauri and the wairua of the river or lake arising from the effects of structures and other activities in, on, under or over river and lake beds.
- 27.2.3.2 To ensure activities and structures in, on, under or over the beds of rivers and lakes avoid, remedy or mitigate adverse effects on cultural heritage sites, including wāhi tapu and wāhi taonga.
- 33.1.3.5 To ensure that existing water quality is not degraded after reasonable mixing as a result of any discharge of contaminants into water and to take into account the following criteria when determining what constitutes reasonable mixing:
- (a) The depth, width and flow characteristics of the receiving water body, including the nature and extent of mixing which may occur and the assimilative capacity of the water.
  - (b) The extent of the mixing zone and the likely adverse effects on aquatic life or ecosystems within the mixing zone.
  - (c) The characteristics of the discharge, including the presence of toxic constituents.
  - (d) The community (public) uses and values of the water or any mixing zone, including those specified in the Plan, any water conservation order or water classification for any water body.

33.1.3.6 To take into account the following factors in determining the significance of actual or likely adverse effects on the receiving water of or from contaminant discharges:

- (a) Any water classification given in any schedule to Chapter 36 or water conservation order.
- (b) Existing water quality of the receiving water.
- (c) The significance or sensitivity of the aquatic life or ecosystem.
- (d) The extent of the water body adversely affected.
- (e) The magnitude, time of year, frequency and duration of the adverse effect, including any cumulative effects as a result of the discharge.
- (f) The range and intensity of uses and values of the water body.
- (g) The conflicts between uses and values of the water body.
- (h) The nature of the risks of the adverse effect.
- (i) Any relevant national or international water quality guidelines or standards, or water conservation order.

13.1.3.10 To maintain or consider the need for protection works to mitigate natural hazard risk where:

- (a) there are substantial capital works or infrastructure at risk; or
- (b) it is impracticable to relocate assets; or
- (c) it is an inefficient use of resources to allow natural processes to take their course; or
- (d) protection works will be effective and economic; or
- (e) protection works will not generate further adverse effects on the environment, or transfer effects to another location.

## Appendix B – Proposed conditions of consent

- 1 The Project shall be undertaken in general accordance with the information provided by the Consent Holder in the application dated June 2019;
- 2 Where there is conflict between the documents listed in (1) above and these conditions, these conditions shall prevail;
- 3 The consent holder shall ensure that a copy of this consent and all documents and plans referred to in this consent, are kept on site at all times, and presented to a TDC officer on request;
- 4 All works shall be carried out in general accordance with condition 1 and the management plans referred to in this application;
- 5 The consent holder shall prepare a Construction and Environmental Management Plan (CEMP) that outlines:
  - a Key staff responsibilities and contact details, including emergency contact details;
  - b Construction methodologies and construction timeframes;
  - c Traffic management practices;
  - d Stream works methodologies including periods where work is to be avoided to avoid effects on fish migration and inanga spawning;
  - e Mitigation measures for those effects arising from construction of the works, including noise, dust, erosion and sediment discharge controls and traffic. This mitigation may be in the form of separate management plans;
  - f Procedures and mitigation measures for effects on flora and fauna;
  - g Procedures regarding environmental complaints;
  - h Compliance monitoring; and
  - i Corrective action.
- 6 The CEMP shall be submitted to the Manager, Consents at Tasman District Council at least 10 working days prior to the commencement of works to which the management plan(s) relate for certification that the CEMP addresses the matters outlined in Condition 5;
- 7 The consent holder may make minor amendments to the management plans at any time. Minor amendments refers to any amendment where the adverse environmental effects arising from that amendment are equivalent or less than those that would arise in the absence of such an amendment;
- 8 Any material changes proposed to the management plans shall meet those requirements established in condition (5) of this consent. A material change refers to any amendment which remains in general accordance with condition (1), but does not qualify as a minor amendment under condition (7);
- 9 The consent holder shall take all reasonable steps to ensure that, during any temporary diversion of water, any fish within the works area are found, captured and relocated into a clear flowing section of the stream, upstream from the affected works area;
- 10 Works along Abel Tasman Drive shall not occur during the peak summer period between 16 December – 14 February;

- 11 All earthworks not being worked for a period exceeding three months, and all completed earthworks areas (including the proposed bund) shall be grassed as soon as is practicable. The consent holder shall monitor the areas subject to being grassed to ensure that full ground cover is achieved.