



IN THE MATTER OF

The Resource Management Act 1991

AND

IN THE MATTER OF

Notices of requirement for designations under section 168 of the Act, in relation to Te Ahu a Turanga; Manawatū Tararua Highway Project.

BY

NZ TRANSPORT AGENCY

Requiring Authority

**STATEMENT OF EVIDENCE OF GREGORY JOHN CARLYON - PLANNER FOR
KAHUNGUNU KI TĀMAKI NUI-A-RUA TRUST AND NGĀTI RAUKAWA**

13 March 2019

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INTRODUCTION

Kahungunu ki Tāmaki nui-a-Rua Trust and Te Rūnanga o Raukawa

1. *“There are many iwi who belong to this place, and our peoples are like the river, our relationships flow and connect across the entire ranges and waterways.”¹*
2. The Kahungunu ki Tāmaki nui-a-Rua Trust is affiliated to Ngāti Kahungunu Iwi Incorporated, but operates autonomously to represent Ngāti Kahungunu interests within the Tāmaki nui-a-Rua rohe. Broadly speaking, the rohe aligns with the boundaries of Tararua district, with some overlap into other adjacent districts. The Trust is extensively involved in representing the interests of its hapū members through social, economic and environmental initiatives. It has been extensively involved since its inception through its Dannevirke based organisation in resource management issues. This has included involvement in every key resource consent process affecting the whenua and awa within the rohe, since 1997, and plan making processes at the district and regional level. The Trust is the only iwi organisation formally involved in the development of the One Plan through its submission and representation to the hearing process. The Trust has worked diligently to build relationships with Crown ministries, government agencies and their representatives, as it has worked through its Treaty settlement process. Key amongst those agencies is NZTA.
3. The context for the work of the Trust in resource management is one of economic development occurring at the expense of environmental protections. This has led to degraded natural resources, diminished access to valued resources for tribal beneficiaries and reduced opportunity for Ngāti Kahungunu to exercise traditional kaitiakitanga. Along with the diminished resource has come a decline in tribal knowledge and the rituals associated with exercising tikanga.
4. Ngāti Raukawa have a number of hapū who relate to the Manawatū awa and Ruahine/Tararua pae maunga. The Rūnanga is representing those interests in these proceedings.
5. Ngāti Raukawa has a rohe that includes parts of the Manawatū, Rangitīkei, Horowhenua and Wellington regions and works to support the 29,000

¹ Jessica Kereama, Te Manawaroatanga – position statement Te Ahu a Turanga, 2018.

beneficiaries of the tribe. It has been extensively engaged in resource management issues, with recent involvement of wastewater and discharge consents within Tararua District, Palmerston North City, Manawatu District Council and Horowhenua District. The Rūnanga provides support and resourcing to hapū (where sought) and maintains strategic involvement with large industry bodies and local authorities to insure Raukawa's tikanga is appropriately reflected in resource use and management. The Rūnanga is in the process of addressing its Treaty claims.

6. At the outset of the Te Ahu a Turanga project, Ngāti Raukawa was not included as an iwi for the purpose of project engagement. This omission was addressed in the latter part of 2018, which allowed the Rūnanga to make representations through its Manawaroatanga statement to the NoR application documents.²
7. For the remainder of my evidence, I have described the two iwi authorities as "the Rūnanga". Where I have addressed a matter particular to an authority, they are identified.
8. I was engaged by Ngāti Kahungunu at the outset of the project to provide planning support through the NoR process, and have been engaged by Ngāti Raukawa since late November 2018 to support their contribution. The Rūnanga have agreed to work collectively in respect of the NoR process, and beyond into the project implementation (if developed as set out). They clearly continue to operate in their own independent capacities.

Qualifications and Experience

9. My name is Greg John Carlyon.
10. I am the Practice Lead - Planning, and Director of, The Catalyst Group.
11. I hold a Bachelor's Degree in Regional Planning from Massey University, and have practiced as a planner for 26 years. I have held senior planning roles with the Department of Conservation and Manawatū-Whanganui Regional Council, and founded The Catalyst Group in 2011, to develop a multi-disciplinary planning and science company, for which I lead the planning output. I am a qualified Independent Commissioner with the Chair's

² Te Ahu a Turanga, NoR, Volume 3B.

endorsement and regularly act in this role, or as a facilitator in respect of resource management matters.

12. My experience with implementation of the Resource Management Act 1991 (RMA) is broad-ranging. It includes being the planning lead and involvement with negotiations for large-scale consent renewal projects for state owned enterprises in the central North Island, the preparation and leadership of a number of district plan processes, oversight and leadership for full plan review programmes, and strategic advice to a large number of regional councils in respect of second-generation plan development.
13. I have extensive involvement with tangata whenua interests in respect of resource management processes, including technical and leadership roles with hapū and iwi in the North Island and upper South Island. This has included negotiations and settlement of issues with the New Zealand Transport Agency (NZTA) in respect of Dame Patricia Grace and associated hapū and trust interests with the Kāpiti Expressway on the Kāpiti Coast, assistance to tangata whenua parties to the Mt Messenger project in Taranaki, and extensive support to iwi and hapū in respect of wastewater and water allocation matters.
14. I have spent the bulk of my career in the Manawatū region. This includes a long period with Manawatū-Whanganui Regional Council (MWRC), during which I led the council's strategy, policy, science, consents, compliance and iwi engagement functions. In particular, I led the development of the One Plan (MWRC's combined regional policy statement, coastal and regional planning document). I developed the framework within the plan which focused on four key strategic resource management issues. They are all relevant to this hearing and include water quality, quantity, terrestrial biodiversity and sustainable land use. I also led the development of the Te Ao Māori framework in Chapter 2 of the plan.
15. I have worked extensively with the district councils engaged in the NoR process, including plan development and consenting for community infrastructure.

Environment Court Code of Conduct

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

Scope of Evidence

17. My evidence addresses the following matters.

- The rights and interests of the Rūnanga
- The statements of position prepared by Kahungunu and Ngāti Raukawa, as they relate to the resource management issues before this hearing.
- The decision of iwi to work inside the case of NZTA.
- Statutory assessment in respect of matters in contention.
- Environmental effects in respect of recreation, landscape, ecology, historic and archaeological values, water matters and tangata whenua values.
- Draft conditions in respect of the interests of tangata whenua.
- The environmental cultural design framework (ECDF) and its critical place in providing certainty.
- Developing a project in a cultural landscape, as opposed to a landscape with cultural sites of significance.
- The working relationship with NZTA, emerging relationship with Alliance parties and memorandum of partnership.
- Response to Commissioners' questions in respect of cultural matters.

In preparing this evidence I have received expert advice from Dr Fleur Maseyk, Ms Kate McArthur, Mr Morry Black, Mr James Kendrick and Ms Jessica Kereama. I have also reviewed the following documentation.

- NoR application documentation
- Section 42A reports for the proceedings
- Evidence prepared by NZTA for proceedings
- Commissioners' questions to parties
- Responses to questions in respect of Commissioners' questions

I have visited parts of the proposed route on a number of occasions as the project has developed.

EXECUTIVE SUMMARY

18. The Manawatū Gorge project has been well described in the NoR documents, evidence of NZTA, section 42A planning report, and has been summarised in the Rūnanga contribution to the application documents. I do not repeat those descriptions here.
19. The Rūnanga have confirmed their position to this hearing, that the roading project concept, and accordingly the recommendation for a NoR, be supported. That position is built on the development of a relationship with NZTA and its expert advisers, the opportunity to investigate, influence and direct the project and the confidence that unresolved matters will be resolved prior to and during construction.
20. There is substantial uncertainty remaining across a number of elements of the project, which are cause for concern for the Rūnanga. These include adverse effects on:
 - landscape,
 - terrestrial ecology,
 - water quality,
 - historic and archaeological values; and significantly,
 - tangata whenua values.
21. There are a number of areas in which uncertainty remains that are not key areas of interest for the Rūnanga. This includes recreation, broader social and community impacts, and cycling/walking opportunities. There are a number of parties advocating for those values through these proceedings, and the Rūnanga have a number of other avenues to influence outcomes in respect of these matters, should they need to contribute.
22. The processes described in the documentation and evidence produced by NZTA, in respect of outline plans and the Environmental and Cultural Design Framework (ECDF), do not address all of the adverse effects that could be generated by the project, at this stage.
23. The separation of the NoR proceedings from the resource consents may be necessary from NZTA's perspective. However, it generates a level of uncertainty in respect of impacts on streams which are significant, and these remain unresolved from an effects perspective at this time. The NoR

attempts to resolve key issues in respect of cultural, water quality, terrestrial biodiversity and landscape, although these issues (especially in relation to water quality) are more appropriately addressed in a resource consent environment. The necessity for addressing effects at the NoR level is understood.

24. There is a perspective that frameworks like the ECDF are “living documents”, subject to change, amendment and contribution from the four iwi engaged in the project. This approach is adopted as a consequence of the compressed timeframes for the project and the matters unresolved prior to hearing. At a stage prior to the project construction commencing, the outstanding matters identified by the Rūnanga will need to have been addressed.
25. The ECDF needs to be capable of clear interpretation between parties, where there is a difference of opinion, it needs to be capable of providing certainty to the road construction teams and Rūnanga in order that the parties are clear on their responsibilities and outcomes to be achieved. It also needs to be capable of physical implementation, recognition and protection of the values of the Rūnanga.
26. There is a clear position adopted by the Rūnanga that the gorge project is being developed within a cultural landscape. The possible misconception that the roading project only needs to deal with identified sites of significance, ko-iwi or wāhi tapu matters on a locational basis, is a fraction of the context in which the project needs to be undertaken.
27. NZTA and its agents have been thoroughly constructive and engaging with the Rūnanga as this process has evolved.
28. With the emerging suite of conditions, identification and initial attempts at resolution of adverse effects on values held by the Rūnanga, and the partnership between the Rūnanga and NZTA, the rights and interests of the Rūnanga in respect of Part 2 are addressed.
29. If the Hearing Panel is minded to direct further work in respect of conditions, or adopt more specification (particularly in the ECDF), the Rūnanga are more than prepared to assist.

PROJECT OVERVIEW

Statement of Position for two iwi

30. The positions of Ngāti Kahungunu and Ngāti Raukawa are set out in the evidence of Mr Morry Black and Ms Jessica Kereama for their respective iwi. These positions are also supported by the documentation prepared by their teams for the NoR application, lodged in 2018.
31. The Rūnanga have formally adopted the position that the roading project concept is supported. This position has been formally conveyed to NZTA and will be further articulated in evidence before the panel. This position is a recognition of two key matters:
 - i. The substantial economic, social and safety concerns caused by the closure of State Highway 3 through the Manawatū Gorge, as a result of geotechnical instability.
 - ii. A strong understanding from the Rūnanga that there is a path forward that allows for resolution of the significant number of outstanding matters generated by the roading project.
32. In addition, the Rūnanga are very clear that their alliance allows for the following values to be recognised and provided for.
33. Through a circumstance outside any parties' control, the authorisation process for the NoR process and associated exercises has been truncated and has placed considerable pressure on the Rūnanga to determine matters which they simply cannot do in the time available. The memorandum of partnership with NZTA is a shared effort to address uncertainty and resolve matters, both within the processes prescribed in the Act and beyond. This shifting paradigm for the way in which projects of this type are undertaken is reflected in the arrangement that sees the tangata whenua evidence coming before the panel as part of NZTA's case.
34. As the Rūnanga have identified, the maunga of the Tararua and Ruahine Ranges and Manawatū awa – Ngā Pae Maunga me ngā Wai-tuku-kiri are inseparable from the tangata whenua of the region. To that extent, the Rūnanga have been developing a long-term strategic approach, which exceeds the short-term needs of the roading authority.

Why no submission from the Rūnanga?

35. The Rūnanga are well versed, resourced and supported in their engagement relating to matters under the Resource Management Act 1991. This has been needed in the context of clear evidence of degradation across the natural resources on which the Rūnanga depends, and in a broader context, of tangata whenua being marginalised in decisions on resource management matters. Accordingly the Rūnanga have been involved in every discharge and water take application for the Manawatū awa over the past ten years and have been extensively involved in hearing proceedings through to the Environment Court on matters that effect their rights and interests. They have also been heavily involved with NZTA in relation to roading projects on both sides of the ranges that the Manawatū awa bisects.
36. With this knowledge and experience, alongside the opportunities offered by NZTA, an early determination was made to partner with NZTA. In respect of Kahungunu, this allowed clear evaluation of the project proposal and a level of analysis not normally available in projects of this type. It was clear to the parties from the outset that the path taken by Kahungunu was theirs to choose. The determination to provide documentation within the case generated by the applicant, was not an easy one, but was assisted by the formal commitment from NZTA to expert technical and field investigation within an envelope that the project would not exacerbate or generate grievances between the Crown and iwi.
37. It was a different situation for Ngāti Raukawa, as they were not formally taken into the project and recognised as an iwi with legitimate rights and interests in respect of the gorge project until late 2018. From the point at which their manawhenua was formally recognised by the agency, a similar process of analysis and consideration has been undertaken. This exercise has been assisted by the work underway between NZTA and Ngāti Raukawa with the Whirokino Trestle Bridge replacement project on State Highway 1. The learnings from the implementation of that project, along with the relationships that have developed, have built confidence that there is a path to address uncertainty and adverse effects generated by the project.

38. The ability for the Rūnanga to be engaged, influence the project outcomes, and where necessary direct responses, has been strengthened by the approach adopted by NZTA and the Rūnanga. In my opinion, the path set out between the iwi and NZTA is a mature response to the experiences of a number of similar roading projects over the past decade. It represents an evolution in thinking from project to project and critically relies on a mutual reliance on each party for the project to succeed. In the context of section 6(e), which requires the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga to be recognised and provided for, section 7 which requires particular regard to be had to kaitiakitanga and section 8 which requires the principles of the Treaty of Waitangi to be taken into account, the requirements of Part 2 are met. I address the detail of uncertainty, both in respect of cultural matters and other associated matters elsewhere in my evidence.
39. The Rūnanga's involvement in this project is focused beyond holding the line on cultural and biophysical values, and extends to a clear expectation that protection and enhancement of these values will occur through the project.

STATUTORY ASSESSMENT

Relevant Statutory Documents

40. The RMA directs decision makers to have regard to the relevant provisions of planning instruments at a national, regional and district level. The application documentation and s42A report prepared by Ms Ainsley McLeod, Mr Phillip Percy and Ms Anita Copplestone identify the relevant national standards, policy statements, regional and district plans. In addition, they identify other matters in accordance with s171(1)(d).
41. In my view, this is the complete suite of relevant documents.
42. I note that there are no publicly recorded iwi management plans relevant for consideration in the NoR process. Preparing this documentation is likely to be a lower priority for the Rūnanga, as they progress through the Treaty settlement exercise over the next few years. I recognise that Ngāti Kahungunu is further ahead in this process, having signed a deed of settlement in 2018. Other iwi for this hearing have settlement Acts in place to protect their rights and interests, signed through 2016-17.
43. The draft Te Apiti masterplan, prepared in 2019, is not yet ratified. I note it was prepared for the purpose of protecting and enhancing the Te Apiti area, and attempts to provide for the many values held by the stakeholders to this positive initiative. For the Rūnanga, I note that there is no current involvement by the iwi in the Te Apiti planning exercise. Discussions are ongoing. I note that one of the key guiding principles for the masterplan is a recognition of iwi and their cultural history, associated with the area. Against this is the premise that there will be a korero, which enriches manawhenua.
44. There has been a discussion amongst a number of parties that the Te Apiti programme is an appropriate way to address adverse effects in respect of cultural and biodiversity matters. While this may well be so, it is my opinion that in the absence of Ngāti Kahungunu and Ngāti Raukawa, it is inappropriate to rely on the project as a vehicle to address effects through established programmes, including cultural recognition, pest control, planting or other offsets.

Consideration of Alternatives

45. In accordance with s171(1)(b)(i) and (ii), the territorial authority has had particular regard to whether the requiring authority (NZTA) has given adequate consideration to alternatives. This assessment is undertaken on the basis that the requiring authority does not have a sufficient interest in the land in which the proposal is located, or there are significant adverse effects on the environment. It is accepted that both of these matters are challenges for the requiring authority.
46. I accept the proposition advanced by Ms McLeod at paragraph 58 of her evidence, that the requirement is consideration of alternatives, as opposed to the choice of a preferred alternative. It is the preferred alternative that is the focus of the inquiry and subject of the bulk of analysis undertaken currently before the panel. The section 42A report authors identify potentially significant adverse effects generated by the proposal. For clarity, it is my opinion that there are likely to be significant adverse effects on a range of parameters. These are identified in the evidence from the applicant's experts and include but are not limited to terrestrial ecology, water quality and ecology, landscape and cultural values.
47. The evidence of Mr Black identifies the option determined by the requiring authority met a range of criteria, principle amongst them that it was the lowest cost option. In my opinion, the risks of the option chosen through the NoR process rest with the applicant. Those risks may be magnified Where significant adverse effects on the environment could have been addressed through alternative options assessment. For example, effects on infrastructure protected by the NPS for renewal energy generation vs impacts on significant indigenous vegetation, which is protected as a matter of importance at section 6(c) of the Act.

Environmental Effects

Landscape and Natural Character

48. The assessment provided with the NoR documentation identifies five landscape character areas and the draft ECDF identifies six project zones. The statutory context for assessing the activity is described in the section 42A report at paragraph 354-372. I agree that these are the relevant provisions. The Rūnanga provide no expert assessment in respect of

landscape and rely on the positions and expert analysis reflected in the NoR document, and section 42A report. Witnesses for NZTA recognise that there will be significant adverse effects on landscapes. It is further acknowledged that those impacts on landscapes will often correlate with other adverse effects on biophysical values, in particular terrestrial ecology. The broadly agreed position amongst experts is that the significant adverse effects generated by the proposal will be resolved through conditions on the NoR, or through the programme and approaches set out in the ECDF. My response in relation to conditions is identified at Annex 1 of my evidence and I reaffirm my position in relation to the ECDF, that it could still be considered a “work in progress”. “Given that the NoR process does not adequately address the potential for significant adverse effects across multiple areas, including cultural values, this will need to be addresses through the revised ECDF and ultimately in the resource consent process.”

Terrestrial Biodiversity and Associated Offsets

49. Experts across the parties agree there are significant adverse effects on indigenous biological diversity that cannot be avoided, remedied or mitigated. This conclusion is reached on the basis that any road alignment built within the NoR boundaries will impact on significant indigenous vegetation. Dr Forbes has undertaken a thorough assessment of terrestrial biodiversity values. This is supported by Mr Lambie in his section 42A report. In Dr Forbes’ assessment, he identifies that the opportunity to offset values where they cannot be avoided, remedied or mitigated is somewhat constrained. He identifies that the offsetting principles developed by Maseyk et al. (2018) are problematic. Mr Lambie identified that an offsets package has not been prepared to the extent that it achieves the purposes of the objectives and policies of the One Plan, in respect of maintenance and net gain of indigenous biodiversity.
50. The Rūnanga have commissioned a review of evidence prepared for the NoR from Dr Maseyk. Dr Maseyk is a leading expert in respect of offsets matters and has led a number of national and international programmes in this regard. She has conferred with Mr Lambie and Dr Forbes in respect of the Te Ahu a Turanga project and has provided advice to the Rūnanga.
51. In considering the key points from Dr Maseyk’s review, it is my opinion that the iteration of the proposed offset package lacks the rigour and

transparency to enable certainty that the proposed actions are appropriate and that the anticipated gains are adequate to achieve a net gain for the values, which are a target of the offset.

52. Biodiversity offsetting is underpinned by a series of principles that illustrate the level of rigour required to design and implement an offset. International best practise in this regard is that an offset design would adhere to these principles. In particular, I would draw the panel's attention to the principles of additionality, permanence and ecological equivalence.
53. The current offset proposal for Te Ahu a Turanga has not objectively evaluated ecological equivalents, amount, time and space. In this regard it is difficult to conclude that an offset package is likely to achieve a net gain outcome. I also note Dr Maseyk's advice in respect of additionality for the hearing panel. Additionality requires that biodiversity benefits attributable to an offset must be over and above that which would have happened anyway. The current project identifies a number of actions (for example opossum control to 5% RTC), that are not additional to what is already happening in the landscape.
54. Finally, in respect of the Ecological Compensation Ratios (ECRs) used to determine the amount of offset planting, it is Dr Maseyk's view that expert judgement has been applied in the absence of numerical modelling and associated evaluation of the offset required to achieve a net gain. The assumptions in the expert judgements of Dr Forbes are not explicit. I note Dr Maseyk has made a number of other comments that are best resolved through expert conferencing between Dr Forbes, Mr Lambie and Dr Maseyk at the appropriate time. In my opinion these discussions may well be replicated in the resource consent process yet to come. To some degree this approach either delays analysis that would inform the current process, or confuses parties in respect of the appropriate time to raise, address and attempt to resolve issues in respect of the Te Ahu a Turanga project.
55. The framework in which assessment is required is appropriately set out in the section 42A report and evidence of Ms McLeod.
56. Ms McLeod sets out the view, at paragraph 154 of her evidence, that delivering the project within the defined effects envelope is a risk for NZTA. My experience and opinion is that the risks are not confined in any way to the applicant and are often externalised in ways that adversely affect the community, tangata whenua or environment.

Freshwater Ecological Impacts

57. The application documentation and experts involved in these proceedings (including Ms McArthur, who is an advisor to the Rūnanga in respect of freshwater matters), agree that the project will generate substantial modification to freshwater environments, with associated significant adverse effects. The section 42A reports of Mr Lambie and Mr Brown for the councils, identify that there is not enough detail within the application or assessment to determine whether effects generated from the development activities can be avoided, remedied or mitigated. Mr Lambie goes further in his section 42A report to question the degree to which there is an ability to mitigate and/or offset losses within the catchments of the waterbodies affected.
58. I note the observation of the section 42A planning report at paragraph 455, that NZTA is largely deferring the consideration of aquatic ecology to the regional council resource consent stage. I broadly agree that this is the approach taken. I further agree with the authors of the section 42A report that the designation should assess and address actual and potential effects on the aquatic environment. In light of the approach taken by NZTA, two challenges emerge. The first is that conditions are generated in anticipation of effects that have not yet been determined to be significant, or otherwise, and that conditions are responding to matters that are not relevant. The second challenge generated by this approach is the possible competition generated between the NoR and resource consent process, with the expectation that matters may have been addressed at one tier of the approval process, when they have not, or that they need not be addressed in the second tier process because they were resolved in the first process, when they have not. As I have earlier indicated in my evidence, this is a risk that sits with the requiring authority. In my opinion, it should not be externalised onto tangata whenua, the community or onto the environment.
59. The relevant provisions for assessment of the impact and resolution of issues are contained in the section 42A planning report. I concur with the scope identified.

Historic and Archaeological Values

60. The evidence of Dr Clough (who engaged with Ngāti Kahungunu), confirms that there are a number of known heritage and archaeological sites. It is entirely possible that the project could have a significant effect on archaeological values – described as an aspect of cultural values by the Rūnanga. The principle approach adopted by Dr Clough to mitigate these potential effects is the archaeological authority and associated conditions in respect of accidental discovery protocols.
61. In my opinion, section 6(e) relationship matters cannot be separated from site specific known values. To some degree it is mechanistic to contemplate these values on a site-specific basis, where it is the view of the Rūnanga that these works are being undertaken in the context of a cultural landscape, for which many of the values are not physically present. To that extent, it is my opinion that the ECDF is the appropriate vehicle to detail responses to these matters (at least in respect of the Rūnanga). I note my earlier evidence and the evidence of Mr Black and Ms Kereama, that there is a substantial body of work required to develop confidence that the framework will deliver in this regard. Equally, it is identified that a process and commitment between the parties is in place to allow this to occur.
62. The observation that iwi (broadly speaking) are generally in agreement with the conditions to provide for historic and archaeological matters, is not the case for the Rūnanga. It may well be the case for Rangitāne, but that is for that iwi to comment.

Tangata Whenua Values

63. I have read Ms McLeod's assessment in respect of tangata whenua values at paragraph 176 on in her evidence, and have reviewed the section 42A report at section 8.9 (planning). I agree with the statutory context identified for consideration of tangata whenua matters set out in 8.9.4.1 and 2. of the section 42A assessment. Mr Percy accurately characterises the key response to tangata whenua matters as a reliance on the ECDF.
64. The Rūnanga agree with this concept as an appropriate framework for recognising values of the two iwi (and other iwi with an interest in this process), and giving life to those values through a series of implementation statements and downstream plans. As I have identified earlier in my

evidence and as identified in the evidence of Mr Black and Ms Kereama, that process is at a relatively early stage and cannot be relied on to inform the decision of the panel.

65. As Mr Black and Ms Kereama have also identified, an agreement is in place with NZTA to work through the outstanding matters in respect of the ECDF for a resolution that provides for the requirements of Part 2 of the Act and accordingly the Te Ao Maori chapter of the regional policy statement – Horizons One Plan. NZTA have been proactive and constructive with the iwi throughout the process prior to this hearing and there is every expectation that the relationships developed will strengthen through the project delivery. In addition, NZTA has made every attempt to remove the barriers to the Rūnanga in respect of their contributions before this hearing. It is my opinion that the necessarily tight timeframes and understandably thorough assessment the Rūnanga wish to undertake are in competition. NZTA and the Rūnanga have continued to seek ways to remedy this.

Part 2

66. The matters addressed in section 171 of the RMA are subject to Part 2 of the RMA.
67. In respect of landscape/natural character, terrestrial ecological impacts, historic and archaeological values and aquatic ecology, it is difficult to draw a conclusion in respect of Part 2 sections 6 and 7. To a large extent the unresolved issues will be addressed through the resource consent process still to come, and as I understand it, the caucusing and expert conferencing occurring prior to hearing. The position advanced through Ms McLeod's evidence at paragraphs 217-219 has a very strong reliance on the means not the end, to provide for the requirements of Part 2. For example, the preparation of management plans, commitment to the ECDF, etc. While I entirely respect the conceptual nature of the application, the requirement for the NoR to be assessed against Part 2 and the relevant statutory instruments is still required and is as yet not informed by the detail that would come through resource consent applications (where many of these issues are likely to be resolved).

68. In respect of section 6(e) matters, it is my opinion that the protections contained in Part 2, at sections 6, 7 and 8 are provided for in the agreements in place with NZTA. These agreements and their implementation are occurring inside a shifting paradigm that accepts tangata whenua are the best ones to speak to their values, and in that regard, are the best ones to confirm whether their rights and interests are provided for. I accept the view expressed by the experts for Ngāti Raukawa and Ngāti Kahungunu. Should the panel be of the view that there are outstanding areas of uncertainty, that if clarified will inform decision making, the Rūnanga are committed to assisting where their input is sought.
69. In respect of the draft conditions and commissioner's questions, my responses can be found at Annex 1 and 2 of this evidence.

OTHER MATTERS

Environmental and Cultural Design Framework (ECDF)

70. The proposition behind the Environmental and Cultural Design Framework (ECDF) is articulated in the evidence of Mr Christopher Bentley for NZTA. It is also addressed in the planning evidence of Ms Ainsley McLeod for NZTA, Mr Philip Percy and Ms Anita Copplestone, within their section 42A officer reports. Mr Black and Ms Kereama have addressed the current state of play in respect of the ECDF, and the critical requirement for a framework of this type to address cultural values.
71. Mr Bentley has identified that the role of the ECDF is to guide development over the roading corridor and identify key elements in respect of landscape and cultural matters that require special attention³. He further identifies that the framework is given effect to through the conditions associated with the NoR, in order to minimise or mitigate impacts. Following a recommendation by the panel, the assumption is the management plans identified, outline plans and resource consents, will give effect to the directions developed.
72. This approach denotes a clear hierarchy flowing from the design concept to the ECDF and onwards to implementation.
73. The position advanced by Ms Kereama and Mr Black, for the Rūnanga, is that the ECDF does not currently reflect the values of the Rūnanga.
74. I have attended a number of workshops with the Rūnanga to discuss the ECDF and have participated in a workshop with NZTA (25 February 2019) to discuss progress with this document. The position of the Rūnanga, clearly articulated to the representatives of NZTA, was that the ECDF is a major body of work, which cannot be completed in time for the NoR (I became aware of this position in November 2018). The Rūnanga need to undertake a process of engagement with their hapū and tribal beneficiaries to determine and reconcile values particular to their circumstance and bring those through to actions and responses for the project implementation.
75. At this point I understand that there is a commitment between the parties to resourcing, preparation and completion of an ECDF over the next four to six month period. This commitment and the project framework developed between the respective teams allows a degree of confidence that the Rūnanga can complete this exercise, that it will be complete prior to a

³ Page 5, EIC Mr Bentley

resource consent hearing process, and that it will appropriately identify the responses required to provide for the values framework to be developed.

76. The evidence of Mr Black and Ms Kereama and the supporting documentation prepared for the NoR application, identifies values at a broad scale. This is a useful pointer to the direction that may be taken, but in my opinion it would be unwise to assume the outcome of a constructive tribal and inter-tribal exercise of this nature.
77. The position of the Rūnanga in respect of outstanding matters to be addressed through the ECDF management plan, outline plans and other instruments, is clearly articulated in the Kahungunu statement of position and Te Manawaroatanga statement prepared by Ngāti Raukawa.
78. In summary, the position articulated in November 2018 has not progressed substantially prior to the hearing, other than to confirm a framework is emerging for these matters to be addressed in the near future.
79. I agree with the 42A report authors, at paragraph 557, where they identify, “*it is difficult to draw planning conclusions at this time*”. I also caution, in respect of conditions, that engagement of tangata whenua in the ECDF process, (and similar exercises), is to conflate engagement with outcomes.
80. I also note that there has been no engagement from Manawatu District, Palmerston North City or Tararua District in respect of the rights and interests of the Rūnanga. The position taken by local authorities and NZTA is that the parties best able to speak to tangata whenua values are tangata whenua themselves.
81. In summary, the position of the Rūnanga is that their values have not yet been fully articulated and are not capable of resolution at this point. In this respect, the ECDF is a useful framework or tool, but in its unpopulated state, cannot be relied on at this time. Accordingly, Mr Black, Ms Kereama and myself have identified the Rūnanga are utilising other mechanisms to address their needs and permit consideration of the NoR and the subsequent ongoing project development.

Gregory John Carlyon

13 March 2019

ANNEX 1: DRAFT CONDITIONS

NoR conditions assessment

Condition 1

Because the ECDF does not currently include all of the cultural values of all iwi affected by the project it cannot be considered the final NOR reference document for the project to be “in general accordance with”. Provision is needed in condition 1 to refer to the revised ECDF, which will contain a more thorough description of the cultural values, once agreement is reached between Ngāti Raukawa, Kahungunu and NZTA.

Condition 3

I agree with the s42A report recommendation that Condition 1 should not be removed in its entirety. The revised ECDF may contain provisions relating to cultural values that endure beyond the construction phase of the project.

Condition 5

I note that a Tangata Whenua Values Monitoring and Management Plan (TWVMMP) is yet to include all values held by all iwi. That plan will need to be informed by the revised ECDF. References in condition 5 (and other related conditions) to an ECDF design review will also need to be amended to incorporate a revised ECDF to include all values of all iwi. I note that the outline plan does not require any further agreement or approval from tangata whenua beyond the Ecological Mitigation Management Plan, the Manawatu Gorge Scenic Reserve car park, the Landscape Management Plan, TWVMMP or the ECDF and that tangata whenua have no ability to engage with NZTA on the outline plan beyond those two documents in the RMA framework, although there are avenues available through the agreements between iwi and NZ Transport Agency. I also note that the outline plan for enabling works does not reference these documents at all.

Condition 7

Tangata whenua will be specifically engaged in the preparation of the Communications Plan.

Condition 8A

As Treaty Partners, tangata whenua have an interest in the matters recommended by the s42A officers for inclusion in a community engagement plan above and beyond that of the wider community. Engagement with tangata whenua on these matters is required.

Condition 10

The CEMP should include reference to the ECDF not just the TWVMMP.

Condition 11

The s42A officers track changes to conditions identify the need for a design review of the ECDF. Ngāti Raukawa and Kahungunu have provided evidence that their values are not currently fully reflected in the ECDF. To remedy this, condition 11 must require not only a design review of the ECDF but must also include reference to a revised ECDF which incorporates the cultural values identified through the agreement with NZTA to resource further work by Raukawa and Kahungunu. The revised ECDF should also inform all other relevant management plans.

Condition 12

Must include reference to the revised ECDF.

Conditions 13 and 14

May require reference to cultural offset planting and mitigation as yet to be determined through the revised ECDF.

Condition 18

The condition should reference tangata whenua AND the Department of Conservation, not "and/or".

Condition 23

Reference to avoiding and minimising effects on cultural values should also include reference to mitigating or offsetting effects on cultural values.

Condition 23 also needs to allow for the inclusion of information or recommendations from tangata whenua led cultural monitoring in recognition of their status as Treaty Partners and the principles of Te Tiriti (e.g., rangātiratanga). All references to tangata whenua must include all relevant iwi.

Condition 24

All references to tangata whenua must include all relevant iwi. Ngāti Raukawa and Kahungunu have significant concerns with the current accidental discovery protocol, as outlined in the evidence of Ms Kereama and Mr Black. An approval or authority from He Pouhere Taonga-Heritage New Zealand and what it encompasses has yet to be agreed between the Rūnanga and NZTA.

Condition PN2 and PN3

The conditions require reference to any revised ECDF. Ngāti Raukawa have expressed an interest in access to, and through, the Manawatū Gorge as outlined in the evidence of Ms Kereama.

ANNEX 2: RESPONSE TO PANEL QUESTIONS

Q: What in NZTA’s view does “cultural monitoring activities” actually entail? For example, what will actually be monitored, by whom and at what frequency? How will any “cultural monitoring” results be utilised by NZTA?

A: The scope of the cultural monitoring activities will need to be defined through wānanga by Ngāti Raukawa and Kahungunu with the relevant hapū, marae and whanau who whakapapa to the area and are therefore affected by the project. Values within the designation can then be identified and measurements of the state of those values taken on-site within the designation area to determine the potential effects of activities proposed through the resource consent process. Kahungunu are in the process of scoping a cultural monitoring programme for freshwater. An example of the values to be considered within that programme are tuna (eels) and kōura (freshwater crayfish). Justin Tamihana and James Kendrick will discuss on-the-ground cultural monitoring at the hearing.

Information on cultural values is intended to be included in the revised ECDF and will inform the outline plan and proposed resource consent conditions.

Q: Whakapapa - Does this suitably reflect the matters raised by Raukawa in relation to ensuring cultural sensitivity across a range of it and tangata whenua?

A: Ngāti Raukawa have not been included in the ECDF to date as a result of incomplete guidance from Councils to NZTA on which iwi to engage, as discussed in the evidence of Ms Kereama. Future input by Ngāti Raukawa to a revised ECDF, as agreed with NZTA will ensure matters raised by Ngāti Raukawa will be appropriately addressed and included in the ECDF. It is hoped that the wider tangata whenua inclusion will be adequately reflected through the outline plan and proposed resource consent conditions.

Q: The identification of sites of significance to tangata whenua only includes the elements around Ashhurst. Please explain how the more ephemeral aspects raised by the various iwi are addressed through the ECDF other than through consultation and management plans.

A: The ECDF does not currently reflect the cultural values or sites of significance of Ngāti Raukawa or Kahungunu as described in the evidence of Ms Kereama and Mr Black. Agreement between these iwi and NZTA is being sought to ensure there

is adequate time and resource available for the cultural values and sites of all affected iwi to be identified and included in the revised ECDF and reflected through cultural monitoring, the outline plan, subsidiary plans and proposed consent conditions.

Q: Would it be more certain to specify who the relevant tangata whenua are?

A: Yes. Statements including all of the relevant iwi are needed throughout the NoR conditions (including PN1 and PN2) to ensure an appropriate and inclusive process going forward. Ngāti Raukawa and Kahungunu have expressed concerns around the current accidental discovery protocol, as noted in the evidence of Ms Kereama and Mr Black.

Q: Is there a reason why section 1.5 of the ECDF does not mention Raukawa?

A: Yes. Ngāti Raukawa were not identified by Councils as required iwi for engagement by NZTA at the project outset. The lack of inclusion of Ngāti Raukawa is discussed in the evidence of Ms Kereama.

Q: Is it possible for members of the public to be involved within the development of the outline plan process, and if so, how will this occur and is this outcome provided for within conditions?

A: As Treaty Partners, tangata whenua involvement in the outline plan is needed, over and above the contribution of the wider community and in keeping with the agreement with NZTA. The outline plan (and future resource consent conditions) must be consistent with and reflect the future contributions of Ngāti Raukawa and Kahungunu to the ECDF.

Q: Are you satisfied that the NOR conditions offered by NZTA adequately address the concerns of Ngāti Kahungunu within the Tamaki nui-a-Rua rohe?

A: No. The values and concerns of Kahungunu are not adequately captured within the current ECDF and NoR conditions. A full assessment of cultural values and sites of significance to Kahungunu needs to be undertaken and included in the ECDF, resource consent conditions and outline plan, and direction given for the suite of other plans, which will influence how Kahungunu values and their specific attributes are taken into account/addressed. This work is expected to be

undertaken through agreement with NZTA. Changes to the NoR conditions are included below and supported by the evidence of Mr Black.

Q: What do you envisage that “cultural monitoring and assessment” will actually involve in practice? Namely what would be monitored and assessed, when and by whom and how would that monitoring and assessment information be utilised by NZTA?

A: Kahungunu are currently scoping a cultural monitoring programme for freshwater (in collaboration with Ngāti Raukawa) and protocols and actions for seed collection for terrestrial biodiversity by agreement with NZTA. An example of freshwater cultural values monitoring currently being considered is the monitoring of the state of tuna (eels) and kōura (freshwater crayfish and their habitat) within the streams affected by the designation. Monitoring of the state of these mahinga kai resources prior to, during construction and post-construction will be needed to assess the effects on the species and the mahinga kai resource. As the habitat of these mahinga kai species includes areas outside of the NoR (e.g., migratory indigenous fish), the effects of activities within the NoR on those habitats may also need to be included. Consideration is also being given to the potential to provide habitat refuges for these species where they are likely to be affected by construction works. Assessment of the character of the ephemeral streams likely to be affected by the project is also being considered. These streams will likely need to be assessed during dry and wet periods to better understand their cultural values across the spectrum of conditions expected.

The freshwater cultural monitoring will be complementary to and informed by the ongoing ecological monitoring undertaken by NZTA.

On-the-ground cultural monitoring and identification of significant sites to Kahungunu will be covered in the presentation of Mr Kendrick and is included in the evidence of Mr Black.

Q: Shouldn't any off-sets be limited to the impact of the new road on Mauri as opposed to how Mauri might have been historically diminished by “human intervention across the NOR area”?

A: Yes. However, there is no current baseline cultural measurement of mauri (how currently diminished mauri may be). This baseline is needed to determine the degree of effect of the activities within the designation as a result of the project

works, and thus to ensure any offset adequately addresses the effects of the project on mauri.

Q: Can you update us on progress with items 1, 2, 3, 5 and 6?

1. *Work with NZTA to ensure NOR process provides for cultural values*

The pathway and timeline towards achieving this is not yet confirmed. Part of the problem is gaining site access to enable a robust assessment of cultural values along the route – current state, predicted state as a result of activities within the NoR, and appropriate level of remediation/mitigation required. Parts of the terrestrial environment have been traversed but only assessed in terms of matakite/divination of past events and cultural association. A proper assessment of cultural significance, potential effects of the NoR and future land-use across multiple sites and areas, including numerous stream environments has not been done. A preliminary assessment of what has been completed to date, limited by time, access and resources, will be presented at the hearing by Mr Kendrick.

2. *Prepare an amended statement to reflect outcomes achieved in lead-up to public hearing process.*

Refer to the evidence of Mr Black and the presentation of Mr Kendrick.

3. *Undertake a Cultural Impact Assessment once detail on heritage, terrestrial biodiversity, and freshwater is complete.*

Kahungunu indicated a willingness to undertake fieldwork in January 2019, when stream flows were relatively stable compared to the rest of the year and Kahungunu personnel were available. NZTA's preference was for Kahungunu's terrestrial and aquatic fieldwork to be left to a later date and to form part of the resource consenting process following approval of the NoR. This is problematic for two reasons: 1) having to complete cultural fieldwork during (potentially) high-flow events, a time not compatible with our cultural preferences, and 2) NZTA has completed their fieldwork to inform the NoR in the absence of cultural monitoring assessment by Kahungunu.

5. *Work with NZTA and other iwi, as appropriate, to develop an environmental and cultural design framework that represents the cultural values reflected in this report.*

Kahungunu are currently collaborating with Ngāti Raukawa on this aspect. Input to parts of the NoR project have until recently (February 2019) been restricted due to lack of resources and adequate site access.

6. *Undertake baseline freshwater cultural monitoring and assessment, and continue cultural monitoring through the duration of the project.*

Baseline monitoring was to assess current state prior to construction (including preparatory works – access tracks etc) commencing. For several reasons this has not eventuated. I note that widening of tracks within and adjacent to the NoR has already started as permitted activities.

Following baseline cultural monitoring and assessment, Kahungunu envisage further monitoring during construction (perhaps the 3-year stage) and then 18 months following project completion. This has yet to be commissioned or agreed with NZTA.

Q: In relation to the sub-options A-F for the western end of the NOR considered in the DBC, are any of these routes preferential compared to the proposed in terms of cultural effects?

A: Ngāti Raukawa do not have a preferred option as cultural impact assessment and the revised ECDF have not been completed due to time and resource constraints. Ngāti Raukawa (and Kahungunu) are committed to ensuring any cultural values work is done properly and appropriately.

Q: Are you able to tell us what, if any, amendments or additions to the NOR conditions offered by NZTA are sought to address the concerns of Ngāti Raukawa?

A: Comments specific to all conditions are included in this evidence.

Q: The author noted that during the initial field work several sites of cultural significance were identified which the Trust felt required further investigation and consequently the Trust has been working directly with NZTA to have the sites recognised and protected where relevant.

Can the author confirm whether any of these sites are within the designation area, and if so, where are they located along the route?

A: This will be addressed in the presentation of Mr Kendrick to the hearing.

Q: (2) Will the Trust and NZTA be in a position to confirm at the hearing how they intend to recognise and protect any cultural values associated with the sites?

A: Kahungunu envisage the recognition and protection of the cultural sites to be codified in the revised ECDF, following appropriate assessment and baseline monitoring work.

Q: At the time of writing, the author noted that the partnership agreement between the NZTA and the Trust was still in draft form and yet to be agreed. What is the current status of this agreement and how effective has it been to date in addressing matters relevant to both resource management processes and broader cultural issues?

A: The agreement between NZTA and Kahungunu has been signed by both parties, but it has a sunset clause (end of NoR process). This was due to the inability of parties to predict the timeframe associated with the resource consenting process, and potential appeals. Kahungunu are committed to collaborating with Ngāti Raukawa to undertake appropriate assessments and monitoring, however, there are still issues to be resolved to finalise the agreement with NZTA. Scoping work is underway, as discussed above.

Q: To what extent have the Trust's cultural values (as outlined in paras 60-90) been provided for through the NOR process?; and more specifically, has the Trust had the opportunity to work with NZTA and other iwi (as appropriate) to develop an environmental and cultural design framework that represents the cultural values reflected in the Trust's statement of position?

A: Due to time, site access, limitations due to pastoral farming activities and resourcing constraints discussed above the Trust's cultural values are not completely captured in the NoR to date. Kahungunu continues to work with NZTA and Ngāti Raukawa to reach an agreement on the scope of work, the resources required and the revision of the ECDF to inform the outline plan and resource consent conditions.

Q: The author expresses concern that the project may have an impact on waterways, including the Manawatu, Pohangina and Nga Mangaiti within potential designations agreed between NZTA and Ngāti Raukawa, and land reserved to be returned in pending Treaty settlements.

Can the author please clarify whether any land set aside by OTS as potential Treaty redress is located within the area of the designation; and, if so, where along the route is this OTS land located, and what are the implications for the project?

A: Ngāti Raukawa and Kahungunu witnesses can provide this information at the hearing.

Q: At the top of page 10, under the hearing “Implications for NZTA and Raukawa”, the author identifies a range of mechanisms sought by Ngāti Raukawa to address concerns in relation to potential adverse cultural effects arising from the project.

What progress has been made in implementing these mechanisms?

A: Ngāti Raukawa are collaborating with Kahungunu to seek an agreement with NZTA to resource appropriate cultural values and impact assessment and monitoring programmes.

Q: To what extent have Ngāti Raukawa’s cultural values been reflected throughout the NOR process?

A: Due to limited initial engagement, time, access and resourcing constraints discussed above Ngāti Raukawa’s cultural values are not completely captured in the NoR to date. Raukawa continue to work with NZTA and Kahungunu to reach agreement on the scope and resourcing of the required work and the revision of the ECDF to inform the outline plan and resource consent conditions.

Environmental effects

The hearing panel have posed a number of questions regarding effects on ecology, mitigation and offsetting, planting, natural character and historic heritage. Ngāti Raukawa and Kahungunu remain uncertain on the effects of the project on ecology, water values, heritage, archaeology and wāhi tapu. Both iwi have engaged independent and in-house experts to assist in the assessment of effects in these areas.

The scope and scale of effects in these areas is not well-described in the NoR process and thus the Rūnanga cannot be confident that the effects on cultural or environmental values are adequately avoided, remedied or mitigated. An additional concern is that the grading of streams and terrestrial habitats, as to priority or significance, has been done without inclusion or consideration of cultural values. We understand that more detailed assessment of activities and their effects will be part of the resource consent hearings. It is the hope of both iwi that agreement can be reached with NZTA for time and resourcing to adequately understand the effects in these areas (both cultural and environmental) and via the revised ECDF and that on the advice of our experts we can address these effects through the resource consent hearing process.