

**BEFORE A HEARING COMMISSIONER APPOINTED BY THE
WESTLAND DISTRICT COUNCIL**

S42A PLANNING OFFICER REPORT

APPLICATION FOR RESOURCE CONSENT

OKURU ENTERPRISES LIMITED

In The Matter of the
Resource Management Act 1991 ("**the Act**") and

Resource Consent Application:
RC160021

By Okuru Enterprises Limited

Prepared by: Jessica Hollis, Senior Planner
Opus International Consultants Ltd

For: Westland District Council

Date: 22 February 2017

Applicant: Okuru Enterprises Limited

Subject Site: As per the table below:

Location/Description	Legal Description	Ownership & Land Status	Activity
Tuning Fork Creek weir site to Haast-Jackson Bay Road	Part RES 1692 RES 2044	Department of Conservation - Conservation Area -Arawhata Stewardship Land Department of Conservation - Arawhata Stock Reserve -Local Purpose Reserve	Construction of the water intake structure, weir and pipeline (buried) Pipeline (buried)
Haast-Jackson Bay legal road reserve, including Arawhata Bridge	Legal Road Reserve	Administered by Westland District Council	Pipeline (buried and attached to the side of Arawhata River bridge)
Jackson Bay / Neils Beach	Part Rural Section 2118, CFR WS3C/1463 Rural Section 290 and 526, CFR WS3C/814	Private Ownership Private Ownership	Water Storage and Processing Site
Jackson Bay / Neils Beach	Lot 1 Deposited Plan 3786, CFR WS8C/775	Private Ownership	Pipeline (buried)

Zoning: Rural Zone - Westland District Plan

Consents Sought: Land Use Consent to construct, operate and maintain, a bulk water export facility (being an industrial activity) involving physical works at Tuning Fork Creek, within the conservation estate and legal road reserve, and at Jackson Bay / Neils Beach. Activities involved with the project include:

- Indigenous vegetation clearance in excess of permitted levels
- Disturbance of the riparian margins of Tuning Fork Creek
- Installation of pipelines to convey water
- A water storage and processing facility within the Rural Zone

1.0 Foreword

- 1.1 I request the opportunity to provide an addendum or additional evidence if necessary at the time the S42A planning report is presented to the hearing. The addendum will not materially change the report or the position adopted with regard to the analysis of the application in considering the Westland District Plan. It may however provide further information regarding the assessment of the actual and potential effects or address matters raised in the evidence of the applicant or the submitters.

2.0 Introduction

- 2.1 My name is Jessica Hollis and I hold a Bachelor in Resource Studies, majoring in Environmental Management, from Lincoln University, and I am an Associate Member of the New Zealand Planning Institute.
- 2.2 I have been employed in resource management planning roles within local government in Auckland, Nelson and Westport over the past 13 years, and operated as an independent resource management consultant based in Westport from April 2012 until January 2016. I am currently employed as a Senior Planner with Opus International Consultants Limited.
- 2.3 I have read and understood the Code of Conduct for Expert Witnesses detailed in the Environment Court of New Zealand Practice Note 2014. This report is within my area of planning expertise and where I have relied upon, or drawn conclusions based on, the information and opinions of other technical experts, this is stated.

3.0 Background and Application Description

Background

- 3.1 As detailed in the application document, the applicant has previously obtained the necessary resource consents and approvals from the relevant authorities (including Westland District Council (“**WDC**”), West Coast Regional Council (“**WCRC**”), and the Department of Conservation (“**DOC**”)) for this project in the early 1990s, however a number of those consents and approvals have either now lapsed or are close to expiring. Details of the previous approvals are shown on page 12 of the application document.
- 3.2 Specifically, with respect to the Westland District Council, it is noted that Resource Consent RC11/91 was originally granted in May 1992, however following a number of granted extensions to the lapsing period the consent has subsequently lapsed on 31 May 2016. A copy of the decision for RC11/91 was attached to the application document and this current application under consideration is essentially a resubmission of the original proposal subject to some minor amendments.

West Coast Regional Council Consents

- 3.3 With respect to the WCRC consents, the WCRC have processed and granted (on 27 September 2016) a number of new consents for the project. A copy of the

WCRC consent decision is attached to this report as Appendix One with the following summarising the granted WCRC consents:

- (i) RC-2016-0018-01 Water Permit – To take and use surface water from Tuning Fork Creek for water export purposes.
- (ii) RC-2016-0018-02 Water Permit – To dam water at Neils Beach for water export purposes.
- (iii) RC-2016-0018-03 Land Use Consent – To take gravel from the dry bed of the Arawhata River for construction of a water export facility, Neils Beach.
- (iv) RC-2016-0018-04 Land Use Consent – To undertake earthworks and vegetation clearance associated with the construction of a pipeline and water storage facility, Neils Beach.
- (v) RC-2016-0018-05 Discharge Permit – To discharge water and stormwater containing contaminants to the Arawhata River associated with a water export facility.

- 3.4 The WCRC has also advised that a further resource consent application for a Coastal Permit to disturb and occupy the foreshore and seabed associated with a pipeline and monobuoy for the water export facility, has been received on 8 February 2017. At the time of writing this report that application was still being processed by the WCRC. It is my understanding that there was initially some disagreement between the applicant and the WCRC regarding the status of the previously granted Coastal Permit and therefore the applicant had not sought a new Coastal Permit. However, the applicant has accepted the WCRC position that the previously granted Coastal Permit has lapsed and therefore a new consent is required from WCRC.

Application Description

- 3.5 This current application under consideration is for land use consent to construct, operate and maintain, a bulk water export facility (being an industrial activity) involving physical works at Tuning Fork Creek, within the conservation estate and legal road reserve, and at Jackson Bay / Neils Beach. The locations, including legal descriptions and land management details, of the various parcels of land forming a part of this application are detailed on page 2 of this report. The application document also contains 13 cadastral maps which clearly show the land parcels involved.
- 3.6 The application was initially lodged with Council on 29 February 2016, and a revised application (dated June 2016) was submitted to Council on 17 June 2016 following a request by the Council for additional information and a number of discussions with the applicant regarding information requirements. The application was limited notified on 14 October 2016 with submissions closing on 15 November 2016.
- 3.7 Full details of the proposal are contained on pages 19 – 28 of the application document and it is not intended to repeat these here. However, in summary, the proposal involves the following key components on the specific parcels of land:

- (i) Part RES 1692 – Construction of the water intake structure and weir involving earthworks within the riparian margins of Tuning Fork Creek, and earthworks and vegetation clearance associated with the burial of a 410mm diameter pipeline for the conveyance of water. Temporary buildings and structures will be associated with the construction site.
- (ii) RES 2044 – Earthworks associated with the burial of a 410mm diameter pipeline for the conveyance of water.
- (iii) Haast-Jackson Bay Legal Road Reserve (from RES 2044, across the Arawhata River bridge, to Part Rural Section 2118) – Physical works, including earthworks, associated with the burial of a 410mm diameter pipeline, and attachment of the pipeline to the Arawhata Bridge, for the conveyance of water.
- (iv) Part Rural Section 2118, and Rural Section 290 and 526 – Earthworks and vegetation clearance associated with site preparation. Construction, operation and maintenance of a water storage and processing facility involving up to six concrete storage tanks, two storage ponds, a filter and pump station building, an office and control room building, and hardstanding areas for access and car parking. It is noted that the information contained in the original application document regarding the bulk and location of buildings and development on the site, was subsequently superseded by the details contained in the applicant's landscape assessment (prepared by Mr White of Stimulus Design Limited and dated August 2016). A copy of the applicants' site plan for the development on Part Rural Section 2118, and Rural Section 290 and 526, is attached to this report as Appendix Two.
- (v) Haast-Jackson Bay Legal Road Reserve (from Part Rural Section 2118 to Lot 1 Deposited Plan 3786) - Earthworks associated with the burial of an approximately 1000mm diameter pipeline for the conveyance of water.
- (vi) Lot 1 Deposited Plan 3786 - Earthworks associated with the burial of an approximately 1000mm diameter pipeline for the conveyance of water.

3.8 The application document also details the following regarding the activity:

- The construction phases of the project will vary in length from approximately two months for the weir construction, three months for the pipeline laying, and up to 12 months at the water storage and processing site.
- The proposal will provide for employment of multiple contractors during the construction phase and between 7-10 full time equivalent employees on an on-going basis for operational requirements.
- Once the water processing and storage site becomes operational the normal 'office' hours will be Monday to Friday, 8am – 5pm and regular light vehicle movements will be 2-4 per day. It is acknowledged that there will be some vehicle movements outside of these days and hours when ships are loading, however this would not involve regular traffic movements to or from the site.
- The 'water export' facility will be available to incoming vessels 24 hours a day, 365 days a year, however once a week vessel frequency is the

maximum anticipated. The plant will operate on an 'as required' basis, estimated at its maximum to be a pattern of 35 hours every 4 days.

- 3.9 Prior to the notification decision being made under Section 95 of the Act, the applicant provided written approval in support of the proposal from K & F Eggeling (the owners of Part Rural Section 2118, and Rural Section 290 and 526).

4.0 Application Sites and Existing Environment

Application Sites

- 4.1 To assist in understanding the potential effects of this proposal, I have reviewed a range of aerial imagery for the various sites, viewed numerous maps and photographs, and I have visited the water storage and processing site and immediate surrounds on 13 January 2017. At the time of my site inspection I also viewed the Tuning Fork Creek area from a distance (on the Arawhata River bridge), went onto RES 2044 (DOC land), drove the proposed pipeline route along the Haast-Jackson Bay Road, and went onto Lot 1 DP3786 (where the proposed pipeline will extend out towards the coastal marine area).
- 4.2 The application document contains details of the application sites on pages 9-11 and 14-18 and I generally concur with these description details. Additional information on the flora and fauna, and visual and landscape setting is provided in the applicant's technical reports prepared by Mr Hammond and Mr White. Of particular assistance with respect to the Jackson Bay / Neils Beach water processing and storage site is the "*Jackson Bay Area Review*" and "*The Export Facility Site Review*" detailed on pages 7-9 of Mr White's landscape assessment, and I therefore adopt those sections for the purposes of this report.
- 4.3 Part RES 1692 and RES 2044 are administered by DOC as Stewardship Land and Local Purpose Stock Reserve respectively. Due to the height and density of the vegetation adjacent to the Haast-Jackson Bay Road, there are limited viewing opportunities from the road towards the proposed weir site and pipeline route. There is a viewing corridor from the Arawhata River bridge towards the weir site (looking up the Arawhata River valley), however the creek itself is not visible due to the vegetation canopy which provides screening of the area.
- 4.4 The Haast-Jackson Bay Road is a sealed road with an open road 100km/hour speed limit. The section of road from the Arawhata River bridge to the water storage and processing site varies slightly in width depending on the topography and orientation of the road, however the road has an average sealed carriageway width of 6.5m with a 1.0m shoulder on each side.
- 4.5 Lot 1 DP3786 currently contains no built development and is covered in vegetation as described in the report of Mr Hammond. Of particular note is the erosion that has occurred along the coastal frontage of the site and this is clearly evident when viewing the site and comparing to earlier aerial imagery.

Existing Environmental Context

- 4.6 The application sites and immediately surrounding areas are predominately located within the Rural Zone, with the exception of the land immediately to the west of Lot 1 DP3786 which is located within the Coastal Settlement Zone.
- 4.7 The proposed weir site and pipeline within the DOC estate is surrounded by conservation land and therefore whilst it is zoned as Rural it is primarily undeveloped and managed for conservation purposes. There are a small number of established residential activities located to the east of the proposed water storage and processing site, the closest of which is owned by JB & M Hughes who have submitted on this application. There is a concentration of residential activities located within the Coastal Settlement Zone to the west of the proposed pipeline location through Lot 1 DP3786, and some built development also to the east.
- 4.8 A number of maps and images of the area are included in Appendix Three to this report.

5.0 Westland District Plan

- 5.1 The rules of the Westland District Plan ("**the Plan**") (operative June 2002) that are relevant to this application are as follows:
- Rule 5.6.2.1 – Any activity which does not fall within the permitted, controlled or discretionary categories is deemed to be a non-complying activity. The proposal to construct, operate and maintain a bulk water export facility (being an industrial activity) within the Rural Zone, does not meet the discretionary activity standards relating to riparian setbacks and gross ground floor area (as detailed in Table 5.7 of the Plan), and therefore the proposal falls to be a non-complying activity.
 - Rule 5.6.2.2.C - The clearance of more than 2000m² of indigenous vegetation per 5 years per site, where the land is managed for conservation purposes or is from an area of indigenous vegetation in excess of 5ha, is a discretionary activity. The indigenous vegetation clearance within Part RES 1692, Part Rural Section 2118, and Rural Section 290 and 526 is a discretionary activity.
 - Rule 6.2(a) provides for "Temporary Activities" as permitted and this includes any land use and structures associated with a construction project for up to a period of 12 months. It is considered that the temporary structures required at the Tuning Creek Fork site in association with the construction of the water intake and weir fit within this category and are therefore permitted.
 - Rule 6.2(g) provides for "Installation and maintenance of pipes for the conveyance of water or sewage and necessary incidental equipment..." as permitted. This rule does not state that it is restricted to the conveyance of water for public purposes, or only for the Council reticulated system, and therefore the installation and maintenance of the various sections of underground pipe is considered to fall within the scope of Rule 6.2(g) as a permitted activity.

- 5.2 The overall status of the application is a Non-Complying Activity, this being the most stringent classification under the relevant planning rules.

6.0 Notification and Submissions

- 6.1 Notice of this application was served on potentially affected persons in accordance with Section 95B of the Act on 14 October 2016 with submissions closing on 15 November 2016. A list of those persons who were served with notice of the application is attached as Appendix Four to this report.
- 6.2 Three submissions were received on this application, all of which were in opposition. Where relevant, the location of the submitter's properties in relation to the application sites are shown on the aerial map included in Appendix Five to this report. The following are the names, property interests, and issues/concerns raised by the submitters:
- (i) JH, LC, ES & HL Davies – owners of Lot 1 Deposited Plan 416778 (immediately opposite the water storage and processing site). Concerns relate to the effects of vegetation clearance on flora and fauna, effects of water discharge to the Arawhata River, effects of discharging ballast waste in the coastal marine area, visual and noise effects from storage and processing site, effects of a docking facility in Jackson Bay, and objection to bulk water export from New Zealand.
 - (ii) JB & M Hughes – owners of Section 1 SO Plan 11781 (immediately adjoining the water storage and processing site). Concerns relate to the effects of vegetation clearance and earthworks on flora and fauna, effects of water discharge to the Arawhata River, effects of discharging ballast waste in the coastal marine area, traffic, visual and noise effects from storage and processing site, risk of tank or ponds rupturing, loss of property value, effects of a docking facility in Jackson Bay, and objection to bulk water export from New Zealand.
 - (iii) Heritage New Zealand. Concerns relate to the potential effects on historic heritage, specifically archaeology, and the reliance on an accidental discovery protocol to manage archaeological sites.
- 6.3 The submission from Heritage New Zealand was received three days late, however the Hearing Commissioner has determined (via a minute/direction #1, dated 21 December 2016), that the submission is accepted as a late submission. No objection to this was raised by the applicant.
- 6.4 Further discussion with respect to the matters raised in the submissions is contained in Section 7.0 of this report. All of the submitters have indicated that they wish to appear at the hearing in support of their submissions.

Section 100 of the Act

- 6.5 Due to the nature of the proposal, its status within the Plan and that all of the submitters wish to be heard, a hearing is necessary pursuant to Section 100 of the Act.

7.0 Section 104 of the Act - Assessment of Application

7.1 Under Section 104 of the Act:

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) any actual and potential effects on the environment of allowing the activity; and*
 - (b) any relevant provisions of—*
 - (i) a national environmental standard:*
 - (ii) other regulations:*
 - (iii) a national policy statement:*
 - (iv) a New Zealand coastal policy statement:*
 - (v) a regional policy statement or proposed regional policy statement:*
 - (vi) a plan or proposed plan; and*
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

7.2 As the application is for a Non-Complying activity, Sections 104B and 104D of the Act are relevant:

104B. Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108.*

104D. Particular restrictions for non-complying activities

- (1) Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (b) the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

Permitted Baseline

- 7.3 Under Section 104(2) of the Act, when forming an opinion for the purposes of considering any actual and potential effects on the environment of allowing an activity, a consent authority *may* disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This statutory baseline is known as the permitted baseline and it is a discretionary consideration rather than a mandatory one. The baseline has been defined by case law as comprising the 'existing environment' and non-fanciful (realistic) activities that would be permitted as of right by the plan.
- 7.4 It is generally accepted in the planning discipline that any activity that is permitted by the Plan, but is considered fanciful, does not provide a realistic indication of what is permitted and a proper point of comparison. The term fanciful refers to the imaginary or an imagined concept, being something that is unrealistic, and therefore determining what a non-fanciful activity is, must be a practical fact specific assessment.
- 7.5 The Plan allows for a number of permitted activities within the Rural Zone, namely agricultural, existing residential, forestry below an altitude of 1000m, prospecting and recreational activities, which comply with the standards for permitted activities in Table 5.7, the general rules in Part 8, and do not modify or effect any outstanding natural features or landscapes or areas of significant indigenous vegetation or habitat. Given the size of the land holdings at the water storage and processing site, I consider that agricultural use of the land is a realistic use and such an activity may involve the construction of farm buildings and structures. However, given the scale of the built development proposed on the site, I do not consider that the visual and landscape effects of the proposal fall within the permitted activity baseline.
- 7.6 I do acknowledge that agricultural use of the water storage and processing site would give rise to a range of adverse effects on the environment (such as noise, dust and traffic generation). Such effects are considered to contribute to the character and amenity of the rural environment, and this is reflective of the Rural Zone typically being accepted as a working environment. However, with respect to this application I find limited value in discussing these aspects further with respect to the permitted baseline.
- 7.7 I have previously noted that Rule 6.2(g) of the Plan provides for “*Installation and maintenance of pipes for the conveyance of water or sewage and necessary incidental equipment...*” as a permitted activity. Therefore the installation and maintenance of the various sections of underground pipe, and any associated effects such as temporary noise, vibration, dust, visual and traffic related effects, fall within the permitted activity baseline and can be disregarded.

Section 104(1)(a) - Actual and Potential Effects on the Environment

- 7.8 Following a site visit to the Jackson Bay and Neils Beach area, and consideration of matters addressed in the application and raised by submitters, I consider that a useful approach to an assessment of allowing the proposal is to consider each of the distinctive 'parts' of the proposal and the associated effects. This assessment is therefore categorised under the following:
- Tuning Fork Creek weir site to Haast-Jackson Bay Road
 - Haast-Jackson Bay legal road reserve, including the Arawhata River bridge
 - Jackson Bay / Neils Beach – Water Storage and Processing Site
 - Jackson Bay / Neils Beach – Pipeline buried through Lot 1 DP 3786
- 7.9 In accordance with s104(3)(a)(ii) of the Act, when considering an application a consent authority must not have regard to any effect on a person who has given written approval to the application. For this application any effects from the proposal on Part Rural Section 2118, and Rural Section 290 and 526 (being the sites where the water storage and processing facility are proposed to be located), must therefore be disregarded.
- 7.10 It should be noted that a number of matters raised in the submissions of JH, LC, ES & HL Davies, and JB & M Hughes, are not within the jurisdiction of the Westland District Council and / or fall outside the scope of what can be considered by the Hearing Commissioner when determining this current application. I have provided details of all relevant consents granted, or applied for, from the WCRC, and the following concerns as raised by the submitters are not discussed further in this report:
- Effects of water discharge to the Arawhata River
 - Effects of discharging ballast waste into the coastal marine area
 - Effects of the docking facility in Jackson Bay
 - Philosophical objection to bulk water export from New Zealand.

Tuning Fork Creek weir site to Haast-Jackson Bay Road

7.11 Works within riparian margins:

The applicant is not proposing to remove any indigenous vegetation from within the riparian margins of Tuning Fork Creek, however it is likely that minor land disturbance will occur during the construction of footings for the water intake structure and the weir. The incidental land disturbance within the riparian margins of Tuning Fork Creek is considered to have no more than minor effects on the waterway, particularly in comparison to the effects of works within the bed of the waterway itself (which have already been consented to by the WCRC). In my opinion, subject to the recommended consent condition requiring a construction and earthworks management plan which will address, among other matters, the procedures to be undertaken to avoid erosion and minimise sediment generation and runoff, there will be no more than minor adverse effects on the aquatic values of the creek.

7.12 Visual and landscape effects:

The weir site is located within the lower reaches of Tuning Fork Creek and due to the existing vegetation cover it will not be readily visible from public roads or vantage points. Vegetation clearance and earthworks for the pipeline (which itself will be buried for the majority of the way) will be limited to a narrow corridor which is not on significantly elevated hillsides and any visual effects will be temporary in nature during the construction period. Subject to recommended consent conditions requiring the appropriate rehabilitation of the disturbed areas of land, I consider that any adverse visual and landscape effects will be minor.

7.13 The storage and use of hazardous substances:

The applicant is proposing to utilise several small sheds at the weir construction site for the purposes of storing equipment and providing a sheltered break room for workers. All fuel and other hazardous substances will be stored within the sheds and a consent condition is recommended requiring the preparation of, and adherence to, a hazardous substances management plan. Taking this into account, I am satisfied that any potential adverse effects from the storage and use of hazardous substances will be appropriately avoided.

7.14 Effects on flora and fauna:

The application document details that vegetation clearance within Part RES 1692 and RES 2044 will be a total area of approximately 1.6ha. It is noted that this clearance will extend along a linear corridor of the proposed pipeline route rather than being concentrated within one large area. The corridor will generally have a maximum width of 2.5m, however in some areas up to 8.0m width will be required for a turning area/s, and will be approximately 2.7km in length.

The application includes a copy of a previous report prepared by Mr Hammond (a resource management and forestry consultant) which details the vegetation associations and wildlife present at the various locations affected by the proposal. It is not intended to repeat this information here, however the report concludes that the effects of vegetation clearance at the water intake/weir site and pipeline within the DOC estate will be short term and minor. Mr Hammond has provided a further letter for this current application advising that there have been no significant changes to the sites since his previous report and that the findings still stand.

Of specific concern with the previous 1991/92 application was the potential effects from vegetation clearance and construction activities on the Haast Tokoeka (Brown Kiwi) within the Tuning Fork Creek area, and this was previously addressed via a number of consent conditions imposed on RC11/91. A copy of a previous report prepared by Dr McLennan was included in the application document, and following a further information request for this current consent application the applicant has subsequently provided an updated assessment from Dr McLennan. The updated assessment concludes that *“adult and juvenile Haast tokoeka will not be harmed or disturbed unduly by the installation of the proposed pipeline in the lower part of the catchment of Tuning Fork Creek, provided appropriate measures are undertaken to protect them”*. Should consent be granted by the Commissioner, a number of consent conditions are recommended to ensure that any adverse effects on Haast Tokoeka are avoided, remedied or mitigated. The recommended consent

conditions are in accordance with the recommendations of Dr McLennan as detailed in his updated report.

It is noted that the proposed works are located within the Haast Tokoeka Sanctuary, which is an 11,400ha area established by DOC to protect the Haast Tokoeka (which has a threat ranking of 'Nationally Critical' under the New Zealand Threat Classification System), and attempt to enhance the population. No submission has been received from DOC and the only evidence on the potential effects of the proposal on Haast Tokoeka is that of Dr McLennan. With the agreement of the applicant I have consulted with the Department of Conservation, via email and phone, with Joy Comrie, the statutory manager for the region. Ms Comrie has reviewed the recommended consent conditions and has provided some minor feedback which has been incorporated into the condition wording. However, in general Ms Comrie has advised that DOC do not wish to provide detailed comments on conditions or advice which may later be contrary to their own concession or wildlife authority requirements. Taking this into account I am relying on the findings and recommendations of Dr McLennan in relation to the Haast Tokoeka, and in particular I accept his conclusion that *"adult and juvenile Haast tokoeka will not be harmed or disturbed unduly by the installation of the proposed pipeline in the lower part of the catchment of Tuning Fork Creek, provided appropriate measures are undertaken to protect them"*.

With the exception of the known presence of Haast Tokoeka, Mr Hammond has not identified any additional endangered species which are known to inhabit the specific area of conservation land proposed to be utilised. It is also noted that the land is classified as either Stewardship Land or Local Purpose Stock Reserve by DOC.

7.15 Permitted activity – installation of pipeline:

It is noted that the installation and maintenance of the pipeline for the conveyance of water is a permitted activity, and therefore the effects of the construction works, including any temporary noise, vibration, dust and traffic related effects, all fall within the permitted activity baseline and should be disregarded. However, I have recommended a number of consent conditions, should consent be granted by the Commissioner, to ensure that the design of such works is appropriate and that any effects on the wider public are minimised.

7.16 Hazard risk avoidance:

The pipeline will cross the Alpine Fault line when travelling through DOC land and this infrastructure is therefore potentially at risk from a seismic event. However as the pipeline will only convey water, and will be buried underground, I consider that it represents only a low level of risk to the environment in the immediate vicinity of the fault line. Further away from the actual location of the fault line I consider that the risk to the environment and the community from pipeline failure due to a seismic event is no greater than other underground services. A number of conditions are recommended to be placed on the consent to address the potential for damage from a seismic event and the consequences of failure. Subject to appropriate engineering design being employed to mitigate the risks presented by natural hazards, the proposal is considered acceptable with respect to hazards.

Haast-Jackson Bay legal road reserve, including the Arawhata River bridge

7.17 Permitted activity – installation of pipeline:

As detailed previously, the installation and maintenance of the pipeline for the conveyance of water is a permitted activity, and therefore the effects of the construction works, including any temporary noise, vibration, dust and traffic related effects, all fall within the permitted activity baseline and should be disregarded. However, the recommended consent conditions will ensure that the design is appropriate and that any effects on the wider public are minimised. Conditions include the avoidance of full road closures, repair and reinstatement of the road reserve, and a maintenance performance bond for two years following the completion of the works.

Council's Group Manager: District Assets, Mr Goel, has reviewed the application and has not raised any concerns subject to the imposition of the recommended consent conditions. Mr Goel has also advised that a License to Occupy will likely be required for any structures proposed to be located within the legal road reserve (of which a license fee may be payable to Westland District Property Limited), and that a separate approval to undertake works within the legal road reserve will be required under the Local Government Act.

Jackson Bay / Neils Beach – Water Storage and Processing Site

7.18 Visual and landscape effects:

As detailed in Section 3.0 of this report, the physical structures proposed at the water storage and processing facility at Jackson Bay / Neils Beach are up to six concrete storage tanks, two storage ponds, a filter and pump station building, an office and control room building, and hard standing areas for access and car parking. I have also noted that the information contained in the original application document regarding the bulk and location of buildings and development on the site, was subsequently superseded by the details contained in the applicant's landscape assessment (prepared by Mr White of Stimulus Design Limited).

In his landscape assessment, Mr White concludes that the site proposed to be developed does not constitute an outstanding natural feature or sit within an outstanding natural landscape, however he acknowledges other past landscape work which has found the areas in the wider vicinity at Jackson Head and the northern Jackson Bay area to be an outstanding natural feature or landscape.

Subject to proposed mitigation measures, including the retention of all existing vegetation around the site perimeter and the establishment of earth bunds, Mr White concludes that *"the large sized tanks and ponds associated with the water storage facility will not be able to be seen from the Haast-Jackson Bay Road or Neil's Beach area. As the site is not signposted, it will be difficult to tell if there is any activity on the site at all"*.

The submissions from JH, LC, ES & HL Davies, and JB & M Hughes, both highlight concerns regarding the visual effects of the proposed development on the site. I note that Mr White has not provided specific comment on the views into the site from the existing dwelling of JB & M Hughes in particular, however he does comment that *"all views from the road are limited to the first 20-30 metres depth of*

vegetation along the road boundary as the average canopy height blocks any deeper views into the site". Taking into account the existing vegetative buffer, of a minimum of approximately 60m in width, between the nearest proposed structure and the dwelling of JB & M Hughes, I consider that it is highly unlikely that the proposed structures will be clearly seen from the dwelling of JB & M Hughes. I have discussed this matter with Mr White and I understand that he intends to provide further cross-sections (in evidence to the hearing) to demonstrate any potential views into the proposed facility from the dwelling of JB & M Hughes and the legal road.

I have reviewed the proposed mitigation measures detailed in Sections 84-89 of Mr White's landscape assessment, and I generally agree that they are appropriate. However, I have specifically discussed the recommended colour ranges with Mr White and he has agreed that there has been some errors in this regard (which has resulted in inappropriate colours being included in the list). I expect that Mr White will correct these in his evidence to the hearing. I also note that the applicant has not specified maximum building heights for the filter and pump station building, and office and control room building and this is considered necessary to provide assurance of the outcome relating to visual and landscape effects.

Subject to the outstanding points above being satisfactorily addressed, I accept the findings of the landscape assessment and therefore consider that the potential adverse visual and landscape effects from development of the Jackson Bay / Neils Beach site will be no more than minor.

7.19 Noise effects:

The construction works at the water storage and processing site are estimated by the applicants to last up to 12 months and during that time the applicant has advised that all construction noise will meet the appropriate New Zealand Standard. It is acknowledged that construction noise is of a temporary and intermittent nature, however given the location of the dwelling of JB & M Hughes in particular, it is considered appropriate to restrict the hours of operation for construction activities on the site to 7.30am – 6.00pm, Monday to Saturday, providing that no works shall take place on statutory holidays unless they are necessary to maintain the safety and integrity of structures on the site. This restriction, as well as a requirement to comply with the New Zealand Standard for construction noise (NZS 6803:1999), are included in the recommended conditions of consent and the applicant has not raised any concerns with this restriction.

With respect to the ongoing operation of the water storage and processing facility, the applicant has advised that the only noise source of significance will be the pump station building containing five diesel powered pumps. The applicant is proposing to engage an acoustic engineer to ensure that the pump station design is sufficient to ensure that the noise limits of the Plan can be met. I have recommended a number of consent conditions relating to noise generation from the facility, including requiring certification from a suitably qualified and experienced engineer that operation of the site will be undertaken in a manner which complies with the Plan, and requiring noise monitoring and reporting to ensure compliance is achieved once the facility is operational. Taking into account the limited number of potential noise sources on the site, the location of the pump station building in excess of 200m from the nearest residential dwelling, and subject to the imposition of recommended

conditions, in my opinion the ongoing operation of the water storage and processing facility will have no more than minor noise effects on the environment and residential activities in the immediate vicinity of the site.

7.20 Lighting effects:

No specific design details involving external lighting have been provided by the applicant with the exception of a statement that any security/night lighting will be positioned and shielded to ensure that there is no glare or light spill beyond the boundaries of the site. A condition is recommended to be placed on the consent, should it be granted, requiring that any security lighting or night lighting shall be positioned and appropriately shielded to ensure that it is not clearly visible from the Haast-Jackson Bay Road or any property used for a residential activity. Subject to compliance with the recommended condition, I am satisfied that there will be no adverse effects relating to lighting on the surrounding properties or the wider Jackson Bay / Neils beach area.

7.21 Hours of operation:

Setting aside construction hours as detailed above in Section 7.19 of this report, once the water processing and storage site becomes operational the normal 'office' hours are proposed to be Monday to Friday, 8am – 5pm. The application document details that maintenance times will be scheduled within these hours also.

The 'water export' facility will be available to incoming vessels 24 hours a day, 365 days a year, however once a week vessel frequency is the maximum anticipated. The applicant has estimated that an entire vessel loading will be achieved in less than 48 hours and staff will be at the facility throughout the duration of the loading. Whilst activity on the site will be occurring during night time hours it is acknowledged that this will be restricted to operation of the pump station and staff monitoring. The pump station will therefore be required to comply with the night time noise limits contained in the Plan and subject to this being achieved I am satisfied that the hours of operation will be acceptable.

7.22 Access, traffic generation and parking:

Access to the water storage and processing site will be from the Haast-Jackson Bay Road which is a local road administered by the Council and the applicant will be required to apply to Council to install a new vehicle crossing.

The construction phase of the project will involve significant earthworks and construction activity at the water storage and processing site. The construction phase is anticipated to take up to 12 months and will involve the use of heavy vehicles transporting material to and from the site, including road tankers for the high volume of concrete required. However, once the site becomes operational the regular light vehicle movements will be limited to two to four per day. It is acknowledged that there will be some vehicle movements outside of these days and hours when ships are loading, however this would not involve regular traffic movements to or from the site.

Council's Group Manager: District Assets has reviewed the application and has not raised any concerns regarding the proposed access location or the anticipated traffic generation from the proposal. Based on this feedback it is considered that the existing traffic network will be capable of accommodating the traffic generated

by the proposal with no more than minor effects on the safe and efficient operation of the road network. Further consideration is likely to be undertaken by the Council with regards to the specific access/vehicle crossing design, however in my opinion given that the road is relatively straight in the vicinity of the access and therefore provides good visibility and sightlines, it is considered highly likely that a suitable design can be achieved which will provide for safe entry and exit for the site.

In my view, taking into account the separation distance between the vehicle access point of JB & M Hughes and the proposed facility, and the roadside vegetation which separates the two access points (and also screens the bulk of the property owned by JH, LC, ES & HL Davies), any traffic related effects on these properties during the construction period will be short term and minor, and during the operational phase of the project will be less than minor.

Given the large land area available it is considered that the establishment of on-site car parking in accordance with Part 8.10 of the Plan will be easily achieved. Taking this into account it is acknowledged that there will be no need for overflow parking from the site.

7.23 The storage and use of hazardous substances:

The applicant is proposing to store diesel on the site in a 10,000 litre double-bunded compliant storage tank. The application document also details that small amounts of oils and hydraulic fluids may be stored on the site for maintenance purposes and that these will be stored in an appropriate manner. A consent condition is recommended requiring the preparation of, and adherence to, a hazardous substances management plan to ensure that any potential adverse effects from the storage and use of hazardous substances will be avoided.

7.24 Effects on flora and fauna:

The application document details that vegetation clearance within Part Rural Section 2118, and Rural Section 290 and 526, will be a total area of approximately 14ha.

The previous report prepared by Mr Hammond details that the vegetation at the Jackson Bay / Neils beach site consists predominately of regenerating vegetation dominated by kamahi and the occasional emergent podocarps. Mr Hammond details that the site appears to have been cleared by early settlers for agricultural purposes and then subsequently abandoned and left to regenerate to the current vegetative cover, with both exotic and indigenous vegetation present.

Given that the site has been previously cleared and now consists of regenerating indigenous and exotic species, I am satisfied that the vegetation proposed to be cleared is unlikely to be considered significant. I also note that the site is located within the Rural Zone and is held in private ownership, is not managed for conservation purposes, and is within reasonable proximity to a number of developed rural-residential land holdings. Taking all of the above into account, whilst the clearance of approximately 14ha of vegetation from the site will be permanent, in my opinion it is acceptable.

The submission from JH, LC, ES & HL Davies notes that the proposal will potentially result in the destruction of an important area of wetland adjacent to the holding tanks. I am unsure exactly what the submitters are referring to in this

regard and they may wish to expand on this point for the benefit of the Commissioner, although I do note that the WCRC does not identify any scheduled wetlands on the site (in the Regional Land and Water Plan).

It is noted that the New Zealand Topographic map, attached in Appendix Three to this report, shows 'Neils Creek' extending through the site, however any traces of a waterway on the site are difficult to distinguish from the aerial imagery. The applicant will therefore need to clarify the presence of any waterways on the site at the hearing. I also note that the recent resource consent decisions from the WCRC do not appear to address any diversion or disturbance of waterways at the water storage and processing site.

7.25 Character and amenity values

To a large degree the character of the application sites and surrounds has already been discussed in this report, in that it is derived from the landscape and visual elements of the sites in addition to the current activities established in the immediately surrounding area.

The amenity of the area is somewhat debatable as precisely what amenity is, and how a proposal will affect an environment's existing amenity, is a subjective matter which can only be determined after consideration of many values. The term 'amenity values' arises in Part 2 of the Act, being a matter that particular regard must be had to in the determination of a resource consent application. The definition in the Act refers to "those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes". Therefore an assessment of the effects of the proposal on character and amenity values relies on a number of variables.

In my opinion the character and amenity of the area surrounding the water storage and processing site is largely influenced by the abundance of existing dense vegetation and the relatively close proximity to the coastal environment (although this is not readily apparent from the water storage and processing site itself). With the exception of the built development at Neils Beach and scattered along the Haast-Jackson Bay Road, the area generally has a 'feel' of wilderness and naturalness, however it is noted that a small number of properties along the Haast-Jackson Bay Road have developed their sites as pastoral farmland and this is an obvious indicator, along with the built development, that human modification has, and continues to, occur in the area.

The water storage and processing site is located within the Rural Zone and the land is of a reasonable size and is held in private ownership. Therefore, in my opinion, it is necessary to identify what can and should be expected to be undertaken on the site, and also the legitimate expectations of amenity of the surrounding neighbours. With respect to potential agricultural uses of the site, it should be acknowledged that rural environments are not traditionally quiet and tranquil and the landscapes can be heavily modified. The submissions from JH, LC, ES & HL Davies and JB & M Hughes, raise concerns regarding the potential noise effects with JB & M Hughes citing a "*detrimental effect on the peace and tranquillity*" that they currently enjoy.

I accept that JB & M Hughes likely enjoy times on their properties where there is minimal noise to be heard and that this would contribute to their appreciation of the

location and the pleasantness of their experience. However considering the varied nature of the surrounding environment and the rural zoning of the area, I do not agree that it is a reasonable expectation of residents to be guaranteed a peaceful and tranquil setting on a routine basis. I also acknowledge, however, that the submitters may not have foreseen an industrial activity of the scale proposed being established within 100m of their property boundary, and therefore it is necessary to ensure that the environmental effects arising from such an activity are avoided, remedied or mitigated to a level which is appropriate for the receiving environment.

In terms of the character of activities expected in the area, I have reviewed the relevant parts of the Plan to assist with understanding the appropriate amenity which is anticipated in the Rural Zone. It is clear that the Plan takes a permissive approach to the Rural Zone, as it does with most zones, however there is an underlying focus on soil quality and the importance of productive land. The Plan recognises that alternative uses of the rural land resource are generally considered appropriate given the *“importance of economic diversification to maintaining small, vulnerable rural communities”*. Policy 4.7.A. recognises, however, that *“landuse activities in the rural area should avoid, mitigate and remedy their adverse effects on adjoining landuses, the community and ecosystems”*, therefore the proviso to this permissive approach is that activities which are not traditionally rural should be treated with extra caution so as to ensure that the amenities of neighbours are not disrupted.

With respect to the degree of compliance with relevant environmental standards, the key concerns raised by JH, LC, ES & HL Davies and JB & M Hughes are related to visual effects, noise effects and traffic related effects. As discussed previously in this report, subject to some outstanding minor points being satisfactorily addressed by Mr White, I accept the findings of the landscape assessment and therefore consider that the potential adverse visual and landscape effects from development of the Jackson Bay / Neils Beach site will be no more than minor. With respect to noise effects, when taking into account the limited number of potential noise sources on the site, the location of the pump station building in excess of 200m from the nearest residential dwelling, and subject to the imposition of recommended conditions, in my opinion the ongoing operation of the water storage and processing facility will have no more than minor effects on the residential activities in the immediate vicinity of the site. Lastly, I have previously concluded that any traffic related effects on the properties of JH, LC, ES & HL Davies and JB & M Hughes during the construction period will be short term and minor, and during the operational phase of the project will be less than minor.

In concluding on this matter, an overall judgement is required on the effects of the proposal on the amenity values of the area in the context of the above discussion. In my view, the effects of the proposal can be avoided, remedied or mitigated to levels which are compatible with the existing character and amenity of the area. On balance, whilst the proposed activity will be a ‘change’ to the existing environment, the most noticeable effects are likely to occur during the construction phase which will be of a limited duration and restricted as to days and hours of activity. I consider that subject to appropriate consent conditions, the proposed activity and the existing residential activity of JB & M Hughes can co-exist.

7.26 Hazard risk avoidance

The submission from JB & M Hughes highlights concerns regarding the potential risks from the rupture of the tanks or the ponds in the event of an earthquake. It is accepted that the site is located approximately 7km to the west of the Alpine Fault and therefore consideration should be given to minimising the risks to the environment and communities from a seismic event. A number of conditions are therefore recommended to be placed on the consent to address the potential for damage from a seismic event and the consequences of failure. Subject to best practice engineering design being employed to mitigate the risks presented by an Alpine Fault rupture, the proposal is considered acceptable with respect to hazards.

An additional 'check' is also recommended to be included in the consent conditions, should consent be granted, requiring an independent Chartered Professional Engineer to be engaged to undertake a full audit of all designs and specifications and to provide certification to the Council that appropriate standards have been met and that accepted design principles have been followed, in respect of seismic resistance and the reasonable avoidance of risk.

Jackson Bay / Neils Beach – Pipeline buried through Lot 1 DP 3786

7.27 Permitted activity – installation of pipeline

As previously noted the installation and maintenance of the pipeline for the conveyance of water within Lot 1 DP 3786 is a permitted activity, and therefore the effects of the construction works, including any temporary noise, visual, vibration, and dust effects, all fall within the permitted activity baseline and should be disregarded. However, I have recommended a number of consent conditions, should consent be granted by the Commissioner, to ensure that the design of such works is appropriate and that any effects on the wider public are minimised.

7.28 Effects on Fiordland Crested Penguins

Although not referred to in the application document, Ms Comrie from DOC has advised that Fiordland Crested Penguins nest at Jackson Head and come ashore to moult at random sites between Jackson Bay and Hannah's Clearing from mid-January to early March. Ms Comrie has commented that the penguin are very vulnerable during the months they are ashore to moult and given their classification of 'Nationally Endangered' (under the New Zealand Threat Classification System), it is considered appropriate to include conditions of consent, should consent be granted, to avoid any adverse effects on the penguins.

A condition is therefore recommended requiring a survey for moulting penguins to be undertaken of the site, by a suitably qualified expert, prior to construction of the pipeline within the coastal margin. If any penguins are observed arrangements should be made in consultation with DOC to relocate these from the construction zone.

7.29 Archaeological, historical and cultural sites

The coastal area of Jackson Bay, where the pipeline will extend underground from the storage and processing facility out towards the foreshore, contains identified archaeological / heritage sites and is known as an area of significance to Maori.

The applicant has provided a copy of two previous archaeological reports (prepared by M Trotter, 1976, and B Allingham, 2003) which assessed the land immediately to either side of the proposed pipeline route. The report of B Allingham states that there is “*evidence of a settlement that appears to date from around the 14th Century A.D. judging by the style of some of the taonga recovered*”. The findings of these reports indicate that there is the potential for archaeological remains to be encountered during physical works for this proposal.

There are several known archaeological sites in close proximity to the proposed pipeline route and these are recorded as E37/1, E37/3 and E37/12 under the New Zealand Archaeological Association recording scheme. The submission received from Heritage New Zealand opposes the application in its current format and highlights that it is inappropriate to rely on an accidental discovery protocol to manage the potential disturbance of undiscovered sites. Heritage New Zealand recommend that prior to any disturbance to the surface of the soil in the application area, a detailed archaeological assessment should be completed and the appropriate requirements of the Heritage New Zealand Pouhere Taonga Act 2014 be met. I have discussed this with the applicant and they agree that it is appropriate, therefore a condition to this effect is recommended to be placed on the consent should it be granted.

With respect to the potential effects on cultural values, the application document details that consultation has been undertaken with Te Runanga o Makaawhio (being the local hapu) and notice of the application was served on both Te Runanga o Ngai Tahu and Te Runanga o Makaawhio. It is noted that no submission was received from either party. Should consent be granted, the applicant has volunteered a condition requiring a ‘cultural monitor’ to be on site at all times during earthworks and the appointment of such a person will be undertaken in consultation with Te Runanga o Makaawhio. Given the known archaeological sites in the vicinity of the pipeline, and the association and value of the area to Te Runanga o Makaawhio, I consider that this is appropriate.

Subject to the recommended conditions of consent I am satisfied that any adverse effects on historic and cultural values will be avoided, remedied or mitigated to an acceptable level.

Positive Effects

- 7.30 The proposal will provide for employment of multiple contractors during the construction phase and between 7-10 full time equivalent employees on an on-going basis for operational requirements. The applicant has noted that the nearby Neils Beach settlement provides little employment opportunities and this will be a significant investment for local employment in such a small community.

Conclusion

- 7.31 Taking into account the assessment above for all sites involved in the application, on balance I consider that the adverse effects of the proposal can be avoided, remedied or mitigated to an acceptable level for the receiving environment. I have clearly highlighted those matters raised by submitters which are outside of the jurisdiction of the Council and I note that all required approvals from the WCRC

have either been granted or in the case of the Coastal Permit application, are currently being processed.

- 7.32 Although a significant amount of time has passed since the original land use consent, RC11/91, was considered and granted by the Council, I believe it is useful to note that this current application is essentially a resubmission of the previously consented proposal with only minor amendments and/or updating proposed. There are some useful findings from the decision for RC11/91 including:

“This application is for little more than a pipeline and associated facilities...In the context of the vastness of South Westland the proposal is small in scale and the likely environmental effects minor”.

“The consent authority considers that any adverse environmental effect is likely to be transient during the construction phase and minor during the operation phase”.

Section 104(1)(b) - Relevant provisions of standards, policies and plans

West Coast Regional Policy Statement

- 7.33 The West Coast Regional Policy Statement has been incorporated into the policies, objectives and rules of the Westland District Plan. An assessment of the Plan will therefore be consistent with an assessment of the Regional Policy Statement and in my opinion there is little value added to this assessment by going into a further discussion of this policy statement.
- 7.34 It is noted that the West Coast Regional Council (“**WCRC**”) has notified a new Proposed Regional Policy Statement in March 2015 and it is a relevant consideration whether to evaluate the application against the Proposed Regional Policy Statement and determine how much weight should be given to it (taking into account the submissions and further submissions received). Further submissions closed on 20 November 2015, however the WCRC is yet to prepare a recommending report on all submissions received. Given the stage that this process is still in, I have not undertaken an assessment of the application against the Proposed Regional Policy Statement.
- 7.35 I would comment that the Proposed Regional Policy Statement has moved towards an increased focus on economic, social and cultural aspects of activities, and providing for sustainable and resilient communities on the West Coast. However I would also note that the WCRC’s summary of decisions requested (excluding further submissions) highlights a significant number of parties in strong opposition to the Proposed Regional Policy Statement with a common theme of concern amongst opposition submitters being that the document appears to give primacy to economic development over all else, including the environment and conservation in general. There are 36 submitters who have requested to be heard in support of their submissions.

Westland District Plan

- 7.36 Part 3 of the Plan identifies key resource management issues and objectives that are specific to the District and Part 4 details policies, methods, outcomes and

monitoring to address the key issues and objectives. The key relevant objectives and policies of the Plan are discussed below:

3.2 - Sustainable Communities

Objective 3.2.1 - To establish levels of environmental quality for Westland which enable people and communities to provide for their social, economic and cultural wellbeing, while meeting the principles of sustainable management of natural and physical resources.

3.9 - The Built Resource

Objective 3.9.1 – To identify, protect and enhance the distinctive Westland character of the District's settlements.

4.4 – Amenity

Policy A – The effects of activities which can have significant adverse effects on amenities and the well being of residents shall generally be avoided, remedied or mitigated.

- 7.37 As discussed earlier in this report, it is my opinion that the effects of the proposal on the surrounding properties to the water storage and processing site can be avoided, remedied or mitigated to levels which are compatible with the existing character and amenity of the area. I have acknowledged that the proposed activity will be a 'change' to the existing environment, however I consider that the most noticeable effects are likely to occur during the construction phase which will be of a limited duration and restricted as to days and hours of activity. I consider that subject to appropriate consent conditions, the ongoing operation of the water storage and processing site, and the existing residential activity of JB & M Hughes in particular, can co-exist. I therefore consider that the proposal meets the purpose of this policy.

3.4 - Infrastructure and Services

Objective 3.4.2 – To ensure that activities located adjacent to infrastructure resources do not adversely affect the safe and efficient use of those resources.

4.6 – Infrastructure and Servicing

Policy B – The roading hierarchy shall be used as a factor in determining the acceptability of activities (including subdivision) which affect traffic flows or the road resource; and the standards of access required.

- 7.38 As detailed previously, the installation and maintenance of the pipeline for the conveyance of water is a permitted activity, and therefore the effects of the construction works, including any temporary traffic related effects, fall within the permitted activity baseline and should be disregarded. However, the recommended consent conditions will ensure that the design is appropriate and that any effects on the wider public are minimised.
- 7.39 I have previously concluded that the existing traffic network will be capable of accommodating the traffic generated by the proposal with no more than minor

effects on the safe and efficient operation of the road network. I also consider that any traffic related effects on the properties of JH, LC, ES & HL Davies and JB & M Hughes during the construction period will be short term and minor, and during the operational phase of the project will be less than minor. I consider that the proposal is therefore consistent with this objective and policy.

3.5 – Maori Perspective

Objective 3.5.2 – To recognise and provide for the relationship, culture and traditions of tangata whenua with their ancestral lands, water, sites, waah tapu and other taonga.

4.2 – Settlement Character

Policy B – The status and importance of historic and cultural settlements and parts of settlements should not be adversely affected by development.

4.5 - Heritage

Policy A – Buildings, places and items of significant historic, cultural or scientific interest and their relationship with places in Westland District should be preserved and maintained.

Policy D – Buildings, places and items of significant historic, cultural or scientific interest and their relationship with places in Westland District should be preserved and maintained.

- 7.40 The coastal area of Jackson Bay, where the pipeline will extend underground from the storage and processing facility out towards the foreshore, contains identified archaeological / heritage sites and is known as an area of significance to Maori. A submission has been received from Heritage New Zealand and their recommended approach to managing potential unknown archaeological sites has been adopted in the recommended conditions of consent. It is noted that no submission has been received from local iwi or hapu.
- 7.41 I am satisfied that subject to an archaeological assessment being undertaken prior to physical works commencing, and the appointment of a 'cultural monitor' (in consultation with Te Runanga o Makaawhio) to oversee earthworks on Lot 1 DP3786, that the proposal will achieve the desired outcomes of this objective and policy.

3.7 – Natural Environments

Objective 3.7.1 – To recognise and provide for the unique values and importance of natural environments and ecosystems in Westland

Objective 3.7.3 – To protect the integrity, functioning, and health of indigenous ecosystems and maintain the current diversity of indigenous flora and fauna.

4.9 – Natural Habitats and Ecosystems

Policy A – Adverse effects on the integrity, functioning and health of natural habitats and ecosystems and indigenous species shall be avoided, or where avoidance is not practical, remedied or mitigated.

Policy B – The protection and enhancement of areas of significant indigenous vegetation and habitats of indigenous fauna, and outstanding natural features in the district will be encouraged.

- 7.42 It is noted that the applicant's reports, and subsequent updates, from Mr Hammond and Dr McLennan, do not specifically provide findings in relation to whether the areas of conservation land in particular should be considered as areas of significant vegetation and / or significant habitats of indigenous fauna. Mr Hammond does note that the *"vegetation found in the area is modified and neither rare nor unique"*, however the modification is due to the presence of animals rather than human influence per se and he does acknowledge that *"the various associations found in the Tuning Fork Creek area appear to be representative of the broad range of vegetation types found in this area"*.
- 7.43 I have reviewed the criteria contained in Policy 4.9(B) of the Plan which provides guidance on classifying areas of significant indigenous vegetation and habitats. The criteria are intactness and size, representativeness, distinctiveness, protected status, connectivity, threat, migratory species, and scientific or other cultural value. In the absence of any alternative opinion from Mr Hammond or Dr McLennan, I am inclined to consider that the areas of stewardship land proposed to be affected by the weir and the pipeline route should be considered as significant in terms of both vegetation and habitat. The vegetation is largely intact (with the exception of some modification by animals), forms part of a large contiguous area of conservation estate, is in close proximity to the Mt Aspiring National Park and is therefore likely to provide a degree of connectivity to that area, provides habitat for the 'Nationally Critical' Haast Tokoeka, and is within the Te Wahipounamu South West New Zealand World Heritage Area.
- 7.44 I acknowledge that ecology is not my area of expertise and the above analysis is made at a very broad level only, therefore I may need to reconsider this position should expert evidence to the contrary be presented to the hearing. However, I also note the findings of the commissioner for RC91/11 which stated that *"the consent authority has no doubt that the National Park and proposed Burmeister Ecological Area are areas of significant indigenous vegetation and significant indigenous fauna..."*. The proposed Burmeister Ecological Area (proposed by DOC) has not eventuated, however the conservation land where the weir and pipeline are located is contained in that previously proposed area.
- 7.45 The report of Mr Hammond concludes that the effects of vegetation clearance at the water intake/weir site and pipeline within the DOC estate will be short term and minor. With respect to Haast Tokoeka, Dr McLennan has concluded that *"adult and juvenile Haast tokoeka will not be harmed or disturbed unduly by the installation of the proposed pipeline in the lower part of the catchment of Tuning Fork Creek, provided appropriate measures are undertaken to protect them"*. The comments of the commissioner for RC91/11 appear to support these conclusions, detailing that:

“...the consent authorities could envisage no likely significant adverse environmental effects with regard to the installation of the pipeline from the weir through to the Arawhata Bridge. In fact the consent authorities noted that it was probably possible to install the entire pipeline without any significant tree removal or damage and incurring only minor transient environmental effects during the construction phase. The consent authorities are certainly of the view that the proposal, subject to appropriate conditions relating to its construction and operation will have insignificant medium or long-term environmental effects given the known regeneration that occurs in the forests of Westland.”

- 7.46 In concluding on these objectives and policies, I consider that any adverse effects of the proposal on areas of significant indigenous vegetation or habitats of indigenous fauna, will be appropriately avoided, remedied or mitigated. There is no evidence to suggest that the rehabilitation or long term pest control measures proposed will enhance the values of the area, however in general I consider that the proposal is certainly not inconsistent with these objectives and policies.

3.10 – Landscape

Objective 3.10.1 – To ensure development does not impinge on the integrity of landscapes in Westland.

Objective 3.10.2 – To maintain and protect the existing scenic and open and diverse character of Westland District, dominated by natural dynamic processes.

Objective 3.10.3 – To ensure that land uses, buildings and development have regard to the natural landscapes in which they are located or seek to be located.

4.8 – Landscape

Policy A – The continuity of the mountains to sea landscape in Westland particularly in the south of the District and significant landscape elements shall be protected by ensuring development takes into account the landscape setting.

- 7.47 As previously discussed, the weir site is located within the lower reaches of Tuning Fork Creek and due to the existing vegetation cover it will not be readily visible from public roads or vantage points. Vegetation clearance and earthworks for the pipeline (which itself will be buried for the majority of the way) will be limited to a narrow corridor and any visual effects will be temporary in nature during the construction period. With respect to the water storage and processing site, the landscape assessment from Mr White concludes that the site proposed to be developed does not constitute an outstanding natural feature or sit within an outstanding natural landscape, and I accept these findings. I also accept that subject to appropriate controls to be placed on built development and vegetation retention at the site, the proposed water storage and processing facility will not be a dominating landscape feature and will not impinge on the integrity of the landscape. In my opinion the proposal is consistent with the above objectives and policies.

3.12 – The Coastal Environment

Objective 3.12.1 – To preserve the natural character and unique qualities of the coastal environment by taking into account the effects of subdivision, use or development on these values.

4.3 – Location of Settlements

Policy E – Any further subdivision or development within the coastal environment should be restricted to areas already significantly modified, or where located in relatively unmodified areas, where any adverse environmental impact can be satisfactorily mitigated.

4.10 – The Coast

Policy B – The adverse effects of subdivision, use or development on the natural character of the coastal environment shall be avoided or mitigated, in particular, in highly sensitive areas such as Wetlands and lagoons.

Policy D – Development, within the coastal area should take place in modified areas such as existing settlements in preference to unmodified areas.

- 7.48 With respect to aspects of the proposal with the potential to affect the coastal environment, the works are limited to the installation of the pipeline across Lot 1 DP3786. I have noted throughout this report that the installation and maintenance of the pipeline is a permitted activity, and therefore the effects of the construction works, including any temporary noise, vibration, visual and dust effects, all fall within the permitted activity baseline and should be disregarded. Nevertheless, I note that the construction works will be of a temporary nature and as the pipeline will be buried there will be no long term effects on the extent of the coastal environment over which Council has jurisdiction. I am therefore satisfied that the proposal will be consistent with the above objective and policies.

Section 104(1)(c) – Other Matters

Te Wahipounamu – South West New Zealand World Heritage Area

- 7.49 The proposed weir, water intake and pipeline route within the conservation estate, are located within the Te Wahipounamu – South West New Zealand World Heritage Area. It is noted that New Zealand does not have any legislation specific to world heritage sites and therefore the land is still managed under the broader conservation legislation (including, where relevant, the National Parks Act, Conservation Act, and Reserves Act). The Department of Conservation¹ detail that whilst the world heritage status does not affect the underlying protective status for which the land is held under New Zealand law, it does place an obligation on the host nation to “*take appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage*”.
- 7.50 The United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Convention encourages the identification, protection and preservation of the world’s outstanding cultural and natural heritage sites for the international community and future generations. The World Heritage Convention was adopted by UNESCO in 1972 and is one of the most widely supported of the United Nations’ conventions, with 186 member countries. It recognises that there are some places on earth so important that their enjoyment and protection is an

¹ Department of Conservation (2010). West Coast Conservation Management Strategy. Retrieved from <http://www.doc.govt.nz/Documents/about-doc/role/policies-and-plans/west-coast-cms-2010/westcoast-cms-complete.pdf>

international responsibility. There are currently 878 sites on the World Heritage List and the Te Wahipounamu site was formally inscribed in 1990.

7.51 The Department of Conservation² provides the following useful details on the Te Wahipounamu heritage area:

“Known to the original Māori inhabitants as Te Wāi Pounamu – the greenstone waters, the 2.6 million hectare site covers almost 10% of New Zealand’s total land area and encompasses four national parks - Westland Tai Poutini, Aoraki/Mount Cook, Mount Aspiring, Fiordland”.

“Why it’s a World Heritage Area:

- Rocks, plants and animals which take us back 80 million years to a time when New Zealand was part of the ancient super continent Gondwana.
- Spectacular ice carved fiords, lakes and valleys – amongst the finest examples of glaciated landforms in the Southern Hemisphere.
- From mountain to sea, landscapes of untouched beauty.
- A stronghold for rare plants and animals living in a range of habitats.
- Much of the area is covered with ancient and mature stands of southern beech and podocarp trees. The kea, an alpine parrot lives in the park, as does the rare and endangered takahe, a large flightless bird. Within this area there are three endemic taxon of kiwi; rowi, Haast tokoeka and Fiordland tokoeka, the first two of which are the most endangered varieties of kiwi in New Zealand”.

“There are significant benefits from world heritage status.

World heritage status is an established force in world tourism markets, and New Zealand can expect to reap benefits from world heritage tourism.

World heritage listing will also increase public interest and awareness in protecting the values of the site. New Zealand will be under an obligation to undertake appropriate management of the site, and to report periodically on the site’s condition to the World Heritage Committee. It is anticipated that the site management systems will be arrived at through close collaboration with local and national stakeholders. Therefore sites inscribed on the World Heritage List benefit from the elaboration and implementation of a comprehensive management plan that sets out adequate preservation measures and monitoring mechanisms, in addition to increasing the tourist activities at the site. All properties inscribed on the World Heritage List must have adequate long-term legislative, regulatory, institutional and/or traditional protection and management to ensure their safeguarding”

7.52 DOC has a legislative mandate for the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations. It is unfortunate that DOC has elected not to engage in this process under the Resource Management Act, and therefore we do not have the benefit of knowing DOC’s full views on the effects of the proposal, nor any specific comment in relation to the Te Wahipounamu heritage site. However, in my

² Department of Conservation (undated). Te Wahipounamu – South West New Zealand World Heritage Area. Retrieved from <http://www.doc.govt.nz/about-us/international-agreements/world-heritage/te-wahipounamu/>

view, and with respect to the specific jurisdiction of the Council, I am satisfied that the applicant has satisfactorily demonstrated that the adverse effects of the proposal can be avoided, remedied or mitigated to an acceptable level for the receiving environment. I consider that following completion of construction works and rehabilitation of the conservation land, the ongoing effects on the Te Wahipounamu heritage site will be largely unnoticeable and confined to the weir site only.

Property Values

- 7.53 The submission from JB & M Hughes raises concerns regarding the effects of the proposal on property values. The issue of property values is a subjective one and the value, or not, of being located adjacent to an industrial activity in contrast to a strictly rural activity, is largely in the eye of the beholder.
- 7.54 In terms of considerations under the Act, a perceived reduction in property values is not a relevant adverse effect in itself but may be symptomatic of other adverse effects on amenity values. I note that no evidence has been provided regarding the potential impact on property values as a direct result of the proposal.

Section 104D – Non-Complying Activity Assessment

- 7.55 Section 104D(1) sets a gateway test for non-complying activities which Consent Authorities must consider prior to undertaking an assessment under Section 104. The gateway test is an “either, or” test, meaning that if an application passes either gateway, it may proceed to an assessment under Section 104. It does not require both tests to be met.
- 7.56 The first test requires the Hearing Commissioner to consider whether the effects of the activity will be minor. The second gateway test is to consider whether the application is not contrary to the objectives and policies of the relevant plan. There are two aspects to consider when making this assessment. The first is that being ‘contrary’ means something more than just non-complying, it means being opposed in nature, different to or opposite. The second is that when assessing whether a non-complying activity is contrary to the objectives and policies of a plan, a broad judgement should be made. This requires more than just isolating out one or two policies with which the activity is contrary, so they must be considered in a holistic, overall way.

Test 1 - Adverse effects on the environment

- 7.57 The effects of the proposal have been discussed in detail in this report and on balance I consider that the adverse effects of the proposal can be avoided, remedied or mitigated to a level which will be minor. The application therefore passes the first gateway test.

Test 2 - Objectives and Policies

- 7.58 An assessment of the proposal against the provisions of the Plan has been undertaken and in my opinion the proposal is generally consistent with the relevant objectives and policies contained within the Plan. I am therefore satisfied that the

second test in Section 104D(1)(b) is also passed and the application can be considered under the broader requirements of Section 104 and Part 2 of the Act.

Section 37

- 7.59 An extension, under Section 37 of the Act, will be required for the time in which this hearing has been held. The delay in proceeding to a hearing for this application has arisen due to further discussion being undertaken with DOC regarding proposed consent conditions. The applicant is aware of the delay and has agreed to an extension being applied.

8.0 Part 2 of the Act

- 8.1 This application has to be considered, subject to Part 2, on its merits in accordance with the provisions of Section 104 of the Act (as outlined and discussed in Section 7.0 of this report above).

- 8.2 Section 5 sets out the Purpose of the Act, and states:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

- 8.3 Section 6 details matters of national importance to be recognised and provided for. In my view the following matters are of relevance to this application:

- (c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) *the protection of historic heritage from inappropriate subdivision, use, and development:*

- 8.4 In my opinion the above matters have been recognised and provided for via the various mitigation measures detailed in this report and contained in the recommended conditions of consent. My explanation and reasons for coming to this conclusion are contained in Section 7.0 of this report.

- 8.5 Section 7 provides other matters to which Council shall have particular regard. Of relevance to this application are:
- (a) kaitiakitanga:*
 - (b) the efficient use and development of natural and physical resources:*
 - (c) the maintenance and enhancement of amenity values:*
 - (d) intrinsic values of ecosystems:*
 - (f) maintenance and enhancement of the quality of the environment:*
- 8.6 In considering the potential effects of the proposal I have had regard to the above matters throughout this report. In my opinion the proposal to the Westland District Council will have only minor long term effects and once established and fully operational the activity on land should be able to operate in relative obscurity.
- 8.7 Section 8 relates to the principles of the Treaty of Waitangi which shall be taken into account when considering matters under the Act, including resource consent applications. It is noted that the applicant has undertaken consultation with Te Runanga o Makaawhio, being the hapu with kaitiaki status in the area, and no submission has been received from Te Runanga o Makaawhio or Te Runanga o Ngai Tahu. I am satisfied that, as far as is necessary and practical, appropriate measures are proposed to ensure that the cultural values of the runanga are not adversely affected.
- 8.8 It is my understanding of the Act that the words 'subject to', in reference to Part 2 when considering an application for resource consent, are used to indicate that the provisions of Part 2 are to prevail in the event of conflict. It is clear from the planning framework provided by the Westland District Plan that there is a balance to be achieved between managing population and economic growth in the district, protecting and preserving the productive value of rural land, and recognising the natural character and amenity values of the rural environments. The Plan also recognises the unique value of South Westland's natural environment, and the landscape value of the coastal environment.
- 8.9 The overall broad question that needs to be answered with respect to the application is whether the proposal promotes the sustainable management of natural and physical resources, being the purpose of the Act as presented in Section 5. I have considered the relevant matters outlined in Sections 6-8 of the Act above and I have addressed these matters via my assessment of the proposal under Section 7.0 of this report. The applicant has provided a range of technical reports relevant to the proposal and where appropriate the recommendations of these reports have been incorporated into the recommended consent conditions. I am satisfied that subject to appropriate conditions the adverse effects of the activity will be sufficiently avoided, remedied or mitigated to a level which is appropriate for the receiving environment, and therefore that this proposal is representative of the sustainable management of natural and physical resources.

9.0 Recommendation

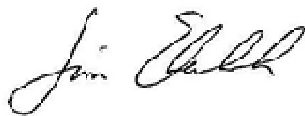
- 9.1 In my opinion the application can be granted. However, this is a recommendation only and the Commissioner is required to determine the application once

submissions and evidence on the application, both from the applicant and submitters, have been heard. The Plan provisions are identified in the above assessment and these, in conjunction with matters raised at the hearing, should form the basis of any decision reached.

- 9.2 Where possible if concerns raised can be mitigated through conditions of consent, these conditions should be imposed in order to maintain the character and amenity of the area, or to ensure that an acceptable level of adverse environmental effects results from the activity.
- 9.3 Should consent be granted by the Commissioner I have suggested a suite of consent conditions that may be of assistance. These are contained in Appendix Six to this report. It is noted that for the majority of matters the intent of the original conditions imposed on RC91/11 has been retained, however the consent conditions have been updated and reworded to reflect any changes to the receiving environment, or additional information now known, and to adopt current best practice in terms of effectiveness and enforceability of the conditions.



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