




# Resource Consent

## RESOURCE MANAGEMENT ACT 1991

### Summary of decision – s127 variation

<b>Consent No.</b>	WGN170140	
<b>Consent ID(s)</b>	[38218] (new) [34440] (old) Land-use consent for the installation and placement of culverts, erosion control structures and stormwater inlet/outlet structures in two tributaries (Duck 11 and Duck 12) of Duck Creek.	
	[38219] (new) [34441] (old) Water permit for the temporary damming and diversion of two tributaries (Duck 11 and Duck 12) of Duck Creek.	
	[38220] (new) [34537] (old) Land-use consent for the reclamation of two tributaries (Duck 11 and Duck 12) of Duck Creek which includes the piping of streams.	
<b>Name</b>	The New Zealand Transport Agency	
<b>Address</b>	Level 5, The Majestic Centre, 100 Willis Street, PO Box 5084, Wellington	
<b>Duration of consent</b>	Original date granted: 8 March 2017	Variation effective: 28 March 2022
	<b>Expires:</b> [38218] 35 years to expire on 8 March 2052 [38219] 35 years to expire on 8 March 2052 [38220] Unlimited	
<b>Purpose for which consent(s) is granted</b>	To undertake works to facilitate the installation of two pipe culverts in two tributaries of Duck Creek including: <ul style="list-style-type: none"> <li>• Temporary damming and diversion of stream flows during construction</li> <li>• Installation of culverts and erosion/scour protection structures</li> <li>• Reclamation of stream bed associated with the piping of streams</li> </ul>	
<b>Location</b>	At about or between map reference NZTM 1758592.5443417 (Bridge 17) and 1758772.5443700 (Bridge 18)	
<b>Legal description of land</b>	Section 3 SO 368657	
<b>Conditions</b>	See below	

Decision recommended by:	Gwen Stewart	Resource Management Consultant for Environmental Regulation	
Decision peer reviewed by:	Kirsty van Reenen	Resource Management Consultant for Environmental Regulation	
Decision approved by:	Shaun Andrewartha	Manager, Environmental Regulation	



## Processing timeframes:

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Application lodged:	17/03/22	Application officially received:	17/03/22
Applicant to be notified of decision by:	14/03/22	Applicant notified of decision on:	28/03/22
Time taken to process application:	7 working days		

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## Consent conditions

*Note: Wording added in **bold**; wording removed in ~~strike through~~.*

1. The location, design, implementation and operation of the activity shall be in general accordance with the consent application and its associated plans and documents lodged with Wellington Regional Council on 7 December 2016 including:
  - Further information received 27 January 2017 related to confirmation of areas of terrestrial mitigation affected by proposed works and extent of terrestrial mitigation planting required;
  - Supplementary email from Michelle Grinlinton-Hancock regarding the context for assessment of the portals design by GWRC received 7 February 2017;
  - Supplementary email from Michelle Grinlinton-Hancock received 9 February 2017 pertaining to confirmation that land-use consent for reclamation was being sought including assessment of relevant objectives and policies;
  - Supplementary email from Fred Whitton received 27 February 2017 regarding context of mitigation concerns raised by GWRC in terms of the overall Project mitigation package;
  - Supplementary email from Andrea Millar received 3 March 2017 containing revised Cannons Creek Mitigation Site report prepared by Cardno (Job Reference NZ0116147 Rev 2) dated 2 March 2017;
  - Supplementary email from Andrea Millar received 6 March 2017 confirming the applicant intends to use the Cannons Creek mitigation site for required mitigation works;
  - **Change in consent conditions application submitted under s127 of the Resource Management Act received 17 March 2022 (application to change the timeframes for the provision of mitigation planting).**

Where there may be contradiction or inconsistencies between the application and further information provided by the applicant, the most recent information applies. In addition, where there may be inconsistencies between information provided by the applicant and conditions of the consent, the conditions apply.

***Note:** Any change from the location, design concepts and parameters, implementation and/or operation may require a new resource consent or change of consent conditions pursuant to section 127 of the Resource Management Act 1991.*

2. The location, design, implementation and operation of the activity shall comply with the requirements of the *Board of Inquiry (BoI) Transmission Gully - Volume 2: Conditions*

identified in the table below. For the avoidance of doubt, where any of the Transmission Gully Bol conditions are inconsistent with conditions 1 and 3-15 of this consent, the conditions of this consent shall prevail.

Conditions	Type
G.2 (Site access) G.4 (Copy of consent held on site) G.7 (Review) G.9 (Complaints) G.10 and 10A (Incidents) G.11 (Staff training) G.15, G.16, G.17 (Management plans) G.26, G.28 (SSEMPs) G.34, G.36 (Ecological monitoring) G.41, G.42, G.42A, G.42B, and G.43 (ESC monitoring during construction)	General conditions
E.7 – E.10 (ESC objectives, standards and design criteria) E.16 – E.21 (ESC management and maintenance) E.28 (Fill Standards)	Conditions relating to earthworks and discharges to land and water
WS.1 WS.2 WS.3 WS.7 WS.8	Conditions relating to streamworks
<p>For the purpose of this consent the following Bol definitions have been amended and will apply to this consent as follows:</p> <p><i>Commencement of the works</i> means the time when the works that are the subject of this consent commence</p> <p><i>Consent Holder</i> means New Zealand Transport Agency (NZTA)</p> <p><i>Manager</i> means the Manager, Environmental Regulation, Wellington Regional Council</p> <p><i>Project</i> means the construction, operation and maintenance of the Transmission Gully main alignment</p>	

*Stage* means a stage of the Project as nominated by the Consent Holder and agreed with the Wellington Regional Council and/or shown in staging plans required by this consent.

In addition, for the purpose of this consent, the following terms (which are used in the BoI conditions) have the following meaning:

*This consent* means the consent(s) granted for the establishment of permanent pipe culverts in tributaries Duck 11 and Duck 12 of Duck Creek, including associated diversion and reclamation activity, in construction zones D3 and D4 of Transmission Gully (WGN170140).

3. The Consent Holder shall undertake all works in accordance with the relevant provisions of the following certified Management Plans (plans required by the *Board of Inquiry Transmission Gully – Volume 2: Conditions*) and any approved amendments made to these management plans, unless otherwise agreed to by the Manager:
- Construction Environmental Management Plan (CEMP)
  - Erosion and Sediment Control Plan (ESCP)
  - Erosion and Sediment Control Monitoring Plan (ESCMP)
  - Chemical Treatment Plan (CTP)
  - Ecological Management and Monitoring Plan (EMMP)
  - Landscape and Urban Design Management Plan (LUDMP)

### **Pre works conditions**

4. The Manager shall be given a minimum of two working days (48 hours) notice prior to works authorised by this consent commencing.

**Note:** Notifications can be emailed to [notifications@gw.govt.nz](mailto:notifications@gw.govt.nz). Please include the consent reference WGN170140 and the name and phone number of a contact person responsible for the proposed works.

5. The Consent Holder shall arrange and conduct a pre-construction site meeting prior to any work authorised by this consent commencing on-site and invite, with a minimum of 48 hours' notice, the Wellington Regional Council and the contractor undertaking the works.

**Note:** In the case that any of the invited parties, other than the representative of the Consent Holder, does not attend this meeting, the Consent Holder will have complied with this condition, provided the invitation requirement is met.

### **Fish Management**

6. The Consent Holder shall engage a suitably qualified ecologist to:
- a) Capture native fish within the affected reaches of Duck 11 and Duck 12 as far as practicable and relocate them upstream or downstream (as appropriate) of the proposed works site prior to the commencement of works; and

- b) Capture and relocate any fish found to be stranded after works have commenced and for the full duration of works until that part of that part of the Project that has caused the barrier is completed and the stream channel is re-opened.

All fish capture and relocation undertaken shall be in accordance with the requirements of the certified EMMP.

## Mitigation

7. The Consent Holder shall undertake and ensure the ongoing management and protection of no less than 819 lineal metres of native riparian mitigation planting ('mitigation planting') along the perennial flowing section of 'Stream 3' in the upper Cannons Creek catchment of Belmont Regional Park, as identified in the Cannons Creek Mitigation Site report prepared by Cardno dated and received 3 March 2017, unless an alternative location is agreed to by the Manager in writing, prior to mitigation planting being undertaken.

The Consent Holder shall ensure that the required mitigation planting is additional to the mitigation specified in G.31 of the *Board of Inquiry Transmission Gully – Volume 2: Conditions*. The mitigation planting and associated monitoring and maintenance shall be implemented in accordance with the requirements and timeframes set out in the certified EMMP, unless otherwise specified in the conditions of this consent. The initial pioneer mitigation planting (which will comprise the majority of the planting) shall be completed prior to **30 September 2022** opening of the Transmission Gully main alignment for public use. Any subsequent enrichment planting shall be implemented in accordance with the timeframes set out in the EMMP.

Prior to undertaking the mitigation planting the Consent Holder shall ensure that the mitigation planting can be legally protected as per the requirements of Condition 9.

8. Prior to commencement of the mitigation planting specified in Condition 7, the Consent Holder shall provide, as a minimum, the following mitigation planting detail within a Site Specific Environmental Management Plan (SSEMP) for certification by the Manager, Environmental Regulation:
  - i. The location and area to be planted;
  - ii. The plant species, the relevant composition of plant species and planting densities.

Mitigation planting shall not commence until the SSEMP has been certified by the Manager. The mitigation planting shall be carried out in accordance with the certified SSEMP.

9. The Consent Holder shall use its best endeavours to procure from the land owner the entering into of an appropriate covenant and/or encumbrance (or similar legal mechanism) to ensure that regardless of any future ownership/tenure changes, the mitigation planting required by Condition 7 of this consent is protected in a manner that achieves the mitigation specified in Condition 7 in perpetuity, and shall upon request from the Manager report

progress on these best endeavours. The legal mechanism shall detail how the protection mechanisms as set out in Condition 13 will be achieved on an ongoing basis.

10. The Consent Holder shall not open the Transmission Gully main alignment for use by the public unless an appropriate covenant and/or encumbrance (or similar legal mechanism) has been registered against all the land required for mitigation planting required by Condition 7 of this consent.

The encumbrance (or similar legal mechanism) shall not be removed without the approval of the Manager.

11. Should best endeavours fail to procure from the land owner the entering into of an appropriate covenant and/or encumbrance (or similar legal mechanism), the Consent Holder shall identify an alternative mitigation location that will meet the requirements of Condition 7 and can be legally protected in perpetuity. The Consent Holder shall ensure that the alternative mitigation location is approved by the Manager prior to any mitigation planting being undertaken.

12. The Consent Holder shall ensure that the legal and physical mechanisms (and the details of the obligations in those) to achieve ongoing protection of the mitigation planting in Condition 7 are approved by the Manager prior to giving legal effect to/registering those mechanisms.

13. The mechanisms to achieve protection of ecological mitigation planting required by Condition 7 of this consent shall be as set out in the EMMP and shall manage:

- i. the felling, removal, burning or taking of any native trees, shrubs, plants or native fauna;
- ii. the planting of any trees, shrubs, or plants be undertaken with a preference for specimens sourced from the ecological district in which the land is situated;
- iii. the introduction of any noxious substance or substance otherwise injurious to plant life except as required for the control of pests;
- iv. access by stock by providing and maintaining fences and gates, except where the provisions of the Fencing Act 1978 apply;
- v. the control of deer, goats, pigs to achieve the conditions of this consent, and to prevent significant loss of existing natural values;
- vi. all weeds and pests to the extent required by any statute and in particular comply with the provisions of, and any notices given under the Biosecurity Act 1993 and the Wild Animal Control Act 1977.

14. All mitigation planting that is to be undertaken under Condition 7 shall be subject to a three year maintenance period which shall commence from the time planting is undertaken in each planting area. At the completion of the three year maintenance period for each planting area, the Consent Holder shall engage a suitably qualified ecologist to carry out a



full review of the success of the revegetation in that planting area to ensure it has met the mitigation requirements set out in the EMMP.

The results of the review shall be provided to the Manager for certification:

- a) That the planting has met the requirements of the EMMP; and/or
- b) To identify any remedial actions that need to be carried out.

Where any remedial actions are required, the Consent Holder shall provide a programme and description of remedial actions to the Manager for certification within a timeframe agreed to in writing by the Manager. These actions shall be carried out as soon as practicable having regard to weather and appropriate planting seasons.

A further review of each revegetation area shall be carried out after 10 years of completion of the planting in each area to determine whether further actions are required to achieve the objective of revegetation. If necessary the revegetation plan in the EMMP shall be amended accordingly.

### **Accidental Discovery Protocol**

- 15. Should waahi tapu or other cultural sites be disturbed during earthworks, the contractor shall:
  - a) Cease operations within 20m of the find
  - b) Inform local iwi (Ngāti Toa)
  - c) Any taonga (finds) will be held by Ngati Toa for safe keeping while Heritage NZ carry out their processes
  - d) Inform Heritage New Zealand and apply for the appropriate authority if required; or
  - e) Take appropriate action, after discussion with Heritage New Zealand, Council and iwi to remedy damage and/or restore the site.

*Note: In accordance with Heritage New Zealand Pouhere Taonga Act 2014, where an archaeological site is present (uncovered), an authority from Heritage New Zealand is required if the site is to be modified in any way.*

### **General Notes**

- a) A resource management charge, set in accordance with section 36(2) of the Resource Management Act 1991 ('RMA') shall be paid to the Regional Council for the carrying out of its functions in relation to the administration, monitoring, and supervision of resource consents and for the carrying out of its functions under section 35 (duty to gather information, monitor, and keep records) of the RMA.

- b) The Wellington Regional Council shall be entitled to recover from the Consent Holder the costs of any review, calculated in accordance with and limited to the Council's scale of charges in force and applicable at that time pursuant to section 36 of the RMA.

# Reasons for decision report

## 1. Background and proposed changes

Waka Kotahi NZ Transport Agency (Waka Kotahi, the applicant) have applied to change conditions of consent WGN170140. The purpose of the change is to revise the date by which pioneer planting must be undertaken.

In June 2012, a Board of Inquiry confirmed the Notices of Requirement and granted the associated resource consents for the Transmission Gully Project (TGP). Subsequent changes to design for the TGP required a variety of additional consents (including WGN170140, i.e. the consent subject to this report) referred to as post-Board of Inquiry consents.

A key requirement of consent WGN170140 is to undertake riparian mitigation planting with a planting margin of 20m each side of the relevant stream reaches unless otherwise agreed by GWRC. Consent WGN170140 requires that planting must be shown in Site Specific Environmental Management Plans (SSEMP) to be certified by Greater Wellington Regional Council (GWRC) prior to planting commencing and pioneer planting must be completed prior to the opening of TG for public use.

Waka Kotahi has advised that in order to complete the pioneer planting required by post BoI consents including WGN170140 prior to road opening, they completed planting at their own risk ahead of the relevant SSEMPs being certified by GWRC. The GWRC review of the SSEMPs has now identified areas where pioneer riparian planting is less than the 20m width required by this consent. I note that SSEMP reviews of Post BoI consents WGN170285, WGN180038 and WGN180091 have identified the same non-compliance with consent conditions. Changes to consent conditions applications have been lodged for WGN170285, WGN180038 and WGN180091 and these are being processed concurrently.

To address this matter, Waka Kotahi have advised that either further planting will be undertaken or planting may be re-allocated from other consents which do not have conditions linked to Road opening. It is proposed that any further planting required will take place within the Cannons Creek catchment this planting season (1 April to 30 September 2022); this planting would not be completed prior to the planned road opening which is anticipated to be (at the time of writing this report ) prior to the end of March 2022. Therefore, a change of conditions is being sought to require that the planting is completed by the end of the 2022 planting season.

The nature, extent, and locations of any additional planting are matters to be certified by GWRC through the SSEMP process, and therefore do not require consideration for the purpose of this application.

The proposed change necessitates changes to consent conditions 1 and 7 as summarised in the table below.

Note: Wording added in **bold**; wording removed in ~~strike through~~.

No.	Condition details
1	<p>The location, design, implementation and operation of the activity shall be in general accordance with the consent application and its associated plans and documents lodged with Wellington Regional Council on 7 December 2016 including:</p> <ul style="list-style-type: none"> <li>• Further information received 27 January 2017 related to confirmation of areas of terrestrial mitigation affected by proposed works and extent of terrestrial mitigation planting required;</li> <li>• Supplementary email from Michelle Grinlinton-Hancock regarding the context for assessment of the portals design by GWRC received 7 February 2017;</li> <li>• Supplementary email from Michelle Grinlinton-Hancock received 9 February 2017 pertaining to confirmation that land-use consent for reclamation was being sought including assessment of relevant objectives and policies;</li> <li>• Supplementary email from Fred Whitton received 27 February 2017 regarding context of mitigation concerns raised by GWRC in terms of the overall Project mitigation package;</li> <li>• Supplementary email from Andrea Millar received 3 March 2017 containing revised Cannons Creek Mitigation Site report prepared by Cardno (Job Reference NZ0116147 Rev 2) dated 2 March 2017;</li> <li>• Supplementary email from Andrea Millar received 6 March 2017 confirming the applicant intends to use the Cannons Creek mitigation site for required mitigation works; <b>and</b></li> <li>• <b>Change in consent conditions application submitted under s127 of the Resource Management Act received 17 March 2022 (application to change the timeframes for the provision of mitigation planting).</b></li> </ul> <p>Where there may be contradiction or inconsistencies between the application and further information provided by the applicant, the most recent information applies. In addition, where there may be inconsistencies between information provided by the applicant and conditions of the consent, the conditions apply.</p> <p><i>Note: Any change from the location, design concepts and parameters, implementation and/or operation may require a new resource consent or change of consent conditions pursuant to section 127 of the Resource Management Act 1991.</i></p>
7	<p>The Consent Holder shall undertake and ensure the ongoing management and protection of no less than 819 lineal metres of native riparian mitigation planting ('mitigation planting') along the perennial flowing section of 'Stream 3' in the upper Cannons Creek catchment of Belmont Regional Park, as identified in the Cannons Creek Mitigation Site report</p>

No.	Condition details
	<p>prepared by Cardno dated and received 3 March 2017, unless an alternative location is agreed to by the Manager in writing, prior to mitigation planting being undertaken.</p> <p>The Consent Holder shall ensure that the required mitigation planting is additional to the mitigation specified in G.31 of the Board of Inquiry Transmission Gully – Volume 2: Conditions. The mitigation planting and associated monitoring and maintenance shall be implemented in accordance with the requirements and timeframes set out in the certified EMMP, unless otherwise specified in the conditions of this consent. The initial pioneer mitigation planting (which will comprise the majority of the planting) shall be completed prior to <b>30 September 2022</b> <del>opening of the Transmission Gully main alignment for public use</del>. Any subsequent enrichment planting shall be implemented in accordance with the timeframes set out in the EMMP.</p> <p>Prior to undertaking the mitigation planting the Consent Holder shall ensure that the mitigation planting can be legally protected as per the requirements of Condition 9.</p>

In accordance with section 127(3) of the Act this application has been considered as a **discretionary activity**.

## 2. Consultation

Iwi authority	Comments
Ngāti Toa Rangatira	Ngāti Toa Rangatira were provided with a copy of the application in accordance with the agreement between GWRC and the iwi group. Ngāti Toa Rangatira did not raise any concerns regarding the delay in pioneer planting as described in the application.
Other parties or persons	Comments
Keith Hamill, Environmental Scientist, River Lake Limited	Mr Hamill reviewed the ecological assessment provided with the application and provided advice regarding effects to freshwater ecology. Outcomes of consultation with Mr Hamill are summarised in section 4 of this report.
Nicholas Singers, Ecologist, NSES Limited	Mr Singers reviewed the ecological assessment provided with the application and provided advice regarding effects to terrestrial mitigation planting. Outcomes of consultation with Mr Singers are summarised in section 4 of this report.

### **3. Notification decision**

A decision was made to process the application on a non-notified basis on 25 March 2022. Further information on the notification decision is provided [here](#)

### **4. Effects of condition change**

#### **4.1 Environmental effects**

A full assessment of environmental effects was made under WGN170140 as set out in the decision report on **8 March 2017**. This assessment focusses on the environmental effects of changing conditions 1 and 7 only.

Pioneer mitigation planting is currently required to be undertaken prior to the opening of Transmission Gully for public use. At the time of writing this report road opening does not have a specific date but it is expected to be open before the end of March.

Waka Kotahi has proposed that the identified shortfall in pioneer planting will be undertaken prior to 30 September 2022 (the end of the 2022 planting season). Assuming the road opens by the end of March that would result in a maximum delay of 6 months in the provision of all required pioneer planting.

The applicant has assessed adverse effects associated with this delay to be less than minor (section 3 of the application). The applicant's conclusions are generally based on the following:

- Any additional planting required to make up the shortfall is a small proportion of the overall planting which has been undertaken to fulfil conditions of consent.
- Additional planting required to make up the shortfall will be completed in the 2022 planting season. How much of a delay that represents from the current consent conditions depends on the date of road opening, which has not yet been set. If the road is opened by April, the maximum difference in completion of planting between the current consent conditions and the proposed conditions would be up to six months. The expected plant growth over that time is not expected to be significant.
- A maximum delay of 6 months is not expected to unduly delay overall plant growth and the required mitigation outcomes.

The assessment has been reviewed by Mr Hamill and Mr Singers who concur that adverse environmental effects are likely to be less than minor.

I note that these conclusions are specific to this site based on technical assessment provided and technical reviews provided. Any proposals to delay the provision of mitigation associated with the Transmission Gully Project in any other location would need to be considered on its merits, taking into account the value of the aquatic habitat in question and the length of the delay.

The recommendations in this report should not set a precedent for any other consents sought to delay the provision of mitigation at any other location.

## **5. Statutory assessment**

I have assessed the application against the relevant statutory documents and consider:

1. The proposed change is consistent with the Purposes and Principles (Part 2) of the Resource Management Act 1991.
2. The proposed change is consistent with original assessment undertaken in accordance with section 104-108AA of the Act and is consistent with the relevant objectives and policies in the Proposed Natural Resources Plan. There are no additional or new matters to be considered with this application.
3. The proposed changes to consent conditions meet s108AA of the RMA.

## **6. Duration of consent**

Under section 127(1)(b) of the Act, no consent holder may apply for a change of the consent duration and so the consent expiry date will remain the same.

## **7. Monitoring**

The current compliance monitoring programme and associated charges will remain.