

I hereby give notice that an ordinary meeting of the Regulatory and Community Safety Committee will be held on:

**Date:** Tuesday, 4 February 2025  
**Time:** 10.00am  
**Meeting Room:** Room 1, Level 26  
**Venue:** Te Wharau o Tāmaki - Auckland House  
135 Albert Street  
Auckland

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## Regulatory and Safety Committee

### OPEN AGENDA

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#### MEMBERSHIP

|                           |  |
|---------------------------|--|
| <b>Chairperson</b>        | Cr Josephine Bartley   |
| <b>Deputy Chairperson</b> | Cr Lotu Fuli   |
| <b>Members</b>            | Hokura Member Edward Ashby<br>Hokura Member Ngarimu Blair<br>Cr Julie Fairey<br>Cr Alf Filipaina, MNZM<br>Cr Mike Lee<br>Cr Kerrin Leoni<br>Cr Sharon Stewart, QSM |
| <b>Ex-officio</b>         | Mayor Wayne Brown<br>Deputy Mayor Desley Simpson, JP   |

(Quorum 5 members)

**Phoebe Chiquet-Kaan**  
**Governance Advisor**

**30 January 2025**

Contact Telephone: 0274069656  
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**1 Ngā Tamōtanga | Apologies**

Apologies have been received from Chairperson J Bartley, Cr J Fairey, and Houkura Member Ngarimu Blair for absence.

**2 Te Whakapuaki i te Whai Pānga | Declaration of Interest**

**3 Te Whakaū i ngā Āmiki | Confirmation of Minutes**

Click the meeting date below to access the minutes.

That the Regulatory and Safety Committee:

- a) whakaū / confirm the ordinary minutes of its meeting, held on [Tuesday, 3 December 2024](#), including the confidential section, as a true and correct record.

**4 Ngā Petihana | Petitions**

**5 Ngā Kōrero a te Marea | Public Input**

**6 Ngā Kōrero a te Poari ā-Rohe Pātata | Local Board Input**

**7 Ngā Pakihi Autaia | Extraordinary Business**



## Status update on action decisions from Regulatory and Safety Committee 3 December 2024

File No.: CP2025/00098

Item 8

### Te take mō te pūrongo Purpose of the report

1. To update the Regulatory and Safety Committee on action decisions made at the last meeting.

### Whakarāpopototanga matua Executive summary

2. The information provided below is a status update on action decisions only, made at the Regulatory and Safety Committee meeting on 3 December 2024:

| Resolution Number             | Item  | Status   |
|-------------------------------|---|--|
| <a href="#">RSCCC/2024/82</a> | Proposed changes to council cemetery bylaw and code | Public consultation commenced on Monday 20 January and will run until Sunday 23 February 2025. |
| <a href="#">RSCCC/2024/83</a> | Proposed changes to council dog policy and bylaw    | Public consultation commenced on Monday 20 January and will run until Sunday 23 February 2025. |

### Ngā tūtohunga Recommendation/s

That the Regulatory and Safety Committee:

- a) **tuhi ā-taipitopito / note** the status of decisions made at the 3 December 2024 meeting.

### Ngā tāpirihanga Attachments

There are no attachments for this report.

### Ngā kaihaina Signatories

|            |  |
|------------|--|
| Author     | Phoebe Chiquet-Kaan - Governance Advisor |
| Authoriser | Rachel Kelleher - Director Community     |





## Resource Consents Appeals: Status Report 4 February 2025

File No.: CP2025/00079

Item 9

### Te take mō te pūrongo

#### Purpose of the report

1. To provide an update of all current resource consent appeals lodged with the Environment Court.

### Whakarāpopototanga matua

#### Executive summary

2. This report provides a summary of current resource consent appeals to which the Auckland Council is a party. It updates the report to the Regulatory and Safety Committee on 3 December 2024.
3. If committee members have detailed questions concerning specific appeals, it would be helpful if they could raise them prior to the meeting with Robert Andrews (phone: 09 353-9254) or email: robert.andrews@aucklandcouncil.govt.nz) in the first instance. Staff will not be present at the committee meeting to respond to any queries without prior request.

### Ngā tūtohunga

#### Recommendation/s

That the Regulatory and Safety Committee:

- a) whiwhi / receive the Resource Consents Appeals: Status Report 4 February 2025

### Horopaki

#### Context

4. As at 10 January 2025, there are 27 resource consent appeals to which Auckland Council is a party. These are grouped by local board area geographically from north to south, as set out in **Attachment A**. Changes since the last report and new appeals received are shown in bold italic text.
5. The principal specialist planners - resource consents, continue to resolve these appeals expeditiously. In the period since preparing the previous status report on 3 December 2024, there have been no new appeals lodged or resolved.

### Tātaritanga me ngā tohutohu

#### Analysis and advice

6. To receive the report as provided.

### Tauākī whakaaweawe āhuarangi

#### Climate impact statement

7. The report provides an update of consent appeals and seeks no resolution or consideration of the merits associated with them.

### Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

#### Council group impacts and views

8. Not applicable.

## Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe Local impacts and local board views

9. Not applicable.

## Tauākī whakaaweawe Māori Māori impact statement

10. The decision requested of the Regulatory and Safety Committee is to receive this progress report rather than to consider the relevance to Māori associated with each of the appeals at this time.
11. The Resource Management Act 1991 includes a number of matters under Part 2, which relate to the relationship of Tangata Whenua to the management of air, land and water resources. Māori values associated with the land, air and freshwater bodies of the Auckland Region are based on whakapapa and stem from the long social, economic and cultural associations and experiences with such taonga. These matters where relevant are considered with the resolution of the resource consent appeals.

## Ngā ritenga ā-pūtea Financial implications

12. Environment Court appeal hearings can generate significant costs in terms of commissioning legal counsel and expert witnesses. Informal mediation and negotiation processes seek to limit these costs. Although it can have budget implications, it is important that Auckland Council, when necessary, ensure that resource consents maintain appropriate environmental outcomes and remain consistent with the statutory plan policy framework through the appeal process.

## Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

13. Not applicable.

## Ngā koringa ā-muri Next steps

14. Not applicable.

## Ngā tāpirihanga Attachments

| No. | Title   | Page |
|-----|---|------|
| A⇒  | Regionwide resource consent appeal register for 4 February 2025 |      |

## Ngā kaihaina Signatories

|             |  |
|-------------|--|
| Author      | Robert Andrews - Principal Specialist Planning   |
| Authorisers | John Duguid - General Manager Planning and Resource Consents<br>Rachel Kelleher - Director Community |

## Summary of Regulatory and Safety Committee information memoranda, workshops, and briefings (including the Forward Work Programme) - 4 February 2025

File No.: CP2025/00099

Item 10

### Te take mō te pūrongo Purpose of the report

1. To receive a summary and provide a public record of memoranda, workshops and briefing papers that have been distributed to the Regulatory and Safety Committee.
2. To note the progress on the Forward Work Programme appended as Attachment A.

### Whakarāpopototanga matua Executive summary

3. This is a regular information-only report which aims to provide greater visibility of information circulated to Regulatory and Safety Committee members via memoranda, workshops and briefings, where no decisions are required.
4. The following information items have been distributed:

| Date       | Subject   |
|------------|---|
| 14/01/2025 | Hearings held, hearing panels and hearing outcomes January 2024 – December 2024 |
| 21/01/2025 | Policy advice on options to ban fireworks in Tāmaki Makaurau / Auckland         |

5. Note that, unlike an agenda report, **staff will not be present to answer questions about the items referred to in this summary.** Committee members should direct any questions to the relevant staff.

### Ngā tūtohunga Recommendation/s

That the Regulatory and Safety Committee:

- a) **whiwhi / receive** the Summary of Regulatory and Safety Committee information memoranda, workshops and briefings – 4 February 2025.
- b) **tuhi ā-taipitopito / note** the progress on the Forward Work Programme appended as Attachment A of the agenda report.

## Ngā tāpirihanga Attachments

| No.                | Title   | Page |
|--------------------|---|------|
| <a href="#">A⇒</a> | Regulatory and Safety Committee Forward Work Programme - 4 February 2025              |      |
| <a href="#">B⇒</a> | Hearings quarterly update memo - January 2025   |      |
| <a href="#">C⇒</a> | Policy advice on options to ban fireworks in Tāmaki Makaurau - Information Memorandum |      |

## Ngā kaihaina Signatories

|            |  |
|------------|--|
| Author     | Phoebe Chiquet-Kaan - Governance Advisor |
| Authoriser | Rachel Kelleher - Director Community     |

## Objection to stormwater works at 116A Forrest Hill Road

File No.: CP2024/17877

Item 11

### Te take mō te pūrongo

#### Purpose of the report

1. To hear and determine an objection to proposed stormwater works at 116A Forrest Hill Road, Forrest Hill, pursuant to section 181 of the Local Government Act 2002.

### Whakarāpopototanga matua

#### Executive summary

2. A developer has obtained approval from the Auckland Council to connect a new development at 118 Forrest Hill Road to the public stormwater manhole that is located on the neighbouring property at 116A Forrest Hill Road.
3. The proposed works involve the construction of a 10-metre length pipe through the rear of 116A Forrest Hill Road to an existing manhole (see Attachment A – Engineering planning approval). The work is estimated to take up to one week. Once constructed, the pipe is intended to be vested in the council as a public stormwater asset.
4. The owners of 116A Forrest Hill Road have not agreed to allow the developer access to their property for this purpose.
5. A site inspection and assessment for the pipe considered the following alternative options:
  - **option one:** extending the public network from the existing manhole at 116a Forrest Hill Road (the recommended option in the statutory notice).
  - **option two:** extending the public network from within the Public Road, Rains Avenue.
  - **option three:** extending the public network from the cesspit lid within Forest Hill Road.
  - **option four:** a kerb outlet discharge in front of 118a Forest Hill Road.
  - **option five:** a private soakhole within 118 Forrest Hill Road.
  - **option six:** do nothing.
6. As a result of the objection, and verified documentation of an existing non-access chamber, staff seek that option one includes the construction of the previously consented 1050mm diameter manhole which is required to enable the works.
7. Council staff have determined that the works constitute necessary public stormwater works and option six (do nothing) is not viable. Staff have issued a notice under section 181(2) of the Local Government Act 2002 informing the landowners of its intention to construct the works as a council project as per option one.
8. The landowners have lodged a written objection to the works, on the grounds that:
  - the works under the notice are contrary to accepted engineering practice
  - the works under the notice breach the underlying resource consent and engineering approval
  - the works are not necessary in their current form as there are better alternatives available
  - the notice contains further errors, (see Attachment B).

9. This report recommends that the Regulatory and Safety Committee resolve that Auckland Council proceeds with the proposed public stormwater works at 116A Forrest Hill Road, including option one, to manage the stormwater effects of the approved consented development at 118 Forrest Hill Road. Noting that option one is also inclusive of the construction of a 1050mm diameter manhole.
10. If the Regulatory and Safety Committee determines that the works should proceed, construction will begin as soon as reasonably possible (weather dependent). It is proposed that the pipe will be installed by open cut (trenching) to ensure minimal machinery and overall, less impact to the affected property. The works will take approximately one week to complete.
11. Staff have explained to all the affected property owners that if the works go ahead, they have the right to claim injurious affection (if established) under the Public Works Act 1981.

## Ngā tūtohunga Recommendations

That the Regulatory and Safety Committee:

- a) hear and determine the objections by the owner of 116A Forrest Hill Road according to clause 1(e) of Schedule 12 of the Local Government Act 2002
- b) tuhi ā-taipitopito / note that the staff recommendation is to proceed with the extension of the public stormwater network from 116A Forrest Hill Road (as detailed in Attachment A – approved engineering plans), according to clause 1(e)(ii) of Schedule 12 of the Local Government Act 2002.

## Horopaki Context

12. Auckland Council's Healthy Waters and Flood Resilience department is responsible for managing and maintaining the public stormwater network in Auckland, much of which is located on private land.
13. Section 181(2) of the Local Government Act 2002 empowers the council to 'construct works on or under private land or under a building on private land that it considers necessary for sewage and stormwater drainage'.
14. Such works require either the prior written consent of the owner of the land, or that the council follows the process set out in Schedule 12 of the Local Government Act 2002.
15. Schedule 12 requires that affected owners and occupiers are provided with a description of the proposed works, including plans, and are given the opportunity to object to the works within one month of notification.
16. If an objection is made, a hearing must be arranged. After hearing objections, the council must then determine to either abandon the works proposed, or proceed with the works proposed, with or without any alterations that the council thinks fit.

## Stormwater management consented for 118 Forrest Hill Road

17. A developer has been granted resource consent to develop a property at 118 Forrest Hill Road, Forrest Hill. A condition of that resource consent is that the new development connects to the public stormwater system.
18. The developer has obtained engineering approval to connect the development to the existing public stormwater line within 116A Forrest Hill Road (see Attachment A).

19. Staff propose that a 10-metre length pipe is constructed using an open-cut method (trenching), from the boundary of 118 and 116A Forrest Hill Road including minor excavations around the manhole located on 116A Forrest Hill Road. This method will cause minimal disruption.
20. Any excavations or changes to the property will be fully re-instated with pre and post works surveys being completed to ensure any changes are captured and remediated appropriately.
21. The new assets, once connected to the stormwater network, will be vested in Auckland Council as public stormwater assets to be owned and maintained by Healthy Waters and Flood Resilience.

### Objections received from landowners at 116A Forest Hill Road

22. The owners of 116A Forest Hill Road have not agreed to allow the developer to connect to the stormwater network via their property. The developer applied to the council to undertake the proposed works as a public project.
23. Stakeholder engagement commenced on 29 September 2022. However, no agreement was reached. The council then analysed the developer's works (as detailed below) and determined that the works are necessary public works, and that they would undertake the works as a council project under the powers of the Local Government Act 2002. This enables public works to be undertaken on private land without the owner's consent, provided the requirements of the act are met.
24. The council issued a notice of their intention to construct the works to the affected landowners under section 181 of the Local Government Act 2002 on 27 February 2024.
25. Following the issue of this notice, the council has continued to communicate with the landowners, however it has not been possible to reach an agreement.
26. Pursuant to schedule 12 of the Local Government Act 2002, the landowners had until 27 March 2024 to formally object to the section 181 notice. On 27 March 2024 an objection was received.

### Tātaritanga me ngā tohutohu Analysis and advice

27. The council is empowered to construct works on private land that it considers necessary for stormwater drainage. When determining the best option, council staff look at a range of possible options to achieve the required stormwater outcomes for the public good, and at the same time, to carefully balance any impacts on individual property owners.
28. The council analysed six alternative alignments for connecting the development at 118 Forrest Hill Road, Forrest Hill, to the public stormwater system (see Attachment C).
29. These options were:
  - **option one:** extending the public network from the existing manhole at 116a Forrest Hill Road (recommended option in the statutory notice)
  - **option two:** extending the public network from within the public road, Rains Avenue
  - **option three:** extending the public network from the cesspit lid within Forest Hill Road
  - **option four:** a kerb outlet discharge in front of 118a Forest Hill Road
  - **option five:** a private soakhole within 118 Forrest Hill Road
  - **option six:** do nothing.

The six options were analysed against relevant criteria as shown in Attachment E.

### Analysing options for stormwater management on 118 Forrest Hill Road.

30. **Option one** as demonstrated by the weightings set out in Attachment E, is the preferred option for the following reasons:
  - the route does not interfere with any existing services
  - the location of the works does not affect existing structures on the landowners' properties, resulting in minimal disturbance
  - the pipe route is the most compliant, effective and direct to reach the connection point
  - the route does not duplicate the existing network and is making efficient use of the current stormwater infrastructure.
31. **Option two** was considered high risk as the house at 2/21 Raines Avenue is too close to the potential alignment, as well as it being a duplication of the existing line between 116 and 17a/b Raines Avenue.
32. **Option three** would require a new manhole over the existing cesspit lead in the carriageway, in addition no gravity flow is possible, therefore a private stormwater tank and pump will be required. This method is considered sub-optimal and contrary to the Stormwater Code of Practice.
33. **Option four** considers including a kerb outlet discharge which is sub-optimal and a non-standard solution for stormwater. This approach is also not supported by Auckland Transport (affected party) as it would lead to road damage.
34. **Option five** is not suitable as a desktop investigation of geological maps reveals a non-supported soil type for soakage.
35. **Option six** considers doing nothing. This would involve the council taking no action in the situation and leaving the developer to continue to negotiate with the owner. This option is not supported, as it means the developer is likely to pursue the other non-supported options.

### Negotiating with the landowners

36. Negotiations with the landowners have been ongoing since 2022. Negotiations were held directly between the developer and the landowners, with the council becoming involved from August 2022 onwards.
37. The council has attempted to engage with the landowners to offer advice on the proposed works and to ensure any reasonable requests regarding the works could be met. Attachment D shows the council's response to the objection letter and the correspondence log.

### Summary of objections received from 116a Forrest Hill Road, Forrest Hill

38. Table 2 below details the grounds upon which the landowner objects to the works and the Healthy Waters and Flood Resilience response:

**Table 2: Summary of objections**

| Objection points   | Response from Healthy Waters  |
|--|---|
| <p><b>(a) The works under the notice are contrary to accepted engineering practice</b></p> | <ul style="list-style-type: none"> <li>• The proposed works have been independently reviewed, have received an approved resource consent and are considered to be in accordance with standard engineering practice.</li> <li>• However, the proposed works were based on a 1050mm manhole being at the property, identified in the consented engineering and as-built plans. This manhole does not exist and it is proposed that the council construct the manhole as part of the works. Refer to explanation below.</li> </ul> |



| Objection points   | Response from Healthy Waters  |
|--|---|
| <p><b>(b) The works under the notice breach the underlying resource consent and engineering approval</b></p>   | <ul style="list-style-type: none"> <li>The proposed works have been independently reviewed, have received an approved resource consent and are considered to be in accordance with standard engineering practice.</li> </ul> <p>However, the proposed works were based on a 1050mm manhole at the property, identified in the consented engineering and as-built plans. This manhole does not exist and it is proposed that the council construct the manhole as part of the works.</p> <ul style="list-style-type: none"> <li>Auckland Council does not rely on the developer's resource consent or engineering plan approval to undertake the works.</li> </ul>   |
| <p><b>(c) The works are not necessary in their current form as there are better alternatives available</b></p> | <ul style="list-style-type: none"> <li>Six options were investigated with the proposed option one being identified as the best option. Refer to Attachment E for options assessment.</li> </ul>   |
| <p><b>(d) The notice contains further errors</b></p>   | <ul style="list-style-type: none"> <li>With reference to points raised in the objections <ul style="list-style-type: none"> <li>a) The notice complies with Schedule 12 of the Act. The works installation is close to existing features on the property but would not clash with them. However, the council would be responsible for reinstating any damage should it occur.</li> <li>b) s460 of the Local Government Act 1974, which authorises the construction of private pipes on third party properties, is not applicable in this case.</li> <li>c) The notice describes the proposed works which were based on the existence of a 1050mm diameter manhole at the property identified in the consented engineering and as-built plans. This manhole however does not exist and it is proposed that Auckland Council construct the manhole as part of the works.</li> </ul> </li> </ul> |

### Concerns around 1050mm diameter manhole

39. The objector has raised the issue that the works were intended to connect to a 1050mm diameter manhole that is shown, on council records, as having been constructed at the property. Specifically, the objector claims that the 1050 diameter manhole did not exist and, therefore, establishes the grounds for objection (as discussed above).
40. In 2008, the objector undertook a development at the property and was required under the resource consent to construct a 1050mm diameter manhole as part of that development. Records provided to the council on behalf of the objector show that the 1050mm diameter manhole had been constructed and the asset was subsequently recorded in the council's asset database.
41. Since the objection was received, the council's engineer has received photographs from the objector showing that the 1050mm diameter manhole does not exist and a non-access chamber was constructed instead. This was confirmed by a site inspection on 23 December 2024.

42. Based on this finding, council staff accept that the description of existing assets in the statutory notice is incorrect. However, staff consider that a new 1050mm diameter manhole can be installed without impact as part of the works. Rather than withdraw, and reissue, the statutory notice, staff request that the Regulatory and Safety Committee make a resolution to proceed with the proposed works with an alteration that allows the 1050mm manhole to be constructed at the same time as the pipeline. This approach is described as **Option One (Amended)**.
43. Staff consider that the addition of the manhole does not materially affect the descriptions in the statutory notice, which can be amended as set out below in Table 2 (additions shown in **bold**, deletions in ~~strikethrough~~).

**Table 1. Amendments to statutory notice to allow for the installation of a 1050mm manhole**

| Statutory notice description amendment  |   |
|---|---|
| <b>Description of the Works</b>         | <p>The works involve the installation of a new stormwater line <b>and replacement of the existing non- access chamber (700mm diameter) by a 1050mm manhole</b> <del>to connect to the existing manhole</del> on the property at 116A Forrest Hill Road. The proposed installation of a new stormwater line <b>and manhole</b> will be by open trench excavation from the existing <del>manholes</del> <b>non-access chamber</b> at 116A to the proposed manholes A at 118 Forrest Hill Road.</p> <p>Refer to Schedule 1 <b>for a drawing of the works.</b> <del>with the drawings issued by MAKO Civil Engineering Consultants and approved under resource consent BUN60418745.</del></p> |
| <b>Affects Effects to your property</b> | <p>Your property will be <del>affected</del> <b>effected</b> temporarily by excavations around the manhole and trench required to install the pipe, and fence removal at the boundary with 118 Forrest Hill Road to enable access to contractor staff and machinery.</p> <p>Once the works are completed, the Council will reinstate any damage to the property, as far as is practicable, to its pre-works condition; and repair any damage that has been caused.</p>  |

44. A copy of the amended statutory notice and associated drawing is attached as Schedule A to this report.

### Recommended stormwater management option

45. Staff recommend that construction of the proposed stormwater works proceed at 116A Forrest Hill Road, Forrest Hill as per Option One (Amended) in this report.
46. The works are necessary to enable development at 118 Forrest Hill Road and to meet the council's stormwater standards. Works are expected to take up to a week to complete, and staff will work with the landowners to ensure minimal disruption occurs.

### Tauākī whakaaweawe āhuarangi Climate impact statement

47. Auckland Council adopted Te Tāruke-ā-Tāwhiri: Auckland's Climate Plan on 21 July 2020. Some of the key elements of the plan include how we will adapt to climate change, taking a precautionary approach and preparing for our current emissions pathway and the prospect of a 3.5 degrees warmer region.

48. One of the expected consequences of rising global temperatures is increased and more intense rainfall. To contribute to increasing Auckland's resilience to climate change, the Auckland Council Stormwater Code of Practice requires all new infrastructure to be designed to deal with these expected impacts and severe weather events.
49. The proposed pipe has been designed to cater for 10 per cent annual exceedance probability (1 in 10-year average recurrence interval) storm events, including allowance for climate change. This has the effect of making the network more resilient to storm events and reducing the likelihood of flooding of properties.

### Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera Council group impacts and views

50. Watercare Services Limited (WSL) and Auckland Transport assets will not be impacted by the proposed works if option one is undertaken. Other options will require consultation with Auckland Transport and WSL to determine the impact to existing wastewater infrastructure and road networks.
51. The pipe, once constructed will be vested in the council and will form part of the public stormwater network to be maintained by Healthy Waters and Flood Resilience.

### Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe Local impacts and local board views

52. The Devonport–Takapuna Local Board has not been consulted on the proposed stormwater works, as the pipe will be constructed on private land.

### Tauākī whakaaweawe Māori Māori impact statement

53. The developer has not consulted local iwi on the proposed stormwater works outlined in this report.
54. Council staff notified iwi representatives of the proposed project through the Healthy Water and Flood Resilience monthly email of all active projects. Iwi representatives were asked to signal whether they would like to be engaged on this project, however, no feedback has been received from iwi to date.
55. Improved water quality for Tāmaki Makaurau is a priority for mana whenua. The recommended option will contribute to a better functioning stormwater management system, reducing the impact of the development on water quality.

### Ngā ritenga ā-pūtea Financial implications

56. The recommended option is the most cost effective for the council, as it involves the shortest and most direct pipe alignment. If approved, the pipe will be constructed by the council, with costs of the works to be paid for by the developer upfront.
57. The council will be responsible for any proven injurious affection to private land pursuant to section 181(6) of the Local Government Act 2002, and the Public Works Act 1981. The likelihood of an injurious affection claim being brought is considered low.
58. To minimise any risk to council which may arise from a potential Injurious Affection claim, a \$100,000 bond is held for up to two years from the developer following the completion of the works.

### Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

59. Staff have undertaken risk assessment and proposed mitigations relating to the endorsement of option one as shown in Table 3 below:

**Table 3. Risks and mitigations arising from option one: crossing land at 116A Forrest Hill Road, Forrest Hill**

| Risk  | Likelihood and consequence                     | Mitigation  |
|---|--|---|
| <p><b>Legal risk – Objectors argue that this is in fact a private pipe and Auckland Council ought to use section 460 of the Local Government Act 1974 instead of section 181 Local Government Act 2002.</b></p> | <p>Likelihood: Low<br/>Consequence: Medium</p> | <p>The pipe will be vested in the council once constructed and will form part of the public stormwater system which the council is responsible for maintaining. It is being built to the council’s standards for public stormwater infrastructure and will serve a wider catchment as the area develops further.</p>  |
| <p><b>Financial risk – If the landowner appeals the Regulatory and Safety Committee’s decision, the council may become liable for the cost of defending a District Court case.</b></p>                          | <p>Likelihood: Low<br/>Consequence: Low</p>    | <p>Given that the Regulatory and Safety Committee and District Court’s decision-making discretion is limited only to questions of the works being necessary and compliance with legal process, and not matters of compensation, it is considered unlikely that an appeal would be brought. Even if it was, the risk of the council losing on appeal is considered low, due to the works being necessary, and the section 181 process being followed correctly.</p> <p>If the landowner is unsuccessful in any legal challenge, they may be liable to pay court costs.</p>                         |
| <p><b>The landowner could seek injurious affection (if evidenced) through the Land Valuation Tribunal.</b></p>  | <p>Likelihood: Low<br/>Consequence: Low</p>    | <p>The potential for an injurious affection claim is considered low in this case for the following reasons:</p> <ul style="list-style-type: none"> <li>• the proposed pipe does not involve the taking of any land</li> <li>• proposed methodology will cause minimal impact to the backyard of 116A Forrest Hill which will be reinstated upon completion of the works</li> <li>• a \$100,000 bond provided by the developer is held for up to two years following the completion of the works</li> <li>• if the landowners are unsuccessful, they will be liable to pay court costs.</li> </ul> |
| <p><b>Infrastructure risk - Low quality assets being vested to the council.</b></p>   | <p>Likelihood: Low<br/>Consequence: Low</p>    | <p>The works will be undertaken by an approved council contractor who will have in place sufficient insurances to cover the risk of failure.</p>  |

## Ngā koringa ā-muri Next steps

60. If the Regulatory and Safety Committee determines to proceed with the project (under Schedule 12 clause 1(e)(ii)), the next step will be to notify the landowner in writing of the council's intention to proceed with the works.
61. The affected landowners have up to 14 days to lodge a further appeal to the District Court. If this occurs, then the council's Legal team will support this process. If no appeal is lodged, the council would look to proceed with the works as soon as possible, with the works taking approximately one week to complete.

## Ngā tāpirihanga Attachments

| No.               | Title                         | Page |
|-------------------|-------------------------------|------|
| <a href="#">A</a> | Engineering planning approval |      |
| <a href="#">B</a> | Objection letter              |      |
| <a href="#">C</a> | Alignment options             |      |
| <a href="#">D</a> | Facilitation summary          |      |
| <a href="#">E</a> | Analysis of alignment options |      |

## Ngā kaihaina Signatories

|             |   |
|-------------|---|
| Authors     | Thomas Parsons - Healthy Waters Specialist, Commercial & Property Team<br>Shaun McAuley - Commercial & Property Team Leader, Healthy Waters |
| Authorisers | Barry Potter - Director Resilience and Infrastructure<br>Rachel Kelleher - Director Community   |



## Objection to stormwater works at 78 Onewa Road

File No.: CP2025/00117

Item 12

### Te take mō te pūrongo Purpose of the report

1. To hear and determine an objection to proposed stormwater works at 16 Bush View Lane, Northcote, pursuant to section 181 of the Local Government Act 2002.

### Whakarāpopototanga matua Executive summary

2. A developer has obtained approval from the council to connect a new development at 78 Onewa Road to the public stormwater manhole that is located within the shared accessway of 16 Bush View Lane.
3. The proposed works involve the construction of a 25-metre long 200mm diameter stormwater pipe below the shared accessway and installation of a new manhole at 16 Bush View Lane (see Attachment A – Engineering planning approval). The work is estimated to take up to two weeks. Once constructed, this pipe is intended to be vested in the council as a public stormwater asset.
4. The owner/s of 10, 12, 14 and 16 Bush View Lane have not agreed to allow the developer access to their properties for this purpose. The owner/s of 10, 12 and 14 Bush View Lane had their objections to the proposed works heard at the Regulatory and Safety Committee (Committee) meeting, held on 3 December 2024. At this meeting, the committee moved to continue with the proposed works (RSCCC/2024/87).
5. At that meeting, it was raised that the owners of 16 Bush View Lane had lodged an objection, but not received invitation to be heard by the committee. A subsequent investigation revealed that an administrative error meant the objection was not responded to in the usual way before a decision is made by the Committee.
6. The objection from 16 Bush View Lane was then scheduled for this meeting, enabling it to be heard in full. See Attachment B.
7. A site inspection and assessment for the pipe considered the following alternative options:
  - **Option One:** extending the public network from the shared accessway of 16 Bush View Lane (recommended option)
  - **Option Two:** extending the public network from 24 Bush View Lane, Birkenhead
  - **Option Three:** extending the public network from 2/78A Onewa Road, Birkenhead
  - **Option Four:** do nothing.
8. Council staff have determined that the works constitute necessary public stormwater works, and option four (do nothing) is not viable. Council has issued a notice under section 181(2) of the Local Government Act 2002 informing the landowners of its intention to construct the works as a council project in line with option one (the recommended option).
9. The landowners of 16 Bush View Lane have lodged a written objection to the works, on the grounds that the works will create insufficient capacity within the network, create further damage to the shared driveway of Bush View Lane, create significant disruption to the 28 owners of the shared access way, and create additional maintenance responsibility for the existing Bush View Lane owners.

10. This report recommends that the Regulatory and Safety Committee resolve that the council proceed with the proposed public stormwater works at 16 Bush View Lane, including option one, to manage the stormwater effects of the approved consented development at 78 Onewa Road.
11. If the Regulatory and Safety Committee determines that the works should proceed, construction will begin as soon as reasonably possible (weather dependent). It is proposed that the pipe will be installed by horizontal directional drilling, which is a trenchless methodology designed to minimise disruption caused by construction. The works will take approximately 10 days to complete.
12. Staff have explained to all the affected property owners that if the works go ahead, they have the right to claim injurious affection (if established) under the Public Works Act 1981.

## Ngā tūtohunga Recommendations

That the Regulatory and Safety Committee:

- a) hear and determine the objections by the owners of 16 Bush View Lane according to clause 1(e) of Schedule 12 of the Local Government Act 2002.
- b) tuhi ā-taipitopito / note that the staff recommendation is proceed with the extension of the public stormwater network from 78 Onewa Road (as shown in Attachment A – approved engineering plans), according to clause 1(e) of Schedule 12 of the Local Government Act 2002.

## Horopaki Context

13. Auckland Council's Healthy Waters and Flood Resilience department is responsible for managing and maintaining the public stormwater network in Auckland, much of which is located on private land.
14. Section 181(2) of the Local Government Act 2002 empowers the council to 'construct works on or under private land or under a building on private land that it considers necessary for sewage and stormwater drainage'.
15. Such works require either the prior written consent of the owner of the land, or that the council follows the process set out in Schedule 12 of the Local Government Act 2002.
16. Schedule 12 requires that affected owners and occupiers are provided with a description of the proposed works, including plans, and are given the opportunity to object to the works within one month of notification.
17. If an objection is made, a hearing must be arranged. After hearing objections, the council must then determine to either abandon the works proposed, or proceed with the works proposed, with or without any alterations that the council thinks fit.

## Stormwater management consented for 78 Onewa Road, Northcote.

18. A developer has been granted resource consent by Auckland Council's regulatory department to develop a property at 78 Onewa Road. A condition of that resource consent is that the new development connects to the public stormwater system.



19. The developer has obtained engineering approval to connect the subdivision to the existing public stormwater network located within the shared accessway of 16 Bush View Lane (see Attachment A). The connecting pipe will be drilled from the development site of 78 Onewa Road, between 14 and 16 Bush View Lane to the existing stormwater line on the shared accessway.
20. Staff propose that a new 200mm diameter stormwater pipe be directionally drilled from 78 Onewa Road to connect to the new manhole which will be installed over the existing stormwater line.
21. Excavation and concrete / asphalt cutting will be required around the proposed new manhole location as per the drawings in Attachment A.
22. The new pipe, once connected to the stormwater network, will be vested in Auckland Council as a public stormwater asset to be owned and maintained by Healthy Waters and Flood Resilience.

### Objection received from landowners at 16 Bush View Lane.

23. The owner/s of 10, 12, 14 and 16 Bush View Lane have not agreed to allow the developer access to their properties for the construction of a 25m long stormwater pipe below their shared accessway and installation of a new manhole at 16 Bush View Lane. The owner/s of 10, 12 and 14 Bush View Lane had their objections to the proposed works heard at the Regulatory and Safety Committee meeting, held on 3 December 2024. At this meeting, the committee moved to continue with the proposed works ([RSCCC/2024/87](#)).
24. At that meeting, it was raised that the owners of 16 Bush View Lane had lodged an objection, but not received invitation to be heard by the committee. A subsequent investigation revealed that an administrative error meant the objection was not responded to in the usual way before a decision is made by the Committee.
25. The objection from 16 Bush View Lane was then scheduled for this meeting, enabling it to be heard in full. See Attachment B.
26. The owners of 16 Bush View Lane have not agreed to allow the developer to connect to the stormwater network via their property. The developer then applied to the council to undertake the proposed project as a public project under the Local Government Act 2002.
27. Engagement by the developer with the affected residents commenced in June 2021. The council then assessed the developer's works (as detailed below) and determined that the works were necessary public works, and that they would undertake the works as a council project under the powers of the Local Government Act 2002. This enables public works to be undertaken on private land without the owner's consent, provided the requirements of the Act are met.
28. The council issued a notice of their intention to construct the works to the affected landowners under section 181 of the Local Government Act 2002 on 20 September 2024.
29. Following the issue of this notice, the council has continued to communicate with the landowners.
30. Pursuant to schedule 12 of the Local Government Act 2002, the landowners had until 25 October 2024 to formally object to the section 181 notice. The owners of 16 Bush View Lane objected to the proposed works via email, dated 18 of October 2024 (see Attachment B).

## Tātaritanga me ngā tohutohu

### Analysis and advice

31. The council is empowered to construct works on private land that it considers necessary for stormwater drainage. When determining the best option, the council looks at a range of possible options to achieve the required stormwater outcomes for the public good, and at the same time, to carefully balance any impacts on individual property owners.

32. The council analysed four alternative alignments for connecting the development at 78 Onewa Road, Northcote to the public stormwater system (see Attachment C).
33. These options were:
  - **Option One:** extending the public network from the shared accessway of Bush View Lane (**recommended option**)
  - **Option Two:** extending the public network from 24 Bush View Lane, Northcote
  - **Option Three:** extending the public network from 2/78A Onewa Road, Northcote
  - **Option Four:** do nothing.

The four options were analysed against relevant criteria as shown below in Attachment E.

### Analysing options for stormwater management on 78 Onewa Road

34. **Option one** as demonstrated by the weightings set out in Attachment E, is the preferred option for the following reasons:
  - the route does not interfere with any existing services
  - the location of the works does not affect any existing structures on the landowners' properties, resulting in minimal disturbance
  - the land proposed to be crossed is a driveway and not land that could be developed for housing or other structures
  - the pipe route is the most logical and direct to reach the connection point
  - the route does not duplicate existing stormwater infrastructure.
35. In addition to these factors, Healthy Waters and Flood Resilience engineers have determined that option one can be constructed using a trenchless method, which would have minimal impact on the affected property owners.
36. **Option Two** has not been considered as the preferred alignment option as it would require approximately 75m of piping through to the public network on 24 Bush View Lane. This alignment would require an open-cut method due to the steepness of the surrounding terrain. Also, the re-instatement of an open-cut method in this area has been deemed extremely costly and the constructability has been deemed a higher risk.
37. **Option Three** has not been pursued as the preferred alignment option as it would require the installation of a manhole on 2/78A Onewa Road. This manhole's level would be too high and a suitable level unachievable. Auckland Council staff assessed whether a 'siphon system' could be used instead, it was however identified that a siphon system would only be able to service approximately 10 per cent of the site area. To service the whole site, a stormwater tank and pump system would be required, which is against the stormwater code of practice and carries the potential risk of flooding during large rain events.
38. **Option Four** considers doing nothing. This would involve the council walking away from the situation and leaving the developer to continue to negotiate with the owner. This option is not supported, as it means the developer is likely to pursue option two as option three would not meet the stormwater code of practice standards. As described above, Option Two would mean higher risk in relation to constructability, future maintenance, remediation, and the impacts on affected owners.

### Negotiating with the landowners

39. Negotiations with the landowners have been ongoing since June 2021. Negotiations were held directly between the developer and the landowners, with the council becoming involved from 22 August 2022 onwards. Once the council was involved, negotiations ceased, and stakeholder engagement became the primary focus.
40. The council has attempted to engage with the landowners to offer advice on the proposed works and to ensure any reasonable requests regarding the works could be met.

41. Attachment D shows the council's response to the objection letter and the correspondence log.

### Summary of objections received

42. Table 1 below details the grounds upon which the landowner objects to the works and Healthy Waters and Flood Resilience response, also refer to Attachment B.

**Table 1. Summary of objections from 16 Bush View Lane**

| Objection points   | Response from Healthy Waters and Flood Resilience  |
|--|--|
| <b>Insufficient stormwater capacity and existing issues with stormwater overflow</b> | <ul style="list-style-type: none"> <li>Healthy Water and Flood Resilience engineers are not aware of any reactive flooding complaints that may indicate the current level of service being compromised or potentially compromised by the proposed development. The consents have been issued by council for the proposed works which confirms that local network's capacity and proposed mitigations are satisfactory.</li> </ul>                  |
| <b>Potential damage to private shared driveway / lane</b>                            | <ul style="list-style-type: none"> <li>Following completion of the works, the council would reinstate the property, as far as is practicable, to its pre-works condition.</li> <li>Any permanent damage on the affected parties' property resulting from the works can be claimed through an injurious affection claim. This can be claimed for up to two years post-completion of the works.</li> </ul>   |
| <b>Access mitigation</b>   | <ul style="list-style-type: none"> <li>Staff will actively work with any affected owners during the construction to ensure that access is provided when required.</li> </ul>   |
| <b>Responsibility for pipe maintenance</b>   | <ul style="list-style-type: none"> <li>Any new stormwater assets which are constructed, as part of these works, within Bush View Lane (outside of 78 Onewa Road) will be vested to and maintained by council.</li> </ul>   |
| <b>Consultation with homeowners</b>  | <ul style="list-style-type: none"> <li>All of the affected parties, as required by s181 of the Local Government Act, have been issued a s181 notice and provided the opportunity to have their concerns / objections heard by the Regulatory and Safety committee.</li> <li>Council staff will continue to cooperate with the affected parties throughout the construction process.</li> </ul>   |
| <b>Capacity and future expansion</b>   | <ul style="list-style-type: none"> <li>Auckland Council's LTP has prioritised growth throughout Auckland. Because of this, many developments are being approved which require a public stormwater network to be extended from adjoining properties. The proposed option has been recommended as the councils has granted consent and is considered the most practical solution that meets the Stormwater Code of Practice requirements.</li> </ul> |

## Recommended stormwater management option

43. Staff recommend that construction of the proposed stormwater works proceed at 16 Bush View Lane in line with the option one assessment.
44. The works are necessary to enable development at 78 Onewa Road and to meet the council's required stormwater standards. Works are expected to take up to 10 days to complete, and staff will work with the landowners to ensure minimal disruption occurs.

## Tauākī whakaaweawe āhuarangi Climate impact statement

45. Auckland Council adopted Te Tāruke-ā-Tāwhiri: Auckland's Climate Plan on 21 July 2020. Some of the key elements of the plan include how we will adapt to climate change, taking a precautionary approach and preparing for our current emissions pathway and the prospect of a 3.5 degrees warmer region.
46. One of the expected consequences of rising global temperatures is increased and more intense rainfall. To contribute to increasing Auckland's resilience to climate change, the Auckland Council Stormwater Code of Practice requires all new infrastructure to be designed to deal with these expected impacts and severe weather events.
47. The proposed pipe has been designed to cater for 10 per cent annual exceedance probability (1 in 10-year average recurrence interval) storm events, including allowance for climate change. This has the effect of making the network more resilient to storm events and reducing the likelihood of flooding of properties.

## Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera Council group impacts and views

48. Watercare and Auckland Transport assets will not be impacted by the proposed works if option one is undertaken.
49. The pipe once constructed will be vested in the council and will form part of the public stormwater network to be maintained by Healthy Waters and Flood Resilience.

## Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe Local impacts and local board views

50. The Kaipātiki Local Board has not been consulted on the proposed stormwater works, as the pipe will be constructed on private land.

## Tauākī whakaaweawe Māori Māori impact statement

51. The developer has not consulted local iwi on the proposed stormwater works outlined in this report.
52. Council staff notified iwi representatives of the proposed project through Healthy Waters and Flood Resilience monthly email of all active projects. Iwi representatives were asked to indicate whether they would like to be engaged on this project, however, no feedback has been received from iwi to date.
53. Improved water quality for Tāmaki Makaurau is a priority for mana whenua. The recommended option will contribute to a better functioning stormwater management system, reducing the impact of the development on water quality.

## Ngā ritenga ā-pūtea Financial implications

54. The recommended option is the most cost effective for the council while complying with the Stormwater Code of Practice. If approved, the pipe will be constructed by the council, with costs of the works to be paid for by the developer upfront.
55. The council will be responsible for any proven injurious affection to private land pursuant to section 181(6) of the Local Government Act 2002, and the Public Works Act 1981. The likelihood of an injurious affection claim being brought is considered low, see Table 3.
56. To minimise any risk to council which may arise from a potential Injurious Affection claim, a \$100,000 bond is held for up to two years following the completion of the works.

## Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

57. Staff have undertaken a risk assessment as shown in Table 2 below.

**Table 2. Risks and mitigations arising from option one: crossing land at 16 Bush View Lane, Northcote**

| Risk   | Likelihood and consequence             | Mitigation  |
|--|--|---|
| <b>Legal risk – Objectors argue that this is in fact a private pipe and Auckland Council ought to use section 460 of the Local Government Act 1974 instead of section 181 Local Government Act 2002.</b> | Likelihood: Low<br>Consequence: Medium | The pipe will be vested in the council once constructed and will form part of the public stormwater system which the council is responsible for maintaining. It is being built to the council's standards for public stormwater infrastructure and will serve a wider catchment as the area develops further.   |
| <b>Financial risk – If the landowners appeals the Regulatory and Safety Committee's decision, the council may become liable for the cost of defending a District Court case.</b>                         | Likelihood: Low<br>Consequence: Low    | Given that the Regulatory and Safety Committee and District Court's decision-making discretion is limited only to questions of the works being necessary and compliant with legal process, and not matters of compensation, it is considered unlikely that an appeal would be brought. Even if it was, the risk of the council losing on appeal is considered low, due to the works being necessary, and the section 181 process being followed correctly.<br><br>If the landowner is unsuccessful in any legal challenge, they may be liable to pay court costs. |

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| Risk  | Likelihood and consequence                     | Mitigation   |
|---|--|--|
| <p><b>Compensation - The landowners could seek injurious affection (if evidenced) through the Land Valuation Tribunal</b></p> | <p>Likelihood: Low<br/>Consequence: Low</p>    | <p>The potential for an injurious affection claim is considered low in this case for the following reasons:</p> <ul style="list-style-type: none"> <li>the proposed pipe does not involve the taking of any land</li> <li>the area affected by the works is a concrete driveway and the installation of this pipe would not impact any potential future development</li> <li>the proposed methodology will cause minimal impact to the driveway which will be reinstated upon completion of the works</li> <li>A \$100,000 Bond provided by the developer is held for up to two years following the completion of the works.</li> </ul> <p>If the landowners are unsuccessful, they will be liable to pay court costs.</p> |
| <p><b>Infrastructure risk - low quality assets being vested to the council.</b></p>   | <p>Likelihood: Low<br/>Consequence: Medium</p> | <p>The works will be undertaken by an approved council contractor who will have in place sufficient insurances to cover the risk of failure.</p>   |

## Ngā koringa ā-muri

### Next steps

58. If the Regulatory Committee determines to proceed with the project (under Schedule 12 clause 1(e)(ii)), the next step will be to notify the landowner in writing of the council's intention to proceed with the works.
59. The affected landowners have up to 14 days to lodge a further appeal to the District Court. If this occurs, then the council's Legal team will support this process. If no appeal is lodged, the council would look to proceed with the works as soon as possible, with the works taking approximately 10 days to complete.

## Ngā tāpirihanga Attachments

| No.                | Title                         | Page |
|--------------------|-------------------------------|------|
| <a href="#">A⇒</a> | Engineering approved plans    |      |
| <a href="#">B⇒</a> | Objections letters            |      |
| <a href="#">C⇒</a> | Alternative alignment options |      |
| <a href="#">D⇒</a> | Correspondence log            |      |
| <a href="#">E⇒</a> | Analysis of alignment options |      |

## Ngā kaihaina Signatories

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