

9. STATUTORY CONSIDERATIONS

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9.1 General

These sections describe the statutory frameworks (including zoning, objectives, policies and rules), and the resource consents needed.

9.2 The Resource Management Act

Section 104 of the Resource Management Act 1991 (RMA) sets out the matters to which a consent authority must have regard when considering applications for resource consents. In particular Section 104(1) is relevant:

- (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 policy statement;*
 - (ii) *a New Zealand coastal policy statement;*
 - (iii) *a regional policy statement or proposed regional policy statement;*
 - (iv) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

Section 105 sets out other matters that the consent authority must have regard to in addition to those in Section 104(1) for certain applications, including discharge permits. Section 105(1) is relevant, and states the following:

- (1) *If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), have regard to –*
- (a) *the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
 - (b) *the applicant’s reasons for the proposed choice; and*
 - (c) *any possible alternative methods of discharge, including discharge into any other receiving environment.*

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These sections provide the statutory framework for the assessment of the resource consent applications. Section 108 is also relevant as it sets out the parameters within which conditions may be applied to a consent when it is granted.

Therefore the Council must consider a range of matters under Sections 104 and 105 of the Act when making decisions on the applications for resource consents. However, these matters are subject to Part II (Purpose and Principles) of the Act.

The purpose of the RMA is to promote the sustainable management of natural and physical resources.

Sustainable management is defined as meaning:

“the management of natural and physical resources in a way or at a rate that enables people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety, while

- (a) Sustaining the potential for natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations.*
- (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”.*

Matters of national importance (Section 6) relevant to this application (which must be recognised and provided for) include the following:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands and rivers and their margins and the protection of them from inappropriate subdivision, use and development*
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development*
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.*

Relevant matters to which regard must be had (Section 7) include the following:

- (a) kaitiakitanga*
 - (aa) the ethic of stewardship*
- (b) the efficient use and development of natural and physical resources*
 - (ba) the efficiency of the end use of energy*
- (c) the maintenance and enhancement of amenity values*
- (d) intrinsic values of ecosystems*
- (f) maintenance and enhancement of the quality of the environment*
- (g) any finite characteristics of natural and physical resources*
- (i) the effects of climate change*

Section 8 requires that the principles of the Treaty of Waitangi must be taken into account by all persons exercising functions and power under the Act in relation to managing the use, development and protection of natural and physical resources.

All the above matters have been fully covered in the preceding assessment of the effects of the proposal on the environment.

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9.3 Otago Regional Policy Statement

The Regional Policy Statement for Otago 1998 (RPS) seeks to provide an overview of the resource management issues of the region. It sets out how natural and physical resources are to be managed in an integrated way with the aim of sustainable management.

The main objectives within the RPS, which are relevant to these applications, include the following:

- 4.4.1 *Waahi Tapu (Sacred places): To recognise the spiritual and customary importance of waahi tapu (such as burial places) to Kai Tahu and to recognise and provide for the protection of waahi tapu from physical disturbance, erosion, pollution and inappropriate land use.*
- 4.4.2 *Waahi Taoka (Treasured Resources): To recognise and provide for the special significance that all taoka play in the culture of Kai Tahu.*
- 4.4.3 *Wai (Water): To recognise the principle of wairua and mauri in the management of Otago's water bodies.*
- 5.4.1 *To promote the sustainable management of Otago's land resources in order:*
 - (a) *To maintain and enhance the primary productive capacity and life-supporting capacity of land resources; and*
 - (b) *To meet the present and reasonably foreseeable needs of Otago's people and communities.*
- 5.4.3 *To protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development.*
- 5.4.5 *To promote the sustainable management of Otago's mineral resources in order to meet the present and reasonably foreseeable needs of Otago's communities.*
- 6.4.1 *To allocate Otago's water resources in a sustainable manner which meets the present and reasonably foreseeable needs of Otago's people and communities.*
- 6.4.2 *To maintain and enhance the quality of Otago's water resources in order to meet the present and reasonably foreseeable needs of Otago's people and communities.*
- 6.4.3 *To safeguard the life-supporting capacity of Otago's water resources through protecting the quantity and quality of those water resources.*
- 6.4.4 *To maintain and enhance the ecological, intrinsic, amenity and cultural values of Otago's water resources.*
- 6.4.5 *To avoid, remedy or mitigate degradation of water resources resulting from the use, development or protection of the beds and banks of Otago's water bodies and of adjacent land areas.*
- 7.4.1 *To maintain and enhance Otago's existing air quality, including visual appearance and odour.*
- 9.4.1 *To promote the sustainable management of Otago's built environment in order to:*
 - (a) *Meet the present and reasonably foreseeable needs of Otago's people and communities; and*
 - (b) *Provide for amenity values, and*
 - (c) *Conserve and enhance environmental and landscape quality; and*
 - (d) *Recognise and protect heritage values.*
- 9.4.3 *To avoid, remedy or mitigate the adverse effects of Otago's built environment on Otago's natural and physical resources.*

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- *9.5.3 To promote and encourage the sustainable management of Otago's transport network through:*
 - (a) Promoting the use of fuel efficient modes of transport; and*
 - (b) Encouraging a reduction in the use of fuels which produce emissions harmful to the environment; and*
 - (c) Promoting a safer transport system; and*
 - (d) Promoting the protection of transport infrastructure from the adverse effects of land use activities and natural hazards.*

Also of particular note is Policy 5.5.8:

"To recognise known mineral deposits and to consider the potential for access to those mineral resources to be compromised or removed by other alternative land development".

9.4 Otago Regional Land Transport Strategy

This document was updated in 2005 and sets the direction for development of the transport system in Otago for the next 10 years.

The vision for Otago is to seek transportation systems that:

- Enable the Otago **economy** to thrive.
- Offer a safe physical **environment** for all users.
- Deliver a healthy, pleasant and low pollution **environment**.
- Promote a **social** environment that is supportive and enables participation by all sectors.
- Foster **community ownership** of land transport decision-making.
- **Integrate** land use and transport needs.
- Are **innovative and responsive** to change.

9.5 Otago Regional Plan – Air

The Otago Regional Plan: Air became operative on 1 January 2003. The purpose of this plan is to promote the sustainable management of the air resource in Otago.

Key objectives from the Air Plan, which are relevant to the proposal, include:

- *6.1.1 To maintain ambient air quality in parts of Otago that have high air quality and enhance ambient air quality in places where it has been degraded.*
- *6.1.2 To avoid adverse localised effects of contaminant discharges into air on:*
 - (a) Human health;*
 - (b) Cultural, heritage and amenity values;*
 - (c) Ecosystems and the plants and animals within them; and*
 - (d) The life-supporting capacity of air.*

9.5.1 Assessment – Air Plan Rules

Air Plan Rules	Comment	Activity Status
16.3.3.1 and 16.3.3.2(2)	No prohibited materials listed under 16.3.3.1 will be used in the plant, however burning of waste oil is proposed and consent is required under rule 16.3.3.2(2).	Discretionary
16.3.4 and 16.3.4.3	Rules under 16.3.4 relate to products of combustion from fuel burning equipment and in particular rule 16.3.4.3 relates to the proposed activity as the heat generation capacity of the site will exceed 5MW.	Discretionary
16.3.5	<p>Sorting, crushing, screening, conveying and storing powdered or bulk products is restricted in capacity and rate of process under rule 16.3.5.2. As the storage and work undertaken in the quarries, pits and on the plant site will not meet these restrictions, resource consent is required under rule 16.3.5.9.</p> <p>The proposal will involve discharges from mineral extraction and processing (rule 16.3.5.3) which exceed the permitted rates and so, again, resource consent is required under rule 16.3.5.9.</p> <p>Rule 16.3.5.4 relates to discharges from chemical processing, manufacturing and industrial or trade processes. As the proposal may exceed the permitted discharges under this rule, again resource consent is sought under rule 16.3.5.9.</p>	Discretionary
16.3.7.3	The potential for odour from the wastewater treatment plant is covered under rule 16.3.7.3.	Discretionary
16.3.13.1(2)	Building and construction activities are covered by rule 16.3.13.1(2) and would cover discharge of dust from construction on the application sites. Where these do not cause discharge that is noxious, dangerous, offensive or objectionable at or beyond the boundary of the property they are permitted activities. The proposal will meet these provisions.	Permitted

Table 9.1: Air Plan Rules

In summary, Holcim seeks all air permits necessary for the project, including:

- burning of waste oil (discretionary),
- combustion from fuel burning equipment (discretionary),
- discharges from industrial or trade processes, including discharges from mineral extraction, handling and storage (discretionary), and
- potential for odour from wastewater treatment (discretionary).

9.6 Otago Regional Plan – Water

The Otago Regional Plan: Water became operative on 1 January 2004. The purpose of this plan is to provide a framework for the integrated and sustainable management of Otago's water resources.

Key objectives from the Water Plan, which are relevant to the proposal, include:

- 6.3.2 *To provide for the water needs of Otago's primary and secondary industries, and community domestic water supplies.*
- 6.3.4 *To maximise the opportunity for diverse consumptive uses of water which is available for taking.*
- 7.5.1 *To maintain or enhance the quality of water in Otago's lakes and rivers so that it is suitable to support their natural and human use values and people's use of water.*
- 8.3.1 *To maintain:*
 - (a) *The stability and function of existing structures located in, on, under or over the bed or margin of any lake or river;*
 - (b) *The stability of the bed and bank of any lake or river; and*
 - (c) *The flood and sediment carrying capacity of any lake or river.*
- 9.3.1 *To sustain the recognised uses of Otago's groundwater.*
- 9.3.2 *To maintain long-term aquifer yield in Otago's groundwater resources.*
- 9.3.3 *To maintain the quality of Otago's groundwater.*

9.6.1 Assessment – Water Plan Rules

Section 12 of the Water Plan relates to water use and management.

Under the proposal, water takes will be required for irrigation and dust suppression, for use in the plant process and for dust control. This water will come partly from re-use, partly from the onsite pond at the plant site and at Ngapara, and partly from bores on the plant site. Any other onsite water needs will be sourced from the North Otago Irrigation Company.

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Water Plan Rules	Comment	Activity Status
12.1 and 12.2	The irrigation water is a permitted activity under rule 12.1.2.5, while the bore water is a discretionary activity under rule 12.2.4. The use of groundwater is a discretionary activity.	Discretionary
12.2	Groundwater takes and their use as part of construction and piling are also covered by rule 12.2.4 as a discretionary activity.	Discretionary
12.3.2.1 and 12.3.2.2	Some damming and diversion of water will occur as part of land drainage and control of water runoff on all the application sites. This is a permitted activity under rules 12.3.2.1 and 12.3.2.2.	Permitted
12.4 and 12.13	The discharge of storm water is covered by the rules under section 12.4. As the proposed storm water management system (collect, store, treat and discharge) on the application sites is not reticulated, it is to be assessed as a restricted discretionary activity under rule 12.4.2.1. The disposal of pit water is a discretionary activity under rule 12.13.1.	Discretionary
12.6	The proposal seeks to manage sewage (and grey water) on the plant site through a Membrane Bioreactor system. The treated wastewater will be reused on-site for toilet flush water, process water and for landscape drip line-irrigation. Whilst the sludge produced in the treatment plant will be periodically collected by a septage contractor. Under rule 12.6.2.1 this is a discretionary activity.	Discretionary
13.5	The rules in section 13 relate to land use on lake or river beds, and so are generally not applicable to this application. Where works are intended to occur in the beds and margins of waterways at Weston and Ngapara, this is covered by rule 13.5.3 as a discretionary activity.	Discretionary
14.1	The rules in section 14 relate to other land use and include construction of a bore (rule 14.1). Bore construction is a controlled activity under clause 14.1.1.1.	Controlled

Table 9.2: Water Plan Rules

In summary, Holcim seeks all water permits and discharge permits necessary for the project, including:

- take and use of groundwater (discretionary),
- storm water management and discharge (restricted discretionary),
- pit water management and discharge (discretionary),
- sewage discharge (discretionary),
- alteration to beds/margins of waterways (discretionary), and
- bore construction (controlled).

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9.7 Otago Regional Plan – Waste

The Otago Regional Plan: Waste became operative on 11 April 1997. The purposes of this plan are to reduce the quantity of waste and adopt a coordinated approach to waste management within the Otago region.

Some of the areas of stockpile and engineered land forms from unused materials from the quarries and pits are classified as landfills. Key objectives from the Waste Plan, which are relevant to the aspects of the proposal deemed to be landfills, include:

- 7.3.1 To avoid, remedy or mitigate the adverse environmental effects arising from the discharge of contaminants at and from landfills.
- 7.3.2 To eliminate illegal, uncontrolled, unmanaged, poorly managed and poorly located landfill sites.

9.7.1 Assessment – Waste Plan Rules

Section 7 of the Waste Plan applies. Rule 7.6.1 requires resource consent as a discretionary activity for new landfills in the form of stockpiles of materials and engineered landforms.

In summary, Holcim seeks all discharge permits necessary for the project, including:

- Stockpiles of materials and engineered landforms (new landfills) (discretionary).

9.8 Waitaki District Plan

The Waitaki District Plan is partially operative, with a number of variations and plan changes currently being processed. The purpose of the District Plan is to assist the Waitaki District Council to carry out its functions in order to achieve the purpose of the Resource Management Act 1991.

The plan contains a number of objectives that are relevant to the proposal:

- 1.3.4 Objective B: Protection and where appropriate, enhancement of waahi tapu, waahi taoka, cultural property and mahinga kai.
- 2.3.1 Objective A: The conservation and enhancement of the heritage values of the District, including historic places and areas, waahi tapu sites and areas, and archaeological sites, in order that the character and history of the District can be preserved and managed.
- 6.2.2 Objective 1: To promote the efficient use of the District's existing and future transportation resource and of fossil fuel usage associated with transportation, and the maintenance and improvement of access, ease and safety of all vehicular, cycle and pedestrian movements.
- 6.3.2 Objective 2: Avoid or mitigate adverse effects on the surrounding environment as a result of transport.
- 10.2.2 Objective 1: The construction, installation, operation and maintenance of utilities to avoid, remedy or mitigate adverse effects on amenity values and the surrounding environment.
- 12.2.2 Objective: Avoid or mitigate adverse environmental effects arising from the use, storage, transportation, manufacture, and disposal of hazardous substances.

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- 16.5.1 Objective 4 – Rural Amenity: A level of rural amenity that is consistent with the range of activities anticipated in the rural areas, but which does not create unacceptably unpleasant living or working conditions for the District’s residents and visitors, nor a significant deterioration of the quality of the rural environment.
- 16.6.1 Objective 5 – Business Development in Rural Areas: The establishment of commercial, industrial, service, recreational and accommodation activities, that are compatible with the amenities of the lower density rural environment.
- 16.7.1 Objective 6: Extractive industries are given the ability to access minerals but in a way that avoids, remedies or mitigates adverse effects on the environment.
- 16.8.2 Landscape Objective: Protection and enhancement of natural features and landscapes within the District.
- 16.9.2-2: The enhancement of the quality of water and the management of the coastal environment, wetlands, lakes, rivers and their margins and the protection of them from inappropriate subdivision, use and development

The policies under Objective 6 specifically recognise extractive industries such as that proposed. The Policies under this Objective also acknowledge the importance of maintaining access to minerals, and that one way of managing the effects of extractive industries is to retain them in their current locations as follows:

Policy 1 – *“To acknowledge the importance of known mineral deposits in the District by, where appropriate, discouraging the establishment of future activities or developments that are likely to compromise access to these mineral deposits.”*

Policy 5 – *“To avoid, remedy or mitigate adverse effects on the rural amenity and environment by, where appropriate, encouraging extractive industries to continue in existing locations.”*

Implementation Method 2 supports the continued importance of the Whitstone limestone resource through the use of the Cement Policy Area, which was carried through from the previous District Plan. This states: *“The recognition of known and important mineral deposits through the provision of ... a Whitstone cement extraction policy area”*.

This is further supported in the Explanation to these Policies and Implementation Methods, which states: *“The Council recognises the importance of the mineral extractive industry to the District and will seek to protect known deposits that are, to a greater or lesser extent, being extracted. This is particularly relevant to the gold mining at Macraes Flat, and the extraction of limestone for the purposes of cement manufacturing near Whitstone which was recognised in the previous Plan. Both these locations are considered as specific policy areas.”*

The rules in the Rural G Zone then go on to reflect the above policy provisions by providing for activities associated with the *“Extraction of limestone and tuff (mining) and the manufacturing of cement only in the Cement Policy Area”* as Controlled Activities.

9.8.1 Assessment – Waitaki District Plan Rules

The land on which the plant site and limestone/siltstone/tuff quarries are proposed is zoned Rural General (Rural G) with a special overlay as a Cement Policy Area. In this area, the extraction of limestone/siltstone and tuff (mining) and the manufacturing of cement is a **controlled** activity under rule 4.3.2-3.

Council has reserved control over the following matters:

- i. terrain disturbance including vegetation clearance, and volumes of material to be removed;
- ii. impact on nature conservation, historic and cultural values;
- iii. rehabilitation of a site;

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- iv. siting of roads or any buildings;
- v. noise, vibration and dust.

Should the project proceed, the titles for the plant site area would be held together in such a way that they cannot be separated without the prior consent of the Council, or subject to a condition imposed under Section 37 of the Building Act, to ensure compliance with internal boundary setback requirements. This could be ensured by way of a condition of the resource consent.

In relation to the plant site, consent is also required in relation to the following rules:

District Plan Rules	Issue	Activity Status
12.2.1(a)	Car parking numbers provided are less than required by the plan.	Restricted discretionary
15.1.1	The scale of the wastewater treatment building (as a utility building) is greater than permitted.	Restricted discretionary
16.1.2-1	Storage of hazardous substances (ammonia for use in the SNCR process and used oil as a fuel) is greater than provided for as permitted activities in the rural zone.	Discretionary

Table 9.3: Plant site consent requirements (Waitaki District Plan)

In relation to the limestone and tuff quarries, consents are also required in relation to the following rules:

District Plan Rules	Issue	Activity Status
4.4.7.2(d)	Some earthworks will occur on slopes over 20 degrees.	Restricted discretionary
4.4.7.2(f)(i)	Some earthworks will occur within an area identified as a significant natural feature.	Restricted discretionary
4.4.8.3(d)	There will be some removal of indigenous vegetation associated with limestone outcrops.	Restricted discretionary
16.1.2-1	Storage of hazardous substances (gases for welding, and lubricating/hydraulic oil) is greater than provided for as permitted activities in the rural zone.	Discretionary
4.3.3.4	There will be some activities which are associated with mining but which are outside the cement policy area. These include: <ul style="list-style-type: none"> • Some of the earth works to the bed/margins of the waterway below Troublesome Gully, and • Some of the earthworks necessary for the establishment of the sediment ponds and storm water / pit water control systems. 	Discretionary

Table 9.4: Weston quarries consent requirements (Waitaki District Plan)

The land proposed for the coal and sand pits is zoned Rural G. Within the Rural G zone, coal and sand extraction are defined as mining activities and require landuse consents as Discretionary Activities.

In summary, Holcim seeks all landuse consents necessary for the project, including:

- To construct and operate a cement manufacturing plant and undertake all associated activities within the Cement Policy Area (controlled activity). The size of the wastewater treatment plant and the number of car parks at the Weston plant site are to be assessed under the restricted discretionary activity provisions.
- Storage of ammonia for the SNCR process and used oil for fuel at the plant site (discretionary activity).
- To extract limestone / siltstone and tuff and undertake all associated activities (restricted discretionary activity).
- Storage of hazardous substances at the tuff quarry (discretionary activity).
- Works outside the Cement Policy Area at the tuff quarry (discretionary activity).
- To extract lignite coal and undertake all associated activities at Ngapara (discretionary activity).
- To extract silica sand and undertake all associated activities at Windsor (discretionary activity).

9.9 Kai Tahu ki Otago: Natural Resource Management Plan

This document is the principal planning document for Kai Tahu ki Otago and provides information, direction and a framework to better understand the natural resource values, concerns and issues of Kai Tahu ki Otago.

The document sets out overall issues, objectives and policies for the Otago Region including:

9.9.1 Wai Maori General Objectives

- i. The spiritual and cultural significance of water to Kai Tahu ki Otago is recognised in all water management.
- ii. The waters of the Otago Catchment are healthy and support Kai Tahu ki Otago customs
- iii. There is no discharge of human waste directly to water.
- iv. Contaminants being discharged directly or indirectly to water are reduced.
- v. Flow regimes and water quality standards are consistent with the cultural values of Kai Tahu ki Otago and are implemented throughout the Otago Region and lower Waitaki Catchment.

9.9.2 Wahi Tapu Objectives

- i. All wahi tapu are protected from inappropriate activities.
- ii. Kai Tahu ki Otago have access to wahi tapu.
- iii. Wahi tapu throughout the Otago region are protected in a culturally appropriate manner.

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9.9.3 Mahika Kai and Biodiversity Objectives

- i. Habitats and the wider needs of mahika kai, taoka species and other species of importance to Kai Tahu ki Otago are protected.
- ii. Mahika kai resources are healthy and abundant within the Otago Region.
- v. Indigenous plant and animal communities and the ecological processes that ensure their survival are recognised and protected to restore and improve indigenous biodiversity within the Otago Region.

9.9.4 Cultural Landscapes Objectives

- i. The relationship that Kai Tahu ki Otago have with land is recognised in all resource management activities and decisions.
- ii. The protection of significant cultural landscapes from inappropriate use and development.
- iii. The cultural landscape that reflects the long association of Kai Tahu ki Otago resource use within the Otago region is maintained and enhanced.

9.9.5 Air Objectives

- i. Kai Tahu ki Otago sites of significance are free from odour, visual and other pollutants.
- ii. Kai Tahu ki Otago are meaningfully involved in the management and protection of the air resource.
- iii. The life supporting capacity and mauri of air is maintained for future generations.

Mention is also made of specific issues within sub-catchments of the Otago region, including the Waitaki catchment and the East Otago catchment.

9.10 Freshwater Policy – Te Runanga o Ngai Tahu

This document provides a foundation for planning for freshwater and the Te Runanga o Ngai Tahu policies with respect to freshwater. The document sets out issues, values, objectives, and policies. The objectives include:

- Total protection of waters of particular spiritual significance to Ngai Tahu
- Restoration, maintenance and protection of the mauri of freshwater resources
- Maintenance of vital, healthy manhinga kai populations and habitats
- Promotion of collaborative management initiatives.

9.11 Reinstatement of the branch rail line

The designation for the Weston-Ngapara branch rail line runs from the Main Trunk Rail Line near Oamaru to the southern edge of the proposed cement manufacturing plant site. This branch rail line was in place until the early 1990's and in more recent times has been used informally for walking and cycling access. The designation remains in place and authorises the reinstatement and use of the railway line between the proposed cement plant site and the main trunk line.

The exact details of the physical reinstatement of the branch rail line will be dealt with separately through the Outline Plan of Works process and is not part of these resource consent applications. The outline plan of works will be prepared in accordance with section 176A of the Resource Management Act and at that time any other associated regional council consents which are necessary will also be sought.

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9.12 Archaeological Authorities

Archaeological authorities will also be sought from the New Zealand Historic Places Trust in relation to any destruction, damage or modification of any archaeological sites. Sections 11 and 12 of the Historic Places Act set out the requirements for such applications.