

Committee Members

Chair: Frank Dooley
Cr Allan Birchfield
Cr Andy Campbell
Cr Brett Cummings

Cr Peter Ewen
Cr Peter Haddock
Cr Mark McIntyre



THE WEST COAST
REGIONAL COUNCIL

PUBLIC COPY

Meeting of the Infrastructure Governance Committee
(Te Huinga Tu)

Tuesday, 8 November 2022

At the conclusion of the Council meeting

West Coast Regional Council Chambers, 388 Main South Road, Greymouth

and

Live Streamed via Council's Facebook Page:

<https://www.facebook.com/WestCoastRegionalCouncil>

INFRASTRUCTURE GOVERNANCE COMMITTEE

Infrastructure Governance Committee Meeting (Te Huinga Tu)

A G E N D A (Rarangi Take)

1. Welcome (*Haere mai*)
2. Apologies (*Ngā Pa Pouri*)
3. Declarations of Interest

Reports

4. **Chair's Report** (*verbal report*)
5. **Compliance Reports**
 - 5.1 IRG Projects
 - 5.2 Quarterly report to Kānoa September 2022
6. **Status Reports**
 - 6.1 Agenda Extraordinary meeting 3 May 2022
 - 6.2 Organs Island (*verbal update*)
7. **Potential Projects for future funding** (*verbal update*)
8. **General Business**
9. **Public Excluded Items**
 - 9.1 Governance
 - 9.2 Compliance -Monthly reports to Kānoa
 - 9.3 Contractual Matters (*verbal update*)

H Mabin
Chief Executive

Purpose of Local Government

The reports contained in this agenda address the requirements of the Local Government Act 2002 in relation to decision making. Unless otherwise stated, the recommended option promotes the social, economic, environmental and cultural well-being of communities in the present and for the future.

Health and Safety Emergency Procedure

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If you require assistance to exit, please see a staff member. Once you reach the bottom of the stairs make your way to the assembly point at the grassed area at the front of the building. Staff will guide you to an alternative route if necessary.

Report to: Infrastructure Governance Committee	Meeting Date: 8 November 2022
Title of Item: IRG Projects	
Report by: Heather Mabin, Chief Executive	
Reviewed by:	
Public excluded? No	

Report Purpose

The purpose of this paper is to table to the Committee background information that relates to the four Shovel ready projects in Councils' infrastructure programme of works.

Summary

Council is currently delivering four Shovel Ready (also known as IRG) Infrastructure Projects.

The paper tables to the Committee the foundation contracts with Ministry of Business, Innovation & Employment (MBIE).

Recommendations

It is recommended that Committee resolve to:

1. *Receive this paper and note the Attachments.*

Background

In 2020 Management applied for funding for various shovel ready projects through the Provincial Growth Fund. Of these, Council was awarded \$6.075M funding for three projects, see Attachment 1. They were:

- Hokitika Flood and Coastal Erosion Protection
- Mawhera Quay Flood Protection Wall
- Westport (Buller River) Flood Warning System

Subsequent to this, in 2021 MBIE varied the agreement to include an additional project, see Attachment 2, namely Franz Josef (Waiho River Stop Bank Protection) Phase One. This increased the total funding to be received to \$15.293M.

There is an additional Stage of the original Franz Josef project that was applied for that relates to two sections of the southside riverwall downstream.

The government entity managing the funding and overseeing progress is Kānoa, a department in MBIE. The Chief Executive attended the quarterly August board meeting of Kānoa in Wellington in person to update them on the developments at Council and to address any concerns they had. At this meeting, Kānoa reassured the Chief Executive that the funding for Council's four active projects was not in jeopardy, however no reassurance was given regarding the likely final decision for Franz Josef Stage 2.

In September 2022 Robert Pigou, Head of Kānoa, and Mark Aliprantis visited Council on their trip to the West Coast.

Current Situation

Currently Mark Aliprantis is regularly on the Coast and works collaboratively with Scott Hoare, Council's Infrastructure Programme Manager, on the progress of the Projects, and has actively supported the identification of future potential projects that require central government funding.

Attachments

Attachment 1: Infrastructure Reference Group Programme of Floodplain Risk Management Funding Agreement for West Coast Regional Council Climate Resilience Programme, dated 20 November 2020.

Attachment 2: Variation Agreement

**INFRASTRUCTURE REFERENCE GROUP
PROGRAMME OF FLOODPLAIN RISK MANAGEMENT
FUNDING AGREEMENT
FOR
WEST COAST REGIONAL COUNCIL
CLIMATE RESILIENCE PROGRAMME**

BETWEEN The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment ("**Ministry**")

AND West Coast Regional Council listed in Part 1 of Schedule 2 to the Local Government Act 2002, with offices at 388 Main South Road, Greymouth ("**Recipient**")

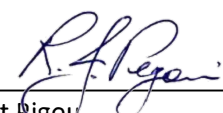
BACKGROUND

The Ministry wishes to contribute to the Programme by providing Funding from the appropriation set out in Schedule 1 (Details) on the terms set out in this Agreement.

AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (Details), Schedule 2 (Funding Agreement Standard Terms and Conditions), Schedule 3 (Social Procurement Outcomes), Schedule 4 (Report Template) and the Project Plan.

SIGNED by the **SOVEREIGN IN RIGHT**)
OF NEW ZEALAND acting by and)
 through the Chief Executive of the)
 Ministry of Business, Innovation and)
 Employment or their authorised)
 delegate:)



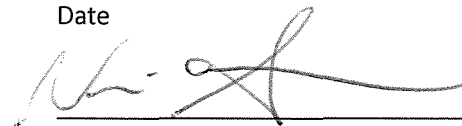
 Robert Rigou

 Head of PDU

20 November 2020

 Date

SIGNED for and on behalf of **WEST**)
COAST REGIONAL COUNCIL by its)
 authorised signatory:)



 Vincent Smith, Chief Executive Officer
 9/11/20

 Date

SCHEDULE 1 - DETAILS

1 CONTEXT

- 1.1 In Budget 2020, Cabinet agreed to provide a \$3 billion investment in infrastructure to support New Zealand's economic recovery as part of the 11 May COVID-19 Response and Recovery Fund [CAB-20-MIN-0219.04 refers].
- 1.2 The Government established the Infrastructure Reference Group (**IRG**) to identify a pipeline of shovel-ready projects to support the economy during the COVID-19 rebuild. The process was supported by Crown Infrastructure Partners.
- 1.3 On 24 June 2020, the Cabinet Economic Development Committee, agreed that the Ministry (acting through the Provincial Development Unit) would be responsible for delivering projects approved by IRG Ministers where they are best placed to do so [CAB-20-MIN-0341 refers].

2 APPROPRIATION AND APPROVAL PROCESS

- 2.1 Funding is from a Non-departmental Other Expenses Supporting Infrastructure Appropriation, Vote Business, Science and Innovation authorised by Cabinet on 20 July 2020 [CAB-20-MIN-0341 refers].

3 FUNDING

- 3.1 **Funding Total:** This Agreement provides funding for a total amount of up to **\$6,075,000** (plus GST, if any) (**Funding**). This is the Total Maximum Amount Payable by the Ministry.
- 3.2 Subject to the terms of this Agreement, the Ministry will pay the Funding in accordance with the payment schedule set out in the Project Plan.
- 3.3 **Application of Funding:** The Recipient:
 - (a) must apply the Funding in accordance with the Project Plan, subject to any variation agreed with the Ministry in writing;
 - (b) will use its best endeavours to deliver each Work Programme in the manner set out in the Project Plan; and
 - (c) must not use the Funding for any part of a Work Programme that is or was already funded by any party (including the Recipient, unless otherwise approved by the Ministry in writing), or in relation to any activity which the Ministry advises the Recipient that it may not apply the Funding to. For the avoidance of doubt, this limitation does not apply to any part of a Work Programme that is co-funded by the Recipient or another party.
- 3.4 **Overruns:** The Parties acknowledge that the Funding in clause 3.1 is the Total Maximum Amount Payable by the Ministry for the Programme (in the aggregate), and that the Recipient will be liable for all cost overruns in relation to the delivery of the Programme. The Ministry will not be liable for any cost overruns. The Recipient will carefully monitor the likelihood of cost overruns through its budgeting and reporting process, and will notify the Ministry as soon as it is aware that there is a likelihood that Programme Costs will exceed the Total Maximum Amount Payable under this Agreement.

4 PROGRAMME

4.1 **Programme:** The Recipient will use the Funding to deliver a floodplain risk management programme of works, the West Coast Regional Council Climate Resilience Programme. The Programme comprises the following Work Programmes, as set out in the Project Plan:

Work Programme	Start Date	End Date	Construction Commencement Date (by no later than 12 months from the Start Date)	Work Programme Cost \$, plus GST (if any)	Co-Funding \$ (plus GST, if any)	Funding Total \$ (plus GST, if any)
1. Hokitika Flood and Coastal Erosion Protection	Nov 2020	July 2022	March 2021	Up to \$6,950,000	Up to \$3,200,000	Up to \$3,750,000
2. Mawhera Quay Flood Protection Wall Upgrade (Stage 2)	Nov 2020	January 2022	July 2021	Up to \$2,600,000	Up to \$650,000	Up to \$1,950,000
3. Westport (Buller River) Flood warning system	Nov 2020	Nov 2021	December 2020	Up to \$530,000	Up to \$155,000	Up to \$375,000
Funding Total: up to \$6,075,000 (clause 3.1)						

4.2 **Programme Outcomes:** the outcomes of the Programme that align with the Funding criteria include:

- (a) new employment, the preservation of jobs and the redeployment of workers in communities and within the infrastructure sector hit by COVID-19; and
- (b) investment toward a more productive, sustainable and inclusive economy, enabling our regions to grow and support a modern and connected New Zealand.

4.3 **Delivery:** The Recipient must ensure that:

- (a) the Construction Commencement Date in each Work Programme is no later than 12 months from the relevant Start Date (set out in the Project Plan);
- (b) it obtains all consents required (including without limitation, statutory consents, permissions and licences) to carry out the Work Programmes in accordance with the consenting timeframes set out in the Project Plan. The Recipient will notify the Ministry immediately if any consent is not achieved, expires, is withdrawn, is breached or otherwise lapses;
- (c) its contractor(s):
 - (i) have accountability and deliver any construction contracts on time, within budget and to meet the relevant building codes and consents, as required for the Work Programmes to be undertaken; and
 - (ii) provide all necessary information to it that will allow the Recipient to promptly notify the Ministry if any material event or circumstance occurs which may be



detrimental to the Work Programmes and their delivery (including any identified funding short fall or potential cost overruns);

- (d) the Work Programmes are carried out:
 - (i) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
 - (ii) by appropriately trained, qualified, experienced and supervised persons;
 - (iii) in accordance with any reasonable directions of the Ministry, notified by the Ministry in writing on recommendation of the Programme Board, from time to time;
 - (iv) to the standard set out in any Programme documentation submitted to the Ministry, including any Minister of the Crown or any Government Agency, and any further plans, designs, or other Programme documents submitted to, and approved by, the Ministry; and
 - (v) in a manner that takes into account the Construction Sector Accord's principles and guidelines.

5 PROCUREMENT

5.1 In delivering the Programme, the Recipient must ensure that all tendering and procurement arrangements for each Work Programme:

- (a) occur at pace, time being critical; and
- (b) comply with any agreed Social Procurement Objectives (Schedule 3).

6 PAYMENT TERMS

6.1 Subject to the terms of this Agreement, the Ministry will pay the Funding to the Recipient in advance at three-monthly intervals, on dates and in amounts as set out in the Project Plan.

6.2 Invoicing and payments may be aggregated across all Work Programmes within the Programme.

6.3 **Payment preconditions:** The Ministry is not required to make any payments under this Agreement until the following conditions have been satisfied (in the Ministry's sole discretion):

- (a) Before the first Instalment, the Recipient has provided, in a form acceptable to the Ministry:
 - i. a Project Plan; and
 - ii. evidence that it has secured the amount of Co-Funding (plus GST, if any) required to be secured by the Recipient before the first Instalment, as set out in the Project Plan;
- (b) The Recipient has completed all Deliverables for the Instalment claimed in the relevant Work Programme, as set out in the Project Plan;
- (c) in relation to each Instalment (except the first Instalment under a Work Programme), the Recipient will provide the Ministry with access to copies of the GST invoices for all payments over \$1,000 paid by the Recipient to third parties in the three months prior to the date of the Instalment;
- (d) the Recipient has provided a valid GST invoice for the Instalment;

- (e) the Recipient provides a certificate (or similar) signed by the Recipient's Programme Director which, in respect to the relevant Work Programme:
 - (i) certifies the progress of the Work Programme;
 - (ii) certifies the costs incurred by the Recipient;
 - (iii) certifies that the Work Programme is on track to be completed by the End Date;
 - (iv) notifies the Ministry of any variations to the relevant construction contract(s);
 - (v) provides the cost to complete the Work Programme;
 - (vi) either certifies that the Project Plan in its current form remains accurate and complete or attaches an updated Project Plan for approval by the Ministry; and
 - (vii) certifies that the Recipient has contributed and applied to the Work Programme the amount of Co-Funding set out in the Project Plan that has to be contributed in the previous three-month period;
- (f) the Recipient has delivered all Reports required under clause 8 to the Ministry's satisfaction;
- (g) the Recipient is not in breach of any provision of this Agreement; and
- (h) the Ministry is satisfied in its sole discretion that:
 - (i) the relevant Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframes;
 - (ii) the Funding has been applied in accordance with clause 4, including pursuant to any discussions with the Recipient;
 - (iii) if applicable, the updated Project Plan is in a form acceptable to the Ministry; and
 - (iv) Co-Funding is and remains secured and available to the Recipient to be applied towards the Project in accordance with the Project Plan.

7 TERM

- 7.1 This Agreement commences on the date it is signed by the Parties and will continue in full force and effect until **1 October 2022**, unless terminated earlier in accordance with its terms.
- 7.2 Each Work Programme starts on the Start Date and ends on the End Date or the date on which anything required to be done by the Recipient under a Work Programme is completed (whichever is the later), unless terminated earlier in accordance with its terms.

8 REPORTING REQUIREMENTS

8.1 Reports: The Recipient will provide the Ministry with:

- (a) A Monthly Report by email on the final Business Day of each month (unless a Quarterly Report is due) detailing the progress of each Work Programme against the relevant Work Programme Budget and Work Programme Timeframes set out in the Project Plan;
- (b) A Quarterly Report completed on a template attached as Schedule 4, by the 10th Business Day following the end of each quarter;
- (c) A Final Report within 10 Business Days of the End Date of a completed Work Programme, on the Ministry's approved form; and
- (d) Immediate notice of any change in circumstance that may result in the Co-Funding (or any part of the Co-Funding) not being secured and available to the Recipient to be applied towards the Programme.

8.2 Ministry satisfaction: For the avoidance of doubt, if any one or more of the Reports do not satisfy the Ministry that a Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframe, the Ministry will be entitled to terminate the relevant Work Programme and recoup all unspent funds in accordance with clause 4 of Schedule 2.

8.3 Final Programme Report: A Final Programme Report within 1 month following the Expiry Date in the Ministry's approved form.

8.4 Further information: The Recipient will promptly provide all information requested by the Ministry necessary to verify the Recipient's performance under this Agreement, including (without limitation) its procurement documentation, subcontracts, financial and technical information, and records of the number and make-up of the workers hired to undertake the Programme or any Work Programme(s).

9 GOVERNANCE

9.1 The Parties acknowledge that, once established, a programme board comprising suitably qualified and experienced personnel will provide oversight of all "Climate Resilience Programmes" subject to Ministry funding agreements, including this Programme (the **Programme Board**).

9.2 The Programme Board will be provided with the Recipient's Reports, budget forecasts, any updated Project Plans, and any other project information necessary in order for it to perform its oversight function.

9.3 The Recipient will promptly provide all further information reasonably requested by the Programme Board in order to perform its oversight functions.

9.4 The Programme Board will:

- (a) provide advice about whether or not the Recipient is meeting its performance obligations under this Agreement;
- (b) provide the Recipient with advice about any action or change recommended to meet its performance obligations;
- (c) monitor the progress of the Programme, compliance, risk identification and mitigation, and quality assurance; and

(d) establish channels for two-way communication of information or escalation of issues between the Recipient and the Ministry.

9.5 The Programme Board may make recommendations to the Ministry in respect to the Recipient's performance under this Agreement and to ensure the improvement and profitable management of the Programme against the Project Plan.

10 **ADDRESS FOR NOTICES**

Ministry:	Recipient:
Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON 6011 Email address: warren.gilbertson@mbie.govt.nz Contact person: Warren Gilbertson Attention: Warren Gilbertson	West Coast Regional Council 388 Main South Road Greymouth 7805 Email address: rb@wrc.govt.nz Contact person: Randal Beal

SCHEDULE 2 - FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In this Agreement, the following terms have the following meanings:

"Agreement" means this agreement, including all Schedules;

"Best Industry Practice" means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement;

"Business Day" means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

"Co-Funding" means the "Co-Funding" or any part of the Co-Funding (as the context requires), described in clause 4.1 of Schedule 1 and the Project Plan.

"Commencement Date" is the date this Agreement is signed by both Parties;

"Confidential Information" includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

"Construction Commencement Date" means the date that construction works under each Work Programme must commence;

"Deliverable" means the deliverables in each Work Programme;

"End Date" means the end date of a Work Programme as set out in the relevant Work Programme;

"Expiry Date" means the expiry date of this Agreement, as described in Schedule 1;

"Final Report" means the final report, as described in Schedule 1;

"Final Programme Report" means the final programme report, as described in Schedule 1;

"Funding" means the funding total, as described in Schedule 1;

"GST" means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

"Instalment" means a three-monthly payment instalment for a Work Programme, as set out in the Project Plan (noting clause 6.2 of Schedule 1 allows aggregation across a Programme);

"Intellectual Property Rights" includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

"Monthly Report" means the monthly report, as described in Schedule 1;

"Parties" means the Ministry and the Recipient and their respective successors and permitted assigns;

"Programme" means the programme described in Schedule 1, which consists of the Work Programmes;

"Programme Board" means the governance board, as described in Schedule 1;

"Programme Director" means an officer of the Recipient with the authority to certify requests for payment of the Instalments described in Schedule 1;

"Programme Costs" means the total costs of the Work Programmes (in the aggregate);

"Project Plan" means a project plan for the Programme, providing details for each Work Programme, in the form approved by the Ministry;

- “Report”** means the reports described in clause 8 of Schedule 1;
- “Schedule”** means a schedule to this Agreement;
- “Social Procurement Objectives”** means the agreed objectives described in Schedule 3;
- “Start Date”** means the start date of a Work Programme as set out in the relevant Work Programme;
- “Total Maximum Amount Payable”** has the meaning given in Schedule 1.
- “Quarterly Report”** means the quarterly report, as described in Schedule 1;
- “Work Programme”** means a work programme identified in clause 4.1 of Schedule 1 and specified in the Project Plan;
- “Work Programme Budget”** means the budget in each Work Programme;
- “Work Programme Costs”** means the total costs of a Work Programme;
- “Work Programme Timeframe”** means the work programme timeframes in each Work Programme.
- 1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.
- 1.3 The headings in this Agreement are for convenience only and have no legal effect.
- 1.4 The singular includes the plural and vice versa.
- 1.5 “Including” and similar words do not imply any limitation.
- 1.6 References to a statute include references to that statute as amended or replaced from time to time.
- 1.7 Monetary references are references to New Zealand currency.
- 1.8 If there is any conflict of meaning between Schedule 1 and Schedule 2, Schedule 2 will prevail.
- ## 2 FUNDING
- 2.1 The Ministry must pay the Funding (up to the Total Maximum Amount Payable) in accordance with the payment schedules in the Project Plan to the Recipient, subject to the terms of this Agreement.
- 2.2 The Recipient must provide a valid GST invoice that complies with the Goods and Services Tax Act 1985 for each Instalment. The invoice must:
- (a) be sent directly to the Ministry via email to monitorpgf@mbie.govt.nz;
 - (b) be copied to the relevant Ministry contact person as set out in clause 10 of Schedule 1;
 - (c) include sufficient information reasonably required to enable the Ministry to validate the claim for payment including a reference to this Agreement (under which the invoice is issued); and
 - (d) be clearly and legibly marked to Ministry staff as advised by the Ministry to the Recipient from time to time.
- 2.3 The Funding is inclusive of all taxation except GST. The Ministry will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Recipient and will not be required to gross-up or increase any such payments in respect of such amounts withheld.
- 2.4 The Recipient must use the Funding only to carry out the Programme in accordance with this Agreement.
- 2.5 In consideration of the Funding, the Recipient must:
- (a) progress each Work Programme to the Ministry’s satisfaction;
 - (b) complete each Work Programme to the Ministry’s satisfaction by the Expiry Date;

(c) carry out each Work Programme in accordance with:

(i) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Work Programme; and

(ii) all applicable laws, regulations, rules and professional codes of conduct or practice; and

(d) refund any unspent Funding in respect to the relevant Work Programme, to the Ministry within 10 Business Days of the End Date.

2.6 Where all of the monies received by the Recipient to carry out the Programme (including the Funding) exceeds the Programme Costs, the Recipient must refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 2.6, any amount that exceeds the Total Maximum Amount Payable.

2.7 The Recipient must ensure (and must procure that any contractor it uses ensures) that all agreements it enters into with contractors or any other party in connection with the Programme are on an "arm's length" basis and provides value for money. To the extent that the expenditure relates to work performed by parties not at "arm's length", that expenditure must be assessed at reasonable market value, and contain no unacceptable overhead and no element of "in group profit".

3 PROGRAMME DELIVERY AND PROGRESS

3.1 If:

(a) the Ministry is not satisfied with the progress of a Work Programme;

(b) the Construction Commencement Date has not been met;

(c) the Recipient does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which, in the Ministry's opinion, may damage the business or reputation of the Ministry; or

(d) the Recipient breaches any of its obligations under this Agreement,

the Ministry may (without limiting its other remedies):

(e) renegotiate the relevant Work Programme(s) with the Recipient; or

(f) terminate the relevant Work Programme(s) immediately by notice to the Recipient, and clause 4.3 and 4.4 will apply.

4 TERMINATION

4.1 The Ministry may terminate this Agreement at any time by giving at least 10 Business Days' notice to the Recipient.

4.2 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:

(a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;

(b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;

(c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;

(d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or

(e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.3 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

4.4 On termination of this Agreement or relevant Work Programme(s), the Ministry

may (without limiting any of its other rights or remedies):

- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
- (b) require the Recipient to refund to the Ministry:
 - (i) any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Programme and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or
 - (ii) the proportion of the Funding that equates to the uncompleted part of the relevant Work Programme, as reasonably determined by the Ministry; and/or;
 - (iii) if the Funding has been misused, or misappropriated, by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money; and/or;
 - (iv) if any proportion of the Co-Funding has not been used for the Programme, the Ministry may recover from the Recipient an equivalent amount of the Funding.

5 REPORTING REQUIREMENTS AND AUDIT

5.1 The Recipient must report on the progress of the Programme to the Ministry:

- (a) as set out in Schedule 1;

- (b) as otherwise reasonably required by the Ministry; and
- (c) in any format and on any medium reasonably required by the Ministry.

5.2 The Recipient must:

- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Programme sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;
- (c) allow the Ministry reasonable access to the Recipient's premises or other premises where any of the works are being carried out;
- (d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding;

6 WARRANTIES

6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

6.2 The Recipient warrants that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;
- (b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and
- (c) it is not aware of any material

information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

- 6.3 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.
- 6.4 The Recipient acknowledges and agrees that the Ministry has made no warranty or representation that any funding or financial support is or will be available to the Recipient in respect of the Programme other than the Funding.

7 INTELLECTUAL PROPERTY

- 7.1 All Intellectual Property Rights in the reports provided under clause 8, Schedule 1 will be owned by the Ministry from the date the reports are created or developed.
- 7.2 All intellectual property produced by the Recipient or its employees or contractors in relation to the Programme is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning, or licensing) such intellectual property without obtaining the prior consent of the other Party. On request, the Recipient must provide to the Ministry such intellectual property in any format, and on any medium, reasonably requested by the Ministry.
- 7.3 The Recipient must ensure that material created or developed in connection with the Programme does not infringe the Intellectual Property Rights of any person.

8 CONFIDENTIALITY

- 8.1 The Recipient must:
- (a) keep the Confidential Information confidential at all times;
 - (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Programme or this Agreement;
 - (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and

(d) ensure that any employees or contractors to whom it discloses the Confidential Information are aware of, and comply with, the provisions of this clause 8.

- 8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:
- (a) to the extent that such disclosure is necessary for the purposes of completing the Programme;
 - (b) required by law; or
 - (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.

8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Programme.

9 LIABILITY AND INSURANCE

- 9.1 The Recipient must effect and maintain insurance that is adequate to cover its obligations under this Agreement. The Recipient must, on request, provide the Ministry with evidence of its insurance cover required under this clause.
- 9.2 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 9.3 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Programme had been carried out in accordance with this Agreement.
- 9.4 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry.

At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety at Work Act 2015 or to pay to the Recipient:

- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
- (b) redundancy or any other form of severance pay; or
- (c) taxes or levies, including any levies under the Accident Compensation Act 2001.

9.5 The Recipient indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own client basis) ("loss") brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Programme, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.

9.6 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in Schedule 1 in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient's wilful default or dishonesty.

9.7 The Recipient must effect and maintain for the term of this Agreement:

- (a) adequate insurance to cover standard commercial risks; and
- (b) other insurance reasonably required by the Ministry.

The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

10 DISPUTE RESOLUTION

10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.

10.2 If the Parties' senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.

10.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of the Resolution Institute of New Zealand) and on the terms of the Resolution Institute's standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).

10.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

10.5 Nothing in this clause 10 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.

11 FORCE MAJEURE

11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("Force Majeure Event"). The Party affected must:

- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate

of the time likely to be required to overcome it;

- (b) use its best endeavours to overcome the Force Majeure Event; and
- (c) continue to perform its obligations as far as practicable.

12 GENERAL

12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

12.2 Assignment:

- (a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.
- (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).

12.3 This Agreement may only be varied by agreement in writing signed by the Parties.

12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

12.5 Any notice to be given under this Agreement must be in writing and hand

delivered or sent by email or registered post to the Parties' respective email address, postal address as set out in Schedule 1. A notice is deemed to be received:

- (a) if personally delivered when delivered; or
- (b) if posted, three Business Days after posting;
- (c) if sent by email, at the time the email enters the Recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error,

provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

12.7 The provisions of this Agreement relating to termination (clause 4), reporting requirements and audit (clause 5), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.

12.8 This Agreement may be signed in any number of counterparts (including emailed copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

12.9 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

SCHEDULE 3 – SOCIAL PROCUREMENT OUTCOMES

Outcome	Measure	When Applied
Employment of targeted workers	Prioritising workers identifying as: <ol style="list-style-type: none"> 1. Māori or Pasifika 2. local workers 3. With the employment of women prioritised at each level where possible. 	All
Local Businesses	90% of the direct contracts and sub-contracts will be awarded to businesses owned and operated by people who reside in the region operating in the region (targeting Māori and Pasifika businesses in particular)	All % to be mutually agreed
Supplier Diversity	Council will continue to identify appropriate Māori and Pasifika businesses and will endeavour to work toward an objective of up to 10% of the direct contracts and sub-contracts to be awarded to Māori and Pasifika businesses	Surge Regions and Waikato % to be mutually agreed
Skills and training	Training should include, but not be limited to: financial literacy and budgeting <ul style="list-style-type: none"> • health & safety • people management & development • marketing 	Work Programmes over 6 months in duration
	<p>A career development plan created within 3 months of a contract being awarded.</p> <p>Internal assessments of all employees' career development plan will be carried out at least once a month and at the end of the contracted works to ensure each employee's career development is progressing.</p> <p>A focus should be individuals obtaining those skills sets and training that will not just benefit them in their current role, but has the ability to keep individuals connected nationally (e.g. traffic management). These should be through an accredited training provider so units are reported correctly on NZQA.</p> <p>Development Plans should include, but not be limited to:</p> <ul style="list-style-type: none"> • individuals' aims and goals • plan to meet aims and goals (if realistic) • clearly identifying needs for skills, knowledge or competence • selecting appropriate development activities • recording of training/development opportunities undertaken • formal recognition/certification of training (e.g. health & safety), and • other roles undertaken. 	Work Programmes over 6 months in duration
Worker Conditions	100% of employees will be registered with a suitably qualified health and safety testing organisation including mental health and wellness.	All

	Employees' wages will increase progressively in line with their career development plan achievements.	Work Programmes over 6 months in duration
Environmental Responsibility	<p>Adoption of practises that enable the Work Programme(s) to be delivered sustainably, including by:</p> <ul style="list-style-type: none"> • protecting or enhancing the local ecosystem and its indigenous biodiversity • actively seeking to minimise the carbon impact of the Programme delivery, to support the transition to a net zero emissions economy • minimising waste, re-using materials, and where possible incorporating the principles of the circular economy • using water resources efficiently • using low-impact, sustainably and locally sourced materials and products; and • including resilience to the impacts of a changing climate. 	All

SCHEDULE 4 – REPORT TEMPLATE

QUARTERLY REPORT TEMPLATE



PROVINCIAL
DEVELOPMENT
UNIT

New Zealand Government

West Coast Regional Council CLIMATE RESILIENCE PROGRAMME

Location and Region:	
Contracted Amount:	
Report Date:	For the month ending [<i>insert month OR quarter</i>]

1. Programme Updates

Provide description and analysis of actual against planned progress of each Work Programme to show that the activity is occurring at pace.

Work Programme	Details of progress
Hokitika Flood and Coastal Erosion Protection	
Mawhera Quay Flood Protection Wall Upgrade (Stage 2)	
Westport (Buller River) Flood warning system	

2. **Redeployment Outcomes**

2.1 Complete the following table for the number of people working to deliver each Work Programme in the current reporting period.

Work Programme	Total People Working	No. previously unemployed	No. local	No. aged 15-24	No. Māori	No. Pasifika	No. Women	Job type*
Hokitika Flood and Coastal Erosion Protection								
Mawhera Quay Flood Protection Wall Upgrade (Stage 2)								
Westport (Buller River) Flood warning system								
Total								

*Full-time/Part-Time/Contractor/Consultant

2.2 Complete the following total jobs table, showing total current, past and expected future jobs

Current jobs (this should be the Total People Working in the table above)	People previously but no longer employed on each Work Programme	Expected jobs in the future

2.3 Provide any additional narrative to explain the tables 2.1 and 2.2 above, including other relevant information

3. Supplier Diversity Outcomes

Complete the following table for the number and value of each direct or sub-contract awarded to local, Māori and/or Pasifika-owned businesses during the current reporting period.

Name of business	Business type (Māori, Pasifika, local)	Contract type (direct, sub-contract)	Contract purpose (briefly describe)	Length of contract (months)	Total value of contract (\$)	No. new employees (as a result of contract)

4. Social Procurement Objectives

In an Appendix (please attach) and in the format that best works for you:

- Show achievements to date against the Social Procurement Objectives in a table or other useful format.
- Provide additional narrative to show how tendering, procurement, employment and/or training arrangements are helping to achieve the Social Procurement Objectives, identifying any limitations or further support needed.

5. Financials

Give a summary of funding received and expenditure to date, actual against budgeted, for each **Work Programme** in the Table below or an Appendix (please attach).

Work Programme	Indicative Cost	Actual Spend	PGF funds (yes/no)	Co-Funding	Note
Hokitika Flood and Coastal Erosion Protection					
Mawhera Quay Flood Protection Wall Upgrade (Stage 2)					
Westport (Buller River) Flood warning system					
Total					

6. Forward Work Programme

Outline forward work to be completed in the next month

Key Milestone	Indicative Timeframe	Outline of Planned Work (for next month)

Key Milestone	Indicative Timeframe	Outline of Planned Work (for next month)

7. Risks/Issues/Opportunities

Outline any risks and/or issues arising or expected to arise, costs and mitigation

Risks / Issues	Magnitude/Likelihood	Mitigation

8. Communications

Provide an update on media, marketing and communications activity for this Programme

9. Any other information



VARIATION AGREEMENT

DATE:

BETWEEN The Sovereign in right of New Zealand acting by and through Te Tumu Whakarae mō Hikina Whakatutuki, Secretary for Business, Innovation and Employment, and the Chief Executive of the Ministry of Business, Innovation and Employment (**Ministry**)

AND West Coast Regional Council, NZBN 9429041923405, a local authority listed in Part 1 of Schedule 2 to the Local Government Act 2002 (**Recipient**)

BACKGROUND

- A. The parties entered into a Funding Agreement for West Coast Regional Council Climate Resilience Programme dated on or about 20 November 2020 (**Agreement**).
- B. The parties have agreed variations to the terms of the Agreement in order to add the Franz Josef (Waiho River Stop Bank Protection) Work Programme to the West Coast Regional Council Climate Resilience Programme.
- C. The parties have agreed to vary the Agreement on the terms and conditions set out in this variation agreement (the **Variation**).

EXECUTION

SIGNED by the **SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through Te Tumu Whakarae mō Hikina Whakatutuki, Secretary for Business, Innovation and Employment and Chief Executive of the Ministry of Business, Innovation and Employment or their authorised delegate:)
) _____
) Robert Pigou
) Deputy Chief Executive and Head of Kānoa -
) Regional Economic Development & Investment Unit
) Ministry of Business, Innovation and Employment
)
) _____
) Date

Signed for and on behalf of **WEST COAST REGIONAL COUNCIL** by:)
)

 Signature

 Print Full Name

 Print Title

 Date



TERMS

1. Interpretation

- 1.1 In this Variation, unless the context requires otherwise:
- a. words and expressions have the meanings given to them in the Agreement and clause 1 of Schedule 2 applied to this Variation; and
 - b. references to clauses and schedules are to the clauses and the schedules of the Agreement.

2. Variation

- 2.1 With effect on and from the date on which this Variation is signed by both parties (the **Effective Date**), the Agreement is amended and restated as attached in Schedule 1 to this Variation (**Restated Agreement**).
- 2.2 The Restated Agreement operates as an entire agreement, and includes and consolidates all of the agreed variations to the terms and conditions of the Agreement. The Restated Agreement supersedes and prevails over the Agreement on and from the Effective Date.

3. Governing law

- 3.1 This Variation is governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

4. Counterparts

- 4.1 This Variation may be executed in any number of counterparts (including electronic copies), each of which will be deemed an original, but all of which together constitute one instrument. No counterpart is effective until each party has executed at least one counterpart.



SCHEDULE 1

AMENDED AND RESTATED AGREEMENT



Kānoa
Regional Economic Development
& Investment Unit

**INFRASTRUCTURE REFERENCE GROUP
PROGRAMME OF FLOODPLAIN RISK MANAGEMENT
FUNDING AGREEMENT**

FOR

**WEST COAST REGIONAL COUNCIL
CLIMATE RESILIENCE PROGRAMME**

BETWEEN The Sovereign in right of New Zealand acting by and through Te Tumu Whakarae mō Hikina Whakatutuki, Secretary for Business, Innovation and Employment, and the Chief Executive of the Ministry of Business, Innovation and Employment ("**Ministry**")

AND West Coast Regional Council, NZBN 9429041923405, a local authority listed in Part 1 of Schedule 2 to the Local Government Act 2002 ("**Recipient**")

BACKGROUND

The Ministry wishes to contribute to the Programme by providing Funding from the appropriation set out in Schedule 1 (Details) on the terms set out in this Agreement.

AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (Details), Schedule 2 (Funding Agreement Standard Terms and Conditions), Schedule 3 (Social Procurement Outcomes), Schedule 4 (Report Template) and the Project Plan.

EXECUTION

Signed by the SOVEREIGN IN RIGHT OF NEW)	
ZEALAND acting by and through Te Tumu)	
Whakarae mō Hikina Whakatutuki, Secretary)	
for Business, Innovation and Employment, and)	_____
the Chief Executive of the Ministry of Business,)	Robert Pigou
Innovation and Employment:)	Deputy Chief Executive and Head of Kānoa -
)	Regional Economic Development & Investment Unit
)	Ministry of Business, Innovation and Employment

Date

Signed for and on behalf of **WEST COAST**)
REGIONAL COUNCIL by:)

Signature

Print Full Name

Print Title

Date

SCHEDULE 1 - DETAILS

1 CONTEXT

- 1.1 In Budget 2020, Cabinet agreed to provide a \$3 billion investment in infrastructure to support New Zealand's economic recovery as part of the 11 May COVID-19 Response and Recovery Fund [CAB-20-MIN-0219.04 refers].
- 1.2 The Government established the Infrastructure Reference Group (**IRG**) to identify a pipeline of shovel-ready projects to support the economy during the COVID-19 rebuild. The process was supported by Crown Infrastructure Partners.
- 1.3 On 24 June 2020, the Cabinet Economic Development Committee, agreed that the Ministry (acting through Kānoa - Regional Economic Development & Investment Unit) would be responsible for delivering projects approved by IRG Ministers where they are best placed to do so [CAB-20-MIN-0341 refers].

2 APPROPRIATION AND APPROVAL PROCESS

- 2.1 Funding is from a Non-departmental Other Expenses Supporting Infrastructure Appropriation, Vote Business, Science and Innovation authorised by Cabinet on 20 July 2020 [CAB-20-MIN-0341 refers].

3 FUNDING

- 3.1 **Funding Total:** This Agreement provides funding for a total amount of up to **\$15,293,597** (plus GST, if any) (**Funding**). This is the Total Maximum Amount Payable by the Ministry.
- 3.2 Subject to the terms of this Agreement, the Ministry will pay the Funding in accordance with the payment schedule set out in the Project Plan.
- 3.3 **Application of Funding:** The Recipient:
 - (a) must apply the Funding in accordance with the Project Plan, subject to any variation agreed with the Ministry in writing;
 - (b) will use its best endeavours to deliver each Work Programme in the manner set out in the Project Plan; and
 - (c) must not use the Funding for any part of a Work Programme that is or was already funded by any party (including the Recipient, unless otherwise approved by the Ministry in writing), or in relation to any activity which the Ministry advises the Recipient that it may not apply the Funding to. For the avoidance of doubt, this limitation does not apply to any part of a Work Programme that is co-funded by the Recipient or another party.
- 3.4 **Overruns:** The Parties acknowledge that the Funding in clause 3.1 is the Total Maximum Amount Payable by the Ministry for the Programme (in the aggregate), and that the Recipient will be liable for all cost overruns in relation to the delivery of the Programme. The Ministry will not be liable for any cost overruns. The Recipient will carefully monitor the likelihood of cost overruns through its budgeting and reporting process, and will notify the Ministry as soon as it is aware that there is a likelihood that Programme Costs will exceed the Total Maximum Amount Payable under this Agreement.

4 PROGRAMME

4.1 **Programme:** The Recipient will use the Funding to deliver a floodplain risk management programme of works, the West Coast Regional Council Climate Resilience Programme. The Programme comprises the following Work Programmes, as set out in the Project Plan:

Work Programme	Start Date	End Date	Construction Commencement Date (by no later than 12 months from the Start Date)	Work Programme Cost \$, plus GST (if any)	Co-Funding (plus GST, if any)	Funding Total (plus GST, if any)
1. Hokitika Flood and Coastal Erosion Protection	Nov 2020	Nov 2022	March 2021	Up to \$6,950,000	Up to \$3,200,000	Up to \$3,750,000
2. Mawhera Quay Flood Protection Wall Upgrade (Stage 2)	Nov 2020	Nov 2022	December 2021	Up to \$2,600,000	Up to \$650,000	Up to \$1,950,000
3. Westport (Buller River) Flood warning system	Nov 2020	Nov 2021	December 2020	Up to \$530,000	Up to \$155,000	Up to \$375,000
4. Franz Josef (Waiho River Stop Bank Protection) Phase One	June 2021	May 2023	September 2021	Up to \$12,291,463	Up to \$3,072,866	Up to \$9,218,597
Funding Total: up to \$15,293,597 (clause 3.1)						

4.2 **Programme Outcomes:** the outcomes of the Programme that align with the Funding criteria include:

- (a) new employment, the preservation of jobs and the redeployment of workers in communities and within the infrastructure sector hit by COVID-19; and
- (b) investment toward a more productive, sustainable and inclusive economy, enabling our regions to grow and support a modern and connected New Zealand.

4.3 **Delivery:** The Recipient must ensure that:

- (a) the Construction Commencement Date in each Work Programme is no later than 12 months from the relevant Start Date (set out in the Project Plan);
- (b) it obtains all consents required (including without limitation, statutory consents, permissions and licences) to carry out the Work Programmes in accordance with the consenting timeframes set out in the Project Plan. The Recipient will notify the Ministry immediately if any consent is not achieved, expires, is withdrawn, is breached or otherwise lapses;
- (c) its contractor(s):
 - (i) have accountability and deliver any construction contracts on time, within budget and to meet the relevant building codes and consents, as required for the Work Programmes to be undertaken; and

- (ii) provide all necessary information to it that will allow the Recipient to promptly notify the Ministry if any material event or circumstance occurs which may be detrimental to the Work Programmes and their delivery (including any identified funding short fall or potential cost overruns); and
- (d) the Work Programmes are carried out:
 - (i) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
 - (ii) by appropriately trained, qualified, experienced and supervised persons;
 - (iii) in accordance with any reasonable directions of the Ministry, notified by the Ministry in writing on recommendation of the Programme Board, from time to time;
 - (iv) to the standard set out in any Programme documentation submitted to the Ministry, including any Minister of the Crown or any Government Agency, and any further plans, designs, or other Programme documents submitted to, and approved by, the Ministry; and
 - (v) in a manner that takes into account the Construction Sector Accord's principles and guidelines.

5 PROCUREMENT

- 5.1 In delivering the Programme, the Recipient must ensure that all tendering and procurement arrangements for each Work Programme:
- (a) occur at pace, time being critical; and
 - (b) comply with any agreed Social Procurement Objectives (Schedule 3).

6 PAYMENT TERMS

- 6.1 Subject to the terms of this Agreement, the Ministry will pay the Funding to the Recipient in advance at three-monthly intervals, on dates and in amounts as set out in the Project Plan.
- 6.2 Invoicing and payments may be aggregated across all Work Programmes within the Programme.
- 6.3 **Payment preconditions:** The Ministry is not required to make any payments under this Agreement until the following conditions have been satisfied (in the Ministry's sole discretion):
- (a) Before the first Instalment, the Recipient has provided, in a form acceptable to the Ministry:
 - i. a Project Plan; and
 - ii. evidence that it has secured the amount of Co-Funding (plus GST, if any) required to be secured by the Recipient before the first Instalment, as set out in the Project Plan;
 - (b) The Recipient has completed all Deliverables for the Instalment claimed in the relevant Work Programme, as set out in the Project Plan;
 - (c) in relation to each Instalment (except the first Instalment under a Work Programme), the Recipient will provide the Ministry with access to copies of the GST invoices for all payments over \$1,000 paid by the Recipient to third parties in the three months prior to the date of the Instalment;
 - (d) the Recipient has provided a valid GST invoice for the Instalment;

- (e) the Recipient provides a certificate (or similar) signed by the Recipient's Programme Director which, in respect to the relevant Work Programme:
 - (i) certifies the progress of the Work Programme;
 - (ii) certifies the costs incurred by the Recipient;
 - (iii) certifies that the Work Programme is on track to be completed by the End Date;
 - (iv) notifies the Ministry of any variations to the relevant construction contract(s);
 - (v) provides the cost to complete the Work Programme;
 - (vi) either certifies that the Project Plan in its current form remains accurate and complete or attaches an updated Project Plan for approval by the Ministry; and
 - (vii) certifies that the Recipient has contributed and applied to the Work Programme the amount of Co-Funding set out in the Project Plan that has to be contributed in the previous three-month period;
- (f) the Recipient has delivered all Reports required under clause 8 to the Ministry's satisfaction;
- (g) the Recipient is not in breach of any provision of this Agreement; and
- (h) the Ministry is satisfied in its sole discretion that:
 - (i) the relevant Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframes;
 - (ii) the Funding has been applied in accordance with clause 4, including pursuant to any discussions with the Recipient;
 - (iii) if applicable, the updated Project Plan is in a form acceptable to the Ministry; and
 - (iv) Co-Funding is and remains secured and available to the Recipient to be applied towards the Project in accordance with the Project Plan.

7 TERM

- 7.1 This Agreement commences on the date it is signed by the Parties and will continue in full force and effect until 1 June 2023, unless terminated earlier in accordance with its terms.
- 7.2 Each Work Programme starts on the Start Date and ends on the End Date or the date on which anything required to be done by the Recipient under a Work Programme is completed (whichever is the later), unless terminated earlier in accordance with its terms.

8 REPORTING REQUIREMENTS

- 8.1 **Reports:** The Recipient will provide the Ministry with:
 - (a) A Monthly Report by email on the final Business Day of each month (unless a Quarterly Report is due) detailing the progress of each Work Programme against the relevant Work Programme Budget and Work Programme Timeframes set out in the Project Plan;
 - (b) A Quarterly Report completed on a template attached as Schedule 4, by the 10th Business Day following the end of each quarter;
 - (c) A Final Report within 10 Business Days of the End Date of a completed Work Programme, on the Ministry's approved form; and

(d) Immediate notice of any change in circumstance that may result in the Co-Funding (or any part of the Co-Funding) not being secured and available to the Recipient to be applied towards the Programme.

8.2 **Ministry satisfaction:** For the avoidance of doubt, if any one or more of the Reports do not satisfy the Ministry that a Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframe, the Ministry will be entitled to terminate the relevant Work Programme and recoup all unspent funds in accordance with clause 4 of Schedule 2.

8.3 **Final Programme Report:** A Final Programme Report within 1 month following the Expiry Date in the Ministry's approved form.

8.4 **Further information:** The Recipient will promptly provide all information requested by the Ministry necessary to verify the Recipient's performance under this Agreement, including (without limitation) its procurement documentation, subcontracts, financial and technical information, and records of the number and make-up of the workers hired to undertake the Programme or any Work Programme(s).

9 GOVERNANCE

9.1 The Parties acknowledge that, once established, a programme board comprising suitably qualified and experienced personnel will provide oversight of all "Climate Resilience Programmes" subject to Ministry funding agreements, including this Programme (the **Programme Board**).

9.2 The Programme Board will be provided with the Recipient's Reports, budget forecasts, any updated Project Plans, and any other project information necessary in order for it to perform its oversight function.

9.3 The Recipient will promptly provide all further information reasonably requested by the Programme Board in order to perform its oversight functions.

9.4 The Programme Board will:

(a) provide advice about whether or not the Recipient is meeting its performance obligations under this Agreement;

(b) provide the Recipient with advice about any action or change recommended to meet its performance obligations;

(c) monitor the progress of the Programme, compliance, risk identification and mitigation, and quality assurance; and

(d) establish channels for two-way communication of information or escalation of issues between the Recipient and the Ministry.

9.5 The Programme Board may make recommendations to the Ministry in respect to the Recipient's performance under this Agreement and to ensure the improvement and profitable management of the Programme against the Project Plan.

10 ADDRESS FOR NOTICES

Ministry:	Recipient:
<p>Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON 6011</p> <p>Email address: warren.gilbertson@mbie.govt.nz Contact person: Warren Gilbertson Attention: Warren Gilbertson</p>	<p>West Coast Regional Council 388 Main South Road Paroa GREYMOUTH 7805</p> <p>Email address: rb@wrc.govt.nz Contact person: Randal Beal</p>

SCHEDULE 2 - FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS

1 INTERPRETATION

1.1 In this Agreement, the following terms have the following meanings:

“Agreement” means this agreement, including all Schedules;

“Best Industry Practice” means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement;

“Business Day” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“Co-Funding” means the “Co-Funding” or any part of the Co-Funding (as the context requires), described in clause 4.1 of Schedule 1 and the Project Plan.

“Commencement Date” is the date this Agreement is signed by both Parties;

“Confidential Information” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

“Construction Commencement Date” means the date that construction works under each Work Programme must commence;

“Deliverable” means the deliverables in each Work Programme;

“End Date” means the end date of a Work Programme as set out in the relevant Work Programme;

“Expiry Date” means the expiry date of this Agreement, as described in Schedule 1;

“Final Report” means the final report, as described in Schedule 1;

“Final Programme Report” means the final programme report, as described in Schedule 1;

“Funding” means the funding total, as described in Schedule 1;

“GST” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“Instalment” means a three-monthly payment instalment for a Work Programme, as set out in the Project Plan (noting clause 6.2 of Schedule 1 allows aggregation across a Programme);

“Intellectual Property Rights” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“Monthly Report” means the monthly report, as described in Schedule 1;

“Parties” means the Ministry and the Recipient and their respective successors and permitted assigns;

“Programme” means the programme described in Schedule 1, which consists of the Work Programmes;

“Programme Board” means the governance board, as described in Schedule 1;

“Programme Director” means an officer of the Recipient with the authority to certify requests for payment of the Instalments described in Schedule 1;

“Programme Costs” means the total costs of the Work Programmes (in the aggregate);

“Project Plan” means a project plan for the Programme, providing details for each Work Programme, in the form approved by the Ministry;

“Report” means the reports described in clause 8 of Schedule 1;

- “**Schedule**” means a schedule to this Agreement;
- “**Social Procurement Objectives**” means the agreed objectives described in Schedule 3;
- “**Start Date**” means the start date of a Work Programme as set out in the relevant Work Programme;
- “**Total Maximum Amount Payable**” has the meaning given in Schedule 1.
- “**Quarterly Report**” means the quarterly report, as described in Schedule 1;
- “**Work Programme**” means a work programme identified in clause 4.1 of Schedule 1 and specified in the Project Plan;
- “**Work Programme Budget**” means the budget in each Work Programme;
- “**Work Programme Costs**” means the total costs of a Work Programme;
- “**Work Programme Timeframe**” means the work programme timeframes in each Work Programme.
- 1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.
- 1.3 The headings in this Agreement are for convenience only and have no legal effect.
- 1.4 The singular includes the plural and vice versa.
- 1.5 “Including” and similar words do not imply any limitation.
- 1.6 References to a statute include references to that statute as amended or replaced from time to time.
- 1.7 Monetary references are references to New Zealand currency.
- 1.8 If there is any conflict of meaning between Schedule 1 and Schedule 2, Schedule 2 will prevail.
- 2 FUNDING** The Ministry must pay the Funding (up to the Total Maximum Amount Payable) in accordance with the payment schedules in the Project Plan to the

Recipient, subject to the terms of this Agreement.

- 2.2 The Recipient must provide a valid GST invoice that complies with the Goods and Services Tax Act 1985 for each Instalment. The invoice must:
- (a) be sent directly to the Ministry via email to monitorpgf@mbie.govt.nz;
 - (b) be copied to the relevant Ministry contact person as set out in clause 10 of Schedule 1;
 - (c) include sufficient information reasonably required to enable the Ministry to validate the claim for payment including a reference to this Agreement (under which the invoice is issued); and
 - (d) be clearly and legibly marked to Ministry staff as advised by the Ministry to the Recipient from time to time.
- 2.3 The Funding is inclusive of all taxation except GST. The Ministry will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Recipient and will not be required to gross-up or increase any such payments in respect of such amounts withheld.
- 2.4 The Recipient must use the Funding only to carry out the Programme in accordance with this Agreement.
- 2.5 In consideration of the Funding, the Recipient must:
- (a) progress each Work Programme to the Ministry’s satisfaction;
 - (b) complete each Work Programme to the Ministry’s satisfaction by the Expiry Date;
 - (c) carry out each Work Programme in accordance with:
 - (i) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Work Programme; and
 - (ii) all applicable laws, regulations, rules and professional codes of conduct or practice; and

- (d) refund any unspent Funding in respect to the relevant Work Programme, to the Ministry within 10 Business Days of the End Date.

2.6 Where all of the monies received by the Recipient to carry out the Programme (including the Funding) exceeds the Programme Costs, the Recipient must refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 2.6, any amount that exceeds the Total Maximum Amount Payable.

2.7 The Recipient must ensure (and must procure that any contractor it uses ensures) that all agreements it enters into with contractors or any other party in connection with the Programme are on an “arm’s length” basis and provides value for money. To the extent that the expenditure relates to work performed by parties not at “arm’s length”, that expenditure must be assessed at reasonable market value, and contain no unacceptable overhead and no element of “in group profit”.

3 PROGRAMME DELIVERY AND PROGRESSif:

- (a) the Ministry is not satisfied with the progress of a Work Programme;
- (b) the Construction Commencement Date has not been met;
- (c) the Recipient does or omits to do something, or any matter concerning the Recipient comes to the Ministry’s attention, which, in the Ministry’s opinion, may damage the business or reputation of the Ministry; or
- (d) the Recipient breaches any of its obligations under this Agreement,
the Ministry may (without limiting its other remedies):
 - (e) renegotiate the relevant Work Programme(s) with the Recipient; or
 - (f) terminate the relevant Work Programme(s) immediately by notice to the Recipient, and clause 4.3 and 4.4 will apply.

4 TERMINATION

4.1 The Ministry may terminate this Agreement at any time by giving at least 10 Business Days’ notice to the Recipient.

4.2 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:

- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
- (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
- (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry’s attention, which in the Ministry’s opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
- (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
- (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.3 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

4.4 On termination of this Agreement or relevant Work Programme(s), the Ministry may (without limiting any of its other rights or remedies):

- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
- (b) require the Recipient to refund to the Ministry:
 - (i) any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been provided or promised to a third

party for the purpose of carrying out the Programme and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or

- (ii) the proportion of the Funding that equates to the uncompleted part of the relevant Work Programme, as reasonably determined by the Ministry; and/or;
- (iii) if the Funding has been misused, or misappropriated, by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money; and/or;
- (iv) if any proportion of the Co-Funding has not been used for the Programme, the Ministry may recover from the Recipient an equivalent amount of the Funding.

5 REPORTING REQUIREMENTS AND AUDIT

The Recipient must report on the progress of the Programme to the Ministry:

- (a) as set out in Schedule 1;
- (b) as otherwise reasonably required by the Ministry; and
- (c) in any format and on any medium reasonably required by the Ministry.

5.2 The Recipient must:

- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Programme sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7

years after termination or expiry of this Agreement;

- (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;
- (c) allow the Ministry reasonable access to the Recipient's premises or other premises where any of the works are being carried out;
- (d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding;

6 WARRANTIES

6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

6.2 The Recipient warrants that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;
- (b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and
- (c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

6.3 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.

6.4 The Recipient acknowledges and agrees that the Ministry has made no warranty or representation that any funding or financial support is or will be available to the

Recipient in respect of the Programme other than the Funding.

7 INTELLECTUAL PROPERTY

- 7.1 All Intellectual Property Rights in the reports provided under clause 8, Schedule 1 will be owned by the Ministry from the date the reports are created or developed.
- 7.2 All intellectual property produced by the Recipient or its employees or contractors in relation to the Programme is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning, or licensing) such intellectual property without obtaining the prior consent of the other Party. On request, the Recipient must provide to the Ministry such intellectual property in any format, and on any medium, reasonably requested by the Ministry.
- 7.3 The Recipient must ensure that material created or developed in connection with the Programme does not infringe the Intellectual Property Rights of any person.

8 CONFIDENTIALITY

- 8.1 The Recipient must:
- (a) keep the Confidential Information confidential at all times;
 - (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Programme or this Agreement;
 - (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
 - (d) ensure that any employees or contractors to whom it discloses the Confidential Information are aware of, and comply with, the provisions of this clause 8.
- 8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:
- (a) to the extent that such disclosure is necessary for the purposes of completing the Programme;

(b) required by law; or

(c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.

- 8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Programme.

9 LIABILITY AND INSURANCE

- 9.1 The Recipient must effect and maintain insurance that is adequate to cover its obligations under this Agreement. The Recipient must, on request, provide the Ministry with evidence of its insurance cover required under this clause.
- 9.2 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 9.3 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Programme had been carried out in accordance with this Agreement.
- 9.4 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety at Work Act 2015 or to pay to the Recipient:
- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
 - (b) redundancy or any other form of severance pay; or
 - (c) taxes or levies, including any levies under the Accident Compensation Act

2001.

- 9.5 The Recipient indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own client basis) (“loss”) brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Programme, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.
- 9.6 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in Schedule 1 in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient’s liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient’s wilful default or dishonesty.
- 9.7 The Recipient must effect and maintain for the term of this Agreement:
- (a) adequate insurance to cover standard commercial risks; and
 - (b) other insurance reasonably required by the Ministry.

The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

10 DISPUTE RESOLUTION

- 10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties’ senior managers for resolution if necessary.
- 10.2 If the Parties’ senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another

form of alternative dispute resolution agreed between the Parties.

- 10.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of the Resolution Institute of New Zealand) and on the terms of the Resolution Institute’s standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).
- 10.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.
- 10.5 Nothing in this clause 10 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.

11 FORCE MAJEURE

- 11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party’s reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement (“Force Majeure Event”). The Party affected must:
- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
 - (b) use its best endeavours to overcome the Force Majeure Event; and
 - (c) continue to perform its obligations as far as practicable.

12 GENERAL

- 12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other

breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

12.2 Assignment:

- (a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.
- (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).

12.3 This Agreement may only be varied by agreement in writing signed by the Parties.

12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or registered post to the Parties' respective email address, postal address as set out in Schedule 1. A notice is deemed to be received:

- (a) if personally delivered when delivered; or
- (b) if posted, three Business Days after posting;
- (c) if sent by email, at the time the email enters the Recipient's information system as evidenced by a delivery

receipt requested by the sender and it is not returned undelivered or as an error, provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

12.7 The provisions of this Agreement relating to termination (clause 4), reporting requirements and audit (clause 5), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.

12.8 This Agreement may be signed in any number of counterparts (including emailed copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

12.9 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

SCHEDULE 3 – SOCIAL PROCUREMENT OUTCOMES

Outcome	Measure
Employment of targeted workers	Prioritising workers identifying as: <ol style="list-style-type: none"> 1. Māori or Pasifika 2. local workers 3. With the employment of women prioritised at each level where possible.
Local Businesses	90% of the direct contracts and sub-contracts will be awarded to businesses owned and operated by people who reside in the region operating in the region (targeting Māori and Pasifika businesses in particular)
Supplier Diversity	Council will continue to identify appropriate Māori and Pasifika businesses and will endeavour to work toward an objective of up to 10% of the direct contracts and sub-contracts to be awarded to Māori and Pasifika businesses
Skills and training	Training should include, but not be limited to: <ul style="list-style-type: none"> • financial literacy and budgeting; • health & safety; • people management & development; and • marketing.
	<p>A career development plan created within 3 months of a contract being awarded.</p> <p>Internal assessments of all employees' career development plan will be carried out at least once a month and at the end of the contracted works to ensure each employee's career development is progressing.</p> <p>A focus should be individuals obtaining those skills sets and training that will not just benefit them in their current role, but has the ability to keep individuals connected nationally (e.g. traffic management). These should be through an accredited training provider so units are reported correctly on NZQA.</p> <p>Development Plans should include, but not be limited to:</p> <ul style="list-style-type: none"> • individuals' aims and goals; • plan to meet aims and goals (if realistic); • clearly identifying needs for skills, knowledge or competence; • selecting appropriate development activities; • recording of training/development opportunities undertaken; • formal recognition/certification of training (e.g. health & safety); and

	<ul style="list-style-type: none"> • other roles undertaken.
Worker Conditions	100% of employees will be registered with a suitably qualified health and safety testing organisation including mental health and wellness.
	Employees' wages will increase progressively in line with their career development plan achievements.
Environmental Responsibility	<p>Adoption of practises that enable the Work Programme(s) to be delivered sustainably, including by:</p> <ul style="list-style-type: none"> • protecting or enhancing the local ecosystem and its indigenous biodiversity; • actively seeking to minimise the carbon impact of the Programme delivery, to support the transition to a net zero emissions economy; • minimising waste, re-using materials, and where possible incorporating the principles of the circular economy; • using water resources efficiently; • using low-impact, sustainably and locally sourced materials and products; and • including resilience to the impacts of a changing climate.

QUARTERLY REPORT TEMPLATE



West Coast Regional Council CLIMATE RESILIENCE PROGRAMME

Location and Region:	
Contracted Amount:	
Report Date:	For the month ending [<i>insert month OR quarter</i>]

1. Programme Updates

Provide description and analysis of actual against planned progress of each Work Programme to show that the activity is occurring at pace.

Work Programme	Details of progress
Hokitika Flood and Coastal Erosion Protection	
Mawhera Quay Flood Protection Wall Upgrade (Stage 2)	
Westport (Buller River) Flood warning system	
Franz Josef (Waiho River Stop Bank Protection) Phase One	

2. Redeployment Outcomes

2.1 Complete the following table for the number of people working to deliver each Work Programme in the current reporting period.

Work Programme	Total People Working	No. previously unemployed	No. local	No. aged 15-24	No. Māori	No. Pasifika	No. Women	Job type*
Hokitika Flood and Coastal Erosion Protection								
Mawhera Quay Flood Protection Wall Upgrade (Stage 2)								
Westport (Buller River) Flood warning system								
Total								

*Full-time/Part-Time/Contractor/Consultant

2.2 Complete the following total jobs table, showing total current, past and expected future jobs

Current jobs (this should be the Total People Working in the table above)	People previously but no longer employed on each Work Programme	Expected jobs in the future

2.3 Provide any additional narrative to explain the tables 2.1 and 2.2 above, including other relevant information

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3. Supplier Diversity Outcomes

Complete the following table for the number and value of each direct or sub-contract awarded to local, Māori and/or Pasifika-owned businesses during the current reporting period.

Name of business	Business type (Māori, Pasifika, local)	Contract type (direct, sub-contract)	Contract purpose (briefly describe)	Length of contract (months)	Total value of contract (\$)	No. new employees (as a result of contract)

4. Social Procurement Objectives

In an Appendix (please attach) and in the format that best works for you:

- Show achievements to date against the Social Procurement Objectives in a table or other useful format.
- Provide additional narrative to show how tendering, procurement, employment and/or training arrangements are helping to achieve the Social Procurement Objectives, identifying any limitations or further support needed.

5. Financials

Give a summary of funding received and expenditure to date, actual against budgeted, for each **Work Programme** in the Table below or an Appendix (please attach).

Work Programme	Indicative Cost	Actual Spend	PGF funds (yes/no)	Co-Funding	Note
Hokitika Flood and Coastal Erosion Protection					
Mawhera Quay Flood Protection Wall Upgrade (Stage 2)					
Westport (Buller River) Flood warning system					
Total					

6. Forward Work Programme

Outline forward work to be completed in the next month

Key Milestone	Indicative Timeframe	Outline of Planned Work (for next month)

7. Risks/Issues/Opportunities

Outline any risks and/or issues arising or expected to arise, costs and mitigation

Risks / Issues	Magnitude/Likelihood	Mitigation

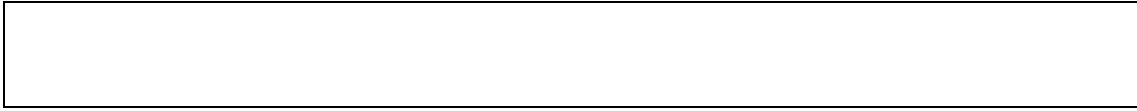
8. Communications

Provide an update on media, marketing and communications activity for this Programme

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9. Any other information

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Report to: Infrastructure Governance Committee	Meeting Date: 8 November 2022
Title of Item: Kānoa Quarterly Report to 30 September 2022	
Report by: Heather Mabin, Chief Executive	
Reviewed by:	
Public excluded? No	

Report Purpose

The purpose of this paper is to table to the Committee the quarterly report to 30 September 2022 that was submitted to Kānoa for the four IRG Projects.

Summary

Each quarter organisations submit a quarterly report to Kānoa. Kānoa oversee the Shovel Ready projects across New Zealand.

Recommendations

It is recommended that Committee resolve to:

- 1. Receive the quarterly report to 30 September 2022 that was submitted to Kānoa.*

Attachment

Attachment 1: Kānoa Quarterly Report to 30 September 2022



Quarterly Report to the Advisory Board on the Climate Resilience Flood Protection Programme

Reporting Period: July – September 2022

River Managers' SIG

Contents

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Project Status Updates

Please provide **numbers** for the planning stage, **percentages** for progress, and **dates** for project milestones. Please provide succinct comment on recent and planned progress.

Region/ Council	Project	Number			Percentage				Date							COMMENTS Work achieved this Quarter	COMMENTS Works planned next Quarter	
		Planning			Progress				Project Milestones									
		Projects/Stages in programme	Plans finalised	Requiring IRG approval	PM systems % in place	Spend as % of budget total	Jobs, % of budget total	Concept design agreed	Prelim design complete	Access secured	Consents granted	Final design complete	Resources assigned	Contracts Awarded	Project completed			Close-out report
Northland	Awanui/Kaitaia																	
	Panguru																	
	Moerewa																	
Kaipara	Raupo																	
	Te Kopuru/Dargaville																	
Bay of Plenty	River Schemes - Flood Resilience Projects:																	
	Ngongotahā Flood Mitigation Works																	
	Whakatāne River flood protection - Urban																	
	Waioeka Estuary Restoration																	
	Kaituna Mole Upgrade																	
	Rangitāiki Floodwalls																	
	Rangitāiki River Community Resilience & Flood Protection - Flood & Spillway Protection Edgecumbe																	
Waikato	Erosion Protection in the Catchments of Lower Waikato Lakes and Wetlands																	
	Fish Passage Pumps																	
	Foreshore East and West Stopbank																	
	Lake Kimihia, Ecological and Cultural Enhancement																	
	Mill Road Pump Station																	
	Piako River Mouth, Right Bank Asset Rationalisation																	

Region/ Council	Project	Number			Percentage				Date								COMMENTS Work achieved this Quarter	COMMENTS Works planned next Quarter
		Planning			Progress				Project Milestones									
		Projects/Stages in programme	Plans finalised	Requiring IRG approval	PM systems % in place	Spend as % of budget total	Jobs, % of budget total	Concept design agreed	Prelim design complete	Access secured	Consents granted	Final design complete	Resources assigned	Contracts Awarded	Project completed	Close-out report		
	Piako River, Ngatea Town Left Stopbank																	
	Roger Harris Pump-station Upgrade																	
	Vessel Reconstruction																	
Gisborne	Waipaoa River Flood Control Scheme																	
Hawkes Bay	Heretaunga Plains Flood Control Scheme																	
	Upper Tukituki Flood Control Scheme - Gravel Extraction																	
	Upper Tukituki Flood Control Scheme - SH50 Bridge																	
	Wairoa River Scheme - River Parade Scour Protection																	
Manawatu-Whanganui	Foxton Flood Protection																	
	Lower Manawatu Scheme Resilience																	
	Palmerston North Flood Protection																	
	Rangitikei Scheme Enhancement/Resilience																	
Greater Wellington	Erosion Projects																	
	Major Projects																	
Nelson	Saxton Creek Upgrade																	
Marlborough	Wairau River Flood Protection Scheme																	
Tasman	Motueka River Refurbishment																	
West Coast	Franz Josef (Waiho River Stopbank Protection) - Phase 1	1	1	1	100%	6%		100%	26/10/21	Nov 22	Nov 22	March 2022	Oct 22	02/05/22	Apr 23	May 23	RC affected party approvals, project planning, construction pre-start meetings, liaison with local community	Resource Consent approval, commence construction on site
	Hokitika Flood and Coastal Erosion Protection	4	25%	0	100	14%		25%	Feb 23	Jun 23	Jun 23	May 23	Nov 23	Nov 23	Jun 24	Aug 24	Sea wall – Resource Consent in progress, Design Complete. River Walls – commence design	Sea Wall – Finalise Cultural Impact Assessment, Complete consenting River Walls – progress design

Region/ Council	Project	Number			Percentage				Date								COMMENTS Work achieved this Quarter	COMMENTS Works planned next Quarter
		Planning			Progress				Project Milestones									
		Projects/Stages in programme	Plans finalised	Requiring IRG approval	PM systems % in place	Spend as % of budget total	Jobs, % of budget total	Concept design agreed	Prelim design complete	Access secured	Consents granted	Final design complete	Resources assigned	Contracts Awarded	Project completed	Close-out report		
	Mawhera Quay Flood Protection Wall upgrade (Stage 2) /Grey Floodwall Upgrade Stage 2	5	0	0	100	14%		90%	Nov 22	Feb 23	Feb 23	Apr 23	Jun 23	Jun 23	May 24	Jun 24	Preliminary designs progressed for all stages, with two stages further progressed to developed design. Budget updates and discussion with GDC commenced	Progress to detailed designs and complete Resource Consent amendment
	Westport (Buller River) Flood warning system	1	1	0	100 %	100 %	100 %	100 %	N/A	N/A	N/A	N/A	May 2021	May 2021	2025 for final fine tuning	50%	First outputs from early warning system provided and used in emergency response planning for August Red rainfall warning event. Project practically complete with only agreed ongoing refinement and fine tuning to be carried out	Complete Close out report, final drawdown
Canterbury	Waimakariri River – McIntosh’s Bend - Kaiapoi Community Flood Protection Project																	
	Ashley/Rakahuri River Protection and Fairway Management																	
	Waiiau Township Stopbank Repairs and Upgrades																	
	Rangitata 2019 Flood Recovery																	
	Region wide river berm transition project (incl Halswell / Hurutini weed barrage)																	
Otago	Outram Flood Protection																	
	Riverbank Road Flood Protection, Lower Clutha. Stabilising critical flood protection infrastructure for Clutha Delta area																	
	Upgrade and Installation of ORC Flow Management																	

Region/ Council	Project	Number			Percentage			Date							COMMENTS Work achieved this Quarter	COMMENTS Works planned next Quarter		
		Planning			Progress			Project Milestones										
		Projects/Stages in programme	Plans finalised	Requiring IRG approval	PM systems % in place	Spend as % of budget total	Jobs, % of budget total	Concept design agreed	Prelim design complete	Access secured	Consents granted	Final design complete	Resources assigned	Contracts Awarded			Project completed	Close-out report
	Structures at Robson Lagoon																	
	West Taieri Contour Channel and Bridges Upgrade																	
Southland	Gore Town Stopbank-Upgrade																	
	Boundary Creek Stopbank Upgrade																	
	Mataura Town S/B upgrade																	
	Waiiau River Flood Damage																	
	Mataura Stopbank Protection																	
	Waimumu Stopbank upgrade																	
	Wyndham Stopbank Upgrade																	
	Waihopai Stop Banks Upgrade																	
	Otepuni Stop Banks Upgrade																	
	Stead Street Pump Station																	
Invercargill	Stead Street Stop Bank																	

Co-funding Confirmation

Please provide up-to-date figures for council's co-funding of each project.

Region/ Council	Project	Co-funding
Northland	Awanui/Kaitaia	
	Panguru	
	Moerewa	
Kaipara	Raupo	
	Te Kopuru/Dargaville	
Bay of Plenty	River Schemes - Flood Resilience Projects:	
	Ngongotahā Flood Mitigation Works	
	Whakatāne River flood protection - Urban	
	Waioeka Estuary Restoration	
	Kaituna Mole Upgrade	

Region/ Council	Project	Co-funding
	Rangitāiki Floodwalls	
	Rangitāiki River Community Resilience & Flood Protection - Flood & Spillway Protection Edgecumbe	
Waikato	Erosion Protection in the Catchments of Lower Waikato Lakes and Wetlands	
	Fish Passage Pumps	
	Foreshore East and West Stopbank	
	Lake Kimihia, Ecological and Cultural Enhancement	
	Mill Road Pump Station	
	Piako River Mouth, Right Bank Asset Rationalisation	
	Piako River, Ngatea Town Left Stopbank	
	Roger Harris Pump-station Upgrade	
	Vessel Reconstruction	
Gisborne	Waipaoa River Flood Control Scheme	
Hawkes Bay	Heretaunga Plains Flood Control Scheme	
	Upper Tukituki Flood Control Scheme - Gravel Extraction	
	Upper Tukituki Flood Control Scheme - SH50 Bridge	
	Wairoa River Scheme - River Parade Scour Protection	
Manawatu-Whanganui	Foxton Flood Protection	
	Lower Manawatu Scheme Resilience	
	Palmerston North Flood Protection	
	Rangitikei Scheme Enhancement/Resilience	
Greater Wellington	Erosion Projects	
	Major Projects	
Nelson	Saxton Creek Upgrade	
Marlborough	Wairau River Flood Protection Scheme	
Tasman	Motueka River Refurbishment	
West Coast	Franz Josef (Waiho River Stopbank Protection) - Phase 1	\$3,072,866
	Hokitika Flood and Coastal Erosion Protection	\$1,250,000
	Mawhera Quay Flood Protection Wall upgrade (Stage 2) /Grey Floodwall Upgrade Stage 2	\$650,000
	Westport (Buller River) Flood warning system	\$125,000
Canterbury	Waimakariri River – McIntosh’s Bend - Kaiapoi Community Flood Protection Project	
	Ashley/Rakahuri River Protection and Fairway Management	
	Waiau Township Stopbank Repairs and Upgrades	
	Rangitata 2019 Flood Recovery	
	Region wide river berm transition project (incl Halswell / Hurutini weed barrage)	
Otago	Outram Flood Protection	
	Riverbank Road Flood Protection, Lower Clutha. Stabilising critical flood protection infrastructure for Clutha Delta area	
	Upgrade and Installation of ORC Flow Management Structures at Robson Lagoon	
	West Taieri Contour Channel and Bridges Upgrade	
Southland	Gore Town Stopbank-Upgrade	
	Boundary Creek Stopbank Upgrade	
	Mataura Town S/B upgrade	
	Waiau River Flood Damage	
	Mataura Stopbank Protection	
	Waimumu Stopbank upgrade	
	Wyndham Stopbank Upgrade	
	Waihopai Stop Banks Upgrade	
	Otepuni Stop Banks Upgrade	

Region/ Council	Project	Co-funding
	Stead Street Pump Station	
Invercargill	Stead Street Stop Bank	

RAG Assessment

Categories and Definitions

	Red		Amber		Green	
Statuses	Definition	Action	Definition	Action	Definition	Action
Overall	Any status is red	As per individual status	3 of 5 Statuses are amber	As per individual Status	All Statuses are green	No action required
Cost	Overall budget is affected Changes to forecast spend Actuals not tracking to forecast	Raise item in risk register Actuals tracking against forecast (>25% variance) Escalate to RDU → Board Change Request/revise plan	Changes to forecast spend Actuals not tracking to forecast spend (15-25% variance) Overall Project budget not affected	Raise item in issues register Escalate to RDU → Board	No changes to forecast spend Actuals tracking close to forecast spend (<14.9% variance) To be delivered to Project Budget	No action required
Schedule	Overall Schedule affected Project deliverables compromised (Completion date, budget, SPO's)	(>3 months) Raise item in risk register Escalate to RDU → Board Change Request/ revise plan	Phase schedule affected (2-3 months) Overall Project completion date not affected	Raise item in issue register Escalate to RDU → Board Change request/ revise plan	Schedule on close to on track (<1 months)	No action required
Scope	Requirements redefined and agreed by Council Project deliverables compromised	(> 3 months) Raise item in risk register Escalate to RDU → Board Change Request/ revise plan	Phase schedule affected (2-3 months) Overall Project completion date not affected	Raise item in issue register Escalate to RDU → Board	Impact insignificant (Low) (<1month) Project completion date not affected	No action required
Risks/Issues	Impact (High) Almost certain Project deliverables compromised (Completion date, budget, SPO's)	Escalate to RDU → Board Raise item in risk register Submit risk mitigation options with comparative benefits	Impact (Moderate) Likelihood (possible) Phase schedule affected but completion date on track	Raise item in issue register Escalate to RDU → Board	Impact insignificant (Low)	No action required
Resourcing	Resource requirements redefined and agreed by Council Overall Project completion date compromised	Raise item in risk register Submit risk mitigation options with comparative benefits	Resources requirements redefined and agreed by Council Phase schedule affected Overall Project completion date not affected	Raise item in risk register Escalate to RDU → Board	Project fully resourced Phase schedule on track Project completion date not affected	No action required

Using the matrix above, on the following pages use red, amber or green “fill” to indicate the risk status for cost, schedule, scope, general risk/issues affecting the project, and resourcing. Please similarly provide an overall risk assessment for the project . Provide additional comment for context and describe mitigations being applied to address any risks.

Council	Project	Overall	Cost	Schedules	Scope	Risk / Issues	Resourcing	COMMENTS: Relating to the overall assignment of RAG.
Northland	Awanui/Kaitaia							
	Panguru							
	Moerewa							
Kaipara	Raupo							
	Te Kopuru/Dargaville							
Bay of Plenty	River Schemes - Flood Resilience Projects:							
	Ngongotahā Flood Mitigation Works							
	Whakatāne River flood protection - Urban							
	Waioeka Estuary Restoration							
	Kaituna Mole Upgrade							
	Rangitāiki Floodwalls							
	Rangitāiki River Community Resilience & Flood Protection - Flood & Spillway Protection Edgecumbe							
Waikato	Erosion Protection in the Catchments of Lower Waikato Lakes and Wetlands							
	Fish Passage Pumps							
	Foreshore East and West Stopbank							
	Lake Kimihia, Ecological and Cultural Enhancement							
	Mill Road Pump Station							
	Piako River Mouth, Right Bank Asset Rationalisation							
	Piako River, Ngatea Town Left Stopbank							
	Roger Harris Pump-station Upgrade							
	Vessel Reconstruction							
	Gisborne	Waipaoa River Flood Control Scheme						
Hawkes Bay	Heretaunga Plains Flood Control Scheme							
	Upper Tukituki Flood Control Scheme - Gravel Extraction							
	Upper Tukituki Flood Control Scheme - SH50 Bridge							

	Wairoa River Scheme - River Parade Scour Protection							
Manawatu-Whanganui	Foxton Flood Protection							
	Lower Manawatu Scheme Resilience							
	Palmerston North Flood Protection							
	Rangitikei Scheme Enhancement/Resilience							
Greater Wellington	Erosion Projects							
	Major Projects							
Nelson	Saxton Creek Upgrade							
Marlborough	Wairau River Flood Protection Scheme							
Tasman	Motueka River Refurbishment							
West Coast	Franz Josef (Waiho River Stopbank Protection) - Phase 1	Yellow	Green	Yellow	Green	Yellow	Green	Delivery programme delayed due to Affected Party approvals for Resource Consent
	Hokitika Flood and Coastal Erosion Protection	Red	Red	Red	Red	Yellow	Yellow	Scope vs budgets not aligned, additional funding or reduced scope will be required
	Mawhera Quay Flood Protection Wall upgrade (Stage 2) /Grey Floodwall Upgrade Stage 2	Yellow	Yellow	Yellow	Yellow	Green	Green	Some additional scope potentially required where the existing flood walls are below expected height along Southern Breakwater Road (not originally part of scope, but has potential to compromise other flood protection works)
	Westport (Buller River) Flood warning system	Green	Green	Green	Green	Green	Green	Initial project work complete with ongoing tuning to be carried out over next 3 years. Close out report underway, expected next quarter.
Canterbury	Waimakariri River – McIntosh’s Bend - Kaiapoi Community Flood Protection Project							
	Ashley/Rakahuri River Protection and Fairway Management							
	Waiau Township Stopbank Repairs and Upgrades							
	Rangitata 2019 Flood Recovery							
	Region wide river berm transition project (incl Halswell / Hurutini weed barrage)							
Otago	Outram Flood Protection							
	Riverbank Road Flood Protection, Lower Clutha. Stabilising critical flood protection infrastructure for Clutha Delta area							
	Upgrade and Installation of ORC Flow Management Structures at Robson Lagoon							
	West Taieri Contour Channel and Bridges Upgrade							
Southland	Gore Town Stopbank-Upgrade							

	Boundary Creek Stopbank Upgrade								
	Mataura Town S/B upgrade								
	Waiau River Flood Damage								
	Mataura Stopbank Protection								
	Waimumu Stopbank upgrade								
	Wyndham Stopbank Upgrade								
	Waihopai Stop Banks Upgrade								
	Otepuni Stop Banks Upgrade								
	Stead Street Pump Station								
Invercargill	Stead Street Stop Bank								

Social Well Being Outcomes

Please provide dollar figures for the forecast budget and expenditure to date. For staff numbers, please provide a head count (ie not FTE).

	Forecast Budget	Expenditure to date	Total staff trained	No staff trained this Quarter	Targeted demographic No. Māori	Targeted demographic No. Pasifika	Targeted demographic No. Women	Targeted demographic No. aged 15-24
Wellness and mental health	\$	\$273	1	1			1	
Career Training	\$	\$	1					
Life Skills Training	\$	\$	1				1	
Health & Safety Training	\$1660	\$	1				1	
Professional Development	\$	\$1307.82	1	1			1	
Social Procurement	\$	\$4600	3	3			2	1

Environmental Outcomes

Please provide targets at completion of your programme for the metrics indicated. At the completion of each recipient's programme, the actual achievement will be compared to the targets.

Social and Environmental Outcomes (Forecast to be achieved at completion of all projects.)															
Council	Flood risk management components enhanced				Areas with reduced flood risk				Areas of environmental enhancement						
	Flood protection (km)	Drainage (ha)	River Management (km)	Tidal (ha)	Residential (ha)	Commercial (ha)	Non-rateable land (ha)	Agricultural (ha)	Exotic (ha)	Native (ha)	Amenity (ha)	Wetlands (ha)	Noxious weed control (ha)	Catchments safe fish passage (ha)	Lakes (ha)
Northland															
Kaipara															
Bay of Plenty															
Gisborne															
Waikato															
Hawkes Bay															
Horizons															
Greater Wellington															
Nelson															
Tasman															
Marlborough															

West Coast	15.1	0.0	0.0	0.0	193.6	132.9	356	2985.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Canterbury															
Otago															
Southland															
Invercargill															
National Totals															

Report to: Infrastructure Governance Committee	Meeting Date: 8 November 2022
Title of Item: Agenda Extraordinary Council meeting 3 May 2022	
Report by: Heather Mabin, Chief Executive	
Reviewed by:	
Public excluded? No	

Report Purpose

The purpose of this paper is to table to the Committee the Agenda of the Extraordinary Council meeting held on 3 May 2022 that ratified the Immediate Urgent works projects at Westport.

Summary

As a result of the significant weather event in the Buller region in July 2021, a Buller Flood Recovery Steering Group was established that consisted of an independent Chair and representatives from NEMA, DIA, BDC and WCRC. This Steering Group was tasked with overseeing the initial central government money awarded to DIA and NEMA for the Buller region's recovery.

Parallel to this, WCRC adopted its Long-term Plan 2021-31 which included \$10.2M spend on a flood protection scheme for Westport. To progress this project, a technical advisory group (TAG) was established to research and design a potential scheme.

During the course of their investigation two projects were identified and recommended as Immediate Urgent Works that would contribute to the area's flood resilience, but be separate to the larger proposed scheme.

Given that the Committee includes four newly elected members, the Agenda that led to Council agreeing to these projects is included for their reference.

Recommendations

It is recommended that Committee resolve to:

1. *Receive and note the Agenda Extraordinary Council meeting 3 May 2022.*

Attachment

Attachment 1: Agenda Extraordinary Council meeting 3 May 2022

ATTACHMENT 1

Council Members

Chair Allan Birchfield
Cr Stuart Challenger (Deputy)
Cr Brett Cummings
Cr Peter Ewen

Cr Debra Magner
Cr Laura Coll McLaughlin
Cr John Hill



Extraordinary Meeting of Council (*Te Huinga Tu*)

Tuesday 3 May 2022
6:00pm

West Coast Regional Council Chambers, 388 Main South Road, Greymouth

and

Live Streamed via Council's Facebook Page:
<https://www.facebook.com/WestCoastRegionalCouncil>

EXTRAORDINARY MEETING OF COUNCIL

A G E N D A (*Rarangī Take*)

6:00 pm Tuesday 3 May 2022

1. Welcome (*Haere mai*)
2. Apologies (*Ngā pa pouri*)
3. Declarations of interest

Reports

4. Retrospective flood protection maintenance works

H. Mabin
Chief Executive

Report to: West Coast Regional Council	Meeting Date: 3 May 2022 Extraordinary Meeting
Title of Item: Retrospective flood protection maintenance works	
Report by: John Hutchings, Matt Gardner, Gary Williams, and Paulette Birchfield	
Reviewed by: Heather Mabin, Chief Executive	
Public excluded? No	

Report Purpose

To provide the Council with the background information and recommendations about urgent, no regrets, retrospective maintenance works at two sites: an erosion scour at Organ’s Island and bank erosion near O’Conor Home – both on the right bank of the Buller River at Westport.

Report Summary

On 8 March 2022 Council agreed in principle to proceed with works recommended by the Westport Rating District Joint Committee, subject to receiving further details. After this decision, it was identified by the Westport Technical Advisory Group (TAG) that priorities needed to be revisited and that there were two key pieces of urgent maintenance that were required to protect Westport.

This work is required prior to commencement of the construction of the Option 2 project as per Council’s Long-term Plan 2021-31 (LTP).

This paper seeks approval from Council to proceed with this work.

Recommendations

It is recommended the Council resolve to:

1. *Receive this report.*
2. *Authorise Staff to proceed with maintenance work on the bank erosion near O’Conor Home, at an estimated cost \$923,351.*
3. *Authorise Staff to proceed with maintenance work on Organ’s Island, at an estimated cost of \$1,701,762.*
4. *Agree to fund these works by:*
 - I. *Liquidating the Catastrophe fund portion of the Investment Portfolio, valued on 2 May 2022 to be \$982,184*
 - II. *Rollover and increase the amount of debt maturing on 26 May 2022 from \$2,013,092 to \$3,750,000 for a period of 6 months.*

Background

During the July 2021 flood event:

- A 260m length of bank erosion formed on the true right bank of the Buller River upstream of the O’Conor Home (a rest home and residential care facility).
- An erosion scour occurred to a section of historic rock training wall adjacent to Organ’s Island.

Previous Council considerations

On 8 March 2022, the Council considered recommendations from the 3 March 2022 Westport Rating District Joint Committee meeting. Among other things, this report sought urgent funding to repair damage to Buller River erosion scour and an area of bank erosion. It also sought funding for a proposed first stage of the proposed Westport circular flood management embankment works.

The work recommended by the Joint Committee was based on three reports:

- *Report on State of Emergency works:* that with the exception of Snodgrass area, the state of emergency works are, where required, brought up to design height and standard.

- *Report on Floodwall Protection Scheme*: that the works identified for Stage One of the flood protection scheme are approved to commence.
- *Report on Retrospective Maintenance works*: that additional budget is approved to complete the retrospective maintenance works.

Councillors resolved to support the Joint Committee's recommendation in principle, subject to provision of information about cost, funding sources, resource consents, land ownership, design, and project management. Councillors expected that the price of the works would be derived by putting the projects out for tender.

Reconsideration of priorities

Since the March Council meeting, the TAG has had two further meetings. A two-day workshop has also been convened. In addition, geotechnical work has been commissioned and information has been sought to satisfy the other needs identified by Councillors.

The overall priority for the TAG remains on providing advice to the Joint Committee and Council about the proposed circular embankment flood protection scheme for Westport. The recent TAG meetings / workshop have also given rise to a reconsideration of other flood protection priorities. The revised priority focus for these other works – and the purpose of this report, is to seek funding and Council endorsement of measures to overcome the risk posed by areas of bank erosion / erosion scours on the right bank of the Buller River near Westport: one near Organ's Island and one near the O'Connor Rest Home.

These are 'adjunct' works and are separate from the proposed Westport circular flood management embankment. They are also separate from several areas of the temporary 'emergency works' put in place in Westport in advance of the February 2022 flood event.

Remediation of the Organ's Island erosion scour / O'Connor area of bank erosion is important. If not acted upon they may put Westport at risk, ahead of the full embankment proposal being constructed.

In the long term, protection at the two areas of bank erosion / erosion scour will maintain the current Buller River alignment and hence protect the proposed flood defence measures (embankments and walls) to be constructed as part of more general flood risk mitigation at Westport.

Stage one works

Final design details for the proposed 'Stage one' embankment works / walls (located between the Toki bridge and the O'Connor Rest Home), are still in development. Design will be assisted by the almost completed geotechnical investigations being carried out in this area.

This work was initially prioritised to enable construction to commence in tandem with the Buller District Council Cycleway Project. Agreement has been reached to defer the Cycleway Project for a short time to ensure the two projects proceed in tandem. It is now proposed these 'Stage one' works be addressed as part of the proposed full Westport Flood Protection Scheme.

Davis Ogilvie have been commissioned to provide design details and an estimate of the cost for Stage one. They will be able to refine these details as soon as geotechnical details are available, and the TAG reaches final agreement about the alignment and height of the embankment at this location. TAG expect to reach agreement on these matters later this week. Discussions will also be required with Buller District Council about how to best integrate the planned cycleway with flood protection embankment works.

When the design and cost estimate has been completed, this information will be tabled to Council for approval to commence the work, in line with the 8 March in principle decision and resolution. It is envisaged that Stage one works could commence by the end of July 2022 at the earliest.

Information needs identified by Councillors

Information about the cost, funding sources, resource consents, land ownership, design, and project management for the O'Connor erosion scour / remediation of scour at Organ's Island has now been collated. All matters, except for those related to cost and funding source, do not present a challenge.

The cost is larger than initially expected. This is \$1,701,762 for works adjacent to Organ's Island and \$923,351 for works adjacent to the O'Connor Rest Home. (NB a 10% contingency has been included in these estimates).

Current situation and proposed remedies

O'Connor Home bank erosion

The presence of a relict high velocity channel of the Buller River near O'Connor Home implies protection of this area is crucial. The July 2021 flood caused the bank adjacent to this channel to be further eroded. LiDAR imagery shows a 260m scour. This bank erosion area may previously have had some river protection from rock spurs. Little evidence of this initial work remains.

To provide protection to this area, continuous rock riprap armour rock is required, from bed level to the full height of the riverbank. The cost of the 13,000 tonnes of rock armour required for this work is estimated to be \$923,351. Once funding is approved, this work will be tendered via the normal process.

Organ's Island

A section of the historic rock training wall at Organ's Island has scoured and deteriorated. This has caused flood flows to erode 50m of the riverbank on the right or northern side of the Buller River and isolate 500m of the rock armouring work. A further 300 m has suffered significant damage. If this rock wall is not repaired, then further flood flows are likely to cause increasingly severe damage, potentially affecting the course of the Buller River and the outflows into the Orowaiti overflow channel. If this were to occur, there would be a heightened risk of Westport being flooded.

Consultant engineer Gary Williams and the TAG recommend the now deteriorated Organ's Island Rock-wall be moved back to a new alignment and fortified with new rock armour, and two spur structures to deflect flow. As noted previously, the estimated cost of this work is \$1,701,762.

Once funding is approved, this work could be tendered and commence two to three weeks after that. Until this work is undertaken, there is a significant risk of further damage and exposure of Westport to flooding from even a relatively small event.

Processes and related information

Land ownership

Both the erosion-scour / bank erosion sites are located on Crown land. Both sites have previously been occupied by erosion protection works.

Resource consents

The proposed works and erosion control structures / land uses are 'permitted' activities under the provisions of the current district and regional plans.

Design

The design of the proposed works has been undertaken by consultant engineer Gary Williams.

Project management

Both sets of works are of a size that can be ably managed using existing Council staff resources.

Risks

The prime risks to Council are:

- Potential risk of loss of life, should another extreme weather event impact the Buller River catchment; and
- The flow-on financial impact to the overall cost of the pending Westport flood protection scheme.

By proceeding with this work Council will be endeavouring to mitigate these significant risks.

Significance and Engagement Policy Assessment

Currently Council does not own significant flood management assets in Westport. However, as per the Addendum of the Policy, the construction of the flood protection scheme in Westport will require the inclusion of this asset in Schedule 1 of the Policy.

The decision to approve the maintenance works is relatively significant given the importance of the works to Westport, the views expressed by the TAG and Joint Committee, and the likely financial cost. However, further engagement is not considered necessary under the terms of the Significance and Engagement Policy, as Council already has a sound understanding of the views of those affected by the proposals. This approach is also provided for in the Policy, given the urgency of the matters and the need for a timely decision.

Tangata whenua views

Iwi representatives are voting members of both the Buller Recovery Steering Group and the Westport Rating District Joint Committee.

Financial implications

Cost

The estimated cost of the O’Conor Rest Home erosion scour work is \$923,351. The estimated cost of the Organ’s Island rock wall is \$1,701,762.

Current budget - \$2.6M unbudgeted spend in 2022 financial year and consequent increase in debt and / or decrease in the value of the Investment Portfolio.

Future implications – as per discussion provided earlier in this paper.

Funding source for bank erosion / erosion scours

The ‘adjunct’ rather than ‘integrated circular embankment’ nature of the necessary erosion scour / bank protection works poses questions about the best mechanism for funding these works.

The \$10.2 million, agreed to as part of the LTP, was for construction of the Westport circular embankment / walls. Council expenditure of this fund was subject to recommendations from the Westport Rating District Joint Committee. Every dollar of this \$10.2m will be required to construct this ‘fall-back’ (if co-investment funding cannot be secured) Westport flood protection scheme.

The construction price index and inflation have both increased since the cost of this Scheme was first calculated. In addition, provision may now be deemed as necessary to manage the effects of climate change. There are also other costs such as those related to the management of the interface between the proposed embankment structures and the stormwater that may accumulate under extreme weather conditions, from within Westport.

These additional costs will be included in the proposed business case seeking central government co-investment. A decision about what aspects of the overall community flood risk resilience project may be funded by central government, and how much they may provide, will not be known until after the proposed July Cabinet Paper.

This gives rise to the question of whether, as a show of good faith and commitment, central government could be persuaded to make an upfront investment in the Buller river erosion scour / bank erosion sites described in this paper. They are an integral part of a multi-tool approach required to secure Westport’s resilience against flooding.

To progress this potential opportunity, the Chief Executive is arranging discussions, at short notice, with senior officials from the Kānoa group in MBIE, DIA and NEMA.

The difficulty faced by the Council is that no guarantee can be provided about securing funding from these sources. Certainty will only be secured when and if, this cost is approved by Government as part of the business case currently being prepared for their consideration. In the meantime, the two areas of work should be proceeded with under urgency.

Given this work is not part of the Option 2 work approved by Council in the LTP, Council has two sources of funding:

1. Liquidate funds held in the Investment Portfolio.
2. Increase Council's debt funded by LGFA.

As of 2 May 2022, Council's Investment Portfolio is valued at \$12.9M. The breakdown of this value is provided below:

The West Coast Regional Council (Main)	\$ 11,949,730
The West Coast Regional Council (Catastrophe)	\$ 982,184
Total	\$ 12,931,914

JB Weir has advised that funds could be available after 3 business days.

In respect of Council's debt, Council has two debt financial instruments totalling \$3.4M maturing in May and due to be renewed. The amounts making up Council's total debt of \$8.6M is listed below:

Council	Maturity	Instrument	Deal Date	Settled	Outstanding	Yield/Latest Rate
West Coast Regional	26/05/22	On-lending Bill	25/11/21	26/11/21	2,013,092.00	1.3200000
West Coast Regional	30/05/22	On-Lending - Fixed	06/06/19	07/06/19	1,400,000.00	2.0200730
West Coast Regional	30/05/23	On-Lending - Floating	06/06/19	07/06/19	1,400,000.00	1.5050000
West Coast Regional	30/05/24	On-Lending - Fixed	06/06/19	07/06/19	1,400,000.00	2.2700560
West Coast Regional	30/05/25	On-Lending - Fixed	06/06/19	07/06/19	1,400,000.00	2.3900530
West Coast Regional	30/05/26	On-Lending - Fixed	03/06/20	08/06/20	1,000,000.00	1.3000170

LGFA has confirmed that Council has the ability to increase the amount renewed on 25 May 2022 to take into account borrowing required for this decision.

It is therefore recommended that the erosion scour / bank erosion works be funded in the interim, from the Council's Catastrophe funds in the investment portfolio and increase its short-term debt borrowing with LGFA. In the longer term, and assuming the proposed discussion with officials is unsuccessful, the expectation is funding for the two sets of 'immediate / urgent' bank erosion / scour works will be recouped as part of the co-investment business case.

Communications

If approved a media release will outline the essence of this report to ensure that the community is aware of the steps being taken.

Attachments

1. Photos and maps of O'Connor erosion scour and proposed erosion scour protection works
2. Photos and maps of Organ's Island existing and proposed erosion scour protection works

O'Connor Rest Home Bank Erosion Retrospective Maintenance Works

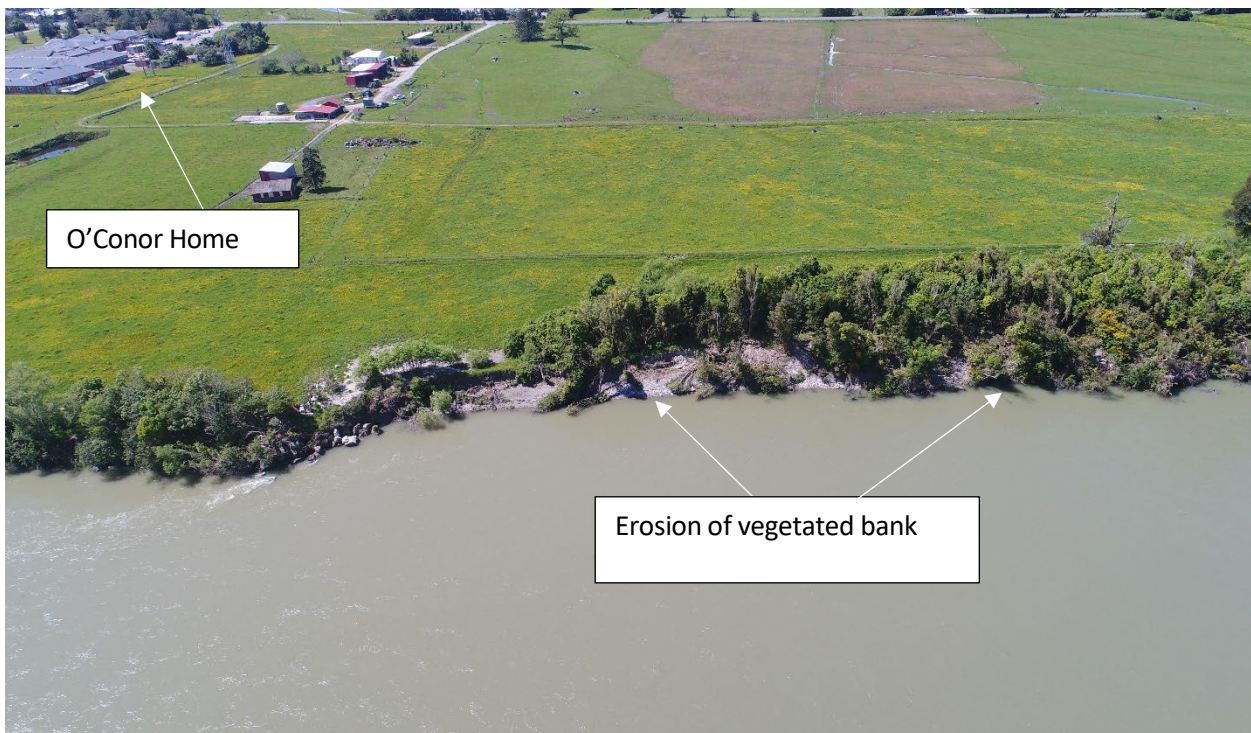


Figure 1: Aerial view, showing proximity of O'Connor Home, and erosion of willows and native vegetation from the riverbank.

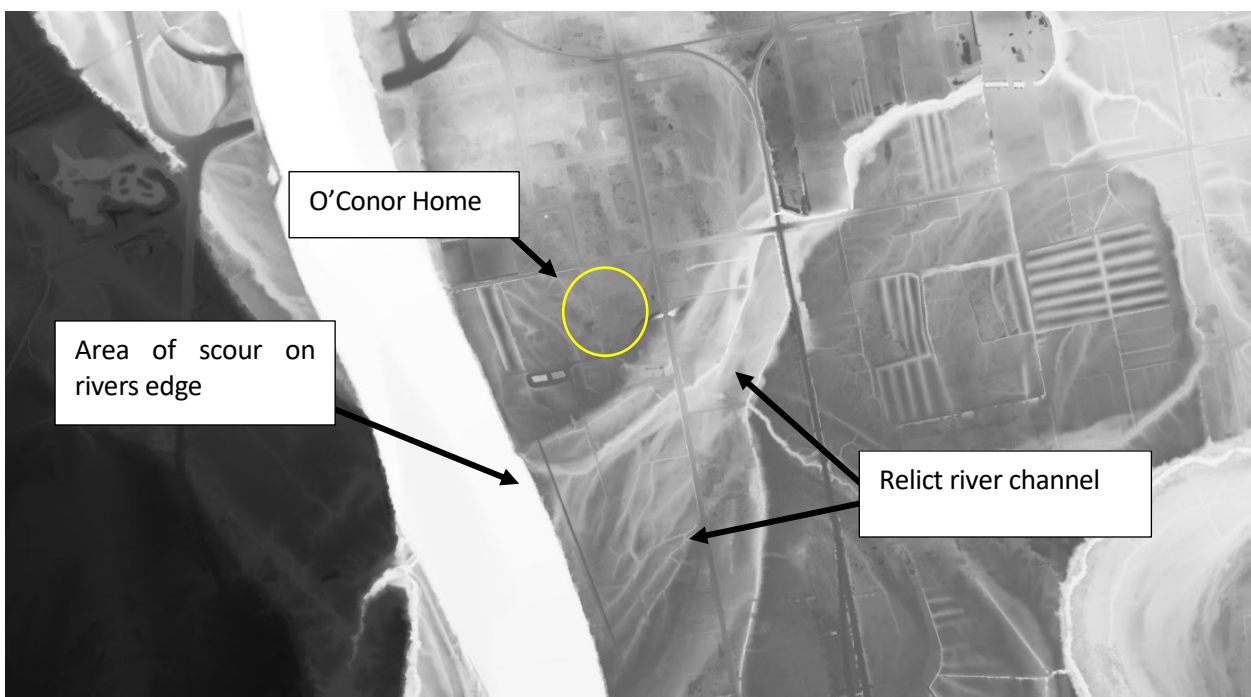


Figure 2: 2021 LiDAR image showing relict river channel and location of O'Connor Home

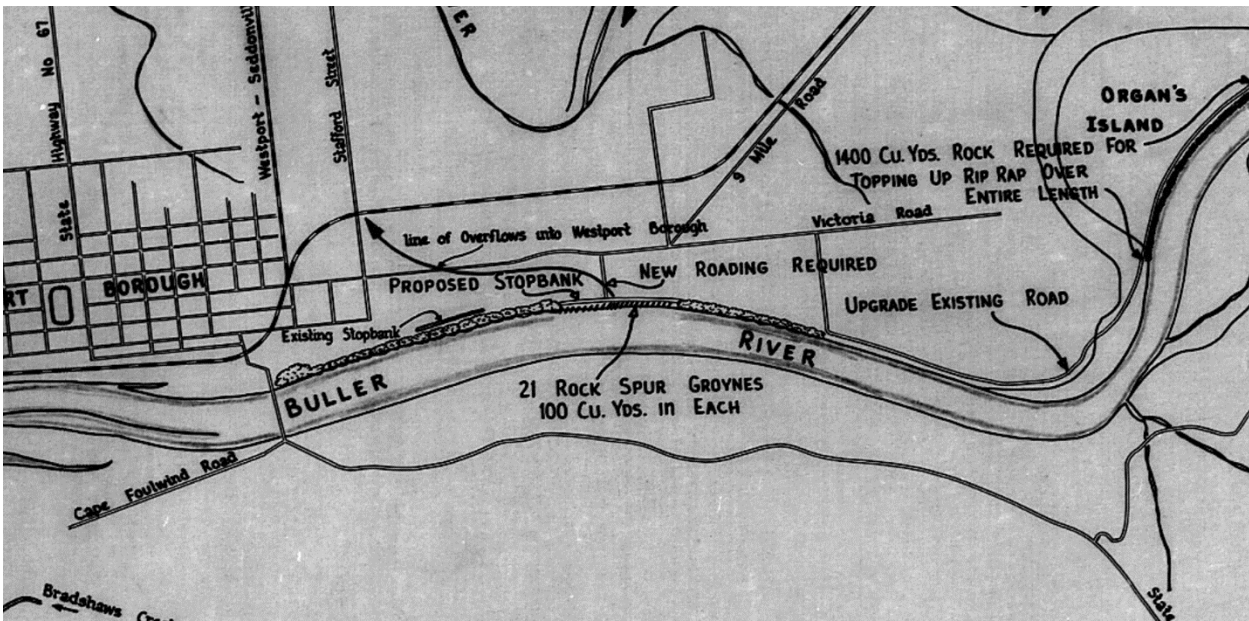


Figure 3: Example of Westland Catchment Board River protection works constructed in 1970 to protect the township of Westport.

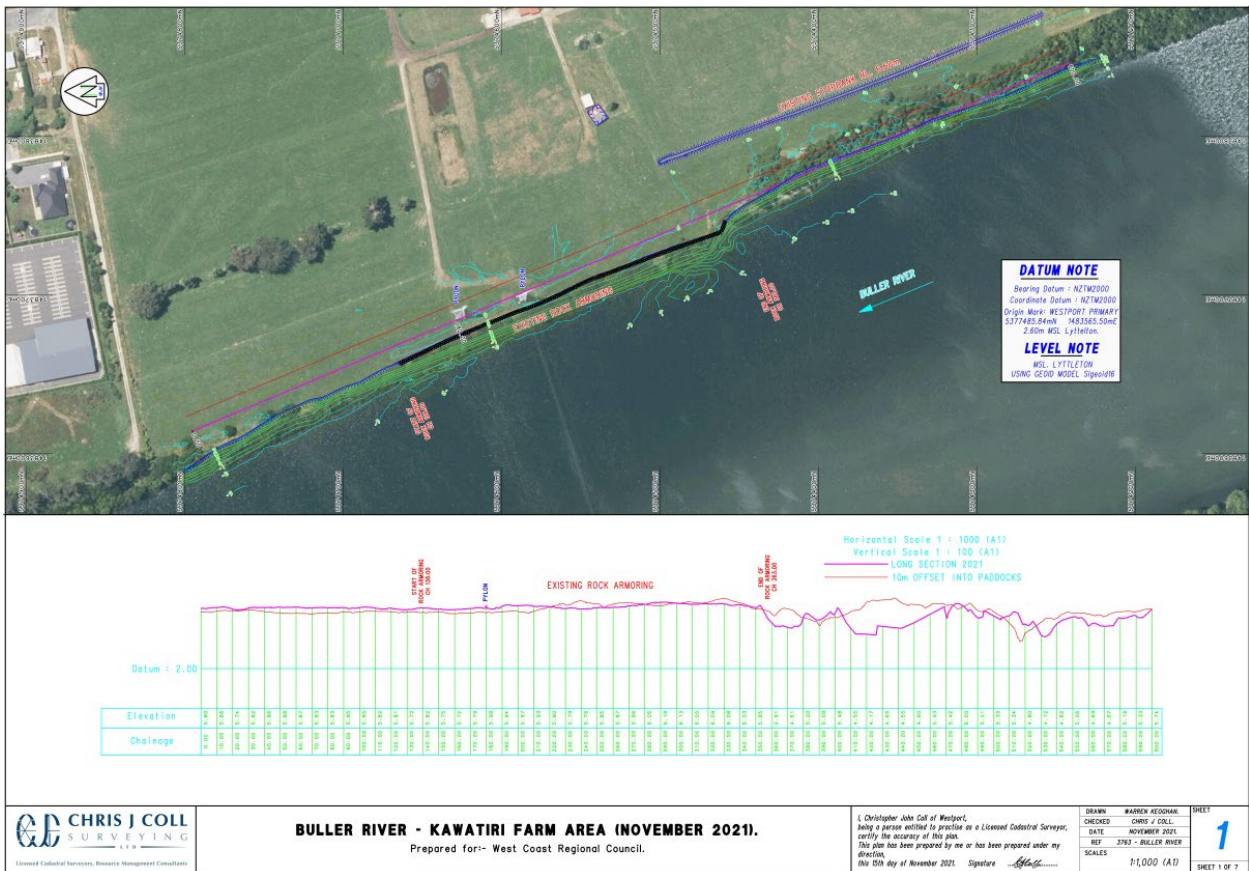


Figure 4: Plan view of erosion scour, and longitudinal survey

Organ's Island Rockwall Realignment to Overcome Erosion Scour Damage



Figure 5: 2016 aerial view of riverbank at Organ's Island.

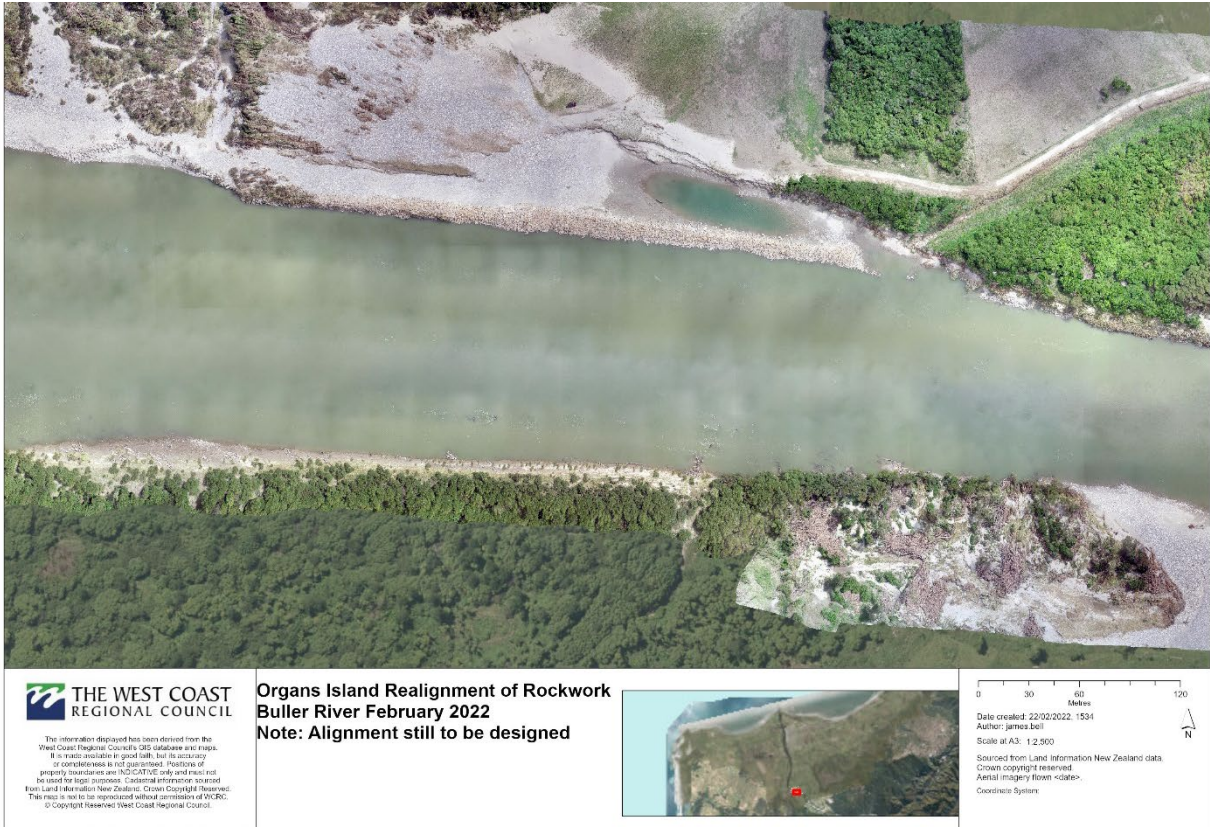
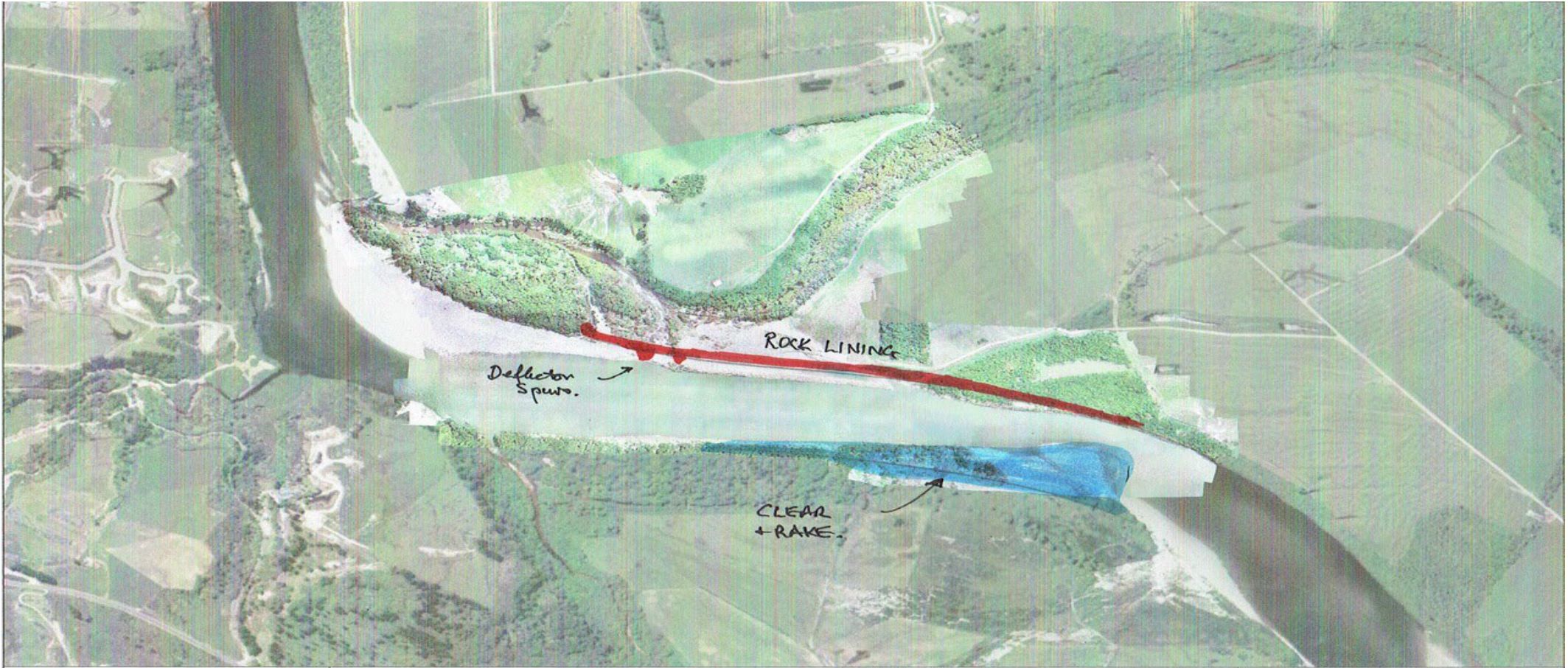


Figure 6: February 2022 aerial view showing deterioration of rock training wall and erosion of riverbank.



Figure 7: Looking downstream showing erosion of bank and scour behind rock training wall



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**Organs Island Rockwork before Feb 2022 flooding
Buller River 2016**

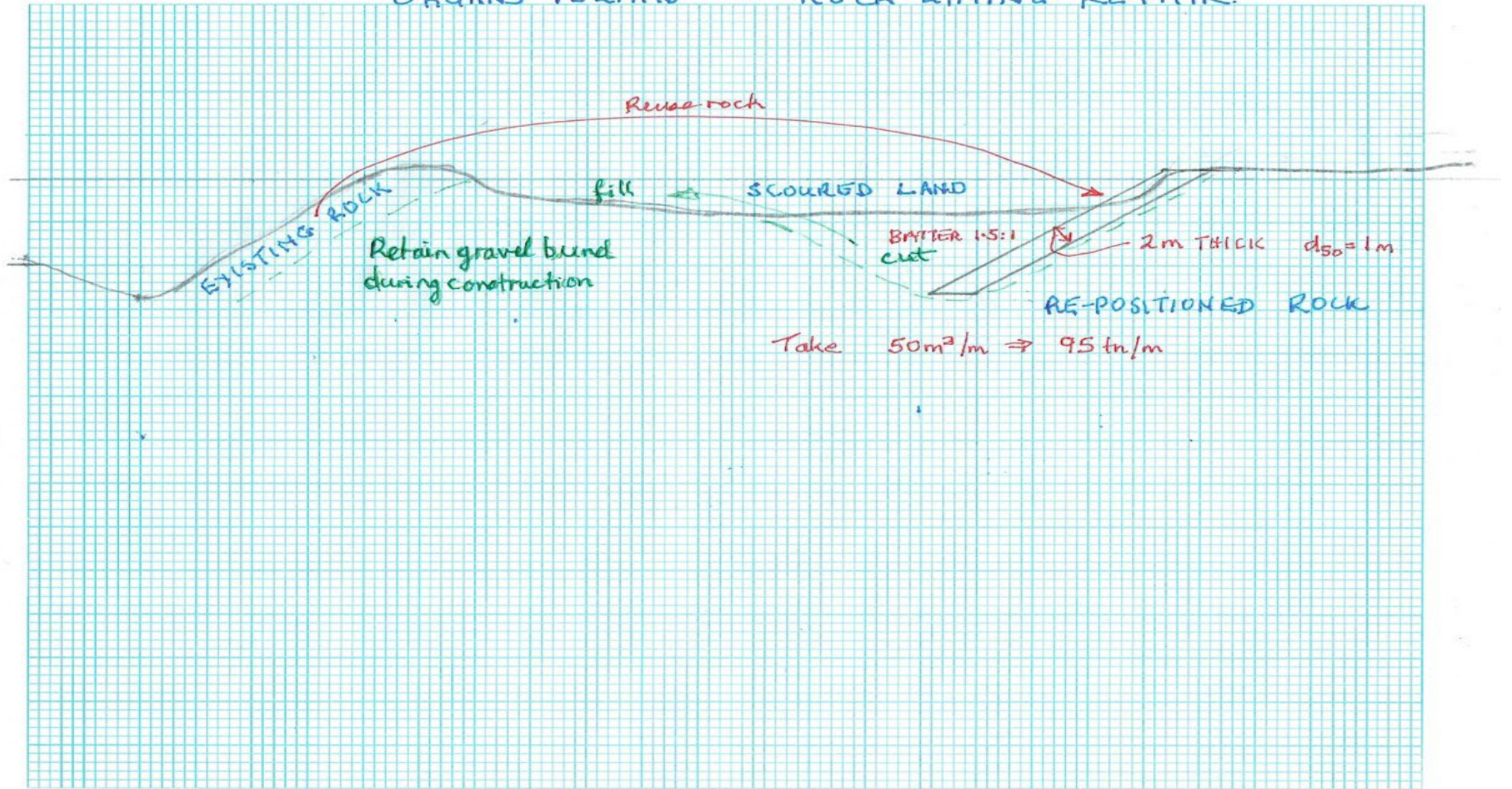


Date created: 04/03/2022, 10:27
 Author: james.bell
 Scale at A3: 1:9,095
 Sourced from Land Information New Zealand data.
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 Aerial imagery flown <date>.
 Coordinate System

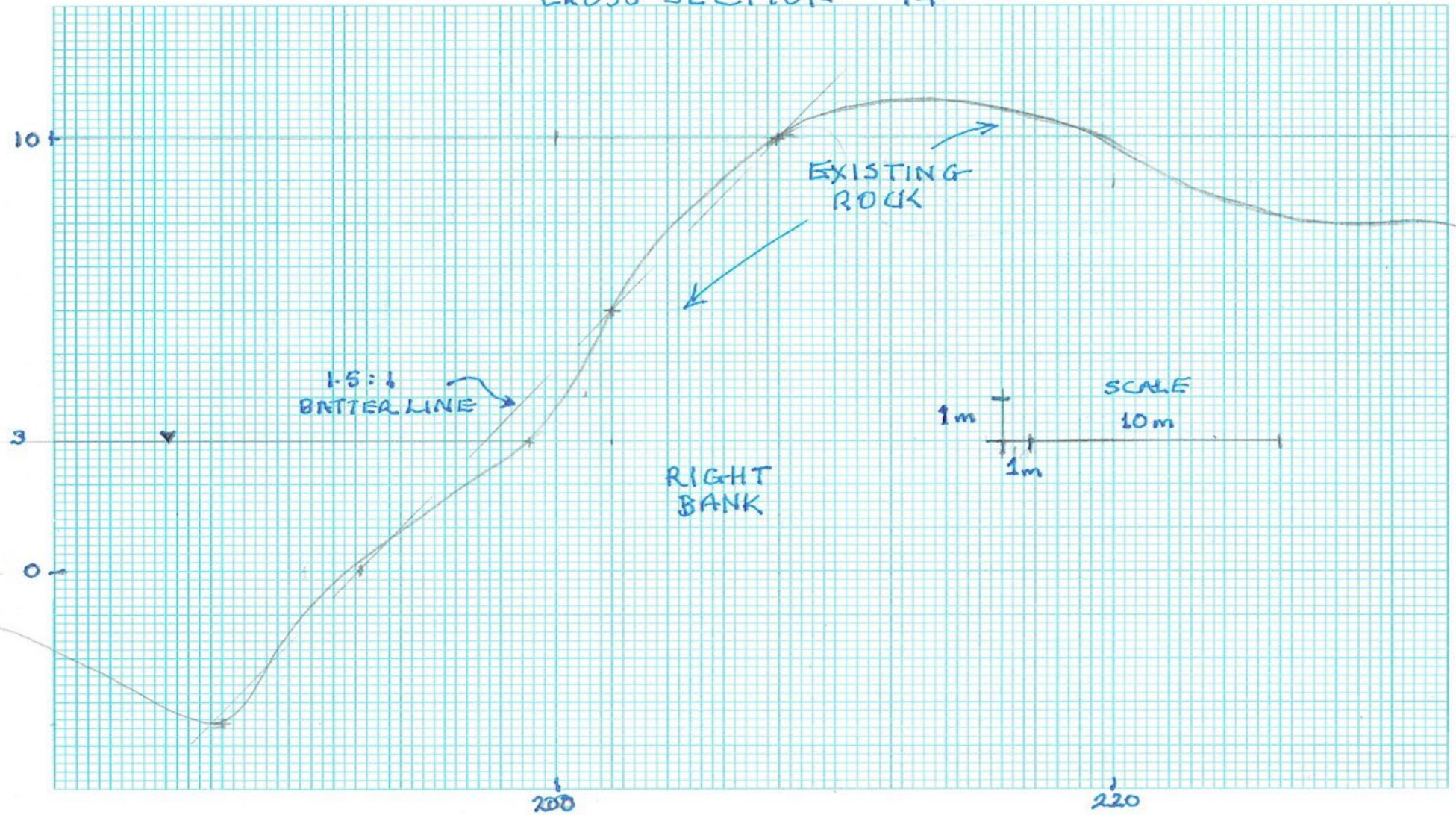


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ORGANS ISLAND — ROCK LINING REPAIR.



CROSS SECTION 14



THE WEST COAST REGIONAL COUNCIL

To: Chair, Infrastructure Governance Committee

I move that the public be excluded from the following parts of the proceedings of this meeting, namely, -

- Item 9.1 – 9.3 inclusive

Item No.	General Subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 7 of LGOIMA for the passing of this resolution
9.1	<i>Governance</i>	<i>The item contains information relating to commercial matters</i>	<i>To protect commercial information (s 7(2)(b)).</i>
9.2	<i>Compliance -Monthly Reports to Kānoa</i>	<i>The item contains information relating to commercial matters</i>	<i>To protect commercial information (s 7(2)(b)).</i>
9.3	<i>Contractual Matters</i>	<i>The item contains information relating to commercial matters</i>	<i>To protect commercial information (s 7(2)(b)).</i>

I also move that:

- Heather Mabin, Rachel Vaughan, Marc Ferguson, and Scott Hoare be permitted to remain at this meeting after the public has been excluded, because of their knowledge on these subjects. This knowledge will be of assistance in relation to the matters to be discussed; and
- The Minutes Clerk also be permitted to remain at the meeting.