Recommendation following the hearing of Notices of Requirement under the Resource Management Act 1991

Proposal

TE TUPU NGĀTAHI – SUPPORTING GROWTH PROGRAMME NORTH (STRATEGIC AND LOCAL) PROJECT

NoR 1 - North: New Rapid Transit Corridor, including a walking and cycling path – New Zealand Transport Agency Waka Kotahi (**NZTA**): Notice of requirement for a designation for a new Rapid Transit Corridor between Albany Bus Station and Milldale, via Dairy Flat, including a cycleway and/or shared path.

NoR 2 - North: New Rapid Transit Station at Milldale – NZTA: Notice of requirement for a designation for a new Rapid Transit Station in Milldale, including transport interchange facilities and active mode facilities.

NoR 3 - North: New Rapid Transit Station at Pine Valley Road – NZTA: Notice of requirement for a designation for a new rapid transit station at Pine Valley Road, Dairy Flat, including transport interchange facilities, active mode facilities and park and ride facilities.

NoR 4 - North: State Highway 1 Improvements – Albany to Ōrewa and Alterations to Existing Designations 6751, 6760, 6759, 6761 - NZTA: Notice of requirement to alter Designations 6751 State Highway 1 - Albany, 6759 State Highway 1 – Silverdale, 6760 State Highway 1 – Redvale to Silverdale, and 6761 State Highway 1 – Silverdale to Puhoi for State Highway 1 improvements from Albany to Ōrewa.

NoR 5 - North: New State Highway 1 Crossing at Dairy Stream – Auckland Transport (**AT**): Notice of requirement for a designation for a new urban arterial corridor with active mode facilities and State Highway 1 motorway overbridge in the vicinity of Dairy Stream, between Top Road in Dairy Flat and East Coast Road in Stillwater.

NoR 6 - North: New Connection between Milldale and Grand Drive, Ōrewa – AT: Notice of requirement for a designation for a new urban arterial corridor with active mode facilities between Wainui Road in Milldale and Grand Drive in Upper Ōrewa.

NoR 7 - North: Upgrade to Pine Valley Road – AT: Notice of requirement for a designation for an upgrade to Pine Valley Road in Dairy Flat to an urban arterial corridor with active mode facilities between Argent Lane and the rural-urban boundary.

NoR 8 - North: Upgrade to Dairy Flat Highway between Silverdale and Dairy Flat – AT: Notice of requirement for a designation for an upgrade to Dairy Flat Highway to an urban arterial corridor with active mode facilities between Silverdale Interchange and Durey Road in Dairy Flat.

NoR 9 - North: Upgrade to Dairy Flat Highway between Dairy Flat and Albany – AT: Notice of requirement for a designation for an upgrade to Dairy Flat Highway between Durey Road in Dairy Flat and Albany village, including active mode facilities and safety improvements.

NoR 10 - North: Upgrade to Wainui Road – AT: Notice of requirement for a designation for an upgrade to Wainui Road to an urban arterial corridor with active mode facilities, between Lysnar Road in Wainui, and the State Highway 1 northbound Wainui Road offramp.

NoR 11 - North: New Connection between Dairy Flat Highway and Wilks Road – AT: Notice of requirement for a designation for a new urban arterial corridor with active mode facilities between Dairy Flat Highway (at the intersection of Kahikatea Flat Road) and Wilks Road in Dairy Flat.

NoR 12 - North: Upgrade and Extension to Bawden Road – AT: Notice of requirement for a designation for an upgrade and extension to Bawden Road to an urban arterial corridor with active mode facilities, between Dairy Flat Highway and State Highway 1.

NoR 13 - North: Upgrade to East Coast Road between Silverdale and Redvale – AT: Notice of requirement for a designation for an upgrade to East Coast Road to an urban arterial corridor with active mode facilities, between Hibiscus Coast Highway in Silverdale and the Ō Mahurangi Penlink (Redvale) Interchange.

These Notices of Requirement are **CONFIRMED** in whole or in part. The reasons are set out below.

Application:	13 Notices of Requirement for Te Tupu Ngātahi - Supporting Growth Programme / North (Strategic and Local) Project
Site Address:	N/A
Requiring Authority:	New Zealand Transport Agency Waka Kotahi and Auckland Transport in conjunction with Te Tupu Ngātahi - Supporting Growth Alliance
Hearing Commenced:	17 June 2024 at 9:30am
Hearing Panel:	Richard Blakey (Chairperson) Mark Farnsworth Vaughan Smith
Appearances:	For the Requiring Authorities: Natasha Garvan, Mathew Gribben, Megan Exton - Legal Alastair Lovell and Daniel Willcocks - AT corporate Deepak Rama - NZTA corporate Christopher Scrafton - Strategic planning and conditions overview Graham Norman - Alternatives

	Joe Philips and Michelle Seymour - Transport Rob Mason and Martin Barrientos - Engineering and design Johan Pratomo - Construction methods Roger Seyb and Mike Summerhays - Flooding Samuel Foster - Urban design Heather Wilkins - Landscape and visual Matt Paul - Arboriculture Fiona Davies - Ecology Claire Drewery - Noise and vibration Hayley Glover - Archaeology and built heritage Jo Healy - Social impact Philippa White – Engagement Kathleen Bunting - Planning Mark van der Ham - AT property Wayne Loader – NZTA property <u>Local Board:</u> Rodney Local Board represented by: - Louise Johnston <u>For the Submitters:</u> Snowplanet represented by: - Alan Webb - Legal Submissions - Rojie Aguilar – General Manager - Paul Arnesen – Planning Dine Yoeh Hoo represented by: - Hari De Alwis Benjamin Marshall and Katherine Hill represented by: - John Hill and Katherine Hill Young Jin Seo & Jae Hoi Noh Phil and Pauline Mitchell Marilyn and Terry Valder North Shore Aero Club Incorporated represented by: - Natasha Rivai, Planner - John Punshon, CEO North Shore Aero Club

	Jennifer Hutchinson Greg & Paulene Gordon Geoff Upson Starglow Limited represented by: - Cliff Tyler Bryce Catchpole on behalf of Bryce and Philippa Catchpole Robert and Linda Brown Highgate Business Park Limited represented by: - Alex van Son, Planner Keith James Dickson Peter Brydon Genevieve A Rush-Munro, Grant A Clendon, Genrus Family Trust represented by: - Tony Poninghaus Robert Eric Fry Janet Ellwood BP Oil New Zealand Limited represented by: - Jarrod Dixon, Planner (via MS Teams) Chu-Ping (Tina) Wu represented by: - Alice Lee La Fong Investment represented by: - Feng Liang Lisa Scott Melida Nicholaevna Gampell and Christopher Joseph Quilty as trustees of the CJQ Melida Family Trust represented by: - Nick Kearney Nick de Witte Papanui Station House Limited represented by: - Daniel Shaw, Planner

	Brian Sutton (Dairy Flat Owners Group) Geert and Susan Geertshuis Mammoth Ventures Limited represented by: - Daniel Shaw, Planner - Lennon Wiltshire, Owner Northridge2018 Limited represented by: - Vicki Toan, Counsel - Simon Wu, General manager - Ashley Watson, Civil engineer - Daniel Shaw, Planner North Shore Vintage Car Club Represented by - Maurice Whitham - John Higham Andrew Pierce Michael William Scott Stanbridge Bruce Turner Andrew and Lysa Ridling Vineway Limited represented by: - Madeleine Wright, Legal - James Kitchen, McKenzie & Co - Andrew Fawcet, MyLand Partners - Djordje Petkovic, MyLand Partners - Ian Campbell, Public Works Advisory Fulton Hogan Land Development Limited represented by: - Jeremy Brabant, Legal Counsel - Fraser Colegrave, Economics - John Parlane, Transport - Nick Roberts, Planning ACGR Old Pine Limited represented by: - James Gardner-Hopkins <u>Tabled Statements:</u> Waste Management NZ Limited represented by: - James Jefferis, Corporate - Simon Pilkinton, Legal

	GR & CC McCullough Trustee Limited represented by: - Diana Bell, Planning John O'Hara Te Tāhuhu o te Mātauranga Ministry of Education Suju Wang Auckland Council Parks and Community Facilities represented by: - Anthony Lewis, Specialist Technical Statutory Advisor - Allan Christensen, Manager Land Advisory Services Enviro NZ Services Limited represented by: - Katie Treadaway, Planning <u>For the Council:</u> Peter Vari - Team Leader Alison Pye - Project Lead Andrew Wilkinson - Planner Mat Collins / Ashrita Loliri – Transport Peter Runcie – Noise and vibration Sally Peake – Landscape and visual Nick Denton – Urban design Danny Curtis/Lee Te – Flooding and stormwater Mark Lowe – Ecology Joe Mills – Archaeology Dan Winwood – Built Heritage Rhys Caldwell – Arborist Gerard McCarten – Open space Rebecca Foy – Social impacts Chayla Walker - Hearings Advisor
Commissioners' site visit	28 May 2024
Hearing Adjourned	3 July 2024 and 10 September 2024
Hearing Closed:	28 August 2024 and 7 October 2024

INTRODUCTION

1. Pursuant to s.168 of the Resource Management Act 1991 (**the RMA**), the New Zealand Transport Agency Waka Kotahi (**NZTA**) and Auckland Transport (**AT**) as part of Te Tupu Ngātahi - Supporting Growth Alliance (**SGA**), as the Requiring Authorities, gave notice

to the Auckland Council (**the Council**) to designate land as described above and in further detail below, known as the 'North (Strategic and Local) Project' (**North Project**), located within North Auckland, under the Auckland Unitary Plan (Operative in Part) (**AUP**). These are comprised of 12 new designations and one alteration to existing designations (NoR 4).

2. At the request of the Requiring Authority, the Notices of Requirement (**NoRs**) were publicly notified on 16 November 2023. Submissions closed on 14 December 2023 with a total of 432 submissions being received across the 13 NoRs, with a further five late submissions being received after the closing date.

3. The North Project NoRs were referred to Independent Hearing Commissioners Richard Blakey (Chair), Mark Farnsworth, and Vaughan Smith (**Panel**), who were appointed and act under delegated authority from the Council under s.34A of the RMA, for a hearing and recommendation. The hearing took place over nine days from 17 June to 3 July 2024 and was held at the North Harbour Stadium (Stadium Drive, Albany). There were appearances at the hearing by the Requiring Authorities, submitters and Council officers, as listed above.

4. This recommendation assesses the North Project NoRs in accordance with s.171 of the RMA. It addresses the issues raised by the Council and the submissions and contains the Panel's recommendation to the Requiring Authorities under s.171(2) of the RMA.

5. By way of summary, the Panel recommends that the NoRs are confirmed, subject to conditions and changes thereto. An overview of the Panel's recommended changes to the NoRs are provided in the recommendation section at the end of this report, and are shown as 'track-change' edits to the two condition sets at Attachments 1A (NZTA) and 2A (AT).

OVERVIEW OF THE NOTICES OF REQUIREMENT

6. The North Project NoRs seek the route protection of future strategic and local transport corridors (highway connections, rapid transit and local arterial roading) as part of the Supporting Growth Programme to enable the future construction, operation and maintenance of transport infrastructure in the northern area of Auckland, generally between Albany to the south and Milldale/Silverdale to the north. The 13 NoRs are described briefly in the 'Proposal' description at the start of this report and further summary descriptions can be reviewed in the Council's s.42A report, and the evidence presented by the SGA.[1]

7. The Requiring Authorities have sought a range of lapse dates in respect of the NoRs, being 20 years for NoRs 8 and 10; 25 years for NoR 11; and 30 years for NoRs 1, 2, 3, 5, 6, 7, 9, 12 and 13 (and none specified for NoR 4). The issue of lapse dates is addressed later in this report.

[1] Agenda, at pp.43-57

8. It is also relevant to record here the specific project objectives, as a matter relevant to our consideration under s.171(1)(c), as detailed in the evidence for the SGA. The objectives for NZTA's four NoRs were described in the corporate evidence of Deepak Rama as being similar, but with some nuances that reflect the geographical location of the relevant NoR and/or the transport outcomes sought. Mr Rama noted that "*[a]t a high level these relate to providing strategic transport corridors which will improve connectivity, integrate with and support planned urban growth and the future transport networks, and which supports mode shift on the network and a safe transport network for all users*".[2] The objective for NoR 1, in particular, is to:

> *Provide for a new public transport and active modes corridor between Albany, Dairy Flat and Milldale that:*
> *a) Improves connectivity*
> *b) Is safe*
> *c) Is efficient, resilient and reliable*
> *d) Integrates with and supports planned urban growth*
> *e) Supports a quality compact urban form*
> *f) Integrates with and supports the existing and future transport network*
> *g) Improves travel choice and contributes to mode shift*

9. The objectives for AT's nine NoRs were set out in the corporate evidence of Alastair Lovell.[3] These were the same across all nine NoRs and are as follows:

> *a. Improves connectivity.*
>
> *b. Is safe.*
>
> *c. Is efficient, resilient and reliable.*
>
> *d. Integrates with and supports planned urban growth.*
>
> *e. Integrates with and supports the existing and future transport network.*
>
> *f. Improves travel choice and contributes to mode shift.*

10. The designation plans (provided as Attachment A in Form 18 for all of the NoRs) together with the schedule of directly affected properties (provided as Attachment B in Form 18) describe the land that will be directly affected and required for the projects and associated works. An updated set of designation plans were provided with the Requiring Authorities' reply submissions, to reflect those changes to the designation boundaries made since notification of all of the NoRs.[4]

11. We also note the overall conditions framework that the SGA proposes to apply across all 13 NoRs, which incorporates a number of management plans to address the majority of anticipated environmental effects. These would provide the framework to guide the

[2] EV06, at [5.2]
[3] EV05, at Appendix A
[4] EV78, at Appendix E

final design of the various components of the transport corridors as well as to avoid, remedy, mitigate or manage the adverse effects of the construction activities associated with the implementation of the Project. The following management plans are proposed by the SGA as those to be developed and submitted as part of any 'outline plan of works' under s.176 of the RMA, in accordance with proposed condition 7 (NZTA NoRs) and 9 (AT NoRs):

- Construction Environmental Management Plan (**CEMP**);
- Construction Noise and Vibration Management Plan (**CNVMP**);
- Construction Traffic Management Plan (**CTMP**);
- Ecological Management Plan (**EMP**);
- Historic Heritage Management Plan (**HHMP**);
- Network Integration Management Plan (**NIMP**);
- Network Utilities Management Plan (**NUMP**).
- Tree Management Plan (**TMP**); and
- Urban and Landscape Design Management Plan (**ULDMP**).

12. The wording of these management plans, and the conditions generally, were consistent across all the NoRs, but with some variances as required for the circumstances and context of each NoR, and recognising the different approaches to some matters between the Requiring Authorities. These differences are discussed later.

13. A significant aspect of the overall proposal is the preparation of a Stakeholder Communication and Engagement Management Plan (**SCEMP**) across all the NoRs. This is proposed to be prepared prior to the commencement of construction and be provided to the Council for information purposes a minimum of ten days prior to those works.

14. The s.42A report noted its acknowledgement in regard to the use of management plans that:[5]

> "*…the NoR process is primarily about route protection rather than implementation and in that regard a management process is accepted as an appropriate method, given that detailed assessment and implementation would occur at the Outline Plan of Works stage*".

15. It went on to emphasise, however, the need for the conditions to establish a robust process for the preparation of those plans, such that they are certain and enforceable and incorporate a clear objective as to their purpose as well as specific measures to avoid or mitigate potentially adverse effects.

16. We address particular aspects related to the conditions and the use of management plans later in this decision.

[5] Agenda, at p.77

SITE AND LOCALITY

17. Section 7 of the AEE provided us with a detailed description of the NoR routes, with further descriptions provided in supporting specialist reports such as the Landscape and Urban Design assessments. The s.42A report adopted these descriptions[6] and we also do the same for the purpose of this recommendation report. The site and locality descriptions were also reinforced by our site visit. We visited all sections of the 'on-road' sections of the designations and viewed various 'off-road' sections of the designations from available vantage points. In general terms it can be said that the North NoRs traverse a variety of contexts, from existing rural road environments for parts of NoR, across areas within or adjacent to the Future Urban Zone (**FUZ**), to areas within or adjacent to countryside living areas, and in limited places, commercial areas. Because of the largely rural nature of the NoR alignments, a relatively low number of properties are affected, but nevertheless have significant effects on some of those properties as was highlighted through numerous submissions.

SUBMISSIONS

18. As noted above, the NoRs were publicly notified by the Council at SGA's request on 16 November 2023. Submissions closed on 14 December 2023 with a total of 432 submissions being received across the 13 NoRs, with a further five late submissions being received. The s.42A report notes that 32 submissions were in support or support with amendments, 57 were neutral (or no clear position was stated) and 343 were in opposition.[7] A summary of the key issues raised in submissions relative to these NoRs was also provided within the s.42A report.[8]

19. The s.42A report provides commentary with respect to three submissions that were received after the closing date. In this regard it is noted that those that were received within 20 working days of the submission closing date were able to be accepted by the Council under s.37A(4) of the RMA, and the reasons for the acceptance was described in the s.42A report.[9] Two further late submissions were received as follows:

    (a) From Pioneer Corporate Trustees Ltd (20 February 2024) in respect of NoR 8. The Panel determined that this submission be accepted, for the reasons set out within its Direction 2 dated 23 February 2024; and

    (b) From the North Shore Vintage Car Club Incorporated (received 4 June 2024) in respect of NoR 4. The Panel determined that this submission be accepted, for the reasons set out within a memorandum from Mr Wilkinson on 6 June 2024 and as referred to within its Direction 4 dated 7 June 2024.

20. A submission was also received in respect of changes to NoR 4, as described in 'Procedural Matters' below.

[6] Ibid, at pp.43-57
[7] Ibid, at pp.67/68
[8] Ibid, at pp.68-71
[9] Ibid, at p.68

PROCEDURAL MATTERS

21. Procedural matters arising prior to the commencement of the hearing were limited to directions relating to the hearing and evidence timetable (Direction 1), the acceptance of late submissions (Directions 2 and 4, as described above), and addressing a proposed amendment (expansion) by the NZTA in respect of the designation boundaries of NoR 4 (SH 1 improvements). In particular, the submission by Weiti Green Ltd sought to expand the boundary of NoR 4 in the vicinity of the O Mahurangi Penlink interchange. A memorandum from the SGA advised that while the NoR was publicly notified, there are five property owners adjacent to the expanded designation who were not directly served in respect of NoR 4. It therefore proposed a notification and submission process for progressing this expansion, and that was confirmed within the Panel's Direction 3 of 23 April 2024.

22. One submission, from Enviro NZ Services Ltd (**Enviro NZ**), was received in respect of this matter, and this was addressed within the Council's s.42A addendum report dated 30 May 2024, and which recommended acceptance of this submission. The Panel accepts that recommendation and records here that this submission has been accepted.

23. The Panel was also provided with advice on 14 June 2024 regarding a change in the landscape witness representing the Council. A memorandum dated 11 June 2024 from Sally Peake advised that she had replaced the Council's previous expert, Paul Murphy, who had recently left the Council, and that she generally adopted his recommendations and reasons for them. We note that no issue in this regard was raised by the SGA.

24. At the beginning of the hearing the Panel also sought clarification as to the differentiation between Auckland Council Parks & Community Facilities (**PCF**) as a submitter, and the role of Gerard McCarten[10] as a contributor to the Council's s.42A report. He provided confirmation through his response memorandum that he had been instructed to provide independent expert planning evidence on parks, recreation, and open space matters for statutory and consent processes, and that he has not been engaged by, nor provides planning evidence for, the Council in its capacity as an asset/landowner (the purpose of which is served by PCF's submission).[11]

25. A further direction (Direction 5) was issued on 8 July 2024, following adjournment of the hearing, in response to a memorandum from the SGA on the same day. The direction set out a revised timeframe for the receipt of the written comments from Lee Te, the Council/Healthy Waters' flooding/stormwater specialist, to enable time for consideration of a revised version of the Flood Hazard condition that was discussed by Chris Scrafton, the SGA's planner, as part of SGA's verbal reply presented on 3 July 2024.

26. Following receipt and review of the Requiring Authority's closing legal submissions (**Reply**) on 12 August 2024, the Panel issued Direction 6 on 19 August 2024 to request that any additional information relating to two submitter sites, and the flood hazard condition, along with Word-format copies of the conditions, be provided. This was

[10] Auckland Council Consultant Parks Planner, on behalf of Parks Planning, Parks & Community Facilities.
[11] EV77, at p.89

responded to way of a Memorandum of Counsel dated 27 August 2024. As this addressed the Panel's queries in full, we resolved to close the hearing and notice to this effect was issued on 28 August 2024 via Minute 1.

27. The Panel was subsequently advised the submitter in respect of the NoR 4 amendment, Enviro NZ, had not been advised of the hearing and sought the opportunity to provide a written statement in respect of its submission, the Council's s.42A addendum and the evidence of the Requiring Authorities. The Panel agreed and issued Direction 7 on 10 September 2024 to re-open the hearing on a limited basis to allow for a statement to be tabled by the submitter, and for responses to be provided by the Council and the SGA.

28. Direction 8 was issued on 18 September 2024 in response to a memorandum from the SGA seeking an opportunity to provide updates relating to further progress in respect of two submitter sites (Northridge and the North Shore Vintage Car Club). The direction advised that the Panel agreed to receive these updates as part of the SGA's response memorandum to be provided in respect to Direction 7.

29. A further post-hearing issue was brought to the Panel's attention on 19 September 2024. This was a request by Fairview Estate Investment Limited (**Fairview**) to make a late submission in respect of NoR 4 due to effects of the designation on its land at 17-23 McMenamin Place. Following consideration of advice from the Council (notification process and communications), receipt of a memorandum from the SGA and a response from Fairview, and noting the provisions of s.37A(2)(b), the Panel advised through Direction 9 (26 September 2024) of its decision to not receive a submission.

30. The Memorandum of Counsel in response to Directions 7 and 8 was received by the Panel on 7 October 2024.[12] Following consideration of the material received in respect of Enviro NZ by the Panel and in respect of Directions 7 and 8, the hearing was re-closed and notice in this regard was issued on 7 October 2024 via Minute 2.

RELEVANT STATUTORY CONSIDERATIONS

31. The statutory considerations relevant to our consideration of the NoRs was set out in the application documents and the s.42A Report and were further reiterated to the Panel through legal submissions and in various expert witness statements. While the relevant provisions of the RMA were well-canvassed during the hearing, they are central to the recommendations that we must make and so are restated here.

32. The RMA provides that the procedures adopted in processing a notice of requirement are generally those adopted for processing a resource consent application. This includes processes relating to lodgement, requiring further information, notification, receiving and the hearing of submissions. In respect of the North Project NoRs, the s.42A Report confirmed that all of those procedures have been followed.[13]

[12] This noted inter alia that the designation was able to be drawn back off the Vintage Car Club site entirely, and this would be confirmed through the Requiring Authorities' final decision.
[13] Agenda, at p.73

33. Section 171 of the RMA states:

> *(1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.*
>
> *(1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—*
>
> *(a) any relevant provisions of—*
>
> *(i) a national policy statement:*
>
> *(ii) a New Zealand coastal policy statement:*
>
> *(iii) a regional policy statement or proposed regional policy statement:*
>
> *(iv) a plan or proposed plan; and*
>
> *(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—*
>
> *(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
>
> *(ii) it is likely that the work will have a significant adverse effect on the environment; and*
>
> *(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
>
> *(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*
>
> *(1B) The effects to be considered under subsection (1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by the requiring authority.*

34. Section 171(1) is subject to Part 2 of the RMA. Part 2 contains the purpose and principles of the RMA. It has been confirmed by the Environment Court that, in relation to a designation matter:[14]

> *"…all considerations, whether favouring or negating the designation, are secondary to the requirement that the provisions of Part II of the RMA must be fulfilled by the proposal".*

35. After considering these matters, the Council needs to make a recommendation to the requiring authority under s.171(2) of the RMA which states:

> *(2) The territorial authority may recommend to the requiring authority that it –*
>
> *(a) confirm the requirement:*
>
> *(b) modify the requirement:*
>
> *(c) impose conditions:*

[14] *Estate of P.A. Moran and Others v Transit NZ* W55/99 [1999] NZEnvC 513, at [114]

(d) withdraw the requirement.

36. Reasons must be given for the recommendation under s.171(3) of the RMA.

37. It is also important to emphasise this aspect of the Panel's role under s.171(2), being to make a recommendation on the NoRs to the Requiring Authorities, rather than a binding decision. While our recommendations support the need for the NoRs, thereby endorsing the SGA's applications and the overall recommendations of the Council but recommending certain changes to the conditions as set out later in this report, it is the Requiring Authorities who will make their decisions on the NoRs (and conditions), in accordance with s.172 ('*Decision of the requiring authority*'). These provisions are set out below as follows:

> *(1) Within 30 working days of the day on which it receives a territorial authority's recommendation under section 171, a requiring authority shall advise the territorial authority whether the requiring authority accepts or rejects the recommendation in whole or in part.*
>
> *(2) A requiring authority may modify a requirement if, and only if, that modification is recommended by the territorial authority or is not inconsistent with the requirement as notified.*
>
> *(3) Where a requiring authority rejects the recommendation in whole or in part, or modifies the requirement, the authority shall give reasons for its decision.*

38. However, despite the abovementioned decision-making powers, all parties retain appeal rights to the Environment Court under s.174 in respect of the eventual decisions to be made on the NoRs by the Requiring Authorities.

EVIDENCE HEARD

39. The s.42A report (and addendum), along with the Council's various specialist assessments, was circulated prior to the hearing and taken as read. The evidence presented at the hearing responded to the issues and concerns identified in the s.42A report, the NoRs themselves, and the submissions made on the NoRs. Expert evidence on behalf of all parties who appeared, along with a number of non-expert statements, were also circulated prior to the hearing and again were taken as read.

40. Due to the breadth and scale of the NoRs a considerable volume of evidence was produced through the Council hearing, including rebuttal and summary statements of witnesses for the Requiring Authorities and some submitters. This information and evidence is referred to as necessary to explain the points being made in text below. However, we have not summarised all the evidence provided, other than where reference is made to specific evidence as part of our discussion in this report. Not only were the materials pre-circulated to all parties but they were also uploaded to the Council's website and may be read there should that be required.[15] An 'evidence index'

[15] This includes the notification materials, submissions and Panel directions.

has also been prepared to assist with navigation of the evidence file, and we have used the index reference in our referencing of the evidence throughout this recommendation report.

41. The Panel reviewed, and considered, all of the submissions made on the NoRs and the relief sought by the submitters. There are a number of generic themes that emerged along with some unique site-specific matters raised in the evidence, which are addressed in the discussion to follow. While these issues are addressed primarily on a topic-wide basis, we wish to emphasise that we have read all submissions and evidence, and we acknowledge the efforts of the parties in preparing and presenting their statements.

42. In terms of timing, the Panel notes that it is not bound by any timeframe under s.171 in which to issue its recommendations but has nevertheless undertaken to prepare its recommendations as expeditiously as possible following receipt of the SGA's first reply and the formal re-closure of the hearing. This approach is in accordance with our general duty under s.21 of the RMA.

43. The Panel thanks the Requiring Authorities for the detailed nature of their reply submissions (and the supplementary memoranda), including its comprehensive response to the evidence of submitters and Council officers, and has found this to be a useful reference both in confirming the matters in contention and as a basis for the Panel's consideration of those matters.

ISSUES IN CONTENTION

Introduction

44. The recommendations made in this report follow the deliberations and the findings reached by the Panel after considering the NoRs, the submissions lodged, the Council's reports, and the legal submissions and evidence presented at the hearing, the response comments provided by Council officers and consultants, and the written replies and associated updated conditions schedule provided by counsel acting on behalf of the Requiring Authorities.[16] The recommendations are made in terms of the aforementioned framework specified by s.171 of the RMA.

45. In overall terms, the NoRs raise a number of issues and result in a range of impacts for those persons (particularly adjacent residents and community groups and businesses) and environments along their routes, including the extent of land take and associated construction and operation effects on affected land.

46. Compounding those matters are the Requiring Authorities' proposed lapse dates which range from 20-30 years. This was a significant factor in the concerns raised by submitters affected by the NoRs, due to the immediate effect that the designations would be likely to have on the value and utility of their property and the uncertainty as

[16] Counsel for the Requiring Authorities were Natasha Garvan, Mathew Gribben and Megan Exton.

to when the designations would be implemented. Further uncertainties and concerns were expressed as to the nature of associated land acquisition processes.

47. The Panel heard from a large number of submitters with respect to the way in which the NoRs could affect their property, either in whole or in part. For properties partly affected (such as through the taking of land along site frontages) such issues are, in the main, proposed to be addressed through management plan conditions to be included in each designation. These generally follow a standard format but have some specific differences between those for the NZTA designations, and those for AT. A further difference arose from the proposed inclusion of a specific management condition in respect of the North Shore Aero Club and, through the SGA's Reply, the Tuckers Orchid Nursery. We have therefore sought to address the issues around the relevant conditions as these represent the primary method by which those effects will be resolved, or at least managed.

48. For both partial and full acquisitions (the latter including those where the designation requires an extensive area of a property and/or where access can no longer be provided), the primary financial relief will be via the Public Works Act 1981 (**PWA**). This would occur either directly with the Requiring Authorities, or if necessary, via an Environment Court order made under s.185 of the RMA. The Reply includes extensive discussion in respect of these processes as a result of our enquiries on this topic during the hearing, and we refer to this aspect later in this report.

49. After our analysis of the NoRs and evidence (including proposed mitigation measures) and concluding the hearing process, it is clear that the NoRs raise a number of issues for consideration. As noted above, the identification of these matters has been assisted by the way in which these have been addressed in the Reply.

50. The Panel notes that the Council's reporting officer, Mr Wilkinson, and all of its experts, as expressed through their response memoranda, continue to recommend that the NoRs be confirmed, subject to recommended amendments to the conditions. The primary issues before us were in respect of the location of the Rapid Transit Corridor (**RTC**) and its proposed alignment through the FUZ, the early acquisition processes, and the lapse periods.

51. The full list of matters in contention that we have determined that we need to make findings on are set out as follows:
    - Design and alignment of the RTC;
    - Alignment and extent of designations generally;
    - Lapse dates;
    - Early acquisition process;
    - Business and property impacts;
    - Adequacy of consultation;
    - Provision for ongoing engagement;
    - Effects of flooding and stormwater;
    - Effects of road noise and vibration;

- Effects on parks, reserves and open space;
- Management plans;
- Section 176 deemed approval and LIP condition;
- Topics and conditions not addressed elsewhere; and
- Site-specific issues.

52. Further to our commentary above, some of these issues were common across a number of submitters or were site or NoR -specific. We should also note that some of the issues in contention appeared to be resolved at least in part through the ongoing evolution of the conditions as proposed by the Requiring Authorities, and we record those outcomes as relevant to the issues or sites in question.

53. The Panel acknowledges that its recommendations do not address all of the concerns raised by submitters, and indeed is unable to do so where those concerns relate to the timing of land acquisition by the Requiring Authorities (and any associated property valuations). However, we did question the SGA on these matters and understand that some policy-related improvements may arise from that, which we refer to in more detail later in this report.

54. The first section in this part of our report addresses the background and rationale for the North NoRs, being an aspect that was generally understood but provides some context to our analysis of the matters that remained in contention. Associated with this topic is the issue of the potential for 'out of sequence' development that would impact on the ability for the Requiring Authorities to implement the Projects if route protection is not undertaken now.

55. The subsequent sections at this part of our report then addresses the primary issues noted above. We consider that the Reply sets the various topics out in a logical manner, and we have generally sought to follow the order in which they are set out therein (but with some merging where appropriate), with a concluding comment that sets out our finding in respect of that each topic, and details of any recommended change to the designation conditions.

56. We also note at this point a particular process-related matter that was raised by two submitters (Mike Stanbridge and Brian Sutton) in respect of the decision (and its timing) of the AT Board to lodge the NoRs at the time that it did so. While the Panel made enquiries of the SGA during the hearing around the content of the Board's resolutions, this was addressed through the evidence and Reply to our satisfaction. This was to the effect that there is a duly approved decision of the AT Board to lodge the NoRs, and that any challenge to that decision would have to occur through judicial review proceedings via a separate jurisdiction.[17] The Panel accepts and agrees with the comments made in the Reply that we do not need to consider this issue further and that we are not able to make any recommendations on the issue. No further reference to this issue is therefore included in this report.

[17] EV78, at [8.6]

Approach to long-term designations for large infrastructure projects

57. The s.42A report has helpfully provided a useful summary of the background and context for the NoRs generally, by reference to the NoR notification documents and we adopt that summary here.[18] In particular, it highlights the signal within the Council's Auckland Plan 2050 that Auckland could grow by 720,000 people over the next 30 years, generating demand for more than 400,000 additional homes and requiring land for 270,000 more jobs. Around a third of this growth is expected to occur in FUZ areas. The Council's 2017 Future Urban Land Supply Strategy (**FULSS**) was updated in line with AUP zonings, with 15,000 hectares of land allocated for future urbanisation. The FULSS provides for sequenced and accelerated greenfield growth in ten areas of Auckland.

58. The Panel notes that since lodgement of the NoRs the Council has also consulted on, and confirmed in late 2023, its Future Development Strategy (**FDS**). This amends the extent of FUZ and the timelines for the development of land previously defined by the FULSS. This does not appear to signal any significant change to the areas of FUZ in the areas subject to the present NoRs, but does indicate that development will occur later than previously forecast.

59. The Supporting Growth Programme has been prepared to investigate, plan and deliver the key components of the future transport network necessary to support this planned greenfield growth in Auckland's future urban areas. The Requiring Authorities' application documents advise, as re-affirmed through evidence, that the early protection of critical transport routes is necessary to provide certainty for all stakeholders as to the alignment, nature and timing of the future transport network. It was also the SGA's case that designations also provide increased certainty for the Requiring Authorities' that they can implement the works provided for by the designations.

60. The AEE provides background as to the rationale for the route protection approach, stating that the need for route protection in the North is driven by the rate and scale of committed developments, including the planned release of land by the Council and pressure from developers proposing to accelerate urban growth in the area. It lists a number of plan changes or other planning-related processes that illustrate this pressure for growth. We set that out below, with the inclusion of updates since the date that the AEE was prepared:

    (a) The need for industrial land in the North has been identified and in response the Council has undertaken the Silverdale West Structure Plan.[19]

[18] Agenda, at pp.39-43

[19] A private plan change request by Fletcher Development Ltd and Fulton Hogan Land Development to rezone land from FUZ to Light Industry has been made, and this was agreed to be accepted for notification by the Council's Planning, Environment and Parks Committee on 13 June 2024. It was subsequently notified on 12 July 2024 (Plan Change 103), and the further submission period closed on 27 September 2024.

(b) Several developers have land-holdings in the area and have a desire to develop the area within the next five years.

(c) The SGA is aware of early structure planning underway by a developer for the Milldale North area as the Milldale area is growing faster than anticipated.

(d) A Fast-track consent application by Auckland Surf Park Community was referred to the Environmental Protection Authority for a surf park (comprised of a solar farm and data centre) located within the FUZ in Dairy Flat.[20]

(e) The National Policy Statement on Urban Development (2020) (**NPS-UD**) requires the Council to prepare the aforementioned FDS. This was approved in November 2023 and proposes growth areas in the North.

(f) An outcome of policy changes, such as those within the NPS-UD, may increase 'out of sequence' plan changes by third parties as has been the case in other areas of Auckland.

(g) Implementation of O Mahurangi (Penlink) has the potential to increase development pressure through improved accessibility for the eastern FUZ land adjoining this corridor.

(h) Proposed Plan Change 78 is a Council-initiated 'Intensification Plan Change' to give effect to the NPS-UD, and the Medium Density Residential Standards (MDRS) introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

61. The Panel also notes the potential for further out of sequence development via the Government's proposed Fast-track legislation, which was highlighted in the Reply and which we discuss later in this report.

62. Conversely, the Panel also observes that the FDS amends the extent of FUZ and the timelines for the development of land previously defined by the FULSS. As referred to above, this does not appear to signal any significant change to the areas of FUZ within the North but suggests that development will occur later than previously forecast.

63. We comment further on the above matters with regard the evidence regarding the need for route protection and with respect to s.171(1)(d) of the RMA later in this report.

64. At this juncture, however, the Panel records that it accepts the basis for the need for route-protection in view of the provision for growth of the North and the evident growth pressures currently experienced within this area, and that the analysis underpinning its rationale in this regard is considered to be sound. That analysis is therefore relied upon for the purposes of considering the issues that arise from the proposed route-protection

[20] This was approved by an Expert Consenting Panel on 25 June 2024 (reference FTC92).

and the associated matters of contention, as discussed in the following parts of this report.

Design and alignment of the RTC (NoR 1)

Introduction

65. As noted above, the design and alignment of NoR 1 was a significant issue that was raised by submitters, and was a particular area of interest to the Panel. This issue is multi-faceted and requires consideration of a number of sub-topics, as have been addressed in sections 2 and 3 of the Reply. We refer to the analysis and conclusions set out in the Reply and the relevant evidence that we heard in the following discussion.

Alignment within FUZ rather than SH1

66. A key issue raised during the hearing was the decision by the SGA to adopt an alignment for the RTC within the FUZ land to the west of SH1, rather than immediately adjacent to SH1. The Reply draws attention to the Indicative Business Case (**IBC**) stage where it was determined that a FUZ alignment would have a considerably greater future development area within the walkable catchments of future RTC stations. This is illustrated in Figure 1 of the Reply, that compares the FUZ alignment with the 'best-performing' SH1 alignment.

67. Further benefits of the proposed RTC alignment were cited in the Reply as follows:

    (a) Severance, or the distance across the respective corridors, would be significantly less for the FUZ option (as discussed further below).

    (b) The FUZ alignment means more patronage for the RTC (as more people will live closer to it), reduced journey times for more people, and better connections to the Council's preferred location for a future town/metro centre for jobs and community facilities.

    (c) The longer length of the RTC alignment through the FUZ area provides more opportunities for stations compared to the SH1 option and these will therefore be closer to where people live.

    (d) Conversely, a SH1-aligned option would require more people to drive, or use feeder buses, to access the RTC stations. It is further noted that the land alongside SH1 is more restricted in terms of future residential development opportunities due to the North Shore Airport, aircraft noise overlays and the proposed industrial area (per Plan Change 103).

68. The Reply makes the further submission that "*[t]he SH1 option had sub-optimal outcomes from a transport and liveability perspective*", and instead, "*it is better if the RTC supports a compact urban form and a well-functioning urban environment*".[21]

69. We address further considerations related to the RTC alignment as part of the various sub-topics discussed below.

Benefit-cost ratio considerations

70. The Reply refers to questions by the Panel of counsel and Mr Norman regarding the benefit-cost ratio (**BCR**) of the two primary options for the RTC. The Reply highlights that there were differences between the two, and that effects on property in the FUZ option were greater, as acknowledged by Mr Norman, but through the subsequent Detailed Business Case (**DBC**), the RTC has a BCR of 1.8, and a sensitivity range of 1.4 – 2.2. It goes on to say that:[22]

> "*The DBC assessment demonstrates that, despite a backdrop of significant construction cost increases since 2018, the benefits of the project were strengthened through optimisation and there is the opportunity for further benefits arising from co-location of RTC stations with future centres in the Dairy Flat FUZ*".

71. We had queried how the potential cost of crossings of the RTC was incorporated into the assessment of costs for different options, and the Reply notes that during the IBC phase the cost of the FUZ option included four to five collector roads, that were included in the comparison exercise.

72. The Reply makes the point, however, that the NZTA is not required to select the 'best' option, and it is not the Panel's role to question whether there are more appropriate routes, sites or methods. In short, the executive responsibility for selecting the site, route, or method, remains with the NZTA. This point was also made in the SGA's opening submissions, with reference to relevant caselaw.[23] Further, and with respect to s.171(1)(b), the Reply notes that the Panel must evaluate the process followed by the Requiring Authorities in considering alternatives. In this regard, it submits that the NZTA undertook considerable investigations of the SH1 alternative option to satisfy itself of the alternative proposals and did not act arbitrarily or give only cursory consideration to such alternatives.

73. The Panel accepts and acknowledges those submissions, which are also relevant to our further consideration with respect to s.171(1)(b) set out later in this report.

[21] EV78, at [2.5]
[22] Ibid, at [2.12]
[23] Re EV01, Appendix F, at [14], with reference to the *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Update Project,* Ministry for the Environment, Board of Inquiry, 4 September 2009 at [177], noting its citing most recently in *Director- General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203, at [96].

Maintaining connectivity and good urban design outcomes

74. This sub-topic considers issues of severance created wherever the RTC is located; integration with adjacent development; and the role of the ULDMP.

75. In terms of cross-corridor connectivity issues, the Reply includes a diagram (Figure 2) showing the different forms that cross-corridor connections would take. These would be comprised of potential future station locations, the Council's preferred town/metro centre location, known arterial road crossing points (which must be grade separated) and other crossing opportunities.

76. While the Panel expressed a concern during the hearing that presently un-costed, or non-DBC, crossings may not be incorporated at the implementation stage (and could affect the BCR in support of it), the Reply notes that these crossings "*would be a crucial part of enabling patronage on the RTC*" and will be influenced by detailed design and future structure planning. In this regard, it submits that the NZTA "*will remain incentivised to enable these crossings to improve access to the stations for the RTC*".[24]

77. In this regard we heard from the Council's transport and urban design specialists, Messrs Collins and Denton respectively, who both considered that implementation of the ULDMP could mitigate potential severance effects. Mr Collins considered that:[25]

> "…*the severance effects of NoR1 can be mitigated through the provision of cross corridor connections, and this may be addressed through the ULDMP condition, although the outcome is not certain*".

78. Mr Denton was of a similar view, noting that the ULDMP condition should be amended in order to better address the risk of severance.[26]

79. The Reply concludes on this point by noting that "*NZTA is aware of the uncertainty about the active mode cross-corridor connections for the RTC, but is confident that a sufficient level of permeability will be provided through detailed design and implementation*".[27]

80. With respect to integration of the RTC with adjacent land uses between crossing points and stations, the Reply highlighted the images provided in Mr Foster's hearing summary that illustrated different opportunities for this to occur. This was considered to demonstrate options for how good urban design outcomes could be achieved. Further, the Reply referenced Mr Rama's rebuttal evidence that highlighted NZTA's commitment to working with landowners and developers to achieve positive integration outcomes, both within and immediately adjacent to the designations. It also noted that there would

[24] EV78, at [2.19]
[25] EV75, at [6]
[26] EV77, at p.26
[27] EV78, at [2.20]

be incentives for NZTA to agree to involve developers who are undertaking earthworks to achieve agreed ground levels to reduce NZTA's own potential project costs.

81. The role of the ULDMP is noted above in terms of minimising severance, but is also noted to have a particular role in the integration process. This was emphasised in the Reply to include a reference in the condition to the NZTA document 'Bridging the Gap', which refers to the management of severance as an effect from transport corridors.

82. The Panel accepts the SGA's approach and agrees that the ULDMP provides suitable measures to ensure that the effects of severance can be appropriately addressed through the detailed design and implementation stage of the Projects. This is subject to the amendments that we recommend in terms of responding to specific matters arising in the way in which the ULDMP will effectively fulfil this role.

Land use/ transport integration processes that have informed the RTC alignment

83. The Panel heard evidence from a number of submitters about the Spatial Land Use Strategy (**SLUS**), and concern that the Council's role in that process had been strongly influenced or directed by the SGA to ensure that the outcome of the SLUS was supportive of its overall transport corridor strategy for the North area.

84. For example, Mr Brabant in his legal submissions addressing the SLUS for Fulton Hogan Land Development (**FHLD**), submitted:[28]

> "*It responds to SGA's [DBC], rather than informing it. The SLUS process did not involve full and meaningful public engagement, nor any proper assessment and independent testing of spatial outcomes proposed*".

85. Such inferences were addressed, and strongly rejected, within the Reply which outlined the long process that has occurred through the history of land use and transportation integration processes for the North. It summarised these processes and associated outcomes, including more recently the FDS.

86. The Reply also highlighted a long history of collaboration between the Council and the Requiring Authorities and noted that this was confirmed by Mr Vari in his comments to the Panel. It also referred to his confirmation that the Council prepared the SLUS to provide the structuring elements of Dairy Flat and Pine Valley to assist with identifying the transport network, as well as the consultation that was undertaken which he described as "relatively rigorous". Further, it was noted by Mr Vari (and the Rodney Local Board) that the town/metro centre location was amended in response to public feedback.

[28] EV68, at [5]

87. The Reply includes a statement in respect of this process, and in response to questions from the Panel, that:[29]

> "*In answer to questions from the Panel, the [SLUS] is an Auckland Council document. It was prepared by Auckland Council officers and approved by the relevant Council Committee. In our submission it was appropriate that Auckland Council led this work and approved this high level land use pattern. AT and NZTA, through Te Tupu Ngātahi, provided significant input into the [SLUS] through providing the transport inputs and direct engagement. NZTA and AT were key stakeholders in the process but were not the author or decision maker*".

88. The Panel acknowledges this clarification and accepts the primary point that is made – i.e., that the Council are the author of the SLUS (as confirmed by Mr Vari) rather than the Requiring Authorities, and accordingly does not accept the evidence of submitters that suggests otherwise.

Structure planning

89. A further theme that arose during the hearing was the suggestion from some witnesses that NoR 1 should not proceed ahead of structure planning for the North area. In essence, and a question that was posed by the Panel, was that normally structure planning would proceed first, an aspect that was also highlighted in Mr Denton's urban design review for the Council where he advised:[30]

> *"In the normal course of events the council would prepare a structure plan based on economic, social, cultural and environmental consideration and taking into account proposed land uses integrated with appropriate infrastructure, prior to making decisions on transport routes."*

90. As a preliminary and primary point, we refer to the evidence of Ms Bunting which highlighted that under the RMA, structure planning is not a prerequisite for confirming a designation.[31] Nevertheless, as a particular point of contention we address this matter in some detail below.

91. More broadly, Mr Roberts, the planning witness for FHLD, raised concerns that designating the RTC ahead of structure planning "*effectively forces future land use planning to be retrofitted around the transport network, potentially hindering integrated development*".[32]

92. Mr Roberts considers that pre-empting structure planning is unlikely to result in an integrated approach to land use, service, and transport network planning. In his view, an integrated approach "*is crucial for creating sustainable, liveable and resilient*

[29] EV78, at [3.4]
[30] Agenda, at p.295
[31] EV24A, at [11.7(a)]
[32] EV61b-2, at [6]

communities that meet the needs of future populations".[33] Mr Brabant also made the submission on behalf of FHLD that:[34]

> "*The better position is to acknowledge that this hearing does not represent a sliding doors moment whereby if the proposed designations are not locked in, the community is irretrievably committed to retrofitting strategic transport corridors around out of sequence privately led development*".

93. The approach of the SGA, as further expressed through the Reply, not unsurprisingly frames this structure planning issue in a more positive manner. It states that the confirmation of a strategic transport network then enables structure planning to address its integration with proposed land use and development. In addition, it says that further analysis and investigation of preferred station locations can also be undertaken through the structure planning process.

94. The Reply went on to make the following points to illustrate why the lack of structure planning is not of significance to the recommendations that the Panel needs to make:

    (a) A detailed constraints and opportunities mapping exercise was undertaken as part of the options assessment process for the RTC, and the level of optioneering undertaken to inform NoR 1 far exceeded the level of analysis required to define indicative transport corridors as part of structure planning.

    (b) The six years taken by the SGA to investigate options, engage with communities, and assess options for an RTC alignment is much longer than that usually taken for structure planning processes, and further, the statutory requirements of s.171 are more rigorous than those for structure plans.

    (c) Structure plans are typically applied to much smaller areas than is required for a strategic transport project, and multiple structure plans would be required to cover the length of the RTC. Conversely, the SGA's approach has been to consider the requirements of the transport network and the surrounding suburbs as a whole. Therefore, reliance on structure planning and plan changes to secure the network would reflect an ad hoc and piecemeal approach to transport planning.

95. The Reply addresses Mr Roberts' evidence that cited the Drury-Opāheke and Pukekohe FUZ areas as his preferred example of how structure planning should occur before rezoning and in advance of the designation process. It was Mr Roberts' opinion that the structure plans in that case allowed the future zoning pattern to be understood and integrated with designations.[35]

96. In this regard, the Reply notes that information used in these structure planning exercises were not at a 'designation level' of information, "*and as a result a number of*

[33] EV61b, at [18]
[34] EV61, at [12]
[35] EV61b-2, at [9]

aspects of the transport network shown on the Drury-Opaheke Structure Plan changed or were refined through the designation process". The Reply states that this included the location of the Drury West Train Station, which changed between the Structure Plan process and the relevant designation, and this change created issues when out-of-sequence plan changes occurred that relied on the structure plan location and not the designation location. The Reply concludes that this example "*shows that even Mr Roberts' preferred sequence has its downsides and is not inherently superior to the approach adopted by the Requiring Authorities and Auckland Council in respect of the North*".[36]

97. While we previously noted Mr Denton's observation that structure planning occurring first was best from an urban design perspective (a point also referenced by Mr Roberts), his concluding memorandum advised of his acceptance of the evidence as to the benefits of route protection occurring first. In Mr Denton's view, the urban design challenges associated with the timing of the North Projects can be addressed through the ULDMP condition that establishes a framework to manage the issue. His memorandum also highlights that structure planning will likely proceed or occur concurrently with detailed design and the development of the ULDMP.

98. The Reply notes that Mr Denton's view is consistent with the evidence and position of the SGA, whereby "*any challenges to the successful implementation of the North Projects created by the lack of a structure plan in some parts of the North growth area, can be addressed through future processes and the conditions framework*".[37]

99. In relation to those matters, the Panel considers that the level of optioneering undertaken for NoR 1 is appropriate for a notice of requirement and is more detailed than might otherwise be expected in addressing a proposed transport network for a structure plan. However, we also make the observation that the area encompassed by a structure planning exercise need not be confined in the manner described in the Reply – for example, the Warkworth Structure Plan covers 1,000ha while that for Pukekohe/Paerata is 1,300ha, whereas the area proposed within PC103, at 107ha, incorporates just a section of the land proposed to be traversed by the RTC. The Panel would acknowledge that these differences can be attributed to whether a structure plan is Council or developer -led, where in the latter case the area of land is likely to be limited to specific landholdings and be less 'strategic' in nature.

100. Overall, the Panel agrees with the position of the SGA that the lack of structure planning in the North area does not preclude the present NoR process, nor obviate the desirability of route protection prior to structure planning being undertaken given the extent of NoR 1 in particular.

[36] EV78, at [3.19]
[37] Ibid, at [3.21]

Difference between the SLUS and structure plans

101. A related aspect to the preceding sub-topic arises from a question of the Panel to Ms Bunting about the differences between the SLUS and structure planning, including in relation to consultation. We summarise the response to that matter set out in the Reply as follows:

(a) Ms Bunting's response was that the SLUS provides a higher level assessment of land uses than a structure plan. However, she also advised that the SLUS in combination with the Council's Silverdale West Industrial Structure Plan provides sufficient guidance around key planned land uses and centre locations to inform the routes/sites for the NoRs and achieves an appropriate level of integration.

(b) Ms Bunting concluded that the SLUS provided the relevant and adequate information to inform the assessment of the selected RTC alignment. This was supported by the Dairy Flat integration process, whereby different land use and transport integration scenarios were considered in partnership with the Council and Manawhenua.

102. The Reply comments that the submissions made on behalf of FHLD "*imply a level of detail and certainty that they perceive will come from the structure planning process, including precise locations of collector and local roads, detailed zoning and location of key activities and schools*".[38] It notes, however, that the position of key activities such as community facilities is not typical of a structure plan. In addressing this matter further the Reply included at Appendix 1 and 2:

(a) A comparison of structure plan requirements, as per Appendix 1 of the Auckland Unitary Plan (RPS), and the matters considered by and included within the SLUS. In this regard it also notes where the Requiring Authorities have prepared technical assessments as part of the assessment of alternatives and then the AEE for the NoRs.

(b) A side-by-side comparison of the map from the SLUS and the map from the Drury – Opaheke Structure Plan 2019 in order to demonstrate the extent of similarity between the two. These maps are described as illustrating that there are more similarities than differences. In this respect the Reply submits that "*the structure planning process would not add much to the existing data set*", noting that "*[t]he difference in information and assessment between a structure plan and the Spatial Land Use Strategy is not significant and a matter of degree, rather than reflecting any fundamental misalignment or gaps*".[39]

103. The Reply comments in conclusion on this matter that structure planning is high level in nature and changes to road alignments, and zoning, are commonplace through plan

[38] EV78, at [3.27]
[39] Ibid, at [3.26]

changes following the structure planning process. It refers again to the example of Drury West where centre locations and train stations have also shifted subsequent to the structure plan process. The Panel acknowledges and agrees with that observation.

104. The Panel does not wholly accept the Requiring Authorities' submissions on this topic insofar as:

(a) The submissions by FHLD do not specifically refer to the level of detail of a structure plan, nor that they should include local and collector roads, and it is not clear that this is implied in that evidence.

(b) The assessments for the NoRs have encompassed many of the matters that would be included in a structure planning process but are of course focussed on transport routes rather than the whole of the FUZ area. Despite a location for a Metropolitan Centre being identified in the NoR documentation, the Panel does not consider that the assessments in relation to that element is as robust as it would likely be with a structure planning process.

105. Conversely, the Panel acknowledges that the analysis and assessments carried out for the proposed arterial road layouts are substantial and comprehensive and, in that respect, and notwithstanding our observations above, we accept that a structure planning process would not add much in the way of detail. The use of the SLUS in lieu of a structure plan for informing the NoRs has been accepted by the Council. When structure planning eventually takes place for the area, the planning for the preferred strategic road network will already be established and the structure planning process will effectively be transport-led.

106. Overall, the Panel concludes that the differences between the SLUS and structure plan processes are not material to the recommendations that we reach as to the merits of the NoRs, and consider that the SLUS has provided a suitable level of land use assessment that has reliably informed the NoR alignments.

Benefits in identifying the RTC now

107. Although Ms Bunting had expressed a planning view that, ideally, NoR 1 would follow a structure planning exercise, the Reply stated that there were benefits in the approach that has been adopted. It submits that the identification of the RTC now allows for future structure planning, and planning for the future (additional) stations to respond to the RTC 'spine'. In essence, the RTC becomes the fixed element within the North area, around which land use planning and future stations are then required to align and integrate with.

108. The Reply further submits as to the benefit that arises from the grade separation incorporated into the concept design for the RTC, which assists future planning by

confirming some of the primary crossing points, and with an approximate horizontal and vertical alignment. As a result:[40]

> "*…future structure planning will likely identify additional crossing points including collector roads, local roads or active mode crossings in the future. Knowing where the RTC corridor is located allows the local transport network to respond to the presence of the corridor and ensure street and development patterns provide a quality urban environment*".

109. In addition, further analysis and investigation of the preferred station locations can be undertaken as part of future processes such as structure planning. The Reply submits that this is considered to be an appropriate and balanced approach to land use and transport integration. The Panel agrees.

The need for route protection

110. As alluded to previously, a key issue in respect of the RTC, and other designations proposed within the FUZ, relates to the need (or otherwise) for route protection now, and before plan changes or resource consents are granted that would affect the preferred routes.

111. Some submitters and experts considered that the presence of the FUZ is sufficient to stop urbanisation and prevent build out of the preferred alignment, and as a result there is no need to seek long-term designations now.

112. Ms Bunting responded on this matter to the Panel that while structure planning would ideally be undertaken at the same time as designating the RTC (as previously noted), there was a high risk of the alignment being built out, particularly because the Council does not intend to undertake structure planning in Dairy Flat for a number of years. This latter point was confirmed by Mr Vari, who advised that structure planning would not be undertaken until approximately three years prior to re-zoning. He also commented in this regard that in the Council's experience, structure planning for an area can lead to expectations that an area will be live-zoned soon afterwards, or encourage landowners to proceed to prepare their own private plan changes or resource consents for smaller activities. This leads to issues as to the cost of servicing such areas with infrastructure. In this respect he also highlighted that the Council cannot presently afford the bulk infrastructure needed to service the Dairy Flat and Pine Valley areas.

113. To illustrate Ms Bunting's point, the Reply noted that the NPS-UD had 'opened a door' for out-of-sequence plan changes while also giving policy direction that land use should include high intensity development around RTC stations, and fast-track proposals are also likely to be sought along the RTC alignment. It stated that the core argument from submitters was that there is too much uncertainty to determine an appropriate location for the RTC within the FUZ. This includes considerations relating to flooding and

[40] Ibid, at [3.29]

stormwater management (as raised by Mr Sutton), wetlands and streams (FHLD), neighbourhood street patterns (John Parlane, FHLD), and demand for business and residential land including yields and density (Fraser Colegrave, FHLD).

114. The evidence of Dr Phil Mitchell, a planning consultant but acting in a private capacity as a resident within Dairy Flat, was that the FUZ prevents ad hoc development that would compromise future urbanisation.[41] He went on to state that the "*plan change applications have no realistic prospect of success given the provisions that apply to the FUZ*".[42] In his view, the FUZ provides all the protection that NZTA might reasonably require. This sentiment was also expressed by Mr Brabant on behalf of FHLD in the following terms:[43]

> *"Undertaking urban development by way of resource consent where a FUZ zone applies is difficult. If private plan changes are progressed, they must engage with transportation and can only be approved if this consideration is appropriately addressed*".

115. These themes were responded to in detail in the Reply, with reference to specific examples, and this is summarised as follows:

(a) The policy provisions within the FUZ are written in directive language in order to prevent activities that would compromise urban development prior to plan change processes. The High Court's decision in *Auckland Council v Matvin*[44] reinforced that understanding and concluded that the purpose of the zone is a holding zone to provide a transition from rural to urban use and development.[45]

(b) A separate fast-track panel has very recently granted consent to the surf park proposal by AW Holdings, notwithstanding its location in the FUZ. The Reply comments in this regard that:[46]

> "*It is somewhat difficult to reconcile the granting of consent with the discussion in the Matvin decision about the purpose of the FUZ. It therefore highlights the scope for approvals to be granted in the FUZ to large scale development that would build out the alignment. Mr Brabant and Mr Roberts sought to distinguish the surf park as being a unique proposal that was neither urban nor rural. That distinction is somewhat beside the point. The FUZ failed to prevent large scale development that could have adversely impacted on the preferred route and project were it not for the designation*".

[41] EV29, at [3.1] - [3.5]
[42] Ibid, at [3.6]
[43] EV61, at [19]
[44] This involved a large scale retirement home development, considered by an Expert Consenting Panel under the COVID-19 (Fast-track) Consenting Act 2019
[45] *Auckland Council v Matvin Group Limited* [2023] NZHC 2481, at [38]
[46] EV78, at [6.4(d)]

(c) There is a risk of ad hoc development through the prospect of the current Fast-track Approvals Bill being considered by the Government. The Reply acknowledges that care must be taken about current uncertainties as to the final form of the legislation but it signals a clear direction of travel to provide for a fast-track consenting process. This was illustrated in the legal submissions presented on behalf of Vineway Ltd which advised that Vineway has lodged an application for a proposed development of approximately 1,250 homes in the FUZ (Upper Orewa Road and Russell Road, affected by NoR 6), and sought to be listed on the schedule to the Fast-track Approvals Bill[47] (i.e., it would not follow the structure planning or plan change processes set out within the RPS). We note that this proposal has since been incorporated into the list of projects to be included in Schedule 2 of the Fast-track Bill (along with 'Milldale Stages 4C and 10-13' by Fulton Hogan Land Development Ltd).[48]

(d) Ms Bunting's evidence referred to the issues associated with Policy 8 of the NPS-UD that also identified issues with managing the effect of out-of-sequence plan changes in the FUZ. This policy expressly requires that such plan changes are considered by a local authority, especially where they provide significant development capacity:

> *"…even if the development capacity is:*
> *(a) unanticipated by RMA planning documents; or*
> *(b) out-of-sequence with planned land release".*

(e) The Reply notes that it can be challenging for the Council (and AT) to resist out-of-sequence plan changes. It cites Plan Changes 48 – 51 and 60 in Drury that were opposed by the Council and AT, but were subsequently granted. The Reply highlights that ultimately, the Requiring Authorities do not have control over the plan change process.

116. The Reply goes on to say that these reasons underline why relying on the FUZ and the option of using plan changes to protect land is inferior to designations and does not meet the project objectives.

117. The Panel accepts the Reply submissions in this regard and agrees that the FUZ has proven at times to be insufficient to provide adequately for route protection in response to resource consent applications under either the RMA or fast-track legislation (notwithstanding the outcome in *Matvin*), and that plan change processes also have the potential to undermine the Requiring Authorities' objectives (being a matter that we must have particular regard to per s.171(1)(c)).

[47] EV59, at [2]
[48] Described as "*earthworks and civil works to create sites for over 1,100 residential sites*".

Structure planning and the statutory tests

118. As previously noted, there is no statutory requirement under s.171 for structure planning to occur prior the lodgement and confirmation of a notice of requirement. The Reply also notes in this respect that Appendix 1 of the AUP lists the requirements of structure planning and encourages it to occur, but neither the RPS nor Appendix 1 refer to a requirement for structure planning to occur prior to transport designations.

119. In response to the submissions of FHLD in this regard, the Reply comments that for the lack of structure planning to be a relevant issue, it must have a bearing on the assessment of one (or more) of the limbs of s.171. While we address s.171 in more detail later in this report, we note the analysis in this regard provided in the Reply in summary as follows:

(a) In terms of effects, the Reply notes that the evidence of its experts is that there is adequate information to assess the effects of the NoR, including with respect to the existing zoning pattern, the Silverdale West Structure Plan, information as to constraints and opportunities, and the SLUS. This latter document is noted to provide the current best information on future zoning for the subject area. The additional information that would arise from structure planning could be the more fine-grained neighbourhood layout for example, and the location and design of stations, but is not likely to alter the proposed RTC route.

(b) In terms of planning documents, the Reply notes that there are various plan provisions in the NPS-UD and the AUP relating to the integration of land use and transport and the creation of well-functioning urban environments. It highlights its evidence that the North Projects and the RTC are consistent with these requirements, and that further fine-grained planning is to come. Reference was also made to the Council's response comments, which noted that integration and long-term planning is being achieved through a combination of the FDS, the NoRs and SLUS. In this regard, the Reply also refers to Mr Roberts' evidence in respect of integration that it says failed to consider the role of the FDS.

(c) In respect of the assessment of alternatives, the Reply comments that the Requiring Authorities have relied upon the existing information as described in order to assess different options and then make a decision on the preferred sites and routes. It goes on to comment that this process would not be amended by the existence of structure plans and would also have been unlikely to have changed the outcome of the alternatives process in terms of the alignment of the RTC (as shown by sensitivity testing throughout the assessment process).

(d) In terms of reasonable necessity, the Reply submits that the RTC as a whole is reasonably necessary to achieve the project objectives (which include connecting Milldale, Dairy Flat and Albany). The RTC is stated as being clearly needed and the only debate is about where it should be located, and when it should be implemented.

120. The Panel accepts and agrees with the Reply submissions in this regard, and we make further comments in respect of the s.171 tests later in this report.

Weight to be afforded to the SLUS

121. It was Mr Brabant's submission on behalf of FHLD that the SLUS should be given little to no weight, because it had not been subject to independent decision-making, and:[49]

> "*…is not a product of comprehensive assessment and engagement as would be expected with a formal structure planning exercise (and has nothing like the gravitas and assessment attendant on a plan change process)*".

122. The Reply expresses its disagreement with that position, and considers that the SLUS can be afforded some weight, notwithstanding that it is not a structure plan. It goes on to state that the SLUS:

(a) was prepared by suitably qualified Council planning staff with input from various Council departments including the Parks Department and Healthy Waters;

(b) incorporated transport aspects based on extensive work undertaken by the SGA and the flooding aspects included input from Healthy Waters;

(c) was subject to public consultation and the feedback collated and presented as part of the final documentation, which resulted in changes to the land use pattern and the location of the proposed centre; and

(d) filled a clear gap given that structure planning for the area is not planned for many years.

123. The Reply also highlights that while Messrs Brabant and Roberts placed considerable emphasis on the benefits of structure planning, these processes are also not subject to external scrutiny by independent commissioners or a court, unless they are part of a (concurrent) private plan change.

124. As previously noted, Mr Denton observed that from urban design perspective the best approach is to have structure planning happen concurrently with route selection and designation of these projects. However, he also accepted the evidence that there may be a benefit for route protection first, and agrees with Mr Foster that integration of the NoRs and future adjacent land use can be addressed through the ULDMP that establishes a framework to manage the issue.[50]

[49] EV61, at [28]
[50] EV77, at p.25

125. The Panel also agrees with the SGA that reliance on structure planning and plan changes to secure the network would reflect an ad hoc and piecemeal approach to transport planning, given the breadth and scope of the projects (and NoR 1 in particular) in front of us.

126. Overall, and in light of recent development in the area the Panel accepts the evidence of SGA on the benefits of route protection now in advance of structure planning, and we accept the urban design challenges associated with the timing of the North Projects can be addressed through the ULDMP condition. We also agree with the SGA that some weight can be afforded the SLUS. Other than for transport matters (for which the assessment of alternatives is very detailed) the assessment for the SLUS is not as detailed as would be the case with a structure plan.

Property considerations at the DBC stage

127. The Panel raised an issue with Ms Foy during her presentation as to the property impacts considered during the DBC optioneering process, and why property impacts were a consideration for segments 1 and 2 of the assessment for the RTC, but not any of the other segments. This question arose following provision of the DBC to the Panel during the hearing, and consideration of the MCA process for the RTC between Albany and Milldale.

128. The Panel's concern was that existing residential development within the Goodlands Estate area being a countryside-living subdivision developed in the early 2000s, had not been recognised in the optioneering process, notwithstanding that this appears as a comprehensively developed area, albeit not to an urban density. On that basis, it was unclear why the preferred Option 4 did not score more poorly in terms of land requirement and social cohesion in terms of the northern sites within Goodlands Estate. Conversely, for segments 1 and 2, the western alignment was noted to be preferred including for the reasons that it scores better for land use futures and urban design, primarily because "*it hugs the existing motorway corridor and avoids effects on Wright Road properties*".[51]

129. We heard in this regard from Dr Mitchell who strongly opined:[52]

> *"There is no credible justification for NoR 1. Whilst it may meet the proponents' objective of protecting a potential transport corridor, the route is already protected by the FUZ, and the proposal is: speculative; not supported by an objective assessment of the reasonable need for it; and will leave property owners like us "high and dry" – prisoners in our own retirement properties, with no way out and, given the lack of funding, no realistic prospect of receiving any compensation in our lifetimes."*

[51] DBC, Part 1
[52] EV29 at [4.4]

130. The Reply referred to the MCA framework used for the RTC alternatives assessment, which had several criteria relevant to property. In particular, it advised that:[53]

> "*Property impacts were considered for all segments through various criteria, but the zoning of land within different segments meant that the level of impacts was different. Property-related impacts on land zoned as FUZ were generally less than impacts on rural zoned land because the land use and the features of the property are expected to change significantly by the time the Projects are implemented. Property impacts were not considered a differentiating factor within the FUZ. The key difference between segments 1 and 2 and the other segments for the RTC is that segments 1 and 2 run through land that is zoned rural. In this case, the impact on dwellings in rural zoned land could be a differentiating factor, especially compared to land zoned as FUZ*".

131. The Panel has some difficulty accepting this approach in respect of the aforementioned areas of Goodland Estate which is essentially a low-density residential suburb, and to a lesser extent through similarly subdivided areas at Grace Hill. In the Panel's view, and notwithstanding the FUZ that applies to this land, the relatively recent development of this land should have been a relevant consideration in the assessment of property impacts for the preferred alignment (and presumably future acquisition costs), or at the very least, not a factor that was ignored altogether. The proposed alignment, that will run through these areas, will clearly have an impact on a number of properties. While a more thorough consideration of this area may not have changed the outcome, it appears to the Panel that property impacts in this area, and within the FUZ more generally, should at least have been a relevant factor in the optioneering processes.

132. No particular recommendations arise from the Panel's observations in this regard, as we understand that the underlying optioneering processes have been completed, and we note that the effects of the alignment on such properties will be addressed through the PWA and associated land acquisition procedures. Further, a recommendation that requires a change of alignment will inevitably give rise to impacts on other landowners and/or other environmental constraints. Nevertheless, the Panel records its concern as to the apparent lack of nuance in the consideration of the different types of FUZ properties that exist within the RTC alignment.

Issues with respect to the location of the Dairy Flat Metro/Town Centre

Introduction

133. The Panel also heard evidence that raised concerns with respect to the location of the Dairy Flat Metro/Town Centre adopted for the RTC route planning, and as indicated in the SLUS. These related to issues of potential flooding (and the cutting off of the centre through flooding of the adjacent arterial road network) and the geotechnical constraints of land in the area. These matters are addressed below.

[53] EV78, at [5.25]

Flood risk

134. Flooding concerns were a particular matter raised by Mr Sutton who stated:[54]

> *"…The region suffering badly from the [affects] of extensive flooding last year which we understand were around a 1 in 100-year event or greater, which has significantly changed the design parameters and compliance issues for supporting development*.
>
> *"…There are no assessments that have been released or referred to on the viability and /or compliance with various National Policy Statements for the development of the major flood plains immediately adjacent to the proposed location of the Metro Centre, for supporting Residential development*".
>
> *"…The road network surrounding the Metro Centre indicates substantial inundation under the updated climate change assumptions, which were experienced twice in 2023, up to or exceeding the 1 in 100 year predictions.*

135. We heard from Messrs Seyb and Summerhays in respect of this issue in terms of both flood modelling and flood effects. The Reply highlighted the following key points of that evidence as follows:

(a) Flood plains were a relevant constraint considered during the RTC options selection and subsequent assessment process. In this regard the RTC "*was purposefully positioned largely outside of the flood plain to limit flooding effects*". Notwithstanding that location, the RTC has retained "*the largest extent of likely walkable catchment compared to other alignment options, when considering the future industrial area, the longer length within FUZ (and therefore more opportunity for stations), as well as constraints like the airport noise overlay and flood plains*".[55]

(b) The location of future urban development is determined by the Council through urban planning and consideration of plan changes and consents. Reference was made in this regard to the response memorandum by Mr Wilkinson that notes that the hearing relates to the NoRs and not the appropriate zoning of land.[56]

(c) Flooding was also assessed as part of both the FDS in relation to the suitability of future development in Dairy Flat, and the options for the town centre under the SLUS. The latter specifically locates the Metro/Town Centre outside of known flood plains in response to comments received and was agreed to by Healthy Waters. The response memorandum by Ms Te explains that the centre and high-

[54] EV50, pp.3 and 4
[55] EV78, at [3.50]
[56] EV77, at p.5

density residential activity will not be located within flood plains but rather will adjoin it.[57]

136. The Panel notes that the approach in the FDS for the Dairy Flat area can be contrasted with the outcome for parts of Kumeu, for example, where areas of existing FUZ were 'red-flagged' in order to preclude development of that area. Ms Te's memorandum advises that the FDS does not identify Dairy Flat as an area to be 'red-flagged' due to natural hazards, including from flood risk.

137. Mr Seyb's evidence also identified that future planning processes will require a catchment management plan.[58] The Reply further states that:[59]

> "…*the [SLUS] recognises that development can be carefully integrated with flood plains, and issues around flood plains adjoining the Dairy Flat Metro/Town Centre can be considered at the structure plan and catchment management plan stages. Ms Te agrees with the stormwater catchment management plan approach and explains that it should include the specific characteristics of the area of development, the significant site features and hydrology, integration with road designs, and protection of streams, riparian margins and significant ecological areas".*

Geotechnical constraints

138. The Panel also heard particular concerns from Mr Sutton with respect to the geotechnical constraints of the Dairy Flat centre location which include Northland Allochthon. He described the land as a wetland/swamp which will create major development issues for private investment.[60]

139. We also heard from Ms Valder on this point who noted the difficult ground conditions namely two unstable gullies containing 'tomos' which required remedial work.[61]

140. The Reply notes that the detailed design stage will include targeted investigations that will be informed by more accurate topographical survey data, site investigations, and site conditions or constraints at the time, as referred to in the evidence of Mr Pratomo and Mr Barientos.[62] It also referred to Mr Mason's evidence that there are practical engineering solutions that can be used to improve stability and it is normal practice to undertake investigations and slope stability analyses as part of the implementation phase of a project with the detailed design being based on current ground information at the time of implementation.[63]

[57] Ibid, at p.55
[58] EV14, at [12.14]
[59] EV78, at [3.52]
[60] EV50, at p.3
[61] EV30
[62] EV12, at [6.5]; and EV11, at [11.111]
[63] EV10, at [1.5]

141. The Reply also highlights that the MCA framework for the RTC alignment includes consideration of 'natural hazards', which measures the extent of effects on adverse geology, steep slopes, seismic impacts, and other resilience risks. It advises in this regard that "*a conservative approach was taken to developing the concept design with respect to earthworks which included considering the presence of the Northland Allochthon*".[64]

Finding

142. The Panel accepts the expert evidence on this matter provided on behalf of the Requiring Authorities and we are satisfied that geotechnical issues are able to be appropriately dealt with during the future detailed design and consenting phase.

Additional RTC matters

Introduction

143. Consideration of the proposed RTC alignment also raised some ancillary issues related to future-proofing for light rail, the staging of the RTC and the location of (or risk of not identifying) future RTC stations. These are addressed briefly by reference to the Reply commentary as set out below.

Provision for light rail

144. The Panel were advised that the RTC is designed to provide a segregated facility, capable of accommodating bus rapid transit or light rail transit. As explained by Mr Norman, it is capable of accommodating bus rapid transit or light rail transit. The key differences in this regard that are that a bus corridor is slightly wider than a light rail corridor, given buses are not constrained to tracks, while the gradients are largely the same.

145. On that basis, the Panel accepts the Reply submission that the RTC is not predicated on light rail proposals (as proposed by the former Government) and will provide a high-speed/high-capacity facility based on whichever vehicle mode is determined to be appropriate at the time of implementation. We also accept the submission that there would be no basis on which to reject provision for light-rail as part of the NoR stage, nor any point in doing so given there is no apparent difference in alignment parameters between either option.

146. Accordingly, we agree with the comment in the Reply that *"[i]dentifying the designation boundary to be able to accommodate both forms of transport maintains flexibility and allows for the most appropriate rapid transit option to be determined in the future*".[65]

[64] EV78, at [3.55]
[65] Ibid, at [3.61]

147. The Panel had also queried this matter by reference to the revised priorities of the current Government as set out in the draft GPS on Land Transport. The Reply comments in this regard that "*[b]oth a bus-based and a light rail-based project would have been consistent with [improving access and supporting urban growth outcomes] and so the GPS did not have an influence on the choice of the mode as part of the business cases or the AEE assessment*". The point raised by the Panel was that current Government priorities, as we understand them, emphasise road-based options over rail, and that a light-rail option for the RTC seems unlikely in that context. Nevertheless, as noted above, it is accepted that the designation provides flexibility for the best option that will be determined at the relevant time, and with reference to the preferred transport modes to be identified in the future.

148. A further aspect addressed in the Reply on this topic was clarification that the BCR for the RTC is not likely to be influenced by the choice of mode as this is based on a defined level of capacity in the corridor. It notes the evidence of Mr Norman that the economic assessment prepared as part of the DBC had assumed operational costs in line with the light rail mode, as that was the more costly of the two options. Accordingly, "*if a bus-based system was implemented, the BCR for the RTC would increase, since bus operating costs are less than light rail with similar benefits*". In addition, at the IBC stage, "*all options were assessed using the same high level operational cost assumptions and no separate assumption was made for bus or light rail*".[66]

RTC staging

149. The Panel queried the likely staging approach to the RTC. In this regard Mr Norman acknowledged that it would be logical for this to occur on a south-to-north basis but noted that it is possible to build the northern section first so it can join into the rest of the network (assuming a bus-based mode). The Reply advises that there are also options for parts of the RTC to be constructed at the time as the widening of SH1 in the southern parts of the route, so that earthworks and carriageway formation only occurs once.

150. Overall, however, the Panel accepts that staging options are a matter for investigation in further business case phases, and are not influenced, or determined, by the NoR.

Location of stations

151. As well as the aforementioned issue as to the lack of identified stations in the middle/southern sections of the RTC, the two proposed stations in the northern section were also queried during the hearing, being Milldale (NoR 2) and Pine Valley East (NoR 3). The Reply advised of the reasons for the identification of these stations in advance of the implementation or detailed design stage as being:[67]

[66] Ibid, at [3.64]
[67] Ibid, at [3.67]

(i) Both stations are located in areas which are either live zoned or have been structure planned; and

(j) The nature of both stations poses constraints which have made it important to identify the location and extent of designation now.

152. In particular, and with reference to the evidence of Mr Norman:[68]

> "*The Milldale station is situated on live-zoned land immediately adjacent to the Milldale development. The Pine Valley East station is partially located in the area subject to the Silverdale West Dairy Flat Industrial Structure Plan. These areas have greater development pressure, along with a sufficient level of certainty as to location (due to applicable constraints that limit different locations for stations).*"

153. The evidence for the SGA also noted that the Milldale station location is already live-zoned and aligns with the potential location indicated in the Integrated Transport Assessment for the Milldale development (having been set aside by the developer for a station through agreement with AT). Having regard to other constraints in the area, it was determined that there were no other practicable locations that could be considered for this station.

154. The Pine Valley station will be located in the FUZ, south of the live-zoned Milldale development and proposed station. The Reply notes the reasons for the park-and-ride facilities at this station as being:[69]

(a) The spatial extent of the Milldale station to the north is constrained and its bus interchange function needed to be prioritised as an end of line station; and

(k) [sic] *The Pine Valley East station is nearer the western fringe of the urban area, providing better opportunities to increase the catchment of the RTC into the surrounding rural environment with less local bus services.*

155. It also states that the Pine Valley East station has been identified for designation now due to its location in an area that is already structure-planned, and because it will require a significantly larger footprint than the Milldale station. It sets out the reasons for the proposed location as follows:[70]

(a) Overall preferred option in relation to transport outcomes (investment objectives), land use futures and urban design – which are critical issues for an RTC station;

[68] Ibid, at [3.68]
[69] Ibid, at [3.72]
[70] Ibid, at [3.76]

(b) *Overall preferred option from a policy analysis perspective – the preferred option minimises the footprint, therefore having the greatest alignment with the NPS-UD and NPS-FM;*
(l) [sic] *Environmental effects were neutral to low adverse, except for construction disruption (a temporary effect) and construction costs/risk;*
(m) [sic] *Equal best value for money; and*
(c) [sic] *The option aligned with Manawhenua and Council preferences*

156. Some submitters raised issues as to why the stations in their proposed locations have been preferred over the existing Hibiscus Coast station on the Northern Busway. It was Mr Norman's evidence, as summarised in the Reply, that:[71]

> "*…ongoing operation of the Hibiscus Coast station and associated park and ride was assumed when considering the RTC alignment, but ultimately the preferred RTC alignment did not allow for a connection to Hibiscus Coast station. Instead, the station and park and ride facilities are anticipated to be transferred to the Pine Valley East station in the long-term once the RTC is operational. Connectivity to the eastern side of SH1 will be maintained through the Highgate bridge. The Pine Valley East station is anticipated to serve a wider catchment for the RTC, as it will extend to the surrounding rural areas*".

157. The Reply notes that this does not mean that retention of the Hibiscus Coast station would be completely precluded, as it is a matter for consideration at the implementation stage (and subject to further modelling).

158. The Panel accepts the reasoning set out in the Reply and the SGA's evidence for the locations of the two proposed stations associated with the RTC.

Overall finding

159. Overall, and notwithstanding its concerns as to the optioneering process undertaken in respect of parts of the FUZ, the Panel finds that the rationale for the RTC (NoR 1), and its associated stations, is accepted and agreed. No recommendations are made in respect of its proposed alignment or designation extent.

Alignment and extent of the designations

Introduction

160. The proposed designations seek to protect routes by way of designation, including land sufficient for the construction, operation and maintenance of the future arterial transport network. The design of the NoRs have focused on developing alignments to a level that is sufficient to inform the proposed designation footprint and to assess an envelope of effects that includes potential construction areas, operational and maintenance

[71] Ibid, at [3.69]

requirements and areas required to mitigate effects. This was a common approach to the North Project as well as those for the North-West and Warkworth that this Panel were familiar with and, we understand, to the Te Tupu Ngātahi programme generally.

161. Our discussion of this topic incorporates several inter-related themes that were frequently raised within the evidence of submitters. These related to the Requiring Authorities' proposals for what will need to be incorporated within each designation, integration with adjacent development proposals, and the maintenance of access during and after construction.

162. The Panel notes at this juncture that while the particular details shown in the concept plans were useful in illustrating the likely and potential form of the completed new roads or upgrades, we are only tasked with making recommendations on the designation maps, which are the outline maps depicting the designations in simple black outline against black-and-white aerial photographs (refer Appendix E to the Reply). While the concept plans form part of the information to be contained in Schedule 1 to the conditions, condition 1 clarifies that where there is any inconsistency between the concept plan and the requirements of the remainder of the conditions, the conditions and management plans shall prevail.

What is incorporated in the designations

163. The Panel was advised that the proposed designations have been designed to incorporate sufficient width along the road corridors to allow a degree of flexibility in the alignment and design of each road, the design of retaining structures and batters, regrading of driveways, works to relocate or realign network utilities and culverts, the construction of bridges, and to provide access for construction. While the concept plans provided a reasonable level of detail of the facilities to be provided within the proposed road reserves, the extent of the additional areas for construction were somewhat less definitive but were described as being based on anticipated requirements given land characteristics and present understandings of construction techniques. In particular, the evidence for the SGA advised that sufficient width has been provided at the edge of embankments and design elements to provide for appropriate construction areas and access along the corridors.

164. It was also the evidence of the SGA that it would be impractical at this stage to identify the extent of temporary versus permanent occupation in relation to those activities given the detailed site investigation that will be required and the determination of construction methodology which can only be finalised following detailed design and the selection of a contractor.

165. The Requiring Authorities also advised that with respect to the design of the road the concept designs have been developed with some flexibility to integrate with adjacent land. The designations are considered by the Requiring Authorities to be of sufficient scope to provide flexibility in road levels and berm areas to accommodate an appropriate tie-in with adjacent land. As the final earthworks levels of any adjoining development are unknown, they have made assumptions regarding road levels and

embankments. The conditions propose that the ULDMP (conditions 16 - 18 for the AT NoRs) is required to be prepared prior to the start of construction to ensure integration with adjoining land use at the time of detailed design and implementation (in particular, via condition 17(a)(i)).

Permanent versus temporary designation areas

166. As referred to earlier, the extent of the proposed designation boundaries was also raised by many submitters across the 13 NoRs, and in particular for the road alignments of NoRs. Some submitters considered that the extent of the designation boundaries had not taken into consideration the potential development of adjacent land, or situations where resource consent approvals had been granted for the same or were in the process of being implemented. For example:

(a) Dr Tony Poninghaus commented that on behalf of his client:[72]

> *"The extent of the designation is substantial. It involves unnecessary land reduction and introduces unwanted uncertainty affecting the future development of the land. This diminishes the ability to provide for essential local commercial, community, recreational and similar activities in a reasonable and efficient manner, as would be provided for under the Neighbourhood Centre zoning of the Auckland Unitary Plan. More so, it adversely affects the commercial realisation of future development, the ability to undertake site master planning, and the ability to integrate development with the adjoining MoE site, including access and interface activity".*

(b) Alex Van Son, for Highgate Business Park Limited, noted that:[73]

> *"…because NOR4 is a variation of the existing designation for SH1, which has been 'given effect to,' a lapse date is not proposed. This creates additional uncertainty for HBPL and, in my view, further supports the need to better define the extent of the proposed designation of DCP2.*
>
> *"SGAs decision not to amend the proposed designation boundary under NOR4 fails to recognise the HBPL implemented resource consents and proposed development of DCP2."*

(c) Mr Clifford Tyle, for Starglow Limited, was concerned as to the extent of NoR 7 on the property at 346 Pine Valley, which would affect the various features at the front of this property (being a valuable sculpture, a large willow tree, a hospitality venue, carpark access and stormwater drainage).[74]

[72] EV43, on behalf of Genevieve A Rush-Munro, Grant A Clendon, Genrus Family Trust
[73] EV40 at [37 & 51]
[74] EV37a, at pp.1-2

167. The evidence for the Requiring Authorities had addressed these submissions by explaining the necessity of the location of the designation in evidence provided by its experts and in some cases by modifying the extent of the designations. It was their overall submission that the designations reflect the information available at the present time, as part of the first step in the designation process and ahead of the detailed design that forms part of the second step. In essence:[75]

> "…*once there is demand for a project to be delivered and funding is confirmed, the Projects will progress to Step 2 with detailed design undertaken and outline plan(s) submitted for the works. The conditions (and their associated management plans) have been carefully designed to anticipate and resolve any effects issues that may arise at the time detailed design is undertaken, including complexities due to changes in the environment*".

168. In this regard, the Panel heard from Robert Mason who provided evidence on behalf of the Requiring Authorities in respect of engineering and design. Mr Mason advised that the cross-section designs for the NoRs were based on "*the requirements of the AT Transport Design Manual which incorporates the AT Urban Street and Road Design Guide, the NZTA State Highway Geometric Design Manual and Vision Zero design features*". He also noted that "*[t]hese standards may change over time, and the final cross section to be implemented will be determined at the future detailed design stage*".[76]

169. Mr Mason also explained that a reduced cross-section width may be necessary in constrained locations, with a balance required to achieve the project outcomes with impacts on adjacent land. Although this would be assessed through future detailed design, there are some locations where this is able to be determined now (citing the example of areas with ecological constraints). He notes that "*[w]hile isolated constraints in width exist, it does not follow that these constraints should drive the wider outcomes sought by the corridor as a whole".*[77]

170. However, other areas incorporated within the NoRs include construction compounds and laydown areas and new wetlands. Individually, these elements of the NoRs occupy large areas of land. It is not entirely clear to the Panel why the construction compounds and laydown areas could not be identified on the designation plans as being areas required only during construction (i.e., temporary). The Panel is also concerned that, with the exception of the laydown areas for bridge construction, the location and extent of these areas is rather arbitrary given that construction could be 30 years in the future. The imposition on private property owners is substantial and there is a question as to whether the designation of these areas is "reasonably necessary" at this time.

171. The Panel considered whether the same issue might apply to the locations identified for stormwater management features (wetlands) but we were persuaded by the evidence of Messrs Seyb and Summerhays that the locations selected are the most appropriate

[75] EV01 - Appendix E, at [30]
[76] EV10, at [6.5]
[77] Ibid, at [6.6]

given the topography along the route of each NoR. Ms Te appeared to concur although her comment related more to a demonstration of the practicality of the proposed stormwater treatment methodology rather than definitive locations.

172. In general, the Panel was interested to understand whether there were larger or more obvious parts of the proposed designation areas that could be identified as temporary construction areas, such as the laydown areas adjacent to bridge alignments, and those areas marked 'indicative construction area' on the general arrangement plans. If so, the Panel wished to know if these could be identified in a different manner than the expected permanent designation areas, and associated linear construction extents, as this would in some cases provide greater certainty for landowners as to extent of the longer-term impacts on their land.

173. The Reply comments in this regard that:[78]

> "*there is no legal requirement to differentiate between land designated for construction and land designated for operation. While doing so is legally possible and has been done so in some other designations, this is generally only done where there is a greater level of design detail available*".

174. It goes on to emphasise that distinguishing between temporary and permanent impacts is best carried out at the time of implementation, for the reasons that:

(a) These are long-term projects and detailed design is yet to occur; and

(b) There will also be opportunities prior to implementation to integrate with adjacent developments, which could include changing the concept design and will influence detailed design of the Projects.

175. The Panel acknowledges the point that there is "no legal requirement" to differentiate the designated land between construction and that required for operation. We nevertheless consider that there may be the potential for some change in approach in light of the proposed lapse dates in a manner that does not affect the actual area of designated land, or the Requiring Authorities' ability to change the concept design in the future.

176. As an alternative to designating the affected land, the Panel has also contemplated whether the areas required for construction compounds could be identified closer to the time of implementation and when lease arrangements are entered into. With the exception of areas adjacent to proposed bridges, the location of those particular elements appear relatively unconstrained and accordingly it may be more appropriate for those areas to be excluded from the designations. Accordingly, Commissioner Smith also considers that most construction compounds identified in the NoRs should be deleted and their occupation be the subject of negotiation with the relevant landowners closer to the time of implementation of the projects.

[78] EV78, at [5.19]

177. However, Commissioners Blakey and Farnsworth recognise that not designating the land now could result in issues at the time of implementation where the land may be developed and result in constraints on the ability to give effect to the works to be enabled by the designations. As a result, we do not (by way of a majority finding) make a recommendation that certain designation areas be deleted from the NoRs.

178. The Panel has nevertheless formed an overall view that the areas marked on the concept plans as 'indicative construction areas' should be identified in a different manner than the expected permanent designation areas, and associated linear construction extents, as this would in some cases provide greater certainty for landowners as to extent of the longer-term impacts on their land.

179. In this way the Panel is recommending the inclusion of a different form of area delineation that reflects the likely expected areas that will only be for construction could be included in the designation maps. In the Panel's view, this could assist landowners during the lengthy pre-implementation period to understand the likely extent of permanent (to be acquired) versus temporary (to be leased) land requirements for particular sites.

180. The Panel therefore recommends that the Requiring Authorities provide a different delineation within its designation maps for temporary construction areas (shown as 'indicative construction areas' in the general arrangement plans).

Designation review

181. Associated with this issue was the timing by which the designation would be reviewed following construction, with Mr Roberts (for FHLD), for example, seeking that the phrase "*as soon as reasonably practicable*" be defined as being within the six-month timeframe put forward in the s.92 version of the conditions.[79]

182. The six-month provision was removed in the version of the conditions attached to Mr Scrafton's primary evidence, although no specific reference was made to the reasons for this deletion. Mr Scrafton's rebuttal evidence did note however that "*while there is no timing restriction placed on the requiring authority to undertake this review, there is a requirement for the territorial authority to update the district plan as soon as reasonably practicable after receiving such notice from the requiring authority".* On this basis, he stated that "*the RMA provides for the designation review process to be 'open ended'*".[80]

183. Mr Wilkinson's response memorandum noted in this regard that:[81]

> "*There appears to be inconsistency on the application of this condition (Conditions 4/5 respectively). I am aware that for Takanini 6 months is included, Warkworth*

[79] For example, see Agenda, Volume 9: p.27 (NZTA, condition 4); p.126 (AT, condition 5)
[80] Scrafton Rebuttal, at [3.2]
[81] EV77, at p.5

the same,[82] *and yet for this set of NoRs it is intended to be removed. There is no clarity as to the reasoning for this change. This condition was also raised by some submitters. It is my opinion that the inclusion of 6 months should be added back in*".

184. The condition wording as proposed in the Reply followed that presented by Mr Scrafton and was as follows:[83]

> *As soon as reasonably practicable following Completion of Construction the Requiring Authority shall:*
> *(i) review the extent of the designation to identify any areas of designated land that it no longer requires for the on-going operation, maintenance or mitigation of effects of the Project; and*
> *(ii) give notice to the Manager in accordance with section 182 of the RMA for the removal of those parts of the designation identified above.*

185. We understand the SGA's concern in respect of this aspect of the condition is that the condition needs to retain some flexibility as the roll-back process may be subject to third party actions and other external factors beyond the control of the Requiring Authorities that could impact the timeframe able to be achieved for this process.

186. However, the Panel is of the view that a six-month timeframe would provide sufficient flexibility to accommodate such factors while also incorporating a more certain limit. We therefore consider that the introductory wording of the condition should be amended as follows:

> *As soon as reasonably practicable<u>, but no later than six (6) months,</u> following Completion of Construction, the Requiring Authority shall: ...*

187. We have incorporated this condition into other changes to this condition that we discuss later in respect of the designation lapse topic.

<u>Panel findings and recommendations</u>

188. The Panel considers that the alignments and extents of the designations have been based on an appropriately detailed analysis of technical need and requirements and have been subject to ongoing review in response to submissions. The Panel finds that no changes are required to the designations in this regard, other than:

(a) to recommend a different form of delineation in the designation maps for areas identified as 'indicative construction areas'; and

(b) to recommend an amendment to conditions 4 and 5 in terms of timeframe limits in the designation review provision as described above.

[82] The Panel notes that the Requiring Authority's decision in Warkworth (dated 24 June 2024) removed the six-month clause.
[83] NZTA condition 4; AT condition 5

The lapse periods for the designations

Proposed lapse periods

189. As previously noted, the North NoRs have a range of proposed lapse periods of between 20 and 30 years. The 'standard' lapse period under the RMA is five years under s.184(1), unless, as provided for in s.184(1)(c), "*the designation specified a different period when incorporated in the plan*".

190. The issue of lapse dates was a significant one during the hearing, and was the most common matter raised within submissions, with concerns raised about the uncertainty for landowners, the constraint on investment decisions and restrictions on opportunities to add value to properties.

191. In general, the Requiring Authorities considered that the proposed lapse dates were necessary to account for the uncertainty as to the timing of urbanisation in the North area and funding timeframes. The AEE had noted that it is not uncommon for infrastructure projects to have longer lapse periods, with reference to recently confirmed projects such as Southern Links (NZTA), Drury Arterials (AT),[84] the Northern Interceptor Wastewater Pipeline (Watercare) and the Hamilton Ring Road (Waikato District Council and Hamilton City Council). It added that setting an "unrealistically" short lapse period would not be a significant factor in facilitating earlier availability of funding than is planned at the time the NoRs are sought.[85]

192. Conversely, the Council and submitters considered that reduced lapse periods were necessary to reduce uncertainty for affected landowners and to avoid the adverse and associated effects of 'planning blight'. Mr Wilkinson, through the s.42A report, advised that, having considered the reasons provided by the SGA for the lapse periods, and balancing these against the effects on directly affected land owners, the proposed lapse periods were not able to be supported. In his opinion:[86]

> "*… a balance needs to be struck between the practical needs of SGA to protect and secure the routes and co-ordinate its implementation with planned urban growth, and the effect of the lapse period on property owners and occupiers. In my view, it is ultimately a question of fairness. I consider that the concerns of the submitters are valid and that the longer lapse periods sought for twelve of the NoRs has the potential to create an unreasonable level of uncertainty and/or planning blight on the properties affected. I consider that the lapse period sought does reveal an issue of planning blight*".

193. Mr Wilkinson also noted that the NoRs are intended to connect from Albany through to Milldale, the latter being a well-established community whereby development has

[84] We note that the Drury Arterials network designations have lapse periods of 20 years, although the Hearing Panel recommendations in that case was that it be reduced to 15 years, with the Requiring Authorities reverting to 20 years in their decision.
[85] AEE, at 5.1
[86] Agenda, at p.83

proceeded in accordance with its master plan and AUP Precinct provisions. He also noted progress in respect of the Silverdale West Structure Plan area that indicates development is proceeding in a manner consistent with the 2030-35 guidance under the FDS, and so would give impetus to the need to establish the connections sought to be achieved by the NoRs. He therefore recommended that the Requiring Authorities consider:[87]

- *A shorter lapse period in the order of 15 years for NoRs (other than NoR 4, which has the existing designations); or*
- *Bring forward the priority sequence and corresponding cascade of lapse dates for each of NoRs implementation.*
- *Further revise and improve the conditions to provide more certainty; or introduce new conditions (based on Ms Foy's recommendations) to provide additional information about the proposed engagement and/or consultation processes for directly affected parties or other parties which are in the vicinity of the proposed works including in the period between when the designation is confirmed and the construction phase i.e. during the detailed planning and route protection phase.*

194. The rationale for the lapse dates proposed for the North Projects was explained in Ms Bunting's evidence, which also set out the reasons why she did not agree with Mr Wilkinson. She stated that she remained of the view, as expressed through the AEE, that the proposed lapse dates are appropriate for the reasons that:[88]

(a) The North Projects are required to support and respond to planned urban growth, and comprise the recommended transport network needed to support the full build out of North growth areas, regardless of when this occurs;

(b) The proposed lapse dates generally align with the most up to date growth timing indications, in the North DBC and FDS, which is also acknowledged by [Mr Wilkinson];

(c) Longer lapse periods are common for complex, large scale infrastructure projects, both in New Zealand and overseas.

(d) Complex infrastructure projects take a long time to deliver between the time of designation and construction.

(e) …Te Waihanga New Zealand Infrastructure Commission includes a strategic direction to take a long-term approach to infrastructure, in order to meet the infrastructure needs of population growth through planning for infrastructure networks before they are needed.

(f) The [Local] boards have endorsed the route protection approach and are cognisant of the property liability that comes with this.

[87] Ibid, at p.84
[88] Bunting EIC, at [12.23]

(g) …alternative methods of route protection have been considered, including short-erm designations; however long term designations have been confirmed as the most appropriate mechanism.

195. The SGA's opening submissions referred us to the Environment Court decision of *Beda Family Trust v Transit New Zealand*, which identifies that the RMA does not provide any guidance on what matters should be considered when determining a longer lapse period, so the matter is discretionary.[89] However, the *Beda* decision outlined some principles to be taken into account in exercising that discretion, being:[90]

(a) When applying an extended lapse period, the discretion must be exercised in a principled manner, after considering all the circumstances of a particular case;
(b) There may be circumstances where a longer period than the statutory 5-year lapse period is required to secure the route for a major roading / transport project; and
(c) In the instance of longer lapse periods, there is a need to balance the prejudicial effects on property owners who are required to endure the effect of planning blight as a result of the project for an indeterminate period.

196. Those submissions noted that the Court in *Beda* had outlined those principles in favour of longer or shorter lapse periods.[91] For the former, these were:

(a) the lapse period reflecting the realistic timeframe within which the project is likely to be constructed;

(b) safeguarding the chosen alignment from inappropriate development in the period before it become fundable;

(c) providing certainty for affected landowners and the local community as to the requiring authorities' future intentions over the longer term; and

(d) providing certainty for the requiring authority that it will be able to fully implement the project when it becomes fundable.

197. Principles in favour of the latter were that a shorter designation recognises that a designation restricts what affected landowners can do with their land; and that "*the ability for affected landowners to require the requiring authority to acquire their land under section 185 of the RMA set a high threshold so is not always an adequate remedy*".[92]

198. The SGA's opening submissions made reference to the aforementioned examples of designations involving longer lapse dates (and the Southern Links Project in particular), which "*demonstrates that a 20-year time period for large strategic infrastructure projects*

[89] *Beda Family Trust v Transit New Zealand*, EC Auckland A139/2004
[90] EV01, at [9.7], with reference to *Beda* at [113]
[91] Ibid, at [9.8]
[92] Ibid, at [9.9]

is not extraordinary".[93] The Panel notes in this regard that while a 20-year period may not be extraordinary, a 30-year period could well be considered as such. Reference to Appendix B of the opening submissions does, however, identify two designations of 30-years, being the Whitford Link Road (2005) and the Beachlands Road widening project (origin date unknown), as well as the 24-years approved for the Wēiti Crossing (O Mahurangi - Penlink) (2011).

199. The opening submissions also noted that in the Southern Links Project case, the reasons for which a 20-year lapse period was granted was that it would:

(a) future proof the transport network so that it could meet strategic growth needs;

(b) protect the route from incompatible future uses;

(c) provide additional time to investigate, fund and construct the project; and

(d) provide certainty for landowners about where the future transport corridor would go.

200. The SGA went on to submit, with reference to the evidence of Mr Scrafton, that the "*longer lapse periods assist to achieve land use and transport planning integration by providing certainty of the location of the transport network*".[94]

201. As previously noted, the issue of the extent of the proposed lapse dates was the most common issue raised across all the NoRs. For example:

(a) Mr Roberts, for FHLD, opposed the lapse dates for NoRs 1, 2, 4, 7, 8, 11 and 13 on the basis that:[95]

> *"…they extend beyond the anticipated extent of works and do not reflect the actual and reasonable area of land that is needed. The area of land proposed to be designated is much greater than what is required for the proposed new or upgraded road designs which, when combined with the 30 year lapse period sought, has the potential to significantly impact landowners*".

(b) The Browns in their representation proposed a maximum of ten years across the board for all NoRs based on the recent North-West NoR hearings.[96]

(c) Mr Hari De Alwis in his representation for Mr Dean Hoo (Woodland Country Estate) on NoRs 1 and 8 noted:[97]

[93] Ibid, at [9.10]
[94] Ibid, at [9.19]
[95] EV61b, at [38]
[96] EV39, at p.9
[97] EV26, at p.3

"The property in question has been the gem of our company that can come to rescue the company cashflow any time. Waiting for a 30 + year period to finalize this matter is totally unacceptable to us".

(d) Ms Jae Hoi Noh expressed the same view for NoR 1 and NoR 3:[98]

"*Planning RTC and a large bus station for over 30 years poses greater obstacles for developers. Fixed bus routes hinder land selection and acquisition. The plan to restrict land use for a bus route serving a small number of users, which may or may not be used for 30 years or beyond, is not practical."*

(e) Mr Robert Fry, for Taemaro Investments Limited, when addressing the lapse period, noted:[99]

"We are now in our early 70's, and realistically the proposition of us being around in 25 years is slim, never mind any potential extensions in the NOR, so looking toward the suggested time horizon we are certainly unlikely to be occupying the property at the end of the proposed NOR timeframe being sought."

(f) Mr Stanbridge stated:[100]

"The very long term 30 year plus unfunded nature of these NORs, in particular NOR1, is exposing the funders to additional risk over and above what has been budgeted by them in the near term 10 years cashflows".

202. Mr Wilkinson's response memorandum re-stated his view that the longer the lapse date the worse the effects of planning blight and uncertainty are. He also made reference to the response comments from Ms Foy in terms of social effects, whereby the long lapse periods may lead to long-term stress for affected landowners. He agreed with Ms Foy that "*the length of the lapse periods and the reliance on the website or other information source (Project Information Condition) and the early acquisition process until funding is secured creates a significant gap of profound uncertainty for owners of designated properties*".[101]

203. However, Mr Wilkinson also acknowledged that route protection is important and in itself provides a level of certainty as to where future roading infrastructure is to be established, noting the concurrent uncertainty as to the timing of urbanisation within the FUZ (albeit that this is subject to landowner agreement and/or input). He also acknowledged the evidence of the SGA in respect of concerns of planning blight and uncertainty, and that amendments to conditions would assist in this regard, including:[102]

[98] EV28a, at pp.15 & 25
[99] EV44, at [5]
[100] EV55, at p.4
[101] EV77, at p.10
[102] Ibid, at p.2

- *Condition 2 Project information;*
- *Land use Integration Process (LIP);*
- *Inclusion of the new Condition 3/4 - Stakeholder Communication and Engagement Condition*
- *Condition 8/11 [SCEMP]; and*
- *Improvements to the definition of terms used within the conditions i.e., the introduction of the definition of 'stakeholder'.*

204. However, Mr Wilkinson remained of the opinion that the conditions remain "*insufficient to address or better mitigate the effects of planning blight and uncertainty, such that they would also address issues of wellbeing*".[103] He considered that shorter lapse periods would generally have less adverse effects in terms of uncertainty, disruption, financial worry and stress. This could be addressed, in his opinion, through a greater level of detail in the conditions (as outlined in the s.42A report and the response memorandum). In his view, the conditions as proposed by the SGA were only acceptable for lapse periods of up to 10-15 years.

205. The Panel notes that the Council's recommended conditions included in the hearing agenda generally amended the relevant lapse dates to 15 years for NZTA NoRs 1 - 3, to 15 years for AT NoRs 5-7, 9, 12 and 13 (shown as being from 30 years). However, no changes were proposed to NoRs 8 and 10 (20 years), or NoR 11 (25 years).[104] The reason for the proposed allowances for NoRs 8, 10 and 11 was not explained but presumed to be an oversight.

206. The lapse dates shown in the Council's response version remained the same, except that NoR 11 was amended to 15 years (from 25 years),[105] but the reason for the 20-year lapse date recommendation for NoRs 8 and 10 remained unexplained. However, we did understand (as set out above) that the Council position was that all lapse dates should be reduced to 15 years.

207. The Reply referred to the issues raised during the hearing in respect of lapse dates and uncertainty, and the potential for planning blight. It noted, similarly to Mr Wilkinson, that while the designations create uncertainty, the FUZ zoning "*causes significant uncertainty even in the absence of the Projects, as it signals large-scale change and urbanisation, but provides no detail on where different activities will go*".[106] The Reply further submits that:[107]

> "*In this case, a designated transport network creates more certainty for the community as a whole. Land uses and future zoning can be better anticipated, and there is a sense of security in knowing what the future transport connections in your community will be. In the FUZ, such designations become even more*

[103] Ibid
[104] Hearing Agenda, Volume 9, at p.126
[105] EV77, at p.132
[106] EV78, at [4.5]
[107] Ibid, at [4.8]

important. As areas become live zoned through plan changes, it is common to include infrastructure triggers, particularly key transport connections…"

208. It goes on to highlight the key measures by which uncertainty will be mitigated as much as possible, which would be through:

> "…*easily accessible information (Project Information condition), a process for integrating land use adjacent to the corridors (LIP condition prior to detailed design, and the ULDMP following detailed design), and an exemption to section 176 approval requirements on AT corridors where appropriate*".[108]

209. The Panel has given careful consideration to the issue of lapse dates. In summary, we accept that these are significant transport projects but equally that funding for their implementation is not in place. We consider that the situation is entirely analogous with the reasons expressed for the Southern Links Project[109] - i.e., that the combination of the designations and the proposed lapse dates:

(a) will future proof the North Projects so that they can meet future growth needs;
(b) protect the routes from incompatible future land-uses;
(c) provide sufficient time to investigate, fund and construct the projects; and
(d) provide certainty for landowners about where the future transport corridors will go.

210. In reaching this conclusion, the Panel recognises that applying the Southern Links and other precedent cases to the 25 and 30-year lapse periods proposed in respect of NoRs 1-3 and 8, 10 and 11 may be stretching their intended or implied applicability. However, we consider that the rationale applied in those examples is entirely relevant to the North Projects, where the effect of the additional timeframes proposed will, in our view, be able to be appropriately mitigated by the aforementioned conditions.

211. In general, the Panel is not convinced that prescribing, or recommending, shorter lapse dates would have any bearing on funding arrangements materialising, or being brought forward, such that the designations may be implemented within a shorter timeframe. Recent and well-publicised decisions with respect to changes to the Auckland and nation-wide fuel tax levies and associated funding uncertainties in at least the near term would also appear to throw further doubt on the ability for the designations to be implemented any earlier than the SGA has already forecast. For the reasons set out below, however, the Panel considers that a limited form of review clause could assist to provide some mitigation of the uncertainty experienced by such landowners (subject to the recommendations we make in respect of the abovementioned LIP condition).

212. Similarly, the Panel is not convinced that shorter lapse dates would, of themselves, reduce the uncertainty associated with the designations. Rather, shorter dates would appear to be at odds with the expected timing of development set out in the FDS and in so doing create additional uncertainty as to the likelihood that the designations can be implemented in a realistic timeframe. If they are not implemented by the end of the lapse

[108] Ibid, at [4.9]
[109] As summarised at EV01, at [9.11]

period, further applications are likely to be made to extend the period, with associated additional uncertainty and cost.

213. These conclusions are also made having regard to the Panel's conclusions in respect of the designation review condition, which we consider to be necessary and to which we refer to below.

Panel findings and recommendations

214. The Panel finds that the proposed 20 to 30-year lapse dates for the designations are appropriate, for the reasons set out in the Requiring Authorities' Reply, and our discussion above, and subject to the inclusion of a designation review condition that we address below and other changes discussed in this report. Except in that respect, we therefore do not make any recommendations to alter the lapse dates proposed for the NoRs by the Requiring Authorities.

Provision for a designation review condition

215. During the hearing the Panel queried whether the inclusion of a condition requiring periodic review of the need for the longer-term designations, particularly those beyond 20 years, would provide a mechanism to address some of the uncertainty faced by affected landowners. Our questions in this regard arose from this issue being well-canvassed within the earlier hearings for the North-West and Warkworth NoRs (that also form part of the Te Tupu Ngātahi programme).

216. The Reply submits that such a review provision is not considered necessary or appropriate, for the following reasons:

> *4.11 Rather than alleviating concerns, a review process about the need for the designation would create further uncertainty which the Requiring Authorities consider to be inappropriate. As noted in response to questions during our opening legal submissions, determining whether a Project is required is more complex than determining whether growth in a certain area is confirmed or not. Consideration needs to be given to (amongst other matters) what the role of a project is in the wider network. Therefore, a cyclical change in growth strategy would not be sufficient to warrant the review of, and potential cancellation of, a designation. Review options would likely be amenable to challenge (for example, judicial review proceedings) which also gives rise to reservations from the Requiring Authorities as to how such a condition would work in practice.*
>
> *4.12 The Requiring Authorities do not consider a periodic review to be necessary as there is already a mandatory statutory process for this. Section 79 of the RMA requires the Council to undertake a review of the District Plan every 10 years. Prior to notifying the proposed plan review, clause 4(1) of Schedule 1 of the RMA requires the Council to invite all requiring authorities that have designations in the operative district plan (which have not expired)*

to give written notice stating whether they require the designation to be rolled over into the proposed plan. In this process, requiring authorities are already obligated to consider whether they still need all their designations. Further, the Environment Court[110] *has acknowledged this Council-led process in the public forum allows for landowners to be more empowered with clear mechanisms for public input (compared to the process to extend lapse dates where the public are not involved).*

217. The Reply further states that:[111]

> "*A periodic review beyond the section 79 process would also place an unreasonable administrative burden on the Requiring Authorities, and set a dangerous precedent for future designations sought. A high-level review would potentially be meaningless, and a robust review would be resource-intensive for a relatively small gain as it would be unlikely that any meaningful reductions in designation could be achieved (and if they could that calls into question the validity of the designation as a whole). It would be a more efficient use of resources to enable detailed design and other pre-implementation processes for the Projects*".

218. As a preliminary point, the Panel does not consider that a periodic review clause would necessarily set a 'dangerous precedent'. The inclusion of such, on NoRs that are proposed for periods of 20 or more years, would recognise the unusually long nature of these NoRs (acknowledged, for example, by the SGA itself as incorporating the longest lapse dates in the Te Tupu Ngātahi programme). The extent to which it may act as a precedent, dangerous or otherwise, would be dependent on the lapse dates envisaged in any future designation proposals, and their particular context. We also consider that the likelihood of challenge (such as judicial review proceedings) is very low provided that the Requiring Authorities carry out a genuine review in accordance with a designation condition.

219. More specifically, the Panel has carefully considered this issue in respect of the North Projects, and whether such a review would provide an appropriate and useful 'counterpoint' to its acceptance of the 20-30 -year lapse dates sought by the SGA, and which we have endorsed through our previous recommendation on that topic (noting that, for obvious reasons, that the two considerations are intertwined).

220. The Panel has reached a view that a review clause is appropriate to mitigate to some extent the effect and impact of the extended period of uncertainty for land owners and occupiers beyond a 20-year timeframe. Without a review and subsequent feedback to property owners affected by the designations, it is possible there will be no communication or updates for a decade or more after the initial establishment of the project website (as discussed further in respect of Ms Foy's response memorandum). There will, therefore be no mitigation of the effects of uncertainty and planning blight. While we accept that s.182 provides a mechanism to review the designation extent, it

[110] Being a reference to *Bunnings Limited v Auckland Transport* [2020] NZEnvC 92, at [83].
[111] EV78, at [4.13]

is noted that the timing of any such review is at the total discretion of the Requiring Authorities.

221. Accordingly, the Panel considers that the NoRs should be subject to a five-yearly review (except for NoR 4), as this would provide a level of certainty and possible comfort for landowners and occupiers that there is a continued need for the NoRs, and which incorporates some level of information as to the progress being made on them. The result of the review would then be communicated directly to the public and to the Council (and the Rodney Local Board). This differs from the Panel's similar conditions recommended in the North-West and Warkworth NoRs insofar as the recommended condition does not incorporate a requirement to involve or consult with any third parties, but does oblige the Requiring Authorities to periodically review the designations and provide the results of those reviews in the relevant websites at appropriate intervals.

222. The Panel considers that this requirement is able to sit alongside the statutory review provisions under ss.79 and 182, and does not override, or interfere with, those processes.

223. The Panel further recommends that the review clause is added to the existing review conditions, whereby the 'completion of construction' clause would follow the interim designation review clause.

Findings and recommendations

224. For the reasons set out above, the Panel finds that a requirement for the Requiring Authorities to undertake reviews of its designations (except NoR 4) at five-yearly intervals will mitigate some of the uncertainty associated with the long lapse dates proposed for the North Project NoRs, and ensure that the status of the designations is communicated to affected persons and communities (including via the Council and the Rodney Local Board) on a reasonably regular basis.

225. The wording for this designation review clause is recommended to be included in conditions 4 (NZTA) and 5 (AT), as follows:

> ***Designation Review***
> *Pre-construction review*
> *(a) The Requiring Authority shall, at five (5) yearly intervals from the confirmation of the designation, undertake a review of the designation. The purpose of the review is to enable areas of designated land to be removed from the designation if identified as being no longer required, and to keep stakeholders updated on progress with implementation of the project.*
> *(b) The five-yearly reviews shall:*
> *(i) include a review of the extent of the designation to identify any areas of designated land that are no longer required for the designation (to be formalised via section 182 of the RMA);*
> *(ii) provide an update on the progress or effort made to give effect to the designation and the anticipated date for implementation; and*

(iii) *be made publicly available on the project website [NZTA's website for NoRs 1 – 3] and be made available to the Council and the Rodney Local Board.*

Post-construction review

(c) *As soon as reasonably practicable following Completion of Construction, but no later than six (6) months, the Requiring Authority shall:*

(i) *review the extent of the designation to identify any areas of designated land that it no longer requires for the on-going operation, maintenance or mitigation of effects of the Project; and*

(ii) *give notice to the Manager in accordance with section 182 of the RMA for the removal of those parts of the designation identified above.*

Lapse period for NoR 4

226. All the proposed NoRs are subject to a lapse date condition, except for NoR 4 which relates to an existing designation for SH1. This lack of a lapse date was questioned by some submitters, including Mr Roberts on behalf of FHLD who considered that NoR 4 should be declined and relodged with a lapse date of 15 years.[112] Daniel Shaw, for Papanui Station House Limited, was also concerned at the lack of a lapse date for NoR 4, stating that:[113]

> *"The project currently applies to the entire property owned by Papanui Station House Limited. This creates significant uncertainty about the ability to use the land for the purposes intended when the property was purchased. There is unlikely to be any development potential (temporary or permanent) available given the details of the NOR. This has adversely affected the value of their land and ability for reasonable use*".

227. The Reply comments that the RMA framework does not provide scope to impose a lapse date on an alteration to an existing designation. This is because s.184 does not apply to alterations to designations, as alterations do not fall within the definition of a designation under s.166. It goes on to state:[114]

> "*Where an application to alter a designation is made under section 181(2) of the RMA, section 181(2) specifies that sections 168 to 179 shall apply to the application, as if it were a requirement for a new designation. Those provisions relate to the procedure for notifying, hearing, and determining an alteration. They do not address the effect of an alteration once confirmed, and in particular do not encompass the lapse period addressed in section 184*".

[112] EV61b-2, at [21]
[113] EV49 at [16]
[114] EV78, at [4.16]

228. The Reply notes that this interpretation was confirmed by the High Court in *Poutama Kaitiaki Charitable Trust and D&T Pascoe*,[115] where it found that s.181(2) prescribes the sections of the RMA that are relevant to an alteration of a designation, and the lapse provision is explicitly excluded (and therefore found that the Environment Court had not erred in failing to impose a lapse date).

229. The Panel heard no contrary legal submissions that would support an alternative interpretation of the High Court's decision, and we adopt the SGA's submission on this point accordingly. We do not consider that there is a proper basis to recommend the imposition of a lapse date on NoR 4 and therefore decline to do so.

Early acquisition process

Introduction

230. As noted in the Reply, issues associated with the early acquisition of properties affected by the NoRs and associated PWA processes were a key area of focus and interest for submitters and the Panel. In particular, we heard from submitters who were deeply concerned at the effect that a designation would have on the value of their property, and their ability to sell it. The Panel was very cognisant of these concerns and also what we perceived to be the different policies of the two Requiring Authorities towards early acquisition and their approaches under s.185 of the RMA.

231. In addressing this issue we should say at the outset that early acquisition and the PWA processes are not matters that this Panel can or will make recommendations on. Nevertheless, as noted above, it is an aspect on which we heard a great deal of evidence and perceptions of submitters about how acquisition of their property might be treated by the Requiring Authorities in the future – in many cases in respect of their primary asset and one with which they invariably and understandably held strong emotional ties. Despite the limitations to our authority and influence in this matter, the submission and hearing process served to provide an important outlet for submitter concerns and fears, and we have endeavoured to inquire into how future acquisition processes will be conducted as part of the North Projects beyond the temporary focus that the hearing provided.

232. Associated concerns that we heard related to the indignity of having to prove either financial or medical hardship, or, as part of fulfilling s.185 tests, having to undertake futile property marketing campaigns with no realistic prospect of success.

233. The Panel notes that a copy of AT's 'Early Acquisition Guideline for Property' (November 2019) was provided with the evidence of Mr van der Ham, along with a copy of its 'Landowner Guide'. In this regard, we were curious to understand the way in which s.185 tests were conveyed in the Guideline, and why they were not mentioned at all in the Landowner Guide, and the overall approach to determining 'hardship'.

[115] *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629.

234. The Panel also requested and was provided during the hearing with a copy of the NZTA's 'Advance Purchase Policy' (October 2018). Some of the phrasing raised some concerns for us as it appeared to imply an effort to resist property acquisition. For example, the NZTA Policy states, somewhat obliquely, "*[h]owever, in all cases, if funding is constrained we should attempt to defer the settlement of such purchases, although the nature of them makes this difficult*".[116] Further, notwithstanding the plain requirements of s.185 (as discussed below), the NZTA Policy purports to incorporate a test as to "*the need for the landowner to sell*".[117]

235. These issues were addressed in the SGA's opening submissions and through expert evidence. We note that due to availability, we did not hear from the SGA's expert witness on this matter (for AT), Mr van der Ham, until the seventh day of the hearing, which followed appearances by a number of submitters who had expressed their concerns as to early acquisition issues, amongst other matters. Mr van der Ham's summary statement provided an overview of early acquisition processes, and he advised that a landowner may request early acquisition from AT without the need for the s.185 Environment Court process. It was his evidence that "*AT is willing to work with affected landowners to reach a constructive solution for these issues, including, where possible, resolution outside of a formal Environment Court process*".

236. Because of the concerns that had been raised at that stage of the hearing with respect to NZTA's approach, its expert in this matter, Wayne Loader, also attended the hearing to respond to questions.

237. The matters identified in terms of the respective early acquisition policies were commented on fully within the Reply, and in respect of the Panel's concerns, and we focus here on the way in which it addresses those differences and clarification as to their implementation. The Reply states in this regard:[118]

> "*As a starting point, the distinction between early acquisition for hardship and section 185 needs to be made. The Requiring Authorities acknowledge that the existing AT and NZTA early acquisition policies unhelpfully appear to conflate the two."*

238. On further review of the policies, we agree with that observation. While we understand that these are developed for internal use, they have been made publicly available (including through the North-West NoR hearings), and it would be timely in our view for these to be reviewed and made more explicit as to what policies will apply at different stages of a designation process.

239. The Reply goes on to helpfully address the issue via several sub-topics relating to the temporal element, matters regarding s.185 and the difference in policy approaches. It also addressed business and property impacts, which we have elected to consider

[116] EV06c, at p.3
[117] EV06c, at p.3
[118] EV78, at [7.4]

within a separate section of this report. We refer to the discussion set out in the Reply below.

Temporal element

240. The Reply clarifies the approach undertaken under both early acquisition policies as follows:

(a) The Requiring Authorities can consider early acquisition based on hardship grounds before and after the NoRs are lodged. However, hardship grounds are mainly contemplated for circumstances where a potential project is public knowledge but no designations have been lodged. This is noted as going "*beyond the Requiring Authorities' statutory obligations pre-lodgement*".[119]

(b) After lodgement, s.185 becomes the main mechanism of early acquisition, and is noted to have a 'low bar'. In this regard, hardship is noted to be most relevant to whether a landowner will be required to market their property to sell, since one of the requirements under s.185 is that a landowner has tried and failed to sell their property at fair market value because of the existence of a NoR.

(c) However, where a landowner has "a compelling reason" to seek early acquisition, the Requiring Authorities may waive the need to market their properties – i.e., the hardship policy is also able to apply post-lodgement.

241. In this regard, the Reply acknowledges, and the Panel agrees, that:[120]

> "…*the drafting of the early acquisition policies could be confusing to those outside the organisations, and allows room for an interpretation that the Requiring Authorities' internal policy will set a higher bar than the statute, but this is not the case*".

Section 185 requirements

242. The relevant aspect of s.185 for the purposes of the following discussion is set out in sub-section (3):

> *The Environment Court may make an order applied for under subsection (1) if it is satisfied that—*
>
> *(a) the owner has tried but been unable to enter into an agreement for the sale of the estate or interest in the land subject to the designation or requirement at a price not less than the market value that the land would have had if it had not been subject to the designation or requirement; and*
>
> *(b) either—*

[119] Ibid, at [7.5]
[120] Ibid, at [7.8]

(i) the designation or requirement prevents reasonable use of the owner's estate or interest in the land; or

(ii) the applicant was the owner, or the spouse, civil union partner, or de facto partner of the owner, of the estate or interest in the land when the designation or requirement was created.

243. In terms of subsequent acquisition process, the Reply advises:[121]

> "*Section 185 of the RMA allows landowners that are affected by a designation to apply to the Environment Court for an order obliging the requiring authority to acquire or lease the owner's estate or interest in the land under the PWA. If the Environment Court makes the order, the landowner is deemed to have entered into an agreement with the requiring authority for the purposes of section 17 of the PWA, and the Requiring Authority is legally obligated to complete the purchase. The agreement will be deemed to have been entered into with the Minister of Lands on behalf of the network utility operator as if the land were required for a government work".*

244. As noted earlier, some submitters questioned the way in which the criteria for s.185(3)(a) were or have been applied by the Requiring Authorities, and the futility of undertaking a marketing campaign given the perceived drop in value of the designated properties. The Reply comments in this respect that:

(a) As explained by Mr van der Ham during the hearing, there are examples of investors being willing to purchase designated properties at market value, meaning the s.185 avenue does not have to be pursued at all.

(b) While such a requirement may seem futile, this is a statutory requirement Parliament has set up to protect the public purse and allow the market to intervene before committing public funds to an acquisition.

245. The Panel acknowledges these points, but we nevertheless agree with the general concern expressed by submitters as to the 'perceived futility' of this process and we are not sure as to whether some possibly isolated examples of investor purchase override this wider perception and/or experience, and concerns as to additional marketing-related costs that will be incurred by landowners for this exercise. In this regard, the Reply notes that the scope of costs covered by the Requiring Authorities is covered by s.66 of the PWA but advises that "*[l]andowners will bear the responsibility of the cost of advertising their property before they approach the Requiring Authorities or file an application in the Environment Court for acquisition under section 185*".[122] However, we were advised that any reasonable costs incurred will be recoverable from the Requiring Authorities once landowners enter into negotiations with them.

[121] Ibid, at [7.28]
[122] Ibid, at [7.15]

246. The Panel notes that this issue of marketing cost does not appear to be addressed in either the AT or NZTA policy guidelines. However, both policies interpret the s.185(3)(a) test as requiring "*[a]n effort to sell the property over a minimum 3 month period has been made demonstrating an inability to sell*" (NZTA example and emphasis). Mr Loader's answers to questions on this point suggested some discretion on the part of the NZTA and the Reply goes on to refer to Mr Rama's confirmation that "*NZTA will give consideration to compassionate grounds when considering the need to market the property under s.185*" and that "*the preference at NZTA is to work together with landowners to reach a positive outcome*".[123]

247. We also note that the desire to sell will in many cases be the result of a particular imposition placed on such landowners in response to a situation that is not of their making, and a requirement to undertake a marketing campaign in order for a landowner to fulfil this test does seem to be an unfair burden. However, the requirement to do so in each case was not particularly certain, and as noted above, is not the situation as advanced through the Reply.

248. In summary, we understand the position to be that NZTA (and possibly AT) will apply some discretion as to whether a landowner needs to undertake a marketing campaign, but if a dispensation is not agreed to, then the landowner would be liable for the costs of that campaign, which could be required to be undertaken for up to three months.

249. While the s.185 tests are clear and unambiguous, some submitters expressed concern that obtaining a s.185 order from the Environment Court involves a court process that can give rise to costs and delays. This perception is perhaps not aided by the NZTA Policy that refers to obtaining legal advice as to "*the extent to which the landowner's case would be supported if heard by the Environment Court*", as a further aspect that it would consider in terms of responding to a s.185 claim.

250. The Reply notes, however, that there have been only two cases involving AT in terms of s.185, both in relation to Te Tupu Ngātahi Projects.[124] Both those cases were advised to have been settled through agreement. For NZTA, the Reply advises that the last substantive s.185 proceeding it was involved in was *Aero Vista Holdings Ltd v Transit New Zealand*, which was 20 years ago.[125] Since then, there has been only one other case that was a procedural decision to correct the respondent against which the proceedings had been lodged.[126] It goes on to state:[127]

> "*This shows that in practice, the Requiring Authorities are very open to negotiations and agreements with landowners outside of courtroom processes. As both Mr Rama and Mr van der Ham have reiterated many times, there is a*

[123] Ibid, at [7.19]
[124] *Redhills Family Ltd v Auckland Transport* [2023] NZEnvC 179, and *PMR Properties Ltd v Auckland Transport* [2023] NZEnvC 268
[125] *Aero Vista Holdings Ltd v Transit New Zealand* [2004], A006/2004
[126] *Peace v New Zealand Transport Agency* [2023] NZEnvC 33
[127] EV78, at [7.14]

strong preference for people to engage with the Requiring Authorities before lodging a section 185 application with the Court".

251. The Panel acknowledges the approach that is taken in practice as explained in the Reply, but suggests (as is set out more fully below) that it would be beneficial for these practices be more accurately captured by the Requiring Authorities' own policy guidelines in order to provide some greater level of certainty and comfort to affected landowners.

252. In general, there appeared to be some agreement that the tests under s.185(3) are otherwise quite straightforward to meet, and on that basis we raised with Mr Loader the issue as to the potential acquisition costs or liabilities faced by NZTA in this regard once the designations are confirmed. He responded that there can be no limit to the pool of funding, given the statutory obligations set out in the RMA.[128] While the potential extent of liability on the public purse arising from lodgement of the NoRs was an issue raised by several submitters, we note that the implications for local or central government funding arising from those obligations are not matters for this Panel to consider.

Difference in hardship policies

253. During the hearing, the Panel expressed some concern about the differences between the NZTA and AT hardship policies, as it understood them from a review of their aforementioned policy guidelines. The Panel was particularly concerned that the NZTA hardship policy appears to provide a more onerous set of criteria than the AT policy, and that landowners could be subject to different standards and potentially inequitable outcomes.

254. The Reply comments in this regard that while the policies are framed slightly differently, they have the same general effect in practice. As referred to earlier, the Requiring Authorities can consider early acquisition based on hardship grounds before and after the NoRs are lodged. It goes on to clarify the respective approaches as follows:

(a) As noted by Mr Rama, the NZTA hardship policy is explicitly aimed at considering hardship claims prior to the NoRs being lodged. In this regard:[129]

> "*The focus on considering hardship claims before the NoRs are lodged, and the national scale of the network managed by NZTA compared to AT's regional mandate, explains the commercial focus of the NZTA hardship policy, when compared to the AT policy (for example, the additional funding and approval requirements)*".

(b) It is acknowledged that projects can have a blighting effect on properties even prior to any designation being lodged, and this is the scenario that the focus of the hardship aspect of the early acquisition policy.

[128] Transcript, Day 7 Session 1, at 1:06
[129] EV78, at [7.17]

255. The Panel also notes that the respective policies advise that the main grounds for early acquisition are medical. Whether hardship was for medical or financial reasons, we heard from some submitters that having to prove either situation can be demeaning and an undue imposition on their privacy. However, we have reached an understanding that early acquisition policies primarily relate to the period before the designations are confirmed, and that demonstrating hardship is not a relevant matter once they are confirmed. Nevertheless, we observe that the pre-lodgement period through to confirmation can represent a lengthy period of time, and be a period in which a landowner's circumstances can potentially change significantly. We suggest that it appears unreasonable that the policies be confined to medical circumstances.

256. The Reply also responds to submitter concerns relating to compensation for land taken temporarily for construction purposes. We note the point raised that compensation for such land will be in the form of a lease payment. As referred to earlier, we also consider that there may be areas that can potentially be identified now for construction purposes, and recommend that the Requiring Authorities undertake that exercise as part of their final decision.

Panel recommendation

257. As noted earlier, the Panel does not need, nor is it able, to reach findings or make recommendations in respect of these acquisition policies or approaches under the PWA. However, as a concluding observation, the Panel notes that the AT and NZTA guideline documents were due to be reviewed in November 2022 and October 2021 respectively. We suggest that these reviews are overdue and should be undertaken in the near future to address the issues that have been identified in the hearing and that were acknowledged in the Reply. In particular, we consider that such reviews should ensure that these guidelines include changes to address the following:

(a) removal of any references to attempting to defer settlement, where the requisite tests and policy requirements are otherwise clear;

(b) presented in more easily understood terms and expressed in respect of each stage of the designation process;

(c) not be limited to medical matters in the consideration of hardship at the pre-confirmation stage;

(d) more clearly acknowledge the clarity of the tests under s.185 (and not imply additional areas of discretion on the part of the Requiring Authorities);

(e) clarify where discretion may be applied in terms of landowners having to undertake marketing campaigns; and

(f) outline the cost liabilities under the PWA, including with respect to any marketing that is required under s.185.

258. We would also suggest that NZTA prepare its own summary guideline for landowners that is included on its website, and that such a document, and that of AT, include an appropriate level of reference to the rights of landowners under s.185.

Business and property impacts

Business impacts

259. The Panel was also interested in the effect of the designations on business activities, and this arose from consideration of PWA provisions (at s.68) whereby such impacts are addressed following a two-year trading period post-implementation. In particular, we wished to understand what would happen where a business could not continue to operate for that length of time as a result of the designation. This was also related to issues of 'planning blight' arising from a reduction of economic activity or property values in a particular area resulting from the potential implementation of the designations.

260. We have previously referred to the relevant tests of s.185 and the Reply advises of the way in which this section addresses of business impacts:[130]

> "*Section 185 does not grant a landowner the right to seek that their business is acquired by the requiring authority alongside their estate or interest in land. The right under section 185 is limited to seeking the acquisition of the owner's estate or interest in 'land'. Additionally, business disturbance loss is not a relevant consideration to the Environment Court's decision on whether to grant the order under section 185*".[131]

261. The Reply also advise, with reference to the evidence of Mr van der Ham, that where a business suffers loss as a direct result of land acquisition for the Projects, the Requiring Authorities will look to address this directly with the business owner, outside of any formal Environment Court process. This could include acquisition of the business, with its value to be independently determined.

Injurious affection

262. The consideration of business and property impacts also involves issues around 'injurious affection', and compensation thereof. This term is a recognition (as stated in the AT Landowner Guide) that the public work may negatively impact the value of a landowner's remaining property even if only part of the land is acquired. The Reply highlights that this does not relate to maintenance or operation of the public work.

263. The Panel was curious to understand whether properties not directly affected by the NoRs could be compensated where adverse effects arise. In this respect the Reply advises that such landowners have to rely on common law remedies, and reflects the balance between impacts on private property rights and the public/private benefits of

[130] Ibid, at [7.29]
[131] Per *Aero Vista Holdings Ltd v Transit New Zealand* A006/2004, at [39]

the works. In this regard we understand that *Tram Lease* remains the leading case on the relationship between the PWA and the RMA, and that the PWA "*is comprehensive and seeks to cover most scenarios that could arise because of land being taken (or used) for a public work".*[132] From an effects-perspective, we are cognisant of the fact that the construction effects on business properties arising for the Central Rail Line (the subject of *Tram Lease*), which involves extensive tunnelling and deep 'top-down' excavations (and therefore aboveground road closures) through the heart of the Auckland CBD over a prolonged length of time, are of a significantly different order of magnitude to those anticipated for the present NoRs.

264. Those differences of scale notwithstanding, the Reply went on to add that the Environment Court in *Tram Lease* confirmed that:[133]

> "*Parliament deliberately created a framework for financial compensation under the RMA and PWA, and the case emphasised the importance of protecting the 'public purse' from extending compensation beyond the circumstances expressly ordained by statute*".

265. We note that the North NoRs do not directly affect existing commercial businesses, and so would not give rise to the same potential impact as we had addressed in respect of some routes within the North-West NoRs, for example. This was also evident by the fact that the Council had not proposed changes to the SCEMP conditions (including provision for a hardship fund for affected business properties) as it had for the North-West NoRs. Accordingly, we are satisfied that the SCEMP condition as proposed by the Requiring Authorities, and the provisions of the PWA, will appropriately manage such effects.

Acquisition where no reasonable use can be maintained

266. The Panel was also interested to understand the implications for sites that are subject to partial designations and associated partial acquisition, where it might lead to significant constraints on the balance of the site. In this regard we were assured that partial designations confirmed that the SGA was confident that access could be maintained for a site "*to an acceptable degree*", and where it could not, the entirety of the site has been designated.[134]

267. For sites where there is a partial acquisition, and the remainder of the site cannot be developed, the Reply advises that there are two stages to determining this issue for the present NoRs:[135]

    (a) The approach taken for the NoRs is that where there is potential to develop, a partial designation is maintained. This is in line with the Project Objectives and

[132] EV78, at [7.32], with reference to Tram Lease Ltd v Auckland Council [2015] NZEnvC 137
[133] Ibid, with reference to *Tram Lease* at [62]
[134] Ibid, at [7.34]
[135] Ibid, at [7.35] – [7.36], with reference to s.34 of the PWA

the reasonable necessity requirement for the NoRs. Where there is a partial acquisition and the remainder of the land cannot be developed or is significantly harder to make use of, the PWA has processes through which a landowner can seek a full acquisition.

(b) For the detailed design and implementation stage:

> "…*the Requiring Authorities will conduct more detailed ground investigations and engage with landowners. Where it is determined that the remainder of partially designated land cannot be developed or would be more costly or less useful to the landowner, the Requiring Authorities will acquire the full property. This is a process separate to the RMA designation process, and it does not require the designation extent to be amended. The Requiring Authorities are confident that the PWA adequately ensures fair compensation commensurate to the property impact landowners will experience*".

268. We acknowledge the clarification provided by the SGA in this regard, and accept the approach whereby further acquisition requirements may become clearer through the detailed design stage. We note, however, that this could leave landowners in a state of uncertainty in the meantime. The case of Lisa Scott at Top Road was a particular example, who had previously obtained advice as to the geotechnical constraints of the remainer of her land. By reference to Appendix F to the Reply, we understand that a follow-up meeting was held with Ms Scott on 18 July 2024 (including in respect of her request for early acquisition) although we were not informed as to the outcome. We are, however, satisfied that the SGA has taken steps to understand potential issues in respect of this property, without necessarily deferring the required analysis to the detailed design stage, along with other similar situations that are addressed in Annexure F to the Reply.

Existing property access condition

Introduction

269. Further to the point above, the Panel also queried the scope of conditions 10 (NZTA)[136] and 11 (AT) which defines the process for ensuring how vehicle access will be maintained for those sites not fully acquired. At the time of the hearing, the condition was as follows:

> *Prior to submission of the Outline Plan, consultation shall be undertaken with landowners and occupiers whose vehicle access to their property will be altered by the project. The Outline Plan shall demonstrate how safe reconfigured or alternate access will be provided, unless otherwise agreed with the affected landowner.*

[136] An amended version for NoR 4 contains an exclusion for access from SH1.

270. It is noted that the NZTA version of this condition, as presented with the Reply, excludes the words "*unless otherwise agreed with the affected landowner*", on the basis that this was explained by Mr Scrafton at the hearing.[137] However, while we acknowledge that this approach places a higher threshold for NZTA, we did not understand the basis for this change or difference to the AT condition to have been fully articulated. In adopting a premise that the conditions should be consistent unless good reason exists for a difference, we recommend that the original wording be retained in the NZTA condition.

271. The Reply confirms its agreement in response to some issues raised by submitters that the onus is on the Requiring Authorities to provide alternative access, and reiterates that there is no intention to permanently close existing accessways. It advises that AT has not proposed the same change as it does not consider it to be required for its NoRs.

Safe, efficient and effective

272. An issue raised with respect to this condition is whether it should require the Requiring Authorities to provide *efficient* and *effective* access, alongside *safe* access.

273. This was addressed by Mr Collins in his response memorandum where he advised that he does not support requiring *efficient* access, and considers that whether *effective* access should be required depends on whether affected parties are eligible for compensation under the PWA. While he does not have any concerns about the inclusion of the term *effective*, based on his understanding of the compensation available under the PWA it may not need to be included.[138] The Reply submitted that the term is not required, with reference to the evidence of Mr van der Ham in respect of the availability of compensation under the PWA where a quantifiable adverse impact arises.

274. The Reply also notes its agreement with Mr Collins that *efficient* access should not be required by the condition. It summarised Mr Scrafton's explanation at the hearing that the issue relates to the conflict between *efficient* and *safe* access when it comes to right hand turns, as the Requiring Authorities may need to close those turns to provide *safe* access to and from the transport corridor but which may not be considered *efficient*.[139]

275. The Panel considers that the existing phrasing contained in the condition that requires *safe* access is a sufficient test that would impliedly incorporate a level of effectiveness and efficiency (i.e., it is unlikely that a safe access would also not also provide for *effective* access - albeit not necessarily efficient - to and from the adjacent road network).

[137] EV78, at [14.64]
[138] EV77, at p.15
[139] EV78, at [14.61]

Parking and manoeuvring

276. The Panel also queried whether *parking* and *manoeuvring* should be included in this condition, noting that provision or maintenance of access would not recognise potentially significant impacts on associated considerations of parking and manoeuvring. Mr Collins' view on this matter was that "*if the PWA does not provide an avenue for compensation where changes to circulation/manoeuvring/parking affect existing business operations, then I support it being included in the condition*".[140]

277. The Reply comments that these matters will be addressed through the ULDMP, and advises that consequential effects on parking and manoeuvring would relate to considerations of injurious affection, whereby compensation would be available under the PWA - i.e., where land along a site frontage is acquired, and the reduced area has impacts on on-site circulation or manoeuvring (and presumably parking) that impacts on business operations. It submits, therefore, that the condition should not be amended to include a reference to parking and manoeuvring.

Enviro NZ Services Ltd

278. The evidence of Katie Treadaway on behalf of Enviro NZ (tabled in accordance with the Panel's Direction 7) sought that condition 10 in respect of NoR 4 (Existing Property Access) be amended as follows:[141]

> *Prior to submission of the Outline Plan, consultation shall be undertaken with landowners and occupiers whose vehicle access to their property will be altered by or directly affected by construction of the project. The Outline Plan shall demonstrate how safe reconfigured or alternate access will be provided, unless otherwise agreed with the affected landowner.*

279. This was to give Enviro NZ additional certainty that they would be directly engaged with throughout the duration of the works to ensure that safe and efficient access is maintained to their site at 1627 East Coast Road. Ms Treadaway also sought that the requirements of the SCEMP under condition 13(c) be expanded to include:

> *(i) A list of Stakeholders;*
>
> *(ii) A list of properties within, ~~and~~ adjacent and proximate to the designation which the Requiring Authority does not own or have occupation rights to…*

280. This change was sought to ensure that Enviro NZ would be consulted with throughout the works, thereby "*enabling suitable measures to be put in place to ensure the continuous, safe and efficient access to their site*".[142]

[140] EV77, at p.15
[141] EV81, at [7.5]
[142] EV81, at [7.7]

281. The Council's memorandum on this matter (dated 27 September 2024) was prepared by Mr Wilkinson. This helpfully included a map of the amended version of NoR 4, with the designation boundary now straddling the intersection that provides access to the Enviro NZ property. Mr Wilkinson noted his view that "*it is reasonably clear that the access is "adjacent" for the purposes of consideration of the conditions*" and on that basis, "*the current wording of the subject conditions [do] not need any amendment*". He recommended that the conditions as contained in the Requiring Authorities' Reply "*remain unchanged as they do address the submitters concerns and will allow for their concerns to be addressed at such time as engagement on the works are required*".[143]

282. The October Memorandum from the SGA expressed a similar view, and noted as follows (in summary):

(a) The Existing Property Access condition addresses permanent alterations to vehicle access, rather than construction which is managed through the CTMP condition that requires a description of methods to maintain access to and within property.

(b) The SGA agrees with Mr Wilkinson that the Enviro NZ site would be considered adjacent for the purposes of the SCEMP condition, and the addition of 'proximate' to this condition is not considered necessary.

283. The Panel agrees with the assessments of the Enviro NZ evidence in respect of these matters and does not consider any recommendations in this regard are necessary.

Panel findings and recommendations

284. The Panel accepts the submissions and evidence of the SGA in respect of business and property impacts (including as to the Enviro NZ evidence as set out above). As previously noted, the Panel considers there is merit in having consistency across the AT and NZTA sets of conditions. Accordingly, it is recommended that the phrase "*unless otherwise agreed with the affected landowner*" be retained for all designations. Other than that, the Panel does not recommend any changes to the general conditions related to Business and Property Impacts.

Adequacy of consultation

285. The Panel heard from some submitters who expressed concern about the adequacy of consultation and engagement, or where ongoing engagement in respect of the NoRs was requested.

286. The engagement process undertaken by the Requiring Authorities was addressed in the evidence of Phillipa White who outlined the consultation that had occurred at the business case stages and prior to lodgement. She noted the overall approach

[143] EV82, at p.2

undertaken to this consultation as follows:[144]

> "*Engagement undertaken for the Projects is consistent with a programme-wide engagement approach on all Te Tupu Ngātahi route protection designation projects. In terms of the International Association for Public Participation (**IAP2**) spectrum, the emphasis during the [IBC] had a broad base with consultation with the community on a range of options. As options were refined for the [DBC] there was still a focus on consultation, but this was targeted to potentially impacted landowners. During the NoRs and submission stages we continued to seek landowner feedback and in many instances boundary changes were made as a result. The process of engagement through the business case development and the NoRs proceeded through a 'funnel' from a broad community base to targeted landowner engagement.*

287. Ms White's evidence also acknowledged some difficulties in ensuring that information was received by affected landowners. Her evidence advised that while multiple channels were used to help ensure widespread awareness of the North Projects and to provide opportunities for feedback and discussion, problems did arise with mail delivery. As a result, the timeframe was extended for engagement during the NoR phase, and in some cases, "*where we did not receive a response or contact from an impacted landowner, we contacted them again to provide an opportunity to meet with the team and to alert them to the submission timeframe*".[145]

288. Ms White advised that the Project Team met with several hundred landowners during engagement and NoR stages, and "*a post-lodgement community drop-in was held to provide information and to encourage people to submit on the NoRs*".[146] She also noted that the North Project Team is continuing to meet with landowners and those with development interests to discuss points raised in their submissions.

289. The Panel notes that this process continued during the hearing itself, and acknowledges the assistance of Mr Jellie for the SGA making himself available to meet with submitters following their presentations to us. We also acknowledge the continued engagement that has evidently occurred as set out in respect of individual submitter concerns that are described in Appendix F to the Reply.

290. Ms White concluded her evidence by saying that "*the Project Team fully appreciated the stress and concern these projects were causing for impacted landowners*", but noted that "*[t]here was a strong commitment from the team to ensure landowners understood the proposed designations, the NoR process, and their rights under the Public Works Act 1981*".[147]

291. Nevertheless, the Panel heard concerns from various submitter parties with respect to the consultation that was undertaken. This was expressed in particular through the

[144] EV23, at [1.4]
[145] Ibid, at [12.4]
[146] Ibid, at [12.5]
[147] Ibid, at [12.6]

presentation by Louise Johnston on behalf of the Rodney Local Board who commented that:[148]

> "*We are concerned about the communication around the NoRs. The [SGA] team have acknowledged that the distribution of letters advising residents that they were in the study area in July 2022 and then later advising impacted landowners in 2023 has been 'disappointing'. The council could not provide the [SGA] team with the email addresses of the property owners due to privacy concerns. But both the post and courier service were not reliable. Over the last year, I have been contacted by some very distressed landowners, only just finding out that they are impacted by the NoRs. The supporting growth team have followed up with these residents, and they did a more targeted drop-off on the 4th of December to residents they had not heard from, but I am concerned that there are still a number of impacted landowners that have not met with the [SGA] team/ are not aware that they impacted by the NoRs / missed the submission deadline especially given its mid-December cut off. We did request an extension of this deadline for NOR submissions, but this was declined by the Council*".

292. Other submitters also expressed concern and frustration with respect to the consultation process. For example:

(a) Dr Mitchell expressed his strong dissatisfaction with the consultation process recording:[149]

> *"I acknowledge that there is no obligation for a project's proponent to consult with any other party, but if consultation is undertaken, it needs to be genuine. I could say significantly more on how unsatisfactory the proponents' approach to engagement is, but because consultation, or the lack thereof in this case, is not determinative of the proposal, there is no point in doing so."*

(b) Robert Fry offered this perspective:[150]

> *"Meetings with Auckland Council Officers during land owner/resident engagement forums were unhelpful, Council could not meaningfully engage in conversation around how the road alignment was derived, what was the timing for the family having to move, or what plans were proposed to alleviate the "dead hand of the Supporting Growth Alliance hanging over the property (and family)" for the next 25 years or what options might be available including potential early acquisition."*

[148] EV60, at [6]
[149] EV29 at [2.8]
[150] EV44 at [7]

(c) YoungJin Seo and JaeHoi Noh stated:[151]

> *"Despite our repeated emails and submission, the NZTA has not [provided] sincere answers to our direct inquiries".*

293. The Reply responded to these criticisms that:

> *10.1 There is no duty to consult under the RMA, but the Requiring Authorities acknowledged that it was appropriate and necessary to engage with communities and landowners as part of the option development and NoR processes.*
>
> *10.2 Unfortunately, it became evident that some mail was not delivered to certain areas at the DBC stage. This led the engagement team to send tracked couriers, but there were also issues with this delivery method and hence some letters were hand delivered. We heard from submitters about their issues with mail delivery in Dairy Flat with one submitter noting: "we tell people to not send us mail".*
>
> *10.3 Requiring Authorities have made extensive efforts to engage with communities and landowners. The option of door-knocking, as suggested by Mr Ridling in his presentation, was not proposed due to health and safety concerns. We also note that the Council will not provide phone or email contact details for privacy reasons, which meant that mail was the first point of contact.*

294. The Panel acknowledges that there will remain some parties who remain dissatisfied with the designations and the extent of consultation to-date but the Panel considers that the measures proposed by the Requiring Authorities through the conditions, and in particular the Project Information requirement, LIP, and SCEMP, represent a considered and detailed approach to managing those effects which will entail further focused engagement with affected persons (as discussed further below). We further recognise that these measures will not be able to be prescribed until the preparation of relevant management plans and the associated detailed design stage.

295. Overall, the Panel considers that, based on the amendments presented in the Reply and in response to the Council's recommendations, that these measures will be responsive to the range of property-specific issues that we heard. This conclusion is, however, subject to our further recommendations relating to the way in which the abovementioned conditions apply to the NZTA NoRs.

Panel findings and recommendations

296. The Panel acknowledges that under s.36A there is no obligation to consult on NoRs. Nevertheless, we accept the evidence and Reply for the Requiring Authorities as to the

[151] EV28, at [1.4]

consultation processes that were undertaken, and we find that this process has been appropriate, broad in scale and scope, and consistent with good practice. No recommendations in respect of the NoRs arise from this finding.

Provision for ongoing engagement

297. The Panel was interested in a number of matters relating to ongoing engagement, including the manner by which project updates would be communicated, how new community members would be involved, the nature of the email subscription service and the complaints process. These matters were considered to be of particular significance given the proposed lapse dates, and relate to proposed conditions including the designation review condition recommended by the Panel.

Project updates and computer literacy

298. The Panel queried whether Project updates can be provided by way of a periodic mail-out, to address concerns about computer literacy. Similarly, the Council's social effects specialist, Ms Foy, proposed in her response memorandum that the Requiring Authorities be required to write to each designated property owner every five years, and she has proposed amendments to the Project Information condition to that effect.

299. This matter is relevant to the Project Information condition, where it is proposed that a project website will be set up that provides for people to subscribe to receiving updates by email. However, the Reply also notes that "*there will be little to no substantive updates prior to funding being secured, at which point there would be media releases, social media and advertising campaigns, and stakeholder engagement would also commence".* It submits, therefore, that in this interim period, "*the potential anxiety associated with providing too many updates is also relevant to how engagement should occur".*[152] It notes that, given the level of internet access in the North,[153] that the subscription service would provide a high level of communication, and this level of access (and associated degrees of literacy) would be likely to increase over time.

300. The Reply advises that it has given consideration to the option of periodic mail-outs but highlights the difficulties it has already experienced with the delivery of mail in the North area, and this raises doubts about the effectiveness of any condition requiring a mail-out. It advises that the SGA are confident that there are existing processes in place that will enable communities to remain informed during the pre-implementation phase. These are summarised as follows:

    (a) The North Projects are expected to be referenced in three-yearly Local Board Plans, which support the Auckland Plan (30-year vision) and the Regional Land Transport Plan (**RLTP**), which outlines planned spending and future investment priorities in which AT and NZTA engages with Local Boards in its development. It notes that the RLTP process, undertaken every three to six years, itself provides a further opportunity to engage with the Projects.

[152] EV78, at [11.4]
[153] 88-98% per the 2018 Census

(b) Local Boards serve as conduits of information, relaying updates on AT and Te Tupu Ngātahi Projects as well as active projects. In this regard it notes the updates provided to the Local Board and its proposed engagement approach, and the involvement of Local Board members with community drop-ins and open days, etc.

(c) Because AT is a Council Controlled Organisation, there is a further obligation to communicate with the community by way of Local Boards. In light of that, the Reply advises that the following additional clause to the Project Information condition is proposed for the AT NoRs:

> *At ten yearly intervals from the inclusion of this designation in the AUP until the start of detailed design, the Requiring Authority shall identify appropriate methods with the relevant Local Board(s) to:*
>
> *(a) inform the wider community of the Project status; and*
>
> *(b) raise awareness of the project website.*

(d) In addition to the RLTP process noted above, there is also the ability to engage with the designations through the AUP rollover process that occurs every ten years, which is applicable to both AT and NZTA designations.

301. The Panel acknowledges the comments provided in the Reply and agrees that a combination of the website required by the relevant conditions, the communication avenues provided through the Local Boards, and other ongoing processes associated with statutory documents will provide a range of means by which the community can remain informed as to any progress towards the implementation stage for the NoRs.

302. The Panel also notes that through its finding in respect of its earlier recommendation for a five-yearly designation review process, which will require the outcome of that review to be reported on the relevant designation website (and to the Council). We consider that this process gives effect to identifying an 'appropriate method' by which to inform the wider community of the Project status, including a mandated process which the Local Board can then rely on to inform members of the community who do not have internet access. The Panel's recommended review process would also fill an apparent gap insofar as the Requiring Authorities' approach described above is not proposed to apply to the Project Information condition for the NZTA NoRs.

Subscription service

303. Related to the above matter was an issue raised by Ms Foy about whether subscription services can be tailored to specific corridors/designations only or include all projects across Auckland. Ms Foy was concerned that updates across the whole Te Tupu Ngātahi programme could lead people to 'unsubscribe' from this service.

304. The Reply advises that on further investigation, such a tailored approach would require a rebuild of AT's entire website and sets out the reasons for that. However, it also notes that NZTA's systems do allow it to send out tailored updates for either specific corridors or for the North area more generally.

305. Having said that, however, the Reply does not propose any amendments to the conditions to require a tailored approach for the NZTA NoRs. The Panel considers that such an option should therefore be incorporated into the Project Information condition as follows:

> *(b) All directly affected owners and occupiers shall be notified in writing as soon as reasonably practicable once the website or equivalent information source has been established. The project website or virtual information source shall include these conditions and shall provide information on:*
>
> *…*
>
> *(v) a subscription service to enable receipt of project updates by email <u>(including provision for subscribers to select the designation(s) of interest)</u>;*
>
> *…*

306. This amendment is included in the Panel's recommended changes at Attachment 1.

New community members

307. Ms Foy also raised a concern about how new community members will be kept informed where there are no designations on their properties or where properties change ownership.

308. In this regard, the Reply advises that the Requiring Authorities do not accept that they would need to advise new owners of designated properties about the Projects. This is because the designations will be mapped in the AUP and thereby included in Land Information Memorandum reports obtained by new property owners. It states that "*[p]urchasers have a responsibility to carry out their own due diligence and it would be inappropriate to shift this burden onto the Requiring Authorities".*[154]

309. In terms of new community members that do not own designated land, there would be little to no substantive updates prior to funding being secured, at which time there would be media releases and the commencement of stakeholder engagement. The Panel also notes that a level of due diligence at the property purchasing stage would also be likely to signal the existence of the designations, depending on proximity of the same to the property in question.

[154] EV78, at [11.14]

310. The Reply also points to the opportunities for engagement through the existing RLTP and AUP designation rollover processes, as well as the engagement undertaken by Local Boards in respect of AT's transport programme.

311. The Panel accepts and agrees with the submissions made by the SGA in this regard, and does not recommend any changes to the conditions to require further specific engagement provisions related to new property purchasers in the North area.

Complaints process

312. Broadly related to the issue as to future engagement, a query was raised by the Panel in respect of any procedures associated with the Complaints Register condition, noting that while there is a specific condition in this regard, other management plan conditions also include their own complaints procedures. As noted on this point in the Reply, the Construction Environmental Management Plans are required to include procedures for responding to complaints about construction works. The Construction Noise and Vibration Management Plans are to include procedures for communicating and engaging with nearby residents and stakeholders, including the management of noise and vibration complaints.

313. The Reply notes its agreement that the meaning of the conditions could be better clarified to avoid confusion and has proposed the following changes which acknowledges the 'process' nature of the condition, and use of 'record' better reflects the wording in clause (a) of the condition which refers to a record (rather than a register). We also note that it also better reflects the introductory wording of the condition. The change is shown below:

> ***Complaints ~~Register~~ Process***
>
> *At all times during Construction Works, a record of any complaints received about the Construction Works shall be maintained. The record shall include:*
>
> *…*
>
> *A copy of the complaints **~~register~~** **record** required by this condition shall be made available to the Manager upon request as soon as practicable after the request is made.*

314. In the Council's response memorandum, Mr Wilkinson had noted in a similar vein that the Complaints Register conditions do not include details of procedures to be undertaken in the event of a complaint. He considered that it missed a step, because "*in order to have a Register you should first have a procedure, within which a Register would form a part*".[155] He was therefore of the view that the condition needs to more clearly set out the procedures that should be in place to address complaints. The Reply comments that the SGA do not agree that the condition requires amendment in this way, as requiring a record of the actions inherently necessitates that the actions must first be

[155] EV77, at p.6

carried out.

315. While the Panel had reached an initial view in agreement with Mr Wilkinson that there appeared to be a missing step, further consideration of the condition as drafted in the Reply is considered to address this issue in the manner referred to above. In other words, we agree that the actions required by the condition will effectively function as a 'process'.

316. No recommendation therefore arises in this regard.

317. As a further observation regarding this condition, we note that Ms Foy also recommended that the complaints record be published on the website. The Panel agrees with the comments in the Reply that this would not be appropriate nor add any apparent utility and could discourage others from raising complaints. As the Reply also notes, there is a requirement for the complaints record to be made available to the Council upon request, and the Panel considers that this provides a suitable level of 'public' oversight as to the actions undertaken in respect of any complaints that arise in respect of the projects.

Effects of flooding and stormwater

Overview

318. To address flooding and stormwater effects, all the NoRs incorporate a specific 'Flood Hazard' condition (condition 9, NZTA; condition 10, AT) that sets out particular flood risk outcomes.

319. The condition was the subject of some evolution through the course of the Council's assessment and during the hearing itself. An amended version was presented and explained during the SGA's comments in reply during the hearing and formed the basis of Ms Te's initial comments as part of the Council's response (on behalf of Healthy Waters). However, further discussions were proposed following adjournment of the hearing in an effort to narrow the differences between the SGA and Healthy Waters, which was provided for through the Panel's Direction 5 (8 July 2024).

320. The Reply comments that Ms Te and the Requiring Authorities are largely aligned in their positions with respect to flooding. Ms Te's response memorandum noted her general agreement with the primary evidence of Mr Summerhays and Mr Seyb, including in relation to the proposed flood hazard conditions. She also advised of her agreement with many of the changes to the flood hazard condition that were proposed and discussed by Mr Scrafton at the hearing. The Reply also advises that the differences have further narrowed since adjournment of the hearing and a meeting between the SGA and Healthy Waters on 15 July 2024. The Reply includes, at Appendix G, an analysis of where the differences remain, noting that these relate to the definition of flood prone areas, overland flow paths and access.

321. We note the resulting version of the flood hazard definitions and the condition itself as set out in the Reply. The definitions are:[156]

(a) AEP – means Annual Exceedance Probability;

(b) Existing Authorised Habitable Floor – means the floor level of any room (floor) in a residential building which is authorised and exists at the time the outline plan is submitted, excluding a laundry, bathroom, toilet or any room used solely as an entrance hall, passageway or garage;

(c) Flood prone area – means potential ponding areas that may flood in a 1% AEP event and commonly comprise of topographical depression areas. The areas can occur naturally or as a result of constructed features. Identification of a potential Flood Prone Area would be by an assessment of residual flood risk (e.g. from blockage of the Project stormwater network) on land outside and adjacent to the designation following the application of Conditions (9)(a)(i) – (iv);

(d) Maximum Probable Development – is the design case for consideration of future flows allowing for development within a catchment that takes into account the maximum impervious surface limits of the current zone or if the land is zoned Future Urban in the AUP, the probable level of development arising from zone changes;

(e) Pre-Project Development – means existing site condition prior to the Project (including existing buildings and roadways); and

(f) Post-Project Development – means site condition after the Project has been completed (including existing and new buildings and roadways).

322. Appendix C to the Reply advises that the changes to the definitions, in particular at (c), are to align the definition of 'Flood Prone Area' with the definition used in the Council's GIS viewer.

323. The flood hazard condition (AT version) is as follows:

(a) The Project shall be designed to achieve the following flood risk outcomes beyond the boundary of the designation:

(i) no increase in flood levels in a 1% AEP event for Existing Authorised Habitable Floors that are already subject to flooding or have a freeboard less than 500mm;

(ii) no increase in flood levels in a 1% AEP event for authorised community, commercial, industrial and network utility building floors

[156] Note, we have used the clean copy version of the conditions (Appendix D to the Reply) for the purposes of our consideration of this topic.

existing at the time the Outline Plan is submitted that are already subject to flooding or have a freeboard less than 300mm;

(iii) maximum of 50mm increase in water level in a 1% AEP event outside and adjacent to the designation boundaries between the Pre-Project Development and Post-Project Development scenarios;

(iv) no new flood prone areas; and

(v) no increase of Flood Hazard class for the main access to authorised habitable dwellings existing at time the Outline Plan is submitted. The assessment shall be undertaken for the 1% AEP rainfall event and reference the hazard class in accordance with Schedule 6 to these conditions.

(b) Compliance with this condition shall be demonstrated in the Outline Plan, which shall include flood modelling of the Pre-Project and Post-Project Development 1% AEP flood levels (for Maximum Probable Development land use and including climate change).

(c) Where:

(i) the flood risk outcomes in (a) can be achieved through alternative measures outside of the designation such as flood stop banks, flood walls, raising Existing Authorised Habitable Floor level and new overland flow paths or

(ii) the outcomes are varied at specific location(s) through agreement with the relevant landowner, confirmation shall be provided to the Council that any necessary landowner and statutory approvals have been obtained for that alternative measure or varied outcome.

324. Appendix C to the Reply advises that:

(a) The amendments that have been made to clauses (a) and (b) seek to improve clarity including defined terms used within the condition and to use consistent terminology e.g., “flood levels”; and

(b) The amendments that have been made to clause (c) seek to clarify the process for implementing alternative flood hazard measures outside the designation.

325. The remaining differences between the Requiring Authorities and Healthy Waters are set out in paragraphs 13.6 – 13.17 of the Reply, relating to considerations of overland flow paths, the flood prone area definition and accessways. We incorporate as part of that discussion the further updates provided in the SGA’s Memorandum of Counsel of 27 August 2024 (**Memorandum**). The issues in contention are addressed below.

Overland flow paths

326. There was some discussion at the hearing about whether there should be a specific outcome for overland flow paths in the Flood Hazard condition. Ms Te proposed two new flood hazard outcomes in respect of overland flow paths in her response memorandum, as follows:[157]

> *(iv) no loss in conveyance capacity or change in alignment of existing overland flow paths in a 1% AEP event, unless provided by other means;*
> *(v) new overland flow paths shall be diverted away from habitable floors and discharge to a suitable location with no increase in flood levels in a 1% AEP event downstream;*

327. The reason for this is stated as being:[158]

> "*Effects on overland flow paths are not managed by the proposed set of conditions, hence, it is important to retain the Healthy Waters proposed overland flow path conditions or include condition(s) relating specifically to overland flow paths, additionally not all overland flow paths are streams and must be accounted for*."

328. The Reply refers to the explanation provided by Mr Seyb, "*that it is normal practice to keep the entry and exit point of overland flow paths the same across a site, unless the upstream and downstream site-specific effects have been assessed and mitigated*".[159] Further, and with respect to whether the effect is already addressed through the condition set, Mr Seyb's evidence was that "*while overland flow paths are not covered explicitly, they are partially covered by the flood prone area outcome as well as the controls on changes to water level at the designation boundaries*".[160]

329. The Reply goes on to say on this issue that:

(a) Mr Scrafton's evidence sets out the process for considering a new condition, and that an effects-based justification requires examination of whether the effect is a district plan matter, and whether it is already addressed by the conditions.

(b) There was discussion in this regard during the hearing as to whether earthworks activities in overland flow paths have an exclusion under Rule E26.5.2.2(19) of the AUP for road network activities, and what this exclusion means.

330. The comment by Ms Te in this regard was that:[161]

> "*The proposed designation area for the two new stations are both subject to overland flow paths, as well as flood plains and flood prone areas. The effects of*

[157] EV77, at p.63
[158] Ibid, at p.59
[159] EV78, at [13.7], with reference to EV14a, at [1.27]
[160] Ibid
[161] EV77, at p.59

proposed new roads and stations on overland flow paths will need to be managed, therefore it is recommended to include conditions relating specifically to overland flow paths in the Flood Hazard conditions".

331. The Reply advised that the Requiring Authorities have been giving further consideration to this issue but, at the time of its filing, they were not able to finalise the SGA's position on the matter but would "*continue to interrogate this issue closely prior to making their decisions on the NoRs and look forward to receiving the Panel's recommendations on this point*".[162] A further update was requested in this regard as part of the Panel's Direction 6, and the subsequent Memorandum noted that the exclusion in the AUP does not apply prior to new roads being formalised. Further:

> *5.5 As Mr Seyb stated in his evidence, while overland flow paths were not specifically mentioned in earlier versions of the Flood Hazard condition larger effects would be controlled by the existing condition. However, there is considered to be merit in ensuring that, where the Project modifies an overland flow path, the effects of doing so are appropriately managed.*
>
> *5.6 For these reasons, the Requiring Authorities propose a new Overland Flow Paths condition applying to new roads and stations (NoRs 1, 2, 3, 5, 6 and 11). A definition of Overland Flow Path aligning with the AUP is also proposed to be added in for the relevant NoRs.*

332. The updated conditions attached to the Memorandum therefore include the following:

- Definition - Overland flow path (NoRs 1 – 3, 5, 6 and 11):

  Means a low point in terrain, excluding a permanent watercourse or intermittent river or stream, where surface runoff will flow, with an upstream contributing catchment exceeding 4,000m²

- New condition 9A for NoRs 1 – 3, and condition 10A for NoRs 5, 6 and 11:

  Overland Flow Paths

  Where the Project modifies an Overland Flow Path by either:

  - *diverting the entry or exit point at the designation boundary; or*
  - *piping, or reducing its capacity;*

  the design shall provide for the continued passage of flow in a manner which manages potential effects upstream and downstream of the modified Overland Flow Path.

[162] EV78, at [13.10]

333. For its part, the Panel has considered this matter and agrees that earthworks have an exclusion under the 'General standards (district)' at Rule 26.5.2.2(19), which provides that:

> *Earthworks (including filling) within overland flow paths (excluding road network activities) must maintain the same entry and exit point at the boundaries of a site and not result in any adverse changes in flood hazards beyond the site, unless such a change is authorised by an existing resource consent.*

334. In addition to the acknowledgment set out in the Memorandum, we also note that the definition of road network activities does not appear to include rapid transit stations (other than ancillary structures associated with such facilities), and so the initially suggested approach by the SGA would not seem to be applicable for NoRs 2 and 3, which Ms Te advised are affected by overland flow paths. However, this aspect has been rectified through the amendments proposed in the Memorandum.

335. Furthermore, we refer to Rule E36.4.1(A42) that relating to 'Activities in overland flow paths' requires consent as a restricted discretionary activity for:

> *Any buildings or other structures, including retaining walls (but excluding permitted fences and walls) located within or over an overland flow path*

336. While the provisions under Chapter E26 are more specific to infrastructure, the Panel notes that Rule C1.6(1) would appear to be applicable (in a manner consistent with the approach taken by the Environment Court in the *Budden* declaration proceedings[163]) whereby:

> *The overall activity status of a proposal will be determined on the basis of all rules which apply to the proposal, including any rule which creates a relevant exception to other rules.*

337. The Panel therefore considers that a conservative approach is appropriate and this seems to be the conclusion of the Requiring Authorities in respect of NoRs 1, 2, 3, 5, 6 and 11. However, we also find that, via Rules E36.4.1(A42) and C1.6(1), the updated definition and conditions should also apply to the remaining NoRs.

338. Overall, we consider that the inclusion of a specific condition relating to overland flow paths addresses the concerns expressed by Ms Te, but as noted above, we also recommend that the condition apply to all the NoRs. In so doing, we assume that all NoRs will be subject to overland flow paths to a greater or lesser extent. For any that are not, we would agree that those NoRs could be excluded.

Flood Prone Areas

339. The response memorandum from Ms Te recommended that the definition relating to flood prone areas be amended to relocate the reference to the 1% AEP event. This was

[163] *Auckland Council v Budden* [2017] NZEnvC 209, at [13] and [55](c)

for the reason that although the definition corresponds with that used in the GIS viewer (as of July 2024), the reference to 1% AEP event is not. Ms Te advises that flood prone areas can flood in more frequent events than a 1% AEP event, and so she recommends that it be relocated to the sentence about the assessment, as follows:[164]

> *(c) Flood prone area – means potential ponding areas that may flood ~~in a 1% AEP event~~ and commonly comprise of topographical depression areas. The areas can occur naturally or as a result of constructed features. Identification of a potential Flood Prone Area would be by an assessment in a 1% AEP event of residual flood risk (e.g. from blockage of the Project stormwater network) on land outside and adjacent to the designation following the application of Conditions (9)(a)(i) – (iv);*

340. The Reply went on to say in respect of flood prone areas that the SGA is largely in agreement with Ms Te with respect to the definition of Flood Prone Areas but are still working through the proposed relocation of the reference to the 1% AEP event.

341. This was clarified through the Memorandum, whereby the first reference to the 1% AEP event is retained, and the second reference recommended by Ms Te is adopted. In this first instance, this is to "*provide certainty on what flood events the condition would apply to*". In the second instance, it is agreed that "*there is merit in including a further reference to a 1% AEP event to provide further clarification on which flood event is to be assessed*".[165]

342. From a review of the GIS Viewer definition included in Ms Te's memorandum, the Panel agrees with her proposed revision to the definition, and we consider that this approach is consistent with the SGA's Reply submission insofar as it states that the intent of this definition has been to align it with the GIS Viewer, as noted above and as referred to in Appendix C of the Reply. We do not consider that defining a flood event solely by reference to only a 1% AEP event is consistent with that approach.

343. We have therefore incorporated Ms Te's version of the recommended changes to the condition, as set out later in this report.

Accessways

344. As explained in the SGA's opening submissions, AT made amendments to the flood hazard condition to refer to flood hazard class and better align with Healthy Waters and the Auckland Council Code of Practice. By comparison, NZTA follows its '*Z/19 Taumata Taiaio – Environmental and Sustainability Standard*' for the infrastructure delivery process and its version of the flood hazard condition was noted to be consistent with its nation-wide approach.

345. The Reply notes that Mr Seyb considered that both approaches to the flood hazard condition broadly reach the same outcome, and therefore there are good reasons for a

[164] EV77, at p.57
[165] EV79, at [5.3]

divergence in the condition approaches.

346. Ms Te's response memorandum advises that she accepts the different approaches between the two Requiring Authorities, given that they are responsible for different types of transport corridors and have different internal flood hazard guidelines, and because both conditions will provide a control and method of assessing flood hazard. She states in this regard that:[166]

> *"…the AT (9)(a)(v) condition includes the flood hazard assessment that aligns with what Healthy Waters uses for flooding assessment. The AT condition also ensures that if the hazard vulnerability classification is H1 or H2 it remains within that classification, while the NZTA allows for changes up to the flood hazard definition outline in A, B or C in condition 9 (a)(v). Additionally, AT condition refers to hazard vulnerability classification (H1 to H6) and this provides assessment of both vehicle and pedestrian. Therefore, the AT flood hazard condition is preferred over NZTA".*

347. Ms Te therefore recommends amendments to the AT version of the condition to require no increase in 'depth x velocity' as well as no increase in flood hazard classification.

348. The Reply states that AT does not agree with this amendment, because:[167]

> "*…it essentially combines two alternative approaches to achieving the same outcome whilst also making it unnecessarily restrictive. The requirement for "no increase in depth and velocity in combination" goes further than the NZTA approach to the condition, which requires no increase only where it is greater than or equal to 0.6m2/s. It also goes further than the approach proposed by Healthy Waters in the section 42A report, where Healthy Waters sought that requirement be deleted and replaced with a requirement for no increase in flood hazard classification only*".

349. It goes on to say that "*[r]equiring a blanket no increase at all levels is not achievable, and essentially takes a zero-effects approach to managing flood hazard effects which is not required under the RMA*".[168]

350. The Panel agrees in general with the SGA's submission to require no increase beyond 0.6m2/s, rather than the absolute no-increase standard that we understand is the approach taken by Healthy Waters. We do not therefore recommend amending this part of the condition.

Panel findings and recommendations

351. For the reasons set out above, the Panel recommends the following changes to the definition relating to the flood hazard condition in respect of the NoRs for both Requiring

[166] EV77, at p.61
[167] EV78, at [13.16]
[168] Ibid, at [13.17]

Authorities:

For the purpose of Conditions 9/10 (Definition)

…

(c) Flood prone area – means potential ponding areas that may flood ~~in a 1% AEP event~~ and commonly comprise of topographical depression areas. The areas can occur naturally or as a result of constructed features. Identification of a potential Flood Prone Area would be by an assessment in a 1% AEP event of residual flood risk (e.g. from blockage of the Project stormwater network) on land outside and adjacent to the designation following the application of Conditions (9)(a)(i) – (iv);[169]

…

352. For the reasons set out above, the Panel recommends that condition 9A is applied to NoR 4, and condition 10A is applied to NoRs 7 – 10, 12 and 13.

Effects of road noise and vibration

Introduction

353. There were several issues of contention relating to road noise (including construction noise) that arose between the evidence of Claire Drewery for the Requiring Authority and the assessment of the Council's acoustic specialist, Peter Runcie. These issues can be categorised as:

- Construction noise and vibration;
- Management of traffic noise for future receivers;
- Noise contours;
- Management of vibration for future receivers, including resurfacing.

354. We address these matters in turn below.

Construction noise and vibration

355. The conditions proposed by the Requiring Authorities provide for a CNVMP to be established which would identify management measures to achieve the construction noise and vibration standards set out in the conditions. A Schedule to the CNVMP would be prepared if construction noise and vibration levels exceed those standards. Mr Runcie advised that he was generally satisfied with that methodology.

356. The evidence of Ms Drewery advised that CNVMP Schedules would be used where noise and/or vibration effects are predicted to exceed the measures set out in the CNVMP. The conditions provide for the preparation of these schedules, and the circumstances where they would be required. She noted that noise and vibration

[169] Condition (10)(a)(i) – (iv) for the AT NoRs

mitigation measures will be adopted through the CNVMP and any required schedules, such as managing the times of activities to avoid night works and other sensitive times.

357. The Panel has previously addressed the different approval processes for CNVMP Schedules, where we have recommended that NZTA Schedules be subject to a certification process.

358. Mr Runcie advised of concerns in respect of the management of construction vibration for night-time activities at 'occupied activities sensitive to noise' depending on whether the Requiring Authority is NZTA or AT. He noted that his recommendation for consistency across all NoRs unintentionally raised another difference, relating to the lower daytime construction vibration limit at sensitive activities proposed in the NZTA condition wording. He referred to Ms Drewery's reference to the fact that the 2mm/s PPV daytime limit in the proposed AT condition is based on the criterion set out in Rule E25.6.30 of the AUP. He advised that he did not have a concern with the use of the daytime 2mm/s PPV limit across all NoRs, and that there would be nothing to stop NZTA adopting a more stringent vibration criteria for managing the effects of their designations.

359. Mr Runcie therefore recommended, for consistency, that:[170]

> "… *the night-time limit is changed for all NoRs such that the Category B night-time vibration limit for 'occupied activities sensitive to noise' is set at 1 mm/s PPV, this would be in line with the Waka Kotahi conditions and guideline. I consider this provides a balanced approach of effects and a reasonable threshold for requiring a Schedule as set out in the conditions of consent*…".

360. The Panel agrees with Mr Runcie that the appropriate daytime standard is that which is consistent with the AUP standard as specified in the AT condition - i.e., 2mm/s ppv, and that this should apply to all of the NoRs. NZTA can, of course, apply a more onerous standard to its projects if it wishes. The Panel also agrees with Mr Runcie that the most appropriate night-time standard for 'occupied activities sensitive to noise' for all NoRs is 1mm/s. This is in line with the NZTA conditions and guidelines and, for consistency, should be applied to all of the NoRs.

Panel findings and recommendations

361. In relation to the night-time construction vibration standard for Category B buildings, the Panel prefers Mr Runcie's recommendation that the NZTA guideline of 1mm/s ppv should be adopted (instead of 2mm/s ppv), while the daytime limit is recommended to be 2mm/s for both sets of conditions.

Management of traffic noise for future receivers

362. The Requiring Authority has assessed traffic noise effects of the projects utilising NZS 6806:2010 Acoustics – Road-traffic-noise – New and altered roads (**NZS6806**). The

[170] EV77, at p.43

approach under this standard is to assess noise received at Protected Premises and Facilities (**PPFs**) which are essentially noise sensitive activities. Existing PPFs, and the corresponding Noise Activity Categories, are set out in Schedule 4 of the conditions. The operational noise conditions relate only to those NoRs for which existing PPFs have been identified in Schedule 4. Existing PPFs will be modified, where necessary, to meet the requirements of NZS6806.

363. The AUP does not include standards requiring dwellings built adjacent to heavily trafficked roads to be acoustically treated to mitigate traffic noise effects. In the absence of such a standard, there was no dispute that there is a shared responsibility between the Requiring Authorities and developers for noise mitigation for buildings constructed between the lodgement of the NoRs and the completion of construction of the projects (future receivers). The Requiring Authorities' responsibility for mitigation comprises the provision of low-noise road surfaces on the roads being constructed as enabled by the NoRs. Based on the design of roads, including the use of low-noise surfaces, the Requiring Authorities have produced noise contours to inform the design of future development with the expectation being that the developers of buildings will ensure the design incorporates sufficient noise mitigation measures to produce suitable internal noise environment when the roads are operational.

364. Mr Runcie nevertheless recommended the conditions of the NoRs include a requirement for a future assessment of noise effects following the detailed design of the projects to confirm the BPO for addressing noise at source. This would take into account any changes to the design assumed with the initial assessment and, in particular, identify any increase to the published noise contours. Mr Runcie emphasised that it would be unrealistic for the Requiring Authorities to be responsible for acoustically treating dwellings constructed in the meantime, but a BPO assessment would enable other mitigation measures to be undertaken to ensure the noise contours are not exceeded. The BPO may include modifications to the road surface selection in relevant locations or localised screening where practicable and appropriate.

365. Mr Runcie recommended the following additional condition (referencing here the AT version that would precede condition 35):[171]

> *Notwithstanding the above applying to the PPFs in Schedule 4, conditions 36, 37, 39 and 40 shall be read as also including a requirement for the future BPO assessment to determine the BPO for the environment (including any dwellings to be retained within the designation) that is present prior to construction starting (in terms of road surface, barriers, or other source noise mitigation), noting that the Requiring Authority is not responsible for acoustically treating dwellings that are constructed following the lodgement of the NoR.*

[171] EV77, at p.48

366. The Reply responded that this change would be inconsistent with NZ6806, and stated that:[172]

> "*the Requiring Authorities and their experts are unaware of any other circumstances where the standard has not been followed in the way proposed by Mr Runcie and there are not sufficiently compelling reasons to depart from the Standard. Mr Runcie's approach would introduce too much uncertainty about the outcomes of future BPO assessments (given the uncertainty about the location and nature of future dwellings) and the scope and cost of future mitigation obligations for the Requiring Authorities. It also alters the approach to shared responsibility between the road controlling authorities and future landowners who may rely on the implementation of the roads for their development*".

367. The Reply acknowledges that Mr Runcie has not sought to extend the condition to install acoustic treatment to dwellings constructed following lodgement of the NoRs, and that "*[i]f the Panel was minded to recommend his condition, it is critical that this aspect is retained*".[173]

368. The Panel considers in general terms, in agreement with the Reply, that there is a shared responsibility for noise mitigation, and that the Requiring Authorities should not be responsible for modifying new dwellings built between the lodgement of the NoRs and their construction. However, we consider that Mr Runcie's recommendation for a BPO assessment to be carried out prior to construction has merit. The long lapse periods proposed and the understandably limited nature of detailed topographical information leads the Panel to the view that a check on the accuracy of the noise contours (which will have been prepared up to 20-30 years earlier) is prudent. This will also enable any discrepancy to be identified and addressed through, for example, localised screening. Accordingly, the Panel recommends the inclusion of the additional condition proposed by Mr Runcie in the conditions for all designations as set out above.

Noise contours

369. Associated with the above matter, the only area of disagreement (or uncertainty) relating to noise contours was where they should be published in order that they could be readily accessed by those persons designing new buildings. The provision of such was recommended by Mr Runcie to form a layer in the Council's GIS as that is a tool used to identify other forms of constraint on development.

370. The Requiring Authority considered that the provision of this information can be managed through the existing condition framework, whereby the Project Information condition (for NZTA) or LIP condition (for AT) incorporates a requirement at (b)(viii) to "*how/where to access noise modelling contours to inform development adjacent to the designation*".

[172] EV78, at [12.22]
[173] EV78, at [12.23]

371. The Reply highlights the technical challenges associated with Mr Runcie's preferred approach. It submits that the approach set out in its conditions is adequate, while noting AT's opinion that the main avenue for engagement with landowners and developments will be via the LIP and so it would be unnecessary for the information to also be available via the project website. It goes on to make the following submission:[174]

> "*In addition, the Requiring Authorities preferred approach to the comprehensive management of road traffic noise and the protection of human health and amenity is the introduction of district plan provisions for noise sensitive activities close to the roads. As a reminder those standards require noise sensitive activities to be designed and constructed to meet certain internal noise levels. There are a number of different ways these plan provisions can be implemented, but the approach incorporated into the AUP through the Drury Plan Changes is for the noise provisions to apply to the land subject to a certain level of noise, as identified through the noise contours prepared by Te Tupu Ngātahi. The area of land is identified through a map in the relevant Precinct provisions. This outcome ensures that landowners are fully aware if they need to consider the impact of road traffic noise as part of development of their land*".

372. The Panel notes that the Council was not able to confirm that the contours could be included as a layer within its GIS system, although we consider that this would be preferable. While the relevant conditions will require that the contours are kept up to date by the relevant Requiring Authority, the issue of ready access, or knowing that the information is available and where to find it, presently remains until resolved through the relevant condition.

373. The Panel considers that, at a minimum, an information layer should be included on the Council's GIS that identifies the area covered by the contours and which directs the reader to the project website for the contours themselves (where that information will be kept up-to-date). However, in view of the technical issues advised to us, we do not consider it appropriate or permissible to include this by way of a condition, and so leave this as a matter that may be addressed in the future by the Requiring Authorities in conjunction with the Council (noting that this may be an issue to be resolved across the whole Te Tupu Ngatahi programme).

374. As a final observation, consideration of this issue overlaps with our earlier recommendation to include a LIP condition within the NZTA NoRs. If that recommendation is upheld by NZTA, then it would be appropriate to delete reference to the noise contour matter at condition 2(b)(viii), as it would be addressed via new condition 2A(c)(i)E. The conditions have been amended to address the Panel's recommendations in this regard accordingly.

Management of vibration for future receivers

375. In respect of road traffic vibration, Mr Runcie expressed a concern in his response

[174] Ibid, at [12.26]

memorandum regarding the lack of a specific vibration performance related requirement within the conditions and that this therefore impacts on the ability to rely on the outcome anticipated in the assessment over the life of the roads. He commented in his response that road defects appearing over the life of a road can and do occur (e.g., as a result of road openings to install new services) and can cause adverse vibration effects. He therefore maintained his original recommendation to modify the low road noise surface conditions for both NZTA and AT to address this, along with removal of the wording "as far as practicable" from the low noise road surface condition to provide greater certainty of outcome and to align with the assessment and proposal.

376. In relation to this matter, the Reply highlighted Ms Drewery's evidence that pointed out that new or upgraded roads are designed to be smooth and even, thereby avoiding vibration generated from passing traffic over uneven surfaces. It goes on to submit that a condition of the nature proposed by Mr Runcie is not required, and that the Requiring Authorities "*have a range of statutory obligations to maintain their assets and an incentive to ensure it is maintained in good condition*",[175] and that an additional condition is not necessary to ensure this outcome.

377. The Panel agrees with Ms Drewery that the design and installation of new roads will avoid vibration effects and, further, it is considered that road surface issues related to the age of the roads should be remedied as part of an ongoing maintenance programme (a further sub-topic that we address below). We therefore do not recommend the additional clauses sought by Mr Runcie.

Low noise road surfacing (and resurfacing)

378. As noted above, the sole form of noise mitigation offered by the Requiring Authorities for future receivers is providing low-noise surface on the roads that are the subject of the NoRs.

379. AT has proposed a condition that enables an alternative surface to be provided when a road is resurfaced if certain specified traffic-related criteria are not met (e.g., when traffic volumes are less than 10,000 vehicles per day [**vpd**]). Mr Runcie expressed concern with this because the Requiring Authority's condition would enable a road surface to be used which is different to that assumed in the assessment of noise effects, and would undermine the argument put forward that developers could rely on provided noise contours to design their developments. In response to questions from the Panel, Ms Drewery agreed that the condition would not be supportable on acoustic grounds.

380. The Reply noted that the only road that could be below the 10,000vpd threshold is NoR 5 (Dairy Stream Crossing of SH1) which affects a relatively small area, near to and within the noise environment of SH1. As a result, the condition is "*unlikely in practice to result in a change in the current application of the shared responsibility principle*".[176] It also references the SGA's evidence, and states that:

[175] Ibid, at [12.20]
[176] Ibid, at [12.12]

(a) Mr Lovell's evidence explains AT's corporate position that resurfacing decisions must take account of whole-of-life costs and ensure an equitable resource allocation across the whole of the network. This is to ensure that ratepayer funding is not applied to reseal roads with more expensive low noise treatments where they are not necessary.

(b) Mr Scrafton's presentation to the Panel also confirms that it will only apply in limited circumstances when a low noise road surface is not the updated BPO.

381. Accordingly, the Reply emphasises that the scope of the Resurfacing Condition is likely to be "*very small in practice and potentially only applying to one project with low traffic volumes … if the Detailed Mitigation option does not require a low noise road surface to be maintained for this road*".[177]

382. In general, the Panel considers that matters of "*equitable resource allocation*" and taking account of cost to ratepayers are not appropriate considerations for an assessment required under the RMA. Given the importance of the low-noise road surface for mitigating operational noise effects, and the agreement between Ms Drewery and Mr Runcie on this issue, the Panel considers that the Requiring Authorities' preferred condition is inappropriate and is recommended to be deleted so as to provide consistency. We recognise, however, the potential for the NoR 5 route to be less likely to give rise to adverse acoustic issues if the condition thresholds were met, and so we recommend that the condition only be applied to this NoR.

Panel findings and recommendations

383. The Panel recommends that condition 34 (Future Resurfacing Work) be deleted in respect of all AT NoRs except NoR 5 and that the following clause (b) be added to condition 33 (Low Road Noise Surface) as follows:

(a) Asphaltic concrete surfacing (or equivalent low noise road surface) shall be implemented within 12 months of Completion of Construction of the project.
(b) The asphaltic concrete surface shall be maintained to retain the noise reduction performance of the surface established in accordance with (a).

Effects on parks, reserves and open space

375. The primary issues related to effects on parks, reserves and open space were raised in the Council's memorandum by Gerard McCarten, the Council's Consultant Parks Planner. Mr McCarten's response memorandum noted those issues that had been resolved, and identified those remaining as relating to:

- Effects on Baker Street Reserve, Kathy's Thicket (NoR 4), Wēiti Stream Valley Esplanade Reserve (NoR 7), Serenity Reserve and Albany Heights West Reserve (NoR 9); and

[177] Ibid, at [12.16]

- Section 176 approval conditions; and
- ULDMP conditions.

376. In summary, Mr McCarten sought the following amendments:[178]

(a) That further consideration is given to how adverse effects on Baker Street Reserve can be mitigated;

(b) That the extent of the current designation 6759 over Kathy's Thicket is removed through NoR 4;

(c) That the extent of NoR 7 over the Wēiti Stream Pine Valley Esplanade Reserve is reduced to that shown in Figure 5 of the memorandum and it is at least 1m clear of all riparian vegetation;

(d) That NoR 9 is removed from all of Serenity Reserve;

(e) That the extent of NoR 9 over Albany Heights West Reserve is reduced to that shown in Figure 7 of the memorandum and is approximately 10m from the edge of indicative work shown on the general arrangement plan.

(f) That all NoRs have the same condition wording for the s.176A approval condition.

(g) That the common s.176A approval condition is changed to include reference to parks in clause (a)(iv) of condition 6 of NoRs 1-4 and 7 of NoRs 5-13.

(h) That the ULDMP conditions are changed to include references to:
- the future urban context in clauses (a)(i) of conditions 15 of NoRs 1-4 and 16 of NoRs 5-13;
- parks and reserves in clauses (d)(i)C of conditions 17 (NoRs 1-4) and 18 (NoRs 5-13);
- the public open space network in clauses (a)(i) of conditions 16 (NoRs 1-4) and 17 (NoRs 5-13); and
- relevant precinct plans and Greenways/Local Paths plans in clauses (b) of conditions 16 (NoRs 1-4) and 17 (NoRs 5-13).

377. We address these matters in turn in the following sections of this report.

Effects on reserves

378. The Reply provides a detailed response to the issues raised by Mr McCarten which we summarise below:

(a) In general terms, the extent of the designations encompass the space required for the operation and maintenance of the Projects, construction, and areas

[178] EV77, at pp.101-102

required to mitigate effects. Given the uncertainty around construction methodology and surrounding land-use, the designation boundary needs to be maintained to accommodate potential future works until more detailed site investigations and design can be undertaken.

(b) In terms of the adjustment to the Wēiti Stream Valley Esplanade Reserve, it should be noted that property boundaries have not been the key driver in setting designation boundaries at any stage. However (as noted in Ms Wilkins' evidence) the designation over this reserve was intended to avoid the Weiti Stream Conservation Area, which was initially assumed to be the same as the Wēiti Stream Stewardship Area shown on the Council's map viewer. The designation was subsequently amended to avoid the Conservation Area which was found to not be the same as the Stewardship Area and would have required removal of protected vegetation. The Reply notes that "*[t]his was also noted as a relatively minor adjustment which was not essential for construction*".[179]

(c) While Mr McCarten considered it inappropriate to amend the designation maps solely on the basis of the DoC Conservation Area mapping, Ms Wilkins had explained that the amendment was made out of an abundance of caution, and the area has been avoided irrespective which boundary is correct.

(d) With respect to Albany Heights West Reserve, the Reply advises that:[180]

> "*Mr Barrientos has addressed the localised widening of the designation on this site, and has explained that this is largely due to uncertainties in the quality and accuracy of the available topographic survey, given the heavy vegetation cover in this area. This is not a matter of providing for easier design in the future. Instead, a conservative approach to earthworks has been adopted to ensure that construction is feasible. As alluded to by Mr McCarten, there are engineering solutions for a number of problems and scenarios, but all of them would be predicated on adequate space being provided for the necessary earthworks and construction*."

(e) In terms of effects on the access and loss of recreational amenity of Baker Street Reserve, the Reply acknowledges that there will be a temporary loss of access during construction. This will be compensated for by a lease or licence for the land under the PWA, and that access will be reinstated to a standard similar to what existed prior to construction. Reinstatement of the passive recreation area is also expected to be straightforward, including revegetation, and that retaining walls can be used if detailed design shows that batters would be too steep (and more than the standard gradient) to retain a recreational function.

The extent of potential effects on this reserve are also considered to be

[179] EV78, at [23.11]
[180] Ibid, at [23.14]

overstated, noting that no connections are shown to the reserve in the Upper Harbour Greenways Plan, and there are no plans to develop the reserve for active recreation in the future at this stage. While it may be possible to maintain access to some parts of the reserve, during the detailed design stage, this cannot be assessed or guaranteed.

Accordingly, and with reference to the evidence of Ms Bunting, the Reply submits that the level of adverse effects will be temporary and able to be appropriately managed.

(f) While Mr McCarten accepted the Requiring Authorities' evidence that construction for NoR 1 can be managed to occur within the existing designation boundary, therefore not impacting Kathy's Thicket, he queried why the existing SH1 designation had not been reduced as part of NoR 4, and that it should be drawn back where it won't reasonably be used. The Reply stated in this regard that:[181]

> "…*the SH1 designations have been rolled over multiple plans, well before the AUP and the controls as they exist today were put into place. The extent of works on this section of SH1 for NoR 4 are well within the existing designation and on the other side of SH1. As explained in Mr Mason's evidence, certain constraints (such as significant ecological areas [and Kathy's Thicket]) can be identified for and accounted for in the cross sections and design that has been used to inform the designation extent*…".

It also states that Kathy's Thicket or even NoR 4 cannot be viewed in isolation and to draw back the existing designation off the portion of Kathy's Thicket "*is a sizeable reduction from the SH1 corridor that cannot be done in isolation without consideration of the entire designated corridor*". It notes, however, that while there is currently insufficient information to draw back the existing designation on this scale, there is a separate workstream being undertaken by NZTA to review designation 6759. This would identify whether "*it can reasonably draw back the designations, including the section over Kathy's Thicket*".[182]

379. The Panel anticipates that should the additional (separate) work being done by NZTA identify that designation 6759 show that it can be drawn back, then that would occur via s.182.

380. More substantively, however, the Panel accepts the commentary presented in the Reply, and noting that there is agreement that Kathy's Thicket will not be impacted, does not consider it necessary to recommend any changes to NoR 4.

Dairy Flat Tennis Club

381. While Mr McCarten's response memorandum did not include recommended changes

[181] Ibid, at [23.25]
[182] Ibid, at [23.26]

to NoR 8 in respect of the Dairy Flat Tennis Club, the Reply had addressed other issues in respect of this facility. It stated that the potential adverse effects on the operation of the club and relocation of the tennis courts are both matters that will primarily be addressed through the PWA process (although we note that some not-insignificant changes have been made to the NoR since lodgement to reduce the effect on the Club). This creates a statutory obligation on the Requiring Authorities to ensure any adverse effect, even on a public asset, is sufficiently compensated for.

382. We do not make any recommendations in respect of this facility.

Section 176 approval

383. Mr McCarten also raised a concern with respect to the s.176 'deemed approval' condition relating to Network Utility Operators and Council Parks, and that this be expanded to cover all corridors, as well as including the upgrading and replacement of parks within the list of activities addressed by the condition.

384. This matter relates to conditions 6 (NZTA) and 7 (AT) and applies to NoRs 1, 4, 7, 8 and 9. The wording is the same across both sets of conditions, and is as follows:

> ***Network Utility Operators and Auckland Council Parks (Section 176 Approval)***
>
> *(a) Prior to the start of Construction Works, Network Utility Operators with existing infrastructure and Auckland Council in relation to parks located within the designation will not require written consent under section 176 of the RMA for the following activities:*
>
> *(i) operation, maintenance and repair works;*
>
> *(ii) minor renewal works to existing network utilities or parks necessary for the on-going provision or security of supply of network utility or parks operations;*
>
> *(iii) minor works such as new service connections; and*
>
> *(iv) the upgrade and replacement of existing network utilities in the same location with the same or similar effects on the works authorised by the designation as the existing utility.*
>
> *(b) To the extent that a record of written approval is required for the activities listed above, this condition shall constitute written approval.*

385. While Mr McCarten was comfortable with the amendments that had been made to this condition through the hearing process, he was concerned that it had not been applied to the remaining NoRs on the basis that there are no existing parks affected by these NoRs. He considers, however, that changes can occur over 30 years, including land

potentially becoming park or reserve, and that inclusion of the remaining NoRs would have:[183]

> "…*no material impact on the operation of the requirements otherwise and creates no unreasonable burden on the requiring authorities to include reference to parks operations in those conditions as well. It has only potential benefits*".

386. He went on to say in response to questions of the Panel that land may still be acquired notwithstanding the existence of a designation, and that this would not automatically render such land unattractive for reserve purposes.

387. The Reply makes the observation that the condition allows the listed activities to occur without written approval where they would otherwise trigger a requirement under s.176 – i.e., where the activity would 'prevent or hinder' the designation work, and "*[i]t does not mean that activities not listed are precluded but rather that written approval may be required*".[184] It highlights that the condition has been applied based on existing parks, and that it is "*important to recognise that once the corridors are designated, they form part of the future environment and any decisions to acquire land for parks and reserves can take them into account and seek written approvals should they be required*".[185]

388. In respect of impact and benefit, the Reply also makes the point that there is nothing to preclude the Council from seeking written approval for any new parks within the other designations. It submits that this ensures "*that the Requiring Authorities have some oversight over what at this point are unknown works within the corridors*".

389. The Panel agrees with and accepts that submission, and considers that the conditions are appropriately applied to the environmental characteristics that presently apply; that future park acquisitions affected by the designations will be undertaken in full cognisance of the obligations applying to landowners under s.176; and that s.176 approvals would still be available when required where an activity is proposed that has the potential to prevent or hinder the work enabled by the designation.

390. The Panel notes that the reason for the separate inclusion of condition 6 in respect of NoRs 1 and 4 is not clear, as the condition wording between both NoRs is identical. Therefore, as an editing matter only, we recommend the deletion of the second copy and inclusion of NoR 4 as part of NoR 1.

391. No other changes to these conditions are recommended.

392. We have commented on the broader application of the s.176 condition later in this report.

[183] EV77, at p.97
[184] EV78, at [23.28]
[185] Ibid, at [23.29]

Management plans

Overview

393. We have previously noted that the Requiring Authorities propose to use management plans to address the majority of those environmental effects expected to occur during implementation of the Projects, and these have been offered as conditions. The list of proposed management plans are set out in paragraph 11 above, and are also referred to as relevant to particular topics elsewhere in this report. In general, the management plans would provide the framework to guide the final design of the various components of the transport corridors as well as avoid, remedy mitigate or manage the adverse effects of the construction activities associated with the implementation of the Project.

394. Mr Wilkinson's s.42A report acknowledges that the NoR process is primarily about route protection rather than implementation, and accepts that a management plan process is appropriate, given that detailed assessment and implementation would occur at the outline plan stage. He also describes the principles that should be incorporated within a management plan condition framework, and notes that these have been adopted in the recommended management plan conditions. He states that: [186]

> "*…In a number of circumstances Council's specialists and I have recommended further amendments to the management plans to address certain adverse effects and/or make the management plans more effective*, *noting also that a number of these are recommendations from within SGA's own specialist assessments which have not been included in the more generic conditions.*"

395. In his response memorandum, Mr Wilkinson advised that the general intent of the SGA's updated conditions are supported insofar as they improve detail, engagement, clarify processes and improve timeliness. However, he considered that further amendments were necessary to ensure that:[187]

- *terms used are clear / clearly understood and suitably inclusive;*
- *links between conditions and the outcomes required by conditions are in fact present and at the correct time in the implementation process; and*
- *requirements to address and mitigate effects, including effects associated with, are included.*

396. The Reply addressed further matters relating to the proposed management plans that arose during the hearing, including in respect of this Panel's queries. It emphasised the 'outcome-focused' nature of the management plan conditions and that they seek to "*ensure that effects are managed with respect to the relevant future receiving environment at the time of detailed design and construction*".[188] The Reply also did not agree with Mr Wilkinson's recommendations for these conditions, submitting that "*the*

[186] Agenda, at p.78
[187] EV77, at p.3
[188] EV78, at [14.4]

conditions have already struck the correct balance between providing flexibility for environmental change and locking in specific requirements now".[189]

ULDMP and UDE

397. Further comment was provided in the Reply in respect of the ULDMP, and in particular to address a recommendation by Mr Denton that a new clause be added to this condition requiring the ULDMP to address the outcomes and relevancy of the recommendations and opportunities contained in the Urban Design Evaluation (**UDE**). This was on the basis that fundamental elements of the environment will still be in place in 30 years. The proposed clause was contained in his memorandum as follows:[190]

> *The ULDMP will address the outcomes and relevancy of recommendations and opportunities contained in the Te Tupu Ngātahi Urban Design Evaluation, including the Outcomes and Opportunities Plans, in developing the detailed design response.*

398. The Reply notes that Ms Peake had recommended that the assessments be re-validated within the contemporary landscape context, but highlights that only this latter recommendation had been included in the Council's proposed condition amendments:

> *The ULDMP shall be prepared in accordance with the recommended mitigation measures contained in the landscape assessment report and Appendix 2 of the Primary Landscape Evidence and the recommended project specific outcomes in the Urban Design Evaluation.*

399. We observe that Mr Denton's condition was not included in the Council's set of proposed conditions, which we assume to be a drafting oversight but we have nevertheless had regard to it.

400. The Reply responded to Ms Peake's proposed condition, and summarised Ms Wilkins evidence on this point. In particular, it noted that Ms Wilkins had explained the way in which the ULDMP condition already provides for detailed design to respond to the contemporary landscape context. The Reply emphasised that "*the outcomes-focussed approach to conditions has been intentionally designed to ensure the design can respond to environmental changes*".[191] It went on to state that the Requiring Authorities do not support the proposed conditions, which would lock in the detailed recommendations contained in assessments and evidence prepared potentially up to 30 years prior to implementation. With reference to the evidence of Mr Foster and Ms Wilkins, it was submitted that "*the conditions already address the core recommendations contained in those assessments*".[192]

[189] Ibid, at [14.4]
[190] EV77, at p.28
[191] EV78, at [14.8]
[192] Ibid, at [14.9]

Panel findings and recommendation

401. The Panel does not wholly accept the submissions from the SGA on this point, and considers that reference to the body of work encapsulated within the UDE represents an appropriate first step in the evaluation and design work required by the ULDMP, and that it would be appropriate to have regard to this document. We do not see that as 'locking in' the recommendations contained therein, but we do acknowledge that this requires some re-drafting of the Council's proposed version to ensure that amendments can be made to respond to any changes in future environmental conditions.

402. In addition, although the lapse dates for nine of the NoRs is 30 years (and between 20 and 25 years for NoRs 8, 10 and 11), it does not follow that the design work required as part of the ULDMP will occur at that end date, and can presumably be expected to occur from a period commencing in 20 – 25 years for a number of the NoRs, and potentially earlier depending on the actual timing in which land is released for development. We agree with Mr Denton that 'fundamental' elements of the existing environment could be expected to be evident to a greater or lesser extent over that time.

403. We therefore recommend that condition 16 (NZTA) and 17 (AT) are amended in line with Mr Denton's recommendation as follows, being a new clause (a)(v) (or (vi)):

> *(a) To achieve the objective set out in Condition 15/16 the ULDMP(s) shall provide details of how the project:*
>
> *…*
>
> *(vi) will address the outcomes and relevancy of recommendations and opportunities contained in the Te Tupu Ngātahi Urban Design Evaluation 2023, including the Outcomes and Opportunities Plans, in developing the detailed design response.*

Management Plan certification

404. The s.42A report recommended that the management plans required to be provided as part of any application for an outline plan should be certified by the Council. This was for the reasons that:[193]

(a) It is general practice for the Council to certify management plans that form conditions of designations;

(b) A great deal of reliance is being placed on management plans as the principal method to avoid, remedy or mitigate adverse effects on the environment; and

(c) It is important that the Council retains the ability to review any management plan for completeness, and to make changes to the management plans without the need for formal review of the conditions.

[193] Agenda, at p.78

405. The Panel observes that the proposed conditions incorporate a limited provision for certification, being in respect of a material change to a management plan that was previously approved through the outline plan process (except for a SCEMP), via condition 10(c), and for a CNVMP Schedule associated with an AT NoR (to be provided a minimum of five working days prior to construction commencement), via condition 24(c).

406. The evidence of Mr Scrafton addressed this issue in his primary evidence, stating that he did not agree with a requirement that the management plans require certification. He stated that:

> *(a) I do consider that management plans prepared under resource consents should generally be certified but they are different to management plans prepared for designations which are intended to form part of the outline plan for the designations. As noted by the Panel in the North West recommendation, the RMA affords certain powers to a Requiring Authority in relation to designations. These powers are not present through a resource consent process. As the Panel will be aware, the RMA provides a two-step authorisation for designations where the designation confirms the project or public works and the design detail follows through the outline plan process under section 176A of the RMA. This process is different from resource consents which, without certification, has no statutory process for oversight of information provided post confirmation of the consent; and*
>
> *(b) Management plans prepared through the outline plan process essentially become a key part of the outline plan demonstrating how the works will manage relevant effects. The authorisation process for outline plans is clearly set out in section 176A of the RMA and that process has been replicated and refined in the proposed designation conditions. This approach provides Council with a statutorily mandated opportunity to review and request changes of the outline plans which will include all required management plans. As such, I consider the conditions and section 176A of the RMA do provide Council the opportunity to review management plans as requested by the Section 42A Team.*

407. In his response memorandum, Mr Wilkinson advised that he remained of the same view on this matter as was set out in his s.42A report. He considered that certification provisions would "*increase and improve certainty that the matters to be included in Management Plans are satisfactorily addressed*". He noted that other AT and NZTA designations have certification requirements, and went on to say:[194]

> "*In light of the requiring authority seeking such significant lapse dates and the lack of specific design detail which results in a management plan needing to cover a large amount of detail; in order to achieve more certainty for all parties, to ensure the management plans contain and address all the matters that they say they are*

[194] EV77, at p.4

going to, I do not think it unreasonable for Council to review and certify management plans".

408. The Panel notes the Council response version of the conditions (nor the s.42A report versions) did not include a specific change that would give effect to the above recommendation, but instead included a requirement for certification in the relevant management plan (being the CEMP, CTMP, CNVMP, EMP, HHMP, NUMP, SCEMP, TMP and ULDMP). For the only relevant amendment to condition 12 (NZTA) or condition 13 (AT) was to include 'certification' in respect of material changes to a SCEMP (clause (d)), although the purpose of that provision is unclear given the certification obligations proposed as part of all the abovementioned management plans. Given the proposed application of certification to that range of plans, we have assumed that the recommendation on this point would likely involve an amendment to clause (a)(v) as follows:

> *(a) Any management plan shall:*
>
> *…*
>
> *(v) be submitted as part of an Outline Plan pursuant to section 176A of the RMA <u>for certification</u>, with the exception of SCEMPs and CNVMP Schedules;*
>
> *…*

409. This issue was addressed in the Reply, and restated the position expressed by Mr Scrafton, while also noting that:

(a) If the Requiring Authorities decline any of the Council's recommended changes, then the Council may appeal to the Environment Court. The Board of Inquiry in the Transmission Gully proposal considered that this process works well in practice and incentivises parties to resolve matters efficiently.[195]

(b) In that case, the Board of Inquiry accepted that it was appropriate for requiring authorities to use management plans by way of the outline plan process, and that this allows for an integrated design response across the entire roading alignment whereas individual certification processes would be likely to jeopardise the holistic process that a designation process entails.

(c) There is no case law that suggests certification is a mandatory requirement, and the Requiring Authorities remain concerned that the Council is effectively attempting to subsume their substantive decision-making power under the outline plan process. It notes the difference in approach between resource consents and designations in this regard.

[195] EV78, at [14.21], with reference to *Transmission Gully*, at [1047]

(d) The comment by Mr Wilkinson that certification provides more certainty is not considered to be well-founded, given the comprehensive review and outline plan process that provides for Council involvement. Accordingly "*[c]ertification would not add any more robustness to this process other than to add an additional layer of unnecessary process that risks holding up construction at a time when efficiency is critical*".[196]

410. The Panel has carefully considered the competing position between the Council and the Requiring Authorities on this issue. We acknowledge the Council's view that the management plans have been designed to function as the principal method to avoid, remedy or mitigate adverse effects on the environment, a position that was not contested. We also observe that while the use of management plans are not specifically envisaged by the RMA, their use is also not precluded, as is evident from many precedent designations, including within the Te Tupu Ngātahi programme.

411. The Panel has not reached a unanimous finding on this issue. The majority view held by Commissioners Farnworth and Smith is set out below:

(a) The Commissioners note that implementation of the North Projects is potentially up to 20 – 30 years in the future. They consider that although an impressive amount of work has been carried out establishing the proposed alignment and designation boundaries based on an assumed road design, it has not been possible to establish with any degree of certainty the effects of the implementation of the designations.

(b) Out of necessity, because of the extremely long timeframes, and uncertainty in relation to the future environment and the effects of the implementation of the projects for which only a very preliminary design exists, a management plan approach has been established by the proposed designation conditions. This approach is by no means unusual, even for relatively short project timeframes.

(c) The Commissioners note that there is agreement between the SGA and the Council that the certification of management plans is the norm for resource consents, but each has acknowledged that certification of management plans for designations is not universal. They note the Council's point that the outline plan process is not a certification process. Under the former, the Council can recommend changes to the outline plan but the Requiring Authorities do not have to adopt the changes. The Council's recourse is by way of an appeal to the Environment Court.

(d) In contrast, the purpose of certification is to ensure that a management plan addresses the relevant designation conditions and the Council may withhold certification if it considers those conditions have not been addressed. The Council

[196] Ibid, at [14.24]

analysis does not go further than that with certification and sole responsibility for the management of effects remains with the Requiring Authorities.

(e) Neither the Requiring Authorities' planning witnesses, nor its legal advisors, consider certification provides a benefit over and above what is provided for by s.176A. The Requiring Authorities' concern with the inclusion of certification is the potential for delays from the involvement of the Council. No evidence was presented on the Council's track record in this regard.

(f) The Commissioners consider that, given lapse periods of 20-30 years, the risk of delay from a certification process is likely to have been overstated. If that is a real concern it would be expedient of the Requiring Authorities to develop the management plans well in advance of the date by which they are required to be finalised.

(g) If that objection falls away, the main matter in contention is whether the outline plan process can provide an equivalent level of scrutiny to the management plans prepared by the Requiring Authorities.

(h) Although designation conditions set out the requirements for the management plans, draft plans have not been provided to the Panel. In addition, the preliminary nature of the design of the projects and the long timeframe established by the lapse period for the designations mean that there is no way of determining at this stage what the effects will be (except in a general sense) and whether the management plans finally produced will establish and address those effects.

412. Commissioners Farnworth and Smith therefore agree with the Council officers that the certification and outline plan processes are quite different and that certification of management plans should occur as an additional matter alongside the consideration of an outline plan. Accordingly, they consider that it is essential that there be a check on the content of all management plans through a requirement for certification of those plans.

413. The minority view of Commissioner Blakey accepts the position of the Requiring Authorities, which he considers to be aligned with the overall scheme of the RMA in relation to designations, and the broad powers that it affords a requiring authority as noted by the abovementioned Board of Inquiry. In that regard he has some concern with an approach that would seek to assign a form of approval that is at odds with the final decision-making functions of a requiring authority. Such an approach, in his view, does not sit comfortably with the duty of the Council to make recommendations only in respect of an outline plan, and to do so within 20 working days. Clearly, that is not an absolute power, given the appeal process available to the Council should that prove necessary, along with the two certification exceptions provided within the proposed conditions. However, he considers that it is a clear signal that any amendment to the general presumption should be carefully exercised. Commissioner Blakey has concluded that it is not necessary in the case of these NoRs to exercise, or so recommend, such an

amendment but highlights other changes related to certification requirements in the following sections below.

Panel findings and recommendation

414. Having regard to the majority finding in this regard as set out above, it is recommended that the outline plan conditions relating to management plans are amended to reflect a more broadly-cast certification approach. The wording of the recommended changes (condition 12 for NZTA, and condition 13 for AT) is set out below:

> *…*
>
> *(b) Any management plan shall:*
>
> *…*
>
> *(iv) be submitted as part of an Outline Plan pursuant to section 176A of the RMA for Certification, with the exception of SCEMPs and CNVMP Schedules;*
>
> *…*

Material change to a management plan

415. There is a further point to be made in respect of the certification conditions as presented in the NoRs and in the Reply. The abovementioned management plan conditions require, at (d), that material changes to those plans are to be submitted to the Council "*as an update to the Outline Plan or for certification as soon as practicable*…".

416. This is common to other NoRs in the Te Tupu Ngātahi approaches with which the Panel is familiar (i.e., North-West and Warkworth). However, on further review it is apparent that the less 'onerous' approach would be likely to be adopted in these circumstances, whereby a material change would simply be submitted as an update to an outline plan, in preference to seeking certification (whether on a 'deemed' basis or otherwise). However, it is not apparent to the Panel that s.176A contemplates a post-outline plan document being simply 'updated' and would be contrary to the definition set out in the conditions for "*Certification of material changes to management plans*" and associated certification provisions that go beyond simply the updating of a management plan. We therefore recommend this option be deleted from the relevant conditions. This is set out in our recommended amendments below.

Panel findings and recommendations

417. For the reasons set out above, the Panel recommends that clause (d) of the Management Plan condition be amended as follows:

…

(d) If there is a material change required to a management plan which has been submitted with an Outline Plan, the revised part of the plan shall be submitted to the Manager ~~as an update to the Outline Plan or~~ for Certification as soon as practicable following identification of the need for a revision;

…

Certification of a CNVMP Schedule

418. An issue raised during the hearing was in respect of the difference between the AT and NZTA NoRs in respect of the requirement for a Schedule to a CNVMP to be submitted to the Council for certification for the AT NoRs and for 'information' only for the NZTA NoRs. It is noted that such schedules are required at the pre-construction commencement stage, rather than through an outline plan process, so differ in that respect from our comments in respect of management plans more generally.

419. The Reply advises that this arises from differences in internal processes between AT and NZTA. With reference to Mr Scrafton's evidence, it comments that "*NZTA has tried, tested and stringent processes in place to regulate construction contractors, and an extensive system of internal review and certification",* with these processes being set out in NZTA's State Highway Construction and Maintenance Noise and Vibration Guide. This Guide includes when schedules are required, how they are prepared and their quality review programme.[197] These processes were described as "*significantly more onerous than AT's*" such that additional oversight through a Council certification requirement is unnecessary.

420. The Reply made reference to the response comments from Mr Runcie (the Council's acoustic specialist), and presumably to the comments of the Panel of a similar nature, that recommended consistency across the conditions (to avoid discrepancies and confusion for receivers). It states that the certification procedures are administrative and not related to construction noise outcomes. The Reply submits that:[198]

> *"…opportunities to reduce unnecessary administrative processes and improve efficiency should be taken, even where that may mean a different approach across requiring authorities. It is also important to note that in reality the works will be constructed at different times and under different contracts, so the concern raised by Mr Runcie would not be an issue in practice*".

421. The Panel is not convinced by the SGA's submissions on this point. It acknowledges that the NZTA no doubt have robust and detailed processes in-house on which to develop such schedules of the appropriate standard. From the Panel's perspective, that simply means that a subsequent certification process via the Council should be more

[197] Ibid, at [14.44]
[198] Ibid, at [14.46]

streamlined as a result. It notes that the purpose of the schedules is to enable the effects of construction works (in terms of noise and vibration) to exceed certain standards (relating to existing District Plan rules), and it is not appropriate, in the Panel's view, for the NZTA to adopt a self-certification approach and thus be the final arbiter of whether those exceedances are acceptable without some level of Council oversight. As with Mr Runcie, the Panel is also concerned at the potential for different processes and outcomes in those situations where properties are affected by designations by both Requiring Authorities.

422. Therefore, and because we could not discern a proper basis for the difference in approaches, we have recommended that the use of consistent requirement for CNVMP Schedules across all the NoRs.

Panel findings and recommendations

423. On the basis of the above commentary, the Panel recommends the following changes to condition 25 for NoRs 1 – 4:

> *(d) The Schedule shall be submitted to the Manager for ~~information~~ Certification at least 5 working days (except in unforeseen circumstances) in advance of Construction Works that are covered by the scope of the Schedule and shall form part of the CNVMP. ~~If any comments are received from the Manager, these shall be considered by the Requiring Authority prior to implementation of the Schedule.~~*
>
> *(e) The CNVMP Schedule shall be deemed certified five working days from the submission of the CNVMP Schedule where no written confirmation of certification has been received.*
>
> *(f) Where material changes are made to a Schedule required by this condition, the Requiring Authority shall consult the owners and/or occupiers of sites subject to the Schedule prior to submitting the amended Schedule to the Manager for ~~information~~ Certification in accordance with ~~(c)~~ (d) above. The amended Schedule shall document the consultation undertaken with those owners and occupiers, and how consultation outcomes have and have not been taken into account.*

Section 176 deemed approval and LIP conditions

Introduction

424. During the hearing the Panel had made reference to the difference in conditions between the NZTA and AT designations. This included in respect of following:

- The s.176 deemed approval condition (proposed for AT NoRs); and
- The Land use Integration Process (**LIP**) condition (proposed for AT NoRs).

425. As indicated in respect of other differences, such as the implementation of the PWA and s.185, and CNVMP Schedules, the Panel was concerned to ensure that affected landowners would not be subject to differing outcomes depending on who's designation was appliable. We were also concerned to ensure that the implementation of conditions would have consistent approaches and results. The Panel notes that the lapse periods for the NoRs are very lengthy and over the next 20-30 years, organisations and processes could be subject to change. We also observe that the conditions are cast in a manner that establishes a minimum standard to be met, and there is no difficulty from our perspective if a higher standard were to be applied by one or other of the Requiring Authorities. Overall, the Panel considers that a common set of conditions should apply where possible to both the AT and NZTA NoRs.

426. The Reply addressed the general principles as to why the condition approaches could be and are different in certain respects. It noted that while Ms Bunting and Mr Scrafton agreed that in an 'ideal world' the conditions would be the same, there are good reasons for the different approaches:

(a) AT is a Council Controlled Organisation under the Local Government (Auckland Council) Act 2009 while NZTA is a Crown Agency with a national focus and has functions and operating principles set out in the Land Transport Management Act 2003 and the Government Roading Powers Act 1989.

(b) The nature of the corridors is different. The NZTA NoRs include upgrades to a state highway and a new RTC where access onto the corridors from surrounding properties is largely restricted. While there are opportunities for integration with the NZTA corridors, the opportunities for delivering the corridors in partnership with developers are greater for the AT urban arterials where a more active interface is sought.

(c) There is a greater number of AT NoRs across the North Projects (and across the wider Te Tupu Ngātahi programme), which will require more engagement with developers and will result in a greater volume of owners and occupiers seeking s.176 approvals.

427. The Reply notes, however, that notwithstanding the above differences, there is a high level of consistency across the conditions.

Section 176 deemed approval

428. This provision was prepared in respect of network utility operators, the Council's Parks department and to other landowners more generally. For example, the 'general' s.176 approval condition is as follows (AT condition 8):

(a) Prior to the start of the formal acquisition process under the Public Works Act 1981 for a property, or submission of the Outline Plan, persons on properties zoned Rural or Future Urban will not require written consent under section 176 of the RMA for the following activities:

(i) Internal alterations;

(ii) One extension to an existing structure as at 2023, up to 30m^2;

(iii) Temporary or relocatable structures, provided they are removed from the site and the land is reinstated (including closing and capping any associated services) at the landowner's expense prior to the start of Construction Works. The landowner shall be responsible for any resource consent required for the structures, their removal or relocation,

(b) To the extent that a record of written approval is required for the activities listed above, this condition shall constitute written approval.

429. The Reply notes that the deemed approval condition approach proposed by AT will lead to improved efficiencies in circumstances where it would otherwise need to manage a much larger workload associated with landowners wishing to undertake minor works within designation boundaries. It also comments in respect of the variation to condition approaches across the Te Tupu Ngātahi projects generally, that the s.176 exemption condition is included "*to recognise the lack of urban development in the Project area and to mitigate some of the blighting effects that long lapse periods may have*".[199]

430. The NZTA NoRs do not provide corresponding conditions and rely instead on what were described as existing and established website-based approaches. These were detailed in section 8 of Mr Rama's evidence, including the way in which its nationally based teams operate and respond to local queries and requests regarding integration and ss.176 and 178 matters. We note from Mr Rama's evidence that a deemed s.176 approval condition was not considered necessary by NZTA, because information is already held on the NZTA website to provide guidance to the public in this regard. He did note, however, that "*[t]he website could include a more detailed list of the types of activities that can be undertaken without written approval than a condition could…*", while also advising of the ability or intent to increase restrictions closer to the construction of the Projects.[200]

431. The Reply advised that the NZTA approach is quite different to AT as this organisation does not have the same opportunities for sharing workloads. It submitted that "*both the deemed approval condition proposed by AT and the website-based approach proposed by NZTA are appropriate mechanisms for addressing concerns raised by submitters*".[201]

432. The Panel agrees with the AT approach, although we heard from a number of submitters who noted that the extent of permitted works are very limited and would not offset the loss of utility from their land. However, we accept that the AT condition will enable small-scale works to be undertaken in an efficient manner and without the need to enter into formal approval processes.

[199] Ibid, at [19.4]
[200] EV06, at [8.8]
[201] EV78, at [14.30]

428. From the perspective of a deemed s.176 approval, the Panel also considers that the AT condition is more certain than the website-based approach advanced by NZTA. From the Panel's own review of the NZTA website, we observe that it advises of examples of work that would be exempt as including painting and decorating, garden improvement and utility repairs. Relative to the AT deemed s.176 consent condition, however, it creates some uncertainty where it states that new buildings "*would likely need written consent from NZTA*".

429. While the evidence of Mr Rama suggests that the description within the NZTA website can be more detailed, no evidence was received as to what amendments may be proposed in this regard, nor what further restrictions may be included closer to the implementation stage. With respect to the latter, that approach suggests that further restrictions will likely be applied in the future, whereas such amendments would not be applicable to persons affected by the AT designations. The Panel is not satisfied that this approach is equitable or justified.

430. The Panel also observes in this regard that the NZTA website includes reference to 'utility repairs' as a type of work for which s.176 approval would not be required. We consider that it would be appropriate to include this in the AT condition and we have recommended this accordingly.

431. Overall, however, the Panel does not consider the two approaches to be commensurate from the perspective of an affected landowner. Further, we do not consider it appropriate that deemed s.176 provisions have been included in the NZTA NoRs for network utility operators and the Council's Parks department, but not for affected landowners more generally. It has not been satisfactorily explained to us why those organisations, who we consider are likely to be able to more easily navigate NZTA approval processes, have the benefit of these provisions, and landowners do not, for equally minor levels of work.

432. Accordingly, we recommend the inclusion of the same landowner s.176 deemed approval condition as applicable to AT NoRs to NZTA NoRs 1 – 4, with amendments to wording to reflect the comments above. The Panel wishes to highlight that this recommended change would not prevent NZTA from including additional exemptions on its website should it wish to do so.

Land use Integration Process

433. The AT NoRs include a detailed Land use Integration Process condition (condition 3) (**LIP**) which has the purpose of encouraging and facilitating the integration of master planning and land use development activity on land directly affected or adjacent to the designation.

434. Similar to the s.176 deemed approval condition, the Reply explained that the developer integration and web-based processes used by NZTA will lead to similar outcomes to the LIP condition proposed for the AT NoRs, and compares the matters required by that condition with what NZTA would also undertake. With reference to the evidence

presented on behalf of FHLD and Mammoth Ventures Ltd in respect of integration with NoR 4, and the response comments by Mr Collins for the Council (who considered the LIP should apply to the NZTA NoRs, as also agreed by Mr Wilkinson), the Reply comments that:[202]

> "*NZTA does not disagree that there is a need for integration across its corridors. However, the context is so different to the AT urban arterials that it does not warrant conditioning a land use integration process, particularly in circumstances where there are already robust internal processes in place and the LIP condition has been specifically designed for AT*".

435. The Reply concludes on this point by saying:

> "*While it may appear straightforward to add the LIP and deemed approval conditions into the NZTA NoRs, it is important to re-iterate that NZTA has carefully worked through this matter and has proposed a condition set that recognises its own business practices as well as the context of its NoRs. The LIP condition was designed specifically for AT, and placing the same condition on NZTA risks creating inefficiencies in circumstances where NZTA already has robust processes in place to manage integration*".

436. The Panel notes that, notwithstanding the emphasis and reliance placed on NZTA's website-based approach, the relevant links or content within its website were not provided. Nevertheless, from our aforementioned review of the website, a separate page recommends that developments affecting the state highway network, or designations for the same, should be discussed with NZTA. An online application form link is provided for this purpose. It does not appear that there is any guidance or information contained within this resource as to what information should be provided (beyond a description of an enquirer's proposal). This compares unfavourably, in the Panel's view, with the up-front process and information details that are incorporated within condition (3)(c) of the AT NoRs.

437. The Panel is again not able to accept, on the information that is available, that the two processes are commensurate, nor that the inclusion of a form of the LIP condition on the NZTA NoRs would interrupt or be incompatible with the existing systems that it presently uses for integration queries. We consider that the LIP condition better describes the obligations and responsibilities of the developer and the relevant Requiring Authority(s), and establishes a framework for information sharing, approval processes, and maintaining a record of engagement. Given the extensive length of the RTC in particular, through land that is earmarked for future plan changes and development, we consider that defining these processes to at least some level of detail (and ideally consistent with those applicable to the AT designations) to be essential to promoting integration outcomes and greater certainty as to how those outcomes will be achieved. From the way in which existing NZTA processes were described to us, we can also see no particular difficulty in adapting those processes to the requirements of

[202] Ibid, at [14.34]

the LIP condition.

438. In this respect, the Panel also highlights the submission contained in the Reply that the LIP is referred to as one of the conditions to address the uncertainty associated with the long lapse dates.[203] Given that the RTC is proposed to have a 30-year lapse condition, we consider that the submission point would be of particular applicability to NoR 1.

439. While the Panel accepts that AT and NZTA are separate entities, it is our view that landowners should be able to expect a consistent approach, particularly if affected by designations from both Requiring Authorities. The Panel also does not accept that inclusion of similar conditions to AT within the NZTA NoRs would give rise to any difficulties or inefficiencies on the part of NZTA, and considers that a greater level of certainty can be provided to adjacent or affected landowners by adopting the LIP and s.176 deemed consent conditions.

440. The Panel therefore recommends the LIP condition also be applied to the NZTA NoRs, with amendments to wording to reflect the comments above.

Topics not addressed elsewhere

441. The following topics relate to issues or topics raised in the Council's response, and which have not been previously addressed.

Arboriculture

442. The Panel was interested in the proposed mitigation for the expected removal of a notable Kauri tree located growing on the boundary of Dairy Flat Highway (NoR 9). The evidence of Matthew Paul for the SGA confirmed that this tree will likely require removal to facilitate the works. He explained that while avoiding its removal was considered at the optioneering stage, it is impossible to undertake the works without impacting the tree. However, he also considered that it is unlikely to survive the next 30 years given its precarious location along Dairy Flat Highway.

443. Given its likely removal, the Panel queried what the appropriate mitigation would be, noting the proposed replacement planting ration of 2:1, per the Tree Management Plan (**TMP**) condition, which seemed insufficient in respect of a notable tree. While Mr Paul acknowledged that this 2:1 ratio would not address the importance of this tree in this case, he noted that it is more of an ecological matter rather than an arboricultural issue and one that will be considered during the regional consenting process.

444. The Reply submits that, with respect to district plan matters, the proposed TMP condition is appropriate for managing the removal of this tree, and that "*[t]he regional consenting process will consider its importance in the ecosystem and may result in consent conditions that would apply in addition to the TMP condition*".[204] This approach was agreed with by the Council's arborist, Rhys Caldwell, who explained that the tree

[203] Refer EV78, at [4.9]
[204] EV78, at [14.73]

is located within an SEA and its removal would trigger the need for a regional resource consent.

445. The Panel records our view, from a district plan perspective as relevant to these proceedings, that a planting ratio of somewhat more than 2:1 would be expected.

446. This leads to a further minor issue in respect of the replanting ratio included in the TMP more generally. Mr Caldwell's response memorandum stated that:[205]

> *"While there is general consensus with regard to the planting ratios, the wording of the conditions as recommended by the council provide for the most appropriate method of evaluation at the time of the proposed removals. Both versions of the conditions as worded provide for a minimum base level of replacement planting".*

447. The Reply notes that no change to the condition is proposed in the Council's conditions and submits that the wording as proposed by the Requiring Authorities is appropriate.

448. The Panel accepts the response set out in the Reply and beyond highlighting the likely need for more tailored mitigation for removal of the notable Kauri, and removal of vegetation within SEA areas more generally at the regional consenting stage, we make no recommendations in respect of this matter.

Ecology

Introduction

449. The areas of contention remaining between the SGA's ecologist, Ms Davies and the Council's Principal Environmental Scientist, Mark Lowe, were noted in the Reply to relate to the pre-construction ecological survey condition, requirements for terrestrial offsets, and the setback distances for wetland birds contained in the Ecological Management Plan (**EMP**) condition. We address these matters in turn below.

Pre-construction ecological survey condition

450. The issue with respect to the ecological survey condition (condition 27) was Mr Lowe's concern that it would only require a re-survey of the Identified Biodiversity Areas (**IBAs**) recorded in the schedule to the conditions, rather than a survey of potential new areas of value being created prior to the implementation stage. While no specific amendments to the condition were drafted, Mr Lowe advised that it would be "*appropriate and precautionary to not limit the future pre-construction ecological survey to the [IBAs] but rather retain flexibility to assess additional areas as required closer to the future construction phase*".[206]

451. Ms Davies evidence explained that the IBAs have been identified using an inherently conservative approach, and that areas where ecological value may improve in the future have already been considered through the assessment. The Reply submitted that a

[205] EV77, p.33
[206] Ibid, at p.37

requirement to survey additional areas would undermine the assessment and create uncertainty.

452. The Reply also highlighted Ms Davies' evidence that the regional consenting and Wildlife Act processes will act as a 'belts and braces" approach to add another layer of protection to fauna management. It notes that these processes "*can impose more stringent requirements should that be required in the context of the ecological matters assessed*".[207]

453. The Panel also questioned Ms Davies about re-surveys in the context of long lapse dates, and whether bats could be re-detected after regional consents are sought, including situations where consents are obtained several years in advance of the works being carried out. The Reply refers to Ms Davies' response that she would expect another survey to be carried out during the regional consenting process. This is illustrated by the regional consents granted by the Panel to AT for the North-West Trig Road Corridor Upgrade,[208] and conditions therein that require ecological surveys to be carried out prior to works commencing, including a site-specific bat survey prior to vegetation removal.

454. The Reply submits that the key point being that "*the designation conditions do not stop regional consenting processes requiring additional surveys if appropriate, which may be required both at the application assessment stage and also at a later date prior to the works commencing*".[209]

455. The Panel makes the observation that the need for further surveys was a contested matter in the Trig Road hearing through the applicant's evidence and legal submissions. Nevertheless, we acknowledge that the concurrent NoR conditions in that case were not determinative, and the conditions imposed were based on a consideration of the applicant's assessment of ecological effects and the evidence that the Panel heard. We therefore also accept that the same weighing of evidence can occur in respect of the present NoR projects, and appropriate conditions imposed should that be deemed necessary by the decision-maker(s).

456. We therefore do not recommend any changes to the relevant conditions in this regard.

Terrestrial offset requirements

457. The response memorandum of Mr Lowe has also raised an issue with the use of the EIANZ Guidelines. While he agreed with Ms Davies' assessment as to the magnitude of effects arising from the removal of 'District Plan vegetation', as determined under the EIANZ Guidelines (2018), he was of the view that the effects management hierarchy included in the more recent National Policy Statement for Indigenous Biodiversity (**NPS-IB**) should be applied. In particular, he noted that the NPS-IB is not yet reflected in the

[207] EV78, at [21.6]
[208] Council reference BUN60413797 and BUN60417340, 5 April 2024
[209] EV78, at [21.8]

EIANZ Guidelines. He advised that the NPS-IB:[210]

> *5.5 …seeks that indigenous biodiversity outside [a] Significant Natural Area (SNA (SEA in the AUP)) must be managed by applying the effects management hierarch (section 3.16(1)). The effects management [hierarchy] seeks offsetting that achieves a net gain, or compensation that outweigh the adverse effects. The discounting of adverse effects that are Low or Very Low as not requiring offset or compensation does not align with these aspects of the NPS:IB.*
>
> *5.6 The 1:1 area (m^2) replacement of groups of trees is unlikely to account for time lag which is also sought under the NPS:IB (Appendix 3 and 4).*

458. As a result, Mr Lowe recommended that the required quantum of planting should be calculated using a best practice offset accounting method. This would require a change to the EMP condition at 28 (NZTA) and 29 (AT), as shown in the Council's draft conditions dated 17 June 2024. This is shown below (as adopted from the response memorandum version of 27 July 2024), and incorporates the certification issue addressed previously:[211]

> *a. An EMP shall be prepared for any Confirmed Biodiversity Areas (confirmed through Condition 28) prior to the Start of Construction for a Stage of Work and submitted to the manager for certification. The objective of the EMP is to minimise effects of the Project on the ecological features of value of Confirmed Biodiversity Areas as far as practicable, and to remedy, offset or [compensate for] any residual adverse effects.*

459. We note here that the Panel had some difficulty ascertaining the particular issues in question due to changes in condition numbering and Mr Lowe's reference in his discussion to the TMP condition at his paragraph 5.7 (where no differences between the parties were apparent). We understand the matter in contention to relate to the requirement to "*remedy, offset or [compensate for] any residual adverse effects*" (as shown above), albeit this was shown in green font and attributed to Mr McCarten. The Reply commentary, set out below, only refers to the requirement for offsetting, and not to remedying or compensating for residual effects, but we have assumed it to be opposed to the use of this terminology as well.

460. Reference to Mr Lowe's memorandum does refer to the TMP condition, and the 2:1 replacement planting ratio (or "like for like" for groups of trees), where he expresses the opinion that "*such replanting is an offset or compensation, rather than mitigation as they do not alleviate, nor abate, nor moderate the severity of the impacts; nor are they located at the point of impact*". We note on this point that no changes to the conditions were proposed, and the TMP condition included the Reply condition is the same as that shown in the Council's memorandum.

[210] EV77, at p.38
[211] Ibid, at p.143

461. In respect of what appears to be reference to the EMP condition, rather than the TMP, the Reply identifies that Mr Lowe agrees with Ms Davies that under the EIANZ Guidelines 'low' adverse effects would not ordinarily require an offset. It refers to Mr Lowe's view that "*indigenous biodiversity outside SNAs must be managed by requiring offsets that achieve a net gain or compensation that outweighs the adverse effect in accordance with the effects management hierarchy contained in the NPS:IB*".[212] His proposed amendments are made in that respect, noting that he disagrees that 'low' or 'very low' effects do not require offsets or compensation.

462. It also refers to Ms Davies' evidence which acknowledged that while the NPS-IB was not gazetted at the time the ecological assessment was carried out, this would not have changed the assessment scope or methodology, or the effects assessment and conclusions that she reached.

463. The Reply goes on to make the following submissions in regard to Mr Lowe's position and proposed condition amendments:

> *21.12 In terms of the wording of the NPS:IB, it is incorrect to say that it requires offsetting for Very Low and Low adverse effects on indigenous biodiversity outside SNAs. Outside SNAs, the NPS:IB provides that where adverse effects are assessed as significant, the effects management hierarchy will be applied, which is considered a High level of effect under the EIANZ Guidelines. Then where there are more than minor residual adverse effects that cannot be avoided, minimised or remedied, offsetting will be provided where possible. In this way, there is no blanket requirement to offset or compensate for Low or Very Low adverse effects outside SNAs and as Ms Davies explained in her primary evidence there are no residual adverse effects to address. We note for completeness that Mr Paul similarly does not agree that an offset requirement is appropriate.*
>
> *21.13 It is also important to note that regional resource consents will be applied for in the future and any required offset would be fully assessed at that time. The approach taken in this NoR process has been to consider ecological effects to the extent necessary to inform the designation boundaries, and Ms Davies is confident that offset requirements can be met when required in the future as part of the regional resource consenting process.*

464. The Panel accepts the reasoning set out in the Reply, and in particular we agree that to the extent that adverse effects are identified at the regional consenting stage, that these can be appropriately addressed at that time.

465. If the issue in question referred to in the preceding discussion actually refers to the TMP condition, then we further note that we did not identify a basis on which to recommend changes to it, and our discussion on this topic also acknowledges the potential for further mitigation through regional consent processes (and which we anticipate may

[212] EV78, at [21.10]

need to be somewhat more than 2:1 ratio in respect of notable or significant vegetation).

Setback distances for wetland birds

466. Conditions 28 (NZTA) and 29 (AT) include provisions for an EMP in respect of wetland birds, and prescribes certain setbacks and buffers in respect of works near to nesting locations. Mr Lowe considers that specifying the setback distances for wetland birds based on the NZTA Dotterel Guidelines is inappropriate (as referred to by Ms Davies as the basis for the distances), and recommended greater setback distances.

467. The condition as proposed by the SGA and as attached to the Reply (NZTA version) is as follows:

> *(d) If an EMP is required in accordance with (a) for the presence of threatened or at risk wetland birds:*
>
> *(i) How the timing of any Construction Works shall be undertaken outside of the bird breeding season (September to February) where practicable.*
>
> *(ii) Where works are required within the Confirmed Biodiversity Area during the bird season, methods to minimise adverse effects on Threatened or At-Risk wetland birds*
>
> *(iii) Undertaking a nesting bird survey of Threatened or At-Risk wetland birds prior to any Construction Works taking place within a 50m radius of any identified Wetlands (including establishment of construction areas adjacent to Wetlands). Surveys should be repeated at the beginning of each wetland bird breeding season and following periods of construction inactivity;*
>
> *(iv) What protection and buffer measures will be provided where nesting Threatened or At-Risk wetland birds are identified within 50m of any construction area (including laydown areas). Measures could include:*
>
> *A. A 20 m buffer area around the nest location and retaining vegetation. The buffer areas should be demarcated where necessary to protect birds from encroachment. This might include the use of marker poles, tape and signage;*
>
> *B. Monitoring of the nesting Threatened or At-Risk wetland birds. Construction works within the 20m nesting buffer areas should not occur until the Threatened or At-Risk wetland birds have fledged*

from the nest location (approximately 30 days from egg laying to fledging); and

C. *Minimising the disturbance from the works if construction works are required within 50 m of a nest;*

D. *Adopting a 10m setback where practicable, between the edge of Wetlands and construction areas (along the edge of the stockpile/laydown area).*

E. *Minimising light spill from construction areas into Wetlands*

468. Mr Lowe recommended a change at (iv) to refer to 200m rather than 50m, with the final sentence to read "*Measures ~~could include~~ must consider the type, intensity and duration of the construction activity and species of wetland bird affected*", and the deletion of clauses A – E.

469. Mr Lowe's reasoning in this regard was that, in summary:[213]

6.7.1 An appropriate setback distance to avoid abandonment of a nest from construction activities is dependent on the specific construction activity (including intensity and duration) and species of wetland bird. Regardless, the distance is likely to be greater than 20 m.

6.7.2 Following a precautionary principle, it is recommended that the specification or recommendation of setback distances in the condition are removed (and can be developed as part of the Management Plan based on the specific activity and species) and the survey requirement trigger is also increased.

470. The Reply comments in this regard that, in summary:

(a) The ecological impact assessment for construction and disturbance on wetland birds *conservatively* included any wetland with wetland bird potential within 100m of the NoRs. Bird management was then recommended and conditioned where there was a level of effect of Moderate or higher. Extending the setbacks to 200m would encompass additional wetlands that have not been included in the assessment and subsequent IBAs.

(b) Ms Davies advised that the use of the NZTA Dotterel Guidelines is standard practice for this type of assessment and condition, and has been accepted in other Te Tupu Ngātahi Projects.

(c) The regional consenting process will also add another layer of protection to fauna management during which additional mitigation with respect to wetland birds may be imposed. This may involve requiring consents for the removal of vegetation in riparian margins or for activities close to wetlands, whereby more detailed habitat

[213] EV77, at p.40

and fauna surveys may be required, including the more comprehensive assessment of setback distances.

(d) The protection and buffer measures included in the EMP condition are framed as matters that may be included to achieve the overall objective of minimising effects on ecological features of value. This means that they are not set in stone should different setback distances be required where nesting Threatened or At-Risk wetland birds are identified and (for example) could be different in the final EMP to align with setback distances established through the regional resource consenting process.

471. Having considered the competing points in this regard the Panel prefers the recommendations of Mr Lowe, primarily because we consider that a more precautionary approach is in our view necessary in respect of vulnerable species. While clause (iv) is couched in terms of matters that 'could' be adopted in each case, and does not rule out greater setbacks as part of a subsequent consenting process, the Panel has a concern that these will form something of a baseline that we consider is insufficient on the basis of Mr Lowe's assessment. While the Reply expresses a concern that a distance of 200m would exceed the extent of the IBAs, we understand from Mr Lowe's memorandum and proposed condition that this would simply establish a threshold on which to undertake further assessment and to establish appropriate buffer zones.

472. The Panel therefore recommends that Mr Lowe's amendments (as set out above) are incorporated into conditions 28(d) (NZTA) and 29(e) (AT).

Dairy Flat village

473. We have previously addressed the wording of the 'Existing property access' condition as part of our discussion of 'Business and Property Impacts' and have recorded our recommendations in terms of that condition. Mr Collins' response memorandum noted that the Kahikatea Flat commercial centre (at the corner of Dairy Flat Highway and Kahikatea Flat Road) presents additional considerations in respect of this condition as follows:

(a) The commercial centre is largely developed, and therefore there is a lower likelihood of significant change in land use activities, compared with sites that have existing access within FUZ areas, with less likelihood of alternative access options (e.g., via new roads within the Business: Light Industrial Zone).

(b) The Light Industrial Zone in this location is on the edge of the RUB, which means it is unlikely that alternative access or routing could be provided, should right turns on Kahikatea Flat Road be restricted. Having regard to amendments to the ULDMP condition adopted for commercial areas as part of the North-West NoR hearings, changes were recommended for NoRs 8 and 11 to require details to be provided of how the project:

(v) Interfaces with the operational areas of commercial premises within

business zoned land, including loading areas, internal circulation and carparking, where practicable.

474. Mr Wilkinson advised that due to the locational characteristics of the area, he supported these changes.[214]

475. The Reply submits that the potential impacts on the urban area in this case are not the same as those in the North-West, where the proposed network runs through the existing Kumeū and Huapai townships, as well as constructing a new Rapid Transit Corridor alongside SH16 Main Road. It states that "*[t]his is very different to the North Project context, which does not have the same level of existing urbanisation*".[215]

476. The Reply also addresses Mr Collins' comments in respect of comparisons between Dairy Flat village and other sites in the FUZ in terms of the extent of development and the likelihood of alternative future access options. Again, it makes the point that while there some development at this location, "*it cannot be likened to the urban areas included in the North West Projects and it does not follow that the North West condition is warranted*". In addition, the Reply reiterates that AT "*has no intention to permanently close existing accessways, and should the works leave part of a property without access then the landowner could request it be purchased*".[216]

477. The Reply also comments in conclusion that the level of impact on live-zoned land would be insignificant, with no permanent works associated with Kahikatea Road in private property, and the works for Dairy Flat Highway are almost entirely within the road reserve.

478. The Panel accepts the Reply submissions in this regard and agrees that the situation at this location is not analogous to that which exists in the North-West NoRs context. We have not therefore adopted Mr Collins' proposed condition and make no recommendations in this regard.

Urban Design

479. Mr Denton's response memorandum reiterated specific concerns of integration related to NoRs 8 and 12 raised in his s.42A assessment (Dairy Flat Highway and Bawden Road upgrades respectively). He noted that each of these NoRs proposed four lanes "*introducing strong movement outcomes and placing a higher risk that place-based outcomes would be more difficult to achieve*",[217] particularly for NoR 12 adjacent to an anticipated urban centre. He referred to Mr Foster's opinion that the detail required is best addressed through future design stages and preparation of a ULDMP, and following structure planning. While Mr Denton supported this, he considered that more confidence would be achieved if the level of flexibility available and range of corridor

[214] EV77, at p.6
[215] EV78, at [22.4]
[216] Ibid, at [22.8]
[217] EV77, at p.27

design testing was better understood.

480. The Reply responded to this matter by noting the general approach addressed by Mr Mason, and the presumption of fill batters, and the decision to designate for tie-in areas on some properties. It submitted that both of these approaches lead to a slightly larger designation extent than just the operational corridor but allows for better urban design outcomes and integration opportunities. Noting also the range of modes that can be accommodated by the corridors for NoRs 5-13, as addressed by Mr Barrientos, the Reply considers that sufficient flexibility for design has been maintained for NoRs 8 and 12.

481. While the Panel understands the concern raised by Mr Denton, we note that no specific changes or new conditions were proposed to address this matter, and the Panel does not consider that there are further conditions beyond the requirements set out in the ULDMP that would provide any additional confidence as to the outcomes likely to be achieved. We highlight condition 17(a)(i) that requires details of how the projects will be "*designed to integrate with the adjacent urban (or proposed urban) and landscape context, including the surrounding existing or proposed topography, urban environment (i.e. centres and density of built form), natural environment, landscape character and open space zones*". The UDE plans also identify the potential opportunities for integration, and we have previously set out our recommendations as to the need to include reference to these plans within the ULDMP condition. Based on the inclusion of that recommended amendment, the Panel is satisfied that the issues of integration raised by Mr Denton can be suitably addressed through implementation of the ULDMP at the appropriate time.

482. Mr Denton also questioned whether processes for ongoing engagement with mana whenua should be included in the conditions. The Reply refers in this regard to Ms Bunting's evidence that the conditions have been developed at a programme-wide level in partnership with mana whenua, and therefore no changes are proposed. The Panel agrees with the approach as already articulated within the conditions, and so we make no further recommendations in respect of this matter.

Landscape

483. Ms Peake raised several matters in her response memorandum, relating to the need to revalidate the landscape, natural character, and visual effects assessments at implementation due to the long lapse dates; the protection of vegetation in Lucas Creek; and the structural screening and boundary treatment strategy. These matters are addressed below.

<u>Landscape revalidation</u>

484. Ms Peake's concern was that current assumptions made about the likely future environment may be inaccurate, so that the recommendation to revalidate the landscape, natural character, and visual effects of construction within the contemporary landscape context for each NoR (contained in the Assessment of Effects report and Ms

Wilkins Primary Evidence) is considered essential, together with a timely review of the results and ULDMP by the Council.

485. On this topic Ms Peake recommended the following changes to the condition 15 (NZTA) and 16 (AT):[218]

(a) Clause (a) "*A ULDMP shall be prepared ~~prior to the Start of Construction~~ as part of detailed design*". This was in order to allow for a reasonable time for the updated review recommended above.

(b) Clause (c): "*The ULDMP shall be prepared in accordance with the recommended mitigation measures contained in the landscape assessment report and Appendix 2 of the Primary Landscape Evidence and the recommended project specific outcomes in the Urban Design Evaluation*". This amendment was proposed because the current wording is considered broad and these assessments provide useful and detailed outcomes, including for the revalidation process.

486. These issues were responded to in the Reply which submitted that:[219]

> "*This urban-rural interface that needs to be maintained, and the role the Projects will have in this is one of the key reasons the conditions framework has been designed to be outcomes-focused. This approach has already been discussed earlier in these submissions, but the general lack of certainty of where these pockets of rural character may occur is addressed by the setting of principles rather than a process. This means that at the time of implementation, a process can be developed through the ULDMP that is bespoke to the environment at the time and the works being undertaken, that will ensure effects are managed, regardless of whether the impacted areas are urban or rural*".

487. The Panel does not consider that condition amendment (a) above is necessary, as conditions 7 and 12 (NZTA) make it clear that the ULDMP would form one of the management plans that is required at the outline plan stage, which in our view provides for the 'reasonable time' that Ms Peake seeks in order to undertake any updated review.

488. We have also previously recommended the inclusion of reference to the UDE within the ULDMP condition, and so while our proposed wording is not the same as Ms Peake's it will have the same effect, and so to that extent her recommendation in this regard is acknowledged and agreed with. In particular, the Panel considers that the UDE will provide a useful baseline for the subsequent and more detailed work to be undertaken at the implementation stage, where fundamental components of the respective NoR contexts would generally be expected to remain evident.

[218] Ibid, at p.32
[219] EV78, at [25.2]

Lucas Creek vegetation

489. Ms Peake commented that subsequent investigations have shown that the vegetation in question in respect of Lucas Creek is covered by both an SEA overlay and an existing SH1 designation, which offers both opportunities (through a future regional consent processes) and constraints to its protection.

490. The Reply notes its agreement with that assessment. It acknowledges that while part of the RTC works by Lucas Creek overlap with an SEA, ecological constraints were avoided as far as practicable for the Projects. However, it states that "*due to necessary integration with Albany Bus Station and to avoid a greater magnitude of adverse effects that would be caused by a more northern RTC crossing of SH1, an RTC alignment on the west of SH1 was selected*".[220]

491. The Reply also highlighted Ms Wilkins' supplementary evidence and hearing presentation that screening will be used where specific visual effects caused by unavoidable removal of vegetation require mitigation, whereby she described "*examples where mature vegetation and trees can be transplanted to the relevant site to essentially speed up the effect of the mitigation*".[221] It further highlights that any works undertaken within the riparian margin of Lucas Creek and SEAs will also require regional consents, for which more detailed investigations and mitigation will be required.

492. The Panel accepts that submission (and the evidence on which it is based), and so we do not make any recommendations on this issue.

Structural screening and boundary treatment

493. In terms of issues related to structural screening and the boundary treatment strategy, Ms Peake acknowledges the evidence that establishes that an integrated corridor approach to landscape design is the intended outcome of the ULDMP objectives. However, she expressed a concern at the separate processes under the PWA and ULDMP, and that they are not necessarily coordinated. She acknowledged that this issue "*is not easily resolved but [supports] the recommendation by others to include a LIP condition in the NZTA conditions to manage this issue as best as possible*".[222]

494. The Reply reiterates its prior submission, as discussed earlier in this report, that inclusion of the LIP condition would be an unnecessary doubling-up of existing NZTA processes. It goes on to say, with reference to Ms Wilkins' evidence, that:[223]

> "*…the ULDMP objectives provide an opportunity to consider a co-ordinated boundary treatment approach, but that this can only be done during detailed design when there is more information about the urban and landscape character and stakeholders that wish to be engaged with. There will also be a degree of overlap between the approach to boundary treatment and PWA processes for*

[220] Ibid, at [25.9]
[221] Ibid, at [25.10]
[222] EV77, at p.31
[223] EV78, at [25.6]

reinstatement, which will also only commence with detailed design once exact land requirements are known".

495. The Panel has previously addressed the reasons why we consider that it is appropriate to include the LIP condition as part of the NZTA condition set, and we have recommended its inclusion accordingly and so we agree with Ms Peake in this regard. This was not specifically in respect of the coordination of processes under the PWA and ULDMP, but in our view a coordinated outcome in this regard would be better provided for by such an inclusion.

Social

Overlap between Stakeholder Communication and SCEMP

496. The response memorandum by Ms Foy included detailed commentary with respect to the difficulties she perceived with respect to the interrelationship between the Stakeholder Communication and Engagement condition (NZTA condition 3, AT condition 4) and SCEMP (NZTA condition 13, AT condition 14). As summarised in the Reply, Ms Foy had queried whether the purpose of the Stakeholder Communication and Engagement condition should refer to updating the 'social baseline' prior to engagement and considered that more clarity about how it works together with the SCEMP is required. Ms Foy also referred to a duplication between the conditions as well as potential confusion about timeframes and proposed a new two-step approach to stakeholder engagement at 12 months and six months out from detailed design.

497. The Reply submits that the proposed engagement timeframes set out in the Requiring Authorities' conditions are important and have been carefully drafted to ensure that they align across the condition sets. It highlights that the condition timeline diagram included in the Visual Bundle shows that:

> *(a) Six months prior to the start of detailed design: the Stakeholder Communication and Engagement condition requires the identification of Stakeholders and methods for engagement, and relevant stakeholders shall be invited to participate in the preparation of ULDMPs; and*
>
> *(b) Prior to the Start of Construction: the ULDMPs and the SCEMPs are prepared.*

498. The Reply states that this timeline is to ensure that "*Stakeholders and methods for engagement are identified first and can then feed into detailed design as well as the preparation of the SCEMP, which is to identify how the public and Stakeholders will be engaged with throughout construction*".[224]

499. It goes on to acknowledge that while the Requiring Authorities recognise that there is some room for improvement, the amendments to these conditions proposed by Ms Foy are confusing and misunderstand their purpose and would not ensure the necessary

[224] Ibid, at [26.6]

level of alignment. By way of example, the Reply refers to Ms Foy's recommended additional step 12-months prior to detailed design, requiring information to be provided to directly affected and adjacent owners and occupiers. It says that this would be "*out of sequence with the need to first identify who those parties are and the methods to engage with them, which will occur six months later".*[225] In addition, the amendment to the SCEMP to provide an opportunity for Stakeholders to input into detailed design misunderstands the purpose of the SCEMP, "*which is about keeping people informed during construction and does not feed into design*".[226] It highlights that this is the role of the ULDMP, which already includes a requirement for the participation of relevant stakeholders.

500. Notwithstanding that criticism of Ms Foy's recommendations, the Reply advises of a change to remove duplication between the conditions, whereby clauses (b)(ii) and (iii) are deleted from the SCEMP, as follows:

> *(b) To achieve the objective, the SCEMP shall include:*
>
> *…*
>
> ~~*(ii) a list of properties within the designation which the Requiring Authority does not own or have occupation rights to;*~~
>
> ~~*(iii) methods to engage with Stakeholders and the owners of properties identified in (b)(ii) above;*~~

501. It goes on to say that "*these matters will be addressed through the Stakeholder Communication and Engagement condition earlier in the process*". The Panel notes that the change was only made to the NZTA version of the condition, and we did not understand the proposed change to be limited in this way. The Panel accepts and agrees that the deletion is appropriate, and we recommend that the change is also made to AT condition 14.

Conditions gap

502. In her response at the hearing and her associated memorandum, Ms Foy presented a diagram (that she had developed during the Takanini Level Crossing NoR hearing) showing the likely social impacts of the Projects and how she considers they will change over time and at different stages of the Projects.[227] The diagram sought to illustrate a gap that Ms Foy considered to exist between the designations being confirmed and funding being secured. These concerns were also noted by Mr Wilkinson.

503. The Reply states that the diagram shows the Project Information condition as a one-off event, whereas the condition "*requires a website to be set up within six months of the designation being confirmed and for it to be updated at the start of detailed design to*

[225] Ibid, at [27.7]
[226] Ibid, at [26.8]
[227] EV77, Figure 1 at p.71

provide information on the timing and staging of construction works".[228] Additional update periods are noted:

(a) The website needs to include the status of the Project and contact details for enquiries, and when there are changes to either of these the website will be updated to reflect the latest information (in accordance with an additional clause added to the conditions for clarity).

(b) Updates in relation to activities that can be undertaken by landowners without the need for written consent to be obtained under s.176. The Reply re-states that this list is likely to become more restrictive over time and therefore it will become important to the viability of the Project to ensure the accuracy of this information.

504. The Reply goes on to say that:[229]

> "*Regular periodic updates when there has been no change or progress towards implementation will achieve little and place an unreasonable administrative burden on the Requiring Authorities. It would also cause unnecessary stress to landowners, who would essentially be put on notice by the update, but no new information would be provided. The email subscription service required under the Project Information condition, described in detail earlier in these submissions in relation to ongoing engagement, will notify those subscribed, and new subscriptions will be allowed for the life of the Projects. This ensures that landowners are only notified when there is new, or a change in, information*".

505. The Reply further submits that Ms Foy's diagram also omits some key conditions and processes, citing that the AT NoRs have the LIP and s.176 exemption condition which apply from the designation confirmation date until implementation. It considers that both conditions "*will go a long way in providing some certainty*". Following that, and once detailed design commences, it emphasises that "*the preparation of the ULDMP will cover the processes previously covered by the LIP condition, as one of the requirements for the ULDMP is to show how the project has responded to matters identified through the Land Use Integration Process (for AT NoRs)*".[230]

506. The Reply acknowledges that the NZTA designations do not have these same conditions, but considers the NZTA's established approach to be commensurate, and recognises the different logistical reasons between the two methods. It further highlights that "*NZTA corridors tend to be limited access, and are therefore not subject to the same access or integration requirements that an AT corridor would be*", and that "*AT is also more likely to enter into a partnership with a developer for the delivery of a corridor than NZTA*".[231]

[228] EV78, at [26.13]
[229] Ibid, at [26.15]
[230] Ibid, at [26.16]
[231] Ibid, at [26.17]

507. These considerations are noted in the Reply as factors that would "plug the gaps" identified in Ms Foy's diagram, and that the conditions provide a robust method by which to manage uncertainty. In this way they are considered by the SGA to strike a reasonable balance "*between allowing for a level of change and activity within the designations given the long lapse period, and preventing development that would prevent or hinder the Projects*".[232]

508. The Panel notes that this issue overlaps with its consideration of a designation review condition, as well as the matter of whether the AT s.176 exemption and LIP conditions should also apply to NZTA. Our earlier findings in respect of those issues are relevant to note here:

    (a) In respect of website updates, we have recommended that a five-yearly review be undertaken in accordance with proposed conditions 4 and 5. We consider that this would address the gap identified by Ms Foy, and equally, we do not consider this to place an unreasonable administrative burden on the Requiring Authorities, particularly when considered against the burden of the designations that will be placed upon landowners for extensive periods of time.

    (b) In respect of the s.176 exemption condition, we note that it is only the NZTA conditions that propose reliance on a website approach to s.176 approvals, and for the reasons set out earlier we have recommended that the same condition applying to AT be included in the NZTA conditions. Further, we do not consider it appropriate that exempted activities under s.176 should have the potential to become more restrictive over time for NZTA designations (a further difference that exists relative to the AT designations), and we do not consider this to be equitable or appropriate. The Panel's recommended approach is considered to avoid an unfair and unreasonable distinction in this regard.

    (c) In terms of the different requirements for land-use integration, while we accept the general proposition as to the difference between NZTA and AT designations and the accessibility of their respective routes, we note the extent of FUZ land being traversed by NoR 1, and the integration necessary for NoRs 2 and 3. This makes inclusion of the LIP condition to be desirable in the Panel's view, particularly given the emphasis placed on integration to minimise severance effects along the RTC corridor.

509. The Panel does not make any further recommendations in respect of this topic, as our previous findings and recommendations remain applicable in this regard. Overall, and based on our recommended changes to the conditions, we conclude that the information gaps suggested in Ms Foy's diagram will not arise in the case of the present NoRs.

[232] Ibid, at [27.18]

Conditions not addressed elsewhere

Station noise

510. The s.42A memorandum of Mr Runcie recommended an addition to the station noise condition for NoRs 2 and 3 (condition 33) to provide clarity as to the standards to be used for the measurement and assessment of station noise.[233]

511. The Reply advised that after further consideration by the SGA team Mr Runcie's recommended wording has been adopted, albeit with some amendments, as follows:

> *(a) All mechanical and electrical services (including the public address system) at the Milldale and Pine Valley East Stations shall be designed to comply with the following noise rating levels and maximum noise levels at any residential site boundary, with reference to the New Zealand Standard NZS 6801:2008 "Acoustics – Measurement of environmental sound" and the New Zealand Standard NZS 6802:2008 "Acoustics - Environmental Noise" ~~as measured and assessed at any residential zone site boundary~~:*
>
> *…*

512. The Reply advises of the rationale for the amended wording as follows:[234]

> "*These amendments incorporate references to NZS 6801:2008 and NZS 6802:2008 as suggested by the Council section 42A reporting team whilst also deleting the reference to "measured and assessed" to make it clear that the intended focus of this condition is on the design of mechanical and electrical services and there is no requirement for the Requiring Authorities to measure and assess these noise rating levels and maximum noise levels on an ongoing basis*".

513. The Panel accepts that rationale for the amendments made to the condition and makes no recommendations in respect of the proposed wording.

Other amendments

ULDMP

514. Condition 16 (AT) and condition 15 (NZTA) require the ULDMP to be prepared in general accordance with several standards and guidelines. In all except one case, the document references include the phrase "*and any subsequent or updated version*". The exception is AT's 'Urban Roads and Streets Design Guide'. The Reply submitted that reference to an updated version is not required because the Guide "*informed the width of the NoR footprints*".[235]

515. However, the Panel considers that the qualifier should be included with this document because design standards could be subject to change during the period prior to the

[233] Agenda, at p.111
[234] EV78, at [14.56]
[235] Ibid, at [14.6]

implementation of the NoRs and may also have been superseded by a different document. This would be consistent with the earlier noted comment by Mr Mason who had acknowledged that standards, including the Guide, "*may change over time, and the final cross section to be implemented will be determined at the future detailed design stage*".[236]

516. The Panel therefore recommends that the phrase "*or any subsequent or updated version*" be included following the reference to the Urban Roads and Streets Design Guide in the ULDMP conditions.

General

517. The Reply advises of other amendments to the conditions. The more notable of these are described briefly below:

(a) The Schedules to the conditions have been updated to reflect changes made to the NoR boundaries post lodgement, being Schedule 1: General Accordance Plans and Information; Schedule 2: IBAs; Schedule 3: Trees to be included in the TMP; and Schedule 4: Identified PPFs Noise Criteria Categories);

(b) Changes to the IBAs in respect of lizards, birds (wetland/forest) and bats; and

(c) A new condition is added to NoR 4, "SH1 Improvements Project", to clarify which parts of the corridors are subject to the conditions.

518. The Panel acknowledges those changes, which are accepted and for which no recommendations are necessary.

Consideration of general site-specific concerns

Overview

519. As outlined previously, a large number of submissions were received across the overall North Projects and we heard from a number of submitters affected by these NoRs as to the way in which the designations would affect their properties. These included the extent of land proposed to be included in the designations, and the effects on the amenity and utility of those land areas (usually relating to frontages and including potential access restrictions) and the length of time that the subject land would be affected by the designations (lapse period).

520. To a significant extent our previous discussion with respect to these matters has sought to address such concerns on a generally Project-wide basis, with reference to specific evidence where that has highlighted the effects of a particular issue on an individual property. The Panel acknowledges the extent of property-specific evidence that it heard throughout the hearing and has taken note of the concerns expressed before it. However, in general, and as previously described, it has reached a view that those

[236] EV10, at [6.5]

matters are able to be appropriately addressed and managed through a combination of the following:

- the Project Information website (AT condition 2) or the NZTA website information;
- the AT LIP (condition 3), as also recommended to be applied to the NZTA NoRs, but also recognising in the event that this recommendation is not upheld, that integration processes are available via NZTA's website (albeit that these are undescribed);
- the SCEMP and ULDMP; and
- the PWA and s.185 of the RMA, and the Requiring Authorities' policy guidelines in respect of that.

521. The Panel observes that a number of issues raised in submissions, as listed in the s.42A report,[237] had either been addressed through the SGA's evidence, either by revisions to the designation alignments or changes to the conditions, such that those topics were not raised during the hearing.

522. The Panel also recognises that the specific responses as to the management and mitigation, and remediation, of effects on properties will not be known until the detailed design stage, including through the preparation of the SCEMPs and ULDMPs. This is, in the Panel's view, not an untypical outcome with respect to road and transport corridor designations with long lapse dates, but the Panel nevertheless recognises that these lapse dates are not themselves typical. However, we have, for the reasons set out earlier, accepted the need and rationale for the lapse dates proposed for these projects (subject to our recommendation in respect of a designation review process).

523. We also refer to Appendix F of the Reply which sets out in some detail the Requiring Authorities' responses to submitter-specific issues. These provided specific responses where applicable or refer to its evidence and legal submissions where relevant, and to further engagement that has occurred since the hearing was adjourned. The Panel has carefully considered the commentary provided in respect of individual submitters and whether any of the issues raised would affect our overall recommendations, including with respect to the conditions of the NoRs. We confirm that, in general, they would not and we consider that the submitter concerns have largely been addressed to an appropriate level of detail and with reference to further analysis (and engagement) where necessary.

524. We note certain exceptions to this, in line with the particular sites acknowledged within the Reply and which we discuss in further detail below, as well as a comment in respect of the use of site-specific management plans or conditions.

[237] Agenda, at Appendix 3

Panel findings and recommendations

525. No further recommendations arise as a result of our discussion and conclusions set out above.

The use of site specific management plans or conditions

Overview

526. Several witnesses for various submitters had raised concerns with construction effects and sought site-specific management plans or conditions in relation to their properties. This approach was borne out of the same issue arising in respect of the North-West NoR hearings. Mr Scrafton addressed this matter in his evidence, noting that "*duplicating an existing condition requirement by simply adding a name or property address does not add any material benefit and is not justified on an effects-basis*".[238]

527. The Reply referred to this matter, acknowledging that site-specific conditions are warranted to address the particular concerns raised by the North Shore Aero Club (**NSAC**) Incorporated with respect to aircraft operations, and Tuckers Orchid Nursery (**Tuckers**) with respect to nursery activities that are highly sensitive to dust. We address these parties and the changes to the conditions below.

North Shore Aero Club

528. For the NSAC, concerns were raised about potential obstructions into their airspace, as well as bird hazard and lighting and glare effects. A new condition 12 was referred to in the SGA's opening submissions in respect of NoRs 11 and 13 ('Airport Operations') as follows:

> *The Outline Plan shall:*
>
> *(i) include measures to manage potential glare, lighting and bird hazard effects on adjacent airport operations;*
>
> *(ii) demonstrate how requirements of any applicable airport overlay will be met or how any temporary infringement will be managed; and*
> *(iii) include details of any feedback received from airport operations in relation to (i) and (ii) above.*

529. The evidence of Natasha Rivai (planning consultant for NSAC) sought the inclusion of the NSAC within the definition of 'Stakeholder'. This was because the NSAC does not yet have Airport Authority or Requiring Authority status, with these applications being in train, it is essential for specific reference to be made to the occupier and operator of the North Shore Airport, being NSAC.[239]

[238] EV07, at [9.6], noting the relevant submitters at his footnote 15
[239] EV31, at [2.7]

530. However, the Reply referred to the approach taken to the conditions in this regard by Mr Scrafton and Ms Foy. In this regard, the SGA adopted a general resistance to a wider inclusion of individual parties as it would risk "*elevating those parties above others for no resource management purpose*" and considers that there is "*the potential for unintended consequences should the list be expanded".*[240] We accept that general premise, both in respect of the NSAC and other submitter parties. For the NSAC in particular, we consider that the inclusion of the above condition, that includes a requirement for feedback from "airport operations", takes the matter beyond doubt that they would be identified as a Stakeholder in accordance with the definition and requirements of condition 4 (SCEMP).

531. We therefore agree with the comment in the Reply that condition 12 will require AT to include details in the outline plan of any feedback received from airport operators, without compromising the 'Stakeholders' definition by introducing unnecessary weightings between parties.

Tuckers Orchid Nursery

532. The submission by Tuckers pointed out that their orchid operation is highly sensitive to dust from construction activities, and such activities could damage plant stock and its saleability. The SGA responded in its opening submissions that the preparation of a CEMP and conditions of a resource consent for earthworks could address the concern, and that compensation under the PWA was possible.

533. In response to the questions that the Panel raised with Mr Pratomo about the Tuckers site, the Reply advised that further recognition had been given by NZTA as to the particular concerns raised with respect to this site. Accordingly, and following further consideration, it noted that a proposed a new site-specific clause has been inserted into the CEMP condition for NoR 4 as follows:

> *(c) If, prior to the Start of Construction, a commercial orchid growing business operates at 1370 East Coast Road, Redvale, the CEMP shall also include details of measures to minimise the potential for dust to impact on its operation.*

534. The Panel considers such a site-specific condition is appropriate but considers it should be strengthened by requiring "*details of ~~measures~~ the best practicable option*" for addressing dust effects to be provided.

General approach

535. The Reply advises more generally that the matters addressed by these conditions are quite different to the more network-wide concerns (e.g., access and engagement in design) where other submitters have sought bespoke conditions. It submits that "*[t]he*

[240] EV78, at [18.5]

Panel can be confident that where bespoke conditions are required, they have been proposed".[241]

536. The Panel understands an underlying concern of submitters as to the potential for their particular integration issue(s) to be lost between the designations being confirmed and the time that the Projects are implemented. Separate to the two cases noted above, and having reviewed the submissions on the need for site-specific measures, it is clear that such requests highlight issues which submitters deem to be important at this present time. However, we are satisfied that the detail required within the ULDMP and SCEMP processes will be extensive and incorporate detailed integration considerations, and we therefore agree with the SGA that no additional site-specific conditions are necessary.

Panel findings and recommendations

537. As a result of our considerations, it is the Panel's findings that:

(a) The amended conditions more generally are suitably framed to ensure site-specific issues are captured through the engagement process, which will be used to inform the preparation of management plans; and

(b) Other than in respect of the NSAC and Tuckers, the inclusion of further site-specific conditions at this stage in the process would not be a useful addition to the same exercise being carried out at that the SCEMP preparation stage.

538. Accordingly, we have not recommended that further site-specific conditions be developed.

Northridge Golf Resort

539. Representatives of the Northridge Golf Resort (**Northridge**) raised concerns about the impact of NoRs 6 and 10 on the property at 379 Wainui Road. This related to impacts as to the extent of the designation on site features such as a number of greens, outdoor resort areas and carparking.

540. The SGA had provided details as to reductions of the designation over a portion of the golf course site. However, Northridge representatives sought further reductions in order to reduce likely impacts. Daniel Shaw, planning consultant, considered that Northridge would be significantly impacted by the NoRs, and that "*the assessment undertaken by the SGA has been inadequate in terms of the nature and use of the Submitters property and alternatives".*[242] By reference to the engineering evidence of Ashley Watson in respect of stormwater matters, Mr Shaw concluded that:[243]

[241] Ibid, at [14.18]
[242] EV52d, at [29]
[243] Ibid, at [30]

"*There are more reasonable alternatives available which will better integrate land use and infrastructure, and reduce impacts on the submitter's property, while still achieving the project objectives, and those of the [AUP]*".

541. The Reply noted that the extent of the designation was a key issue for Northridge (including the location of construction areas and stormwater devices), and that the matter is complicated by the submission from the owner of 348 Wainui Road (opposite the site), who raised similar concerns about the extent of the designation over their property.

542. It goes on to advise that the SGA has met with Northridge representatives following the hearing and, as part of the Reply, confirms that further boundary changes are proposed, and are shown in its Figure 6. The Panel notes that these changes are not insignificant, although effects on the eastern-most green remain extensive.

543. The Reply comments that Northridge has indicated its appreciation to AT regarding these reductions, although it is still considering its position in respect of them, with further engagement proposed to continue.[244] It also advises of the technical constraints that exist in terms of accommodating the necessary stormwater devices in this location, but advises that final decisions in this regard are not able to be resolved until the detailed design stage.[245]

544. We also heard evidence and received comments from Ms Foy in respect of the ongoing viability of Northridge, and the extent to which the evidence of Ms Healy for the SGA may have presupposed the cessation of Northridge's activities at the time the designations are implemented. Mr Shaw's evidence highlighted that the primary threat to the continuation of Northridge was the designations themselves. This issue became about the distinction to be made between Northridge as a private business and other Council-owned golf facilities, whereby Ms Foy considers that the recreational value of the Northridge and its potential future value as a green space and social facility should be given weight. Ms Healy acknowledged the positive recreation value of Northridge, but notes that it is its underlying business purpose that sets it apart from Council-owned facilities.

545. The Reply highlights that in any event, the assessment of effects has also considered the existing environment (which includes Northridge) and that "*the conditions proposed are sufficient to manage effects should the golf resort still be in operation at the time of implementation*".[246] It concludes on this point that:[247]

"*Mr Shaw's proposition that the golf resort could be integrated into surrounding land use in the future is accepted by the Requiring Authorities. It has never been suggested at any stage by any expert on behalf of the Requiring Authorities that*

[244] EV78, at [15.6]
[245] The October Reply advised that engagement with Northridge has continued but there are no further updates that can be provided to the Panel.
[246] Ibid, at [15.18]
[247] Ibid, at [15.19]

this would not be possible. The Requiring Authorities acknowledge Mr Wu's intention to further develop and maintain the golf course".

546. The Panel agrees with the submitter that Ms Healy appears to have discounted to some extent the adverse effects on Northridge because it is a privately owned business rather than a public facility. The Panel acknowledges, however, the dialogue that is continuing between the Requiring Authorities and Northridge in terms of the extent to which NoR 10 impinges on this property and the viability of the golf course operation, as further detailed in the October Reply. It is anticipated that further reductions to the designation extent may be included in the SGA's decisions but we are concerned that adverse effects on Northridge will still be significant unless a nine-hole golf course can continue to be configured on the site both during and post-construction of NoR 10.

547. Nevertheless, the Panel accept the Reply submissions in this regard, and acknowledge the engagement that is evidently continuing with Northridge in terms of the effects of NoR 10 on this property and anticipates that further reductions to the designation extent may be included in the SGA's decisions. The Panel highlights the desirability of maintaining a nine-hole golf course on this site, and thereby the overall viability of the Northridge premises. Notwithstanding whether further such reductions may be possible, we consider that the condition framework will ensure that Northridge are identified as a relevant stakeholder for the purposes of the SCEMP and that the ULDMP will provide for the integration of NoR 10 with the Northridge site at the detailed design stage.

Snowplanet

548. The submissions and evidence for the Snowplanet operation relate to NoR 4, in terms of its eastern extent over the western frontage of the Snowplanet site, and the western extent of NoR 13 (East Coast Road improvements) that affects the eastern side of the site.[248] While Snowplanet originally opposed both NoRs, the evidence of Paul Arneson, consultant planner for Snowplanet, agreed that "*the 'Reduced Designation' for NoR 4 as set out at page 60 of Mr Barrientos' primary evidence will not unduly inhibit the future operations of Snowplanet, or the function of the stormwater pond".*[249]

549. However, Snowplanet's counsel, Alan Webb, submitted that "*either the designation boundary should be reduced as sought by SL, or AT should commit now to providing approval under s 176 RMA, to make that process a formality*".[250]

550. In response, the Reply highlighted Mr Barrientos' evidence that the proposed NoR 4 boundary is reasonably necessary to deliver the SH1 improvements and further reductions are not proposed. It also noted that NZTA cannot commit to any s.176 approval for carpark extensions prior to reviewing any detailed planning. The Panel

[248] Commissioner Farnsworth declared a potential conflict of interest at the hearing in respect of Snowplanet and did not assist in the Panel's recommendations regarding this submitter.
[249] EV25a, at [B]
[250] EV25f, at [26]

considers that its recommended change to incorporate a LIP condition for this designation will assist in that future process.

551. More significantly, Mr Arneson remained concerned at the extent of NoR 13 on the Snowplanet site, and the potential for planning blight. In particular, he considered that the extent of NoR 13, which is approximately 1ha in area and extends up to 55m into the site, is unnecessary for the proposed widening. It would also extend into the footprint of the consented 'Alpine Coaster' and an area where Snowplanet wish to establish a solar panel array to power the existing Snowplanet facility. In his summary evidence, Mr Arneson sought that:[251]

    a) *The extent of NoR 13 as it affects the Snowplanet site should be significantly reduced; and/or*

    b) *The LIP condition should be amended to include specific reference to recommended changes to the designation boundary to provide site owners greater security in progressing with development within the designation boundary, prior to the Requiring Authority giving effect to the designation, or similar to the same effect.*

552. At the invitation of the Panel, Mr Arneson provided a supplementary statement (post-hearing) to set out the details of what changes to the LIP condition that he thought would be necessary to give effect to the above.[252] In particular, he advised of proposed amendments to include a new clause (dd) which would require AT "*to work proactively with land owners (developers or development agencies) to accommodate their development proposals within the designated area*", while a new clause (e)(iii) requires "*the 'nominated contact' at [AT] to record any agreements reached*".[253]

553. Snowplanet also subsequently (also post-hearing) provided a copy of the approved Alpine Coaster plans,[254] and the proposed concept plan for the solar array.[255] Both activities are located in the north-eastern part of the site, with the former being generally located along the eastern boundary (inside a proposed landscaped buffer) up to East Coast Road. A cursory review of these plans indicates some difficulties in implementing both, in that the two proposals are entirely overlapped (as also identified in the Reply[256]) and the solar array would appear to impact the trees shown on the approved plans, and the aforementioned landscape buffer. The Panel assumes that such issues would be resolved as part of a resource consent application for the solar array.

554. Mr Arneson suggested that a retaining wall solution would reduce the amount of land required for the road widening. This was addressed in Mr Barrientos' evidence, where

[251] EV25a, at [M]
[252] The Panel acknowledges on further review that this wording had already been included at Attachment 1 of Mr Arneson's primary evidence.
[253] EV25c, at [3]
[254] EV25e
[255] EV25d
[256] EV78, at Figure 7, and confirmed through post-hearing discussions, at [17.7]

he advised that this would not reduce the designation to any significant degree, as a large area would still be needed for construction, and for future maintenance.

555. The Reply noted that discussions were held with Snowplanet representatives after the hearing. In this regard it states that:

> "*Mr Barrientos reiterated that the Requiring Authorities are happy to work with Snowplanet to find an integrated solution, but require some certainty about its development plans before they can finalise anything. NoR 13 will not blight the property and hinder all development, but AT cannot give consent to any development within the designation extent until it is confident that the development will not unduly prevent or hinder the Project in the future, for which it needs sufficient information on the proposal, which has not been provided to date*".

556. In terms of the proposed amendments to the LIP condition, this was addressed in Mr Scrafton's rebuttal evidence (in response to the condition version shown at Attachment 1 to Mr Arneson's primary evidence) where he stated that:[257]

> *(a) There is currently no funding for the next stages of the Projects, therefore, I consider that it is inappropriate for the Requiring Authority to undertake further design work prematurely;*
>
> *(b) The suggested requirement for the Requiring Authority to "use all reasonable endeavours to minimise the impact that the Project will have on development plans" in my view goes beyond the intention of the Land Use Integration Process which seeks to integrate land use development with the proposed designations where appropriate, i.e., without compromising what the Project is seeking to achieve; and*
>
> *(c) The intention of the Land Use Integration Process condition is to effectively bridge the gap between the concept and detailed design stage for those who have development plans that are imminent and are likely to precede the implementation of the Projects.*

557. The Panel agrees with Mr Scrafton's comments in this regard, and that this accords with our understanding of the intent of the LIP condition (and again note the benefits of applying that condition to NoR 4 as regards the SH1 interface area of the Snowplanet site). We are, however, satisfied that the requirements of the condition will provide for appropriate dialogue between AT and Snowplanet at the time that Snowplanet seek further engagement with respect to its plans (and acknowledge the engagement already underway in this regard). We also note the requirement for records to be maintained in a suitable and relevant manner.

[257] EV07b, at [6.2]

558. The Panel therefore does not recommend the inclusion of the changes sought by Mr Arneson to the LIP condition.

RELEVANT STATUTORY PROVISIONS CONSIDERED

Introduction

559. AT and the NZTA are both requiring authorities in terms of s.166 of the RMA and have given notice to the Council under s.168 of its requirement for the works associated with the road construction and improvement projects described as NoRs 1 - 13.

560. We have previously set out the wording of s.171 which describes the matters to which this Panel must have regard when considering these NoRs and any submissions received, and in making our recommendations to the Requiring Authorities. Section 171 is subject to Part 2, which states the purpose and principles of the RMA.

561. Our recommendation in respect of the NoRs are therefore subject to the provisions of s.171 as set out above, and we address the specific clauses of s.171(1) below.

Section 171(1)(a) – Any relevant provisions of a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, a regional plan, a district plan or proposed district plan

562. The Panel notes that s.171(1)(a) requires that we consider the environmental effects of allowing the activity, having particular regard to the various statutory planning documents within the national, regional and local hierarchy. In other words, the environmental effects are to be assessed against the environment envisaged by those planning documents and the environmental outcomes sought by the relevant objectives and policies for the land through which the North Project routes are to pass. The analysis within the s.42A report and the evidence for the Requiring Authorities contained a comprehensive review of the framework established by these documents, including the statutory provisions as they relate to various parts of the routes.

563. As set out in the Requiring Authorities' opening submissions, the assessment of effects on the environment for the NoRs has been limited to matters that trigger district plan consent requirements as these are the only activities to be authorised by the proposed designations.[258] Accordingly, where National Environmental Standard (**NES**) or regional plan consenting requirements are triggered, these will not be authorised by the proposed designations. Resource consents will be required in the future to authorise activities controlled under the NES and regional plan matters of the AUP.

564. The assessment provided in Mr Wilkinson's s.42A report identifies the policy and planning provisions from the National Policy Statement on Urban Development (**NPS-UD**), the National Policy Statement on Freshwater Management (**NPS-FM**), and the Regional Policy Statement (**RPS**) and district plan sections of the AUP.

[258] EV01, at [8.10]

565. Mr Wilkinson also comments on the National Policy Statement on Indigenous Biodiversity 2023 (**NPS-IB**). Noting the recent nature of this NPS, he considered that the assessments by the SGA and the Council in terms of indigenous biodiversity matters, and that these can be appropriately managed, it was his view that the NoRs are likely to be consistent with the NPS-IB.

566. Mr Wilkinson's assessment set out in the s.42A report advised that he was in general agreement with the Requiring Authorities' assessment of the abovementioned statutory documents and that the Projects align with the relevant provisions of the national policy statements, policy documents and plans. He noted in reference to six submissions that had relevance to the NPS-UD that it could be argued "*whether the timing, funding and delivery of the proposed transport infrastructure is not being undertaken in a manner that integrates with urban growth and facilitates good urban outcomes".*[259] However, he acknowledged that the Council has adopted the SLUS for Dairy Flat and Silverdale, and while this is not 'structure planning', it serves to highlight the planned direction for developing these areas and supports what the SGA is seeking to deliver. He invited further evidence from the SGA in this regard, and stated that "*[p]rovided these matters are further resolved and conditions agreed, then I would agree that the NoRs give effect to the NPS-UD*".[260]

567. As part of his response memorandum, and in respect of the evidence of Mr Roberts regarding the alignment of the NoRs with the NPS-UD in particular, Mr Wilkinson highlighted the requirements of section 3.13 of the NPS-UD, and in this regard he stated that:

> "*the work carried out to-date, and with reference to the need to consider infrastructure (such as roads) indicates that what has been prepared and what is proposed by the NoRs is working towards achieving the outcomes that the NPS-UD seeks*".

568. This was consistent with the evidence that we heard from Ms Bunting for the SGA.

569. Expert planning evidence from the submitters was less comprehensive in its coverage, being focused on particular points of contention or areas of specific interest, but in some cases brought our attention to specific elements of the planning documents upon which their evidence focussed. This was particularly the case in respect of issues around structure planning and the FUZ in regard to the RTC. We find that the conditions attached to the recommendation address the concerns raised in the submitter evidence about the consistency of the Projects with the relevant provisions.

570. The preceding parts of this report have considered the adverse effects of the NoRs where there were matters remaining in contention between the Requiring Authorities, the submitters and the Council (or matters raised by this Panel), and we have made our findings in respect of these matters, having regard to the relevant statutory tests and

[259] Agenda, at p.154
[260] Ibid, at p.155

the conditions proposed by the Requiring Authorities and our recommended amendments (set out in Attachments 1 and 2).

571. We also note that during the hearing the Panel asked counsel for the SGA whether the plan provisions of the FUZ are relevant to the assessment of reasonable necessity under s.171(c) or other aspects of s.171. As previously noted, the Requiring Authorities agree, as advised through the Reply, that the scope and impact of the FUZ provisions are relevant in an assessment of whether the designation is reasonably necessary for achieving the Project Objectives.[261] If the FUZ by itself was sufficient to protect the routes and site and enable the construction, operation and maintenance of the Projects then that would be a factor in assessing if the designation was reasonably necessary. However, for the various reasons identified in submissions and evidence and addressed earlier, the Panel agrees the provisions of the FUZ have been shown to not always be sufficiently robust to protect against fast-track proposals or out of sequence plan changes, and do not of themselves function as a reliable form of route protection.

572. The FUZ provisions are also relevant to an assessment of the NoRs in relation to the AUP provisions in s.171(1)(a). However, as outlined in Ms Buntings' rebuttal evidence,[262] the FUZ provisions must be considered alongside other more relevant AUP provisions.

Section 171(1B) - any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation

573. Section 171(1B) provides that the effects to be considered under s.171(1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by a requiring authority.

574. Positive effects were described within section 9 of the AEE, and in terms of individual effect topic areas in Part D and were referenced by Mr Wilkinson in the s.42A report.[263] To a large extent, these effects form part of the overall rationale for the North Projects and align with their respective Project objectives. They were noted to include in a s.171(1B) sense a number of general matters (such as supporting and enabling growth and providing improved access to economic and social opportunities and improved resilience in the strategic transport network); supporting transformational mode shift and sustainable outcomes; encouraging land use and transport integration; providing for improved road-user safety; and integrating the transport response with the needs and opportunities of network utility providers.

575. The evidence of Ms Bunting noted Mr Wilkinson's (and various Council specialists) acknowledgement of the expected positive effects of the North Projects. It was her

[261] EV78, at [6.4]
[262] EV24b, at [4.63]
[263] Agenda, at pp.78 and 79

conclusion that "*a range of positive effects will arise from the North Projects, which will enable people and communities to provide for their social, economic wellbeing and for their health and safety*".[264] The Panel accepts that these positive effects identified by the Requiring Authorities relate to the Projects as a whole and we have taken these into consideration when balancing any adverse effects on the environment.

576. We also note that while a number of planning experts appeared for submitters in respect of particular site-specific concerns and issues, they did not generally oppose the NoRs and acknowledged some of the broader positive effects that would arise from their implementation. The exception to this is in respect of NoR 1, which we have discussed earlier in this report and have set out our conclusions in respect of it. In summary, we accept that the RTC will have positive effects, including in a comparative sense with a SH1 alignment, by being in greater proximity to walkable catchments within future urban areas.

577. Overall, the Panel agrees with the conclusions of the Council and Ms Bunting that the North Project NoRs will provide for a range of positive effects and outcomes for the reasons noted above.

Section 171(1)(b) – Adequate consideration has been given to alternative sites, routes, or methods of undertaking the work or that it is likely that the work will have a significant adverse effect on the environment.

578. Pursuant to s.171(1)(b), subject to Part 2 of the RMA, the Panel must have particular regard to whether adequate consideration has been given to alternative sites, routes and methods of undertaking the public work, if the requiring authority does not have an interest in the land sufficient for undertaking the work, or it is likely that the work will have a significant adverse effect on the environment.

579. The consideration of alternatives is a matter of whether we are satisfied that the Requiring Authorities have adequately considered alternatives, rather than whether the 'best' option has been chosen, or that all possible alternatives have been considered. Therefore, the options chosen by the Requiring Authorities are those that it considers meets their objectives for the Projects. As explained in the Requiring Authorities' opening submissions, they need to ensure that they have considered all reasonable options and have not acted arbitrarily or given cursory consideration to the alternatives.

580. The Panel notes that a detailed explanation of the assessment of alternatives for the proposed alignments for each NoR was set out in Appendix A of the AEE and in the evidence of Mr Norman. From that evidence we understand that the assessment of alternatives has been detailed and rigorous, and note Mr Norman's conclusions that:[265]

> *24.1 Te Tupu Ngātahi, on behalf of AT and NZTA, has adopted a systematic and comprehensive approach to considering alternatives and statutory methods. The MCA framework adopted to consider alternative options incorporated*

[264] EV24, at [16.14]
[265] EV08

Part 2 RMA elements as well as matters appropriate to AT and NZTA statutory functions.

24.2 In my opinion, adequate consideration was given to alternative sites, routes and methods in selecting the preferred options for undertaking the Projects and this meets the purposes of section 171(1)(b) of the RMA.

581. We are further satisfied that the documentation supporting the NoRs and its evidence clearly demonstrate the adequacy of the optioneering process and assessment.

582. The primary issues with respect to alternatives was related to NoR 1 and some aspects of designation alignment, as discussed with respect to the specific NoRs earlier in this report. Submissions in respect of specific NoRs were addressed by Mr Norman in his summary statement, that included the selection process for NoR 1.[266]

583. The Requiring Authorities' opening submissions noted the Council's agreement with the alternatives assessment undertaken by the SGA, and its conclusion that adequate consideration has been given to alternative sites, routes, or methods of undertaking the work. With respect to submitter concerns regarding the alternatives assessment for NoRs 1, 2 and 3, it states that:[267]

> "*Largely these relate to the outcome of the consideration of alternatives and not to the process itself. Where submitters have engaged with the detail of certain assessments (for example travel times in the assessment of the RTC options) they have failed to consider the overall process and the wide range of factors that need to be considered.*"

584. Those submissions also addressed the particular requirements of s.171(1)(b) in the following terms:[268]

> *(a) The focus is on the process, not the outcome: whether the Requiring Authorities have made sufficient investigations of alternatives to satisfy themselves of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration;*
> *(b) The question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods;*
> *(c) The fact that there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant;*
> *(d) The RMA does not entrust to the decision maker the policy function of deciding the most suitable site, route or method; the executive responsibility for selecting that site route or method remains with the Requiring Authorities;*

[266] EV08a, at [5.2] – [5.12]
[267] EV01, at [7.10]
[268] Ibid, at [14]

(e) *The RMA does not require every alternative, however speculative, to have been fully considered. Notable in this context is the fact that many of the Projects involve alterations or widening of existing corridors and have the express purpose of connecting key destinations and integrating with future urban growth. This, along with existing land use and environmental constraints has limited the alignment options readily available; and*

(f) *The Requiring Authorities are not required to eliminate speculative or suppositious options.*

585. In respect of (a) above, the submissions included a footnote highlighting that:[269]

> *The Supreme Court in Royal Forest and Bird Protection Society v New Zealand Transport Agency [2024] NZSC 26 confirmed at [154] that the requirements of section 171 are process-based. A consent authority only needs to be satisfied that the requiring authority has [given] "adequate consideration" to alternatives. The focus [is] on the process and not the result.*

586. The Reply re-stated the relevant tests and parameters for our recommendations, submitting that:[270]

> "*…it is clear that there has been more than adequate consideration of alternatives. The Requiring Authorities have not acted arbitrarily or given only cursory consideration to alternatives, and the assessment process was robust, transparent and replicable. While we acknowledge for completeness that the High Court in 'Basin Bridge' found that where there are adverse effects of allowing a notice of requirement on private land a more careful consideration of alternatives may be required, in our submission this test has been met*".

587. Overall, and other than the alignment issues discussed in respect of NoR 1 as addressed earlier (regarding certain 'developed' parts of the FUZ in Dairy Flat), we conclude that the evidence from the Requiring Authorities in respect of its assessment of alternatives was extensive and aligns with the requirements that have been established through the relevant case law.

588. Accordingly, the Panel finds that adequate and appropriate consideration was given to alternative routes and methods, and is in accordance with the requirements of s.171(1)(b).

Section 171(1)(c) - Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

589. Section 171(1)(c) requires that we must have particular regard to whether the work and designation are 'reasonably necessary' for achieving the objectives of the Requiring

[269] Ibid, at Footnote 376
[270] EV78, at [5.7], with reference to *New Zealand Transport Agency v Architectural Centre Incorporated* [2015] NZHC 1991 at [140].

Authorities for which the designations are sought. The project objectives were fully described in the documentation for the NoRs (and have been outlined earlier in this report), the legal submissions and evidence, as was the need for the specific works being reasonably necessary to achieve them.

590. The Requiring Authorities' opening submissions advised of two particular legal considerations related to the question posted by s.171(1)(c), and to which we have previously referred. Firstly, the Panel was advised that the High Court[271] has described the threshold of 'reasonably necessary' as falling somewhere between expedient or desirable on the one hand and essential on the other, with the use of 'reasonably' allowing some form of tolerance. On this interpretation, a threshold assessment may be made "*that is proportionate to the circumstances of the case to assess whether the proposed work is clearly justified*".[272] Secondly, what is then required is:[273]

> *"an assessment of whether the work and the designation proposed are reasonably necessary to achieve the requiring authority's objectives, not whether the objectives themselves are necessary. When assessing reasonable necessity, the Panel cannot cast judgment on the merits of a requiring authority's objectives*".

591. We have previously described the Project objectives, and as noted in the opening submissions, the AEE provides an extensive analysis of how the NoRs are reasonably necessary to achieve meet those objectives,[274] noting also the evidence of Messrs Lovell and Rama.[275] Ms Bunting's evidence referred again to the assessment undertaken in the AEE and advised that she remained "*of the view expressed in the AEE that the work and NoRs are reasonably necessary for achieving the objectives as required under section 171(1)(c) of the RMA*"[276] and noted Mr Wilkinson's agreement to the same.

592. The Panel notes that some submitters have questioned whether the extent of various designations would be reasonably necessary, including in relation to the extent of land required for operation and/or construction and for stormwater treatment. We have considered these issues previously in this report, and have generally found the designation extent, as finalised through the Requiring Authorities' amendments, to meet the threshold of 'reasonably necessary' as we have understood that test to have been defined by the courts. However, we have recommended that the Requiring Authorities differentiate 'indicative construction areas' from the general designation extents where possible.

[271] By reference to *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZHC 2347 at [93] – [96]
[272] EV01, at [16]
[273] Ibid, at [17], with reference to *Bungalo Holdings Limited v North Shore City Council* EC Auckland A052/01, 7 June 2001 at [66], and *New Zealand Transport Agency v Waikato Regional Council* [2023] NZEnvC 055 at [76]
[274] AEE, at sections 3.4 and 6
[275] Appendix A of EV05 and EV06
[276] EV24, at [15.6]

593. Overall, it is the Panel's finding that the North Project NoRs meet the requirements of s.171(1)(c).

Section 171(1)(d) - Other matters considered reasonably necessary in order to make a recommendation on the requirement.

594. The Panel was not presented with any specific 'other matters' from the Requiring Authorities that would be of particular moment to an assessment under s.171(1)(d). The AEE did not consider that there are any other matters under s.171(1)(d) that are reasonably necessary to make a recommendation on the NoRs. The s.42A report noted, however, that the AEE did provide an assessment against a range of other legislation, central government and local government plans, strategies and policies. These included the Government Policy Statement on Land Transport for 2021/22 – 2030/31; the Emissions Reduction Plan 2022; Auckland Regional Land Transport Plan 2018-2028; the Auckland Transport Alignment Project 2021-2031 (**ATAP**); and the Silverdale West Structure Plan. Mr Wilkinson advised that he generally concurs "*with the assessments and conclusions of the AEE on any other matter and the range of other documents listed in section 23.3 of the AEE*".[277]

595. The Requiring Authorities' opening submissions also advised, in the context of s.171(1)(d), that other legislation and policy has informed the development of the North Project NoRs. The submissions highlighted that:[278]

> *"At a strategic policy level, the objectives of the Supporting Growth Programme are recognised as a priority for Auckland. For example, the [ATAP] identifies the "critical role" of transport in delivering a successful Auckland, which means working towards transport objectives that include "enabling and supporting Auckland's growth".[279] This is what the projects seek to achieve. The objectives being progressed by Te Tupu Ngātahi are also supported by Auckland's strategic policy documents, including the FDS, with funding prioritised for Te Tupu Ngātahi to undertake these initiatives".*

596. The conclusions of the s.42A report and evidence and submissions of the Requiring Authorities in this regard were not challenged through the hearing, and the Panel therefore finds that the range of other legislation, central government and local government plans, strategies and policies identified in the AEE, and including the FDS (as discussed elsewhere), are relevant 'other matters', with which the Projects are generally aligned.

PART 2 OF THE RMA

597. Part 2 of the RMA sets out its purpose and principles at ss.5 to 8, with the overall purpose being sustainable management as defined in s.5. The SGA's opening submissions describe the approach to a Part 2 consideration in the context of

[277] Agenda, at p.163
[278] EV01, at [21]
[279] With reference to the AT Alignment Project 2021-2031, at [31].

designations under s.171, as amended by the Supreme Court in its decision on the East West Link project. In particular, it highlights that:[280]

> "*The Supreme Court majority confirms that reference to Part 2 cannot be used to produce outcomes that subvert the clear intent of directive provisions in plans and planning documents. As a result, objectives and policies become the focal point of the assessment under section 171, but decision makers must also ensure that the outcome of this assessment is not plainly contrary to the RMA's overall objective of sustainable management*".

598. Based on the assessments undertaken, the opening submissions stated that the Projects are consistent with the relevant planning documents and that there is no need for the Panel to engage with Part 2. However, for completeness, and to assist the Panel, it noted that section 26 of the AEE provides an assessment of the Projects against Part 2, and that Ms Bunting has provided her view on the conclusion reached in the AEE regarding the Part 2 considerations. We refer to Ms Bunting's conclusions below.

599. In terms of s.5, the Panel recognises that the proposal will generate adverse environmental effects. Taken overall and subject to compliance with the conditions we are recommending to the Requiring Authorities, we consider that these effects will be no more than minor and will be outweighed by the positive benefits of providing for the social, cultural and economic wellbeing of local and regional communities by enabling the development of roading infrastructure proposed in the NoRs. The conditions to be attached to the designations, including the Panel's recommended amendments, will ensure that adverse effects are avoided or mitigated to the extent that is practicable, and will address the maintenance and enhancement of amenity values and quality of the environment, such as construction traffic and access, noise, infrastructure, property effects and landscape amenity.

600. The Panel acknowledges, however, that the implementation and operation of the proposed roading projects could potentially generate effects on individual property owners that are more than minor or significant. These potential effects may arise, for example, from planning blight (due to the extended lapse periods) and the social effects of compulsory purchase. The primary manner by which these effects will be addressed is through the PWA (and the additional review process that we have recommended), as is also applicable across the Te Tupu Ngātahi programme.

601. Overall, we adopt the assessment of the AEE in respect of s.5, as agreed with by Mr Wilkinson, that "*[t]he North Projects will result in some adverse effects; however, when considering the significant regional and local benefits of the North Projects, and the measures proposed to avoid, remedy and mitigate the adverse effects, the North Projects are considered to be consistent with Section 5 of the RMA*".[281]

[280] EV01, with reference to *Royal Forest and Bird Protection Society v New Zealand Transport Agency* at [119].
[281] AEE, at [26.4], and restated in EV24, at [36.4]

602. The Panel has also had regard to the matters of national importance listed in s.6, and these were addressed in appropriate detail in the AEE, as referred to in the s.42A report. Key points in respect of s.6 were also highlighted by Ms Bunting, who stated that:[282]

(a) *Areas of high natural character, outstanding natural features and landscapes, and significant indigenous vegetation/habitat have largely been avoided (where practicable) through the assessment of alternatives process and selection of the preferred sites and routes, such that these matters of national importance will be preserved and protected;*

(b) *Where there is a functional or operational need to locate in these areas, the extent of the designations have been minimised, with opportunities to further minimise impacts through future detailed design [and regional consent processes]…*

(c) *Appropriate management measures are also proposed in the conditions including an [EMP] to avoid, remedy and mitigate relevant effects on nationally important bird, bad and lizards species. …Ms Davies concludes in her evidence that implementing the proposed mitigation (management plans) will appropriately manage the ecological effects identified;*

(d) *A future regional consenting process will also be required for activities such as removal of vegetation in SEAs or riparian margins, works in the coastal marine area (for NoR 4), freshwater bodies and stormwater discharges;*

(e) *In terms of RMA section 6(d), the North Projects will not impact upon existing public access to streams and the Coastal Marine Area, and will have the potential to enhance access to these areas, particularly through walking and cycling paths;*

(f) *In terms of RMA section 6(h), as noted in the evidence of Mr Norman and Mr Seyb, flood hazard risk and climate change risk have been considered in the route selection, refinement and AEE. A flood hazard condition is proposed, which will ensure significant risks are avoided.*

603. Section 7 includes 'other matters' that are relevant to the proposed designations. Key points in respect of s.7 were also addressed by Ms Bunting, who stated that:[283]

(f) *…In terms of RMA sections 7(c) and (f), … the North Projects have sought to maintain, and enhance amenity values and the quality of the environment through the route selection process and the development of the concept designs. The details of how this will be achieved will be confirmed during the future detailed design and outline plan stage, as part of preparation of the ULDMP which is a condition of each designation;*

[282] EV24, at [36.3]
[283] Ibid

(g) In regard to RMA 7(b), I note that where the Project Objectives of the Requiring Authority could be met by doing so, the North Projects use existing corridors. Furthermore, the only sections of new corridor (for NoRs *1, 5, 6, 11, and 12) are through FUZ land, which is considered an efficient use and development of resources recognising the Projects are needed to support development of this FUZ land;*

(h) In regard to RMA section 7(i), I note that the Projects seek to minimise the effects of climate change by providing resilience to flooding, including climate change scenarios. …

604. In terms of s.8, which requires all persons exercising functions and powers under the RMA to take the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) into account, no issues were drawn to our attention. It is recorded that the Requiring Authorities have established a collaborative working relationship with mana whenua, as described in section 26.3 of the AEE. This stated that:

> "*Te Tupu Ngātahi has partnered with Manawhenua throughout the development of the North Projects.This has resulted in the selection of transport corridors/stations which avoid and minimise adverse effects on cultural values where practicable. This has included avoiding or minimising impacts on SEAs, puke, wetlands and streams, and ensuring that construction management plans will be in place to protect water quality and any previously unrecorded items of cultural heritage encountered.*
>
> *"Further engagement will be undertaken in the detailed design and construction phases to ensure that the principles of the Treaty of Waitangi are taken into account. Given these factors, the development of the North Projects is considered to be consistent with the principles of the Treaty of Waitangi, and section 8 of the RMA*".

605. The Panel notes that this continued engagement will be mandated through the requirements contained in the Cultural Advisory Report requirements and in several of the management plan conditions.

606. Overall, the Panel accepts the assessment provided in the s.42A report and the evidence for the Requiring Authorities that the purpose and principles of the RMA as set out in Part 2 will be fulfilled by the Projects, and this aligns with the findings we have made in respect of s.171.

CONCLUSIONS

607. Section 171 of the RMA provides the means by which the NoRs can be recommended to be confirmed or otherwise by NZTA and AT. In terms of s.171 the Panel considers that the NoRs are appropriate, subject to the conditions we are recommending be adopted (as Attachments 1A and 2A) by the Requiring Authorities, and are therefore recommended to be confirmed.

608. Overall, we conclude in line with the s.42A recommendation report that:

(a) The notices of requirement and associated works are reasonably necessary for achieving the objectives of the Requiring Authorities;

(b) Adequate consideration has been given to alternative sites, routes or methods of undertaking the work identified in the NoRs;

(c) The notices of requirement are generally consistent with the relevant AUP provisions;

(d) The NoRs are generally in accordance with Part 2 of the RMA and relevant national environmental standards and national policy statements; and

(e) Restrictions, by way of conditions, imposed on the designations can avoid, remedy or mitigate any potential adverse environmental effects.

609. We also conclude that the 20-30 -year lapse periods sought by the Requiring Authorities for the NoRs are appropriate (subject to the recommended imposition of a designation review clause) given the Project's scale and the expected timeframes anticipated in respect of funding, land acquisition and outline plan approval processes to be completed, as well as its actual construction.

610. Many of the issues raised by submissions will be appropriately dealt with at the outline plan stage, that must occur before work commences and which are subject to overview and recommendations by the Council.

RECOMMENDATIONS

611. In accordance with section 171(2) of the RMA, and on behalf of the Auckland Council the Commissioners recommend to the New Zealand Transport Agency Waka Kotahi (NZTA) and Auckland Transport (AT) that the Notices of Requirement for the following designations:

- NoR 1 - North: New Rapid Transit Corridor, including a walking and cycling path – NZTA: for a new Rapid Transit Corridor between Albany Bus Station and Milldale, via Dairy Flat, including a cycleway and/or shared path;

- NoR 2 - North: New Rapid Transit Station at Milldale – NZTA: for a new Rapid Transit Station in Milldale, including transport interchange facilities and active mode facilities;

- NoR 3 - North: New Rapid Transit Station at Pine Valley Road – NZTA: for a designation for a new rapid transit station at Pine Valley Road, Dairy Flat, including transport interchange facilities, active mode facilities and park and ride facilities;

- NoR 4 - North: State Highway 1 Improvements – Albany to Ōrewa and Alterations to Existing Designations 6751, 6760, 6759, 6761 – NZTA: to alter Designations

6751 State Highway 1 - Albany, 6759 State Highway 1 – Silverdale, 6760 State Highway 1 – Redvale to Silverdale, and 6761 State Highway 1 – Silverdale to Puhoi for State Highway 1 improvements from Albany to Ōrewa;

- NoR 5 - North: New State Highway 1 Crossing at Dairy Stream – AT: for a new urban arterial corridor with active mode facilities and State Highway 1 motorway overbridge in the vicinity of Dairy Stream, between Top Road in Dairy Flat and East Coast Road in Stillwater;

- NoR 6 - North: New Connection between Milldale and Grand Drive, Ōrewa – AT: for a new urban arterial corridor with active mode facilities between Wainui Road in Milldale and Grand Drive in Upper Ōrewa;

- NoR 7 - North: Upgrade to Pine Valley Road – AT: for a designation for an upgrade to Pine Valley Road in Dairy Flat to an urban arterial corridor with active mode facilities between Argent Lane and the rural-urban boundary;

- NoR 8 - North: Upgrade to Dairy Flat Highway between Silverdale and Dairy Flat – AT: for a designation for an upgrade to Dairy Flat Highway to an urban arterial corridor with active mode facilities between Silverdale Interchange and Durey Road in Dairy Flat;

- NoR 9 - North: Upgrade to Dairy Flat Highway between Dairy Flat and Albany – AT: for a designation for an upgrade to Dairy Flat Highway between Durey Road in Dairy Flat and Albany village, including active mode facilities and safety improvements;

- NoR 10 - North: Upgrade to Wainui Road – AT: for a designation for an upgrade to Wainui Road to an urban arterial corridor with active mode facilities, between Lysnar Road in Wainui, and the State Highway 1 northbound Wainui Road offramp;

- NoR 11 - North: New Connection between Dairy Flat Highway and Wilks Road – AT: for a designation for a new urban arterial corridor with active mode facilities between Dairy Flat Highway (at the intersection of Kahikatea Flat Road) and Wilks Road in Dairy Flat;

- NoR 12 - North: Upgrade and Extension to Bawden Road – AT: for a designation for an upgrade and extension to Bawden Road to an urban arterial corridor with active mode facilities, between Dairy Flat Highway and State Highway 1; and

- NoR 13 - North: Upgrade to East Coast Road between Silverdale and Redvale – AT: for a designation for an upgrade to East Coast Road to an urban arterial corridor with active mode facilities, between Hibiscus Coast Highway in Silverdale and the Ō Mahurangi Penlink (Redvale) Interchange,

be confirmed, subject to the following recommendations:

General

(a) That the Requiring Authorities provide a different delineation within their respective designation maps for construction areas (shown as 'indicative construction areas' in the general arrangement plans);

Conditions

(b) That condition 2 (NZTA) include provision for subscribers to the information website to select the designation(s) of interest;

(c) That the AT Land use Integration Process condition be applied to NZTA NoRs 1 – 4 (as condition 2A);

(d) That condition 4 (NZTA) and condition 5 (AT) regarding designation reviews are amended to include a five-yearly review provision (except NoR 4), and include a six-month limitation to the post-construction review;

(e) That the second identical copy of condition 6 (NZTA) relating to NoR 4 is deleted and that NoR 4 is included as part of the condition applying to NoR 1;

(f) That the AT 'General Section 176 Approval' condition be applied to the NZTA NoRs (as condition 6A);

(g) That condition 8 (AT) include reference to 'utility repairs', as also recommended to be included in recommended condition 6A (NZTA);

(h) That the definition of Flood Prone Area (condition 9 NZTA, condition 10 AT) be amended in respect of the inclusion of the 1% AEP event;

(i) That the Overland Flow Path requirements at condition 9A (NZTA) and condition 10A (AT) are applied to NoR 4 and NoRs 7 – 10, 12 and 13;

(j) That condition 10 (NoRs 1 – 3) regarding existing property access retain the phrase "*unless otherwise agreed with the affected landowner*";

(k) That condition 12(b)(iv) (NZTA) and condition 13(b)(iv) (AT) regarding Management Plan requirements be amended to require certification;

(l) That condition 12(d) (NZTA) and condition 13(d) (AT) regarding Management Plan requirements be amended to delete reference to the option for changes to be provided as an update;

(m) That clauses (b)(ii) and (iii) of AT condition 14 (SCEMP) be deleted;

(n) That a clause is added to the ULDMP condition 16 (NZTA) and condition 17 (AT) requiring reference to the outcomes and relevancy of recommendations and

opportunities contained in the Te Tupu Ngātahi Urban Design Evaluation 2023, including the Outcomes and Opportunities Plans, in developing the detailed design response;

(o) That clause (b)(i) of condition 17 (AT) include the phrase "*or any subsequent or updated version*" in respect of the reference to the Urban Roads and Streets Design Guide;

(p) That condition 18 (NZTA) relating to the CEMP provisions for the Tuckers Orchard Nursery be amended to delete 'measures' and replace with 'the best practicable option';

(q) That condition 23 (NZTA) relating to the day-time construction vibration standard for Category A buildings, be amended to adopt the AT/AUP standard of 2mm/s ppv;

(r) That condition 24 (AT) relating to the night-time construction vibration standard for Category B buildings, be amended to adopt the NZTA standard of 1mm/s ppv;

(s) That condition 25 (NZTA) regarding CNVMP Schedules be amended to require certification of a schedule; to incorporate a deemed certification clause; and to require certification of a material change to a CNVMP Schedule;

(t) That condition 28 (NZTA) and condition 29 (AT) relating to Ecological Management Plans are amended at clause (d)(iv) to refer to 200m rather than 50m; with a requirement to consider the type, intensity and duration of the construction activity and species of wetland bird affected; and the deletion of clauses A – E;

(u) That condition 34 (Future Resurfacing Work) be deleted in respect of all AT NoRs except NoR 5, and that a clause be added to condition 33 (AT) requiring asphaltic concrete surfaces to be maintained to retain the noise reduction performance of the originally established surface; and

(v) That condition 33A (NZTA) and condition 34A (AT) be added to require a BPO assessment prior to construction in respect of the environment existing at the time of construction.

612. The recommended changes to conditions are set out in Attachments 1A and 2A.

613. Under section 171(3) of the RMA, the reasons for this recommendation are:

(a) The NoRs satisfy section 171 of the RMA as the designations will avoid, remedy or mitigate adverse environmental effects, subject to the adoption of the recommended conditions set out in Attachment A, and because the designations are in general accordance with to the objectives and policies of the relevant plans, which include:

- The National Policy Statement for Freshwater Management;
- The National Policy Statement for Indigenous Biodiversity;
- The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health;
- The New Zealand Coastal Policy Statement and the Hauraki Gulf Marine Park Act 2000;
- Auckland Regional Policy Statement; and
- Auckland Unitary Plan – Operative in Part,

(b) The Requiring Authorities have considered alternative sites, routes and methods for undertaking the proposed works.

(c) The proposed works are reasonably necessary for achieving the objectives of the Requiring Authorities.

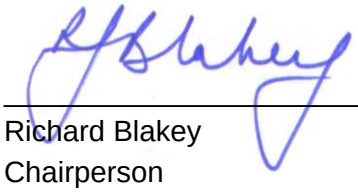
(d) Subject to the changes set out within the recommended conditions (at Attachments 1 and 2), and as described above, the designations will avoid, remedy or mitigate adverse environmental effects.

(e) A 20-30 -year lapse period for the designations is appropriate given the scale of the proposed works and associated timeframes related to funding, outline plan approvals and construction. This is subject to the recommended inclusion of a five-yearly review clause.

(f) The works proposed by the NoRs are consistent with Part 2 of the RMA in that they represent the sustainable management of natural and physical resources.

AMENDMENTS TO THE AUCKLAND UNITARY PLAN

614. That the Auckland Unitary Plan be amended as set out in **Attachments 1** and **2**.



Richard Blakey
Chairperson

Mark Farnsworth

Vaughan Smith

Date: 24 October 2024

Attachment 1 – Recommended Conditions: NZTA Designations

Attachment 2 – Recommended Conditions: AT Designations